



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**West Virginia**

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## Nutrient Management Plans

### STATE OF WEST VIRGINIA

#### **1) W. Va. Code §§ 22-11-4(a)(1), (16), 22-11-8, 22-11-12; W. Va. CSR §§ 47-10-4, 47-10-13 (13.1)**

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

#### **1) W. Va. Code §§ 22-11-4(a)(1), (16), 22-11-8, 22-11-12; W. Va. CSR §§ 47-10-4, 47-10-13 (13.1)**

##### **§22-11-4. General powers and duties of director with respect to pollution.**

[ . . . ]

(1) To perform any and all acts necessary to carry out the purposes and requirements of this article and of the "Federal Water Pollution Control Act," 33 U.S.C. §1251, et seq., as amended, relating to this state's participation in the "National Pollutant Discharge Elimination System," 33 U.S.C. §1342, established under that act;

[ . . . ]

(16) To adopt, modify, repeal and enforce rules, in accordance with the provisions of chapter twenty-nine-a of this code: (A) Implementing and making effective the declaration of policy contained in section one of this article and the powers, duties and responsibilities vested in the director and the chief by the provisions of this article and otherwise by law; (B) preventing, controlling and abating pollution; and (C) facilitating the state's participation in the "National Pollutant Discharge Elimination System" pursuant to the "Federal Water Pollution Control Act," as amended: Provided, That no rule adopted by the director shall specify the design of equipment, type of construction or particular method which a person shall use to reduce the discharge of a pollutant;

##### **§ 22-11-8. Prohibitions; permits required.**

(a) The secretary may, after public notice and opportunity for public hearing, issue a permit for the discharge or disposition of any pollutant or combination of pollutants into waters of this state upon condition that the discharge or disposition meets or will meet all applicable state and federal water quality standards and effluent limitations and all other requirements of this article and article three [§§ 22B-3-1 et seq.], chapter twenty-two-b of this code. While permits shall contain conditions that are designed to meet all applicable state and federal water quality standards and effluent limitations, water quality standards themselves shall not be incorporated wholesale either expressly or by reference as effluent standards or limitations in a permit issued pursuant to this article.

(b) It is unlawful for any person, unless the person holds a permit therefor from the department, which is in full force and effect, to:

(1) Allow sewage, industrial wastes or other wastes, or the effluent therefrom, produced by or emanating from any point source, to flow into the waters of this state;

(2) Make, cause or permit to be made any outlet, or substantially enlarge or add to the load of any existing outlet, for the discharge of sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state;

(3) Acquire, construct, install, modify or operate a disposal system or part thereof for the direct or indirect discharge or deposit of treated or untreated sewage, industrial wastes or other wastes, or the effluent therefrom, into the waters of this state, or any extension to or addition to the disposal system;

(4) Increase in volume or concentration any sewage, industrial wastes or other wastes in excess of the discharges or disposition specified or permitted under any existing permit;

(5) Extend, modify or add to any point source, the operation of which would cause an increase in the volume or concentration of any sewage, industrial wastes or other wastes discharging or flowing into the waters of the state;

(6) Construct, install, modify, open, reopen, operate or abandon any mine, quarry or preparation plant, or dispose of any refuse or industrial wastes or other wastes from the mine or quarry or preparation plant: Provided, That the department's permit is only required wherever the aforementioned activities cause, may cause or might reasonably be expected to cause a discharge into or pollution of waters of the state, except that a permit is required for any preparation plant: Provided, however, That unless waived in writing by the secretary, every application for a permit to open, reopen or operate any mine, quarry or preparation plant or to dispose of any refuse or industrial wastes or other wastes from the mine or quarry or preparation plant shall contain a plan for abandonment of the facility or operation, which plan shall comply in all respects to the requirements of this article. The plan of abandonment is subject to modification or amendment upon application by the permit holder to the secretary and approval of the modification or amendment by the secretary; or

(7) Operate any disposal well for the injection or reinjection underground of any industrial wastes, including, but not limited to, liquids or gases, or convert any well into such a disposal well or plug or abandon any such disposal well.

(c) Where a person has a number of outlets emerging into the waters of this state in close proximity to one another, the outlets may be treated as a unit for the purposes of this section, and only one permit issued for all the outlets.

**§ 22-11-12. Inspections; orders to compel compliance with permits; service of orders.**

After issuance of the division's permit for any activity the director may make field inspections of the work on the activity, and, after completion thereof, may inspect the completed activity, and, from time to time, may inspect the maintenance and operation of the activity.

To compel compliance with the terms and conditions of the division's permit for any activity, the director is hereby authorized, after at least twenty days' notice, to make and enter an order revoking, suspending or modifying, in whole or in part, such permit for cause including, but not limited to, the following:

- (1) Violation of any term or condition of the permit;
- (2) Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts; or
- (3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge, release, escape, deposit or disposition.

The director shall cause a copy of any such order to be served by registered or certified mail or by a law-enforcement officer upon the person to whom any such permit was issued. The director shall also cause a notice to be served with a copy of such order, which notice shall advise such person of the right to appeal to the board by filing a notice of appeal on the form prescribed by the board for such purpose, with the board, in accordance with the provisions of, and within the time specified in, section seven [§ 22B-1-7], article one, chapter twenty-two-b of this code.

