

Petition to Intervene in the Contested Case
Regarding Proposed Major Modification and Renewal
of the South Dakota CAFO General Permit

Submission Deadline: November 20, 2015

The following individual(s) is filing this Petition to Intervene in accordance with ARSD Section 74:50:02:05 in the contested case regarding the proposed major modification and renewal of the South Dakota General Permit for concentrated animal feeding operations (CAFO General Permit):

Anthony Helland

Print Name

According to ARSD 74:50:02:05, the request to intervene must also conform to contested case petitions as described in ARSD 74:50:02:02 as follows:

- (1) A statement of the petitioner's interest in the involved matter.
- (2) A statement of the recommendation contested, if any, and the relief and decision requested from the board.
- (3) A statement alleging the relevant facts and issues known to the petitioner, upon which the petitioner bases the contest or request to the board;
- (4) A statement of the legal authority and jurisdiction under which the hearing would be held, if known;
- (5) A reference to the particular statutes and rules involved, if known; and
- (6) The signature of the petitioner or the petitioner's attorney.

Statement of Petitioner's Interest

The Petitioner(s) has interest in the regulation of concentrated animal feeding operations and the protection of public health and the environment. The Petitioner(s) has participated in the informal and formal public comment period relevant to the proposed General Permit by submitting public comment and attending public meetings. As stated in our various public comments, the Petitioner(s) is concerned about the preservation of water quality in surface waters of South Dakota and the ability of the proposed General Permit to adequately regulate large-scale animal feeding operations.

Statement of Relevant Facts and Issues

The issues of concern for the Petitioner(s) related to the proposed CAFO General Permit have been provided in both the informal and formal public comments submitted to the DENR. A summary of those concerns include, but are not limited to the following:

1. Proper handling of manure and wastewater generated at CAFOs including the design requirements for earthen and plastic liners, leakage and seepage from waste facilities,
2. Proper disposal of manure and wastewater generated at CAFOs including the restrictions to tiled lands, 100 year floodplain, saturated or snow covered lands.
3. Transparency of operations including improved recordkeeping, annual reporting, and public access to documents, including an online searchable database.
4. Public and individual access to contested case procedures to be the same whether the General Permit is used as a state operating permit or a federal discharge permit.
5. Assurance and documentation that best management practices are able to adequately protect public health and the environment with respect to the collection, storage, transportation, and disposal of manure and wastewater generated by CAFOs.
6. Contamination of groundwater in areas where manure and wastewater are applied to agricultural lands.
7. Contents of manure management plans and the accountability that those plans are comprehensive and implemented properly.
8. Air pollution from CAFOs that pose a threat to public health and the environment, as well as the health of other livestock.
9. Permit fees and violation penalties are not proportional to the size of the CAFO.
10. Response time of the SD-DENR to public complaints regarding CAFOs.

Relief Requested

The petitioner(s) request relief in the following issues related to protecting public health and the environment:

1. The impacts on the water quality of the Big Sioux River Watershed from large agricultural developments and CAFO's have negatively impacted water the quality of the Big Sioux River, and her tributaries, flowing through the Sioux Fall area.
2. Negative impacts to the water quality of the Big Sioux River Watershed from industrial Ag and CAFO's have raised the risks to my health, safety, and welfare as well as other persons living in the Sioux Falls area.
3. These negative impacts and pollution of the Big Sioux River have also hindered public access and enjoyment of the river through restrictions of human contact with the contaminated water and as a result certain recreational activities.

Signatures of the Petitioner(s)

 _____ 11/20/15

Date

Date

WILKINSON & WILKINSON

ATTORNEYS AT LAW

103 JOLIET AVE., S.E. P.O.BOX 29

DE SMET, SOUTH DAKOTA 57231

TELEPHONE: 605 / 854-3378

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HARRY J. EGGEN (1922-1969)

ELLSWORTH F. WILKINSON (1923-2005)

TODD D. WILKINSON

MARCENE J. SMITH

GARY W. SCHUMACHER*

*ALSO LICENSED IN MINNESOTA

November 20, 2015

Steve Pirner, Secretary
SD Department of Environment
and Natural Resources
523 E. Capitol Avenue
Pierre, South Dakota 57501

RE: Petition to Intervene in the Matter of Reissuing the General Water
Pollution Control Permit for Concentrated Animal Feeding
Operations

Dear Secretary Pirner:

This office represents the South Dakota Cattlemen's Association and is filing this petition as counsel of record on behalf of the South Dakota Cattlemen's Association.

This petition is filed to intervene in the above referenced hearing for reissuing the general water pollution control permit for a concentrated animal feeding operations currently scheduled for a contested hearing on December 16, 2015, at 9:00AM in Pierre, South Dakota. It is our understanding the Department of Environment and Natural Resources has announced that the Division of Environmental Services - Feedlot Permit Program is recommending to the Secretary of the Department of Environment and Natural Resources to reissue the general surface water pollution control permit regulating manure containment and land application from concentrated animal feeding operations. The South Dakota Cattlemen's Association represents approximately one thousand members consisting of farmers, ranchers, stockers, and feedlot operations in the State of South Dakota. Many of our members would be impacted by the terms and conditions of the proposed permit.

Certain Concentrated Animal Feeding Operations are currently required to obtain permit coverage under a general or individual water pollution control permit by SDCL Chapter 34A-2-36.2. The terms of the general permit specify if an operation is required to obtain permit coverage, if they meet the definition of

a concentrated animal feeding operation, the maximum number of confined animals for a permitted facility, the length of confinement, and whether pollutants are discharged to waters of the state and other criteria relevant to determine whether an animal feeding operation falls within the permit scope and coverage.

