

OREGON CONFINED ANIMAL FEEDING OPERATION
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
INDIVIDUAL PERMIT


State of Oregon
Department of Agriculture
Confined Animal Feeding Operation Program
and
Department of Environmental Quality
Water Quality Division

In compliance with the provisions of Oregon Revised Statutes (ORS) Chapter 468B, Oregon Administrative Rules (OAR) Chapter 340, Divisions 40, 45 and 51 and Chapter 603, Division 74, the Federal Water Pollution Control Act as amended (The Clean Water Act), Title 33 United States Code, Section 1251 et seq., and the National Pollutant Discharge Elimination System (NPDES) program.

FACILITY	SOURCES COVERED BY THIS PERMIT
J-S Ranch 37225 Jefferson Scio Dr Scio, OR 97374	<i>Type of Materials:</i> Poultry manure, litter, and process wastewater <i>Method of Utilization/Disposal:</i> Roofed storage, composting, and export.
CAFO TYPE AND LOCATION	RIVER BASIN INFORMATION
<i>Type:</i> Poultry CAFO (broilers) <i>Location:</i> 37225 Jefferson Scio Dr, Scio, OR 97374 <i>Manure and process wastewater land application site:</i> No applications on site <i>Latitude/Longitude:</i> 44°42'53.00"N 122°55'32.00"W Township 10S, Range 02W, Tax lot 501	<i>Basin:</i> Willamette <i>Sub-basin:</i> South Santiam <i>Hydro Code:</i> 17090006 <i>County:</i> Linn
EPA REFERENCE NO.: INV-ORI010828	



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PERMITTED ACTIVITIES

Until this permit expires or is modified or revoked, the permittee is authorized to operate this CAFO facility in accordance with the special and general water quality conditions that follow.

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SPECIAL CONDITIONS

DEFINITIONS

1. "25-year, 24-hour rainfall event" means an event with a probable recurrence interval of once in twenty-five years as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, or equivalent regional or state rainfall probability information developed from this source.
2. "40 CFR" means Title 40 of the Code of Federal Regulations.
3. "Agricultural stormwater" is defined at 40 CFR § 122.23(e) and 33 USC 1362(14).
4. "Bedding," means any absorbent material that is used to provide animal cleanliness and comfort in a confinement system. Bedding materials include but are not limited to: straw, sawdust, wood shavings, grass seed cleanings, recycled, composted, or dried manure solids, and recycled paper products. Bedding that comes into contact with animals, manure or process wastewater is determined to be manure or process wastewater for purposes of this permit.
5. "Compacted soil pad," as used in this permit, means a building floor or manure storage area, where the soil has been mechanically prepared to provide a layer of soil at least 2 inches thick that has been compacted to a permeability of 1×10^{-7} cm/sec.
6. "Confined animal feeding operation or CAFO" means:
 - (a) The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities, and fur farms;
 - (A) In buildings or in pens or lots where the surface has been prepared with concrete, rock, or fibrous material to support animals in wet weather; or
 - (B) That have wastewater treatment works; or
 - (C) That discharge any wastes into waters of the state.
 - (b) An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to the definition of 40 CFR § 122.23.
7. "Department" means the Oregon Department of Agriculture (ODA) or the Oregon Department of Environmental Quality (DEQ).
8. "Director" means the director of the Oregon Department of Agriculture or the director of the Oregon Department of Environmental Quality.
9. "Discharge" means the placement of wastes into "waters of the state," on land, or otherwise into the environment in a manner that affects or may tend to affect the quality of the "waters of the state" or the "waters of the U.S.". Where the discharge or disposal is to "Waters of the U.S." the term when used without qualification means the "discharge of a pollutant." "Discharge of a pollutant" is defined at 40 CFR § 122.2.
10. "Groundwater" means water in a saturated zone or stratum beneath the surface of land or below a surface water body.
11. "Manure" means manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.
12. "Nutrient Management Plan" or "NMP" means a written document containing the minimum elements necessary to manage manure, process wastewater, and other nutrients in accordance with the terms and conditions of this permit.
13. "OAR" means Oregon Administrative Rule.
14. "ORS" means Oregon Revised Statute.
15. "Overflow," means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or stormwater can be contained by the structure.
16. "Person" means any individual, the United States and agencies thereof, any state, public or private corporation, political subdivision, governmental agency, municipality, co-partnership, association, firm, trust, estate or any other legal entity whatever.
17. "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewerage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

