

**Tennessee Department of Environment and Conservation (TDEC)
Division of Water Resources (DWR)
William Snodgrass-Tennessee Tower
312 Rosa L. Parks Avenue
NASHVILLE TN 37243**

Permit Issuance Rationale
Including
Record of Comments and Responses
(Notice of Determination)

**General State Operating Permits for
Concentrated Animal Feeding Operations (CAFOs)**

Permit No. SOPCI0000 (Formerly SOPCD0000)

June 20, 2016

Administrative Record

This permit rationale sets forth the Division of Water Resources' (division's) basis for permit conditions to be applied statewide for the reissuance of the General State Operating Permit for Concentrated Animal Feeding Operations (CAFOs), permit number SOPCI0000. This CAFO General State Operating Permit (SOP) is intended to authorize the operation of Class II CAFOs that manage liquid manure in open impoundments, wastewater containment structures, or in a manner that is otherwise not protected from rainfall events.

Operations eligible for coverage under this general permit could include Class II dairies, swine operations, beef cattle operations, as well as additional types of operations.

On November 13, 2015, the division published Public Notice No. NOPH15-002. This public notice announced our intent to issue this General State Operating Permit. Copies of the draft permits were made available in electronic format on the division's web site at <http://www.tn.gov/environment/topic/ppo-water>. On January 14, 2016, a public hearing was held at the William R. Snodgrass – Tennessee Tower, 312 Rosa L. Parks Avenue, Nashville, TN 37243. In addition, it was held via video conference at the following Environmental Field Offices:

Eastern Time Zone

EFO	Location	Phone No.
Chattanooga	1301 Riverfront Parkway, Suite 206	(423) 634-5745
Johnson City	2305 Silverdale Road	(423) 854-5400
Knoxville	3711 Middlebrook Pike	(865) 594-6035

Central Time Zone

EFO	Location	Phone No.
Nashville	711 R.S. Gass Blvd	(615) 687-7000
Jackson	1625 Hollywood Drive	(731) 512-1300
Cookeville	1221 South Willow Avenue	(931) 432-4015
Columbia	1421 Hampshire Pike	(931) 380-3371
Memphis	8383 Wolf Lake Drive, Bartlett	(901) 371-3000

The division set the deadline for any comments to be received by January 22, 2016. The public comments we received are summarized below, along with the division's responses.

Comments received and responses

- 1. Comment: If EPA has not specifically directed or required that the (discharge) provision be removed then we would request that the provision remain in the new permit.**

Response: The division does not have the authority to issue a state operating permit which authorizes a discharge. EPA has specifically informed the division that only a National Pollutant Discharge Elimination System (NPDES) permit can allow for a discharge.

- 2. Comment: In Section 1.5.4 and subpart 4.13, the timeline mentioned regarding Closure Plans was different by five days (360 days and 12 months, respectively).**

Response: Subpart 4.13 has been revised to state 360 days, per division rule 0400-40-05-.14(6).

- 3. Comment: Do permittees get to choose between the October 2002 edition of NRCS Conservation Practice Standard 316 and the most recent version, or should the most recent document be followed?**

Response: It is the intent of rule 0400-40-05-.14(10)(3.) that the most recent edition be followed.

- 4. Comment: The following sentence should be added to section 4.5.2 C. so that the permittee knows how to handle the collected samples: "The collected samples shall be promptly stored in an ice filled cooler and maintained in an environment that is below 6°C while being transported for laboratory analysis."**

Response: This suggestion has been added to the permit along with (43°F).

- 5. Comment: In section 4.10.2 C. we should change "Periodic" to a set interval. Periodic is vague and difficult to regulate.**

Response: “Periodic” is the word used in rule 0400-40-05-.14(10(10.)). This allows consideration of manufacturer’s recommendations and application frequency.

6. Comment: Is the activity with the 150ft setback mentioned in appendix C the same as mentioned in section 4.10.2 D.(ii.)?

Response: The 150ft setback mentioned in Appendix C is a recommendation for 3rd party recipients of manure. The 100ft setback is the required setback for operations per rule 0400-40-05-.14(10)(7.)(ii).

7. Comment: Section 4.10.2 D(ii.) sounds like if UT Extension recommends a shorter distance than 100ft we would be okay with it. I do not believe this was the intention, so I added a short clarifier: “but in no case closer than 100 feet”.

Response: This suggestion was incorporated into the permit language as “a minimum of 100 feet”.

8. Comment: In the definition of “Production Area”, do we want to put a number where it currently says “several”? Several is vague and difficult to regulate.

Response: The definition of Production Area is from division rule 0400-40-05-.02(7). The word “several” is given a specific time-frame in the following sentence, which states: “Note that manure or litter stored uncovered for more than two weeks is not considered to be short-term or temporary storage, and is included in the definition of production area.”

