

UNITED EGG PRODUCERS

FINAL PROJECT AGREEMENT

PROJECT XL

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I. INTRODUCTION

A. **What is Project XL?**

The U.S. Environmental Protection Agency (EPA) created Project XL, which stands for *eXcellence and Leadership*, to give companies, communities, state and local agencies, federal facilities, and industrial sectors, the opportunity to propose cleaner, cheaper, and smarter ways of protecting the environment. Project XL provides real world tests of these innovative strategies. Project XL also provides a vehicle for EPA to consider and, after careful evaluation of the project, replace or modify regulatory requirements, policies or procedures if it is determined that the innovative strategy piloted in this XL project will produce Superior Environmental Performance (SEP) and promote accountability to the public.

Project XL was identified as the best mechanism for developing an innovative Project involving EPA and the United Egg Producers (UEP). Project XL provides a mechanism for the Parties to explore flexibility for selected facilities through EPA's National Pollutant Discharge Elimination System (NPDES) permits, while also ensuring a superior environmental outcome through the use of an environmental management system (EMS) that addresses a full range of significant environmental impacts, including those not subject to regulation.

B. **Purpose of this Final Project Agreement**

This Final Project Agreement (Agreement) sets forth the plans of the signatories and represents the firm commitment of each signatory to support the XL process, the elements of the model general permit, and the implementation and oversight of EMS by each participating facility based on the program developed by the workgroup.

The Agreement is not, however, intended to create legal rights or obligations and is not a contract, a final agency action, or a regulatory action such as a rule. The Agreement does not give anyone a right to sue the Project Signatories for any alleged failure to implement its terms, either to compel implementation or to recover damages.

This Agreement was available for a fourteen-day (14) public comment period. Additionally, this Agreement will allow EPA to gather data and evaluate experiences that will inform Agency decision making as we consider ways to improve the current regulatory system. As with all XL Projects, the opportunities granted in connection with this Agreement, in and of itself, establish no precedent with regard to other projects.

C. **Project Description and Purpose**

This innovative Project is expected to help selected egg producing facilities achieve superior environmental results beyond those that could be achieved under

conventional NPDES general permits. This innovative and more comprehensive approach will require qualified facilities to 1) comply with the terms of an NPDES general permit; and 2) develop and implement a multi-media environmental management system (EMS) that addresses a full range of significant environmental impacts, including those not subject to regulation.

Participation in this project will be strictly limited to those that can continue to meet these stringent requirements. Each facility will also need to pass an independent 3rd party audit confirming compliance with an NPDES general permit and the fact that an EMS was in place and been developed with input from stakeholders before it could even apply for coverage under a general permit. Based on information submitted by the facility, including audit results, states would then have up to 30 days to evaluate this information and make a final decision on whether to grant coverage under an NPDES general permit. This information would also be available to local stakeholders. Each facility will also need to successfully complete regular follow-up audits and continue to work with stakeholders as the EMS is implemented. Information on the results of these follow-up audits will also be publicly available. Each facility's EMS will also help ensure that on-farm management practices most likely to result in superior environmental performance will be used. Based on EMS audit results or inspections carried out by regulatory authorities, facilities could be required to apply for individual NPDES permits.

Facilities that wish to participate in this program will be subject to a two stage compliance screening process, using EPA's Project XL screening criteria. First, following the signing of this agreement, EPA would conduct a national screening, using EPA's Project XL compliance screening criteria. UEP would provide information, as necessary, to facilitate this screening. Facilities that did not pass this screen would not be eligible to participate.

The second screening will occur at the time a state, as part of this XL project, decides to develop an NPDES general permit. EPA and the state will work together at that time to do another screen, again using the XL screening criteria and any other compliance screening criteria the state felt were appropriate for specific egg producing facilities located in that state. At either step, a facility that did not initially meet the screening criteria could be eligible to reapply once the noncompliance issues had been satisfactorily resolved.

Finally, this project involves significantly greater local participation than is currently available under EPA's existing NPDES general permitting regulations. Stakeholders will be given the opportunity to work with individual facilities throughout the entire process of developing and implementing the EMS and will have access to important facility information, including EMS audit results, throughout the life of project.

This Project includes a model NPDES general permit and a description of EMS guidelines for states and egg producing facilities. These two documents were developed by a workgroup consisting of EPA, UEP members, several States, non-governmental organizations, and a representative from the U. S. Department of Agriculture (USDA). A list of the workgroup members is attached in Appendix A. To supplement the EMS requirements contained in this FPA, UEP will develop more detailed guidance and training to assist individual facilities adopt EMSs and will also develop an independent 3rd party auditing program. UEP will also expand its outreach and education program in order to assist egg producers develop EMSs and educate users of manure on ways to properly apply and manage this manure. Facilities will not be able to consider applying for this program until these steps are completed and individual states decide to develop general permits. As the project sponsor, UEP will also have the primary responsibility for tracking progress under the project and providing information to various stakeholders on its success.

As described in more detail in Section IV, EPA is not proposing a site-specific rule to implement this project. Individual states may choose to use the model general permit developed as part of this project or could develop their own general permit.

D. Description of UEP

UEP is a farmer cooperative representing more than 300 egg producers in more than 20 states across the nation, most of whom own their own flocks and do not contract out egg production. Most UEP members are large enough (>100,000 birds) to be defined as Concentrated Animal Feeding Operations (CAFOs) and thus likely to be subject to individual NPDES permits, but could be covered under general permits if they are able to meet the requirements of this program, which are described later in this Agreement.

E. Description of Egg Producing Facilities

Egg producing facilities are generally owned and operated by producers that own their own flocks and do not contract out their operations, as do other parts of the poultry industry like broiler production facilities. Most farms are integrated from the point of production through the final marketing of the eggs. In recent years, there has been rapid consolidation of the industry into fewer, but much larger farms that nonetheless are generally still operated as family farms. Smaller farms do exist (<200,000 birds), but the economics of egg production, collection, cleaning, processing, and shipping generally dictates large operations (500,000 to five million birds).

Most UEP operations are solely dry litter operations, in which chicken litter is collected and stored in watertight cement pits below the bird cages, dried for several months, removed for sale, and then spread on nearby farmland or composted/pelletized for sale to nursery or retail garden markets. Most UEP

operations are large enough (>100,000 birds) to be defined as CAFOs. However, at this point, only about 12% operate under federal NPDES permits, and between 50% and 60% operate under State permits or regulations that are independent of the federal permitting program.

It is UEP's understanding that most UEP members, due to their size, would be required under EPA regulations now under development to obtain individual NPDES permits. In light of this, UEP has now proposed to implement a program designed to achieve superior environmental results at participating facilities in exchange for coverage under general permits. The facilities will also benefit from a streamlined process for obtaining permits. EPA and states will benefit because facilities that meet the stringent requirements of this program will come under NPDES permits more quickly than would occur under EPA's regulations under development since these regulations will not be promulgated until 2003 at the earliest. SEP will be achieved because, in addition to complying with the terms of the NPDES general permit, each facility's EMS will need to address a full range of environmental impacts, both regulated and unregulated, not just those regulated under the NPDES program. Each facility's EMS would also have to pass an audit conducted by an independent 3rd party in order for the facility to be eligible to apply for a general permit. Information from a successful audit would be publicly available and provided to the state or federal permit writer at the time the facility applies for coverage under a general permit. Follow up audits to ensure that the facility continues to successfully implement its EMS will take place and the results of these audits will be publicly available. Facilities that fail to remain in compliance with the general permit and/or fail to adequately implement their EMS could be required to obtain individual permits by the permitting authority.

F. List of Parties that Will Sign the Agreement

This Agreement is entered into by the U.S. Environmental Protection Agency and United Egg Producers. It will guide the working relationship of all Parties in fulfilling the promise of this XL Project.

G. List of Project Contacts

Each party has designated a representative to serve as its contact person for inquiries concerning the Project. These representatives are as follows:

1. For EPA:

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Office of Water

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II. DETAILED DESCRIPTION OF THE PROJECT

A. **Description of the Specific Project Elements**

There are two major elements of this project – the model NPDES general permit and the EMS program, including 3rd party audits, that each facility will need to conform to before applying for an NPDES general permit. Another important component of this Project is an expanded industry education and training program that UEP will implement. The expanded industry education and training program is designed to assist individual egg producers develop effective EMSs, effectively manage nutrients, and effective management of litter generated by UEP facilities by 3rd party users.

1. **Model NPDES General Permit**

The model NPDES general permit, which is included in Appendix B, is offered as guidance to States that may wish to participate in this program. The provisions contained in the model NPDES general permit are quite similar to the requirements that are expected to be required in the future for facilities subject to individual NPDES permits. The model NPDES general permit for egg producing operations (EPO) contained in this Agreement contains the following major parts:

Part I Permit Area and Coverage

This part contains basic information on which types of facilities are covered, what types of discharges are covered, who is eligible for coverage, and how to apply for coverage.

Part II Permit Requirements

This part describes the two basic categories of pollutant discharge limitations for facilities seeking coverage, technology-based effluent limitations, and any other limitations, such as requirements to develop comprehensive nutrient

management plans.

Part III Special Conditions

This section describes a number of special conditions such as (1) minimum standards to protect water quality, (2) comprehensive nutrient management plans, (3) management practices, (4) land application activities not under the control of the EPO, and (5) the environmental management system each facility must have in place.

Part IV Discharge Monitoring and Notification Requirements

This section describes monitoring requirements for each covered operation and requirements for notifying state or federal regulatory agencies when a discharge has occurred.

Part V Standard Permit Conditions

This section contains certain general conditions such as duty to provide information to regulatory authorities, as well as a number of more substantive conditions dealing with operation and maintenance, record keeping, and reporting.

Part VI Definitions

This section contains a set of basic definitions that pertain to the permit such as the definition of an animal feeding operation, rainfall event, and animal unit.

Part VII Permitting Authority Specific Permit Conditions

This final section allows the permitting authority to include any other specific conditions that it may wish to include for all EPOs in its jurisdiction.

2. EMS Program

As indicated, each facility, in addition to meeting all requirements of the NPDES general permit, will be required to have an acceptable EMS in place, as determined by an independent 3rd party audit, before the facility can apply for coverage under the NPDES general permit. For the purposes of this Agreement, the workgroup has developed a series of documents which outline a series of EMS requirements that will pertain to individual facilities. UEP will also be developing additional more detailed guidance that will assist individual facilities develop EMSs consistent with the requirements agreed to by the workgroup. The documents included in this FPA include:

A set of **EMS Elements** that describe a series of procedural and process steps each facility will need to use as it develops its EMS, including communications with the local community. The EMS Elements are modeled

after the standard Plan-Do-Check-Act EMS framework, but tailored to meet the needs of the egg producing industry. A copy of the EMS Elements is located in Appendix C.

An industry **Code of Good Practice** which describes a number of overall commitments each facility will make through its EMS. The Code is designed to assure that facilities address a full range of potential environmental impacts (regulated and unregulated) and adopt best management practices (BMPs) designed to achieve superior environmental performance. A copy of this Code is in located in Appendix D.

A series of **Critical Management Programs** that facilities would need to implement as part of their EMS. Critical Management Programs define the broad areas of management that every facility will need to address like odor control and pest control. Properly addressing these areas will also help address other environmental impacts, like air quality, that would not be addressed under NPDES permits. UEP will also develop a list of individual best management programs (BMPs) to help ensure effective ongoing implementation of each critical management program. If a facility was not successfully addressing each critical management program, it would not pass the audit. A list of these critical management programs is located in Appendix E

The EMS components listed above have been developed by the workgroup led by UEP. Taken together, they define what an individual egg producing facility will need to do to participate in the XL program. However, they do not provide detailed guidance for facilities on how to develop an EMS, nor do they describe how UEP will educate and train facilities interested in participating in this XL Project. These components also do not describe exactly how the 3rd party EMS auditing program will operate.

Therefore, as part of its commitment under this Agreement, UEP commits to fully develop these remaining elements, in conjunction with the project workgroup, by a specific date agreed to by EPA and UEP. Specifically, UEP agrees to the following actions:

1. To develop more detailed guidance to assist individual facilities develop all the elements of an acceptable EMS. The key element of this more detailed guidance will be a Model EMS Template for Egg Producers (Model). The model will be organized around the EMS Elements Document and list of Critical Management Programs. It will not only describe the objective of each EMS element but provide relevant examples of ways in which a facility could satisfy each element. The model will also give guidance on how to implement

each of the Critical Management Programs, including recommended BMPs for each one.

2. Develop an EMS Training and Technical Assistance Action Plan. This strategy will be designed to assist, over time, all egg producers that wish to develop an EMS that will enable them to seek coverage under a general permit. The Action Plan will describe what type of training and assistance will be provided, what materials will be used, and over what time frame the training and technical assistance will be provided. The Action Plan will cover training and assistance necessary both for initial coverage under a general permit and, as necessary, ongoing assistance to help facilities maintain their EMS and implement critical management programs.
3. Develop a 3rd Party EMS Auditing Program. At a minimum, this program will include (1) necessary qualifications of auditors, (2) training to assure auditor competency, (3) protocols and other written tools used to conduct the audits, (4) sample audit findings reports to be used when sharing information with regulatory agencies and local stakeholders, and (5) the way in which UEP will oversee the operation of the auditing program. UEP may wish to work with other organizations with similar programs in place, like America's Clean Water Foundation, or others.
4. Develop an outreach program designed to help off-site users of manure from egg producers manage this manure in an environmentally responsible manner. This program will focus over time on providing the most current information to off-site manure users on:
 - suggested application rates for various crops,
 - warnings about potential impacts from over application of manure,
 - suggestions on appropriate BMPs to use, and
 - ways to develop Comprehensive Nutrient Management Plans (CNMPs) over time.

