



University of Arkansas Division of Agriculture

**An Agricultural Law Research Project**

**Nutrient Management Plans  
Statutes & Regulations**

**Colorado**

[www.NationalAgLawCenter.org](http://www.NationalAgLawCenter.org)



## Nutrient Management Plans

### STATE OF COLORADO

#### **1) C.R.S. 25-8-501, 501.1, 502, 503, 504; 5 CCR 1002-61.13(3)(f), 61.17(8)(b)**

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Colorado Legislative Council.*

#### **1) C.R.S. 25-8-501, 501.1, 502, 503, 504; 5 CCR 1002-61.13(3)(f), 61.17(8)(b)**

##### **25-8-501. Permits required for discharge of pollutants - administration**

(1) No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the division for such discharge, and no person shall discharge into a ditch or man-made conveyance for the purpose of evading the requirement to obtain a permit under this article. No person covered by this article shall use or dispose of biosolids, except as authorized by regulations that shall not be more restrictive than the requirements adopted for solid wastes disposal sites and facilities pursuant to part 1 of article 20 of title 30, C.R.S., except as necessary to be consistent with section 405 of the federal act. Existing authorization for the use or disposal of biosolids shall continue until permits are issued in accordance with this part 5. Each application for a permit duly filed under the federal act shall be deemed to be a permit application filed under this article, and each permit issued pursuant to the federal act shall be deemed to be a temporary permit issued under this article which shall expire upon expiration of the federal permit.

(2) The division shall examine applications for and may issue, suspend, revoke, modify, deny, and otherwise administer permits for the discharge of pollutants into state waters and for the use and disposal of biosolids. Such administration shall be in accordance with the provisions of this article and regulations promulgated by the commission. Until modified pursuant to this article, final permits shall be governed by their existing limitations.

(3) The commission shall promulgate such regulations as may be necessary and proper for the orderly and effective administration of permits for the discharge of pollutants, which regulations shall include, but not be limited to, procedures for the issuance of a variance pursuant to section 25-8-503 (4), and shall also require that, in appropriate circumstances, the effluent limitations contained in a permit shall be adjusted to account for the pollutants contained in the discharger's intake water. Such regulations shall be consistent with the provisions of this article and with federal requirements and shall be in furtherance of the policy contained in section 25-8-102. Such regulations shall establish a permit process that allows permit conditions to remain in effect as long as circumstances dictate those conditions. In order to comply with federal requirements, but not to lessen

compliance with federal standards, such permit process may require periodic renewal of permits even where minimal or no changes in the permit conditions are necessary. Renewal shall be required where more than minimal changes in permit conditions are necessary. The regulations may pertain to and implement, among other matters, permit and permit application contents, procedures, requirements, and restrictions with respect to the following:

- (a) Identification and address of the owner and operator of the activity, facility, or process from which the discharge is to be permitted;
- (b) Location and quantity and quality characteristics of the permitted discharge;
- (c) Effluent limitations and conditions for treatment prior to discharge to a publicly owned treatment works;
- (d) Monitoring as well as record-keeping and reporting requirements consistent with standard procedures and methods established by the division;
- (e) Schedules of compliance;
- (f) Procedures to be followed by division personnel for entering and inspecting premises;
- (g) Submission of pertinent plans and specifications for the facility, process, or activity which is the source of a waste discharge;
- (h) Restrictions on transfers of the permit;
- (i) Procedures to be followed in the event of expansion or modification of the process, facility, or activity from which the discharge occurs or the quality, quantity, or frequency of the discharge;
- (j) Duration of the permit and renewal procedures using a risk-based approach that limits the amount of work required to renew permits that have minimal or no changes in the permit conditions to streamline the renewal process;
- (k) Authority of the division to require changes in plans and specifications for control facilities as a condition for the issuance of a permit;
- (l) Identification of control regulations over which the permit takes precedence and identification of control regulations over which a permit may never take precedence;
- (m) Notice requirements of any intent to construct, install, or alter any process, facility, or activity that is likely to result in a new or altered discharge;

(n) Effectiveness under this article of permit applications submitted to and permits issued by the federal government under the federal act.

(4) Nothing in any permit shall ever be construed to prevent or limit the application of any emergency power of the division.

(5) Every permit issued for a domestic wastewater treatment works shall contain such terms and conditions as the division determines to be necessary or desirable to assure continuing compliance with applicable control regulations. Such terms and conditions may require that whenever deemed necessary by the division to assure such compliance the permittee shall:

(a) Require pretreatment of effluent from industrial, governmental, or commercial facilities, processes, and activities before such effluent is received into the gathering and collection system of the permittee;

(b) Prohibit any connection to any municipal permittee's interceptors and collection system that would result in receipt by such municipal permittee of any effluent other than sewage required by law to be received by such permittee;

(c) Include specified terms and conditions of its permit in all contracts for receipt by the permittee of any effluent not required to be received by a municipal permittee;

(d) Initiate engineering and financial planning for expansion of the domestic wastewater treatment works whenever throughput and treatment reaches eighty percent of design capacity;

(e) Commence construction of such domestic wastewater treatment works expansion whenever throughput and treatment reaches ninety-five percent of design capacity or, in the case of a municipality, either commence such construction or cease issuance of building permits within such municipality until such construction is commenced; except that building permits may continue to be issued for any construction which would not have the effect of increasing the input of domestic wastewater to the sewage treatment works of the municipality involved. The term "commence construction", as used in this paragraph (e), includes execution of, and commencement of work under, contracts for engineering design, plans, and specifications for erection, building, alteration, remodeling, improvement, or extension of treatment works and commitment to the completion of construction of such treatment works prior to exceeding permit effluent limitations based upon facility design and capacity or execution of a contract for the construction thereof.

(6) Inclusion of the requirements authorized by paragraph (d) of subsection (5) of this section shall be presumed unnecessary to assure compliance upon a showing that the area served by a domestic wastewater treatment works has a stable or declining population;

but this provision shall not be construed as preventing periodic review by the division should it be felt that growth is occurring or will occur in the area.

**25-8-501.1. Permit required for point source water pollution control - definitions - housed commercial swine feeding operations - legislative declaration**

(1) The people of the state of Colorado hereby find, determine, and declare that the advent of large housed commercial swine feeding operations in Colorado has presented new challenges to ensuring that the quality of the state's environment is preserved and protected. As distinguished from more traditional operations that historically have characterized Colorado's livestock industry, large housed swine feeding operations use significant amounts of process water for flushing and disposing of swine waste, commonly store this waste in large impoundments, and dispose of it through land application. The waste storage, handling and disposal by such operations are particularly odorous and offensive. The people further find that it is necessary to ensure that the storage and land application of waste by housed commercial swine feeding operations is done in a responsible manner, so as not to adversely impact Colorado's valuable air, land and water resources.