As was noted in the comments submitted in connection with the draft permit, specifically, “Best Management Practices” under 1.1.4, we believe the last sentence in this section defining best management practices is misplaced and should be removed from this definition. The producer’s inclusion of best management practice in their nutrient management plan is more properly addressed on page 10 section 1.2.2-2J which already addresses best management practices.

We object to the terminology “Major Modification” as it appears that any change would be covered under this definition regardless how minor that change may be. We assert there should be some allowance for minor changes in crop rotations, additional acres in the nutrient management plan or other minor changes that will not significantly affect the environmental impact of the operation. Notifications to DENR with any change no matter how insignificant, in our operation is not only time consuming and burdensome for the producer, but a drain on DENR resources.

Under “Existing Operations Required to Obtain a Permit,” while we understand in 1.2.2.3 this is similar to current practice, there is a concern that the language in the opening paragraph in this section seems to imply that existing feedlot operations may be required to obtain a permit solely based upon the complaint, which may or may not be valid. We believe the following changes should be made to the first paragraph:

“Upon receipt of a signed complaint, the Secretary will conduct an inspection in response to the complaint. ~~determine whether an existing animal feeding operation is a concentrated animal feeding operation or should be designated as a medium or small concentrated animal feeding operation required to obtain coverage under this permit.~~ After conducting an Following the inspection, ~~in response to the complaint,~~ the Secretary will notify the producer of DENR’s findings and whether coverage under this permit is required.”

Under 1.4.3, #3, bb, “Feed and Other Raw Materials Storage”, as indicated in our comments on the earlier draft, we remain concerned about the necessity to contain runoff from feed stock piles and the design changes, and potentially significant associated costs, of updating existing facilities to meet this requirement. Additionally, we wonder how the current language might impact feedstuffs that are stored off site, i.e. silage or corn stored in nearby fields, but not actually at the feedlot.

In section 1.4.3, #4, e, “Ground Water Protection – Shrubs and Trees,” SDCA is particularly concerned about how the current language may impact tree rows/ shelter belts at existing facilities. We suggest either changing “shall” to

“should” or providing language that would allow evaluating the tree and shrub planting requirements on a case by case basis. The requirements should be determined after taking the height of the exterior berm into consideration for maximum odor mitigation by trees.

Regarding section 1.4.3, #5, d, “Temporary Stockpile Manure,” SDCA appreciates the addition of a provision that allows temporary stockpiling of manure for up to 120 days. This provision will be beneficial to effectively managing nutrients.

Under section 1.4.4, #1, a, “BMPs for Land Application of Manure,” please clarify if “crops” include grass in pastures. We hope manure application will continue to be allowed on pasture land.

In section 1.4.4, #1, g, 1&2, “BMPs for Land Application of Manure” we are unfamiliar with the term “down-gradient surface waters.” Please clarify or provide examples of such so that producers will better understand how to be in compliance.

Regarding section 1.4.4, #1, t, #6, “Manure Application on Saturated, Snow Covered, or Frozen Soil,” while we appreciate DENR’s consideration of the ongoing study by SDSU and others, we are concerned about how producers might determine the “upper 50% of the topography of an application field,” particularly in a situation where the topography is relatively flat. Rather, we believe #6 should be stricken as this point is better addressed in #10 indicating application should be restricted to land with slopes less than 4 percent.

In section 1.4.4, #3, v, “Solid Manure Sales/ Give Away,” while we appreciate the inclusion of language indicating the person who receives manure is responsible for complying with environmental regulations, we would prefer language that specifies the liability is expressly removed from the producer once the manure leaves his facility. We suggest the following:

Once the producer has completed the requirements of this section, s/he is no longer responsible for how the manure is stored or applied. The person who receives the manure assumes responsibility ~~is responsible~~ for storing the manure and land applying the manure so it does not cause pollution of waters of the state.

We reserve the right to submit additional testimony and evidence during the scheduled hearing.

Sincerely yours,

WILKINSON & WILKINSON



Todd D. Wilkinson

TDW:th

cc: South Dakota Pork Producers Council
cc: Ellie Bailey, Attorney

REFERENCES:

Water Quality Effects of Winter Application of Manure in SD 2011 to 2015

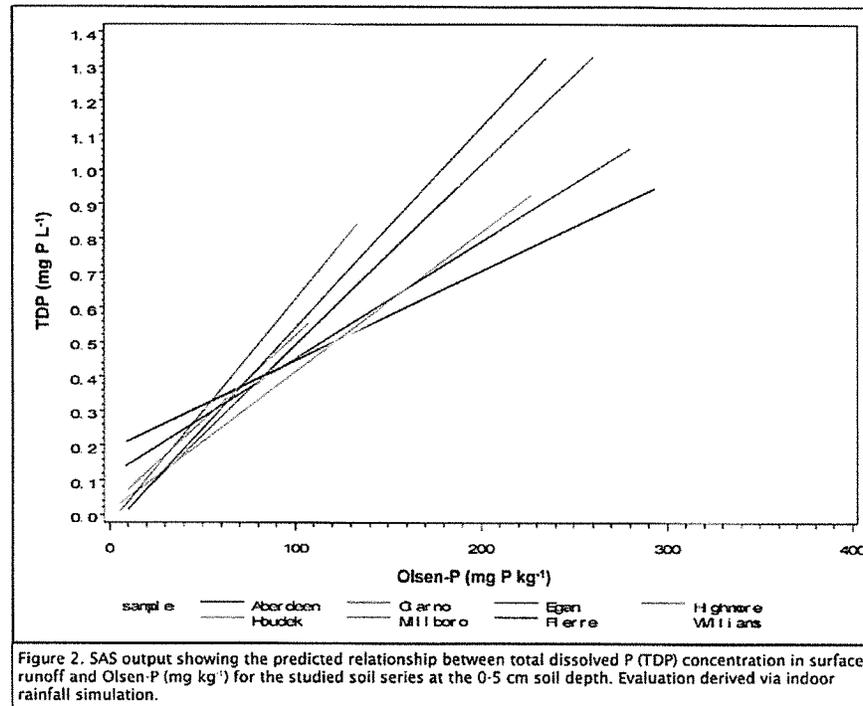
Introduction:

