

Title 35 - Oklahoma Department of Agriculture, Food, and Forestry
Chapter 44 – Agriculture Pollutant Discharge Elimination System
Subchapter 3 – Permit Conditions and Requirements

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35:44-3-1. Permit required

Any animal feeding operation required by federal regulations to obtain a National Pollutant Discharge Elimination System permit for concentrated animal feeding operations shall be required to obtain an Agriculture Pollutant Discharge Elimination System permit.

35:44-3-2. Incorporation by reference of federal regulations

- (a) The following provisions of Title 40 of the Code of Federal Regulations and the requirements contained therein pertaining to concentrated animal feeding operations are, unless otherwise specified, adopted and incorporated by reference in their entirety, except for those regulations noted in subsection (b):
 - (1) The following from Part 122 (NPDES Permit Regulations):
 - (A) 122.21 (a)-(b), (e)-(f), (i), and (p) (application for permit).
 - (B) 122.23 (concentrated animal feeding operations).
 - (C) 122.28 (General permits).
 - (D) 122.42(e) (Conditions applicable to specified categories of permits).
 - (2) Part 412 (Concentrated Animal Feeding Operations (CAFO) Point Source Category).
- (b) Any regulations incorporated by reference above that were invalidated by *Waterkeeper Alliance, Inc., et al. v. US Environmental Protection Agency*, 399 F.3d 486 (2nd Cir. 2005), shall not be incorporated by reference and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry.
- (c) Narrative provisions of this subchapter control over any provision of regulations of the Environmental Protection Agency (EPA) adopted by reference and the rules are interpreted consistently with state compliance, with the requirements of 40 C.F.R. Part 123 (EPA Regulations on State NPDES Permit Program Requirements), and applicable provisions of the federal Clean Water Act and Oklahoma law.

35:44-3-3. Date of federal regulations incorporated

When reference is made to 40 CFR it means, unless otherwise specified, Title 40 of the Code of Federal Regulations (2015 Revision).

35:44-3-4. Terms and conditions of permits

- (a) Terms and conditions of permits issued under this Chapter shall include requirements necessary to assure compliance with the Oklahoma Water Quality Standards, the Implementation of Oklahoma's Water Quality Standards, and the ODAFF Water Quality Standards Implementation Plan.
- (b) Where practicable and as deemed appropriate by the AgPDES Director and as applicable in the circumstances, any discharge permit, or authorization to discharge issued by the Director under a General Permit, may contain appropriate terms, conditions, limitations and requirements related to protection of groundwater, for remediation of pollution, or for implementation of other programs under the jurisdiction of the ODAFF.

35:44-3-5. Technology-based methodologies

Effluent limitation guidelines for industry categories and pollutants are promulgated by the EPA pursuant to the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and

Water Quality Act of 1987. EPA guidelines are adopted and incorporated by reference in OAC 35:44-1-2. If there are no industry category or pollutant guidelines applicable to the applicant's industry, Best Professional Judgment of the permit writer applies.

35:44-3-6. Water quality review

- (a) The provisions of "Quality Criteria for Water, 1986", United States Environmental Protection Agency, EPA 440/5-86-001, as amended, are incorporated herein by reference and shall be consulted where Oklahoma's Water Quality Standards do not contain a specific criterion on a particular pollutant and a criterion is necessary to protect a designated beneficial use.
- (b) In all cases, where appropriate, to ensure that beneficial uses of receiving waters are protected or when deemed necessary to establish waste load allocations of dischargers to a stream, the AgPDES Director shall require the applicant to perform and submit to ODAFF appropriate stream studies and water quality modeling. If resources allow, ODAFF may conduct stream studies and modeling.

35:44-3-7. Water Quality Standards Variance

Approval for any variance allowed pursuant to the Oklahoma Water Quality Standards shall be obtained directly from the Oklahoma Water Resources Board and the permittee or applicant shall submit written evidence of the variance to the AgPDES Director in a timely manner.

35:44-3-8. Technical Standards

- (a) The contents of the manure management plan for a concentrated animal feeding operation shall be based on the nutrient management plan standards prepared in the Agricultural Waste Management Field Handbook, published by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS).
- (b) Manure or animal waste shall be applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in manure or animal waste in compliance with the best management practices of the most current USDA NRCS-Oklahoma Waste Utilization Standard Code 633 and Conservation Practice Standard for Nutrient Management Code 590, and the Midwest Plan Service Publication 18, Livestock Waste Facilities Handbook.
- (c) This section is promulgated to meet the requirements of 40 CFR 412.4(c)(2).