**§ 47-10-4. Application for Permits.**

**4.1. Duty to apply.**

**4.1.a.** Any person who discharges or proposes to discharge pollutants and who does not have an effective permit, except persons covered by general permits and persons excluded under subsection 3.2 above, shall submit a complete application in the manner and on a form prescribed by the Director, in accordance with the following paragraphs, and accompanied by the filing fee as prescribed in 47CSR26.

**4.1.b.** When a facility or activity is owned by one person but is operated by another, the application should be submitted by the operator. The Director may require documentation of the permit responsibility and liability of the owner and operator and may propose and issue the permit to either the owner or the operator or both, but only after notice to both the owner and operator; or, the Director may deny the permit until the responsible party or parties apply for the permit.

#### **4.2. Completeness.**

**4.2.a.** For the purposes of this section, the term "Director" includes the Director's authorized representative except in subdivision 4.2.f below.

**4.2.b.** The Director shall not begin the processing of a permit before receiving a complete application.

**4.2.c.** The Director shall review every application for completeness in not more than ninety (90) days. Upon completing the review, the Director shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Director shall list the information necessary to make the application complete. When the application is for an existing source, the Director shall specify in the request for supplemental information a date for submitting the necessary information. The Director shall notify the applicant that the application is complete upon receiving this information.

**4.2.d.** If an applicant fails or refuses to submit the requested supplemental information, the permit application may be denied and appropriate enforcement action may be taken under the applicable provisions of the State Act.

**4.2.e.** The application shall be considered complete on the date on which the Director notifies the applicant to that effect as provided in subdivision 4.2.c of this rule.

**4.2.f.** The Director shall have not more than ninety (90) days to act upon the completed application unless EPA has filed a written objection; however, this limitation may be extended by the period of time granted by the Director under paragraph 12.1.b.1 and subdivision 12.4.a of this rule.

**4.2.g.** For a period of one (1) year after the effective date of this rule, the time period for completeness under subdivision 4.2.c above and the time period for acting upon a completed application under subdivision 4.2.f above may be extended by the Director when necessary, but in no case shall the combined time periods under these provisions exceed two hundred forty (240) days.

**4.3. Time to apply.** – Any person proposing a new discharge shall submit an application at least one hundred eighty (180) days prior to commencing construction of the facility, unless permission for a shorter time period has been granted by the Director. Any person

with an existing permit shall submit a new application at least one hundred eighty (180) days before the expiration date of the existing permit, unless permission for a shorter time period has been granted by the Director. Any person proposing to abandon a facility under W. Va. Code §22-11-8(b)(6) shall apply for and obtain a permit as required by that section at least one hundred eighty (180) days prior to abandonment.

**4.4. Information required from applicant(s).**

**4.4.a.** All applicants shall provide the Director a complete application in the manner and on a form prescribed by the Director. The form may require information in addition to that specified in this section.

**4.4.a.1.** The activities conducted by the applicant that require it to obtain permits.

**4.4.a.2.** The name, mailing address, and location of the facility for which the application is submitted.

**4.4.a.3.** Up to four (4) Standard Industrial Classification (SIC) codes that best reflect the principal products or services provided by the facility.

**4.4.a.4.** The operator's name, address, telephone number, ownership status (including the name and address of the owner if different), and status as Federal, State, private, public or other entity.

**4.4.a.5.** Other relevant permits as defined in 40 C.F.R. §122.21(f)(6).

**4.4.a.6.** A topographic map (or other map drawing if a topographic map is unavailable) drawn to a reasonable scale and extending at least one (1) mile beyond the site, depicting the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

**4.4.a.7.** A brief description of the nature of the business.

**4.4.b.** Existing sewage, manufacturing, commercial, mining and silvicultural dischargers shall also provide the following information to the Director, using application forms provided by the Director:

**4.4.b.1.** Outlet location. – The latitude and longitude to the nearest second and the name and alphanumeric designation of the immediate receiving stream or river mile point where applicable.

**4.4.b.2.** Line drawing. – A line drawing of the water flow through the facility, with a water balance showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under paragraph 4.4.b.3 of this rule. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide instead a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

**4.4.b.3.** Average flows and treatment. – A narrative identification of each type of process, operation, or production area that contributes wastewater to the effluent for each outlet, including process wastewater, cooling water, sewage, and storm water runoff (including material storage area runoff), the average flow that each wastewater contributes, and a description of the treatment, if any, each wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Process, operations or production areas may be described in general terms (for example, "dye-making reactor," "distillation tower"). For a privately owned treatment works, this information may include the identity of each user of the treatment works.

**4.4.b.4.** Intermittent flows. – If any of the discharges described in paragraph 4.4.b.3 above are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage or leaks.

**4.4.b.5.** Maximum production. – If an effluent guideline promulgated under §304 of the CWA applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline. The reported measure must reflect the actual production of the facility as required by subdivision 7.2.a. below.

**4.4.b.6.** Improvements. – If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement project and a listing of the required and projected final compliance dates.