This project was initiated in the late 1990's in an effort to quantify the risk associated with manure management practices, particularly regarding winter manure application. SD producer groups, DENR, the EPA, and SDSU came together in order to investigate/develop best management practices. An ongoing watershed project on the effects of winter manure application practices on runoff water quality has been operational since 2011.

Progression of Research:

Bench Top Tests – Laboratory tests were performed to assess the level of dissolved phosphorus runoff correlated to soil type and phosphorus content of the soil. It was found that different soil types retain phosphorus at different rates, and that higher concentrations of soil test phosphorus indicate greater risk of phosphorus loss in runoff. An interesting aside is that soils tend to group into 2 major categories, high loss and low loss.

Field Plot Tests – The laboratory tests were repeated on larger field plots and the same observations were recorded. Figure 2 demonstrates the soils tested and rate of phosphorus loss. The soils are representative of common SD soils across the state. Please note the high slopes represent higher loss soils and lower slopes represent low loss soils.



Large Scale Field Test – One ~25 acre field with 3 distinct watersheds was provided by Mike Schmidt, a producer in Moody County. The research aims are to quantify the differences, if any, on runoff quantity and level of runoff nutrient contamination. The South watershed received manure in the winter on the higher 50% of the plot, the North watershed received

manure on the lowest 50%, and the third received no manure. All areas without manure were fertilized with conventional fertilizers. Data continues to be collected.

Current Results:

Overall, manuring the low ground results with slightly higher levels of contamination in runoff. There appears to be mostly insignificant differences between manuring the high ground and straight conventional fertilizer.

| Table - 1: Average Concentrations of Compounds in Runoff collected over 3 years | | | | | | | |
|---|--------------|-------------|-------------|-------------|-------------|-----------------|--------------|
| Watershed | Total N | nitrate-N | ammonia-N | Total P | Dissolved P | TSS | # of Samples |
| | mg/L | mg/L | mg/L | mg/L | mg/L | mg/L | |
| North | 8.60 | 2.34 | 2.57 | 1.30 | 1.09 | 157.45 | 11 |
| 95% CI* | (6.8 - 10.4) | (1.2 - 3.5) | (2.1 - 3.1) | (0.7 - 1.9) | (0.8 - 1.4) | (-16.3 - 331.2) | |
| South | 6.36 | 4.05 | 1.56 | 0.85 | 0.44 | 143.16 | 11 |
| 95% CI* | (4.5 - 8.3) | (2.2 - 5.9) | (0.9 - 2.2) | (0.1 - 1.7) | (0.2 - 0.7) | (-71.6 - 358.0) | |
| East | 6.50 | 5.44 | 1.52 | 0.50 | 0.51 | 38.81 | 9 |
| 95% CI* | (5.1 - 7.9) | (2.1 - 8.8) | (1.1 - 1.9) | (0.4 - 0.6) | (0.4 - 0.6) | (26.5 - 51.1) | |

North Watershed - Manured on lower 50% of topography, conventional fertilizer upper 50%

South Watershed - Manured on upper 50% of topography, conventional fertilizer lower 50%

East Watershed - No manure, conventional fertilizer only

* Confidence interval was calculated using Student's t-distribution

Above is the summary of 3 years of collected data. Note that none of the field plots discharged, on average, greater than 10 ppm nitrate, the drinking water standard. Ammonia discharges from all field treatments exceed 1 mg/L (ppm), these levels can be lethal to sensitive fish populations. Only the north watershed with manure application on the lowest 50% of the topography generated total dissolved phosphorus above the critical level of 1 mg/L proposed by Sharpey et al 1966 to limit lake eutrophication.

The study is ongoing. Automatic samplers utilized this year have dramatically increased the number of samples collected. A more complete assessment will be performed after all summer and fall runoff events are collected and analyzed. Currently, samples continue to be analyzed in the lab. This year's data will be compiled and assessed later this fall as analysis becomes available from the lab.

Conclusions:

The first 3 years of data suggest minimal differences between manuring the upper 50% of the topography and conventional fertilizer application. Winter manure application limited to the higher elevations on a field should be considered as a risk limiting management practice within the confines of appropriate nutrient additions to arable land. Limitations of the data to date include exclusion of high flow events due to difficulty in obtaining samples, and rare occurrence of high flow events during the first years'. This year's data should remedy this gap.

Summary prepared by Dr. Joe Darrington.

Kent,

Please accept this electronic version of SDDP's petition as an interested party to support all the recommendations in the General Permit CAFO hearing to reissue the General Permit with one exception. SDDP would desire to take exception to by initiating this petition to contest the proposed change on item e, page 26: SDDP understands that we would have the right to be present at the hearing to discuss this point.

1. The South Dakota Dairy Producers on behalf of their members has interest in this matter as it pertains to any member that is required to obtain a CAFO General Permit.

