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Nutrient Management Plans Statutes & Regulations

Rhode Island

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Nutrient Management Plans

STATE OF RHODE ISLAND

1) R.I. Gen. Laws § 46-12-3; 250 RICR 150-10-1.4(3), (19), (76), (91), 250 RICR 150-10-11.17(K), 1.28, 1.67

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Rhode Island Law Revision Office.

1) R.I. Gen. Laws § 46-12-3; 250 RICR 150-10-1.4(3), (19), (76), (91), 250 RICR 150-10-11.17(K), 1.28, 1.67

§ 46-12-3. Powers and duties of the director.

In addition to the other powers granted the director of the department of environmental management herein, the director shall have and may exercise the following powers and duties:

- (1) To exercise general supervision of the administration and enforcement of this chapter, and all rules and regulations and orders promulgated hereunder;
- (2) To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the waters of this state;
- (3) To advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in the furtherance of the purposes of this chapter;
- (4) To accept and administer loans and grants from the federal government and from other sources, public or private, for the carrying out of any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;
- (5) To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and its causes, prevention, control, and abatement thereof, as he or she may deem advisable and necessary for the discharge of his or her duties under this chapter;
- (6) To collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof;

- (7) Except as otherwise provided in subdivision (24) below, to promulgate standards of water quality and to classify the waters of the state accordingly;
- (8) To administer state grants to municipalities and political subdivisions for the construction of sewage treatment works;
- (9) To hold hearings, to issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, and to administer oaths and to take testimony, that he or she may deem necessary;
- (10) To approve, pursuant to standards adopted by the environmental standards board, the construction, modification, and operation of discharge systems or any parts thereof, and to require the prior submission of plans, specifications, and other data relative to discharge systems and to require that the plans, specifications, or other data be certified by a professional engineer registered in Rhode Island, and to inspect the systems either under construction or in operation;
- (11) To issue a permit for the discharge of any pollutant or combination of pollutants or to issue a general permit authorizing a category of discharges within a geographical area upon conditions as may be necessary to carry out the purposes of this chapter and of the Clean Water Act, 33 U.S.C. § 1251 et seq., which may include, but not be limited to, providing for specific effluent limitations and levels of treatment technology, monitoring, recording, and reporting standards, or to deny a permit or general permit;
- (12) To renew, revoke, modify, or suspend in whole or in part any permit, order, or schedule of compliance pursuant to the provisions of this chapter, and any rules and regulations promulgated thereunder;
- (13) To approve the discharge of pollutants into the waters of this state pursuant to all applicable standards;
- (14) To require publicly owned treatment works to adopt and implement requirements regarding the pretreatment of pollutants consistent with existing federal requirements, and to require compliance by all persons with pretreatment requirements;
- (15) To issue such orders as may be necessary to prevent the unauthorized construction, modification, or operation of discharge systems and the discharge of pollutants into the waters of this state;
- (16) To require proper maintenance and operation of discharge systems;
- (17) To consult the advisory council on environmental affairs on the policies and plans for the control and abatement of pollution;

(18) To make, issue, amend, and revoke reasonable rules and regulations for the prevention, control, and abatement of pollution and the enforcement of orders issued hereunder, including public notice and comment requirements;

(19) To exercise all incidental powers necessary to carry out the purposes of this chapter;

(20) To approve the operation of treatment facilities, pursuant to the provisions of chapters 3, 11, and 18 of title 44;

(21) To promulgate and enforce rules and regulations to govern the location, design, construction, maintenance, and operation of underground storage facilities used for storing petroleum products or hazardous materials to prevent, abate, and remedy the discharge of petroleum products and hazardous materials into the waters of the state; provided that all underground storage tanks and associated piping installed after September 1, 1991 shall provide for secondary containment in a manner approved by the director; and provided, that single-walled tanks and/or piping installed prior to May 8, 1985, shall be permitted to remain in use until December 22, 2017, and single-walled tanks and/or piping installed between May 8, 1985, and July 20, 1992, shall be permitted to remain in use for thirty-two (32) years from the date of installation if the owner/operator of the single-walled tank or piping performs an annual facility compliance inspection to ensure structural integrity; and provided, further, that the installation of underground storage tanks is prohibited at sites located within wellhead protection areas for community water supply wells as designated by the director and consistent with chapter 46-13.1. This prohibition shall not apply to the replacement or upgrading of existing underground storage tanks installed prior to July 1, 1991, provided that such activity take place in accordance with all applicable state and federal regulations. The department of environmental management shall by January 1, 2011, develop recommendations for phasing out the stage II vapor recovery program with the required removal of single-walled underground storage tanks in order to achieve the objectives of both program efforts in a cost effective and efficient manner. The department of environmental management shall report its findings to the chair of the house committee on environment and natural resources and to the chair of the senate committee on environment and agriculture on or before January 1, 2011;

