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States' Application Restrictions Statutes & Regulations: *Michigan*



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MI Comp L § 324.3103 MI Comp L § 324.3106 MI Admin Code R. 323.2196(5)(a)(ix)

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Michigan Legislative Council.

MI Comp L § 324.3103. Department of environmental quality; powers and duties generally; rules; other actions.

(1) The department shall protect and conserve the water resources of the state and shall have control of the pollution of surface or underground waters of the state and the Great Lakes, which are or may be affected by waste disposal of any person. The department may make or cause to be made surveys, studies, and investigations of the uses of waters of the state, both surface and underground, and cooperate with other governments and governmental units and agencies in making the surveys, studies, and investigations. The department shall assist in an advisory capacity a flood control district that may be authorized by the legislature. The department, in the public interest, shall appear and present evidence, reports, and other testimony during the hearings involving the creation and organization of flood control districts. The department shall advise and consult with the legislature on the obligation of the state to participate in the costs of construction and maintenance as provided for in the official plans of a flood control district or intercounty drainage district.

(2) The department shall enforce this part and may promulgate rules as it considers necessary to carry out its duties under this part. However, notwithstanding any rule-promulgation authority that is provided in this part, except for rules authorized under section 3112(6), the department shall not promulgate any additional rules under this part after December 31, 2006.

(3) The department may promulgate rules and take other actions as may be necessary to comply with the federal water pollution control act, 33 USC 1251 to 1387, and to expend funds available under such law for extension or improvement of the state or interstate program for prevention and control of water pollution. This part shall not be construed as authorizing



the department to expend or to incur any obligation to expend any state funds for such purpose in excess of any amount that is appropriated by the legislature.

(4) Notwithstanding the limitations on rule promulgation under subsection (2), rules promulgated under this part before January 1, 2007 shall remain in effect unless rescinded.

MI Comp L § 324.3106. Establishment of pollution standards; permits; determination of volume of water and high and low water marks; rules; orders; pollution prevention.

The department shall establish pollution standards for lakes, rivers, streams, and other waters of the state in relation to the public use to which they are or may be put, as it considers necessary. The department shall issue permits that will assure compliance with state standards to regulate municipal, industrial, and commercial discharges or storage of any substance that may affect the quality of the waters of the state. The department may set permit restrictions that will assure compliance with applicable federal law and regulations. The department may ascertain and determine for record and in making its order what volume of water actually flows in all streams, and the high and low water marks of lakes and other waters of the state, affected by the waste disposal or pollution of any persons. The department may promulgate rules and issue orders restricting the polluting content of any waste material or polluting substance discharged or sought to be discharged into any lake, river, stream, or other waters of the state. The department shall take all appropriate steps to prevent any pollution the department considers to be unreasonable and against public interest in view of the existing conditions in any lake, river, stream, or other waters of the state.

MI Admin Code R. 323.2196. CAFO permits.

(1) CAFOs are point sources that require NPDES permits for discharges or potential discharges and require all of the following:

(a) If an operation becomes a CAFO, then the NPDES requirements for CAFOs apply to all animals in confinement at the operation and all production area waste and CAFO process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(b) All CAFO owners or operators shall apply either for an individual NPDES permit, or a certificate of coverage under an NPDES general permit, unless the owner or operator has received a determination from the department, made after providing notice and opportunity for public comment, that the CAFO has "no potential to discharge" pursuant to subrule (4) of this rule.



(c) The discharge to waters of the state from land application areas is a discharge from the CAFO subject to NPDES permit requirements.

(2) The schedule for permit application, coverage, and renewal shall include all of the following:

(a) A CAFO shall apply for an NPDES permit not later than the effective date of these rules, except as specified in subdivisions (b), (d), or (e) of this subrule.

(b) An existing CAFO, or an existing AFO that becomes a CAFO, that has not had a regulated discharge since January 14, 2000, shall apply for coverage under NPDES general permit no. MIG440000 (effective January 1, 2003), or equivalent document approved by the department, not later than 90 days after notification by the department or by September 1, 2005, whichever is sooner. Before July 1, 2007, all CAFOs that are operating under an equivalent document approved by the department shall apply for an NPDES permit. An existing CAFO or existing AFO is any CAFO or AFO that is constructed and populated before January 30, 2004.

(c) For the purposes of subdivision (b) of this subrule, a regulated discharge is any of the following:

(i) A discharge that causes or contributes to a violation of R 323.1041 to R 323.1117 of the water quality standards.