(2) As used in this section, unless the context otherwise requires:

(a) "Agronomic rate of application" means the rate of application of nutrients to plants that is necessary to satisfy the plants' nutritional requirements while strictly minimizing the amount of nutrients that run off to surface waters or which pass below the root zone of the plants, as specified by the most current published fertilizer suggestions of the Colorado state university cooperative extension service for the plants, or most closely related plant type, to which the nutrients are applied.

(b) "Housed commercial swine feeding operation" means a housed swine feeding operation that is capable of housing eight hundred thousand pounds or more of live animal weight of swine at any one time or is deemed a commercial operation under local zoning or land use regulations. Two or more housed swine confined feeding operations shall be considered to comprise a single housed commercial swine feeding operation if they are under common or affiliated ownership or management, and are adjacent to or utilize a common area or system for manure disposal, are integrated in any way, are located or discharge within the same watershed or into watersheds that are hydrologically connected, or are located on or discharge onto land overlying the same groundwater aquifer.

(c) "Housed swine feeding operation" means the practice of raising swine in buildings, or other enclosed structures wherein swine of any size are fed for forty-five days or longer in any twelve-month period, and crop or forage growth or production is not sustained in the area of confinement.

(d) "Process wastewater" means any process-generated wastewater used in a housed commercial swine feeding operation, including water used for feeding, flushing, or washing, and any water or precipitation that comes into contact with any manure, urine, or any product used in or resulting from the production of swine.

(3) No person shall operate, construct, or expand a housed commercial swine feeding operation without first having obtained an individual discharge permit from the division.

(4) On or before March 31, 1999, the commission shall promulgate rules necessary to ensure the issuance and effective administration and enforcement of permits under this section by July 1, 1999. Such rules shall incorporate the preceding subsection (3) and shall, at a minimum, require:

(a) That the owner or operator of a housed commercial swine feeding operation must obtain division approval of construction, operations and swine waste management plans that, for any land waste application, includes a detailed agronomic analysis. Said plans shall employ the best available waste management practices, provide for remediation of residual soil and groundwater contamination, and ensure that disposal of solid or liquid waste to the soil not exceed agronomic rates of application.

(b) That appropriate setbacks for maintaining water quality be established for land waste application areas and waste impoundments;

(c) That waste impoundments or manure stock piles shall not be located within a one-hundred-year floodplain unless proper flood proofing measures are designed and constructed;

(d) That the owner or operator of the housed commercial swine feeding operation shall provide financial assurances for the final closure of the housed commercial swine feeding operation, the conduct of any necessary postclosure activities, the undertaking of any corrective action made necessary by migration of contaminants from the housed commercial swine feeding operation into the soil and groundwater, or cleanup of any spill or breach;

(e) That the owner or operator of a housed commercial swine feeding operation shall ensure that no solid or liquid waste generated by it shall be applied to land by any person at a rate that exceeds, in amount or duration, the agronomic rate of application; and

(f) That, because waste storage and disposal by housed commercial swine feeding operations pose particular jeopardy for state trust lands, in light of the mandate in the Colorado constitution, article IX, section 10, that state land board trust lands be held in trust and be protected and enhanced to promote long-term productivity and sound stewardship, the construction, operations and waste

management plans approved for housed commercial swine feeding operations on such lands, shall not permit the degradation of the physical attributes or value of any state trust lands.

(5) Any spill or contamination by a housed commercial swine feeding operation shall be reported immediately to the division and the county or district public health agency for the county in which the housed commercial swine feeding operation is conducted, and, within twenty-four hours after the spill or contamination, a written report shall be filed with the division and the county or district public health agency for the county in which the housed commercial swine feeding operation is conducted.

(6) Housed commercial swine feeding operations shall submit to the division and the county or district public health agency quarterly, comprehensive monitoring reports and agronomic analyses that demonstrate that the operation has land-applied solid and liquid waste at no greater than agronomic rates. The division shall require the sampling and monitoring of chemical and appropriate biological parameters to protect the quality and existing and future beneficial uses of groundwater including, at a minimum, nitrogen, phosphorus, heavy metals, and salts. At a minimum, the monitoring program shall include quarterly samples, analysis, and reporting of the groundwater, soils within the root zone, and soils beneath the root zone within each waste application site, and shall also include monitoring to ensure that no excessive seepage occurs from any waste impoundments.

(7) Repealed.

(8) The division shall enforce the provisions of this section and shall take immediate enforcement action against any housed commercial swine feeding operation that has exceeded the agronomic rate limit of this section. In addition, any person who may be adversely affected by a housed commercial swine feeding operation may enforce these provisions directly against the operation by filing a civil action in the district court in the county in which the person resides.

(9) These provisions shall not preclude any local government from imposing requirements more restrictive than those contained in this section.

#### **25-8-502. Application - definitions - fees - funds created - public participation - repeal**

(1) For the purposes of this section:

(a) "Animal feeding operation" or "CAFO" means a lot or facility, other than an aquatic animal production facility, where:

(I) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

(II) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(b) "Categorical effluent standards" means those standards established by the federal environmental protection agency pursuant to section 307 (b) of the federal act.

(c) "Discharge" means the discharge of pollutants, and includes land application.

(d) "Gallons per day" is based on design capacity of the facility, not flow.

(e) "Land application" is any discharge being applied to the land for treatment purposes.

(f) "Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains, that is:

(I) Owned or operated by a state, city, town, county, district, association, or other public body created by or pursuant to state law having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district, drainage district, or similar entity, or a designated and approved management agency under section 208 of the federal act that discharges to state waters;

(II) Designed or used for collecting or conveying storm water;

(III) Not a combined sewer; and

(IV) Not part of a publicly owned treatment works.

(g) "Significant industrial discharger" means an industrial discharger that meets one or more criteria established by the federal environmental protection agency pursuant to section 307 (b) of the federal act.

(1.1) For each regulated activity listed in this subsection (1.1), the division may assess an annual permit fee and a nonrefundable permit application fee for new permits that must equal fifty percent of the annual permit fee. The full amount of the application fee is credited toward the annual permit fee. All such fees must be in accordance with the following schedules:

(a) The animal agriculture sector includes annual fee schedules for regulated activities associated with animal feeding operations as follows:



(I) General permit: The division shall assess a CAFO an annual permit fee not to exceed two hundred fifty dollars plus four cents per animal unit, based on the CAFO's permitted capacity; except that, from July 1, 2009, through June 30, 2025, the division shall assess a CAFO an annual permit fee not to exceed seven hundred fifty dollars plus nine cents per animal unit, based on the CAFO's permitted capacity.

