



**PAG-12
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT FOR OPERATION OF
CONCENTRATED ANIMAL FEEDING OPERATIONS
FACT SHEET**

In compliance with the provisions of the Clean Streams Law (35 P.S. §§ 691.1 – 691.1001) and the Clean Water Act (33 U.S.C. §§ 1251 – 1388), the Department of Environmental Protection (DEP) is authorizing the operation of Concentrated Animal Feeding Operations (CAFOs) under the PAG-12 General Permit (2023 General Permit). The purpose of this document is to explain the basis for the terms and conditions of the 2023 General Permit, in accordance with 25 Pa. Code § 92a.53 (relating to documentation of permit conditions).

On March 31, 2018, DEP reissued the PAG-12 General Permit (2018 General Permit) for a new 5-year term, as announced in the *Pennsylvania Bulletin* [48 Pa.B. 1898]. Following reissuance, DEP decided to amend PAG-12 to address the issues identified below. DEP announced the availability of the amended General Permit in the October 31, 2020 version of the *Pennsylvania Bulletin* [50 Pa.B. 6060]. The modified General Permit became effective on January 1, 2021. DEP made the following modifications to the 2018 General Permit:

- **Coverage Expiration Date** – A specific expiration date was identified on the coverage approval page and page 1 of the amended General Permit. This date coincides with the expiration date of the master PAG-12 General Permit. All coverage under the amended General Permit will expire on the same date. CAFOs are expected to submit a timely Notice of Intent (NOI) for continuation of coverage under a reissued general permit prior to expiration of their existing coverage.
- **Annual Report Serving as Notice of Intent (NOI)** – Under the 2018 General Permit, CAFO Annual Reports were considered NOIs to continue coverage under the General Permit. DEP chose to utilize this CAFO Annual Report/NOI arrangement in an effort to reduce administrative burden while ensuring that permitted CAFOs continue to be eligible for coverage. In DEP's experience since the 2018 General Permit was issued, the CAFO Annual Report/NOI arrangement has not reduced administrative burden as intended. In addition, members of the public have expressed confusion over the role and function of CAFO Annual Reports. The amended General Permit no longer considered CAFO Annual Reports as NOIs. Permittees authorized to operate pursuant to the PAG-12 General Permit will continue to submit CAFO Annual Reports, but DEP will no longer consider the CAFO Annual Report as an NOI.
- **Removal of Automatic Expiration of Coverage Language** – The 2018 General Permit specified that failure to submit the CAFO Annual Report and the annual NOI installment fee payment by the due date constituted an expiration of coverage. DEP determined that this language reduces DEP discretion, produces an administrative burden, and was no longer necessary with the change to the role and function of the CAFO Annual Report as explained above. DEP will continue to take necessary enforcement action in the event a permittee fails to submit timely CAFO Annual Reports or annual NOI installment fee payments.
- **Daily Water Line Inspections** – The 2018 General Permit included a requirement from federal regulations at 40 CFR § 412.37 that operations with at least 700 mature dairy cows and/or 1,000 cattle other than mature dairy cows and veal calves must inspect water lines daily, including drinking water or cooling water lines, for the presence of leaks. The 2018 General Permit inadvertently omitted other types of operations that must conduct daily water line inspections under federal regulations. Those operations include all Large CAFOs except those with sheep, lambs, horses, or ducks. This omission was corrected in the amended General Permit.

These modifications have been retained in the reissued PAG-12 General Permit (2023 General Permit).

DEP published notice of the availability of the draft 2023 General Permit in the *Pennsylvania Bulletin* on October 1, 2022 [52 Pa.B. 6265]. A 30-day comment period was provided, and interested parties were directed to submit comments to DEP's eComment system, by e-mail to ecomment@pa.gov, or by traditional mail to DEP's Central Office. The comment period ended on October 31, 2022. DEP received comments and questions from 4 different individuals and organizations during the comment period and has developed a separate comment-response document.