18. "Pollution" or "water pollution" means such alteration of the physical, chemical or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, silt or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive or other substance into any waters of the state, which will or tends to, either by itself or in connection with any other substance, create a public nuisance or which will or tends to render such waters harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life or the habitat thereof.
19. "Process wastewater" or "process wastes" means water directly or indirectly used in the operation of the CAFO 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 CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater or process wastes also includes any water that comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.
20. "Production area" means that part of a CAFO 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, milk rooms, milking centers, cow yards, 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 areas include but are not limited to settling basins, and areas within berms and diversions that separate uncontaminated storm water. Also included in the production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of animal mortalities.
21. "Saturated soil" means soil with all available pore space is filled with liquid so that it has reached its maximum retentive capacity as defined in "Qualitative Description of Soil Wetness" (Brady, N. and Weil, R., 2017, The Nature and Property of Soils, 15th Edition, Chapter 5.8: Qualitative Description of Soil Wetness).
22. "Setback" as defined at 40 CFR § 412.4(b)(1) means a specified distance from surface water or potential conduits to surface water where manure and process wastewater may not be land applied.
23. "Treatment works" means any plant or other works used for the purpose of treating, stabilizing or holding wastes.
24. "Waste storage facilities," means the physical system used for the isolation and retention of manure and process wastes on the CAFO until their ultimate utilization.
25. "Wastewater disposal system," "wastewater treatment works," or "wastewater control facility" means a "disposal system" or "treatment works" as defined in ORS 468B.005 that may cause pollution of surface water or groundwater and is used for collecting, conveying, treating, stabilizing or storing manure, litter, process wastewater, or contaminated production area drainage (e.g., silage leachate, contaminated storm water runoff, etc.) at confined animal feeding operations.
26. "Wastes" means sewage, industrial wastes, agricultural wastes, and all other liquid, gaseous, solid, radioactive or other substances which will or may cause pollution or tend to cause pollution of any waters of the state.
27. "Water" or "waters of the state" include lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the State of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters which do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

S1. PERMIT COVERAGE

S1.A. What activities are covered by this permit?

1. This permit covers the distribution, storage, and treatment of pollutants resulting from processes, wastes, and operations that are identified by the permittee through its Nutrient Management Plan (NMP) approved by the Department.
2. This permit does not cover disposal of human wastes or treatment works that mix human and animal wastes. Any person owning or operating such a system must apply to DEQ for coverage under an individual or general permit issued pursuant to ORS 468B.050. This permit may be used in addition to an individual or general permit issued by DEQ pursuant to ORS 468B.050 that covers some other type of wastewater at this same facility, for example, septic system wastewater.
3. Pursuant to 40 CFR § 122.23(e), precipitation-related discharges that qualify as agricultural stormwater discharges from production areas are not subject to NPDES permit requirements. For discharges from the production area to meet the definition of agricultural stormwater, manure and wastewater must be stored in accordance with site specific practices listed in the Department-approved NMP.

S1.B. How do I transfer permit coverage to a new owner or operator?

The permittee must complete a permit transfer form and submit it to the Department for approval at least 30 days before transfer of the CAFO is scheduled to occur or as specified by the Department. The form must be signed by the previous owner or operator as well as the new owner or operator. The Department will respond to the request for transfer by conducting a site inspection and a review of the permit file. The Department will notify the permittee and transferee in writing of transfer of coverage under this permit or deny the request with an explanation of why the request was denied. OAR 340-045-0045.

S1.C. How do I renew permit coverage?

To renew permit coverage, the permittee must submit to the Department a renewal application at least 180 days before the expiration date of this permit or as specified by the Department in the renewal notice but no later than the expiration date of this permit. Applicants must certify on their renewal application whether an NMP is new, updated or current and on file. New and updated NMPs must be submitted with the application. Applicants must also submit an attestation with the renewal application that the Water Supply Plan (WSP), that was submitted with the original application, is accurate and reflective of the operation at the time of renewal.

S1.D. How do I terminate permit coverage?

1. The Department will terminate coverage under this permit upon issuance of coverage under another water quality permit for the same activity or operation.
2. The permittee may request in writing to the Department that the permit be terminated if any one of the following applies:
 - (a) Conditions or standards have changed so that the CAFO no longer qualifies for or is required to have coverage under this permit.
 - (b) The permittee no longer has animals on site and all manure, litter, and process wastewater and other waste storage and control facilities have been cleaned and re-purposed or decommissioned in accordance with the following requirements:
 - (i) Cleaning/Re-purposing Requirements
 - (1) All manure, litter, and process wastewater must be removed from the structure(s) and ground and prepared surfaces and exported according to S2.K.
 - (2) All waste collection and transfer systems are cleaned or modified so that they would not be a conduit for any pollutant to enter surface or ground waters.
 - (ii) Decommissioning Requirements
 - (1) All manure, litter, and process wastewater must be removed from the structure(s) and exported according to S2.K.
3. The permittee must also certify that it will not commence operation of any other regulated CAFO at the same location until the appropriate NPDES or WPCF permit coverage has been obtained.

4. The Department will respond to the request for cancellation by conducting a site inspection and a review of the permit file. The Department will notify the permittee in writing of termination of coverage under this permit or deny the request with an explanation of why the request was denied.