(ii) A discharge from the process or production area due to precipitation events, either by overland, drainage tiles, or other mechanisms, except the discharge of uncontaminated runoff that does not come into contact with any animals, animal waste, or production area waste.

(iii) A dry-weather discharge, including an accidental release.

(d) Newly constructed CAFOs shall apply for an NPDES permit at least 180 days before commencing operation.

(e) AFOs that become CAFOs after September 1, 2005, shall apply for an NPDES permit at least 180 days before becoming a CAFO.

(f) For AFOs that are designated as CAFOs per subrule (3), the CAFO shall apply for an NPDES permit no later than 90 days after receiving notification of the designation.

(g) Not later than 180 days before the expiration of the permit or equivalent document approved by the department, the permittee shall submit an application to renew its permit. However, the



permittee need not continue to seek continued permit coverage or reapply for a permit if both of the following conditions are true:

- (i) The facility has ceased operation or is no longer a CAFO.
- (ii) The permittee has demonstrated to the satisfaction of the department that there is no remaining potential for a discharge.

(3) In designating an AFO as a CAFO, the following apply:

(a) The department may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the state. In making this designation, the department shall consider all of the following factors:

- (i) The size of the AFO and the amount of production area waste and CAFO process wastewater reaching waters of the state.
- (ii) The location of the AFO relative to waters of the state.
- (iii) The means of conveyance of production area waste and CAFO process wastewater into waters of the state.
- (iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of production area waste and CAFO process wastewater into waters of the state.
- (v) Other relevant factors.

(b) An AFO shall not be designated under this subrule unless the department has conducted an inspection of the operation.

(c) An AFO with numbers of animals below those established in R 323.2103(m) shall not be designated as a CAFO unless either of the following occurs:

- (i) Pollutants are discharged from the production area into waters of the state through a manmade ditch, pipe, tile, swale, flushing system, or other similar manmade conveyance.
- (ii) Pollutants are discharged from the production area directly into waters of the state which 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.

(4) In making determinations for no potential to discharge for large CAFOs, all of the following apply:



(a) The department, upon request, may make a determination that a specific large CAFO has no potential to discharge pollutants to waters of the state. In making this determination, the department shall consider the potential for discharges from both the production area and any land application areas. The department shall also consider any record of prior discharges by the CAFO. In no case may the CAFO be determined to have no potential to discharge if it has had a discharge within 5 years before the date of the request submitted under subdivision (b) of this subrule. For purposes of this rule, the term 'no potential to discharge' means that there is no potential for any CAFO production area waste or CAFO process wastewater to be added to waters of the state under any circumstance or climatic condition. A determination that there is no potential to discharge only relates to discharges of production area waste and CAFO process wastewater covered by this rule.

(b) In requesting a determination of no potential to discharge, the CAFO owner or operator shall submit any information that will support such a determination. Such information shall include all of the information specified in 40 C.F.R. §§122.21(f) and (i)(1)(i) to (ix) (2003) and include documentation showing that the CAFO has been verified under the livestock system of the Michigan agriculture environmental assurance program (MAEAP), or successor program, if such a program is available. The department has discretion to require additional information to supplement the request, and may also gather additional information through physical inspection of the CAFO.

(c) Before making a final decision to grant a no potential to discharge determination, the department shall issue a notice to the public stating that a no potential to discharge request has been received. This notice shall be accompanied by a fact sheet which includes the following, if applicable:

(i) A brief description of the type of facility or activity which is the subject of the no potential to discharge determination.

(ii) A brief summary of the factual basis, upon which the request is based, for granting the no potential to discharge determination.

(iii) A description of the procedures for reaching a final decision on the no potential to discharge determination. The department shall base the decision to grant a no potential to discharge determination on the administrative record, which includes all information submitted in support of or against a no



potential to discharge determination and any other data gathered by the department. The department shall notify any CAFO seeking a no potential to discharge determination of its final determination within 180 days of receiving the request.

(d) The owner or operator shall request a no potential to discharge determination by the applicable permit application dates. If the department's final decision is to deny the no potential to discharge determination, then the owner or operator shall seek coverage under a permit within 30 days after notice of the denial.