(II) Individual permit: The division shall assess a CAFO an annual permit fee not to exceed five hundred dollars plus eight cents per animal unit, based on the CAFO's permitted capacity; except that, from July 1, 2009, through June 30, 2025, the division shall assess a CAFO an annual permit fee not to exceed one thousand five hundred dollars plus nine cents per animal unit, based on the CAFO's permitted capacity.

(III)

(A) Effective July 1, 2009, through June 30, 2025, the division shall assess an unpermitted CAFO an annual administrative fee, not to exceed six cents per animal unit, based upon the CAFO's registered capacity, to cover the direct and indirect costs associated with the environmental agriculture program, including inspections, compliance assurance, compliance assistance, and associated regulatory interpretation and review.

(B) This subsection (1.1)(a)(III) is repealed, effective July 1, 2025.

(IV)

(A) Except as otherwise provided in this subsection (1.1)(a)(IV), the division shall assess on each housed commercial swine feeding operation an annual permit fee, not to exceed twenty cents per animal, based on the operation's working capacity, to offset the direct and indirect costs of the program created in section 25-8-501.1.

(B) From July 1, 2009, through June 30, 2025, the division shall assess on each housed commercial swine feeding operation an annual permit fee, not to exceed twenty-six cents per animal, based on the operation's working capacity, to offset the direct and indirect costs of the program created in section 25-8-501.1. This subsection (1.1)(a)(IV)(B) is repealed, effective July 1, 2025.

(C) As used in this subsection (1.1)(a)(IV), "working capacity" means the number of swine the housed commercial swine feeding operation is capable of housing at any one time.

[...]

(1.2)

(a) For the activities listed in this subsection (1.2) associated with reviewing requests for certifications under section 401 of the federal act and this article 8, known as "401 certificates", the division may assess a fee for the review. There is hereby created in the state treasury the water quality certification sector fund, which consists of fees collected pursuant to this subsection (1.2). The division shall transmit the fees to the state treasurer, who shall credit them to the water quality certification sector fund. All such fees must be in accordance with the following schedules:

(I) The fee for a tier 1 project is one thousand one hundred twenty-two dollars, which must be submitted with the certification application. Tier 1 projects are projects that incur minimal costs and minimal water quality impacts. Tier 1 includes certifications of channel stabilization projects and single drainage improvement projects. Typical characteristics of tier 1 projects may include all or some of the following:

- (A) The potential for minimal impacts to water quality;
- (B) A low level of public participation;
- (C) No more than standard coordination with federal, state, or local agencies may be required;
- (D) Limited technical assistance may be needed.

(II) The fee for a tier 2 project is three thousand eight hundred seventy-six dollars, which must be submitted with the certification application. Tier 2 projects are projects that incur moderate costs and potential water quality impacts. Tier 2 includes certifications of projects that affect multiple drainages. Typical characteristics of tier 2 projects may include all or some of the following:

- (A) The potential for minimal impacts to water quality;
- (B) A basic to high level of public participation may be required with potential for participation in public meetings or hearings held by outside parties;
- (C) More than the standard level of coordination with multiple federal, state, or local agencies may be required, including one or more meetings or pre-application site visits;

(D) A moderate and ongoing level of technical assistance may be needed;

(E) Compensatory mitigation review may be required;

(F) Review of a full evaluation and findings report if needed; or

(G) If the certification is appealed, addressing an appeal of the division's water quality certification to the commission pursuant to sections 25-8-202 (1)(k), 25-8-302 (1)(f), and 25-8-401.

(III) The fee for a tier 3 project is calculated on an hourly rate based on the actual costs of division staff and contractor time. Tier 3 projects are projects that involve a large watershed area, a high degree of complexity, or high potential for water quality impacts. Tier 3 includes certifications of federal energy regulatory commission relicensing projects or projects involving more long-term water quality impacts. Typical characteristics of tier 3 projects may include all or some of the following:

(A) The potential for greater, permanent water quality impacts if one or more of the following occurs: The water body is identified as not attaining water quality standards; or multiple stream or lake segments as established by section 25-8-203 are affected;

(B) A high level of public participation, including extensive public comments and the potential for one or more public meetings or hearings conducted by the division or outside parties;

(C) Substantially more than standard coordination with multiple federal, state, or local agencies may be required, including one or more meetings;

(D) A high level of iterative technical assistance may be required or substantive project revisions may be received;

(E) The potential for complex compensatory mitigation review;

(F) A site visit may be needed to understand impacts and advise on potential alternatives;

(G)The review of a full evaluation and findings report if needed; or

(H) If the certification is appealed, addressing an appeal of the division's water quality certification to the commission pursuant to sections 25-8-202 (1)(k), 25-8-302 (1)(f), and 25-8-401.

(IV) The fee for a tier 4 project is calculated on an hourly rate based on the actual costs of division staff and contractor time. Tier 4 projects are projects that involve multiple or large watershed areas, a very high degree of complexity, a very high potential for water quality impacts, or a high level of public participation. Tier 4 includes transmountain water supply projects. Typical characteristics of tier 4 projects may include all or some of the following:

(A) The potential for greater water quality impacts if one or more of the following occurs: The water body is identified as not attaining water quality standards; or multiple stream or lake segments as established by section 25-8-203 are affected;

(B) A high level of public participation, including extensive public comments and the potential for one or more public meetings or hearings conducted by the division or outside parties;

(C) Substantially more coordination than is standard with multiple federal, state, or local agencies may be required, including one or more meetings;

(D) A high level of iterative technical assistance may be required or substantive project revisions may be received;

(E) The potential for complex compensatory mitigation review;

(F) A site visit may be needed to understand impacts and advise on potential alternatives;

(G) Coordination with the governor's office in conjunction with other state agencies, tribal nations, and the federal government may be required;

(H) To the extent pertinent, review of additional documents, such as federal "National Environmental Policy Act" resource reports, environmental assessments, and environmental impact statements;

(I) If needed, to the extent not addressed in the documents addressed in sub-subparagraph (H) of this subparagraph (IV) and consistent with the requirements of this article and of the rules promulgated pursuant to this article, review and use of a full evaluation and findings report; or

(J) If the certification is appealed, addressing an appeal of the division's water quality certification to the commission pursuant to sections 25-8-202 (1)(k), 25-8-302 (1)(f), and 25-8-401.