S1.E. Will my information be kept confidential?

Information, including the name and address of an NPDES permit applicant or permittee, NPDES permit applications and attachments (for example, NMPs), NPDES permits, and NPDES permit discharge data cannot be kept confidential pursuant to 40 CFR § 122.7(b) and (c), ORS 468.095(1), and ORS 192.410 to 192.505. The applicant or permittee may request that the Director classify other records as confidential upon a proper showing that the record is a trade secret pursuant to ORS 468.095(2).

S1.F. What are the public notice and participation requirements of this permit?

1. Prior to issuing the public notice, the Department will forward the draft public notice and permit to the applicant for a minimum applicant review period of 14 days. The applicant may waive their right to the review period.
2. Public participation process
 - (a) Public notice with a minimum of 30 days' notice for a public hearing, and a public comment period of at least 35 days will be provided as follows:
 - (i) Posted on ODA and DEQ websites;
 - (ii) Emailed to the Department's interested persons list and relevant persons as determined by ODA's Environmental Justice Task Force; and
 - (b) Application and permit materials will be available for public review at ODA headquarters and appropriate field offices. Electronic copies of documents will be provided upon request.
 - (c) Written responses to relevant public comments will be developed by the Departments and made available to interested persons.
3. Permit actions that require public notice
 - (a) The Department will provide public notice for the following:
 - (i) New application;
 - (ii) Renewal application; and
 - (iii) Proposed substantial changes to the NMP, as described in S3.E.
4. Contents of public notice
 - (a) Public notice packets for new permit applications will include:
 - (i) Proposed permitting action and public participation information;
 - (ii) Name, address, and type of operation;
 - (iii) Name of operator or landowner if different than operator, mailing address, and telephone number;
 - (iv) Number of animals proposed;
 - (v) Land use compatibility statement (LUCS);
 - (vi) NMP; and
 - (vii) Permit fact sheet.
 - (b) Public notice packets for permit renewal applications or proposed substantial changes to the NMP will include:
 - (i) Name, city, county, zip code, and type of operation;
 - (ii) Permit registration number; and
 - (iii) Overview of the proposed substantial change, when relevant.
5. The Department will notify the applicant or permittee of its final decision concerning the permit action, within a reasonable timeframe, after the public comment period ends and changes have been incorporated.

S2. DISCHARGE LIMITATIONS AND OPERATING REQUIREMENTS

S2.A. Prohibitions and Discharge Limitations

1. The permittee must not discharge manure, litter, or process wastewater to surface or groundwater of the state. Types of discharges that are prohibited include but are not limited to: contaminated runoff from confinement

or waste accumulation areas, overflow or discharges from waste storage facilities, discharges due to equipment failure, and leakage or seepage from facilities in the production area.

2. If a discharge to surface water occurs, the permittee must take a grab sample of the effluent discharge.

S2.B. Production Area Limitations

1. The permittee must ensure that the production area is designed, constructed, operated and maintained to prevent the discharge of manure, litter, process wastewater including contaminated stormwater, to waters of the state. At a minimum, the production area must be designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including contaminated stormwater generated during the storage period established in a Department-approved NMP. The permittee must not discharge manure, litter, or process wastewater to waters of the state.
2. The permittee must properly export all manure and litter from the production area in a manner consistent with S2.K and the NMP. The permittee must clean up all manure, litter, and process wastewater handling areas after any clean-out, export, or transfer activities to prevent the production of contaminated stormwater.

S2.C. Land Application Limitations

No land applications are authorized by this permit. All manure and litter must be exported according to the NMP and S2.K. Land application areas include land under the control of the permittee, to which manure, litter, or process wastewater from the production area would be applied.

S2.D. Direct Access by Animals to Surface Water of the State in the Production Area Prohibited

The permittee must prevent direct animal contact with stormwater in the production area and surface water. Direct animal contact means any situation where animals in the production area have free access and are allowed to loiter or drop waste in the stormwater diversion system or surface water.