9. Comment: In the definition of “rainfall event”, I believe we should get rid of the Technical Paper No. 40 reference and mention the NOAA’s National Weather Service Atlas 14 data for Tennessee. You enter coordinates to find precipitation depths and return intervals rather than looking at a paper map. Plus, I believe it uses more recent data.

Response: This definition comes from rule 0400-40-05-.02(71). The NOAA National Weather Service Atlas 14 has been added to this permit as an “equivalent regional or state rainfall probability information developed from this source”, per division rule 0400-40-05-.02(71).

10. Comment: Does this general permit really just have to apply to Class II CAFOs? Why couldn’t it cover both Class I and Class II farms?

Response: The division does not view Class I operations as being suitable for coverage under a general permit due to the size and complexity of these facilities. Class I CAFOs that store liquid manure in impoundments or lagoons are eligible for coverage under either an Individual SOP or an Individual NPDES permit. Whichever of these two permit types an operation applies for coverage under, there is a minimum 30 day public notice period included. This provides members of the public with an opportunity to review and comment on a specific operation’s nutrient management plan.

11. Comment: Consider adding “or lagoons” to the permit language. Most farmers do not refer to their waste storage ponds as “impoundments” – this may help to clarify.

Response: Division rule 0400-40-05-.14 uses the term “impoundment” instead of the term “lagoon”. However, “or wastewater containment structure” has been added throughout the permit to address any type of structure that is not an impoundment.

12. Comment: The term “closure/rehabilitation plan” is not defined in the federal rules.

Response: The closure/rehabilitation plan is explained in division rule 0400-40-05-.14(6)(b).

13. Comment: To my knowledge, there are no fees for any SOPs. True? If so, then it seems this (link to fee information in permit) is unnecessary at best, and confusing at worst. Delete.

Response: An annual maintenance fee of \$350.00 is required for individual State Operating Permits and individual NPDES permits. This link is provided in the permit so that applicants will be familiar with the division’s permitting fee structure.

14. Comment: Is this language (in section 1.3) still correct based on EPA’s recent declaration that state issued permits cannot allow a discharge under any circumstances?

Response: The permit language has been revised to state “that manage liquid manure in open impoundments, wastewater containment structures, or in a manner that is otherwise not protected from rainfall events.”

15. Comment: What about the requirements in 122.23(c)(3) – i.e., onsite inspection, etc.?

Response: Section 1.3 has been revised based on this suggestion to add the following language from division rule 0400-40-05-.14(4): “and the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes into waters of the state. The director shall conduct an on-site inspection prior to determining that an operation should be regulated under the CAFO permit program.”

16. Comment: The state needs to reinsert the language about allowances for discharges resulting from 25-year and 100-year/24-hour storm events. I know what EPA recently said about this issue, but they only have regulatory over point sources; these Class II farms are NOT point sources. Therefore, the authority rests with TDEC, not EPA, to allow or not allow discharges in cases of severe wet weather. These Class II farms are being regulated under the authority of the Tennessee Water Quality Control Act, not the federal Clean Water Act.

Response: The division does not have the authority to issue a state operating permit which authorizes a discharge. EPA has specifically informed the division that only a National Pollutant Discharge Elimination System (NPDES) permit can allow for a discharge. A discharge from a Class II CAFO would be considered a point source discharge, unless it meets the requirements to qualify for an agricultural stormwater discharge.

17. Comment: (Section 1.5.1) should be deleted because of 1. See comments immediately below, and 2. Everything of significance related to the NOI is covered in section 1.5.2 – Delete 1.5.1.

This section has a lot of language in it that is from before the TDA/TDEC MOA. This needs to be revised in light of that document.

Response: This section has not been deleted, but reworded to better incorporate the TDA/TDEC Memorandum of Agreement (MOA) as suggested.

18. Comment: In section 1.6.1, what if it is not approved by TDA? TDEC cannot issue a permit in that case. Somewhere in this paragraph needs to be added the approval of the application packet by TDA before the Notice of Coverage is issued.

Response: TDEC is responsible for the permitting process associated with CAFO facilities. TDA assists TDEC in this process through an MOA. Permit language has been amended in sections 1.5.1 and 1.6.1 to accurately reflect this structure.

19. Comment: Is there a (Notice of Termination) form available from the state for CAFOs like there is for CGPs? TDA is not aware of such, but recommends that one be created that satisfies the state and make it available to CAFO owners as needed.

Response: There is not an official Notice of Termination form for CAFOs. This requirement is currently being met with a letter from the CAFO owner. Notices of Termination are available for CAFOs that are permitted under individual permits.