**4.4.b.7.** Effluent characteristics. – Information on the discharge of pollutants is specified in this paragraph. When "quantitative data" for a pollutant is required, the applicant must collect a sample effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 C.F.R. §122.21(g)(7) and 40 C.F.R. §136. When no analytical method is approved, the applicant may use any suitable method

but must provide a description of the method. When an applicant has two (2) or more outlets with substantially identical effluents, the Director may allow the applicant to test only one (1) outlet and report that the quantitative data also applies to the substantially identical outlet. The requirements in subparagraphs 4.4.b.7.C and 4.4.b.7.D of this rule that an applicant must believe pollutants to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. The Director may require that grab samples or composite samples be used for particular pollutants. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production or storage of the pollutant or on any previous analyses for the pollutant. For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.

**4.4.b.7.A.** Every applicant must report quantitative data for every outlet for the following parameters relating to pollutants, unless the prescribed form indicates that such data is not necessary:

**4.4.b.7.A.1.** Biochemical oxygen demand (BOD);

**4.4.b.7.A.2.** Chemical oxygen demand;

**4.4.b.7.A.3.** Total organic carbon;

**4.4.b.7.A.4.** Total suspended solids;

**4.4.b.7.A.5.** Ammonia (as N);

**4.4.b.7.A.6.** Temperature (both winter and summer); and

**4.4.b.7.A.7.** pH.

**4.4.b.7.B.** At the applicant's request, the Director may waive the reporting requirements for particular point sources or for a particular industry category for one (1) or more of the pollutants listed in 4.4.b.7.A above, if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

**4.4.b.7.C.** Each applicant with processes in one (1) or more primary industry category (see Appendix A) contributing to a discharge must report quantitative data for the following pollutants in each outlet containing process wastewater:



**4.4.b.7.C.1.** The organic toxic pollutants in the fractions designated in Table I of Appendix C for the applicant's industrial category or categories; Provided, that testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash, and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category shall not apply. Table II of Appendix C lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

**4.4.b.7.C.2.** The pollutants listed in Table III of Appendix C (the toxic metals, cyanide, and total phenols).

**4.4.b.7.D.** Reporting of quantitative data shall be as follows:

**4.4.b.7.D.1.** Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix C (certain conventional and nonconventional pollutants) is discharged from each outlet. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator or upon a specific request by the Director for certain Table IV pollutants at the issuance of the application, or at such later time as provided in paragraph 4.4.b.12 of this rule, the applicant must report quantitative data. For every pollutant discharged that is not so limited in an effluent limitations guideline or specifically requested by the Director, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

**4.4.b.7.D.2.** Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of Appendix C (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under subparagraph 4.4.b.7.C above is discharged from each outfall. For every pollutant expected to be discharged in concentrations of ten parts per billion

(10 ppb) or greater, the applicant must report quantitative data. Where acrolein, acrylonitrile, 2,4 dinitrophenol, or 2-methyl-4,6 dinitrophenol are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb or, in the case of acrolein, acrylonitrile, 2, 4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph 4.4.b.8 of this rule is not required to analyze for pollutants listed in Table II of Appendix C (the organic toxic pollutants).

**4.4.b.7.E.** Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix C (certain hazardous substances and asbestos) are discharged from each outlet. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report quantitative data it has for any pollutant.

**4.4.b.7.F.** Each applicant, except sewage facilities, must report qualitative data generated using a screening procedure not calibrated with analytical standards for 2, 3, 7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

**4.4.b.7.F.1.** Uses or manufactures 2, 4, 5-trichlorophenoxy acetic acid (2, 4,5-t); 2- (2,4,5-trichlorophenoxy) propanoic acid (Silvex,2,4,5,TP); 2-(2,4,5-trichlorophenoxy) ethyl 2, 2- dichloropropionate (Erbon); 0, 0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorathiate (Ronnel); 2,4-5-trichlorophenol (TCP); or hexachlorophene (HCP); or

**4.4.b.7.F.2.** Knows or has reason to believe that TCDD is or may be present in an effluent.

**4.4.b.8.** Small business exemption. – An applicant that qualifies as a small business under one (1) of the following criteria is exempt from the requirements of subparagraphs 4.4.b.7.C or 4.4.b.7.D of this rule to submit quantitative data for the pollutants listed in Table II of Appendix C (the organic toxic pollutants):

**4.4.b.8.1.** For coal mines, a probable total annual production of less than one hundred thousand (100,000) tons per year.

**4.4.b.8.2.** For all other applicants, gross total annual sales averaging less than one hundred thousand dollars (\$100,000) per year.

**4.4.b.9.** Used or manufactured toxics. – A listing of any toxic pollutant that the applicant uses or manufactures or expects that it will use or manufacture during the next five (5) years as an intermediate or final product or byproduct.

**4.4.b.10.** Biological toxicity tests. – An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

**4.4.b.11.** Contract analyses. – If a contract laboratory or consulting firm performed any of the analyses required by paragraph 4.4.b.7 of this rule, the identity of each laboratory or firm and the analyses performed.

**4.4.b.12.** Additional information. – In addition to the information reported on the application form, applicants shall provide to the Director, at his or her request, such other information as the Director may reasonably require to assess the discharges of the facility and to determine whether to issue a NPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity to aquatic life of the discharges and requirements to determine the cause of the toxicity.