Egg producers will not be responsible for actually writing CNMPs for third-party manure users, but, as indicated, will provide information designed to help these users develop their own CNMPs.

III. HOW WILL THE PROJECT MEET THE PROJECT XL ACCEPTANCE CRITERIA?

The UEP Project, described in this Agreement, meets EPA's Project XL criteria. See 60 Fed. Reg. 27, 282, et seq. (May 23, 1995). The criteria and the basis for stating that they are met are summarized below.

A. Anticipated Superior Environmental Performance

It is anticipated that the Superior Environmental Performance (SEP) from this project will result from egg producing facilities participating in a more comprehensive program that is based not only on: 1) compliance with an NPDES general permit, including appropriate land application of manure; 2) voluntary development and implementation of a multi-media EMS that helps reduce environmental impacts from regulated activities and activities that are not regulated under conventional NPDES permits; and 3) ongoing audits of EMSs by an independent third party, in addition to routine NPDES compliance inspections.

The third party auditing/EMS requirements of this project will help egg-laying facilities remain in compliance and improve on areas of their production that need attention. It will also help to ensure that well-functioning facilities continue to perform at high levels and continue to address environmental issues of concern to their neighbors, not just those related to water quality. By utilizing the services of trained independent auditors, more oversight of egg producing facilities can take place than would likely be possible with existing federal and state resources. However, States and/or EPA are not precluded in any way from continuing to perform their ongoing compliance and enforcement functions, with appropriate biosecurity considerations, nor is the right of citizens to bring lawsuits against a particular facility limited in any way under this project. Results from audits will be publicly available, and EPA or States could require facilities to obtain an individual NPDES permit at any time if they failed to remain in compliance or successfully implement their EMS.

Other benefits will be realized as well. Currently, only a portion of egg producing operations are fully inspected by regulatory agencies. Facilities participating in this program will be audited on a regular basis. The results of these audits, including areas where improvements are needed, will be shared by UEP with other smaller facilities that may fall below the regulatory threshold but nonetheless could use this information to reduce their environmental impacts. If these audits, along with inspections conducted by regulatory authorities indicate that a participating facility is not remaining in compliance with the general permit or failing to maintain its EMS, the facility could be required to apply for an individual NPDES permit.

B. Anticipated Benefits

The proposed program is ultimately expected to provide considerable cost savings to participating facilities. However, at least some facilities will need to invest in improvements to their facilities and incur design and construction expenses before they can participate. For example, operations and maintenance expenses might be increased for certain facilities. The requirements set out in the model NPDES general permit guidance are quite stringent and are similar to the requirements that facilities that operate under individual permits in the future will likely need to meet. EPA and

UEP both believe that the proposed program will bring about greater levels of environmental protection because it will require facilities that ultimately qualify for NPDES general permits to implement EMSs that address environmental issues beyond the scope of the NPDES program.

C. Stakeholder Involvement/Public Participation

This proposal has been developed by a workgroup consisting of EPA, UEP members, several States, non-governmental organizations, and a representative from USDA. All aspects of the program have been thoroughly reviewed and are supported by all participants. Ultimately, however, it will be up to the individual States to support the program by making general permits available to qualifying facilities. UEP has the primary responsibility for helping to secure support from the states. UEP will work closely with states that have egg producers to educate them on the program and encourage them to participate. UEP will also work closely with the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). The UEP Board of Directors has endorsed the project and has made resources available to facilitate its implementation. Please see Appendix F for a more detailed description of the Project's Stakeholder involvement.

This project also provides for greater local participation in the NPDES permitting process than is available under EPA's existing NPDES general permitting regulations, as well as greater public access to important information on a full range of environmental impacts that must be addressed as each qualifying facility develops and implements its EMS.

D. Innovative Approach and Multi-Media Pollution Prevention

This Project's innovation involves an entire industry sector voluntarily requesting permits and developing an industry-specific EMS and auditing program. Each EMS will be multi-media in order to address all significant environmental impacts, both regulated and unregulated, using pollution prevention approaches whenever practicable. Participating facilities will also be required to implement a series of critical management programs, and associated BMPs. If, through the 3rd party audits, it was determined that any of the critical management programs were not being adequately implemented, the facility would not initially qualify for coverage under an NPDES general permit or could not continue to be covered unless corrective actions were taken. Participating facilities will also have to develop CNMP's over time, consistent with EPA's AFO/CAFO Strategy, that also contribute to pollution prevention.

E. Transferability

This project will be transferable to any State in the future that did not initially choose to participate.

F. Feasibility

UEP has the support and resource commitment from its Board of Directors and members to implement this project. Other key stakeholders like ASIWPCA are also supporting the project. Support from the states is the main key to success for this program. Without this support, the program will not be successful. UEP has the primary responsibility for securing support from the States. EPA will encourage, but certainly not require States with egg producing facilities, to adopt this program. Additionally, the program does not have to be implemented in all States with egg producing facilities to be deemed successful. It is the hope of UEP and EPA that several States will move forward quickly to adopt the program and, as success is documented, more and more States will see the value of this innovative approach.

G. Evaluation, Monitoring and Accountability

EPA's monitoring, reporting and evaluation criteria within this Agreement articulate EPA's expectation that Project XL sponsors will make Project information available to Stakeholders in a form that is easy to understand. Information about this Project can be found on the Project XL web site, www.epa.gov/projectxl; and on the UEP's web site. For a more detailed description of the Project's monitoring, reporting and evaluation requirements, please see Section V. C. -- Performance Targets/Tracking, Reporting and Evaluation.

H. Shifting of Risk Burden

EPA and UEP have analyzed Executive Order No. 12898 on Environmental Justice, and do not expect the Project to result in unjust or disproportionate environmental impacts. No group of citizens or neighborhood will be subject to disproportionate environmental impacts. This proposal does not involve shifting a risk burden from one population to another or one media to another. Additionally, it should not result in any health and safety problems for farm workers or citizens.

IV. DESCRIPTION OF THE REQUESTED FLEXIBILITY AND THE IMPLEMENTING MECHANISMS

A. Requested Flexibility

Facilities that have successfully completed the EMS audit would submit a Notice of Intent (NOI), along with information on the results of the audit, to be covered under an NPDES general permit issued by either a State or EPA. Coverage under the general permit will continue as long as the facility remained in compliance with the terms of the NPDES general permit and continued to implement its EMS. Regular follow up audits will take place from independent 3rd parties, and States or EPA will continue to perform their routine compliance and enforcement activities, as necessary. No rule making is necessary to implement this project. If a facility failed to remain in compliance with the NPDES general permit or failed to adequately implement its

EMS, States or EPA could require the facility to obtain an individual, site-specific NPDES permit. States and EPA retain all compliance and enforcement authority and may bring an enforcement action at any time for violations of the NPDES general permit and in cases where the facility may be causing significant water quality problems.

B. Legal Implementation Mechanism

EPA regulations at 40 CFR 122.28 allow States and EPA to issue NPDES general permits. These regulations also set forth requirements for how general NPDES permits are to be issued and administered. For example, under these regulations, general permits are first issued in draft form so that the public may comment on the draft permit and request a public hearing before a final permit is issued. Under 40 CFR 123.25 (a), State general permit programs must conform to section 122.28 or be more stringent but a State that does not seek to implement a general permit program under Section 122.28 need not do so. EPA will support adoption of NPDES general permits for egg producers by authorized States, but the final decision on whether to do so will rest with these states. EPA will offer NPDES general permits to qualified facilities in States that are not authorized to administer the NPDES program.

C. Compliance/Enforcement Screening

Screening to ensure the likelihood of a participant s ability to achieve superior environmental results, and to ensure the appropriateness of providing a participant with the regulatory flexibility sought, is a requirement for all XL projects, and will be an integral part of this project. Compliance screening, using EPA s Project XL compliance screening criteria, will take place at two levels. Initially, following the signature of this project agreement, EPA will perform a national screen of all egg producing facilities to identify those facilities that would not be eligible at this point to participate in the program. UEP will work with EPA to provide any information needed to complete this screening. Then, as individual states choose to develop general permits for egg producers in their state, EPA and the state will work together, again using the Project XL screening criteria plus any other criteria the state deems appropriate, to identify facilities in the state that would not be eligible to participate.

In states that are not delegated the authority to issue general NPDES permits, EPA s regional offices will conduct the compliance screen using the Project XL screening criteria, and will then provide coverage under a general permit only to those facilities that meet the screening criteria and other requirements of this XL program. If a facility failed either of the screens, but was able to resolve outstanding noncompliance issues to the satisfaction of EPA and the state, the facility would be eligible to apply for inclusion into the program.

V. DISCUSSION OF INTENTIONS AND COMMITMENTS FOR IMPLEMENTING THE PROJECT

A. UEP and Egg Producer Intentions

Egg Producers that choose to participate in this project will comply with all environmental regulatory and other requirements necessary to qualify for NPDES general permits during implementation of this Project and will implement EMSs based on guidelines developed by UEP and approved by EPA.

UEP intends to continue to provide resources to achieve the objectives of this Agreement. _

UEP will work with Stakeholders and the appropriate local, regional, state and federal agencies to facilitate the process.

B. EPA Intentions

EPA will facilitate, in a timely manner and through use of Project XL, the terms of this project.

EPA will work with Stakeholders and the appropriate local, regional, state and federal agencies to facilitate the process.

EPA, UEP, and other stakeholders will review the Project to determine whether it results in SEP.

EPA intends to continue to provide advice to UEP, subject to the availability of resources, to achieve the objectives of this Agreement.

C. State Intentions

The states that participate in this program will issue (subject to applicable procedures and review of public comments) an NPDES general permit under their applicable state statutes and regulations that is consistent with the model NPDES general permit contained in this agreement and will use the EMS guidance developed under this project to supplement their NPDES general permit.

D. Performance Targets/Tracking, Reporting and Evaluation

EPA, UEP, and other stakeholders will evaluate the results of this Agreement to determine performance relating to the following measures:

Indicators of Project Success

Indicator	Measure	Source(s)	Frequency
1. Extent of State participation	Number of state issuing XL general permits	ASIWPCA; Regional EPA Administrators, UEP	Annually, on anniversary of Agreement signing
2. Extent of egg producer participation	Number of egg producers granted XL NPDES general permits	ACWF**, UEP	Annually
3. Value of UEP expanded industry education program	Evidence that UEP promotion of education programs will benefit the environment: <input type="checkbox"/> Number of fact sheets and employee training materials; <input type="checkbox"/> Number of seminars, workshops and XL presentations; <input type="checkbox"/> Number of newsletters and articles on key XL topics; <input type="checkbox"/> Survey indications that third-party manure users program is perceived as valuable	UEP	Annually
4. Value of on-farm assessments	First-time audit success rate for producers who underwent pre-audit assessments vs. those who didn't	ACWF, UEP	Annually
5. Environmental improvements	Evidence that EMS systems and practices have reduced negative impacts on the environment and on enjoyment of property: <input type="checkbox"/> Greater frequency of BMP adoption to reduce unregulated impacts vs. others <input type="checkbox"/> More rapid adoption of CNMPs vs. others <input type="checkbox"/> Follow-up audit evidence of continuous improvement to farms (and EMS practices) <input type="checkbox"/> Number of closed watering	States, UEP, ACWF	Annually

Indicator	Measure	Source(s)	Frequency
	systems vs. others in industry		
6. Continued EMS implementation among XL participants	Absence of follow-up audit failures, State actions, loss of general permits	States, UEP, ACWF	Annually
7. More rapid adoption of CNMPs by participating facilities vs. others	# and percentage of UEP facilities with CNMPs and # and percentage of UEP manure/egg wash user facilities with CNMPs	UEP, ACWF	Annually
8. Regulatory compliance by XL participants	Compliance rates of XL participants	States, EPA	Annually

** ACWF stands for America s Clean Water Foundation

In addition to the indicators listed above, this Project provides a unique opportunity for all interested Parties to gain additional information and insight on the effectiveness of BMPs to help protect water quality. Accordingly, UEP, with input from EPA and States, will design and implement a water quality monitoring study at selected land application sites around the country. Egg producers will voluntarily provide data from these sites and all data will be blinded so as not to reveal the identity of the producer who provided it. Data will be maintained in a database managed by UEP and appropriate Quality Assurance/Quality Control procedures will be used. The duration of this study will be determined by a subgroup convened by UEP to design the study.

Nothing in this Agreement reduces or affects UEP s or a participating egg producer s rights to copyright, patent, or license the use of any proprietary or business confidential information or data contained in or created in the course of the implementation of this Project.