(22) To promulgate and enforce rules and regulations to govern the installation, construction, operation, and abandonment of monitoring wells;

(23) To promulgate and enforce rules and regulations to govern the location, design, installation, operation and maintenance of subsurface disposal systems which receive the discharge of pollutants and of subsurface containment systems, including underground storage tanks, used to contain or control the discharge of pollutants below the ground surface.

(24) In connection with the dredging and transportation and disposal of dredge material, to promulgate and adopt water quality standards that conform with the federal Environmental Protection Agency's applicable water quality rules and regulations and guidelines, including, but not limited to, the federal Environmental Protection Agency's rules and regulations and guidelines for deviating from said standards. The department of environmental management shall also apply the applicable standards and guidelines and adopt the procedures as set forth in the manual identified as "Evaluation of Dredge Material for Purpose of Ocean Disposal. Testing Manual Put Together by EPA and Army Corps of Engineers in February, 1991" and any amendments or supplements or successor manuals thereto to the extent that the same are relevant to dredging, transportation and/or disposal of dredge materials in tidal waters or any documents or manuals approved by the federal Environmental Protection Agency relating to dredging, transportation and/or disposal of dredge materials; and

(25) To prepare and to submit to the governor, the speaker of the house, the president of the senate, the chairperson of the house committee on environment and natural resources and the chairperson of the senate committee on environment and agriculture, not later than February 1, 2005, a plan, including an implementation program with cost estimates, recommended sources of funding, measurable goals, objectives, and targets and limitations for nutrient introduction into the waters of the state, for the purposes of: (i) managing nutrient loadings and the effects of nutrients in the waters of the state; and (ii) preventing and eliminating conditions of eutrophication.

150-10-1.4. Definitions.

[. . .]

3. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where: 1) animals (other than aquatic animals) have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and 2) crops, vegetation, forage, growth or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of pollutants.

[. . .]

19. "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria in § 1.67 of this Part.

[. . .]

76. "Permit" means an authorization, license or equivalent control document issued by the Department to implement the requirements of these regulations and the Clean Water Act, or previously issued by the EPA prior to delegation of the NPDES program to the State of Rhode Island. "Permit" includes a general permit, but does not include any document which has not yet been the subject of final Department action, such as a "draft permit" or "proposed permit."

[. . .]

91. "Rhode Island Pollutant Discharge Elimination System" or "RIPDES" means the Rhode Island system for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing discharge permits and imposing and enforcing pretreatment requirements pursuant to R.I. Gen. Laws Chapter 46-12 and the Clean Water Act.

[. . .]

150-10-1.17. Conditions Applicable to Specific Types of Permits.

[. . .]

K. Concentrated animal feeding operations (CAFOs). Any permit issued to a CAFO must include the following requirements:

1. Requirement to implement a nutrient management plan. Any permit issued to a CAFO must include a requirement to implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements of this subsection and applicable effluent limitations and standards, including those specified in 40 C.F.R. § 412, incorporated above at § 1.3(B) of this Part. The nutrient management plan must, to the extent applicable:

- a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
- b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
- c. Ensure that clean water is diverted, as appropriate, from the production area;
- d. Prevent direct contact of confined animals with waters of the United States;

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

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;

g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in this section.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the Department, upon request, the following records:

a. All applicable records identified pursuant to this section;

b. In addition, all CAFOs subject to 40 C.F.R. § 412, incorporated above at § 1.3(B) of this Part, must comply with record keeping requirements as specified in § 412.37(b) and (c) and § 412.47(b) and (c).