Following the comment period, DEP's Agricultural Advisory Board (AAB) requested that PAG-12 be administratively extended so that a thorough evaluation could be completed of new requirements of the General Permit, as discussed

below. DEP agreed to the extension, and published notice of a one-year extension until March 31, 2024 in the *Pennsylvania Bulletin* [52 Pa.B. 7786] on December 17, 2022.

SCOPE

The General Permit may be used by certain CAFOs to meet requirements for NPDES permit coverage under state and federal regulations, including regulations at 25 Pa. Code §§ 92a.29(a) – (d) and 40 CFR § 122.23(a). The following agricultural operations that are not aquatic animal production facilities are eligible for coverage under the General Permit unless conditions exist that would prohibit such coverage (see “Operations Not Authorized by the General Permit” below):

1. Concentrated Animal Operations (CAOs) with greater than 300 Animal Equivalent Units (AEUs).
2. Any agricultural operation with greater than 1,000 AEUs.
3. Any agricultural operation defined as a Large CAFO under 40 CFR § 122.23(b)(4).
4. Any agricultural operation defined as a Medium CAFO under 40 CFR § 122.23(b)(6)(i) or as a Small CAFO under 40 CFR § 122.23(b)(9) that discharges pollutants to surface waters as described in 40 CFR § 122.23(b)(6)(ii).
5. Any agricultural operation that is defined as an Animal Feeding Operation (AFO) under 40 CFR § 122.23(b)(1) and is designated as a CAFO by the U.S. Environmental Protection Agency (EPA) or DEP under 40 CFR § 122.23(c).

OPERATIONS NOT AUTHORIZED BY THE GENERAL PERMIT

The following agricultural operations are not authorized under this General Permit, and DEP will deny coverage under this General Permit when one or more of the following conditions exist:

1. Operations that, individually or in combination with other similar operations, are or have the potential to be a contributor of pollution, as defined in the Pennsylvania Clean Streams Law, which is more appropriately controlled under an individual permit.
2. The operation is not, or will not be, in compliance with any one or more of the conditions of the General Permit.
3. Operations proposed by a person responsible for other activities regulated by DEP who has failed and continues to fail to comply or has shown a lack of ability or intention to comply with a regulation, permit, schedule of compliance or order issued by DEP.
4. Operations with discharges that contain pollutants for which a change has occurred in the availability of demonstrated technology or practices for the control or abatement of the pollutants.
5. Operations subject to categorical point source effluent limitations that have been promulgated by EPA and are not incorporated into the General Permit.
6. Operations that are not in compliance or will not result in compliance with an applicable effluent limitation or water quality standard.

NOTE – see “CAFOs Operating in TMDL Watersheds” below.

7. Operations for which an individual permit is required for other point source discharges, and issuance of both an individual permit and authorization for coverage under a General Permit for the facility would constitute an undue administrative burden on DEP.
8. Operations that DEP determines require an individual NPDES permit to ensure compliance with the federal Clean Water Act, the Pennsylvania Clean Streams Law or DEP regulations.
9. Operations with discharges to waters, including wetlands, with a designated or existing use of High Quality or Exceptional Value pursuant to 25 Pa. Code Chapter 93 (relating to Water Quality Standards).

The previous version of the PAG-12 General Permit contained these prohibitions, as provided in DEP's regulations at 25 Pa. Code §§ 92a.54(e)(1) – (9) (relating to general permits). In addition, CAFOs with discharges of pollutants at less than design conditions (i.e., the design storms identified in the PAG-12 General Permit) will not be authorized under the General Permit.

CAFOs Operating in Impaired Watersheds

Under EPA's regulations at 40 CFR § 122.44(d)(1)(vii)(B) (incorporated by reference at 25 Pa. Code § 92a.44), effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, must be consistent with the assumptions and requirements of any available wasteload allocation (WLA) for the discharge prepared by the State and approved by EPA pursuant to 40 CFR § 130.7 (relating to Total Maximum Daily Loads (TMDLs)). In addition, 40 CFR § 122.44(d)(1)(ii) requires the permitting authority to use procedures which account for, among other things, existing controls on point and nonpoint sources of pollution when determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a state water quality standard.