E. Project Implementation

As previously indicated, this project will be implemented over time at a large number of individual egg producing facilities. Accordingly, while some of the specific implementation actions may vary in individual states, the basic steps each facility would need to take in order to participate, once states or EPA have issued a general permit through normal notice and comment proceedings, are as follows:

1. Using the State or EPA issued NPDES general permit and the EMS guidance developed under this XL project, a facility will develop its EMS, taking input and sharing information with local stakeholders throughout this process.
2. The facility may then choose to have a preliminary assessment done for its EMS. This preliminary assessment is outside the scope of this XL project and could be a dry run for the subsequent EMS audit and could be done by an independent 3rd party or by the facility itself.
3. The facility will then contact an approved independent 3rd party organization and request an audit to confirm compliance with the NPDES general permit and its EMS for purposes of applying for coverage under a general permit.
4. If the audit is successful, the facility will submit the results of the audit to the regulatory authority (State or EPA) along with a Notice of Intent (NOI) to comply with the terms of the NPDES general permit. The facility will also place a notice in the local newspaper indicating it has passed the audit and intends to submit the NOI. This notice will also be sent directly to key local stakeholders identified by the facility, including those that have provided input to the facility as its EMS was developed. A point of contact at the facility will also be included in the notice if local stakeholders have any questions about the audit, would like to see information on audit results, or would like meet with the facility. The facility must respond to any inquiries and/or issues that arise and indicate to the regulatory authority what the response was and describe any actions they agreed to take as a result of the inquiries.
5. Once it has received the NOI, the state regulatory authority will review the information and, if satisfied, grant coverage under the NPDES general permit within 30 days, where applicable.
6. Follow-up EMS audits by the 3rd party will take place annually and the results of these audits and will also be made available to the public.
7. If, as a result of these follow-up audits or any regular compliance inspections conducted by the regulatory authority, it is determined that the facility was not adequately implementing its EMS or remaining in compliance with its NPDES general permit, EPA or the state could require the facility to apply for an individual NPDES permit.
8. Finally, throughout the process of developing and implementing its EMS, each facility will seek input from local stakeholders and respond to any issues raised by these stakeholders. Information about the EMS and its performance will be made available to the public on an ongoing basis.

F. Periodic Review by the Parties to the Agreement

The Parties to this Agreement will hold periodic performance review meetings to assess the progress in implementing the UEP XL Project. Unless they agree otherwise, the date for those conferences will be concurrent with annual workgroup meetings. No later than thirty (30) days following a periodic performance review meeting, UEP will provide a summary of the minutes and any key decisions that were made to all interested Stakeholders. Copies of any additional comments from participating Stakeholders will be forwarded onto EPA.

G. Duration of the Project

This Agreement will continue for three years. After year three, both UEP and EPA will conduct an independent program evaluation. If both UEP and EPA desire to continue the Agreement, the Agreement will be extended for a period of time mutually agreed upon by EPA and UEP, with input from interested Stakeholders. However, individual states may choose to develop NPDES general permits consistent with this project, regardless of whether the project is extended or not. If the project is terminated after three years, facilities that are currently under NPDES general permits and are meeting all of the requirements of the program, could retain this coverage. Also, EPA or a state could require an individual facility to seek coverage under an individual NPDES permit at any time if the facility was not in compliance with the terms of the general permit or had failed to adequately implement its EMS.

VI. LEGAL BASIS FOR THE PROJECT

A. Authority to Enter into the Agreement

By signing this Agreement EPA and UEP acknowledge and agree that they have the respective authorities, discretion, and resources to enter into this Agreement and to implement all applicable provisions of this Project, as described in this Agreement.

B. Legal Effect of the Agreement

This Agreement states the intentions of the Parties with respect to the UEP XL Project. The Parties have stated their intentions seriously and in good faith, and expect to carry out their stated intentions.

This Agreement does not create or modify legal rights or obligations, is not a contract or a regulatory action, such as a permit or a rule, and is not legally binding or enforceable against any Party. Rather, it expresses the plans and intentions of the Parties without making those plans and intentions binding requirements. This applies to the provisions of this Agreement that concern procedural as well as substantive matters. While all Parties fully intend to adhere to these provisions, they are not legally obligated to do so.

This Agreement is not a final agency action by EPA, because it does not create or modify legal rights or obligations and is not legally enforceable. This Agreement,

itself, is not subject to judicial review or enforcement. Nothing any Party does or does not do that deviates from a provision of this Agreement, or that is alleged to deviate from a provision of this Agreement, can serve as a basis for any claim for damages, compensation or other relief against any Party.

C. Applicability of Other Laws or Regulations

The Parties do not intend that this Agreement will modify the applicability of any existing or future laws or regulations.

D. Retention of Rights to Other Legal Remedies

Nothing in this Agreement affects or limits UEP's or EPA's legal rights. These rights may include legal, equitable, civil, criminal or administrative claims or other relief regarding the enforcement of present or future applicable federal and state laws, rules, regulations or permits with respect to the facility.

Although UEP does not intend to challenge Agency actions implementing the XL Project (including any rule amendments or adoptions, permit actions, or other action) that are consistent with this Agreement, UEP reserves any right it may have to appeal or otherwise challenge any EPA or state action to implement the Project. With regard to the legal implementing mechanisms, nothing in this Agreement is intended to limit UEP's rights to administrative or judicial appeal or review of those legal mechanisms, in accordance with the applicable procedures for such review.

VII. UNAVOIDABLE DELAY DURING PROJECT IMPLEMENTATION

Unavoidable delay" (for purposes of this Agreement) means any event beyond the control of any Party that causes delays or prevents the implementation of the Project described in this Agreement, despite the Parties' best efforts to put their intentions into effect. An unavoidable delay can be caused by, for example, a fire or acts of war.

When any event occurs that may delay or prevent the implementation of this Project, whether or not it is avoidable, the Party to this Agreement who knows about it will immediately provide notice to the remaining Parties. Within ten (10) days after that initial notice, the Party should confirm the event in writing. The confirming notice should include: (1) the reason for the delay; (2) the anticipated duration; (3) all actions taken to prevent or minimize the delay; and (4) why the delay was considered unavoidable, accompanied by appropriate documentation.

This Section applies only to provisions of this Agreement that are not implemented by legal implementing mechanisms. Legal mechanisms, such as permit provisions or rules, will be subject to modification or enforcement as provided under applicable law.

VIII. AMENDMENTS OR MODIFICATIONS TO THE AGREEMENT

This Project is an experiment designed to test new approaches to environmental protection and there is a degree of uncertainty regarding the environmental benefits and costs associated with activities to be undertaken in this Project. Therefore, it may be appropriate to amend this Agreement at some point during its duration.

This Agreement may be amended by mutual agreement of all Parties at any time during the duration of the Project. The Parties recognize that amendments to this Agreement may also necessitate modification of legal implementation mechanisms or may require development of new implementation mechanisms. If the Agreement is amended, EPA and UEP expect to work together with other regulatory bodies and Stakeholders to identify and pursue any necessary modifications or additions to the implementation mechanisms in accordance with applicable procedures. If the Parties agree to make a substantial amendment to this Agreement, the general public will receive notice of the amendment and be given an opportunity to participate in the process, as appropriate.

In determining whether to amend the Agreement, the Parties will evaluate whether the proposed amendment meets Project XL acceptance criteria and any other relevant considerations agreed on by the Parties. All Parties to the Agreement will meet within ninety (90) days following submission of any amendment proposal (or within a shorter or longer period if all Parties agree) to discuss evaluation of the proposed amendment. If all Parties support the proposed amendment, the Parties will (after appropriate Stakeholder involvement) amend the Agreement.

IX. TRANSFER OF PROJECT BENEFITS AND RESPONSIBILITIES TO NEW EGG PRODUCER OWNERS

The Parties agree that the benefits of this Project will be communicated widely to all egg producing operations in the U.S. on an ongoing basis by UEP.

X. PROCESS FOR RESOLVING DISPUTES

Any dispute which arises under or with respect to this Agreement will be subject to informal negotiations between the Parties to the Agreement. The period of informal negotiations will not exceed twenty (20) calendar days from the time the dispute is first documented, unless that period is extended by a written agreement of the Parties to the dispute. The dispute will be considered documented when one party sends a written Notice of Dispute to the other Parties.

If the Parties cannot resolve a dispute through informal negotiations, the Parties may invoke non-binding mediation by describing the dispute with a proposal for resolution in a letter to the EPA Assistant Administrator for the Office of Water. The Assistant Administrator will serve as the non-binding mediator and may request an informal mediation meeting to attempt to resolve the dispute. The Assistant Administrator will then issue a written opinion that will be non-binding and does not constitute a final EPA action. If this effort is not successful, the Parties

still have the option to terminate or withdraw from the Agreement, as set forth in Section XI below.

XI. WITHDRAWAL FROM OR TERMINATION OF THE AGREEMENT

A. Expectations

Although this Agreement is not legally binding and any party may withdraw from the Agreement at any time, it is the desire of the Parties that it should remain in effect through the expected duration of three years, and be implemented as fully as possible unless one of the conditions below occurs:

1. Failure by any party to (a) comply with the provisions of the enforceable implementing mechanisms for this Project, or (b) act in accordance with the provisions of this Agreement. The assessment of the failure will take its nature and duration into account.
2. Failure of any party to disclose material facts during development of the Agreement.
3. Failure of the Project to provide SEP consistent with the provisions of this Agreement.
4. Enactment or promulgation of any environmental, health or safety law or regulation after execution of the Agreement, which renders the Project legally, technically or economically impracticable.
5. Decision by an agency to reject the transfer of the Project to a new owner or operator of the facility.

In addition, EPA does not intend to withdraw from the Agreement if UEP does not act in accordance with this Agreement or its implementation mechanisms, unless the actions constitute a substantial failure to act consistently with intentions expressed in this Agreement and its implementing mechanisms. The decision to withdraw will, of course, take the failure's nature and duration into account.

UEP will be given notice and a reasonable opportunity to remedy any substantial failure before EPA's withdrawal. If there is a disagreement between the Parties over whether a substantial failure exists, the Parties will use the dispute resolution mechanism identified in Section X of this Agreement. EPA retains its discretion to use existing enforcement authorities, including withdrawal or termination of this Project, as appropriate. UEP retains any existing rights or abilities to defend themselves against any enforcement actions, in accordance with applicable procedures.

B. Procedures

The Parties agree that the following procedures will be used to withdraw from or terminate the Project before expiration of the Project term. They also agree that the implementing mechanism(s) will provide for withdrawal or termination consistent with these procedures.

1. Any party that wants to terminate or withdraw from the Project is expected to provide written notice to the other Parties at least sixty (60) days before the withdrawal or termination.
2. If requested by any party during the sixty (60) day period noted above, the dispute resolution proceedings described in this Agreement may be initiated to resolve any dispute relating to the intended withdrawal or termination. If, following any dispute resolution or informal discussion, a party still desires to withdraw or terminate, that party will provide written notice of final withdrawal or termination to the other Parties.
3. The procedures described in this Section apply only to the decision to withdraw or terminate participation in this Agreement. Procedures to be used in modifying or rescinding any legal implementing mechanisms will be governed by the terms of those legal mechanisms and applicable law. It may be necessary to invoke the implementing mechanism s provisions that end authorization for the Project (called sunset provisions) in the event of withdrawal or termination.

XII. COMPLIANCE AFTER THE PROJECT IS OVER

As indicated throughout this FPA, this project will be implemented not only by States and EPA, but by individual facilities that choose to participate. Ongoing compliance with the terms of NPDES general permits as well as conformance with EMS requirements, is necessary for any facility to participate in this program. Once the project term is completed, individual facilities could continue to be covered under NPDES general permits if they had remained in compliance with the permit and were continuing to adequately implement their EMS.

XII. SIGNATORIES AND EFFECTIVE DATE

We, the undersigned, pledge our support for the continued success of the UEP XL Project and the furtherance of an effective partnership between EPA and UEP.

United States Environmental Protection Agency
Office of Water

United Egg Producers

APPENDIX A

List of Workgroup Members

NAME	ORGANIZATION	PHONE	EMAIL
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Bill Beranek	Indiana Environmental Institute	317-635-6018	inenviro@iquest.net
Paul Brennan	Indiana Poultry Association	765-494-8517	pbrennan@purdue.edu
Mark Gephart	Illinois Pork Council	217-529-3100	mark@ilpork.com
Marcia Damato	U.S. EPA, Region V	312-886-0266	damato.marcia@epa.gov
Chad Gregory	United Egg Producers	847-356-4401	chaduep@aol.com
Myrna Halbach	Minnesota Pollution Control Agency	320-214-3794	myrna.halbach@pca.state.mn.us
Jim Horne	U.S. EPA, Office of Water	202-260-5802	horne.james@epa.gov
Cal Jackson	Creighton Brothers Farms, IN	219-267-3101	jackson@medt.com
Steve Jann	U.S. EPA, Region V	312-886-2446	jann.stephen@epa.gov
Ron Jepson	Colorado Division of Water Quality	303-692-3520	ron.jepson@state.co.us
Roger Kanerva	Illinois Environmental Protection Agency	217-785-5735	epa8500@epa.state.il.us
John Kessler	Ohio EPA, Division of Surface Water	614-644-2020	john.kessler@epa.state.oh.us
Ken Klippen	United Egg Producers	202-842-2345	kklippen@mwmlaw.com
Arnie Ledec	Illinois Environmental Protection Agency	312-886-0133	leder.arnold@epa.gov
Linda Martin	Illinois Environmental Protection Agency	312-814-7182	epa8589@epa.state.il.us
Erik Meyers	Environmental Law Institute	202-939-3800	meyers@eli.org
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Dave Staples	Creekwood Farms, WI	920-648-2377	creekwood@intaccess.com
Chuck Sutfin	U.S. EPA, Office of Water	202-260-4047	sutfin.charles@epa.gov
A.G. Taylor	Illinois Environmental Protection Agency	217-785-0830	epa8569@epa.state.il.us
Dave Thompson	Thompson's Pearl Valley Eggs, IL	815-443-2170	ewingt@aol.com
John Thorne	Capitolink, LLC	202-872-3865	jthorne@capitolink.com
Bruce Yurdin	Illinois Environmental Protection Agency	217-782-0610	epa1177@epa.state.il.us
Jack Ferguson	U.S. EPA Region VI	214-665-8118	ferguson.jack@epa.gov

APPENDIX B

NPDES GENERAL PERMIT FOR EGG PRODUCTION OPERATIONS (EPOs)

[INSERT - AUTHORIZED NPDES PERMITTING AUTHORITY]

AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with provisions of the Clean Water Act, 33 USC 1251 et seq., the Act and the regulations found at 40 CFR §122. [INSERT STATE REGULATORY CITATION AS APPROPRIATE]

Owners and operators of egg production operations (EPOs), except those EPOs excluded from coverage in Part I of this permit, may apply for authorization to discharge under this general permit and, once authorized, must operate their EPO in accordance with the effluent limitations, monitoring requirements, and other provisions set forth herein.