**4.4.c.** New and existing concentrated animal feeding operations and concentrated aquatic animal production facilities shall provide the following information to the Director, using the application form provided by the Director:

**4.4.c.1.** For concentrated animal feeding operations:

**4.4.c.1.A.** The name of the owner or operator;

**4.4.c.1.B.** The facility location and mailing addresses;

**4.4.c.1.C.** Latitude and longitude of the entrance to the production area;

**4.4.c.1.D.** A topographic map of the geographic area in which the CAFO is located, showing the specific location of the production area in lieu of the requirements of paragraph 4.4.a.6 of this rule;

**4.4.c.1.E.** Specific information about the number and type of animals at issue (i.e. beef cattle, broilers, layers, swine weighing

fifty-five (55) pounds or more, swine weighing less than fifty-five (55) pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, etc.) and whether such animals are in open confinement or housed under roof;

**4.4.c.1.F.** The type of containment and storage (i.e. anaerobic lagoon, roofed storage shed, storage ponds, under-floor pits, above-ground storage tanks, below-ground storage tanks, concrete pad, impervious soil pad, etc.) and its total capacity for manure, litter or process wastewater storage, measured in tons or gallons;

**4.4.c.1.G.** The total number of acres under control of the applicant available for land application of manure, litter or process wastewater;

**4.4.c.1.H.** The estimated amount of manure, litter, or process wastewater generated per year, measured in tons or gallons;

**4.4.c.1.I.** The estimated amount of manure, litter or process wastewater transferred to other persons per year, measured in tons or gallons; and

**4.4.c.1.J.** A nutrient management plan that, at a minimum, satisfies the requirements of subdivision 13.1.h below, including, for all CAFOs subject to 40 C.F.R. Part 412 Subpart C or D, the requirements of 40 C.F.R. §412.4(c), as applicable.

**4.4.c.2.** For concentrated aquatic animal production facilities:

**4.4.c.2.A.** The maximum daily and average monthly flow from each outlet;

**4.4.c.2.B.** The number of ponds, raceways, and similar structures;

**4.4.c.2.C.** The name of the receiving water and the source of intake water.

**4.4.c.2.D.** For each species of aquatic animal, the total yearly and maximum harvestable weight;

**4.4.c.2.E.** The calendar month of maximum feeding and the total mass of food fed during that month; and

**4.4.c.2.F.** Any other information the Director may reasonably require.

**4.4.d.** Variance requests by non-POTWs. – A discharger that is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified herein:

**4.4.d.1.** Fundamentally different factors. – A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be made by the close of the public comment period provided for in subsection 12.1 below. The request shall explain how the requirements of 40 C.F.R. Part 125, Subpart D have been met.

**4.4.d.2.** Nonconventional pollutants. – A request for a variance from the best available technology (BAT) requirements of CWA §301(b)(2)(F) pollutants (commonly called "nonconventional pollutants") pursuant to §301(c) of the CWA because of the economic capability of the owner or operator, or pursuant to §301(g) of the CWA because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

**4.4.d.2.A.** Submitting an initial request to the Regional Administrator and to the Director stating the name of discharger, the permit number, the outlet number(s), the applicable effluent guideline, and whether the discharger is requesting a CWA §301(c) or CWA §301(G) modification or both. This request must have been filed not later than:

**4.4.d.2.A.1.** September 25, 1978 for a pollutant that is controlled by a BAT effluent guideline promulgated before December 27, 1977; or

**4.4.d.2.A.2.** Two hundred seventy (270) days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 28, 1977.

**4.4.d.2.B.** Submitting a completed request no later than the close of the public comment period provided for in subsection 12.1 of this rule, demonstrating that the applicable requirements of 40 C.F.R. §125 have been met.

**4.4.d.2.C.** Requests for variance from effluent limitations not based on effluent limitation guidelines need only comply with subparagraph 4.4.d.2.B of this rule and need not be preceded by an initial request under subparagraph 4.4.d.2.A.

**4.4.d.3.** Delay in construction of POTW. – An extension under CWA §301(i)(2) of the statutory deadlines in §§301(b)(1)(A) or (B)(1)(C) based on delay in completion of a POTW into which the source is to discharge must have been requested on or before June 26, 1978 or one hundred eighty (180) days after the relevant POTW requested an extension under paragraph 4.4.e.1 below, whichever is later, but in no event may this date have been later than December 24, 1978. The request shall explain how the requirements of 40 C.F.R. Part 125, Subpart J have been met.

**4.4.d.4.** Innovative technology. – An extension under CWA §301(k) from the statutory deadline of §301(b)(2)(A) for best available technology based on the use of innovative technology may be requested no later than the close of the public comment period provided for in subsection 12.1 of this rule for the discharger's initial permit requiring compliance with §301(b)(2)(A). The request shall demonstrate that the requirements of 40 C.F.R. §125 have been met.

**4.4.d.5.** Water quality related effluent limitations. – A modification under CWA §302(b)(2) of the requirements of §302(a) for achieving water quality related effluent limitations may be requested no later than the close of the public comment period provided for in subsection 12.1 on the permit from which the modification is sought.

**4.4.d.6.** Thermal discharge. – A variance under CWA §316(a) for the thermal component of any discharge must be filed with a timely application for a permit under this rule, except that if thermal effluent limitations are established under CWA §402(a)(1) or are based on water quality standards, the request for a variance may be filed by the close of the public comment period provided for in subsection 12.1 below. A copy of the request required by 40 C.F.R. Part 125, Subpart H shall be sent to the Director.