To ensure that CAFOs seeking coverage under PAG-12 are operating in a manner consistent with approved TMDLs and will not have discharges that cause or contribute to an impairment, DEP has developed a "Reasonable Potential Analysis" (RPA) spreadsheet for use by DEP Permits staff. This spreadsheet will be used anytime a CAFO is located within a watershed that is not attaining its existing or designated uses under Chapter 93 (i.e., is impaired), where the cause of the impairment is nutrients and/or sediment (including turbidity and Total Suspended Solids), to assist DEP with a determination of the likelihood that discharges from a CAFO's production area (including animal concentration areas adjacent to surface waters) are causing or contributing to the impairment. The spreadsheet will be used for all CAFOs located within the Chesapeake Bay watershed.

"Reasonable potential" is a term used in EPA's regulations at 40 CFR § 122.44(d) to characterize the likelihood of discharges causing or contributing to a violation of water quality standards. The RPA spreadsheet includes questions that evaluate the potential for discharges from CAFO production areas during normal precipitation events or other events conducted during dry weather that contribute to an impairment, which are not authorized under the General Permit. A finding of "high" reasonable potential will result in a determination that the CAFO is ineligible to use PAG-12 (under the authority of 25 Pa. Code § 92a.54(e)(1)) unless the CAFO can take actions, such as implement BMPs, to reduce the reasonable potential.

Areas outside of the production area are not part of the RPA spreadsheet. Since all CAFOs must have an Agricultural Erosion and Sediment Control (Ag E&S) Plan or Conservation Plan and Nutrient Management Plan (NMP) for lands under its control, implementation of these plans by CAFOs provides consistency with the assumptions and requirements of TMDLs for the land application of manure, where applicable, and limits any reasonable potential for discharges to cause excursions of state water quality standards. It is noted that in accordance with 40 CFR § 122.23(e), the discharge of manure, litter or process wastewater to waters of the United States from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from a CAFO subject to NPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. 1362(14). Where the manure, litter or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in 40 CFR § 122.42(e)(1)(vi)–(ix), a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

NOI REQUIREMENTS

A new or expanding operation that is eligible for and desires coverage under the PAG-12 General Permit must submit an administratively complete and acceptable NOI at least 180 days prior to the planned date for commencing operation as a CAFO. Buildings, facilities and structures may be constructed prior to obtaining NPDES permit coverage, provided that the appropriate earth disturbance and construction permits are obtained, as applicable. A CAFO that is authorized to operate under an individual NPDES permit who is seeking coverage under the General Permit may continue to operate in accordance with the individual permit while DEP reviews the NOI and associated documents for coverage under the General Permit.

PART A – EFFLUENT LIMITATIONS

Effluent limitations for CAFO NPDES permits consist of the implementation of best management practices (BMPs) designed to prevent the discharge of pollutants under normal operating conditions, defined as conditions less than a design storm event. The effluent limitations of the PAG-12 General Permit consist of: ensuring there are no discharges under normal operating conditions up to the design storm events identified in 40 CFR Part 412 and 25 Pa. Code § 91.36(a); compliance with all applicable technology and water quality-based standards in 40 CFR Part 412 and 25 Pa. Code Chapters 83, 91, 92a, 93, 95, 96, 102 and 105; and implementation of additional BMPs or other control measures to ensure that the water quality standards of the receiving waters are attained upon written notice from DEP.

PART A - SELF-MONITORING, REPORTING AND RECORDKEEPING

This section addresses:

- Representative sampling (applies to the collection of water samples, not manure or plant tissue samples, if required by the General Permit), in accordance with state and federal regulations.
- Test procedures, in accordance with state and federal regulations.
- Record retention requirements, in accordance with state and federal regulations.
- Routine inspections, involving daily, weekly and periodic self-inspections of water lines, production areas, manure storage freeboard and capacity, stormwater diversion systems, and land application equipment. The permittee would record the results of all inspections on forms supplied by DEP and retain the completed forms on-site.
- Annual reporting and fee requirements.
- Notification requirements for planned changes or alterations to physical facilities. As discussed further below, this section has been expanded in the PAG-12 General Permit.
- Non-compliance and potential pollution reporting – this section addresses the requirement that the permittee 1) notify DEP “immediately” (within 4 hours) of becoming aware of an incident that causes or threatens pollution (e.g., an accidental manure leak or discharge); 2) notify DEP within 24 hours when there is a non-compliance incident (not caused by an accident) and submit a written report to DEP; and 3) complete and maintain on-site a Non-Compliance Discharge Report for all other instances of non-compliance.
- Signatory requirements of state and federal regulations.