20. Comment: This (section 2.3.2) only applies to Class I CAFOs. Class II (medium) CAFOs are not subject to ELGs. Delete this entire section as it references ELGs which do not apply to Class II CAFOs.

Response: This section refers to permit application timelines established by the division in rule 0400-40-05-.05(3).

21. Comment: Can a requirement to include the “Declarations to Nutrient Management Plan” form be added to this list, and the form added to the Appendix?

Response: The Declarations to Nutrient Management Plan form is not required in division rule 0400-40-05.14 as part of a complete application package.

22. Comment: This (section 3.1 A.) must be deleted – Class II/medium CAFOs are not subject to ELGs.

Response: This section states what is required from a Nutrient Management Plan per division rule 0400-40-05.14(10)(a).

23. Comment: This term “adequate storage” is problematic in the review process because it is never explicitly defined. The “rule-of-thumb” of 3 months storage has been loosely enforced, but has never been formally adopted as the definition.

Response: Adequate storage must be demonstrated by following division rule 0400-40-05-.14(14).

24. Comment: Add TDA’s “Policy Concerning the Disposal of Dead Farm Animals and the Disposal of Offal from Slaughter Facilities” to this list of references (in section 3.1 C.).

Response: The mortality management guidance documents listed in the general permit are the ones referenced in rule 0400-40-05-.14(10)(3.).

25. Comment: We may want to think about including a statement (in section 3.2) along the lines of “The CAFO shall not have multiple, conflicting, NMPs generated by different agencies implemented simultaneously. The plan being implemented should match that submitted to the state for review.

Response: The division bases permit decisions on the submitted site-specific NMP during the application process.

26. Comment: (Section 4.3) only required in section 412 (ELGs) – not for Class II CAFOs. Delete.

Response: Rainfall monitoring is an important component of proper impoundment management. Division rules (0400-40-05-.14(11)(3.,4.)) require weekly inspections of impoundments noting the liquid level and maintaining records of the depth of manure as indicated by the required depth marker.

27. Comment: Isn’t this a permit for operations with liquid manure? I guess this (section 4.4) is here just in case they also manage some amount of manure as a solid?

Response: This general permit is for operations that store liquid manure in open impoundments, wastewater containment structures, or in a manner that is otherwise not protected from rainfall events. Dry manure that is stored such a way that it is not protected from rainfall events would also be relevant for this permit.

28. Comment: This (section 4.4) is in conflict with allowances provided in the definition of “AFO Production Area” in state rules at 0400-40-05-.02(7). This needs to be revised to eliminate the contradiction.

Response: This section has been reworded per this suggestion to incorporate the AFO Production Area definition which states that “manure or litter stored uncovered for more than two weeks is not considered to be short-term or temporary storage, and is included in the definition of production area”.

29. Comment: It seems obvious that the language in this entire section (4.7) is a carry-over from wastewater/industrial/manufacturing permits and has little to do with CAFOs that do not have to conduct routine monitoring. Why can't this be deleted?

Response: Section 4.7 provides guidance regarding sampling in the event of a discharge of manure to waters of the state. A sentence was added at the beginning of the section to explain this.

30. Comment: We do not understand what this phrase (section 4.8) means. It does not seem likely that farmers will understand it either.

Response: This statement means that the facility will be managed and operated according to the nutrient management plan and general permit requirements. It has been reworded per this suggestion.

31. Comment: Should this point (in section 4.10.1) be changed to "impoundments and/or lagoons"? Facilities with under floor pits are typically permitted under SOPC (since their waste storage is not affected by rainfall).

Response: It is possible that an operation could utilize an under barn storage structure as well as an impoundment for manure storage. This permit requirement stresses that only materials that the structure is designed to contain (i.e., manure and process wastewater) should be sent to the under barn storage.

32. Comment: Delete – there does not seem to be any authority or justification for this requirement (section 4.10.1 D.) in state CAFO rules.

Response: The mentioned section is included as a precaution in case any of the listed scenarios were to happen. It has been reworded to be more applicable to the permitted operations.

33. Comment: This requirement (section 4.10.1 E.) in particular seems to have come out of nowhere. Is there a source for this? This is almost unenforceable as written because there are not definitions or standards for the training. This is probably a good thing because I'd be shocked if anyone has ever done this. Consider eliminating this entirely if possible (i.e., not required somewhere).

Response: The required training for staff regarding work activities which relate to permit compliance is a reasonable requirement under TCA 69-3-108(g).

34. Comment: Where did these (section 4.10.1 F.) come from? I don't think they are in the state rule anywhere.

Response: Rule 0400-40-05-.14(10)(4.) requires that clean water be diverted, as appropriate, from the production area.

