

NOTICE OF INTENT

Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Extension of Compliance Deadlines for CAFO Permits
(LAC 33:IX.2501, 2505, 2703, and 4903) (WQ066ft)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Water Quality regulations, LAC 33:IX.2501, 2505, 2703, and 4903 (Log #WQ066ft).

This proposed rule is identical to federal regulations found in 40 CFR 122.21, 23, and 42 and 412.31 and 43, as amended at 71 FR 6978 - 6984 (2/10/06), which are applicable in Louisiana. For more information regarding the federal requirement, contact the Regulation Development Section at (225) 219-3550 or Box 4302, Baton Rouge, LA 70821-4302. No fiscal or economic impact will result from the proposed rule; therefore, the rule will be promulgated in accordance with R.S. 49:953(F)(3) and (4).

This rule implements the February 10, 2006, EPA rule (71 FR 6978-6984) that postpones dates established in the 2003 Concentrated Animal Feeding Operations (CAFOs) rule issued on February 12, 2003, by which facilities newly defined as CAFOs were required to seek permit coverage and by which all CAFOs were required to have nutrient management plans (NMPs) developed and implemented. EPA extended the date by which operations defined as CAFOs as of April 14, 2003, who were not defined as CAFOs prior to that date, must seek NPDES permit coverage, from February 13, 2006 to July 31, 2007. EPA also amended the date by which operations that become defined as CAFOs after April 14, 2003, due to operational changes that would not have made them CAFOs prior to April 14, 2003, and that are not new sources, must seek NPDES permit coverage, from April 13, 2006 to July 31, 2007. Finally, EPA extended the deadline by which CAFOs are required to develop and implement NMPs, from December 31, 2006 to July 31, 2007.

Under authority of the CWA which restores and maintains the chemical, physical, and biological integrity of the nation's waters, one of the core provisions of that Act is to authorize and regulate the discharge of pollutants from point sources to waters of the United States. Section 502(14) of the CWA specifically includes CAFOs in the definition of the term "point source." The Department of Environmental Quality, Office of Environmental Services, became the NPDES permit issuing authority for the State of Louisiana on August 27, 1996. This rule is necessary in order to comply with federal regulations that require the Louisiana Pollutant Discharge Elimination System (LPDES) program to be consistent with the EPA NPDES program. The basis and rationale for this rule are to mirror the federal regulations.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on April 25, 2006, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Free parking is available in the Galvez Garage when the parking ticket is validated by department personnel at the hearing.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by WQ066ft. Such comments must be received no later than April 25, 2006, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to FAX (225) 219-3582 or by e-mail to judith.schuerman@la.gov. The comment period for this rule ends on the same date as the public hearing. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of WQ066ft. This regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

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**Title 33
ENVIRONMENTAL QUALITY**

**Part IX. Water Quality
Subpart 2. The Louisiana Pollutant Discharge Elimination System (LPDES)
Program**

Chapter 25. Permit Application and Special LPDES Program Requirements

§2501. Application for a Permit

A. - I.1.i. ...

j. for CAFOs that must seek coverage under a permit after ~~December 31, 2006~~ July 31, 2007, certification that a nutrient management plan has been completed and will be implemented upon the date of permit coverage.

I.2. - R.5.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:723 (June 1997), amended by the Office of the Secretary, LR 25:661 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2552 (November 2000), LR 26:2756 (December 2000), LR 27:45 (January 2001), LR 28:465 (March 2002), LR 28:1766 (August 2002), LR 29:1462 (August 2003), repromulgated LR 30:229 (February 2004), amended by the Office of Environmental Assessment, LR 30:2028 (September 2004), LR 31:425 (February 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2509 (October 2005), LR 32:

§2505. Concentrated Animal Feeding Operations

A. - G.1. ...

2. Operations Defined as CAFOs as of April 14, 2003, Which Were Not Defined as CAFOs Prior to That Date. For all such CAFOs, the owner or operator of the CAFO must seek to obtain coverage under an LPDES permit by a date specified by the state administrative authority, but no later than ~~February 13, 2006~~ July 31, 2007.

3.- 3.b. ...

c. if an operational change that makes the operation a CAFO would not have made it a CAFO prior to April 14, 2003, the operation has until ~~April 13, 2006~~ July 31, 2007, or 90 days after becoming defined as a CAFO, whichever is later.

G.4. - H.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:467 (March 2002), LR 29:1463 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of Environmental Assessment, LR 31:1577 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 32:

Chapter 27. LPDES Permit Conditions

§2703. Additional Conditions Applicable to Specified Categories of LPDES Permits

The following conditions, in addition to those set forth in LAC 33:IX.2701, apply to all LPDES permits within the categories specified below.

A. - E. ...

1. Requirements to Develop and Implement a Nutrient Management Plan. At a minimum, a nutrient management plan must include best management practices and procedures necessary to implement applicable effluent limitations and standards. Permitted CAFOs must have their nutrient management plans developed and implemented by ~~December 31, 2006~~ July 31, 2007. CAFOs that seek to obtain coverage under a permit after ~~December 31, 2006~~ July 31, 2007, must have a nutrient management plan developed and implemented upon the date of permit coverage. The nutrient management plan must, to the extent applicable:

1.a. – 4.g. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (B)(4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2554 (November 2000), LR 29:1466 (August 2003), repromulgated LR 30:230 (February 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2512 (October 2005), LR 32:

Chapter 49. Incorporation by Reference

§4903. 40 CFR Chapter I, Subchapter N

A. 40 CFR Chapter I, Subchapter N, Effluent Guidelines and Standards, Parts 401 and 405-471, July 1, 2004⁵, and ~~amendments to Section 429.11(c) in 69 FR 46045, July 30, 2004, Part 432 in 69 FR 54541-54555, September 8, 2004, and Part 451 in 69 FR 51927-51930, August 23, 2004, and amendments to 40 CFR 412.31 and 412.43 in 71 FR 6978-6984, February 10, 2006~~, are hereby incorporated by reference.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 et seq., and in particular Section 2074(B)(3) and (4).

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Water Resources, LR 21:945 (September 1995), amended LR 23:958 (August 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1467 (August 1999), LR 26:1609 (August 2000), LR 27:2232 (December 2001), LR 28:996 (May 2002), LR 29:700 (May 2003), LR 29:1467 (August 2003), repromulgated LR 30:232 (February 2004), amended LR 30:752 (April 2004), amended by the Office of Environmental Assessment, LR 31:920 (April 2005), amended by the Office of the Secretary, Legal Affairs Division LR 32:**, LR 32: