

Due to recent (November 20, 2008) CAFO Rule changes established by the Environmental Protection Agency (EPA), The sample plans on the KDHE website do not meet the new requirements. These plans are provided only as a guide for sample verbiage and will be updated as soon as possible. Below are some of the significant NMP changes not addressed in the current plan examples:

Note: All facilities over 1000 animal units must develop, submit for Department review and implement a Nutrient Management Plan in accordance with the Kansas Technical Standard – Nutrient Management (revised, 12/15/2006). KDHE is in the process of updating the Technical Standard to reflect recent changes in the USEPA CAFO Rule.

1. New NMP Plan Options

The Final Rule, as it applies in Kansas, provides two approaches which a CAFO may use in its NMP to identify annual maximum rates of application of manure, litter, and process wastewater by field and crop for each year of permit coverage. The information, protocols, best management practices and waste application rates may become enforceable “terms of the facility permit”. The two approaches are:

- A. The “linear approach” expresses field-specific maximum rates of application in terms of the amount of nitrogen and phosphorus from manure, litter, and process wastewater allowed to be applied.
- B. The “narrative rate approach” expresses the field-specific rate of application as a narrative rate prescribing how to calculate the amount of manure, litter, and process wastewater allowed to be applied. The narrative rate approach allows CAFO operators to change their crop rotation, form and source of manure, litter, and process wastewater, as well as the timing and method of application. The narrative rate approach allows the use of “real time” data for determining rates of application and provides the most flexible approach for farmers. Under this approach, the operator will not have to revise their permits every time a need to change land application plans occurs.

2. Field Specific - Best Management Plans (BMPs)

The Nutrient Management Plan must identify actual buffers and setbacks from surface water or conduits to surface water for the application fields. This may reduce the available application acres for waste application. Please be aware that the 2008 CAFO Rule also requires that field specific management practices be included in the NMP. These specific practices will become “terms of the NMP” and thus terms of your permit.

3. Modifications and Changes to NMPs

Plans will be based upon a 5-year crop cycle generally following the permit cycle. If the CAFO operator wants to change the terms of the facility’s NMP, the CAFO operator will be required to submit a revised NMP to the permitting authority (KDHE). If the revised NMP requires a substantial change to the “terms of the NMP,” a permit modification will be necessary. The rule establishes a two-tier process for modifying the facility permit:

- A. Non-substantial changes will be made without the need for public review and comment and will be reflected in the annual report available to the public.
- B. Substantial changes will be subject to public notice and comment, with an opportunity for a public hearing before the permit is modified.

4. **New Annual Report Requirements**

In the 2008 rule, EPA has established additional annual reporting requirements for CAFOs that relate to the proposed provisions regarding the terms of the NMP. These changes will need to be incorporated in the facilities 2009 Annual Report.

- A. The USEPA is establishing additional annual report requirements, in 40 CFR 122.42(e) (4) (viii), mandating all permitted CAFOs to include in their annual reports 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, and the amount of manure, litter, or process wastewater applied to each field during the previous 12 months. The EPA believes that it is important for the permitting authority to obtain this information on an annual basis in order to ensure that the CAFO has been operating in compliance with the terms of its permit.
- B. The USEPA is also requiring CAFOs that follow the second (“narrative rate”) approach for describing rates of application in the NMP to submit as part of their annual report the results of all soil testing and concurrent calculations to account for residual nitrogen and phosphorus in the soil, all recalculations, and the new data from which they are derived. The CAFO is required to report the amounts of manure, litter, process wastewater and the amount of chemical fertilizer applied to each field during the preceding 12 months. Together with the total amount of plant available nitrogen and phosphorus from all sources, the information that is required to be included in the annual report provides the information necessary to determine that the CAFO was adhering to the terms of its permit when calculating amounts of manure, litter, and process wastewater to apply.

If you have questions about NMPs and Annual Reports, Please contact:

Kristen Baum	or	Rob Gavin
785-296-5570		785-296-5557
kbaum@kdheks.gov		rgavin@kdheks.gov

Additional information and a copy of the EPA 2008 CAFO Final Rule may be found at the following website:

http://cfpub.epa.gov/npdes/afo/cafofinalrule.cfm?program_id=7