35. Comment: It is TDA's belief that a new statement needs to be added to now require the new Tennessee N-leaching index. The only reason this had not always been

required here was because TN did not have a “field-specific assessment of N loss/transport” until recently. Now that we have one, it seems the intent of this section to require both – field-specific assessments of both N and P transport.

Response: The division is not opposed to the Tennessee N-leaching index being utilized during the nutrient management planning process. However, the N-leaching index is not specifically required in rule 0400-40-05-.14(10)(9.).

36. Comment: These “final design plans and specifications...” need to be defined in the Definitions section or more clearly described here. As I have said many times, we have never required engineered designed drawings in the past (that is until TDEC declared that we do as of several months ago). One big issue is what are these guidelines from NRCS and TDEC that are referenced here?

To me, the only things this section (4.11) says they must have and that we can require are A. and B. below – siting of liquid waste storage structures and a subsurface investigation.

Response: The standard requirements for liquid waste management systems are found in rule 0400-40-05-.14(14). The division also has the discretion to require additional reasonable information per rule 0400-40-05-.05(2). It is the division’s intent to assist the agriculture community by ensuring water quality is protected on the front-end through the permitting process.

37. Comment: Since there is nothing in federal rules regarding Closure Plans, this subject is appropriate to target for simplification. This should be re-thought during our process of rewriting state rules.

Response: The division requirements for closure plans come from state rules and NRCS guidance. It is necessary for the protection of water quality and for public safety.

38. Comment: Add TDA’s “Policy Concerning the Disposal of Dead Farm Animals and the Disposal of Offal from Slaughter Facilities” to this list of references (in section 4.14).

Response: The mortality management guidance documents listed in the general permit are the ones referenced in rule 0400-40-05-.14(10)(3.).

39. Comment: Delete this entire section (5.1) for two reasons: one, it is repeated three inches below in section 5.2 (eliminate redundancy); and two, all of these farms are from section 412 (i.e., ELGs) and do not apply to Class II CAFOs.

Response: The requirements of this section are found in division rule 0400-40-05-.14(11)(3.).

40. Comment: All of these records (section 5.2 C. and D.) come from section 412 (ELGs) and do not apply to Class II CAFOs – Delete.

Response: See answer to comment above.

41. Comment: Please define the level of documentation required (in section 5.2 G.). Are engineered drawings absolutely required in all cases, or is running AWM and providing that data sufficient?

Response: Final design plans and specifications are required for operations as detailed in division rule 0400-40-05-.14(14).

42. Comment: This item (section 5.2 T.) is not found in the rules – Delete.

Response: This requirement is an important part of being able to show compliance with division rule 0400-40-05-.14(11)(3(iii) through 4.).

43. Comment: This list (section 5.3) is not the complete list found in the current state rule. Is TDEC saying the longer list in the rule only applies to NPDES permits?

Response: The entire list found in rule 0400-40-05-.14(11)(c) has been added to the permit.

44. Comment: This (section 6.7.1) is not true per Waterkeeper...the state, nor EPA, can require an NPDES permit of any operation unless they have a discharge. This must be revised or deleted.

Response: Section 6.7.1 has been revised to remove the term NPDES. This was an oversight in leaving the language from the previous version of the permit intact. An individual permit (SOP or NPDES) is still required of large operations which store liquid manure in an impoundment. However, an operation can only be required to obtain an NPDES permit in the event of a discharge.

45. Comment: This language (section 6.8) has absolutely nothing whatsoever to do with CAFOs. Again, obvious carry-over from traditional industrial/wastewater permits. Delete.

Response: The division agrees that the language in this section is not relevant for CAFOs. It has been removed per this recommendation.

46. Comment: “Overflow” is not defined in 0400-40-05-.02. Furthermore, I’m not sure why we need another term that is so similar to discharge as to cause additional confusion. Reasoning?

Response: The term “AFO Overflow” is defined in rule 0400-40-05-.02(6). The definition explains that an overflow is “the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure”.

47. Comment: This whole section (6.19) is redundant – the top paragraph is repeated almost exactly in the bottom section, and they both repeat section 4.5.1. Delete one instance or the other.

Response: Procedures in the first paragraph are specifically regarding discharges to waters of the state. Procedures mentioned in the second paragraph include any noncompliance which could cause a threat to human health or the environment.

48. Comment: Add (in the NOI form) in the new SOPCE and change SOPCD to SOPCI.

Response: The NOI form has been updated.

49. Comment: Remember to change all references to what used to be called TDA's "Water Resources Program" to "Land and Water Stewardship Section".

Response: The general permit has been updated to reflect this.

50. Comment: To be consistent with state CAFO rules and language in permits, this (in Appendix C) should be changed to "at least once every five years".

Response: This revision has been made.

Determination

The division's decision on this matter is to issue the SOPCI0000 General Permit, with all changes mentioned during the above responses incorporated.