2. The recommendation of the DENR is:

Item e, page 26; If shrubs and small trees with a mature height of less than 25 feet are planted near a manure containment system, they shall be a minimum of 25 feet from the toe of the exterior berm of a holding pond or the foundation of a manure containment system. If trees with a mature height of greater than 25 feet are planted near a manure containment system, they shall be at least 50 feet from the toe of the exterior berm of a holding pond or the foundation of a manure containment system. Any volunteer trees and shrubs should be removed from the above boundaries depending on the species.

3. SDDP believes from real situations and logic that the proposed change would cause the trees to be ineffective in their designed purpose of dispersing odors. The proposed 50 foot setback from the toe of the exterior berm would cause some trees to be over 175 feet away and below the height of the berm due to distance suggested from the toe. SDDP will present information from Int'l Society of Arboriculturalist page 152 (height as a predictor of root spread) that that information is only effective in an urban setting. Dr Ball –SDSU Forestry statements do not agree with the 50ft from the outside of the toe scenario. Trees could be closer and a tree could be measured from the inside of the berm providing odor mitigation of what the intended purpose is for. He believes only hair like roots would be at a greater distance and therefore would allow trees to be closer.

SDDP believes trees could be planted 25- 50 feet(depending on the type of tree) out from the inside of the berm to allow effective dispersion of odor. Roots would not penetrate the berm compromising its integrity.

4. The legal authority and jurisdiction for this hearing was noticed by DENR under the General Permit for CAFO's.

5. Statutes referenced to in the notice. SDCL 34A-2-93, SDCL 1-26-17, SDCL1-26-27

6. Roger Scheibe, Executive Director, South Dakota Dairy Producers, Box 31, Brookings, SD 57006 sddairyproducers@gmail.com on behalf of its membership.

Roger Scheibe
South Dakota Dairy Producers
PO Box 31
Brookings, SD 57006
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Preserving and Enhancing a Sustainable Dairy Environment in South Dakota

Petition to Intervene in the Contested Case

Regarding Proposed Major Modification and Renewal

of the South Dakota CAFO General Permit

Submission Deadline: November 20, 2015

The following individual(s) is filing this Petition to Intervene in accordance with SDCL Section 74:50:02:05 in the contested case regarding the proposed major modification and renewal of the South Dakota General Permit for concentrated animal feeding operations (CAFO General Permit):

__David and Lisa Nehring (Petitioners)_____

Name

At: 27551 452nd Ave., Parker, SD 57053

Address

According to SDCL 74:50:02:05, the request to intervene must also conform to contested case petitions as described in SDCL 74:50:02:02 as follows:

- (1) A statement of the petitioner's interest in the involved matter.
- (2) A statement of the recommendation contested, if any, and the relief and decision requested from the board.
- (3) A statement alleging the relevant facts and issues known to the petitioner, upon which the petitioner bases the contest or request to the board;
- (4) A statement of the legal authority and jurisdiction under which the hearing would be held, if known;
- (5) A reference to the particular statutes and rules involved, if known; and
- (6) The signature of the petitioner or the petitioner's attorney.

Statement of Petitioner's Interest

The Petitioner(s) (David and Lisa Nehring) has interest in the regulation of concentrated animal feeding operations and the protection of public health and the environment. The Petitioner(s) (David and Lisa Nehring) has participated in the informal and formal public

comment period relevant to the proposed General Permit by submitting public comment and/or attending public meetings. As stated in our various public comments, the Petitioner(s) is concerned about the preservation of water quality in surface waters of South Dakota and the ability of the proposed General Permit to adequately regulate large-scale animal feeding operations.

Statement of Relevant Facts and Issues

The issues of concern for the Petitioner(s) (David and Lisa Nehring) related to the proposed CAFO General Permit have been provided in both the informal and formal public comments submitted to the DENR. A summary of those concerns include, but are not limited to the following:

1. Proper handling of manure and wastewater generated at CAFOs including the design requirements for earthen and plastic liners, leakage and seepage from waste facilities,
2. Proper disposal of manure and wastewater generated at CAFOs including the restrictions to tiled lands, 100 year floodplain, saturated or snow covered lands.
3. Transparency of operations including improved recordkeeping, annual reporting, and public access to documents, including an online searchable database.
4. Public and individual access to contested case procedures to be the same whether the General Permit is used as a state operating permit or a federal discharge permit.
5. Assurance and documentation that best management practices are able to adequately protect public health and the environment with respect to the collection, storage, transportation, and disposal of manure and wastewater generated by CAFOs.
6. Contamination of groundwater in areas where manure and wastewater are applied to agricultural lands.
7. Contents of manure management plans and the accountability that those plans are comprehensive and implemented properly.
8. Air pollution from CAFOs that pose a threat to public health and the environment, as well as the health of other livestock.
9. Permit fees and violation penalties are not proportional to the size of the CAFO.
10. Response time of the SD-DENR to public complaints regarding CAFOs.