**4.4.e.** Variance requests by POTWs. – A discharger that is a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under either of the following statutory provisions as specified herein:

**4.4.e.1.** Delay in construction. – An extension under CWA §301(i)(1) of the statutory deadlines in CWA §§301(b)(1)(B) or (b)(1)(C) based on delay in the construction of the POTW must have been requested on or before June 26, 1978; or

**4.4.e.2.** Water quality based effluent limitation. – A modification under CWA §302(b)(2) of the requirements under §302(a) for achieving water quality based effluent limitations shall be requested on the permit from

which the modification is sought no later than the close of the public comment period provided for in subsection 12.1 of this rule.

**4.4.f.** Expedited variance procedures and time extensions:

**4.4.f.1.** Notwithstanding the time requirements in subdivisions 4.4.d and 4.4.e above, the Director may notify a permit applicant before a draft permit is issued that the draft permit will likely contain limitations that are eligible for variance. In the notice, as a condition of consideration of any potential variance request, the Director may require the applicant to submit a request explaining how the requirements of 40 C.F.R. §125 applicable to the variance have been met. The Director may also require the request's submission within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations that may become effective upon final grant of the variance.

**4.4.f.2.** A discharger who cannot file a complete request required under subparagraphs 4.4.d.2.B or 4.4.d.2.C of this rule may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions shall be no more than six (6) months in duration.

**4.5.** Record keeping. – The applicant shall keep records of all data used to complete permit applications and any supplemental information submitted for a period of at least three (3) years from the date the application is signed.

**4.6.** Signatories to permit applications and reports.

**4.6.a.** Applications. – All permit applications shall be signed as follows:

**4.6.a.1.** For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

**4.6.a.1.A.** A president, secretary, treasurer or vice-president of the corporation in charge of a principle business function or any other person who performs similar policy or decision making functions for the corporation; or

**4.6.a.1.B.** The manager of one (1) or more manufacturing, production, or operating facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

NOTE: The Director does not require specific assignments or delegations of authority to responsible corporate officers identified in subparagraph 4.6.a.1.A. The Director will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under subparagraph 4.6.a.1.B rather than to specific individuals.

**4.6.a.2.** For a partnership or sole proprietorship: by a general partner or the proprietor respectively; or

**4.6.a.3.** For a municipality, State, Federal or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

**4.6.a.3.A.** The chief executive officer of the agency; or

**4.6.a.3.B.** A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrator of EPA.)

**4.6.b. Reports.** – All reports required by permits and other information requested by the Director shall be signed by a person described in subdivision 4.6.a or by a duly authorized representative of that person. A person is a duly authorized representative only if:

**4.6.b.1.** The authorization is made in writing by a person described in subdivision 4.6.a above;

**4.6.b.2.** The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

**4.6.b.3.** The written authorization is submitted to the Director.

**4.6.c. Changes to authorization.** – If an authorization under subdivision 4.6.b above is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization



satisfying the requirements of subdivision 4.6.b must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

**4.6.d. Certification.** – Any person signing a document under subdivisions 4.6.a or 4.6.b of this rule shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

**4.7. Filing fee.** – For all NPDES permits, the filing fees required by 47CSR26 shall apply as though fully set forth herein.

## **§ 47-10-13. Special NPDES Programs.**

**13.1. Concentrated animal feeding operations.**

**13.1.a.** Concentrated animal feeding operations (CAFOs), as defined in subdivision 13.1.b. or designated in accordance with subdivision 13.1.c. of this rule, are point sources subject to NPDES permitting requirements as provided herein. Once an animal feeding operation is defined as a CAFO for at least one (1) type of animal, the NPDES requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter or process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

**13.1.b.** Definitions applicable to this section:

**13.1.b.1.** "Animal feeding operation" ("AFO") means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

**13.1.b.1.A.** Animals other than aquatic animals have been, are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and

**13.1.b.1.B.** Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

**13.1.b.2.** "Concentrated animal feeding operation" ("CAFO") means an AFO that is defined or designated as a Large CAFO or as a Medium CAFO by the terms of this rule. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

**13.1.b.3.** "Land application area" means land under the control of an AFO owner or operator, whether it is owned, rented or leased, to which manure, litter or process wastewater from the production area is or may be applied.

**13.1.b.4.** "Large concentrated animal feeding operation" ("Large CAFO") means an AFO that:

**13.1.b.4.A.** Stables or confines as many as or more than the number of animals specified in any of the following categories:

**13.1.b.4.A.1.** Seven hundred (700) mature dairy cows, whether milked or dry;

**13.1.b.4.A.2.** One thousand (1,000) veal calves;

**13.1.b.4.A.3.** One thousand (1,000) cattle other than mature dairy cows or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs;

**13.1.b.4.A.4.** Two thousand five hundred (2,500) swine, each weighing fifty-five (55) pounds or more;

**13.1.b.4.A.5.** Ten thousand (10,000) swine, each weighing less than fifty-five (55) pounds;

**13.1.b.4.A.6.** Five hundred (500) horses;

**13.1.b.4.A.7.** Ten thousand (10,000) sheep or lambs;

**13.1.b.4.A.8.** Fifty-five thousand (55,000) turkeys;

**13.1.b.4.A.9.** Thirty thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system;

**13.1.b.4.A.10.** One hundred twenty-five thousand (125,000) chickens other than laying hens, if the AFO uses other than a liquid manure handling system;