(1) A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Department upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 C.F.R. § 412, incorporated above at § 1.3(B) of this Part. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Department. As of December 21, 2020 all annual reports submitted in compliance with this section must be submitted electronically by the

permittee to the Department or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this section and 40 C.F.R. § 3 (including, in all cases, subpart D to part 3), § 122.22, and 40 C.F.R. § 127 (incorporated above at § 1.3(B) of this Part. Section 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Section 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law. The annual report must include:

- a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
- d. Total number of acres for land application covered by the nutrient management plan;
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including, for each discharge, the date of discovery, duration of discharge, and approximate volume; and
- g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and
- h. 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 section, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with § 1.17(K)(1)(h) of this Part, 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 §

1.17(K)(1)(h) of this Part, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. 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 determined by the Department to be necessary to meet the requirements of this section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by § 1.17(K)(1) of this Part and, as applicable, 40 C.F.R. § 412.4(c), incorporated above at § 1.3(B) of this Part, must include the fields available for land application; field-specific rates of application properly developed to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms must address rates of application using one of the following two approaches, unless the Department specifies that only one of these approaches may be used:

a. Linear approach. An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Department, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include: The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the Department for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include 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 Department, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; 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 § 1.17(K)(4)(h) of this Part); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the Department for each crop or use identified for each field. In addition, the terms include 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: Results of soil tests conducted in accordance with protocols identified in the nutrient management plan; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus

recommendations from sources specified by the Department for each crop. 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 § 1.17(K)(1) of this Part.

(3) For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the Department, but are not terms of the nutrient management plan: The CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in this section before land applying manure, litter, and process wastewater and must rely on the following data:

(AA) 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 this section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Department; and

(BB) 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.

6. Changes to a nutrient management plan. Any permit issued to a CAFO must require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the Department:

a. The CAFO owner or operator must provide the Department with the most current version of the CAFO's nutrient management plan and identify changes from the previous version.

b. The Department 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 40 C.F.R. § 412 , incorporated above at § 1.3(B) of this Part, 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 Department 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 Director must determine whether such changes are substantial changes as described in this section.

(1) If the Department determines that the changes to the terms of the nutrient management plan are not substantial, the Department 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 Department determines that the changes to the terms of the nutrient management plan are substantial, the Department 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 §§ 1.42 and 1.44 of this Part. The Department may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a hearing on the proposed changes that differs from the time period specified in § 1.42 of this Part. The Director must respond to all significant comments received during the comment period as provided in § 1.48 of this Part, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the Director incorporates the revised terms of the nutrient management plan into the permit, the Department must notify the owner or operator and inform the

public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

(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 RIPDES permit 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 field-specific maximum annual rates for land application and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop;

(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; 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 waters of the State.

150-10-1.28. Concentrated Animal Feeding Operations.

A. Permit requirement. "Concentrated animal feeding operations" (as defined in § 1.4 of this Part) are point sources subject to the RIPDES permit program.

B. Case-by-case designation of concentrated animal feeding operations.

1. The Department may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Department shall consider the following factors:

a. The size of the animal feeding operation and the amount of wastes reaching the waters of the State;

- b. The location of the animal feeding operation relative to waters of the State;
- c. The means of conveyance of animal wastes and process wastewaters into waters of the State;
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal waste and process wastewaters into waters of the State; and
- e. Other relevant factors.

2. No animal feeding operation with less than the numbers of animals set forth in § 1.67 of this Part shall be designated as a concentrated animal feeding operation unless:

- a. Pollutants are discharged into waters of the State through a manmade ditch, flushing system, or other similar manmade device; or
- b. Pollutants are discharged directly into waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

C. Permit authorization Permit Requirement. A CAFO must not discharge unless the discharge is authorized by an RIDES permit. In order to obtain authorization under a RIPDES permit, the CAFO owner or operator must either apply for an individual permit or submit a notice of intent for coverage under a general permit.

D. Land application discharges from a CAFO are subject to RIPDES requirements. The discharge of manure, litter or process wastewater to waters of the State from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to RIPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. § 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in § 1.17(K) of this Part, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

1. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural storm water discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in § 1.17(K) of this Part.

2. Unpermitted Large CAFOs must maintain documentation specified in § 1.17(K) of this Part either on site or at a nearby office, or otherwise make such documentation readily available to the Department or Regional Administrator upon request.

E. A CAFO must be covered by a permit at the time that it discharges.

150-10-1.67. Criteria for Determining A Concentrated Animal Feeding Operation.

An animal feeding operation is a concentrated animal feeding operation for purposes of § 1.28 of this Part if the criteria from 40 C.F.R. §§ 122.23(b)(4) – (6), incorporated above at § 1.3(B) of this Part, are met.