S2.E. Solid Manure and Process Wastewater Storage Facilities

1. All manure and litter must be stored on prepared surfaces according to S3.D and managed according to the NMP. The permittee must provide adequate storage capacity for manure, litter, and process wastewater at all times so that liquids are absorbed in bedding and no free liquids remain. Export must occur according to the NMP and S2.K of this permit.
2. The permittee must site, design, construct, operate, and maintain all waste storage facilities to contain all manure, litter, process wastewater, and contaminated stormwater runoff including direct precipitation, from a 25-year, 24-hour rainfall event, that becomes contaminated. New and modified construction of waste storage facilities must be approved in advance and prior to construction by the Department in conformance with ORS 468B.055 and OARs 340-051, 340-052 and 603-074.
3. The compacted soil layer in each compacted soil pad, used in waste storage facilities and poultry housing areas, must be 4-6 inches below the floor surface, to protect it during routine activities. Compaction of the compacted layer must be certified by an appropriate licensed engineer in the state of Oregon. The compacted soil layer must be designed and installed in accordance with the guidance contained in the Oregon Natural Resources Conservation Service (NRCS) Conservation standards 313, 317, and 520, using the procedures described in Appendix 10d of the Agricultural Waste Management Field Handbook.
4. The number of animals that may occupy the facility is dependent upon the construction of appropriate infrastructure, as determined by the Department, that can sustain the number of animals held consistent with ORS 468B.210 and the permit terms. Prior to constructing new facilities, the permittee must submit to the Department a Construction Approval Request, which includes detailed plans and specifications and other necessary information as provided in OAR 340-51 and as may be required by the Director. Construction may commence only upon receipt of a signed construction approval letter from the Department.
5. Upon completion of construction, the permittee will notify the Department and request a pre-population inspection in order to populate the newly constructed facilities. The Department will inspect the facilities and as part of the inspection, may request additional information to determine whether the construction and installation of any systems to manage wastes and relevant operational functions of the CAFO comply with

the permit, including results of any required construction testing. The Department will issue an order that either approves or denies the request to populate the newly constructed facilities. The approval may, among other provisions, specify the number of animals that may occupy the facility within the capacity of the facility consistent with ORS 468B.210. Upon receipt of an order of approval, the permittee may populate the newly constructed facilities.

S2.F. Prevention of System Overloading

1. The permittee may not increase the number of animals over 10% or 25 animals, whichever is greater, of the maximum number assigned by the Department in the Occupancy Approval without approval from the Director as described in S2.E above.
2. In all cases, the permittee must ensure that animal numbers do not exceed the capacity of the waste storage facilities described in the Department-approved NMP.

S2.G. Handling of Animal Mortalities

The permittee must not dispose of animal mortalities in wastewater control facilities. Animal mortality composting is allowed and must be described in the NMP. The permittee must handle animal mortalities in such a way as to prevent discharge of pollutants to waters of the state.

S2.H. Proper Operation and Maintenance

The permittee must at all times properly operate and maintain all facilities and systems used for manure, litter, and process wastewater collection, storage, and utilization, and correct any deficiencies found as soon as possible.

S2.I. Maintaining Compliance if System Fails

The permittee must control all discharges upon reduction, loss, or failure of the waste storage facilities until they are restored or an alternative method of storage is provided. This requirement also applies when the primary source of power is reduced, lost, or fails.

S2.J. Setback Requirement

The permittee may not land apply manure, litter, or process wastewater.

S2.K. Manure, Litter, or Process Wastewater Transfers

1. The permittee retains responsibility of on-site generated manure, litter, and process wastewater until the transfer or export is completed with the required documentation.
2. The permittee must maintain manure and litter transfer or export records as required by S4.C.2. Required records for each transfer or export activity include the date of the export, the name and address of the receiver, the type of export, the amount of material exported, and a copy of a nutrient analysis of the exported material that is no older than 12 months.
 - (a) A permittee exporting manure or process wastewater to a facility that is not covered by an NPDES or WPCF permit and is land applying manure in a groundwater management area (GWMA), must also maintain records of the recipient's Department-issued nutrient application permit (NAP) number.
3. Prior to transferring manure or litter to other persons, the permittee must provide the recipient with a manure nutrient analysis conducted within the previous 12 months.
4. Immediately after exporting manure or litter, the transfer area will be cleaned according to the procedures described in the NMP.

S2.L. Proper Disposal of Other Wastes

The permittee must dispose of any chemicals or other wastes in accordance with applicable state regulation. The permittee must manage chemicals and wastes to prevent their disposal in any manure, litter, process wastewater, or stormwater storage or treatment works unless specifically designed to treat these wastes and the pollutants and treatment works are identified in the NMP. The permittee must not dispose of chemicals or other wastes to any system used for the control of uncontaminated stormwater.

S3. NUTRIENT MANAGEMENT PLAN

S3.A. Nutrient Management Plan (NMP) Implementation and Compliance

1. Upon issuance of this permit, and subject to S3.A(2), the permittee must amend and update NMP #24007 to include any additional, required monitoring and recordkeeping.
2. Prior to the addition of animals as described in S2.F.1, the permittee must submit a revised NMP that incorporates the requirements imposed by this permit on the facility.
3. Any Department approved NMP is incorporated into this permit by reference. The permittee must comply with all terms and conditions of its Department-approved NMP. Failure to comply with the Department-approved NMP constitutes a violation of the terms and conditions of this permit.

S3.B. NMP Submittal and Public Notice

1. The applicant applying for permit coverage must submit its NMP with the application to the Department for review and approval.
2. NMPs are subject to public notice requirements detailed in S1.F.