(e) The no potential to discharge determination does not relieve the CAFO from the consequences of an actual discharge. Any unpermitted CAFO that discharges pollutants into the waters of this state is in violation of the act even if it has received a no potential to discharge determination from the department. Any CAFO that has received a determination of no potential to discharge, but who anticipates changes in circumstances that could create the potential for a discharge, shall contact the department and apply for and obtain NPDES permit authorization prior to the change of circumstances. If any CAFO that has received a determination of no potential to discharge has unanticipated changes in circumstances that could create the potential for a discharge, then the CAFO shall immediately notify the department and submit a complete application for coverage under an NPDES permit within 30 days after the change in circumstances.

(f) Where the department has issued a determination of no potential to discharge, the department retains the authority to subsequently require NPDES permit coverage for any of the following:

- (i) If circumstances at the facility change.
- (ii) If new information becomes available.
- (iii) If there is another reason for the department to determine that the CAFO has a potential to discharge.

(g) Notwithstanding any other provision of this section, a CAFO that has received a no potential to discharge determination from the department is not required to seek coverage under an NPDES permit that would otherwise be required.

(5) CAFO NPDES permits shall include all of the following:

(a) A requirement to develop and implement a comprehensive nutrient management plan (CNMP). The CNMP shall be approved



by a certified CNMP provider. At a minimum, a CNMP shall include best management practices and procedures necessary to implement applicable effluent limitations and technical standards established by the department including all of the following:

- (i) Ensure adequate storage of production area waste and CAFO process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities.
- (ii) Ensure proper management of mortalities and ensure that they are not disposed of in a liquid manure, storm water, or CAFO process wastewater storage or treatment system.
- (iii) Ensure clean water is diverted from the production area.
- (iv) Prevent direct contact of confined animals with waters of the state.
- (v) Ensure chemicals and other contaminants handled at the CAFO, that are not part of the normal agricultural practice at the production area, are not disposed of in any production area waste, CAFO process wastewater, or storm water storage or treatment system.
- (vi) Identify specific conservation practices to control runoff of pollutants to waters of the state.
- (vii) Identify protocols for testing of production area waste, CAFO process wastewater, and soil.
- (viii) Conduct a field-by-field assessment of land application areas and address the form, source, amount, timing, rate, and method of application of nutrients to demonstrate that land application of production area waste or CAFO process wastewater is in accordance with field-specific nutrient management practices that ensures proper agricultural utilization of the nutrients in the production area waste or CAFO process wastewater. The assessment shall take into account field-specific conditions including locations of tile outlets, tile risers, and tile depth before land application to determine suitability of land application and to prevent discharge of any potential polluting material.
- (ix) Ensure proper land application by complying with all of the following conditions:



(A) Production area waste and CAFO process wastewater shall not be land-applied on ground that is flooded, saturated with water, frozen, or snow-covered where the production area waste and CAFO process wastewater may enter waters of the state.

(B) Production area waste and CAFO process wastewater shall not be applied to frozen or snow-covered ground unless it is subsurface injected and there is substantial soil coverage of the applied production area waste and CAFO process wastewater, or it is surface-applied and incorporated within 24 hours.

(C) Production area waste and CAFO process wastewater may be surface-applied to frozen or snow-covered ground and not incorporated within 24 hours only if there is a field-by-field demonstration in the CNMP showing that such land application will not result in a situation where production area waste and CAFO process wastewater may enter waters of the state.

(D) Production area waste and CAFO process wastewater shall not be applied when precipitation exceeding $\frac{1}{2}$ inch is forecast within 24 hours or if precipitation is forecast that may cause the production area waste and CAFO process wastewater to enter waters of the state.

(E) On ground that is not frozen or snow-covered, production area waste and CAFO process wastewater, if not subsurface-injected, shall be incorporated into the soil within 24 hours of application except on no-till fields.

(x) Identify specific records that will be maintained to document the implementation and management of the CNMP.

(b) A copy of the CAFO's CNMP shall be maintained at the CAFO and made available to the department on request. In addition, the executive summary shall be submitted to the department.

(c) A prohibition on dry weather discharges from the CAFO except in accordance with 40 C.F.R. §412.31(a)(2) (2003) or 40 C.F.R. §412.46(d) (2003).

(d) Storm water discharges from land areas under the control of a CAFO where production area waste or CAFO process wastewater



has been applied in compliance with field-specific nutrient management practices developed in accordance with R 323.2196(5)(a), and such discharges do not cause or contribute to a violation of water quality standards, are in compliance with this rule, provided such discharges are authorized by an NPDES permit.