**13.1.b.4.A.11.** Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system;

**13.1.b.4.A.12.** Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system; or

**13.1.b.4.A.13.** Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system).

**13.1.b.5.** "Manure" is defined to include manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

**13.1.b.6.** "Medium concentrated animal feeding operation" ("Medium CAFO") means an AFO that:

**13.1.b.6.A.** Stables or confines the type and number of animals that fall within the following ranges:

**13.1.b.6.A.1.** Two hundred (200) to six hundred ninety-nine (699) mature dairy cows, whether milked or dry;

**13.1.b.6.A.2.** Three hundred (300) to nine hundred ninety-nine (999) veal calves;

**13.1.b.6.A.3.** Three hundred (300) to nine hundred ninety-nine (999) cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;

**13.1.b.6.A.4.** Seven hundred fifty (750) to two thousand four hundred ninety-nine (2,499) swine, each weighing fifty-five (55) pounds or more;

**13.1.b.6.A.5.** Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) swine, each weighing less than fifty-five (55) pounds;

**13.1.b.6.A.6.** One hundred fifty (150) to four hundred ninety-nine (499) horses;

**13.1.b.6.A.7.** Three thousand (3,000) to nine thousand nine hundred ninety-nine (9,999) sheep or lambs;

**13.1.b.6.A.8.** Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys;

**13.1.b.6.A.9.** Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system;

**13.1.b.6.A.10.** Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens other than laying hens, if the AFO uses other than a liquid manure handling system;

**13.1.b.6.A.11.** Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system;

**13.1.b.6.A.12.** Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system; or

**13.1.b.6.A.13.** One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system; and

**13.1.b.6.B.** Either one of the following conditions is met:

**13.1.b.6.B.1.** Pollutants are discharged into waters of West Virginia through a man-made ditch, flushing system or other similar man-made device; or

**13.1.b.6.B.2.** Pollutants are discharged directly into waters of West Virginia that originate outside of and pass over, across or through the facility or otherwise come into direct contact with the animals confined in the operation.

**13.1.b.7.** "Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits or other AFO facilities; direct contact swimming, washing or spray-cooling of animals; or dust control. Process wastewater also includes any water that comes into contact with any raw materials, products or byproducts, including manure, litter, feed, milk, eggs or bedding.

**13.1.b.8.** "Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities.

**13.1.b.9.** "Small concentrated animal feeding operation" ("Small CAFO") means an AFO that is designated as a CAFO and is not a Medium CAFO as defined above.

**13.1.c.** The appropriate authority (i.e., Director or Regional Administrator or both, as specified in paragraph 13.1.c.1. below) may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to the waters of West Virginia.

**13.1.c.1.** CAFO designations shall be made by the Director. The Regional Administrator may also designate CAFOs, but only where the Regional Administrator has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State or Indian country water that is impaired for that pollutant.

**13.1.c.2.** In making this designation, the Director or the Regional Administrator shall consider the following factors:

**13.1.c.2.A.** The size of the AFO and the amount of waste reaching the waters of West Virginia;

**13.1.c.2.B.** The location of the AFO relative to the waters of West Virginia;

**13.1.c.2.C.** The means of conveyance of animal wastes and process wastewaters into the waters of West Virginia;

**13.1.c.2.D.** The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, manure, and process wastewaters into the waters of West Virginia; and

**13.1.c.2.E.** Other relevant factors.

**13.1.c.3.** No AFO shall be designated under this section unless the Director or the Regional Administrator has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO with numbers of animals below those established in paragraph 13.1.b.6 of this rule may be designated as a CAFO unless:

**13.1.c.3.A.** Pollutants are discharged into the waters of West Virginia through a manmade ditch, flushing system or other similar manmade device; or

**13.1.c.3.B.** Pollutants are discharged directly into the waters of West Virginia that 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.

**13.1.d.** Permit Requirement.

**13.1.d.1.** The owner or operator of a CAFO must apply for an individual NPDES permit if the CAFO discharges or proposes to discharge into the waters of West Virginia. A CAFO proposes to discharge if it is designed, constructed, operated or maintained such that a discharge will occur.

**13.1.d.2.** A permit application for an individual permit must include the information specified in paragraph 4.4.c.1 above.

**13.1.e.** Land application discharges from a CAFO are subject to NPDES requirements. The discharge of manure, litter or process wastewater to waters of West Virginia from a CAFO as a result of the application of manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES 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, 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.

**13.1.e.1.** For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of the 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 subparagraphs 13.1.h.1.A through 13.1.h.1.I below.

**13.1.e.2.** Unpermitted Large CAFOs must maintain documentation specified in subparagraph 13.1.h.1.I. below, either on site or at a nearby office or otherwise make such documentation readily available to the Director or Regional Administrator upon request.

**13.1.f.** Any CAFO that is required to seek permit coverage under paragraph 13.1.d.1 of this rule must seek coverage when the CAFO proposes to discharge.