S3.C. NMP Elements

1. The permittee must ensure that its NMP is adequate for the proposed population of animals, reflective of the proposed facility operation, and prepared in accordance with the terms and conditions of this permit, OAR 340-051, and OAR 603-074.
2. The NMP must, to the extent applicable, include the following:
 - (a) Procedures to ensure collection, handling, and storage of manure, litter, and process wastewater in compliance with the requirements of S2. The NMP must detail the management and practices needed to prevent contamination of the stormwater system. Procedures for cleaning up transfer areas after clean-out, bedding addition, and manure and litter exports are specifically required. Calculations used to determine that adequate storage capacity exists must be provided, including a demonstration that facilities are designed and constructed to contain all manure, litter, and process wastewater so that export can comport with S2.K and the NMP of the operation.
 - (b) Procedures to ensure proper operation and maintenance of the waste storage facilities. Include site preparation elevation details and building foundation elevations. A description of the system intended to manage seasonal high water tables. Include all practices needed to maintain 2 feet of separation between each compacted soil pad surface and seasonal high water table under poultry housing and waste storage facilities. Include details of management of wastes to ensure liquids are absorbed and contained in manure, litter, and composting materials.
 - (c) Procedures for proper management of animal mortalities. The procedures must ensure that animal mortalities are disposed of legally and are not disposed of in any storage or treatment works that is not specifically designed to treat animal mortalities.
 - (d) A description of the stormwater diversion system and its management. Procedures to ensure that storm water is diverted, as appropriate, without contamination from the production area.
 - (e) Procedures to prevent direct contact of confined animals with surface water.
 - (f) Identification of appropriate site-specific conservation practices to be implemented, including buffers, setback areas, or equivalent practices, to prevent runoff of pollutants to surface water and groundwater.
 - (i) Calculations showing the total nitrogen and phosphorus produced annually.
 - (ii) Timing of manure and litter transfers.
 - (g) Protocols for testing of manure and litter. Protocol for collecting and recording soil moisture sensor readings. Protocol for responding to elevated soil moisture as indicated by sensor readings.
 - (h) Procedures for transfer or export of manure or litter. Include detailed procedures for cleanup of transfer areas, roads, and storage area aprons after any transfer and export activities.
 - (i) Identification of specific records that will be maintained to document the implementation and management of the minimum elements described above.

S3.D. Design Requirements for Waste Storage Facilities and Poultry Housing

1. All waste storage facilities must be approved by the Department.
2. Manure, litter, and composting materials must be covered and stored on concrete or on a compacted soil pad. Stormwater must be diverted away from waste storage facilities and poultry housing.

S3.E. Requirements for NMP Updates and Changes

1. **NMP Changes**
 - (a) *Substantial changes.* The permittee must submit any proposal to make substantial changes to its NMP to the Department for approval at least 60 days in advance of the proposed changes. The Department will provide public notice on the proposal as described in S1.F. The Department will notify the permittee of its final decision concerning the proposed changes after the public notice period ends. The permittee must not implement a proposed change until the Department has approved it. The following types of changes to an NMP are considered substantial and a major modification described in OAR 340-045-0055:
 - (i) Addition of new land application areas not previously included in the NMP, unless the land application area is covered by an existing NMP that has already been incorporated into an existing NPDES permit and the application of manure, litter, or process wastewater on the newly added land application area is in accordance with that existing NPDES permit.
 - (ii) Any changes to the field-specific maximum annual rates for land application.
 - (iii) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop.
 - (iv) Addition of any crop or other uses not included in the NMP and corresponding field-specific rates of application.
 - (v) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current NMP.
 - (vi) Any changes that are likely to increase the risk of pollutant transport to surface water or groundwater.
 - (b) *Non-substantial changes.* The permittee must submit any proposal to make non-substantial changes to its NMP to the Department for approval at least 60 days in advance of the proposed changes unless a different timeframe is allowed by the Department. A proposal for a non-substantial change is not subject to public notice. The Department will notify the permittee of its final decision concerning the proposed changes after reviewing the proposal. The permittee must not implement a proposed change until the Department has approved it. The following types of changes to an NMP are considered non-substantial provided they do not result in a substantial modification listed in paragraph (a) above:
 - (i) An increase in animal numbers greater than 10% of the permittee's maximum allowed animal numbers.
 - (ii) When facility expansions, production increases, or process modifications will result in new or increased generation of manure, litter, or process wastewater or other waste beyond the scope of the current NMP.