(b) For tier 3 and tier 4 projects, the division may assess fees for services provided by the division prior to the applicant submitting a formal water quality certification application, which fees must reflect the actual cost of division staff and contractor time.

(c) For tier 3 and tier 4 projects, the division may assess fees for services provided by the division to monitor the projects certified with conditions, which fees must reflect the actual cost of division staff and contractor time.

(1.3) For each service listed below, the division may assess a fee for the service, and all such fees must be in accordance with the following schedules:

(a) Amendments to permits associated with the commerce and industry sector, construction sector, pesticides application, public and private utility sector under subsection (1.1) of this section, and amendments to permits issued through June 30, 2018, associated with regulated activities in subparagraph (IV) of the animal agriculture sector in paragraph (a) of subsection (1.1) of this section:

(I) Minor amendment: An amount equal to twenty-five percent of the annual fee for the permit being amended, not to exceed two thousand eight hundred ten dollars;

(II) Major amendment: An amount equal to fifty-five percent of the annual fee for the permit being amended, not to exceed five thousand nine hundred fifty dollars;

(b) Preliminary effluent limitations:

(I) In accordance with section 25-8-702, the division may assess a fee, as set forth in the schedules in this paragraph (b), for the determination of preliminary effluent limitations upon a domestic wastewater treatment works pursuant to the site location approval process. All such fees shall be paid in advance of any work done.

(II) At the request of an entity that is not a domestic wastewater treatment works, and upon payment of the appropriate fee as set forth in the schedules in this paragraph (b), the division may determine preliminary effluent limits for a proposed discharge as described by the requester.

(III) Fees set forth in the schedules established in this paragraph (b) are increased by an amount equal to seventy-five percent of the applicable fee for each set of preliminary effluent limitations requested by domestic wastewater treatment works for discharges to second or additional receiving water bodies.

(IV) The division may, where an entity requests modification of existing division-approved preliminary effluent limitations, complete the modification for a fee equal to twenty-five percent of the applicable fee as set forth in the schedules in this paragraph (b).

Facility Categories and Subcategories for Preliminary Effluent Limitations Fees

(V) Preliminary effluent limitations for individual permits:

(A) Less than 100,000 gallons per day \$2,562

(B) 100,000 to 999,999 gallons per day \$5,124

(C) 1,000,000 to 9,999,999 gallons per day \$7,686

(D) 10,000,000 or more gallons per day \$10,248

(VI) Preliminary effluent limitations for general permits from 0 up to 1,000,000 gallons per day \$1,281

(VII) Preliminary effluent limitations for discharges to groundwater:

(A) Minor facilities, less than 1,000,000 gallons per day \$641

(B) Major facilities, 1,000,000 gallons per day or more \$1,025

(VIII) Review of preliminary effluent limitations for individual permits professionally prepared by others:

(A) Minor facilities, less than 1,000,000 gallons per day \$1,922

(B) Major facilities, 1,000,000 gallons per day or more \$3,843

[...]

(1.4) The division may establish an interim fee that must be consistent and equitable with the fees contained in subsection (1.1) of this section in any case where a facility other than those listed must be permitted. This interim fee applies until the date of adjournment sine die of the next regular session of the general assembly following imposition of the interim fee.

[...]

(1.6) There is hereby created the animal feeding operations fund, which consists of all fees collected for regulated activities associated with the animal agriculture sector in paragraph (a) of subsection (1.1) of this section, as well as all fees collected for services

provided by the division associated with the animal agriculture sector in subsection (1.3) of this section. The division shall transmit the fees to the state treasurer, who shall credit them to the animal feeding operations fund. Any unexpended and unencumbered moneys remaining in the animal feeding operations fund at the end of any fiscal year remain in the animal feeding operations fund and shall not be transferred or revert to the general fund or any other fund. The general assembly shall annually appropriate the moneys in the animal feeding operations fund to the department of public health and environment for the direct and indirect costs associated with the permitting and oversight of animal feeding operations under this article.

(1.7)

(a) The department of public health and environment shall report annually to:

(I) The senate agriculture and natural resources committee and the house of representatives agriculture, livestock, and natural resources committee, or their successor committees, on:

(A) The environmental agriculture program. The report must include the number of permits processed, the number of inspections conducted, the number of enforcement actions taken, and the costs associated with all program activities during the preceding year. The department shall submit the report on or before March 31 of each year.

(B) The clean water program. The report must include the number of permits processed, the number of applications pending for new and amended permits, the length of time the permits remain in the system prior to issuance, the number of inspections conducted, the number of site application and design reviews completed, the number of enforcement actions taken, the costs associated with each sector specified in subsections (1.1), (1.2), and (1.3) of this section, the number of full-time equivalents assigned to and actively processing permits, the number of full-time equivalents assigned to and actively conducting inspections, the number of full-time equivalents assigned to and actively conducting site application and design reviews, the number of full-time equivalents assigned to and actively conducting enforcement actions, and the number of full-time equivalents assigned to and actively developing rules and standards. The department shall inform the committees regarding all new standards and rules to be proposed within the subsequent year. The department shall submit the report on or before March 31 of each year. Commencing in 2017, the department shall develop baseline information for reporting. Commencing in 2018, the department shall provide information on improvements that have been made in comparison

to the baseline information and information on the barriers to making improvements.

(II) The joint budget committee by November 1 of each year regarding the fee revenue received from each sector specified in subsections (1.1), (1.2), and (1.3) of this section, including expenditures by fund source and revenues by fund and sector source based on the November 1 request.

(b) The reporting required by this section is exempt from section 24-1-136, C.R.S.

(2)

(a) A complete and accurate application for all discharges shall be filed with the division not less than one hundred eighty days prior to the date proposed for commencing the discharge.

(b) The application shall contain such relevant plans, specifications, water quality data, and other information related to the proposed discharge as the division may reasonably require. Prior to submitting an application for a permit, the applicant may request and, if so requested, the division shall grant a planning meeting with the applicant. At such meeting, the division shall advise the applicant of the applicable permit requirements, including the information, plans, specifications, and data required to be furnished with the permit application.