NPDES eReporting Rule

EPA published the NPDES Electronic Reporting Rule (eReporting Rule) on October 22, 2015. This rule is modernizing Clean Water Act (CWA) reporting for municipalities, industries and other facilities. The rule replaces most paper-based NPDES reporting requirements with electronic reporting. Specifically, the rule requires regulated entities to report information electronically, instead of filing written paper reports. These reports include:

- Discharge Monitoring Reports (DMRs);
- Notices of Intent to discharge in compliance with a general permit; and
- Other specified program reports.

The eReporting Rule provides two deadlines for electronic reporting: December 21, 2016 for Phase 1 data elements (i.e., DMRs, permit and facility data, etc.) and December 21, 2020 for Phase 2 data elements (i.e., program reports, NOIs, etc.).

On November 2, 2020, EPA published the NPDES Phase 2 Extension final rule which provides states and EPA additional time to implement electronic reporting for certain Clean Water Act discharge permitting requirements. In this final rule, EPA extended the compliance deadline for implementation of Phase 2 of the eReporting Rule by five years, from December 21, 2020 to December 21, 2025. This final rule also provides states with additional flexibility to request additional time as needed.

At this time DEP is working toward the development of an electronic reporting system for CAFO Annual Reports. It is anticipated that this system will be completed by 2024. DEP may need to request additional time in order to develop an electronic system for the receipt of PAG-12 NOIs. The PAG-12 General Permit requires the submission of NOIs and annual reports electronically when notified by DEP in writing.

PART B – GENERAL CONDITIONS

Requirements are established in this section that are consistent with 25 Pa. Code Chapter 92a and the federal requirements incorporated therein. This section also addresses Notice of Termination and Closure Plan requirements for CAFOs.

PART C – OTHER REQUIREMENTS

This section addresses requirements related to:

- Implementation of Nutrient Management Plans (NMPs) (including setbacks, applications during the winter period, and manure stockpiling).
- Implementation of Erosion and Sediment Control (E&S) Plans for agricultural plowing and tilling and animal heavy use areas (AHUAs).
- Implementation of Preparedness, Prevention and Contingency (PPC) Plans for agricultural operations.
- Management of animal mortalities.
- Appropriate design, construction, operation and maintenance (O&M) of manure storage facilities.
- Leak detection and subsurface drain monitoring.
- O&M and inspection of earthen manure storage facilities.
- Water Quality Management (WQM) permit requirements for new or expanded manure storage facilities.
- Implementation of measures to prevent discharges from raw material storage areas.
- DEP may require additional BMPs to protect public health and to protect, maintain and restore water quality, including BMPs identified in DEP's Watershed Implementation Plan (WIP) for the Chesapeake Bay TMDL.

SUMMARY OF CHANGES

In addition to retaining the changes made through the October 31, 2020 amendment to the 2018 General Permit, DEP has made the following additional changes for the 2023 General Permit:

- DEP has removed the requirement for existing operations that will become CAFOs as a result of new standard animal weights to apply for NPDES permit coverage no later than April 1, 2019, as this requirement is no longer applicable.
- DEP has removed language in the General Permit concerning possible revocation of coverage or enforcement action in the event a CAFO fails to submit an annual report or pay an annual NOI installment fee because the language is unnecessary (i.e., DEP may take appropriate action for any non-compliance, not just failure to submit reports and fees).
- DEP has clarified that the payment of an annual NOI installment fee is not required if DEP approves a Notice of Termination (NOT) prior to the due date. This is consistent with other general permits.
- Since issuance of the 2018 General Permit, DEP has developed a standardized Notice of Termination (NOT) form. DEP is requiring use of this form to notify DEP that permit coverage is no longer needed.