This general permit covers discharges or the potential to discharge process wastewater, rainfall or snow melt runoff from the animal confinement or storage and handling areas and runoff from land application areas, under the operational control of the permittee, of manure and process wastewater. The animal type covered under this general permit are laying hens.

A copy of this permit must be kept by the permittee at the site of the permitted EPO.

This permit will become effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION]

This permit and the authorization to discharge under the NPDES shall expire at midnight [INSERT DATE 5 YEARS AFTER THE DATE ABOVE].

Signed this (Day) of (Month) and (Year).

[Permitting Authority Official]

PART I. PERMIT AREA AND COVERAGE

A. Permit Area

[The permitting authority should insert language that identifies the geographic area covered by the permit being issued (e.g., State, watershed, etc.).]

B. Permit Coverage

1. Who is eligible to be covered under this general permit?

This general permit is available for any EPO that has agreed to participate in the United Egg Producers (UEP) XL Project and has qualified for coverage by this general permit as outlined in Parts I.C., D., and E. below.

2. What does the NPDES general permit for EPOs cover?

NPDES general permits issued to EPOs cover the animal confinement areas, storage facilities and unloading/handling areas of manure, or egg wash wastewater, and land application activities under the operational control of the EPO. General permit coverage is contingent upon continuing implementation of an environmental management system (EMS), consistent with the guidelines developed by UEP, as determined by audits conducted by an independent third party. EPOs that fail to comply with the terms of a general permit or fail to adequately implement their EMS could be required to apply for an individual NPDES permit by the permitting authority.

3. What constitutes a discharge from an EPO?

At 40 CFR §122.2 a discharge of a pollutant means:

- (a) Any addition of any pollutant or combination of pollutants to waters of the United States from any point source, or
- (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.

This definition includes additions of pollutants into waters of the United States from: surface runoff which is collected or channeled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

For example at EPOs discharges of pollutants (manure and/or process wastewater) include, but are not limited to, the following discharges that reach waters of the U.S.:

- " Contaminated runoff from stock piled manure and feed;

- " Overflow from manure storage facilities, including secondary containment;
- " Discharges via ground water that has a direct hydrologic connection to surface waters,
- " Discharges associated with land application of manure and/or wastewater activities under the control of the EPO operator not in compliance with Minimum Requirement 9 in Table III.A, in Part III.A, including discharges to ground water that has a direct hydrologic connection to surface waters;
- " Manure and/or wastewater discharges from retention ponds, manure storage facilities, or lagoons, including secondary containment;
- " Discharges of manure and/or wastewater due to pipe breakage or equipment failure;
- " Leaks or seepage from retention ponds, manure storage facilities, lagoons to ground water that has a direct hydrologic connection to surface waters;
- " Discharge of pollutants from dead bird or nonedible egg handling and storage; and
- " Spills or leakage from the poultry houses or the pit under the poultry houses.

C. Eligibility for Coverage

Unless excluded from coverage in accordance with Paragraph D or F below, owners/operators of EPOs are eligible, under the terms and conditions of this permit, and upon the submission of a notice of intent (NOI) and a summary of the results of a successful environmental management system (EMS) audit to gain coverage under this NPDES general permit. Permittees must retain, on the site of the permitted EPO, a copy of the permit, the comprehensive nutrient management plan (CNMP) and EMS as required by this permit, and must submit a copy of the CNMP and a summary of the results of an annual EMS audit to the permitting authority upon request by the permitting authority (see Part III). In addition, the permittee must retain records indicating that it is implementing an EMS consistent with the requirements described in Section C of Part IV of this permit. At a minimum, these records must: (1) describe the EMS and (2) include all records of audits by independent 3rd parties, as well as a description of the corrective actions taken, if any, to address any major deficiencies identified in these audits.

A permittee who is authorized by this general permit may request to be excluded from coverage under this permit by: (1) submitting to the permitting authority a completed notice of termination form; or applying for an individual NPDES permit in accordance with Part I.F(2).

D. Limitations on Coverage

The following EPOs are not eligible for coverage under this NPDES general permit, but

must apply for an individual permit:

1. EPOs that have failed an audit by an independent third party or been notified by the **[Permitting Authority]** to apply for an individual NPDES permit in accordance with Part I.F (below) of this permit.
2. EPOs that have been notified by the **[Permitting Authority]** that they are ineligible for coverage because of a past history of non-compliance
3. New and/or significantly expanding EPOs that apply manure and/or wastewater to lands that are adjacent to or near water bodies that are listed under the CWA, section 303(d), as impaired due to inadequate oxygen, excessive nutrients, suspended solids, turbidity and/or pathogens and are notified by the **[Permitting Authority]** to apply for an individual NPDES permit.

E. Requirements for Obtaining Coverage

1. Owners/operators of EPOs seeking to be covered by this general permit (see Part I) must submit: (1) a notice of intent (NOI) to be covered by this permit; (2) evidence that the EPO has developed and implemented an EMS consistent with the guidelines set forth below in Part III.E; (3) the results of a successful audit conducted by an independent 3rd party for the purpose of applying for this permit **[Permitting Authority to insert number of days/weeks prior to the effective date of this permit]**; and (4) evidence that the EPO: has placed a notice in the local newspaper that indicates that the EPO has passed the audit and intends to submit the NOI; sent the notice directly to local stakeholders; and has established a point of contact at the facility for public inquiries. EPA's existing Project XL compliance/enforcement screening criteria should be used by the permitting authority at the time the general permit is developed. States may also wish to apply other screening criteria they feel are appropriate, including criteria by which a facility would be allowed for coverage under the general permit once compliance and enforcement issues had been satisfactorily resolved.
2. Owners/operators of new EPOs must submit an NOI, have a complete comprehensive nutrient management plan (CNMP) and an EMS 180 days prior to commencement of operation.
3. The NOI must be signed by the owner/operator or other authorized person in accordance with Part V. E. of this permit and include the name of the EPO contact person.
4. Signed copies of the NOI must be sent to:
[Permitting Authority Address]
5. The Permitting Authority will review the information (NOI and audit) and, if satisfied, will notify the facility that it will be covered under the permit within 30

days.

6. The EPO will be subject to the terms and conditions of this general permit beginning thirty (30) days from the **[Permitting Authority]** notification of coverage unless **[Permitting Authority]** fails to approve the EPO for inclusion under this general permit and requires the submission of an individual NPDES permit application (See Sections D and F).

F. Requiring an Individual Permit

1. The **[Permitting Authority]** may require any EPO authorized by this permit to apply for, and obtain, an individual NPDES permit. **[Permitting Authority]** will notify the EPO owner/operator, in writing, that an application for an individual permit is required. This notice will include a brief statement of the reasons for the decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NPDES permit the general permit as it applies to the individual permittee is automatically terminated.
2. Any EPO owner/operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual NPDES permit. The EPO owner/operator shall submit an application for an individual NPDES permit (Form 1 and Form 2B), along with any other information required by the **[Permitting Authority]**. If an individual NPDES permit is issued to an EPO owner/operator otherwise subject to this general permit, or the EPO owner/operator is approved for coverage under an alternative NPDES general permit, the applicability of this NPDES EPO general permit to the facility is automatically terminated on the effective date of the individual NPDES permit or on the date that coverage commences under the alternative NPDES general permit. Otherwise, the applicability of this general permit to the facility remains in full force and effect (for example, if an individual NPDES permit is denied to an EPO owner/operator otherwise subject to this general permit, or the EPO owner/operator is denied coverage under an alternative NPDES general permit).

G. Permit Expiration

This general permit expires five years after its effective date. If this permit is not reissued prior to its expiration date, it will be administratively continued in accordance with the Administrative Procedure Act and any EPO authorized by this permit prior to the expiration date will remain authorized under this permit (i) if it submits an NOI within 60 days of the expiration date of the permit requesting continued coverage under this general permit until; (ii) the permit is reissued; or (iii) EPA publishes a determination not to reissue this permit.

PART II. PERMIT REQUIREMENTS

A. Effluent Limitations

The following effluent limitations apply to EPOs covered under this general permit, and cover both the production and the land application areas under the control of the EPO:

1. Production Areas: There shall be no discharge of process wastewater pollutants to waters of the United States, including discharges to groundwater that has a direct hydrologic connection to waters of the United States, **except when catastrophic rainfall events** cause an overflow of process wastewater from a facility properly designed, constructed, maintained, and operated to contain:
 - a. All process generated wastewater resulting from the operation of the EPO; plus,
 - b. All runoff from a 25-year, 24-hour rainfall event for the location of the EPO.
2. Land Application Area: For discharges associated with land application of process wastewater and/or manure under the control of the EPO operator, including discharges to groundwater that has a direct hydrologic connection to waters of the United States, the permittee must:
 - a. The EPO must ensure that such activities comply with the requirements of Minimum Requirement 9 specified in Table III.A, in Part III.A of this permit; and
3. Other requirements: the EPO must comply with other special conditions established by the permitting authority (Parts III.A and C).

B. Other Legal Requirements

No condition of this permit shall release the permittee from any responsibility or requirements under other statutes or regulations, Federal, State/Indian Tribe or Local.

PART III. SPECIAL CONDITIONS

A. Minimum Requirements to Protect Water Quality

This permit identifies (See Table III. A below) specific minimum requirements that the permittee must meet to achieve the effluent limitations in this permit, including requirements that address proper land application of manure and wastewater. The minimum requirements (or portions thereof) that must be implemented immediately upon coverage by of this permit are indicated by an asterisk (*). The permittee must comply with the remaining minimum standards (or portions thereof) in accordance with the enforceable schedule for developing and implementing a CNMP, which is established in Section III. B. of this permit. All of the requirements to protect water quality must be based on the minimum requirements of Table III.A and incorporated into the site-specific CNMP developed and implemented for the permitted EPO.

Table III. A
Minimum Requirements to Protect Water Quality in NPDES Permits for EPOs

Each of the following minimum standards is designed to achieve the objective of preventing discharges of pollutants to waters of the U.S. from discharges of pollutants to waters of the U.S. from under the operational control of the EPO. Minimum requirements or portions of minimum requirements that must be implemented on the effective date of the permit are indicated by an asterisk (*). In addition to these minimum requirements, the permittee must comply with water quality-based effluent limitations in Part II.A(1).

<p>1. MINIMUM REQUIREMENT - BUFFERS OR EQUIVALENT PRACTICES Provide and maintain buffer strips or other equivalent practices near the animal confinement areas, manure storage areas, and land application areas that are sufficient to minimize the discharge of pollutants to waters of the U.S. (e.g., soil erosion and manure and wastewater). These practices may include but are not limited to: residue management, conservation crop rotation, grassed waterways, strip cropping, vegetative buffers, terracing, and diversion.</p>
<p>2. MINIMUM REQUIREMENT - DIVERT CLEAN WATER *Design and implement management practices to divert clean water and runoff waters from contact with the animal confinement areas; animal manure; or manure and/or process wastewater storage systems. Clean water and runoff waters includes rain falling on the roofs of facilities, runoff from adjacent land, or other sources.</p>
<p>3. MINIMUM REQUIREMENT - PREVENT DIRECT CONTACT OF ANIMALS WITH WATERS OF THE U.S. *Develop and implement appropriate controls to prevent direct access of animals in confinement to waters of the U.S. to protect water quality.</p>
<p>4. MINIMUM REQUIREMENT - ANIMAL MORTALITY *Handle and dispose of dead animals in a manner that prevents contamination of surface waters of the U.S. (including contamination of groundwater with a direct hydrological connection to surface waters).</p>
<p>5. MINIMUM REQUIREMENT - CHEMICAL DISPOSAL *Prevent introduction of chemicals into manure and wastewater storage structures for purposes of disposal. Examples include pesticides, hazardous and toxic chemicals, and petroleum products/by-products.</p>
<p>6. MINIMUM REQUIREMENT - PROPER OPERATION AND MAINTENANCE *Implement an operation and maintenance program to minimize the discharges of pollutants to surface water and groundwater that is hydrologically connected to surface water that involves periodic visual inspection and maintenance of all manure storage and handling equipment and structures and all runoff management devices (e.g., cleaning separators, barnyards, catch basins, screens, annual testing and calibration of land application equipment to ensure proper application rates and maintenance of filter strips).</p>

7. MINIMUM REQUIREMENT - RECORD KEEPING AND TESTING

*Maintain a log that documents the visual inspections, findings, preventative maintenance, testing, and calibration that has been performed.