(c) The division shall begin the review of an application within forty-five days after the receipt of the application and shall notify the applicant within ninety days after receipt of the application whether the application is complete. If the division determines that an application is incomplete, the division may request that the applicant submit additional information. If additional information is requested by the division and submitted by the applicant, the division shall have fifteen days after the date the additional information is submitted to determine whether the additional information satisfies the request and to advise the applicant if, and in what respects, the additional information does not satisfy the request. A final decision that an application is not complete shall be considered final agency action upon issuance of such decision to the applicant and shall be subject to judicial review. A petition for review of such decision shall be given priority scheduling by the court.

(3)

(a) The division shall evaluate complete permit applications to determine whether the proposed discharge will comply with all applicable federal and state statutory and regulatory requirements.



(b) The division shall give public notice of a complete permit application and the division's preliminary analysis of the application as provided in subsection (4) of this section. The notice shall advise of the opportunity for interested persons to submit written comments on the permit application and the division's preliminary analysis or to request, for good cause shown, a public meeting on the application and analysis. A request for a public meeting shall be made within thirty days after the initial public notice of the permit application and the division's preliminary analysis. If a public meeting is requested and the division, in its discretion and for good cause shown, grants the request, the division shall hold the public meeting not more than seventy-five days after the initial public notice. The division shall provide notice as provided in subsection (4) of this section of the public meeting not less than thirty days prior to the date of the meeting.

(c) The period for public comment shall close thirty days from the date of notice of the permit application and the division's preliminary analysis thereof; except that, if a public meeting is held on the application and analysis, the period for public comment shall close sixty days from the date of notice of the application.

(4) Public notice of every complete permit application and the division's preliminary analysis thereof shall be circulated in a manner designed to inform interested and potentially interested persons of the application and analysis. Procedures for the circulation of such public notice or a notice regarding a public meeting concerning an application and analysis shall be established by the commission and shall include at least the following:

(a) Notice shall be given by at least one publication in a newspaper of general circulation which is distributed within the geographical areas of the proposed discharge.

(b) Notice shall be mailed to any person or group upon request.

(c) The division shall add the name of any person or group upon request to a mailing list to receive copies of notices for all discharge permit applications within the state or within a certain geographical area.

(d) The division shall also, during the period from the date of the initial public notice of the application and analysis to the close of the public comment period, maintain in the office of the county clerk and recorder of the county in which the proposed discharge, or a part thereof, is to occur a copy of its preliminary analysis and a copy of the permit application with all accompanying data for public inspection.

(5)

(a)

(I) Except as provided in this subsection (5), if the division has not finally issued or denied a permit within one hundred eighty days after receipt of the permit application, unless this time limit is waived or extended by the applicant or if the division determines at any time after receiving an application that it cannot issue a permit prior to the expiration of an existing permit, the division shall issue a temporary permit or the existing permit shall be extended pursuant to the operation of section 24-4-104, C.R.S.

(II) The deadlines established pursuant to subparagraph (I) of this paragraph (a) for a determination on a permit application shall be extended by:

(A) The number of days which an applicant takes to submit information requested by the division pursuant to paragraph (c) of subsection (2) of this section plus the fifteen days provided for the division to evaluate such additional information; and

(B) Forty-five days, if a public meeting is held pursuant to subsection (3) of this section.

(b) All temporary permits shall contain such conditions as are necessary to protect public health and shall not be less restrictive than required by state and federal effluent guidelines unless a schedule of compliance or a variance is set forth therein. A temporary permit shall be issued for a period not to exceed two years and shall expire as provided in the issuance or denial of the final permit. Issuance of a temporary permit shall be final agency action for the purposes of section 24-4-106, C.R.S.

(6) Repealed.

### **25-8-503. Permits - when required and when prohibited - variances**

(1)

(a) The division shall issue a permit in accordance with regulations promulgated under this article when the division has determined that the provisions of this article and the federal act and regulations thereunder have been met with respect to both the application and proposed permit.

(b) When necessary for compliance with the federal act for the achievement of technology-based effluent limitations, the division may exercise best professional judgment in establishing effluent limitations on a case-by-case basis for permits as granted pursuant to paragraph (a) of this subsection (1). Technology-based effluent limitations based on best professional judgment shall be made only for good cause and in the absence of federally promulgated effluent guidelines or

effluent limitation regulations promulgated by the commission and shall be subject to review as provided for in paragraph (c) of this subsection (1). Any effluent limitations established according to this paragraph (b) shall be made after considering the availability of appropriate technology, its economic reasonableness, the age of equipment and facilities involved, the process employed, and any increase in water or energy consumption.

(c) Review by a hearing officer or an administrative law judge of the department of personnel of technology-based effluent limitations based on best professional judgment shall be on request of the permit applicant or permittee or any aggrieved person and shall take place in an adjudicatory hearing to be held pursuant to section 24-4-105, C.R.S. The necessity of effluent limitations based on best professional judgment, as well as the reasonableness of the effluent limitation, considering all factors enumerated in paragraph (b) of this subsection (1), must be supported by substantial evidence. If such hearing is requested, it shall be held as part of a hearing requested to challenge the conditions of the permit.

(d) Repealed.

(2) No permit shall be issued which is inconsistent with any duly promulgated and controlling state, regional, or local land use plan or any portion of an approved regional wastewater management plan which has been adopted as a regulation pursuant to this article, unless all other requirements and conditions of this act have been met or will be met pursuant to a schedule of compliance or a variance specifying treatment requirements as determined by the division.

(3) No permit shall be issued which allows a violation of a control regulation unless the waste discharge permit contains effluent limitations and a schedule of compliance or a variance specifying treatment requirements as determined by the division.

(4) No permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements. Effluent limitations designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary to achieve the levels of protection required by the standards.

(5) Activities such as diversion, carriage, and exchange of water from or into streams, lakes, reservoirs, or conveyance structures, or storage of water in or the release of water from lakes, reservoirs, or conveyance structures, in the exercise of water rights shall not be considered to be point source discharges of pollution under this article. Water quality standards may apply to discharges from such activities only if the commission has adopted appropriate control regulations pursuant to section 25-8-205. Nothing in this article shall supersede the provisions of articles 80 to 93 of title 37, C.R.S.

(6) Nothing in subsection (5) of this section shall exempt any point source discharger which generates wastewater effluent from the requirement of obtaining a permit pursuant to this article. All permits for such discharges shall apply at the point where wastewater effluent is released from the control of the discharger. All permits for discharges into ditches or other man-made conveyance structures shall contain such provisions as are necessary for the protection of agricultural, domestic, industrial, and municipal beneficial uses made of the waters of the ditch or other man-made conveyance structures, which use or uses were decreed and in existence prior to the inception of the discharge.

(7) Repealed.