- The definitions for 25-year/24-hour storm and 100-year/24-hour storm have been updated to refer to National Oceanic and Atmospheric Administration (NOAA) Atlas 14 point precipitation frequency estimates, which replaced the National Weather Service's Technical Paper 40. New and expanded manure storage facilities that will collect precipitation should be designed to account for precipitation depths in NOAA Atlas 14.
- Part B I.D of the General Permit has been updated to include the proposed language below. This language existed in prior versions of PAG-12 and has been useful for facilitating corrective actions in response to DEP inspections.

The permittee shall ensure that activities and facilities, including the production and the land application areas under control of the owner and/or operator, associated with the CAFO operation do not create a danger of pollution, or cause or contribute to pollution of surface waters. In response to its own finding of water quality problems or based upon documented evidence, DEP may, upon written notice, require the permittee to develop and implement additional BMPs or use other control measures to promptly abate the pollution problem and to ensure that the water quality of the receiving water is protected and maintained and to ensure that clean water is diverted, as appropriate, from the production area.

- DEP has clarified in Part C I.D.2 and D.3 (relating to winter manure application) that the NMP must contain a determination of adequate manure storage capacity for the winter period and provide sufficient capacity at the start of winter to implement the NMP for liquid and semi-solid manure storage facilities only.
- Clarification has been made to Part C V.C (Freeboard) of the General Permit in that the regulatory freeboard of 12 inches applies to any manure storage facility that is exposed to direct precipitation (in addition to ponds and impoundments) and the regulatory freeboard of 6 inches applies to any manure storage facility that is not exposed to direct precipitation, on operations with less than 1,000 AEUs.
- Clarification has been made to Part C V.E (Leak Detection and Subsurface Drainage Monitoring) that in addition to monitoring drainage from leak detection systems beneath ponds and impoundments, monitoring must be done for any manure storage facility that is in-ground or below ground and has a leak detection system.
- In Part C V.F (Water Quality Management (WQM) Permits and Engineer Certifications), DEP has clarified that a WQM permit is required to construct any manure storage facility that is exposed to direct precipitation (in addition to ponds and impoundments) and will have a liquid and semi-solid manure storage capacity of between 1 and 2.5 million gallons where the nearest downgradient surface water is classified as a High Quality or Exceptional Value Water or is impaired for nutrients due to agricultural activities.
- DEP has removed Part C V.F.3 (relating to prevention of discharges up to the 100-year/24-hour storm for CAFOs with swine, poultry or veal calves) because it is redundant with requirements in Part A of the General Permit.
- DEP is requiring the inclusion of operation-specific methods for the management or disposal of mass animal mortalities in an operation's Preparedness, Prevention and Contingency (PPC) Plan or emergency response plan that is required in NMPs. This information will need to be submitted with the NOI to remain covered under PAG-12. This requirement is in response to the 2022 avian flu outbreak and resultant need for the disposal of millions of poultry animals. DEP believes it is appropriate to conduct advanced planning for future possible outbreaks.
- As mentioned above, DEP has developed the RPA spreadsheet for evaluating the reasonable potential for CAFOs to have discharges that cause or contribute to an impairment, where the CAFO operates in an impaired watershed (with or without an approved TMDL) where the cause is nutrients and/or sediment. As a result, the "BMP Checklist for TMDL Waters" that was proposed by DEP in the draft PAG-12 General Permit is no longer considered necessary as all of the information DEP will need to conduct this analysis will be part of the NOI submission, to be supplemented by field observations as necessary. The AAB had requested additional time to review the BMP Checklist for TMDL Waters but as a result of the RPA spreadsheet, the checklist will not be part of the final PAG-12 General Permit package.
- The due date for annual reports and annual NOI installment payments has been modified from January 1 to December 31 to align report and fee due dates with the expiration date of PAG-12.

PUBLIC NOTICE

In accordance with 25 Pa. Code § 92a.84(c)(2), DEP will publish notice in the *Pennsylvania Bulletin* upon receipt of each NOI form (3800-PM-BCW0032b) and each approval of coverage under the PAG-12 General Permit.