PART 21. WASTEWATER DISCHARGE PERMITS

R 323.2119 Public notice; comment period for interested persons.
Rule 2119. (1) Up to 30 days following the date of posting or publication of the public notice pursuant to R 323.2117, an interested person may submit his or her views in writing on the application or department tentative determinations, or both, to the department. The time for public comment may be extended by the department if it determines that an extension of time is necessary to facilitate additional public comment.
(2) All views submitted to the department in writing by interested persons during the comment period shall be retained and considered in the formulation of final determinations by the department on the permit application.


R 323.2130 Permit applications; public hearings, determinations, and scheduling.
Rule 2130. (1) Within the 30-day comment period or other applicable comment period provided after posting or publishing of a public notice pursuant to R 323.2119, an applicant, any affected state or state or interstate agency or country, the regional administrator, or any other interested person or agency may file a petition with the department for a public hearing on an application for a state or national permit. A petition for a public hearing shall indicate the reasons why a hearing is requested, the interest in or relationship of the petitioner to the application or existing or proposed discharge identified therein, and specifically indicate which portions of the application or other NPDES form or information constitutes necessity for a public hearing. If the department determines that a petition constitutes sufficient cause or that there is sufficient public interest in an application for a public hearing, it may direct the scheduling of a hearing thereon.
(2) A hearing shall be scheduled not less than 4 weeks nor more than 8 weeks after the department determines the necessity of the hearing in the geographical location of the applicant or, at the discretion of the department, at another appropriate location, and shall be noticed not less than 30 days before the hearing in the same manner as the public notice on an application pursuant to R 323.2117 and R 323.2118. The notice of public hearing shall be transmitted to the applicant and shall be published in at least 1 newspaper of general circulation in the geographical area of the existing or proposed discharge identified on the permit application and shall be mailed to any person or group upon request therefore. Notice shall be mailed to all persons and governmental agencies which received a copy of the notice or the fact sheet for the permit application.
(3) The department may hold a single public hearing on related groups of permit applications.

R 323.2151  Review and reissuance of state and national permits.
Rule 2151. (1) Not less than 180 days before the expiration date of a state or national permit issued by the department pursuant to part 31 of the act and these rules, a permittee who wishes to continue the discharge of waste or wastewaters into the surface or groundwaters of the state or on the ground shall submit a written request to the department for reissuance.
(2) After receipt of written request for reissuance of a state or national permit by a permittee, the department shall review the request, and before reissuing a permit shall be assured by the permittee of all of the following:
(a) The permittee is in compliance with or has substantially complied with the terms, conditions, requirements, and schedules of compliance of the existing state or national permit.
(b) The department has up-to-date information on the permittee's production levels, waste treatment practices, and the nature, contents, and frequency of the permittee's discharge. The information shall be available to the department either through the submission of new NPDES forms by the permittee or by means of monitoring records or reports submitted thereto pursuant to R 323.2155.
(c) The discharge is consistent with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements, including any additions to, or revisions or modifications of, the effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.
(3) The department shall follow the public notice and public participation procedures specified in R 323.2117 to R 323.2119 and R 323.2124 to R 323.2127 before any state or national permit is reissued pursuant to this rule.
(4) A copy of a national permit reissued by the department shall be transmitted to the regional administrator with any other appropriate NPDES forms or other applicable information relating thereto.


R 323.2191  General permits generally.
Rule 2191. (1) Upon a determination by the department that certain discharges are appropriately and adequately controlled by a general permit, the department may issue a general permit to cover a category of discharge. The general permit may cover storm water point source discharges or a category of point source discharges other than storm water point source discharges if all of the following provisions apply:
(a) The sources involve the same or substantially similar types of operations.
(b) The sources discharge the same types of wastes.
(c) The sources require the same effluent limitation or operating conditions.
(d) The sources require the same or similar monitoring.
(2) General permits shall be issued, modified, revoked and reissued, or terminated in compliance with these rules.
(3) The department may require any person who is authorized to make a discharge, by a general permit, to apply for and obtain an individual national permit if any of the following circumstances apply:
(a) The discharge is a significant contributor to pollution as determined by the department on a case-by-case basis.
(b) The discharger is not complying, or has not complied, with the conditions of the general permit.
(c) A change has occurred in the availability of demonstrated technology or
practices for the control or abatement of waste applicable to the point source discharge.
(d) Effluent standards and limitations are promulgated for point source discharges subject to the general permit.
(e) The department determines that the criteria under which the general permit was issued no longer apply. Any person may request the department to take action pursuant to the provisions of this subrule.
(4) If the department requires a person who is authorized to make a discharge, by a general permit, to apply for an individual national permit as provided in subrule (3) of this rule, the department shall do so in writing. Written notice shall include all of the following:
(a) A statement of the reasons for the department's decision.
(b) An application form.
(c) A statement setting the date by which the owner or operator shall file the application.
(d) A statement that on the effective date of the individual national permit, the general permit, as it applies to the individual discharge, will be superseded.
(5) Any person having a discharge which is authorized, or proposing a discharge which may be authorized by a general permit, may request to be excluded from the coverage of the general permit and apply for an individual national permit. An application shall be submitted pursuant to these rules, with reasons supporting the request, to the department. The department may deny an application for an individual national permit if it determines that the general permit is more appropriate.
(6) The issuance of an individual national permit to a person will supersede the applicability of the general permit on the effective date of the individual national permit.


R 323.2192 General permits; application and coverage.
Rule 2192. All of the following provisions are application requirements for coverage under general permits and shall be complied with:
(a) A person who requests coverage under a general permit shall comply with all applicable requirements of this part, except where the department has approved an amended application form that is specific to a general permit.
(b) Upon the receipt of an application for coverage under an existing general permit, the department shall determine if the discharge meets the criteria for coverage under the general permit. The issuance of a notice of coverage by the department which states that the discharge meets the criteria initiates coverage by the general permit.
(c) The department shall promptly report to the department each person having a discharge for which coverage by general permit has been initiated pursuant to the provisions of subdivision (b) of this rule. A person who is aggrieved by the coverage may file a sworn petition for a contested case hearing on the matter with the department in accordance with the provisions of section 3113 of part 31 of the act. A petition that is filed more than 60 days after coverage by the general permit is reported to the department may be rejected by the department as being untimely.
(d) A person who holds an individual national permit for a point source discharge that is excluded from a general permit solely because the person already has an individual national permit may apply for coverage under the general permit. The department may terminate the individual national permit and include the discharge under the coverage of the general permit if the department determines that the general permit is more appropriate.
R 323.2196 CAFO permits.

Rule 2196. (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) 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 ½ 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.