(8) Where a permit requires treatment to levels necessary to protect water quality standards and beyond levels required by technology-based effluent limitation requirements, the division must determine whether or not any or all of the water-quality-standard-based effluent limitations are reasonably related to the economic, environmental, public health, and energy impact to the public and affected persons, and are in furtherance of the policies set forth in sections 25-8-102 and 25-8-104. The division's determination shall be based upon information available to it including information provided during the public comment period on the draft permit or in response to specific requests for information. Such determinations shall be included as a part of the written record of the issuance of the final permit, whether or not a variance is available under subsection (9) of this section to alter the water quality standard based effluent limitations.

(9) The division may grant a variance from otherwise applicable requirements only to the extent authorized in the federal act or implementing regulations. Variances may be granted for no longer than the duration of the permit. Variances shall be granted or renewed according to the procedure established in section 25-8-401 (5). Any variances granted prior to June 4, 1985, which were validly granted under the provisions then in effect shall be valid according to their original terms.

#### **25-8-504. Agricultural wastes**

(1) Neither the commission nor the division shall require any permit for any flow or return flow of irrigation water into state waters except as may be required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the federal act or regulations.

(2)

(a) Neither the commission nor the division shall require any permit for animal or agricultural waste on farms, ranches, and horticultural or floricultural operations, except as may be required by the federal act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the federal act or regulations.

(b) Nothing in paragraph (a) of this subsection (2), as amended by House Bill 05-1180, as enacted at the first regular session of the sixty-fifth general assembly, shall be construed as changing the property tax classification of property owned by a horticultural or floricultural operation.

(3) No permit or fee shall ever be required pursuant to this part 5 for the diversion of water from natural surface streams.

(4) Nothing in this section shall be construed to affect the requirement of permits for housed commercial swine feeding operations pursuant to section 25-8-501.1.

## **5 CCR 1002-61.13 HOUSED COMMERCIAL SWINE FEEDING OPERATIONS**

[...]

### **61.13(3) APPLICATIONS AND REQUIRED PLANS**

[...]

(f) Swine Waste Management Plan – Any permit issued to a housed commercial swine feeding operation (“HCSFO”) must require compliance with the terms of the HCSFO’s site-specific swine waste management plan. The terms of the swine waste management plan are the information, protocols, best management practices, and other conditions in the swine waste management plan determined by the Division to be necessary to meet the requirements of subsections 61.13(3)(f), 61.13(4)(e) and 61.13(4)(f)(iii). A HCSFO shall develop and implement a complete swine waste management plan as of the date of permit coverage. The plan shall be prepared under the supervision of a professional engineer registered in the State of Colorado, by the Natural Resources Conservation Service, by a qualified Cooperative Extension Agent, by a certified crop advisor certified by the American Society of Agronomy or by an independent crop consultant certified by the National Alliance of Independent Crop Consultants. The plan shall include sufficient site-specific hydrologic and agronomic information, supplemented by other scientifically supported information, to document that land application of all residual solids and swine feeding process wastewater will be conducted and sustained at or below the agronomic rate of application for crops or vegetation to be grown on the application site(s). The plan shall quantify the disposition of all residual solids and swine feeding process wastewater produced at the facility whether put to beneficial use through land application on-site or transported off-site. The swine waste management plan must identify and address the following:

(i) Daily, seasonal, and annual quantities and/or flow rates of residual solids and swine feeding process wastewater to be applied to the land area;

(ii) Concentrations of specific constituents including, but not limited to, nitrogen, phosphorus, heavy metals, and salts present in the residual solids or swine feeding process wastewater as a result of the housed commercial swine feeding operation;

(iii) Climatic conditions, including temperature and precipitation regime, as they may seasonally affect the plants' ability to uptake nutrients and other constituents present in the wastewater;

(iv) Soil types in the land application sites;

(v) Documentation which supports any post-treatment reduction in waste concentration(s) prior to land application;

(vi) Identify the crops to be planted in each field, or any other uses such as pasture or fallow fields. Identify alternative crops that are not in the planted crop rotation for each field. Identify the realistic yield goal for each crop and alternative crop for each field.

(vii) The specific land parcels and acreage to receive the residual solids and swine feeding process wastewater and a demonstration that adequate and suitable land is available upon which to land apply the residual solids and swine feeding process wastewater in accordance with the agronomic rate of application;

(viii) Identify the constituents in residual solids, swine feeding process wastewater, and soils that will be analyzed, and the testing protocols that will be used for the analyses, to ensure the provisions of subsection 61.13(4)(e) are met;

(ix) Identification and a description of the methods for determining application rates and setbacks, and the potential for nitrogen and phosphorus transport from land application sites that will ensure the provisions of subsection 61.13(4)(e) and 61.13(4)(f)(iii) are met;

(x) A description of the planned method of residual solids and swine feeding process wastewater land application, disposal, or other usage, land application equipment leak inspection protocols, and surface water runoff controls and setbacks that will be implemented to prevent wastes from being discharged to waters of the state or beyond the property boundary of the land application site;

(xi) A description of how the permittee will ensure adequate storage of residual solids and swine feeding process wastewater, including

procedures to ensure proper operation and maintenance of the storage facilities;

(xii) A description of how animal mortalities will be managed to ensure that they are not disposed of in any liquid residual solids or swine feeding process wastewater system that is not specifically designed to treat animal mortalities, and are handled in such a way as to prevent the discharge of pollutants to surface waters;

(xiii) Indicate how the permittee will ensure that clean water is diverted, as appropriate, from the production area;

(xiv) Indicate how swine will be prevented from having direct contact with surface water;

(xv) A description of how chemicals and other contaminants handled on-site are not disposed of in any residual solids or swine feeding process wastewater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

(xvi) Identify specific records that will be maintained to document the implementation and management of the elements required in subsections 61.13(3)(f)(vi) through (xv), above;

(xvii) Feed management practices employed, if any, to reduce nutrient concentrations in swine feeding process wastewater or residual solids;

(xviii) If swine waste is to be applied on property not owned by the permittee, written agreements with landowners for off-site land application must be included in the plan. Agreements entered into after March 30, 1999, with landowners for land application shall allow the Division or its agent to assume the rights of the permittee under the agreement in the event that a facility must be brought to final closure by the state unless alternative treatment and disposal are provided for under the financial assurance plan, subsection 61.13(3)(h). The permittee shall provide notice to each landowner of property on which off-site land application occurs of the Division's authority to enter and inspect premises pursuant to section 25-8-306, C.R.S. The permittee shall provide evidence that any agreement with the landowner entered into after March 30, 1999, provides a right of entry to the Division to monitor for compliance with the permit, either directly in the agreement or by assignment of the permittee's rights under the agreement. The Division may require that the permittee cease land application on any off-site lands to which the Division is denied entry; and

(xix) Changes to Swine Waste Management Plan

(A) Any permit issued to a HCSFO must require the following procedures when a HCSFO owner or operator makes changes to the swine waste management plan previously submitted to the Division:

(I) The HCSFO owner or operator must provide the Division with the most current version of the HCSFO's swine waste management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of paragraph 61.13(4)(e) are not subject to the requirements of this section.

