

the Director, and apply for and obtain permit authorization prior to the change of circumstances.

(6) *The Director retains authority to require a permit.* Where the Director has issued a determination of “no potential to discharge,” the Director retains the authority to subsequently require NPDES permit coverage if circumstances at the facility change, if new information becomes available, or if there is another reason for the Director to determine that the CAFO has a potential to discharge.

(g) *When must a CAFO seek coverage under an NPDES permit?*—(1) *Operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date.* For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by a date specified by the Director, but no later than July 31, 2007.

(2) *Operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date.* For all CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an NPDES permit by a date specified by the Director, but no later than February 13, 2006.

(3) *Operations that become defined as CAFOs after April 14, 2003, but which are not new sources.* For newly constructed AFOs and AFOs that make changes to their operations that result in becoming defined as CAFOs for the first time, after April 14, 2003, but are not new sources, the owner or operator must seek to obtain coverage under an NPDES permit, as follows:

(i) For newly constructed operations not subject to effluent limitations guidelines, 180 days prior to the time CAFO commences operation; or

(ii) For other operations (*e.g.*, resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; except that

(iii) If an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until July 31, 2007, or 90 days after becoming defined as a CAFO, whichever is later.

(4) *New sources.* New sources must seek to obtain coverage under a permit

at least 180 days prior to the time that the CAFO commences operation.

(5) *Operations that are designated as CAFOs.* For operations designated as a CAFO in accordance with paragraph (c) of this section, the owner or operator must seek to obtain coverage under a permit no later than 90 days after receiving notice of the designation.

(6) *No potential to discharge.* Notwithstanding any other provision of this section, a CAFO that has received a “no potential to discharge” determination in accordance with paragraph (f) of this section is not required to seek coverage under an NPDES permit that would otherwise be required by this section. If circumstances materially change at a CAFO that has received a NPTD determination, such that the CAFO has a potential for a discharge, the CAFO has a duty to immediately notify the Director, and seek coverage under an NPDES permit within 30 days after the change in circumstances.

(h) *Duty to Maintain Permit Coverage.* No later than 180 days before the expiration of the permit, the permittee must submit an application to renew its permit, in accordance with § 122.21(g). However, the permittee need not continue to seek continued permit coverage or reapply for a permit if:

(1) The facility has ceased operation or is no longer a CAFO; and

(2) The permittee has demonstrated to the satisfaction of the Director that there is no remaining potential for a discharge of manure, litter or associated process wastewater that was generated while the operation was a CAFO, other than agricultural stormwater from land application areas.

[68 FR 7265, Feb. 12, 2003, as amended at 71 FR 6984, Feb. 10, 2006]

**§ 122.24 Concentrated aquatic animal production facilities (applicable to State NPDES programs, see § 123.25).**

(a) *Permit requirement.* Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definition.* *Concentrated aquatic animal production facility* means a hatchery, fish farm, or other facility

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which meets the criteria in appendix C of this part, or which the Director designates under paragraph (c) of this section.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* (1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

- (i) The location and quality of the receiving waters of the United States;
- (ii) The holding, feeding, and production capacities of the facility;
- (iii) The quantity and nature of the pollutants reaching waters of the United States; and
- (iv) Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this paragraph until the Director has conducted on-site inspection of the facility and has determined that the facility should and could be regulated under the permit program.

[48 FR 14153, Apr. 1, 1983, as amended at 65 FR 30907, May 15, 2000]

### § 122.25 Aquaculture projects (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of CWA, and in accordance with 40 CFR part 125, subpart B.

(b) *Definitions.* (1) *Aquaculture project* means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) *Designated project area* means the portions of the waters of the United States within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan or operation (including, but not limited to, physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure

that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvested within a defined geographic area.

### § 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).

(a) *Permit requirement.* (1) Prior to October 1, 1994, discharges composed entirely of storm water shall not be required to obtain a NPDES permit except:

(i) A discharge with respect to which a permit has been issued prior to February 4, 1987;

(ii) A discharge associated with industrial activity (see §122.26(a)(4));

(iii) A discharge from a large municipal separate storm sewer system;

(iv) A discharge from a medium municipal separate storm sewer system;

(v) A discharge which the Director, or in States with approved NPDES programs, either the Director or the EPA Regional Administrator, determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at §122.2.

The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

(A) The location of the discharge with respect to waters of the United States as defined at 40 CFR 122.2.

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to waters of the United States; and

(D) Other relevant factors.