*Document the date, rate, location, types of crops, and methods used for application of manure and wastewater as well as other nutrients to land under the control of the EPO operator.

Where manure and wastewater are not applied on land under the operational control of the EPO operator, maintain a record of the transfer of the manure off-site.

*Record the results of annual manure and wastewater testing to determine nutrient content.

*Record the results of representative soil sampling and analyses conducted at least every three years to determine nutrient content.

8. MINIMUM REQUIREMENT - MAINTAIN PROPER STORAGE CAPACITY

*Maintain sufficient freeboard in liquid manure storage structures to assure compliance with the permit conditions.

*Store dry manure in production buildings or in storage facilities or in another manner as to prevent polluted runoff, (e.g., located on relatively flat land, away from water bodies, wetlands and wells, and/or surrounded by a berm or buffer).

Provide adequate storage capacity so that land application occurs only during periods when land and weather conditions are suitable for manure and wastewater application (see Minimum Standard #9, below).

9. MINIMUM REQUIREMENT - RATES AND TIMING OF LAND APPLICATION OF MANURE AND WASTEWATER

*Land apply manure and/or wastewater in accordance with proper agricultural practices.

Land apply manure and/or wastewater in accordance with land application rates developed on a site-specific basis as needed to protect water quality. At a minimum, land application rates should (1) prevent application of nutrients at rates that will exceed the capacity of the soil and the planned crops to assimilate nutrients and minimize water pollution; and (2) be quantified and based on the most limiting nutrient in the soil (e.g., phosphorus or nitrogen), type of crop, realistic crop yields, soil type, and all nutrient inputs in addition to those from manure and wastewater.

Incorporate manure applied to the bare soil surface within 24 hours after land application.

*Land application of manure and/or wastewater is prohibited on land that is flooded, saturated with water, frozen or snow covered (unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water) at the time of land application where the manure and/or wastewater may enter waters of the U.S.

*Land application of manure and/or wastewater is prohibited on land with slopes greater than 6 per cent unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water.

*Land application of manure and/or wastewater is prohibited during the period of November 15 through April 15 on land with slopes greater than 3 per cent unless approved conservation measures of a certified CNMP are in place to prevent off-site movement of contaminated water.

*Land application of manure and/or wastewater is prohibited during rainfall events and for 24 hours prior to a 60 per cent forecasted rainfall event of 1/4 inch or more.

B. Comprehensive Nutrient Management Plan (CNMP)

1. Elements of a CNMP

Each EPO covered by this permit shall develop and implement a site-specific CNMP that includes the following elements as appropriate to the needs and circumstances of the permitted facility: animal outputs; manure handling and storage; land application of manure and wastewater; site management; record keeping; and other manure and/or wastewater utilization options. The CNMP must be developed and implemented to meet all of the minimum standards identified in Section A of this Part to protect water quality that are applicable to the permitted facility. The CNMP must be approved by a certified conservation planner or certified specialist and developed and implemented to meet the requirements of the CWA, current State and U.S. Department of Agriculture-Natural Resources Conservation Service (NRCS) technical standards and NRCS's CNMP Technical Guidance.

Each CNMP shall specifically identify and describe practices that are to be implemented to assure compliance with the limitations and conditions of this permit. The CNMP shall identify a specific individual(s) at the facility responsible for its implementation. The activities and responsibilities of such personnel must be described in the CNMP. CNMPs are to be developed as a special condition of the NPDES permit, and where applicable must contain the information in (a) and (b) below:

- a. Existing Facility Plans: Where a facility has previously prepared information that supports one or more of the five elements of a CNMP as outlined in the NRCS Technical Guidance for Developing CNMPs, the EPO may adopt this information for incorporation into the facility-specific CNMP.
 - b. Signatory Requirements: The CNMP shall be signed by the EPO owner/operator or other signatory authority in accordance with Part V.E (Signatory Requirements).
 - c. The **[Permitting Authority]** or authorized representative may notify the permittee, at any time, that the CNMP does not meet one or more of the minimum requirements of this Part B. The permittee shall make changes to the CNMP within 90 days after such notification unless otherwise provided by the **[Permitting Authority]**.
2. Schedule for Developing, Submitting, and Implementing a CNMP
Following the submission of the NOI, any EPO covered by this NPDES general permit shall develop and implement a CNMP **[Permitting Authority to insert schedule for developing and implementing the CNMP no later than the end of 2003 including interim milestones as determined to be appropriate.]** The permittee must notify the permitting authority in writing within thirty days following the completed development and implementation of the site-specific CNMP.
 3. Certified Specialists to Develop CNMPs
The CNMP must be developed or approved (including any modifications) by a certified specialist defined by **[Permitting Authority to insert State or governmental agency]**. The **[Permitting Authority or other State agency]** will specify the requirements for certification. While the permittee may seek technical assistance from an outside source and must obtain approval from a certified specialist, it is the permittee's sole responsibility to assure that the effective implementation of the CNMP results in compliance with all permit conditions.
 4. CNMP is to be Maintained On Site
A current copy of the CNMP shall be kept on the site of the permitted EPO in

accordance with Part V.C.3 (Retention of Records) of this permit and provided to the permitting authority upon request of the permitting authority.

5. Duty to Amend the CNMP

The permittee must amend the CNMP whenever: (1) the facility makes a substantive change in how it manages its operations, including the location, method, timing or frequency of land application; or (2) a discharge occurs in violation of this NPDES permit. Where the facility is located in an impaired watershed, CNMPs should also be reviewed and amended, as needed, as part of the TMDL process. The facility must complete and submit to **[Permitting Authority]** notification of any substantial changes to the CNMP and an annual certification that the CNMP has been reviewed to assess its adequacy in protecting water quality.

C. Management Practices

1. Emergency Discharge Impact Abatement: Discharges authorized by Part II.A(1) of this permit must, where practicable, be released to vegetated fields for filtering or captured in secondary containment to minimize discharge to waters of the U.S.
2. Irrigation Control: Irrigation systems shall be managed so as to reduce or minimize: (1) ponding or puddling of wastewater on land application fields; and (2) contamination of ground and surface water.
3. Spills: Appropriate measures necessary to prevent spills and to clean up spills of any toxic and other pollutants shall be taken. If possible spills are anticipated, materials handling procedures and storage must be specified in the CNMP. Procedures for cleaning up spills shall be identified, and the necessary equipment to implement clean up shall be made available to facility personnel. All spills resulting in actual or potential to discharge to waters of the U.S. must be reported to EPA and State/Indian Tribe authorities.
4. Measurement of Rainfall: A rain gauge meeting National Weather Service standards or its equivalent shall be maintained on site of all EPOs which collect egg wash wastewater in uncovered lagoons or basins, or which practice land application of manure or egg wash wastewater. A log of all measurable rainfall events shall be kept by such EPO operators/owners.
5. Liner Requirement: Where a direct hydrologic connection through ground water exists, the ponds, lagoons and basins of the retention structure must have a liner which will prevent the potential contamination of surface waters.
6. Employee Training: Where employees are responsible for work activities which relate to permit compliance, those employees must be regularly trained or informed of any

information pertinent to the proper operation and maintenance of the facility and waste disposal. Training shall include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary record-keeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the CNMP shall identify periodic dates for such training. This training program must also be included in the EMS.

7. Chemical Handling: The owner/operator shall prevent the discharge of pesticide-contaminated waters into retention structures. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the management of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent pollutants from entering the retention structures or waters of the United States.
8. Discharges of Chemicals to Containment Structures: All discharges to containment structures shall be composed entirely of wastewater from the proper operation and maintenance of an EPO and the precipitation runoff from the EPO areas. The disposal of any materials (other than materials and discharges associated with proper operation and maintenance of the EPO) into the containment structures is prohibited by this permit.
9. Siting and Structural Integrity: Site and construct new facilities so as to comply with applicable State and/or local requirements. In the absence of applicable State and/or local requirements, new facilities must be constructed to meet NRCS, ASCS, or equivalent engineering and construction standards. Existing facilities must be checked and maintained to ensure their structural integrity, and that they are appropriately sized for egg-producing operations.
10. Facility Closure: The following conditions shall apply to the closure of egg washing storage structures and other litter and wastewater facilities:

- a. Closure of Egg Wash Wastewater Storage Structures

No egg wash wastewater storage structure shall be permanently abandoned without proper closure.

Egg wash wastewater storage structures shall be maintained at all times until closed in compliance with this section.

Egg wash wastewater storage structures must be properly closed if the permittee ceases operation. In addition, any egg wash wastewater storage structure that is not in

use for a period of twelve consecutive months must be properly closed unless the facility is financially viable, intends to resume use of the structure at a later date, and either: (1) maintains the structure as though it were actively in use, to prevent compromise of structural integrity; or (2) removes waste materials to a depth of one foot or less and maintain a depth of wastewater sufficient to preserve the integrity of the synthetic or earthen liner. In either case, the permittee shall notify the **[Permitting Authority]** of the action taken, and shall conduct routine inspections, maintenance, and record-keeping as though the structure were in use. Prior to restoration of use of the structure, the permittee shall notify the **[Permitting Authority]** and provide the opportunity for inspection.

All closure of lagoons and other earthen or synthetic lined basins must be consistent with NRCS standards (currently, Field Technical Guide No. 998, Interim Standard for Closure of Abandoned Waste Treatment Lagoons and Waste Storage Ponds). Consistent with NRCS standards, the permittee shall remove all waste materials to the maximum extent practicable and dispose of them in accordance with the permittee's CNMP, unless otherwise authorized by the **[Permitting Authority]**. If the permittee plans to land apply lagoon sludge, the CNMP should have special conditions for such application based on the most limiting contaminant in the waste.

Unless otherwise authorized by the **[Permitting Authority]**, completion of closure for egg wash wastewater storage structures shall occur as promptly as practicable after the permittee ceases to operate or, if the permittee has not ceased operations, 12 months from the date on which the use of the structure ceased, unless the lagoons or basins are being maintained for possible future use in accordance with the requirements above.

b. Closure Procedures for Manure and Other Wastewater Facilities

No manure or other wastewater control and retention structure shall be abandoned. Closure of all such structures shall occur as promptly as practicable after the permittee has ceased to operate, or, if the permittee has not ceased to operate, within 12 months after the date on which the use of the structure ceased. To close a manure or wastewater control and retention structure, the permittee shall remove all manure and wastewater and dispose of it in accordance with the permittee's CNMP, unless otherwise authorized by the **[Permitting Authority]**.

D. Requirements for Land Application Activities Not Under the Control of the Permitted EPO Operator.

In cases where EPO-generated manure is to be used for land application activities that are not under the operational control of the permitted EPO, such land application does not need to be addressed in the permitted EPO's CNMP. However, the EPO must comply with the following conditions:

1. Maintain records showing the date and amount of manure and/or wastewater that leaves the permitted operation;
2. For quantities of greater than one metric ton per recipient per day, record the name and address of the recipient;
3. Provide the recipient(s) with representative information on the nutrient content of the manure and/or wastewater to be used in determining the appropriate land application rates;
4. Inform the recipient of his/her responsibility to properly manage the land application of the manure and/or wastewater to minimize the discharge of pollutants to waters of the U.S.; and
5. Offer technical assistance to the recipient to develop and implement a site-specific CNMP.

These records must be retained on-site, and must be submitted to the permitting authority upon request.

E. Environmental Management System (EMS)

In order to be eligible for coverage under a general permit, EPOs must have an environmental management system (EMS) in place that is consistent with EMS Elements developed by EPA, the United Egg Producers (UEP), States, and others as a part of EPA's Project XL agreement with UEP [insert date of signed agreement]. These required elements are included in Appendices C, D, and E. Throughout the process of developing the EMS, each EPO is responsible for seeking input from local stakeholders and responding to any issues raised.

In addition, prior to seeking coverage under this general permit, EPOs must successfully complete an audit of their EMS by a qualified independent 3rd party organization within [Permitting Authority to specify a date that ensure the audit is recent], again consistent with the Project XL agreement signed by EPA and the UEP. Information on the results of successful audits must be made available to the local community when the facility decides to apply for coverage under the general permit, and the facility must provide local community members with the opportunity to comment on this information. Information about the EMS and the EPO's performance will be made available to the public.

When formally submitting the notice of intent to be covered under the general permit to the permitting authority, the EPO must provide a copy of any written comments received from the community, and indicate how these and any other verbal comments were obtained and addressed. Once a facility is accepted for coverage under the general permit, annual third party audits must be conducted and the results of these audits would be available to the public.

PART IV. DISCHARGE MONITORING AND NOTIFICATION REQUIREMENTS

A. Notification of Discharges from Retention Structures and Improper Land Application

If, for any reason, there is a discharge of pollutants to a water of the U.S., the permittee is required to make immediate oral notification within 24-hours to the **[Permitting Authority (Contact Number)]** and notify the **[Permitting Authority]** in writing within five (5) working days of the discharge from the facility. In addition, the permittee shall keep a copy of the written notification submitted to the [Permitting Authority] together with the CNMP. The discharge notification shall include the following information:

1. Description of the discharge: A description of the discharge and its cause, including a description of the flow path to the receiving water body and an estimate of the flow and volume discharged.
2. Time of the discharge: The period of noncompliance, including exact dates and times, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate and prevent recurrence of the discharge.