Relief Requested

The petitioner(s) request relief in the following issues related to protecting public health and the environment:

1. Rescind CAFO zoning modifications made in the Turner County in 2015 in the zone five miles radius from the City of Parker.
2. In the absence of rescinding said zoning modifications, an immediate water purity study, characterized by best environmental impact practices, is to be commissioned and conducted entailing water sampling above, beside and below the site of said CAFO with results to be compared to a similar study after the installation of said CAFO. Evidence of change in water purity is to be followed by strict sanctions on the owners and operators of said CAFO until previous levels of water purity to be restored.
3. In addition, air quality and entomology studies, again characterized by best environmental impact practices, is to be commissioned and conducted entailing air and entomology sampling at locations surrounding the site of said CAFO with results to be compared to a similar study after the installation of said CAFO. Evidence of change in air purity or entomological characteristics are to be followed by strict sanctions on the owners and operators of said CAFO until previous air purity and entomological characteristics to be restored.
4. Finally land value impact study for homes, farms and acreages in the zone five mile radius to the site of the proposed CAFO is to be commissioned and conducted looking at adverse impact on land values in said region, caused by direct and indirect (e.g. crime rate) impacts of the operating of said CAFO. Results are to be published in a public forum following completion of study, but to be released no later than the initiation of construction of said CAFO.

Signatures of the Petitioner(s)

//original signed//

20 November 2015

David E. Nehring

Date

//original signed//

20 November 2015

Lisa M. Nehring

Date

Petition to Intervene in the Contested Case
Regarding Proposed Major Modification and Renewal
of the South Dakota CAFO General Permit

Submitted on November 20, 2015

Dakota Rural Action (DRA) and Don Kelley are filing this Petition to Intervene in accordance with ARSD Section 74:50:02:05 in the contested case regarding the proposed major modification and renewal of the South Dakota General Permit for concentrated animal feeding operations (CAFO General Permit).

According to ARSD 74:50:02:05, the request to intervene must also conform to contested case petitions as described in ARSD 74:50:02:02 as follows:

- (1) A statement of the petitioner's interest in the involved matter.
- (2) A statement of the recommendation contested, if any, and the relief and decision requested from the board.
- (3) A statement alleging the relevant facts and issues known to the petitioner, upon which the petitioner bases the contest or request to the board;
- (4) A statement of the legal authority and jurisdiction under which the hearing would be held, if known;
- (5) A reference to the particular statutes and rules involved, if known; and
- (6) The signature of the petitioner or the petitioner's attorney.

Statement of Petitioner's Interest

DRA has an interest in the regulation of concentrated animal feeding operations and the protection of public health and the environment. DRA is a 28-year old membership based family agriculture and conservation group that organizes South Dakotans to protect our family farmers and ranchers, natural resources, and unique way of life. Its mission is to build grassroots leadership through community organizing by giving people a strong voice in decisions affecting their quality of life. DRA organizes around issues statewide and has five community based chapters located in rural communities throughout eastern, north central, and western South Dakota.

Don Kelley, is a concerned citizen and advocate of agriculture, renewable energy, and land stewardship with serious public health concerns from impacts related to CAFO developments in South Dakota.

The Petitioners have participated in the informal and formal public comment period relevant to the proposed General Permit by submitting public comment, along with the Socially Responsible Agriculture Project (SRAP) and the South Dakota Farmer's Union (SDFU), and attending public meetings. As stated in our various public comments, the Petitioners are concerned about the

preservation of water quality in surface waters of South Dakota and the ability of the proposed General Permit to adequately regulate large-scale animal feeding operations.

Statement of Relevant Facts and Issues

The issues of concern for the Petitioner related to the proposed CAFO General Permit have been provided in both the informal and formal public comments submitted to the DENR by DRA, SRAP and SDFU. A summary of those concerns include, but are not limited to the following:

1. Proper handling of manure and wastewater generated at CAFOs including the design requirements for earthen and plastic liners, leakage and seepage from waste facilities,
2. Proper disposal of manure and wastewater generated at CAFOs including the restrictions to tiled lands, 100 year floodplain, saturated or snow covered lands.
3. Transparency of operations including improved recordkeeping, annual reporting, and public access to documents, including an online searchable database.
4. Public and individual access to contested case procedures to be the same whether the General Permit is used as a state operating permit or a federal discharge permit.
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6. Contamination of groundwater in areas where manure and wastewater are applied to agricultural lands.
7. Contents of manure management plans and the accountability that those plans are comprehensive and implemented properly.
8. Air pollution from CAFOs that pose a threat to public health and the environment, as well as the health of other livestock.
9. Permit fees and violation penalties are not proportional to the size of the CAFO.
10. Response time of the SD-DENR to public complaints regarding CAFOs.

Relief Requested

The Petitioner requests relief by the Board to modify the terms of the proposed CAFO General Permit to address the issues noted above, among other terms of the permit relating to protecting public health and the environment.

Signatures of the Petitioner



Frank James, Director of Dakota Rural Action

November 20, 2015

Date

Don Kelley

Don Kelly, Concerned Citizen and Advocate

November 20, 2015

Date

Petition to Intervene in the Contested Case
Regarding Proposed Major Modification and Renewal
of the South Dakota CAFO General Permit
Submission Deadline: November 20, 2015

The following individual(s) is filing this Petition to Intervene in accordance with SDCL Section 74:50:02:05 in the contested case regarding the proposed major modification and renewal of the South Dakota General Permit for concentrated animal feeding operations (CAFO General Permit):

George Bogenschutz

According to SDCL 74:50:02:05, the request to intervene must also conform to contested case petitions as described in SDCL 74:50:02:02 as follows:

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Statement of Petitioner's Interest

The Petitioner(s) has interest in the regulation of concentrated animal feeding operations and the protection of public health and the environment. The Petitioner(s) has participated in the informal and formal public comment period relevant to the proposed General Permit by submitting public comment and attending public meetings. As stated in our various public comments, the Petitioner(s) is concerned about the preservation of water quality in surface waters of South Dakota and the ability of the proposed General Permit to adequately regulate large-scale animal feeding operations.