S4. MONITORING, INSPECTION, RECORDKEEPING, AND REPORTING REQUIREMENTS

S4.A. Monitoring Requirements

1. Groundwater Monitoring

The permittee must establish a soil moisture monitoring system within poultry housing areas, to ensure there is no discharge to groundwater, that meets the following minimum requirements:

 - (a) At least three resistance type moisture sensors placed at 2, 8, and 12 inches below the compacted soil pad surface in each poultry housing barn.
 - (b) Readings must be taken and recorded from all three depths on a daily basis. Management must be adjusted to prevent free liquids when moisture is moving downwards into the soil profile as indicated by sensor readings, or

- groundwater is rising as indicated by sensor readings.
- (c) Any set of readings or consecutive sets that indicate moisture is traveling downward reaching saturation at the 12 inch sensor after first reaching the 2 and 8 inch sensors, will be considered a prohibited discharge.
 - (d) If saturation is indicated at the 12 inch sensor and other sensor readings indicate that groundwater is rising from below, the permittee must adjust or modify the system to manage seasonal high water tables under the houses.

2. **Surface Monitoring**

The permittee must establish a surface monitoring system within the production area, to ensure there is no discharge to surface or groundwater, that meet the following minimum requirements:

- (a) Establish a visual inspection perimeter in the areas surrounding all poultry housing barns and waste storage facilities.
- (b) Complete and record daily visual inspections of the areas determined in S4.A(2)(a) for manure, litter, and process wastewater.
- (c) Any manure, litter, and process wastewater identified in the daily visual inspections as being outside the perimeter of poultry housing and waste storage facilities must immediately be cleaned and remedied according to the NMP.
- (d) Any manure, litter, and process wastewater identified outside the perimeter of poultry housing and waste storage facilities that contaminates stormwater runoff or waters of the state is a prohibited discharge.

3. **If a Prohibited Discharge Occurs**

If a discharge to surface water or groundwater that is prohibited by S2.A or S2.B occurs, the permittee must record the following information and notify the Department as soon as possible after discovering the discharge but no later than 24 hours after discovery (see S4.D for written reporting requirements):

- (a) A description and cause of the discharge;
- (b) The period of discharge including exact date(s), time(s), and duration of discharge;
- (c) An estimate of discharge volume;
- (d) Name or location of receiving water;
- (e) If a grab sample was taken of the discharge;
- (f) Corrective steps taken, if appropriate, to reduce, eliminate, or prevent reoccurrence of the discharge; and
- (g) For any unauthorized discharge that may have come in contact with a drinking water intake, confirmation that Oregon Emergency Response System (OERS) was notified.

4. The permittee must conduct the following monitoring and sampling activities of waste storage facilities and poultry housing areas in accordance with G12 of this permit:

Item or Parameter	Minimum Frequency	Type of Record
Soil moisture sensors below poultry housing barns	Daily	Meter reading
Perimeter surrounding poultry housing and waste storage facilities	Daily	Visual inspection: record date and condition
Manure and litter removed from poultry housing barns	Each occurrence	Estimated Volume
Process wastewater collected from cleaning activities	Each occurrence	Estimated Volume
Total nitrogen and total phosphorus of exported manure and litter	Annually	Sample according to guidance contained in PNW 0533 and PNW 505
<i>E. coli</i> , nitrate plus nitrite nitrogen, total phosphorus, and TKN of effluent discharge from production area	Upon occurrence	Grab sample analyzed using test methods in 40 CFR part 136

S4.B. Facility Inspection Requirements

- 1. The permittee must monitor all poultry housing and waste storage facilities in accordance with the Department-approved NMP.
- 2. The permittee must conduct the following inspections:

Area	Minimum Frequency	Type of Record
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Watering systems and cooling cells	Daily when operating	Visual inspection: record date and condition
Stormwater diversion devices, runoff diversion structures, waste storage facilities, and poultry housing barns	Weekly	Visual inspection: record date and condition
Equipment used for manure, litter, and process wastewater collection and transport	Daily when operating	Visual inspection: record date and condition
Water lines, including drinking water or cooling water lines	Daily	Visual inspection: record date and condition

3. The permittee must correct any deficiencies found as a result of these inspections as soon as possible. The permittee must record any actions taken to correct these deficiencies and, if deficiencies are not corrected within 30 days, provide an explanation of the factors preventing immediate correction.

S4.C. Recordkeeping and Availability Requirements

1. The permittee must maintain all information required by this permit at the facility for at least five years and make this information available to the Department upon request.
2. The permittee must record the following information:
 - (a) Total amount of manure and litter transferred or exported to other persons including the date and amount of each transfer or export, the name and address of each recipient, and copy of the manure nutrient analysis conducted provided to the recipient (see S2.K).
 - (b) A permit registrant exporting manure or process wastewater to a facility that is not covered by an NPDES or WPCF permit and is land applying manure in a groundwater management area (GWMA), must also maintain records of the recipient's Department-issued nutrient application permit (NAP) number.
 - (c) All records required under S4.A and S4.B, in accordance with the NMP.