**13.1.f.1.** New sources. – The owner or operator of a new source must seek to obtain coverage under a permit at least one hundred eighty (180) days prior to the time that the CAFO commences operation.

**13.1.f.2.** Expansion of AFO to CAFO. – For other operations (e.g. resulting from an increase in the number of animals), the owner or operator must seek to obtain coverage under a permit as soon as possible, but no later than ninety (90) days after becoming defined as a CAFO.

**13.1.f.3.** Operations that are designated as CAFOs. – For an operation designated as a CAFO in accordance with subdivision 13.1.c. above, the owner or operator must seek to obtain a permit no later than ninety (90) days after receiving notice of the designation.

**13.1.g.** Duty to Maintain Permit Coverage. – No later than one hundred eighty (180) days before the expiration of the permit, or as provided by the Director, any permitted CAFO must submit an application to renew its permit in accordance with paragraph 4.4.c.1 of this rule, unless the CAFO will not discharge or propose to discharge upon expiration of the permit.

**13.1.h.** Additional conditions applicable to NPDES permits issued to CAFOs. – Any permit issued to a CAFO must include the following:

**13.1.h.1.** Requirement to implement a nutrient management plan. – Any permit issued to a CAFO must include a requirement to implement a nutrient management plan (NMP) that, at a minimum, contains BMPs necessary to meet the requirements of this section and applicable effluent limitations and standards, including those specified in 40 C.F.R. §412. The NMP must, to the extent applicable:

**13.1.h.1.A.** Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

**13.1.h.1.B.** Ensure proper management of mortalities (i.e. dead animals) to make certain 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;

**13.1.h.1.C.** Ensure that clean water is diverted, as appropriate, from the production area;

**13.1.h.1.D.** Prevent direct contact of confined animals with waters of West Virginia;

**13.1.h.1.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 such system is specifically designed to treat such chemicals and other contaminants;

**13.1.h.1.F.** Identify appropriate site-specific conservation practices to be implemented, including as appropriate buffers or equivalent practices to control runoff of pollutants into the waters of West Virginia;

**13.1.h.1.G.** Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

**13.1.h.1.H.** Establish protocols to land-apply manure, litter and/or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter and/or process wastewater; and

**13.1.h.1.I.** Identify specific records that will be maintained to document the implementation and management of the minimum elements described hereinabove.

**13.1.h.2.** Recordkeeping requirements.

**13.1.h.2.A.** The permittee must create, maintain for five (5) years, and make available to the Director upon request the following records:

**13.1.h.2.A.1.** All applicable records identified in subparagraph 13.1.h.1.I above;



**13.1.h.2.A.2.** In addition, all CAFOs subject to 40 C.F.R. §412 must comply with the recordkeeping requirements of 40 C.F.R. §§412.37(b) and (c) and 40 C.F.R. §§412.47(b) and (c).

**13.1.h.2.B.** A copy of the CAFO's site-specific NMP must be maintained on site and made available to the Director upon request.

**13.1.h.3.** Requirements relating to the 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. Large CAFOs must retain for five (5) years records of the recipient's name and address, approximate amount of manure, litter or process wastewater transferred, and the date of the transfer.

**13.1.h.4.** Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Director, which must include:

**13.1.h.4.A.** The number and type of animals, as listed in paragraphs 13.1.b.4 and 13.1.b.6 above, whether in open confinement or housed under roof;

**13.1.h.4.B.** The estimated amount of total manure, litter or process wastewater generated by the CAFO in the previous twelve (12) months, measured in tons or gallons;

**13.1.h.4.C.** The estimated amount of total manure, litter or process wastewater transferred to another person by the CAFO in the previous twelve (12) months, measured in tons or gallons;

**13.1.h.4.D.** The total number of acres of land application covered by the NMP developed in accordance with this rule;

**13.1.h.4.E.** The total number of acres under the control of the CAFO that were used for land application of manure, litter or process wastewater in the previous twelve (12) months;

**13.1.h.4.F.** A summary of all manure, litter or process wastewater discharges from the production area in the previous twelve (12) months, including date, time, and approximate volume;

**13.1.h.4.G.** A statement indicating whether the current version of the CAFO's NMP was developed or approved by a certified nutrient management planner; and

**13.1.h.4.H.** The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter or process wastewater, the results of calculations conducted in accordance with parts 13.1.h.5.A.2 and 13.1.h.5.B.4 below, and the amount of manure, litter or process wastewater applied to each field during the previous twelve (12) months; and, for any CAFO that implements a NMP that addresses rates of application in accordance with subparagraph 13.1.h.5.B of this rule, the results of any soil testing for nitrogen or phosphorus taken during the preceding twelve (12) months, the data used in calculations conducted in accordance with part 13.1.h.5.B.4 below, and the amount of any supplemental fertilizer applied during the previous twelve (12) months.