B. Monitoring Requirements for Discharges from Retention Structures

In the event of any overflow or other discharge of pollutants to waters of the U.S. from a manure and/or wastewater storage structure, the following actions shall be taken:

1. Analysis of the discharge: All discharges shall be sampled and analyzed. Samples must, at a minimum, be analyzed for the following parameters: fecal coliform bacteria; five-day biochemical oxygen demand (BOD₅); total suspended solids (TSS); total phosphorus as phosphorus; dissolved phosphorus as phosphorus; ammonia-nitrogen as nitrogen; TKN as nitrogen; nitrate as nitrogen; pH; metals; and temperature.
2. Estimate volume of the discharge: Record an estimate of the volume of the release and the date and time.
3. Sampling procedures: Samples shall consist of grab samples collected from the over-flow or discharges from the retention structure. A minimum of one sample shall be collected from the initial discharge (within 30 minutes). The sample shall be collected and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR 136. Samples collected for the purpose of monitoring shall be representative of the monitored discharge. Monitoring results must be submitted to the permitting authority within 30 days.
4. Reasons for not sampling: If conditions are not safe for sampling, the permittee must provide documentation of why samples could not be collected. For example, the permittee may be unable to collect samples during dangerous

weather conditions (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). However, once dangerous conditions have passed, the permittee shall collect a sample from the retention structure (pond or lagoon) from which the discharge occurred.

C. General Inspection, Monitoring, and Record Keeping Requirements

The permittee shall inspect, monitor, and record the results of such inspection and monitoring in accordance with Table 4 1:

TABLE 4 1. PERIODIC INSPECTION AND MONITORING REQUIREMENTS

PARAMETER	UNITS	FREQUENCY
Facility inspection¹		
Review all facilities and land application areas addressed in the EPO's CNMP to evaluate whether measures to reduce pollutant loadings identified in the CNMP are adequately and properly implemented in accordance with the terms of the permit or whether additional control measures are needed	NA	Annually
Egg washing storage structure monitoring and inspection		
Freeboard ²	Feet	Weekly
Structural integrity (i.e., integrity of berms) ³	NA	Weekly
Integrity of liners and absence of a hydrologic connection ⁴	NA	Once/5 years

Sampling of manure/wastewater and land application soils⁵		
Sample manure and wastewater to determine available nutrient content (nitrogen and phosphorus).	ppm	Conduct initial sampling. Then sample at least once per year thereafter.
Sample land application soils to determine nutrient content (nitrogen and phosphorus).	Pounds per acre	Conduct initial sampling. Then sample at least once every three years thereafter.
Land application activities		
Duration of land application activities ⁵	Hours/day	Daily
Quantity of manure/wastewater applied to land application fields ⁵	Gallons/day or Tons/day	Daily
Application rate ⁵	Tons/acre	Daily
Application area ⁵	Acres	Daily
Precipitation		
Rainfall ⁶	Inches	Daily

Footnotes:

- ¹ A complete inspection of the facility shall be done and a report made annually.
 - ² For lagoons or other liquid storage basins, report the water level as feet below the emergency overflow level. For solid manure storage structures, report the percentage of remaining storage capacity.
 - ³ Documentation of compliance with this requirement must be compiled in an inspection report to be kept at the facility.
 - ⁴ Permittee shall document compliance with this requirement by preparing a report that must be kept at the facility.
 - ⁵ Monitor during periods of land application only. Estimate application quantity and rate from the number of truckload spread per day. Land application practices must be conducted in accordance with the permittee's CNMP.
 - ⁶ The permittee shall maintain a precipitation gauge at each permitted facility conducting land application or collecting egg wash wastewater in uncovered lagoons or berms, and record the rainfall for each 24-hour period.
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D. Additional Monitoring Requirements

Additional analysis: Upon request by [**Permitting Authority**], the permittee may be required to collect and analyze samples including but not limited to soils, surface water, ground water, and/or stored waste in a manner and frequency specified by [**Permitting Authority**].

Additional monitoring for some high risk operations: Upon notification by [**Permitting Authority**], the permittee may be required to conduct ambient monitoring of surface and/or groundwater (where there is a possible direct hydrologic connection between the ground water and surface waters). For example, facilities with significant environmental concerns, or facilities impacting impaired water bodies.

PART V. STANDARD PERMIT CONDITIONS

A. General Conditions

1. Introduction: In accordance with the provisions of 40 CFR Part 122.41, et. Seq., this permit incorporates by reference ALL conditions and requirements applicable to NPDES Permits set forth in the Clean Water Act, as amended, (hereinafter known as the Act) as well as ALL applicable regulations.
2. Duty to Comply: The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation, and reissuance; for denial of a permit renewal application; and/or for requiring a permittee to apply for and obtain an individual NPDES permit. It is expected that the EMS and independent 3rd party audits will identify minor noncompliance issues for prompt correction.
3. Toxic pollutants: The permittee shall comply with effluent standards and prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.
4. Permit actions: This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
5. Property rights: The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State/Tribal or local laws or regulations.
6. Duty to provide information: The permittee shall furnish to the Permitting Authority, within a reasonable time, any information which the Permitting Authority 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 Permitting Authority, upon request, copies of records required to be kept by this permit.

7. Criminal and Civil Liability: Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance. Any false or materially misleading representation or concealment of information required to be reported by the provisions of the permit, the Act, or applicable regulations, which avoids or effectively defeats the regulatory purpose of the Permit may subject the Permittee to criminal enforcement pursuant to 18 U.S.C. Section 1001.
8. State/Tribal Laws: Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by Section 510 of the Act.
9. Severability: The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
10. Duty to Reapply: 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.

B. Proper Operation and Maintenance

1. Need to halt or reduce activity not a defense: It shall not be a defense for a permittee in an enforcement action to plead that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
2. Duty to mitigate: The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
3. Proper operation and maintenance: 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 includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

C. Monitoring and Records

1. Inspection and entry: The permittee shall allow the [**Permitting Authority**] or EPA, or an authorized representative of [**Permitting Authority**] or EPA, upon the presentation of credentials and other documents as may be required by law, to:
 - a. Enter 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;
 - b. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - c. Inspect, at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit, and
 - d. Sample or monitor, at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.
2. Representative sampling: Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
3. Retention of records: 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 three years from the date of the sample, measurement, report, or application. This period may be extended by request of the permitting authority at any time.
4. Record content: Records of monitoring information shall include:
 - a. The date, exact place, and time of sampling or measurements;
 - b. The individual(s) who performed the sampling or measurements;
 - c. The date(s) analyses were performed;
 - d. The individual(s) who performed the analyses;
 - e. The analytical techniques or methods used; and
 - f. The results of such analyses.
5. Monitoring procedures:
 - a. Monitoring, when necessary, must be conducted according to test procedures

approved under 40 CFR Part 136, unless other test procedures have been specified in this permit or approved by the Regional Administrator.

- b. The permittee shall calibrate and perform maintenance procedures on all monitoring and analytical instruments at intervals frequent enough to insure accuracy of measurements and shall maintain appropriate records of such activities.
- c. An adequate analytical quality control program, including the analyses of sufficient standards, spikes, and duplicate samples to insure the accuracy of all required analytical results shall be maintained by the permittee or designated commercial laboratory.

D. Reporting Requirements

1. Physical Alterations: The permittee shall give advance notice to the **[Permitting Authority]** of any planned physical alterations or additions or changes in activity which may result in noncompliance with requirements in this permit.
2. Transfers: This permit is not transferable to any person except after notice to the **[Permitting Authority]**. The **[Permitting Authority]** may require modification or revocation and reissuance of the permit to change the name or the permittee and incorporate such other requirements as may be necessary under the CWA.
3. Twenty-four Hour Reporting: a. The permittee shall report any noncompliance that may endanger human health or the environment. Any information must be provided orally to within 24 hours from the time that the permittee becomes aware of the circumstances to **[Insert Permitting Authority contact information]**. A written submission shall also be provided to **[Permitting Authority]** within five (5) days of the time the permittee becomes aware of the circumstances. The written submission shall contain the following information:
 - i) A description of the noncompliance and its cause;
 - ii) 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
 - iii) Steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

The following shall be included as information which must be reported within 24 hours:

- i) Any unanticipated bypass which exceeds any effluent limitation in this permit.
- ii) Any upset which exceeds any effluent limitation in this permit.

- iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the permitting authority in this permit to be reported within 24 hours.

The permitting authority may waive the written report on a case-by-case basis for reports under this Part if the oral report has been received within 24 hours.

- 4. Other Noncompliance: The permittee shall report all instances of noncompliance not reported under this Part at the time monitoring reports are submitted. The reports shall contain the information listed in Part V.D.
- 5. 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 **[Permitting Authority]**, it shall promptly submit such facts or information to the **[Permitting Authority]**.

E. Signatory Requirements

All applications, reports, or information submitted to the **[Permitting Authority]** shall be signed and certified consistent with 40 CFR §122.22:

- 1. **All permit applications** shall be signed as follows:
 - a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:
 - i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or
 - ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures; or
 - b. For a partnership or sole proprietorship: By a general partner for a partnership or the proprietor, respectively. All applications, reports, or information submitted to the **[Permitting Authority]** shall be signed and certified consistent with 40 CFR §122.22:

2. **All reports** required by the permit and other information requested by the **[Permitting Authority]** shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:
 - a. The authorization is made in writing by a person described above;
 - b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, superintendent, position of equivalent responsibility, or any individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or an individual occupying a named position; and,
 - c. The written authorization is submitted to the **[Permitting Authority]**.

F. Certification

Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or 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 fine and imprisonment for knowing violations.

G. Bypass

1. Definitions

- a. **Bypass** means the intentional diversion of waste streams from any portion of a treatment facility.
 - b. **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 Part V.G.(3) and (4).

3. **Notice.**

- a. **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.
- b. **Unanticipated bypass.** The permittee shall submit notice of an unanticipated bypass as required in D.3 of this Part.

4. **Prohibition of Bypass.**

- a. **Bypass is prohibited**, and the permitting authority may take enforcement action against a permittee, unless:
 - i) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - ii) 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 judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - iii) The permittee submitted notices as required under G.3 of this Part.
- b. **The permitting authority may approve** an anticipated bypass, after considering its adverse effects, if the permitting authority determines that it will meet the three conditions listed above in G.4.a of this Part.

H. Upset

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, 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 H.3. of this Part 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:
 - a. An upset occurred and that the permittee can identify the cause(s) of upset;
 - b. The permitted facility was at the time being properly operated; and
 - c. The permittee submitted notice of the upset as required in D. of this Part (24 hour notice).
 - d. The permittee complied with any remedial measures required under B.2 of this Part.
4. **Burden of Proof.** In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Penalties for Violations of Permit Conditions

A violation of the EMS could result in the EPO being required to apply for an individual NPDES permit. The Clean Water Act provides the following for any violations of the terms and conditions of this permit:

1. Criminal Penalties

- a. **Negligent violations:** The Act provides that any person who negligently violates Section 301, 302, 306, 307, 308, 318, or 405 of the Act or any condition or limitation implementing those provisions in a permit issued under Section 402 is subject to a fine of not less than \$2,750 nor more than \$27,500 per day of violation, or by imprisonment for not more than one year, or both.
- b. **Knowing violations:** The Act provides that any person who knowingly violates Sections 301, 302, 306, 307, 308, 318, or 405 of the Act or any permit conditions implementing those provisions is subject to a fine of not less than \$5,500 nor more than \$55,000 per day of violation, or by imprisonment for not more than three years, or both.
- c. **Knowing endangerment:** The Act provides that any person who knowingly violates Sections 301, 302, 303, 306, 307, 308, 318, or 405 of the Act or permit conditions implementing those provisions and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than \$275,000, or by imprisonment for not more than 15 years, or both.

- d. False statements: The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than \$11,000, or by imprisonment for not more than two years, or by both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than \$22,000 per day of violation, or by imprisonment of not more than four years, or by both. [See Section 309 (c) 4 of the Clean Water Act]

2. Civil penalties

The Act provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed \$27,500 per day for each violation. [See Section 309(d)]

3. Administrative penalties

The Act provides that the Administrator may assess a Class I or Class II administrative penalty if the Administrator finds that a person has violated Sections 301, 302, 306, 307, 308, 318, or 405 of the Act or a permit condition or limitation implementing these provisions, as follows [See Section 309(g)]:

- a. Class I penalty: Not to exceed \$11,000 per violation nor shall the maximum amount exceed \$27,500.
- b. Class II penalty: Not to exceed \$11,000 per day for each day during which the violation continues nor shall the maximum amount exceed \$137,500.

PART VI. DEFINITIONS

25-year, 24-hour rainfall event means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

Best Management Practices (BMPs) means those schedules of activities, maintenance procedures, and other management practices of an egg production operation that are designed to minimize or prevent pollution of the air, water, or soil to control odor or pests.

Certified Conservation Planner and Certified Specialist means a professional who is certified for CNMP development and/or approval pursuant to USDA and EPA technical guidance or

CNMP development (e.g., both engineering and agronomic components of the CNMP).