S4.D. Reporting Requirements

1. Reporting to the Department and Oregon Emergency Response System (OERS)
 - (a) If a discharge to surface water or groundwater occurs, the permittee must notify the Department as soon as possible after discovering the discharge but no later than 24 hours after the discharge. The permittee must submit a written report within five days to the Department. The information to be submitted is listed in the monitoring requirements (See S4.A) of this permit.
 - (b) The permittee must notify the Department within 24 hours of becoming aware of any significant physical failure of waste storage facilities required under this permit.
 - (c) The permittee must notify the Department within 24 hours of any permit noncompliance that may endanger health or the environment as described in G13.6.
 - (d) In addition to complying with 1(c) above, the permittee must notify Oregon Emergency Response System (OERS) of any unauthorized discharge that may come in contact with a surface water or groundwater drinking water system intake as soon as possible after discovering the discharge but no later than 24 hours after discovery. Notification must be made by calling OERS at 1-800-452-0311.
2. Reporting of Monitoring Results of a Prohibited Effluent Discharge
 The permittee must submit monitoring information for an effluent grab sample no later than one month from the date the sample was taken unless a different schedule is established by an administrative order as described in S4.E.
3. Annual Report
 - (a) The permittee must submit an annual report to the Department by March 15 of each year. The annual report must include the following for the previous calendar year:
 - (i) Maximum number and type of animals approved by the Department in the permittee's Department-approved NMP.
 - (ii) Actual number of animals by type averaged over the year.
 - (iii) Estimated amount of total manure, bedding, process wastewater and other material that comes in contact with manure generated.
 - (iv) Estimated amount of total manure, bedding, process wastewater and other material that comes in

- contact with manure transferred to other persons by the permittee.
- (v) Summary of all manure, litter, and process wastewater discharges from the production area that have occurred, including date, time and approximate volume.
 - (vi) A statement indicating whether the NMP was developed or approved by a certified nutrient management planner.
 - (vii) Actual nitrogen and phosphorus content of the manure and process wastewater.
 - (viii) Soil moisture sensor data, as required by this permit.
 - (ix) All actions taken to prevent future discharges to surface waters.
- (b) The annual report must be signed and certified by the permittee or permittee's authorized representative with the following statement: "I certify, under penalty of law, that this document and all attachments were prepared under my direct 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 fines and imprisonment for knowing violations."

S4.E. Additional Monitoring

1. The Department may establish specific monitoring requirements in addition to those contained in this permit by administrative order. An administrative order is a Department action expressed in writing directed to a named person or named persons (ORS 183.310).
2. If a permittee experiences two or more discharges within a 24-month period that are not associated with a 25-year, 24-hour or greater rainfall event, the Department may require additional surface water, groundwater, production area or process monitoring. Monitoring for the following parameters may be required: bacteria, total suspended solids, total kjeldahl nitrogen, biochemical oxygen demand, and other nutrient or process wastewater indicators. If the Department waives the additional monitoring requirements because such monitoring would be impracticable or not likely to produce useful information, the Department will set out the basis for the decision in writing and make the decision available to interested persons.

S5. WATER SUPPLY PLAN

S5.A. Water Supply Plan

1. The permittee was required to submit a Water Supply Plan (WSP) under OAR 340-045-0030(5) and OAR 340-045-033(10)(c)(A).
2. The WSP identified all sources of water that will be used to supply the level and duration of the water needs of the CAFO, including any of its ancillary needs.
3. The commercial/agricultural water used under the exemption in ORS 537.545(1)(f) must have a dedicated totalizing flow meter that is isolated from water diverted for other uses at the CAFO. ODA and Oregon Water Resources Department may inspect the meter upon installation and periodically to take readings.
4. Upon renewal of this permit, the applicant must attest that the WSP submitted with the original application to register remains accurate and reflective of the operation.

GENERAL CONDITIONS

G1. Compliance with other laws and statutes

Nothing in the permit will be construed as excusing the permittee from compliance with any applicable federal, state, or local statutes, ordinances, or regulations.

G2. Duty to comply [40 CFR § 122.41(a)]

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

1. The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
2. The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The Clean Water Act provides that any person who *negligently* violates sections 301, 302, 306, 307, 308, 318, or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who *knowingly* violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 303, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
3. Any person may be assessed an administrative penalty by the Administrator for violating section 301, 302, 306, 307, 308, 318 or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed \$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

G3. Duty to reapply [40 CFR § 122.41(b)]

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.

G4. Need to halt or reduce activity not a defense [40 CFR § 122.41(c)]

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

G5. Duty to mitigate [40 CFR § 122.41(d)]

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit, which has a reasonable likelihood of adversely affecting human health or the environment.