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Relief Requested

The petitioner(s) request relief in the following issues related to protecting public health and the environment:

- 1.
- 2.
- 3.
- 4.

Signatures of the Petitioner(s)

George Bogenschutz, Nunda, SD

Nov 19, 2015

Petition to Intervene in the Contested Case

Regarding Proposed Major Modification and Renewal

of the South Dakota CAFO General Permit

Submission Deadline: November 20, 2015

The following individual(s) is filing this Petition to Intervene in accordance with SDCL Section 74:50:02:05 in the contested case regarding the proposed major modification and renewal of the South Dakota General Permit for concentrated animal feeding operations (CAFO General Permit): **Meghann Jarchow, 2523 Princeton Ave., Vermillion, SD 57069; 605-659-1889.**

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The issues of concern for the Petitioner(s) related to the proposed CAFO General Permit have been provided in both the informal and formal public comments submitted to the DENR. A summary of those concerns include, but are not limited to the following:

1. Proper handling of manure and wastewater generated at CAFOs including the design requirements for earthen and plastic liners, leakage and seepage from waste facilities,
2. Proper disposal of manure and wastewater generated at CAFOs including the restrictions to tiled lands, 100 year floodplain, saturated or snow covered lands.
3. Transparency of operations including improved recordkeeping, annual reporting, and public access to documents, including an online searchable database.
4. Public and individual access to contested case procedures to be the same whether the General Permit is used as a state operating permit or a federal discharge permit.
5. Assurance and documentation that best management practices are able to adequately protect public health and the environment with respect to the collection, storage, transportation, and disposal of manure and wastewater generated by CAFOs.
6. Contamination of groundwater in areas where manure and wastewater are applied to agricultural lands.
7. Contents of manure management plans and the accountability that those plans are comprehensive and implemented properly.
8. Air pollution from CAFOs that pose a threat to public health and the environment, as well as the health of other livestock.
9. Permit fees and violation penalties are not proportional to the size of the CAFO.
10. Response time of the SD-DENR to public complaints regarding CAFOs.

Signatures of the Petitioner(s)

Meghann Jarchow

20 November 2015

SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

In re:
HEARING FOR RE-ISSUING THE
STATE GENERAL WATER
POLLUTION CONTROL PERMIT
FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS

DENR CONTESTED CASE

**SOUTH DAKOTA PORK
PRODUCERS COUNCIL'S
PETITION TO INTERVENE
PURSUANT TO A.R.S.D.
74:50:02:05 AS A PARTY**

COMES NOW the South Dakota Pork Producers Council, a South Dakota non-profit corporation, and through its undersigned attorney, hereby submits its Petition to Intervene in this matter as an interested party pursuant to § 75:50:02:05 of the Administrative Rules of South Dakota. The basis for intervention is as follows:

1. Petitioner's interest in the involved matter: The South Dakota Pork Producers Council ("SDPPC") is an organization of farmers and related industry members who are involved in or contribute to the raising or marketing of swine in the State of South Dakota. Since 1996, SDPPC has worked with the South Dakota Department of Environment and Natural Resources ("DENR") to cooperatively develop permits for approval of individual operations for the housing and production of swine on farms in this state. SDPPC has an interest in the revisions and re-issue of the South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations ("General Permit"). Any changes in the General Permit have a direct impact on the members of SDPPC.

2. Statement of the recommendation contested, if any, and the relief and decision requested from the board: SDPPC respectfully requests that the board adopt the changes in the General Permit as recommended by DENR staff in the public comment period, and stands in opposition to any proposed changes which adversely affect animal agricultural production.
3. Statement alleging the relevant facts and issues known to the petitioner, upon which the petitioner bases the contest or request to the board: SDPPC does not have specific facts to address at this time but seeks to intervene so as to rebut any contentions or adverse proposals by other producer groups or general opponents to confined animal feeding operations. SDPPC members are farmers who seek to be good stewards of the land while producing pork and other porcine products to feed the world and provide numerous other beneficial uses of animals raised here in South Dakota. Upon information and belief, SDPPC anticipates certain opponents of the proposed changes may seek restrictions or conditions on approval of confined animal feeding operations that are not in the interests of the general public or the individual members of the SDPPC.
4. Statement of the legal authority and jurisdiction under which the hearing would be held: A.R.S.D. 75:50:02:06; SDCL 1-26-17 & 1-26-27; SDCL Ch. 34A-2.
5. Reference to the particular statutes and rules involved:
SDCL 34A-2-93 (general authority); SDCL 34A-2-112 (authority of Secretary to issue permit); SDCL 34A-2-30 through 34A-2-35 (administrative procedures for permit adoption and revision).

The SDPPC requests that it be allowed to appear as an intervener through undersigned counsel.

Dated: November 17, 2015.

DONAHOE LAW FIRM, P.C.