Comprehensive Nutrient Management Plan (CNMP): means a group of conservation practices and management activities which, when combined into a system, will help to ensure that both production and natural resources goals are achieved. It incorporates practices to utilize animal manure and organic by-products as a beneficial resource. A CNMP addresses natural resource concerns dealing with nutrient and organic by-products and their adverse impacts on water quality.

Catastrophic rainfall event is equivalent to a 25-year, 24-hour storm event. Catastrophic events include tornadoes, hurricanes, or other catastrophic conditions that would cause an overflow from the waste retention structure that is designed, constructed, operated, and maintained to meet all the requirements of this permit.

Expanded egg production operation means an operation that adds any number of confined hens so that the manure and wastewater produced exceeds the design capacity of the existing manure and wastewater storage facility or the operation's comprehensive nutrient management plan (CNMP).

Ground water means water below the land surface in a zone of saturation (40 CFR §258.2)

Land application means the application of manure and/or wastewater onto or incorporation into the soil.

Land under the operational control of the EPO means any land owned, leased or otherwise controlled by the EPO owner/operator for the purpose of land applying manure and/or wastewater generated at the EPO.

Liner means any barrier in the form of a layer, membrane or blanket, installed to prevent discharges to waters of the U.S.

Notice of Intent (NOI) is a form submitted by the EPO owner/operator applying for coverage under a general permit. It requires the applicant to submit the information necessary for adequate program implementation, including, at a minimum, the legal name and address of the owner or operator, the facility name and address, type of facility or discharges, and the receiving stream(s). [(40 CFR §128.28(b)(2)(ii)].

Nutrient Balance means determining the proper rate and timing of nutrients required to grow the planned crop by balancing the nutrients that are already in the soil and from other sources with those that will be applied in manure, biosolids, and commercial fertilizer. At a minimum, a nutrient balance determination should be based on preventing the application of nutrients at rates that will exceed the capacity of the soil and planned crops to assimilate nutrients and prevent water pollution; and be quantified and based on the most limiting nutrient in the soil, type of crop, realistic crop yields, soil type, and all nutrient inputs in addition to those from manure and wastewater. CNMPs that establish the appropriate rate and timing for land application of manure

and wastewater should be developed for the CAFO by the USDA-NRCS or any third party vendor certification programs that may include, but are not limited to: 1) American Society of Agronomy's certification programs, including Certified Crop Advisors (CCA) and Certified Professional Agronomists (CPAg), Crop Scientists (CPCSc), and Soil Scientists (CPSSc); 2) Land Grant University certification programs; 3) National Alliance of Independent Crop Consultants (NAICC); and State certification programs.

Owner/operator means any person who owns, leases, operates, controls, or supervises a source.

Process wastewater means any process-generated wastewater and any precipitation (e.g., rain or snow) which comes into contact with any manure, litter or bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

Process-generated wastewater means any water directly or indirectly used in the operation of a feedlot for any of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning or flushing pens, barns, manure pits, or other feedlot facilities; direct contact swimming, washing or spray cooling of animals; and dust control.

Qualified groundwater scientist means a scientist, or engineer who has received a baccalaureate or post-graduate degree in natural sciences, or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground-water monitoring, contaminant fate and transport, and corrective action [40 CFR 258.50 (g)]

Retention facilities or retention structures means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds and lagoons used to store wastes, wastewater and manure.

Runoff means collected or uncollected gravity flow overland of water from rain, melted snow, or agricultural or landscape irrigation.

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.

The Act means Federal Water Pollution Control Act as amended, also known as the Clean Water Act as amended, found at 33 USC 1251 et seq.

Toxic pollutants means any pollutant listed as toxic under Section 307(a)(1) of the Act.

Under the Operational Control means a person who the Director determines to be an operator on the basis that the person exercises substantial operational control of the EPO. In making this

determination, the Director shall consider whether the person:

1. Directs the activity of persons working at the EPO either through a contract or direct supervision of, or on-site participation in, activities at the facility;
2. Owns the animals;
3. Specifies how the animals are grown, fed, or medicated; or
4. Meets any other factor that the Director determines demonstrates that the person exercises substantial operational control over the EPO.

Waters of the United States means: (1) all waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide; (2) all interstate waters, including interstate wetlands; (3) all other waters such as intrastate lakes, rivers, and streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters: (a) which are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or, which are or could be used for industrial purposes by industries in interstate commerce; (4) all impoundments of waters otherwise defined as waters of the U.S.; (5) tributaries of waters identified in (1) through (4) of this definition; (6) the territorial sea; and (7) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in items (1) through (6) of this definition.

PART VII. PERMIT CONDITIONS APPLICABLE TO SPECIFIC STATES AND INDIAN COUNTRY LANDS

[Where Applicable When EPA is the Permitting Authority Insert Specific State Permit Conditions]

APPENDIX C

EMS Elements

Under the XL Agreement for the United Egg Producers (UEP), the U.S. Environmental Protection Agency (EPA) has developed a model NPDES general permit for states to consider as they choose to issue general permits to qualified egg production operations. The Agreement also includes other certain prerequisite conditions for developing and implementing environmental management systems (EMS) that facilities would need to meet, consistent with the guidelines described in this document.

Section I: General Information on EMS Components

This first section is designed to provide general information on egg producer environmental management systems. It is advisory only. In Section II, egg producers will find a set of actual EMS elements that UEP has developed for egg producers to use if they wish to participate in this XL project. UEP will also be developing additional guidance and training, based on a Model EMS Template, that will make it much easier for individual facilities to develop site-specific EMSs.

What Prerequisites are Necessary?

Participating states will adopt or adapt EPA's Model General NPDES Permit guidance and issue statewide general permits to qualified egg production operations (EPOs). The guidance will require that, to be eligible for coverage under a general NPDES permit, an EPO needs to be properly implementing an Environmental Management System (EMS) that meets established EMS criteria and continue to implement the EMS if general permit coverage is to continue. Audits by certified independent third parties must be successfully completed before general permit coverage is initially granted. In addition, regular follow-up audits will take place to confirm that the EMS is still being implemented and that compliance with the general permit is maintained. If either of these criteria is not met, the facility may no longer qualify for a general permit and the state or EPA could require the facility to obtain an individual NPDES permit.

What is an Environmental Management System (EMS)?

Like the name suggests, an EMS is a structured system of planning, acting, checking, and communicating that will help egg producers avoid problems, strengthen relationships and protect the environment. Following the guidelines in Section II of this document, egg producers can develop an EMS that is specific to their farms and conditions. For an egg producer's EMS to be effective, it should be an ongoing part of day-to-day operations and a key part of annual planning. Egg producers must have an acceptable EMS in place, as confirmed by a certified independent third party auditor, in order to be eligible for a general permit.

What are the potential benefits of an EMS?

Potential benefits associated with an effective EMS may include:

- Demonstrating reasonable care and achieving ongoing improvement of facility operations and environmental performance;
- Addressing regulated and significant potential unregulated environmental impacts associated with facility operations;
- Maintaining good public/community relations;
- Satisfying investor criteria and improving access to capital;
- Obtaining lower insurance rates;
- Improving cost control and conserving input materials and energy;
- Reducing incidents that could result in liability;
- Fostering development and sharing of environmental solutions;
- Improving industry-government relations; and
- Providing confidence to external interested parties that:
 - a) There exists a management effort to meet objectives and environmental expectations;
 - b) The systems design incorporates the process of continual improvement;
 - c) Emphasis is placed on pollution prevention rather than corrective action; and
 - d) Evidence of reasonable care and regulatory compliance can be provided.

How is an EMS Organized?

Consistent with other EMS models used in both industry and the public sector, an egg producer's EMS will be organized around four major part or elements—Planning, Implementing, Checking, and Acting. These elements also describe the general process by which an EMS is implemented. The following is a general overview of this organization, but refer to Section II for the specific EMS components that each egg producer EMS must include.

Planning

The purpose of this element is to ensure that the egg production operation (a) has a written Policy statement in place that is consistent with all of the commitments contained in the UEP

Code of Good Environmental Practice (Code), (b) is identifying significant environmental impacts that are or could result from its operations, and (c) has planned measurable objectives to meet the commitments in its policy statement and reduce significant environmental impacts, including those that are not regulated. The first planning step would be for the facility to develop a written policy statement.

UEP will provide egg producers with printed copies of the Code suitable for framing. Participating egg producers could sign the Code, discuss each of the commitments with employees, display the signed copy of the Code prominently in the facility, and make a copy of the policy statement available to the public. UEP s Code can be found in Appendix A of this document. If a particular producer had already made environmental commitments over and above the Code or wanted to do so, those commitments would be included in the signed policy statement.

Next the facility should formulate a plan that would ensure its operations meet its environmental policy commitments, by establishing measurable objectives and targets, including objectives on regulatory compliance. These objectives should be consistent with the commitments in the Code, address significant potential environmental impacts (including unregulated impacts) and critical management programs (identified in Appendix B), and ensure compliance with applicable environmental requirements.

An example of such a measurable objective might be to effectively manage flies and rodents. The objective could be met by identifying employee responsibilities, proper operational procedures (e.g., management of buildings, waste feed, dead birds, manure), use of appropriate pest control agents, and collecting information on the effective reduction/ongoing control of flies and rodents.

□□ **Implementing**

Once the overall environmental policy (Code) and objectives are in place, the egg producer should then systematically implement needed critical management programs and related Best Management Practices (BMPs) and carry out planned tasks/activities to make the plan work. The producer should also ensure that responsibilities for implementing the EMS are clearly defined and that employees are provided with the necessary training to ensure that can carry out these responsibilities.

As part of the XL project, UEP and the other stakeholders have identified a series of critical management programs that need to be addressed by each facility. These critical management programs include such things as odor control, fly and rodent control, dead bird proposal, etc. A list of these programs is included as Appendix B. Facilities should also ensure that they are using the appropriate Best Management Practices (BMPs) to ensure the effectiveness of each critical management program. These BMPs could be based on the Model General Permit for this XL Project, state permits, or separate BMP Guidance developed by UEP.□□
Checking

As the EMS is implemented, the facility needs to monitor and periodically audit the EMS to ensure that critical management programs and BMPs are properly implemented, and ensure that the facility is meeting or making acceptable progress toward meeting its objectives and targets, including compliance with regulatory requirements.

Egg producers should keep records to document how critical management programs and BMPs were being implemented, changes to any of these programs, and completion of planned tasks and activities necessary to implement the EMS. The facility should also carry out periodic internal audits to ensure that compliance with regulatory requirements was being maintained and performance of the EMS based on objectives and targets is satisfactory. Internal auditing could be done with facility personnel or with the assistance of outside groups.

□□ **Acting (Review and External Communication)**

Each year the facility should compare the status and results of the EMS to the objectives desired, take necessary steps, as necessary, to enhance its effectiveness, and communicate with external parties about the performance of the EMS and their ideas on possible improvements

This review function should be lead by facility management and should make use of all available information from things like internal audits, critical management program and BMP implementation, changes to regulatory requirements, and any issues raised by external stakeholders since the last review. As a result of the review, the facility should make information available on the performance of the EMS against objectives and targets, any changes to the EMS agreed to, and steps the facility will take to address any significant issues identified by external stakeholders.

Section II: Necessary Components of each EMS

While Section I was a general discussion of EMS components, this Section II is a detailed description of the actual components of an EMS and has been developed by UEP for use by egg producers that wish to participate in this XL project. Although the details of each egg producer s EMS would be unique, the following components need to be included in each EMS for an egg production facility to be eligible for coverage under a general permit issued by states or EPA.

Note this list of components is not intended to prescribe **how** egg producers should organize or operate their facilities. Rather this document is intended to define the needed components of an EMS *process, including some specific procedures*, that would need to be implemented to be expected to result in effective management of the environmental aspects of facility operations.

These EMS components assume that each facility s EMS would address a number of critical

management programs, help the facility to remain in compliance with the terms of a general permit, and help reduce environmental impacts from unregulated activities. Critical management programs include (a) pest control (e.g., flies, rodents); (b) dead bird disposal; (c) an odor management program; (d) preventative maintenance; (e) emergency preparedness and response; (f) utilize closed watering systems to animals; and (g) develop and implement a comprehensive nutrient management plan (CNMP). A more complete description of critical management programs can be found in Appendix B of this document. UEP will also develop, as part of its Model EMS Template described in Section I, a list of recommended best management practices (BMPs) for each critical management program.

What EMS Components are Necessary?

Independent 3rd party auditors would use these components as the primary basis for determining if the EMS was in place and being implemented such that coverage under a general permit would be warranted.

- 1. Environmental Policy/Code of Good Practice.** Egg production facilities seeking coverage under NPDES Model General NPDES Permits need to develop and implement an environmental policy statement that incorporates the commitments contained in the UEP Code of Good Environmental Practice (Code). UEP will provide egg producers with printed copies of the Code suitable for framing. Egg producers should sign the Code, talk about the commitments with all employees, and display the document prominently for public viewing. UEP s Code can be found in Appendix A of this document. Of course, if a particular producer wanted to add commitments over and above the UEP Code, he could do so.
- 2. Environmental Management Planning.** To convert the environmental policy into action, the egg production facility needs to develop and continuously implement an environmental management plan to satisfy the EMS. This plan will be different for each egg production facility but needs to include the following minimum components:
 - a) Evaluate Environmental Impacts:** The plan needs to establish and maintain a procedure to identify the environmental impacts of its activities, products, and/or services over which the facility can be expected to have an influence. Generally this procedure would involve self-analysis, but it could also include assessment by consultants, or conversations with extension workers, neighbors or public officials. The producer needs to ensure that the reduction of these impacts as well as issues identified by neighbors and others are considered in establishing its EMS objectives.
 - b) Evaluate Legal Requirements.** The plan needs to establish and maintain a procedure to identify and have access to current information on all environmental requirements in laws, regulations, ordinances, and/or permits

that apply to egg-production operations (including by-products of egg-production operations). Generally this procedure would involve ongoing interaction with UEP leadership, consultants or counsel, public officials or extension workers.