G6. Proper operation and maintenance [40 CFR § 122.41(e)]

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

G7. Permit actions

1. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition. [40 CFR § 122.41(f)]
2. After notice, registration under this permit may be modified or revoked as it applies to any person for cause as follows:
 - (i) Violation of any terms or conditions of the permit,
 - (ii) Failure of the permittee to disclose fully all relevant facts, or misrepresentations of any relevant facts by the permittee during the permit issuance process and during the life of the permit;
 - (iii) Failure to pay permit fees required by Oregon Administrative Rule when due;
 - (iv) Information indicating that the permitted operation poses a threat to human health or welfare;
 - (v) A change in ownership or control of the operation, or
 - (vi) Other causes listed in 40 CFR § 122.62 and 122.63.
3. Modification or revocation of coverage under this permit as it applies to any person may be initiated by ODA.

G8. Property rights [40 CFR § 122.41(g)]

This permit does not convey any property rights of any sort, or any exclusive privilege.

G9. Duty to provide information [40 CFR § 122.41(h)]

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director, upon request, copies of records required to be kept by this permit.

G10. Inspection and entry [40 CFR § 122.41(i)]

The permittee shall allow the Director or a Department authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act or state law, any substances or parameters at any location.

G11. Monitoring and records [40 CFR § 122.41(j)]

1. Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.
2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which must be retained for a period of at least five years (or longer as required by 40 CFR Part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
3. Records of monitoring information shall include:
 - (i) The date, exact place, and time of sampling or measurements;
 - (ii) The individual(s) who performed the sampling or measurements;
 - (iii) The date(s) analyses were performed;
 - (iv) The individual(s) who performed the analyses;
 - (v) The analytical techniques or methods used; and
 - (vi) The results of such analyses.
4. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR subchapters N or O.
5. The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a

person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

G12. Signatory requirement [40 CFR § 122.21(k)]

1. All applications, reports, or information submitted to the Director shall be signed and certified. (See § 122.22)
2. The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance shall, upon conviction, be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

G13. Additional reporting requirements [40 CFR § 122.41(l)]

1. *Planned changes.* The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in § 122.29(b); or
 - (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants, which are subject neither to effluent limitations in the permit, nor to notification requirements under § 122.42(a)(1).
 - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
2. *Anticipated noncompliance.* The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.
3. *Transfers.* This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See § 122.61; in some cases, modification or revocation and reissuance is mandatory.)
4. *Monitoring reports.* Monitoring results must be reported at the intervals specified elsewhere in this permit.
 - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR), or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
 - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR Part 136, or another method required for an industry-specific waste stream under 40 CFR subchapters N or O, the results of such monitoring must be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.
 - (iii) Calculations for all limitations that require averaging of measurements must utilize an arithmetic mean unless otherwise specified by the Director in the permit.
5. *Compliance schedules.* Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit must be submitted no later than 14 days following each schedule date.
6. *Twenty-four hour reporting.*
 - (i) The permittee shall report any noncompliance that may endanger health or the environment. Any information must be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission must also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission must contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - (ii) The following must be included as information that must be reported within 24 hours under this paragraph.
 - (A) Any unanticipated bypass that exceeds any effluent limitation in the permit. (See § 122.41(g) or G14)
 - (B) Any upset which exceeds any effluent limitation in the permit. (See § 122.41(n) or G15)
 - (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See § 122.44(g).)
 - (iii) The Director may waive the written report on a case-by-case basis for reports under G13.6(ii) of this section if the oral report has been received within 24 hours.

7. *Other noncompliance.* The permittee shall report all instances of noncompliance not reported under G13.4, 5, and 6 of this section, at the time monitoring reports are submitted. The reports must contain the information listed in G13.6 of this section.
8. *Other information.* Where the permittee becomes aware that it failed to submit any relevant facts in a permit application or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

G14. Bypass [40 CFR § 122.41(m)]

1. *Definitions.*
 - (i) *Bypass* means the intentional diversion of waste streams from any portion of a treatment facility.
 - (ii) *Severe property damage* means substantial physical damage to property, damage to the treatment facilities, which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.
2. *Bypass not exceeding limitations.* The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of G14.3 and 4 of this section.
3. *Notice*
 - (i) *Anticipated bypass.* If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible, at least ten days before the date of the bypass.
 - (ii) *Unanticipated bypass.* The permittee shall submit notice of an unanticipated bypass as required in G13.6 of this section (24-hour notice).
4. *Prohibition of bypass.*
 - (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The permittee submitted notices as required under G14.3 of this section.
 - (ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in G14.4(i) of this section.

G15. Upset [40 CFR § 122.41(n)]

1. *Definition.* *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
2. *Effect of an upset.* An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of G15.3 of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
3. *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - (i) An upset occurred and that the permittee can identify the cause(s) of the upset;
 - (ii) The permitted facility was at the time being properly operated; and
 - (iii) The permittee submitted notice of the upset as required in G13.6(ii)(B) of this section (24-hour notice).
 - (iv) The permittee complied with any remedial measures required under G5 of this section.
4. *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.