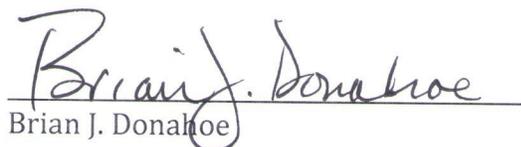


Brian J. Donahoe
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brian@donahoelawfirm.com
*Attorney for South Dakota Pork
Producers Council*

CERTIFICATE OF SERVICE

Upon inquiry with legal counsel for DENR, the only party to the case at the time this Petition was prepared was DENR. Therefore, SDPPC has made its filing with DENR by email and U.S. Mail, postage prepaid, on November 17, 2015 at the following address:

Department of Environment and Natural Resources
Division of Environmental Services
Feedlot Permit Program
523 East Capitol, Joe Foss Building
Pierre, South Dakota 57501
Attn: Mr. Kent Woodmansey Kent.Woodmansey@state.sd.us



Brian J. Donahoe

Petition to Intervene in the Contested Case
Regarding Proposed Major Modification and Renewal
of the South Dakota CAFO General Permit
Submission Deadline: November 20, 2015

The following individual(s) is filing this Petition to Intervene in accordance with SDCL Section 74:50:02:05 in the contested case regarding the proposed major modification and renewal of the South Dakota General Permit for concentrated animal feeding operations (CAFO General Permit):

Roger Loeschke and Ann Loeschke

According to SDCL 74:50:02:05, the request to intervene must also conform to contested case petitions as described in SDCL 74:50:02:02 as follows:

- (1) A statement of the petitioner's interest in the involved matter.
- (2) A statement of the recommendation contested, if any, and the relief and decision requested from the board.
- (3) A statement alleging the relevant facts and issues known to the petitioner, upon which the petitioner bases the contest or request to the board;
- (4) A statement of the legal authority and jurisdiction under which the hearing would be held, if known;
- (5) A reference to the particular statutes and rules involved, if known; and
- (6) The signature of the petitioner or the petitioner's attorney.

Statement of Petitioner's Interest

The Petitioner(s) has interest in the regulation of concentrated animal feeding operations and the protection of public health and the environment. The Petitioner(s) has participated in the informal and formal public comment period relevant to the proposed General Permit by submitting public comment and attending public meetings. As stated in our various public comments, the Petitioner(s) is concerned about the preservation of water quality in surface waters of South Dakota and the ability of the proposed General Permit to adequately regulate large-scale animal feeding operations.

Statement of Relevant Facts and Issues

The issues of concern for the Petitioner(s) related to the proposed CAFO General Permit have been provided in both the informal and formal public comments submitted to the DENR. A summary of those concerns include, but are not limited to the following:

Proper handling of manure and wastewater generated at CAFOs including the design requirements for earthen and plastic liners, leakage and seepage from waste facilities, Proper disposal of manure and wastewater generated at CAFOs including the restrictions to tiled lands, 100 year floodplain, saturated or snow covered lands.

Transparency of operations including improved recordkeeping, annual reporting, and public access to documents, including an online searchable database.

Public and individual access to contested case procedures to be the same whether the General Permit is used as a state operating permit or a federal discharge permit.

Assurance and documentation that best management practices are able to adequately protect public health and the environment with respect to the collection, storage, transportation, and disposal of manure and wastewater generated by CAFOs.

Contamination of groundwater in areas where manure and wastewater are applied to agricultural lands.

Contents of manure management plans and the accountability that those plans are comprehensive and implemented properly.

Air pollution from CAFOs that pose a threat to public health and the environment, as well as the health of other livestock.

Permit fees and violation penalties are not proportional to the size of the CAFO.

Response time of the SD-DENR to public complaints regarding CAFOs.

Signatures of the Petitioner(s)

Roger Loeschke
Ann Loeschke

November 19, 2015
November 19, 2015

SOUTH DAKOTA DEPARTMENT OF
ENVIRONMENT AND NATURAL RESOURCES

In re:
HEARING FOR RE-ISSUING THE
STATE GENERAL WATER
POLLUTION CONTROL PERMIT
FOR CONCENTRATED ANIMAL
FEEDING OPERATIONS

DENR CONTESTED CASE
**SONSTEGARD FOODS COMPANY'S
PETITION TO INTERVENE
PURSUANT TO A.R.S.D.
74:50:02:05 AS A PARTY**

COMES NOW Sonstegard Foods Company, a South Dakota corporation, and through its undersigned attorney, hereby submits its Petition to Intervene in this matter as an interested party pursuant to § 75:50:02:05 of the Administrative Rules of South Dakota. The basis for intervention is as follows:

1. Petitioner's interest in the involved matter: Sonstegard Foods Company ("Sonstegard Foods") is a family farming company which raises laying hens for egg production. Sonstegard Foods is one of the largest egg production companies in the United States. Over the past calendar year, Sonstegard Foods has been involved in seeking zoning approval for a confined animal feeding operation in South Dakota. As part of the process in siting an operation, Sonstegard Foods must address how it will obtain authority from the South Dakota Department of Environment and Natural Resources ("DENR") to construct, operate and house laying hens and egg processing facilities. Sonstegard Foods has an interest in the revisions and re-issue of the South Dakota General Water Pollution Control Permit for Concentrated

Animal Feeding Operations (“General Permit”). Any changes in the General Permit will impact plans and future operations of Sonstegard Foods or affiliated producers who raise pullets or otherwise work with Sonstegard Foods to produce eggs.

2. Statement of the recommendation contested, if any, and the relief and decision requested from the board:

Sonstegard Foods respectfully requests that the Secretary adopt the changes in the General Permit as recommended by DENR staff in the public comment period - with one exception - and stands in opposition to any proposed changes which adversely affect animal agricultural production. Sonstegard Foods opposes the use of animal unit equivalencies in classes of Concentrated Animal Feeding Operations unless those animal units are based on actual weight of the species and type of animal and waste handling system. The proposed changes do not reflect actual animal unit equivalencies used by states or counties. Sonstegard Foods urges DENR to adopt the animal unit equivalencies of the Minnesota Pollution Control Agency. See:

<http://www.pca.state.mn.us/index.php/view-document.html?gid=22440>

3. Statement alleging the relevant facts and issues known to the petitioner, upon which the petitioner bases the contest or request to the board:

Sonstegard Foods believes the animal unit equivalencies set forth in the General Permit have been unfairly used by opponents of animal feeding operations to claim a need for greater regulation or restrictions than any science or actual experience in the field supports as necessary for the

protection of the surface waters of the United States. Sonstegard Foods opposes restrictions or conditions on approval of confined animal feeding operations suggested by other interveners that are not in the interests of the general public or justified by scientific or appropriate objective metrics or evidence.