- c) **Set Objectives and Targets.** The plan needs to establish and maintain environmental objectives and targets that are measurable (whenever possible), and the time frame set up to achieve them. Generally this means that when setting these objectives, the facility needs to include objectives designed to assure compliance with applicable federal, state or local environmental regulations, Critical Management Programs (identified in Appendix B), potential significant environmental impacts, technological options, financial, operational, and business requirements, and the views of local stakeholders. The objectives and targets also need to be consistent with the commitments contained in the producer's environmental policy, including the commitment to comply with applicable Federal, state, and local environmental requirements.

3. Implementing the Environmental Policy and Plan. Implementing environmental plans is a key part of the Plan-Do-Check-Act model of management and a necessary part of the EMS. Producers wishing to gain approval of an EMS in order to gain coverage under a Model General NPDES Permit need to do the following:

- a) **Establish Environmental Management Procedures.** Establish and maintain procedures for ensuring compliance with applicable environmental requirements and to achieve the EMS objectives and targets, including:
 - 1) Designate who is responsible for compliance assurance tasks, implementing appropriate Best Management Practices (BMPs) for each Critical Management Program identified in Appendix B, and ensuring progress toward objectives and targets across the organization; and
 - 2) Establish schedules or frequencies for compliance assurance tasks, implementation of planned Best Management Practices (BMPs) in Critical Management Programs, and ensuring progress toward objectives and targets.
- b) **Align the Facility's Organizational Structure and Resources with the EMS.** Top management needs to establish and maintain an organizational structure that empowers those responsible for implementing the egg production facility's environmental policy and EMS, including:
 - 1) Define, record, and communicate to appropriate individuals all key roles, responsibilities, and authorities needed to facilitate effective

implementation of the producer's EMS;

- 2) Provide resources needed to implement the EMS, including manpower, specialized training, equipment, technology, and financial resources.
- 3) Appoint specific management representative(s) who have defined roles, responsibilities, and authority for:

Ensuring that environmental management system requirements are established, maintained, implemented in accordance with this EMS components document; and

Reporting on the performance of the environmental management system to top management for review and as a basis for improvement of the system.

- c) Train Key Individuals for Proper EMS Implementation.** Effective EMS implementation and achievement of the desired objectives and targets requires the following training and communication activities on the part of the egg producer:

- 1) Provide job-specific training for all personnel whose work is critical to implementation of the EMS, may have a significant environmental impact, or may potentially interfere with an egg producer's compliance with environmental legal requirements. Such personnel need to be competent on the basis of education, appropriate training, and/or experience, as required.
- 2) Provide awareness training to employees at each relevant function and level so they are aware of:

Their roles and responsibilities and the importance of meeting the operation's environmental policy and the requirements of the EMS, including attainment of EMS objectives and targets and emergency preparedness and response requirements; and

The potential consequences of departure from specified operating procedures.

- 3) Establish and maintain procedures for ongoing internal communications of policies, programs, and responsibilities between the various levels and functions within the producer's organization.

- d) Implement Appropriate BMPs and Operational Controls.** The heart of an EMS is the individual best management practices (BMPs) that are appropriate

for each egg production operation. These will vary by location, rainfall and other climatic factors, state and local requirements, management strategies, and other conditions.

- 1) Facilities need to identify BMPs that are appropriate for each Critical Management Program listed in Appendix B, using State BMP guidance, other BMPs identified in EPA's Model General Permit, or BMP guidance developed or approved by UEP for egg production facilities in the assessment and selection of appropriate BMPs.
- 2) Facilities need to establish procedures that ensure the timely and effective implementation of selected BMPs.

e) Implement an Emergency Preparedness and Response Program. Egg producers need to have procedures to prepare for and minimize emergencies. Among other things, such emergencies may come from storms, fires, loss of power or water, computer equipment failure or accidents while handling manure or wastewater.

- 1) Producers need to identify the potential for accidents and emergency situations, effectively respond to such accidents and emergency situations; and prevent and mitigate the environmental impacts that may be associated with such incidents.
- 2) Producers need to review and revise, where necessary, their emergency preparedness and response procedures, particularly after the occurrence of accidents or emergencies. The producer should periodically test such procedures, where practicable.

4. Checking on the Progress and Success of the EMS. Monitoring and evaluating the performance of the operations and activities implementing the environmental plans is a key part of the Plan-Do-Check-Act model of management and a necessary part of the EMS. Producers wishing to gain approval of an EMS in order to gain coverage under a Model General NPDES Permit need to check the following:

a) Implement Monitoring Procedures and Corrective Actions. To properly implement the EMS, the producer needs to regularly monitor and measure the key characteristics of facility operations and activities that could have a significant impact on the environment, evaluate compliance with relevant laws and regulations, and conduct corrective actions where appropriate. In general, this means that producers need to establish and maintain a procedure to regularly:

- 1) Monitor the implementation of relevant management procedures, operational controls and BMPs for each Critical Management Program

described in Appendix B;

- 2) Monitor the performance the EMS, based on the facility s policies, objectives and targets;
- 3) Monitor compliance with relevant federal, state and local environmental laws and regulations; and
- 4) Investigate and handle situations where it is found that the facility is not in conformance with any of the above, by implementing corrective actions, including actions to minimize any adverse environmental impacts, and actions to prevent recurrence of the concern in the future. Any such corrective or preventative actions represent changes in the procedures of the EMS to be recorded and implemented thereafter.

b) Keep Proper Records and Documentation. The producer needs to establish and maintain proper documentation of actions and records related to regulatory compliance requirements and implementation of the facility EMS.

- 1) Records need to be sufficient to demonstrate implementation of the EMS and allow for the review/verification of implementation of the EMS, particularly for critical management programs (including planned BMPs) by a third-party auditor. All appropriate observations by the producer also need to be documented.

- 2) Environmental records need to be maintained in such a way that:

They are readily retrievable and protected against damage, deterioration, or loss;

They are periodically reviewed, revised as necessary, and approved for adequacy by authorized personnel;

The current versions of relevant documents are available at all locations where operations essential to the effective functioning of the system are performed, especially critical management programs;

Obsolete documents are promptly removed form all points of issue and points of use, or otherwise assured against unintended use; and

Obsolete documents that need to be retained for legal reasons or for knowledge preservation are suitably identified; and

- 3) Environmental records need to be legible, identifiable, and traceable to the activity, product, or service involved.

c) Conduct Internal EMS Audits/Assessments. Facilities need to periodically

assess their efforts and identify needed improvements. The information developed by such assessments is confidential to the producer, but need to be documented. The internal EMS audits/assessments should address questions such as:

- 1) Does the design and content of the facility's EMS conform to this EMS components document, and include appropriate best management practices?
- 2) Are BMPs and operational controls under each critical management program (identified in Appendix B) being correctly implemented?
- 3) Have the EMS objectives and targets been met, or is acceptable progress being made toward the objectives and targets and is the facility remaining in compliance with the terms of the general permit?
- 4) Are environmental issues of concern to the local community being addressed?

5. Acting to Continuously Review and Improve the EMS. Facilities need to assess the status and results of the EMS to planned objectives, take steps, as necessary, to enhance its effectiveness, and facilitate meaningful communications with external parties about the performance of the EMS and their ideas on possible improvements.

a) Carry Out Management Reviews. The producer's top management needs to annually review the EMS to ensure its continuing suitability, adequacy, and effectiveness. The management review process needs to ensure that the necessary information is collected to allow management to carry out this evaluation. This review needs to be documented.

- 1) The management review needs to take into account results of monitoring of EMS implementation, internal and 3rd party audit results, and progress toward planned objectives and targets; and
- 2) The review needs to address the possible need for changes to the environmental policy, EMS objectives, or other components of the environmental management system, in light of the foregoing, changing circumstances, and/or the commitment to continual improvement.

b) External Communications. In developing and implementing its EMS, participating egg producing facilities need to:

- 1) Share information with neighbors and other interested stakeholders about their Code of Good Environmental Practice and the EMS as it is being developed;

- 2) Provide meaningful opportunities for input as the EMS is developed and provide feedback/responses to suggestions, issues, or concerns provided by local stakeholders regarding the EMS as it is implemented;
- 3) Make information available to interested stakeholders on the relative performance of the EMS, including compliance with regulatory requirements and results of 3rd party audits, and take steps to address environmental issues of concern to the community on an ongoing basis through the EMS.

APPENDIX D

Code of Good Environmental Practice

Code subscribers and EMS participants pledge to uphold the following principles of conduct:

Environmental Management System: To implement an environmental management system (EMS) consistent with the guidelines developed by the industry, EPA, States, and others, that will provide the mechanism for meeting the commitments identified below, and to make the EMS available for verification by a qualified independent third party to ensure effective ongoing operations.

Compliance: To meet or exceed all applicable federal, state, and local environmental requirements for egg production operations.

Quality Practices: To follow professional performance guidance to operate in an environmentally sound manner, and implement all applicable best management practices and good housekeeping practices for all operations and property.

Sustainable Manure Management Practices: To enhance the environment by committing to sustainable, environmentally acceptable manure and wastewater management, transportation and land application practices.

Preventative Maintenance: To prepare and implement a plan for routine inspection and preventative maintenance of facilities and equipment, including that used to store, manage, transport and land-apply manure and wastewater to ensure continuous effective operations.

Continual Improvement: To seek continual improvement of the operations to reduce negative impacts on the environment and on enjoyment of property.

Communications: To engage in regular, honest and effective communication with officials, neighbors and other stakeholders, employees, customers, and other interested citizens to respond to their concerns and the company progress to meeting the code of good practice.

APPENDIX E

Critical Management Programs

- Utilization of a closed watering systems to animals
- Maintain pest control programs (e.g., flies, rodents)
- Maintain dead bird disposal program
- Maintain odor management program
- Maintain a preventative maintenance program
- Maintain an emergency preparedness and response program
- Develop and implement a comprehensive nutrient management plan (CNMP) that is certified by an appropriate person

* As previously noted, UEP will develop, as part of its Model EMS Template, a recommended list of best management practices (BMPs) for each of the critical management programs listed above.

APPENDIX F

Stakeholder Involvement

Overall Stakeholder Involvement

This project, if successful, will affect several hundred individual egg producing facilities around the country. The success of the project is also heavily dependent on decisions by individual States to develop general permits for this industry. EPA can and will encourage States to do so, but cannot compel them to do so. For these reasons, a traditional stakeholder involvement plan like those developed for most XL projects, is not appropriate. However, stakeholder involvement is a central tenet of the project and will be accomplished at several levels as follows:

Project Workgroup -- the workgroup, led by UEP, includes a diverse set of stakeholders. These include egg producers, UEP staff, State and federal agencies, non-governmental organizations, and others. This workgroup developed all elements of the program described in the body of this Agreement and are prepared to support its implementation. The workgroup will also review the remaining elements of the program to be developed by UEP, as described in Section II of this Agreement.

State General Permits as individual States develop general permits for egg producers, these permits will be available for public comment and input from the public before they are issued.

Local Stakeholder Involvement Most importantly, stakeholder involvement will take place at the local level as facilities develop their EMSs and undergo 3rd party audits. As described earlier, facilities will communicate and take input from local stakeholder on an ongoing basis as their EMS is developed and implemented over time. Information on the results of EMS audits will be made available to regulatory authorities and key local stakeholders as part of the process of submitting a Notice of Intent (NOI) for coverage under general permits. As EMS implementation occurs, facilities will address issues raised by local stakeholders. Finally, all information from follow-up audits to ensure continued implementation of the EMS will be publicly available.

Public Input/Access to EMS Information

Facilities developing and implementing EMSs will work closely with local stakeholders and share information with them throughout the process, consistent with the commitment each facility has made through the Code of Good Environmental Practice. Specifically, this communication will take place in the following ways:

1. Facilities will communicate, take input from, and provide feedback to local stakeholders as the EMS is developed and EMS performance objectives are established in order to ensure that concerns raised by local stakeholders are addressed.
2. Once the facility has successfully completed the 3rd party audit to qualify for coverage under the general permit, it will publish a notice in a local newspaper indicating that the audit was successful and that the facility plans to submit a Notice of Intent (NOI) to comply with the terms of the state or EPA general permit. This notice will also be provided directly to key local stakeholders and will include a point of contact at the facility that can respond to any inquiries from the local community. The facility will respond to any inquiries it receives and provide information on these inquiries and its responses to them to the regulatory authority.
3. Information on audit results will also be sent to the permitting authority (state or EPA) and posted on a web-site maintained by the permitting authority, along with the NOI.
4. As the facility implements its EMS and goes through regular follow-up audits, information about the EMS and its performance will be made available and the facility will take steps to address issues raised by local stakeholders. Information on the results of follow-up audits will also be publicly available.