

The EPA Region 6 Water Quality Protection Division Director, William K. Honker, signed this proposed rule on 07/14/2016, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's [FDsys website \(https://www.gpo.gov/fdsys/search/home.action\)](https://www.gpo.gov/fdsys/search/home.action), [Regulations.gov \(http://www.regulations.gov/#!home\)](http://www.regulations.gov/#!home), and in the [EPA section of the FR website \(https://www.federalregister.gov/agencies/environmental-protection-agency\)](https://www.federalregister.gov/agencies/environmental-protection-agency).

ENVIRONMENTAL PROTECTION AGENCY

[FR

Final National Pollutant Discharge Elimination System (NPDES) General Permit For Discharges From Concentrated Animal Feeding Operations (CAFOs) In New Mexico (NMG010000)

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final NPDES General Permit Issuance

SUMMARY: EPA Region 6 today reissues a National Pollutant Discharge Elimination System general permit for eligible discharges from concentrated animal feeding operations (CAFOs), in New Mexico, except those discharges on Indian Country. This permit covers animal feeding operations that are defined as CAFOs or designated as CAFOs by the permitting authority and that are subject to 40 CFR part 412, subparts A (Horses) and C (Dairy Cows and Cattle Other than Veal Calves) and that discharge or propose to discharge pollutants to waters of the United States. A CAFO proposes to discharge if it is designed, constructed, operated, or maintained such that a discharge will occur. A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 Internet site:

<http://www.epa.gov/region6/water/npdes/cafo/index.htm>.

DATES: This permit is effective on, and is deemed issued for the purpose of judicial review, **[INSERT DATE OF FR PUBLICATION DATE]** and expires July 13, 2021. Under section

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509(b) of the CWA, judicial review of this general permit can be held by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for judicial review. Under section 509(b)(2) of the CWA, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Rosborough, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202-2733. Telephone: (214) 665-7515.

SUPPLEMENTARY INFORMATION:

Summary of Significant Changes from the Draft Permit

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited comments on NPDES general permit NMG010000 at [FRL-9921-07- Region 6](#) (December 30, 2014). The public comment period ended March 2, 2015. The State of New Mexico Environmental Department (NMED) received an extension to April 15, 2015, for certified comments. Region 6 received comments from the New Mexico Environment Department, New Mexico Farm & Livestock Bureau, New Mexico Department of Agriculture, Texas Cattle Feeders Association, Socially Responsible Agriculture Project, the New Mexico Environmental Law Center, Animal Legal Defense Fund, Sierra Club – Rio Grande Chapter, Amigos Bravos, Lea County Concerned Citizens, Rio Valle Concerned Citizens, and Mesquite Community Action Committee, Enviro Compliance Services, Inc., and Erika Brotzman. EPA Region 6 has considered all comments received. In response to those comments the following significant changes are made to the proposed permit. All changes are discussed in the response to comments documents.

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1. Permit Part II.A.5.a.ii. is revised to require calibration of land application equipment to be performed at least annually, in accordance with procedures and schedules to be established in the nutrient management plan for all equipment.
2. Permit Part I.E.8. is updated to require Notice of Intent (NOI) and Nutrient Management Plan (NMP) submittals to NMED.
3. Permit Part I.H, Change in Ownership is clarified and Permit Part I. E.9. is revised to remove the 7 day public review and comment for NOIs resulting from transfer of ownership of a facility with prior permit coverage.
4. Permit Part II.A.2.a.v. is clarified regarding equipment inspection deficiencies to specify deficiencies not corrected in 30 days to be explained.
5. Permit Part III. B. is revised to align facility closure requirements with New Mexico impoundment closure requirements.
6. Permit Part III.C.1.b. is changed to require retention of the telephone number of the recipient of any transferred manure, litter or process wastewater.
7. Permit Part V.A. is revised to change the annual report due date from January 31 to March 31.
8. Other minor changes and clarifications.

OTHER LEGAL REQUIREMENTS

A. State Certification

Under section 401(a)(1) of the CWA, EPA may not issue a NPDES permit until the State or Tribal authority in which the discharge will occur grants or waives certification to ensure compliance with appropriate requirements of the CWA and State law. The New Mexico Environment Department issued the 401 certification on April 15, 2015.

B. Other Regulatory Requirements

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The Endangered Species Act (ESA) of 1973 requires Federal Agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (also known collectively as the “Services”), that any actions authorized, funded, or carried out by the Agency (e.g., EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR 402 and 40 CFR 122.49(c)). Today’s permit is consistent with the ESA section 7(a)(2) consultation between EPA-Region 6 and the USFWS – Albuquerque Field Office, concluded on November 17, 2015.

AUTHORITY:

Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: July 14, 2016

William K. Honker, P.E
Water Quality Protection Division
EPA Region 6