4. Statement of the legal authority and jurisdiction under which the hearing would be held: A.R.S.D. 75:50:02:06; SDCL 1-26-17 & 1-26-27; SDCL Ch. 34A-2.

5. Reference to the particular statutes and rules involved:

SDCL 34A-2-93 (general authority); SDCL 34A-2-112 (authority of Secretary to issue permit); SDCL 34A-2-30 through 34A-2-35 (administrative procedures for permit adoption and revision).

Sosntegard Foods Company requests that it be allowed to appear as an intervener through undersigned counsel.

Dated: November 20, 2015.

DONAHOE LAW FIRM, P.C.



Brian J. Donahoe

Brian J. Donahoe

401 East 8th Street, Suite 215

Sioux Falls, SD 57103-7008

Telephone: (605) 367-3310

Facsimile: (866) 376-3310

brian@donahoelawfirm.com

Attorney for Sonstegard Foods

Company

And

South Dakota Pork Producers

Council

CERTIFICATE OF SERVICE

Sonstegard Foods Company has made its filing with DENR by email and U.S. Mail, postage prepaid, on November 20, 2015 at the following address:

Department of Environment and Natural Resources
Division of Environmental Services
Feedlot Permit Program
523 East Capitol, Joe Foss Building
Pierre, South Dakota 57501
Attn: Mr. Kent Woodmansey Kent.Woodmansey@state.sd.us

And the undersigned has caused the foregoing to be served by email on the following individuals or organizations that have filed Petitions to Intervene at the time of this filing:

| | |
|---|--|
| Anthony Helland | tony.helland@gmail.com |
| Dakota Rural Action (Frank James) & Don Kelly | mthoreau@dakotarural.org |
| David and Lisa Nehring | nehringd@crow.edu |
| George Bogenschutz | mtnmach@itctel.com |
| Meghann Jarchow | Meghann.Jarchow@usd.edu |
| Roger and Ann Loeschke | arloe@tnics.com |
| South Dakota Cattlemen's Association | |
| Wilkinson & Wilkinson – attny Todd Wilkison | todd@wslawfirm.net |
| South Dakota Dairy Producers | sddairyproducers@gmail.com |
| William Powers | wjp@swcp.com |

As legal counsel for South Dakota Pork Producers in this matter, I have also provided a copy to that client as service.



Brian J. Donahoe

William Powers
512 W Main St
White, SD 57276
wjp@swcp.com
605-629-3000

Petition to Intervene in the Contested Case
Regarding Proposed Major Modification and Renewal
of the South Dakota CAFO General Permit
at a meeting to be held on December 16, 2015
in the Matthew Training Center
in Pierre, SD

My principal concerns relative to the CAFO permitting process are:

- 1) If the general permit is to stipulate a minimum set of requirements, on what basis is that minimum established? Because it cannot likely anticipate all possible permitting situations, there must be ample opportunity for local authorities to augment the permitting process. On the other hand, CAFO development would benefit from a transparent process with the permitting requirements being known upfront. As such, an extensive local review and modification of permitting requirements undermines CAFO development. It seems, then, that the needs of both local oversight and investors can be satisfied by a DENR permitting process that avoids the need for local intervention in the vast majority of cases. Consequently, **I recommend the best way to avoid unpredictable local resistance to the CAFO permitting process is to incorporate a large fraction of those local concerns.**
- 2) The primary local concerns are those of water and air quality. These environmental concerns are, of course, present for all livestock operations, but with the increased concentration of livestock there is an increased risk of these environmental deficiencies. The permitting process addresses water quality, but not air quality. Both can be dangerous for both nearby residents and CAFO workers. Anyone living in an agricultural area expects some odors to come with it. Still, it seems that the permitting process should say something about this, even if it is considered exclusively from an OSHA perspective. Consequently, **I recommend that air quality be addressed in the permitting process.** Water quality is a complex and potentially more hazardous than air quality. I am glad to see that water quality is addressed in the permitting process. What concerns me, however, is twofold. First, the permit allows significant leakage from manure lagoons, when there are impermeable layers commercially available. **I would recommend that such impermeable barriers be employed in all manure lagoons.** Second, it seems that the inspection process presumes that we fully understand the leakage from manure lagoons. As a result, only in the case of “shallow” aquifers is monitoring employed. Instead, it seems to me that we can never sufficiently

understand the specifics of lagoon leakage to warrant not monitoring both the water and soil surrounding the manure lagoon. It is good that CAFO owners are required to inspect their lagoons and that there are annual state inspections, but these inspections all appear to presume that what can be visibly detected is sufficient to guarantee the integrity of what is not seen. Instead, **I would recommend that a more scientific methodology be employed by requiring monitoring wells and soil tests in all cases.** By stipulating this in the permitting process, CAFO owners can budget their plans accordingly, rather possibly facing costly environmental lawsuits.

- 3) **Because of the possibility of costly environmental cleanup, I would recommend that CAFOs be required to carry insurance or the equivalent to cover such contingencies.** Should such environmental damage occur, it is likely to bankrupt the CAFO, leaving it to the public coffers to come up with the necessary funds.

Sincerely,
William J. Powers
White, SD