(II) The Division must review the revised swine waste management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 61.13(4) below, and must determine whether the changes to the swine waste management plan necessitate revision to the terms of the swine waste management plan incorporated into the permit issued to the HCSFO.

1. If revision to the terms of the swine waste management plan is not necessary, the Division must notify the HCSFO owner or operator and upon such notification the HCSFO may implement the revised swine waste management plan.

2. If the Division determines that the changes to the terms of the swine waste management plan are necessary, the Division must notify the public and make the proposed changes and the information submitted by the HCSFO owner or operator available for public review and comment. The process for public comments, hearing requests, and the hearing process if a hearing is held must follow the procedures applicable to draft permits set forth in 61.5. Once the Division incorporates the changes to the terms of the swine waste management plan into the permit, the Division must notify the owner or operator and inform the public of the final decision concerning changes to the terms and conditions of the permit.



(III) Changes to any terms of the swine waste management plan are incorporated as terms and conditions of the permit. Such changes include, but are not limited to:

1. Addition of new land application areas not previously included in the HCSFO's swine waste management plan;
2. Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in paragraph 61.13(4)(e) of this section;
3. Addition of any crop or other uses not included in the terms of the HCSFO's swine waste management plan and corresponding field-specific rates of application expressed in accordance with paragraph 61.13(4)(e) of this section: and
4. Changes to site-specific components of the HCSFO's swine waste management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to surface water.

[...]

## **61.17 CONCENTRATED ANIMAL FEEDING OPERATIONS**

[...]

### **61.17(8) ADDITIONAL REQUIREMENTS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS**

[...]

#### **(b) Nutrient Management Plan Requirements**

(i) Any permit issued to a CAFO must include a requirement to implement a nutrient management plan that, at a minimum, contains best management practices and procedures necessary to meet the requirements of this section and applicable effluent limitations and standards.

(ii) The permittee shall develop and implement a nutrient management plan upon the date of permit coverage for existing and new source CAFOs.

(iii) Ensure adequate storage of manure and process wastewater, including procedures to ensure proper operation and maintenance of the impoundments and tanks. The procedures shall include, but not be limited to:

(A) Except during the designed storm event, manure and process wastewater stored in impoundments and terminal tanks shall be removed as necessary to maintain a minimum of two (2) feet of freeboard, except where the operator requests and the Division approves an alternative freeboard level. The request shall include documentation that the alternative level will protect structural integrity of impoundments and terminal tanks and be functionally equivalent to two feet of freeboard in preventing overflows caused by factors such as wind and receiving direct precipitation.

(B) For operations that land apply process wastewater, whenever the design capacity of impoundments and tanks is less than the volume required to store runoff from the designed storm event, the structures shall be dewatered to a level that restores the required capacity once soils on a land application site has the water holding capacity to receive process wastewater.

(iv) Ensure proper management of animal mortalities (that is, dead animals) to prevent discharge of pollutants to surface waters. Mortalities shall remain on the production area until disposal and shall be managed to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage system that is not specifically designed to treat animal mortalities;

(v) Ensure that clean water is diverted, as appropriate, from the production area;

(vi) Prevent direct contact of confined animals with surface waters;

(vii) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, storm water, or process wastewater storage system unless specifically designed to treat such chemicals and other contaminants;

(viii) Site-specific conservation practices that have been identified and will be implemented, including as appropriate, buffers or equivalent practices, to control runoff of pollutants to surface water. Such practices shall include, but are not limited to:

(A) Solid manure shall be incorporated as soon as possible after application, unless the application site has perennial vegetation or

is no-till cropped, or except where the nutrient management plan adequately demonstrates that surface water quality will be protected where manure is not so incorporated.

(B) Process wastewater to furrow- or flood-irrigated land application sites shall be applied in a manner that prevents any process wastewater runoff into surface waters.

(C) When process wastewater is sprinkler-applied, the soil water holding capacity of the soil shall not be exceeded.

(D) Process wastewater shall not be applied to either frozen or flooded land application sites.

(E) Manure or process wastewater shall not be land-applied within 150 feet of domestic water supply wells, and within 300 feet of community domestic water supply wells.

(ix) Identify protocols for appropriate sampling and testing of manure, process wastewater, and soil;

(x) Establish protocols to land apply manure or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater. Such protocols shall include, but are not limited to:

(A) No application of manure or process wastewater shall be made to a land application site at a rate that will exceed the capacity of the soil and the planned crops to assimilate nitrate-nitrogen within twelve (12) months of the manure or process wastewater being applied.

(B) Manure and process wastewater shall be applied as uniformly as possible with properly calibrated equipment.

(xi) Identify specific records that will be maintained to document the implementation and management of the minimum nutrient management plan elements described in subsections 61.17(8)(b)(i) through (x), above.

(xii) Terms of the Nutrient Management Plan

(A) Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan requested by the Division for

clarification or justification in order to meet the requirements of paragraph 61.17(8)(b) of this section.

(B) The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by paragraph 61.17(8)(b)(x) of this section and, as applicable, 61.17(8), must include:

(I) The fields available for land application;

(II) Field-specific rates of application properly developed, as specified in paragraph 61.17(8)(b)(xii)(B)(IV) below, to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and

(III) Any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application;

(IV) Description of the rates of application of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) Maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Division, in pounds per acre, for each field;

(2) The outcome of field-specific assessment of potential for nitrogen and phosphorus transport to surface water for each field, using the USDA, NRCS Colorado Phosphorus Index Risk Assessment tool or other Division-approved method;

(3) The crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with paragraph 61.17(8)(b)(xii)(B)(IV)(7) of the section);

(4) The realistic yield goal for each crop or use identified for each field;

(5) The nitrogen and phosphorus recommendation for each crop or use identified for each field from a method approved by the Division. Such methods may include, but are not limited to, the most current published fertilizer suggestions of the Cooperative Extension in Colorado or adjacent states, or the most current nutrient management planning guidelines for Colorado as published by the USDA, NRCS.