**13.1.h.5.** Terms of the NMP. – Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-specific NMP. The terms of the NMP are the information, protocols, BMPs, and other conditions determined by the Director to be necessary to meet the requirements of paragraph 13.1.h.1 above. The terms of the NMP with respect to protocols for land application of manure, litter or process wastewater required by subparagraph 13.1.h.1.H above and, if applicable, 40 C.F.R. §412.4(c), must include the fields available for land application; field-specific rates of application, properly developed in accordance with subparagraphs 13.1.h.5.A through 13.1.h.5.B below, to ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and any timing limitations identified in the NMP concerning land application on the fields available for such use. The terms must address rates of application using one of the following two approaches, unless the Director specifies that a certain approach must be used:

**13.1.h.5.A.** Linear approach. – An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

**13.1.h.5.A.1.** The terms include maximum application rates from manure, litter or process wastewater for each year of permit coverage for each crop identified in the NMP, in chemical forms determined to be acceptable to the Director, 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 Director 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 or process wastewater to be land-applied; the timing and method of land application; and the methodology by which the NMP accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

**13.1.h.5.A.2.** Large CAFOs that use this approach must calculate the maximum amount of manure, litter or process wastewater to be land-applied at least once each year, using the results of the most recent representative manure, litter or process wastewater tests for nitrogen and phosphorus taken within twelve (12) months of the date of land application.

**13.1.h.5.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 or process wastewater to be land-applied, according to the following specifications:

**13.1.h.5.B.1.** The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients for each crop identified in the NMP, in chemical forms determined to be acceptable to the Director, 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 of a field, such as pasture or fallow fields (including alternative crops identified in part 13.1.h.5.B.2 below); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the Director for each crop or use identified for each field. In

addition, the terms include the methodology by which the NMP accounts for the following factors when calculating the amounts of manure, litter or process wastewater to be land applied: results of soil tests conducted in accordance with protocols identified in the NMP required by subparagraph 13.1.h.1.G of this rule; credits for all nitrogen in the field that will be plant-available; the amount of nitrogen and phosphorus in the manure, litter or 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.

**13.1.h.5.B.2.** The terms of the NMP include alternative crops identified in the CAFO's NMP that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed in field, in addition to the crops identified in the planned crop rotation for that field, and the NMP must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the Director for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter and/or process wastewater to be applied must be determined in accordance with the methodology described in part 13.1.h.5.B.1 above.

**13.1.h.5.B.3.** For CAFOs using this approach, the following projections must be included in the NMP submitted to the Director, but are not terms of the NMP 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 or 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 NMP.

**13.1.h.5.B.4.** CAFOs that use this approach must calculate maximum amounts of manure, litter or process wastewater to be land-applied at least once each year, using the methodology required by part 13.1.h.5.B.1 above, before land-applying manure, litter or process wastewater and must rely on the following data:

**13.1.h.5.B.4.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 part 13.1.h.5.B.1 above, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Director; and

**13.1.h.5.B.4.b.** The results of most recent representative manure, litter or process wastewater tests for nitrogen and phosphorus, taken within twelve (12) months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter or process wastewater to be applied.

**13.1.h.6.** Changes to a NMP. – Any permit issued to a CAFO must require the following procedures to apply when a CAFO owner or operator makes changes to the NMP previously submitted to the Director:

**13.1.h.6.A.** The CAFO owner or operator must provide the Director with the most current version of the its NMP and identify changes from the previous version, except that the results of calculations made in accordance with the requirements of parts 13.1.h.5.A.2 and 13.1.h.5.B.4 of this rule are not subject to the requirements of paragraph 13.1.h.6.

**13.1.h.6.B.** The Director must review the revised NMP 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, and must determine whether the changes to the NMP necessitate revision to the terms of the NMP incorporated into the permit issued to the CAFO. If revision to the terms of the NMP is not necessary, the Director must notify the CAFO owner or operator and, upon such notification, the CAFO may implement the revised NMP. If revision to the terms of the NMP is necessary, the Director must determine whether such changes are substantial changes as described in subparagraph 13.1.h.6.C below.

**13.1.h.6.B.1.** If the Director determines that the changes to the terms of the NMP are not substantial, the Director must make the revised NMP publicly available and include in it the permit record, revise the terms of the NMP, notify the owner or operator, and inform the public of any changes to the terms of the NMP that are incorporated into the permit.

**13.1.h.6.B.2.** If the Director determines that the changes to the terms of the NMP are substantial, the Director 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, the hearing process, if a hearing is held, and revisions to the CAFO's permit must follow the procedures applicable to draft permits set forth in sections 10 and 12 above. Once the Director incorporates the revised terms of the NMP into the permit, the Director must notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

**13.1.h.6.C.** Substantial changes to the terms of a NMP incorporated as terms and conditions of a permit include, but are not limited to:

**13.1.h.6.C.1.** Addition of new land application areas not previously included in the CAFO's NMP. Except that if the land application area that is being added to the NMP is covered by terms of a NMP incorporated into an existing NPDES permit in accordance with the requirements of paragraph 13.1.h.5 above, 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 NMP, but not a substantial change for purposes of this section;

**13.1.h.6.C.2.** Any changes to the field-specific maximum annual rates for land application as set forth in subparagraph 13.1.h.5.A above, and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop as set forth in subparagraph 13.1.h.5.B above;

**13.1.h.6.C.3.** Addition of any crop or other uses not included in the terms of the CAFO's NMP and corresponding field-specific rates of application expressed in accordance with paragraph 13.1.h.5 of this rule; and

**13.1.h.6.C.4.** Changes to site-specific components of the CAFO's NMP, where such changes are likely to increase the risk of nitrogen and phosphorus transport to the waters of West Virginia.