(e) Unless the department determines otherwise, in cases where production area waste or CAFO process wastewater is sold, given away, or otherwise transferred to other persons (recipient) and the land application of that production area waste or CAFO process wastewater is not under the operational control of the CAFO owner or operator that generates the production area waste or CAFO process wastewater (generator), a manifest shall be used to track the transfer and use of the production area waste or CAFO process wastewater.

(i) The CAFO owner or operator shall do all of the following:

(A) Prepare a manifest for tracking the production area waste or CAFO process wastewater before transferring the production area waste or CAFO process wastewater.

(B) Designate on the manifest the recipient of the production area waste or CAFO process wastewater.

(ii) The generator shall use a manifest form which is approved by the department and which has locations for recording all of the following information:

(A) A manifest document number.

(B) The generator's name, mailing address, and telephone number.

(C) The name and address of the recipient of the production area waste or CAFO process wastewater.

(D) The nutrient content of the production area waste or CAFO process wastewater to be used in determining the appropriate land application rates.

(E) The total quantity of production area waste or CAFO process wastewater by units of weight or volume and the number and size of the loads or containers used to transfer that quantity of production area waste or CAFO process wastewater.



(F) A statement that informs the recipient of his or her responsibility to properly manage the land application of the manure and/or wastewater to minimize the discharge of pollutants to waters of the state.

(G) The following certification: "I hereby declare that the production area waste or CAFO process wastewater is accurately described above and is suitable for land application."

(H) Other certification statements as may be required by the department.

(I) Address or other description for the final destination of the production area waste or CAFO process wastewater.

(J) Locations for dates and signatures.

(iii) The generator shall do all of the following with respect to the manifest:

(A) Sign the manifest certification by hand.

(B) Obtain the handwritten signature of the recipient and the date of acceptance on the manifest.

(C) Retain 1 copy of the manifest.

(D) Give the remaining copies to the recipient.

(E) Advise the recipient of his or her responsibilities to complete the manifest and return a copy to the generator within 30 days after completion of the land application or other disposal or use of the production area waste or CAFO process wastewater.

(iv) One manifest may be used for multiple loads or containers of the same production area waste or CAFO process wastewater transferred to the same recipient.

(v) The generator shall not sell, give away, or otherwise transfer production area waste or CAFO process wastewater to a recipient if any of the following occurs:

(A) The recipient has previously not returned a copy of the completed manifest to the generator.



(B) The returned manifest indicates improper land application, use, or disposal.

(C) The generator has been advised by the department that the department or a court of appropriate jurisdiction has determined that the recipient has improperly land-applied, used, or disposed of a manifested production area waste or CAFO process wastewater.

(D) The recipient fails or refuses to provide accurate information on the manifest in a timely manner.

(vi) If the generator has been prohibited from selling, giving, or otherwise transferring large CAFO waste to a particular recipient under paragraph (v), above, and the generator wishes to resume selling, giving, or otherwise transferring large CAFO waste to that particular recipient, then the one of the following shall be accomplished:

(A) For improper paperwork only, such as incomplete or inaccurate information on the manifest, the recipient must provide the correct, complete information.

(B) For improper land application, use, or disposal of the large CAFO waste by the recipient, the generator must demonstrate, in writing, to the department that the improper land application, use, or disposal has been corrected, and the department has provided approval of the demonstration.

(vii) All copies of manifests shall be kept with the CAFO owner or operator's CNMP for a minimum of 5 years.

(viii) The requirements of this rule do not apply to quantities of production area waste or CAFO process wastewater less than 1 pick-up truck load, 1 cubic yard, or 1 ton per recipient per day.

(f) A requirement that the CAFO owner or operator shall submit annual reports to the department. The annual report shall include, but is not limited to, all of the following:

(i) The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, and turkeys).



(ii) Estimated amount of total production area waste and CAFO process wastewater generated by the CAFO in the previous 12 months (tons/gallons).

(iii) Estimated amount of total production area waste and CAFO process wastewater transferred to another person by the CAFO in the previous 12 months (tons/gallons).

(iv) Total number of acres for land application covered by the CNMP developed in accordance with subdivision (a) of this subrule.

(v) Total number of acres under control of the CAFO that were used for land application of production area waste and CAFO process wastewater in the previous 12 months.

(vi) Summary of all production area waste and CAFO process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume.

(vii) A statement indicating whether the current version of the CAFO's CNMP was developed or approved by a certified CNMP provider.