(6) The methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied:

- a) Results of soil tests conducted in accordance with protocols identified in the nutrient management plan, as required by paragraph 61.17(8)(b)(ix) of this section;
- b) Credits for all nitrogen in the field that will be plant available;
- c) The amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied;
- d) Consideration of multi-year phosphorus application;
- e) Accounting for all other additions of plant available nitrogen and phosphorus to the field;
- f) The form and source of manure, litter and process wastewater;
- g) The timing and method of land application; and
- h) Volatilization of nitrogen and mineralization of organic nitrogen.

(7) For alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation:

- a) The crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field;
- b) The nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified in 61.17(8)(b)(xii)(B)(IV)(5) above;
- c) Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in paragraph 61.17(8)(b)(xii)(B)(IV)(6) of this section.

(C) If approved by the Division, nutrient management plan terms that meet the requirements of 40 CFR 122.42(e)(5)(i) may also be used to satisfy the requirements of 61.17(8)(b)(xiii).

(xiii) The following projections must be included in the nutrient management plan submitted to the Division, but are not terms of the nutrient management plan:

- (A) The CAFO's planned crop rotations for each field for the period of permit coverage;
- (B) The projected amount of manure, litter, or process wastewater to be applied;
- (C) Projected credits for all nitrogen in the field that will be plant available;
- (D) Consideration of multi-year phosphorus application;
- (E) Accounting for all other additions of plant available nitrogen and phosphorus to the field;
- (F) The predicted form, source, and method of application of manure, litter, and process wastewater for each crop.

(xiv) CAFOs must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the

methodology required in paragraph 61.17(8)(b)(xii)(B)(IV)(6) of this section before land applying manure, litter, and process wastewater and must rely on the following data:

(A) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by paragraph 61.17(8)(b)(xii)(B)(IV)(6) of this section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Division; and

(B) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(xv) Changes to a Nutrient Management Plan

(A) Any permit issued to a CAFO must require the following procedures when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the Division.

(I) The CAFO owner or operator must provide the Division with the most current version of the CAFO's nutrient management plan and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of paragraph 61.17(8)(b)(xiv) of this section are not subject to the requirements of paragraph 61.17(8)(b)(xv) of this section.

(II) The Division must review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 61.17(6) above, and must determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the Division must notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the Division must determine whether

such changes are substantial changes as described in paragraph 61.17(8)(b)(xv)(A)(III) of this section.

(1) If the Division determines that the changes to the terms of the nutrient management plan are not substantial, the Division must make the revised nutrient management plan publicly available and include it in the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(2) If the Division determines that the changes to the terms of the nutrient management plan are substantial, the Division must notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, hearing requests, and the hearing process if a hearing is held must follow the procedures applicable to draft permits set forth in 61.5. Once the Division incorporates the changes to the terms of the nutrient management plan into the permit, the Division must notify the owner or operator and inform the public of the final decision concerning changes to the terms and conditions of the permit.

(III) Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include:

(1) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing permit in accordance with the requirements of paragraph 61.17(8)(b)(xii) of this section, and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing field-specific permit terms applicable to the newly



added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

(2) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop, as set forth in paragraph 61.17(8)(b)(xii)(B)(IV) of this section;

(3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application expressed in accordance with paragraph 61.17(8)(b)(xii) of this section; and

(4) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to surface water based on the USDA, NRCS Colorado Phosphorus Index Risk Assessment tool or other Division-approved method.

(c) Recordkeeping Requirements

The permittee shall maintain on site a copy of its most current nutrient management plan and make it available to the Division or its designee, upon request. In addition, the permittee must create, maintain on-site for five years from the date they are created, and make available to the Division or its designee, upon request, the following records:

(i) All applicable records identified in the nutrient management plan, pursuant to subsection 61.17(8)(b)(xi) above.

(ii) The completed permit application required pursuant to subsection 61.17(5)(c), above.

(iii) The following complete records:

(A) Records documenting the visual inspections of the production area required under subsection 61.17(8)(f)(ii)(A) and (B);

(B) Weekly records of the depth of the manure and process wastewater in the liquid impoundment and terminal storage tank as indicated by the depth marker required under subsection 61.17(8)(f)(ii)(D);

(C) Records documenting any actions taken to correct deficiencies required under subsection 61.17(8)(f)(ii)(E). Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing immediate correction;

(D) Records of mortalities management and practices used by the large CAFO to meet the requirements of subsection 61.17(8)(b)(iv);

(E) Records documenting the current design of any manure storage structures, including volume of solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;

(F) Records of date, time, and estimated volume of any overflow.

(iv) For permitted Large Dairy, Beef, Cattle, Swine, Poultry, and Veal Calf CAFOs, the following complete records for land application sites:

(A) Expected crop yields;

(B) The date(s) manure or process wastewater is applied to each land application site;

(C) Weather conditions at the time of land application and for 24 hours prior to and following application;

(D) Test methods used to sample and analyze manure, process wastewater, and soil;

(E) Results from manure, process wastewater, and soil sampling and analysis;

(F) Explanations of the basis for determining manure and process wastewater application rates, in accordance with the nutrient management plan;

(G) Calculations showing the total nitrogen and phosphorus that will be applied to each land application site, including sources other than manure or process wastewater;

(H) The total amount of nitrogen and phosphorus actually applied to each land application site, including documentation of calculations for the total amount applied;

- (I) The method used to apply the manure and process wastewater;
- (J) Date(s) of manure application equipment inspection.

d) Transfer of Manure or Process Wastewater to Third Parties

Prior to transferring manure or process wastewater to other persons, Large CAFOs must provide the recipient of the manure or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of the nutrient management plan (subsection 61.17(8)(b)(xi). Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure or process wastewater transferred to another person.

(e) Annual Reporting Requirements

The permittee must submit an annual report to the Division that shall include the following:

- (i) The number and type of animals, whether in open confinement or housed under roof;
- (ii) The estimated amount of total manure and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- (iii) Estimated amount of total manure and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);
- (iv) The total number of acres for land application covered by the nutrient management plan developed pursuant to subsection 61.17(8)(b);
- (v) The total number of acres of land application sites that were used for application of manure and process wastewater in the previous 12 months;
- (vi) A summary of all manure and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume;
- (vii) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner;
- (viii) The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with paragraph 61.17(8)(b)(xii) of this section, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and

(ix) The results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with paragraph 61.17(8)(b)(xii) of this section, and the amount of any supplemental fertilizer applied during the previous 12 months.