

STATEMENT OF BASIS

PERMIT TYPE: **General Permit for Concentrated Animal Feeding Operations**

PERMIT NUMBER: **SDG100000**

The cover page of the general permit will be replaced with a copy containing the assigned permit number and will indicate whether the permit is a state permit or federally enforceable National Pollutant Discharge Elimination System (NPDES) permit once coverage is authorized.

Purpose of Statement of Basis

The Administrative Rules of South Dakota (ARSD), Chapter 74:52:05:07, require that a Statement of Basis be prepared for each surface water discharge permit. The Statement of Basis briefly sets forth the principal facts in preparing the proposed permit.

Permit Description

This general permit contains discharge requirements and limits that are based on technology and water quality considerations, prohibitions, best management practices, and other conditions applicable to the types of wastewater generated at concentrated animal feeding operations (CAFO).

Background

South Dakota Codified Law 34A-2-112 gives the Secretary authority to issue a general permit. ARSD 74:52:02:46 outlines the requirements that must be met in order to issue a general permit. The sources to be covered under a general permit must meet the following requirements:

1. Involve the same or substantially similar types of operations;
2. Discharge the same types of wastes;
3. Require the same effluent limitation or operating conditions;
4. Require the same or similar monitoring; and
5. In the opinion of the Secretary, be more appropriately controlled under a general permit.

CAFOs meet all of these requirements and, therefore, a general permit is appropriate for this source.

Definitions

An “Animal Feeding Operation” is a lot or facility that stables, confines, and feeds or maintains livestock in either an open or housed lot for a total of 45 days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other (within one mile), or if they use a common area or system for the proper application of manure.

A “Concentrated Animal Feeding Operation” is an animal feeding operation that meets the following criteria for a large, medium, or small concentrated animal feeding operation:

1. A large concentrated animal feeding operation as described in Table 1, below.
2. A medium concentrated animal feeding operation as described in Table 1, below, and meets one of the following conditions: 1) Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or 2) Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
3. A small concentrated animal feeding operation as described in Table 1, below, and designated as a concentrated animal feeding operation by the Secretary considering the following factors:
 - a. The size of the animal feeding operation and the amount of manure or process wastewater reaching waters of the state;
 - b. The location of the animal feeding operation in relation to waters of the state;
 - c. The means of conveyance of manure and process wastewater into waters of the state; and
 - d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure and process wastewater into waters of the state.

Table 1. Number of Animal to Define Large, Medium, and Small Concentrated Animal Feeding Operations			
Type of Animal Feeding Operation	Concentrated Animal Feeding Operations		
	Large Animal numbers equal to or more than:	Medium Animal numbers equal to:	Small Animal numbers less than:
Dairy cows (mature – milked or dry)	700	200 to 699	200
Veal Calves	1,000	300 to 999	300
Cattle other than mature dairy cows or veal calves ¹	1,000	300 to 999	300
Swine (weighing more than 55 pounds)	2,500	750 to 2,499	750
Swine (weighing less than 55 pounds)	10,000	3,000 to 9,999	3,000
Horses	500	150 to 499	150
Sheep or Lambs	10,000	3,000 to 9,999	3,000
Turkeys	55,000	16,500 to 54,999	16,500
Laying hens or broilers ²	30,000	9,000 to 29,999	9,000
Chickens, other than laying hens ³	125,000	37,500 to 124,999	37,500
Laying hens ³	82,000	25,000 to 81,999	25,000
Ducks ²	5,000	1,500 to 4,999	1,500
Ducks ³	30,000	10,000 to 29,999	10,000
Geese	30,000	10,000 to 29,999	10,000

¹ Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs.

² If the animal feeding operation uses a liquid manure handling system.

³ If the animal feeding operation uses other than a liquid manure handling system.

NOTE: Other animal types not listed in the above table may be considered on a case-by-case basis.

“Designed to Not Discharge” is any housed lots with covered manure containment that submits a permit application that complies with this permit. Housed lots or open lots with uncovered manure containment systems that apply for the state permit option of this permit and New Source swine, poultry and veal operations that apply for the NPDES permit option of this permit shall

include an evaluation of their manure management system using the Natural Resource Conservation Service's (NRCS) Soil Plant Air Water (SPA W) hydrology tool or an equivalent model indicating the manure management system with a final modeled result showing no discharges from the designed uncovered manure storage structure to be designed to not discharge. The evaluation shall include all inputs to SPA W for the previous 100 years consistent with the operation's nutrient management plan, with the final modeled result showing no overflows from the designed uncovered manure storage structure. For those operations where 100 years of local weather data for the operation's location is not available, operations may use a simulation with a confidence interval analysis conducted over a period of 100 years.

NOTE: CAFOs that submit an application indicating they are designed to not discharge are eligible to be processed as a state permit if that is indicated on the Notice of Intent. CAFOs with a state permit that discharge may be subject to enforcement for discharging without a NPDES permit. An NPDES permit is required for CAFOs that discharge to waters of the state. CAFOs with an NPDES permit can discharge in accordance with the requirements of this permit.

Operations Required to Obtain Permit Coverage

An animal feeding operation (see definition) is subject to this permit if one or more of the following criteria are met:

1. It is a CAFO (see definition and SDCL 34A-2-36.2);
2. A local level of government, such as a county commission or planning and zoning committee, requires coverage;
3. It is a large CAFOs located in other states or in Indian Country that stockpiles or land applies un-manipulated manure or process wastewater on land under the jurisdiction of South Dakota;
4. The operation is an animal feeding operation voluntarily requesting permit coverage; or
5. The Secretary designates the animal feeding operation as a CAFO.

How to Obtain Permit Coverage

The permit includes application requirements for existing operations with an approved permit application or permit coverage prior to the effective date of the permit; permitted operations making a major modification to their operation; permitted operations that will have a change in producer; existing operations without a DENR approved manure management system; existing operations required to obtain permit coverage; and new operations. The permit includes minimum location standards the producer shall consider when selecting a site for a new CAFO. The general elements of a permit application are a Certification of Applicant form, a Notice of Intent form, engineering plans and specifications for the manure management system, and a nutrient management plan.

In addition to the Certification of Applicant form, the permit requires applicants that are representing a corporation, partnership, limited liability partnership (LLP), limited liability corporation (LLC), or trust to provide information on their legal structure including any parent corporation or subsidiary corporations of the applicant. The applicant shall also identify the name, title/position, and residential address (a P.O. Box is not acceptable) of every officer, general partner, LLP partner, LLC member, trustee, investor, director, or person performing a

function similar to a director; the applicant, and each person who is the recorded or beneficial owner of 10 percent or more of any class of voting stock of the applicant, or any other responsible official(s) of the applicant with legal or decision making responsibility or authority for the operation. This requirement has been included in the permit so the Secretary can verify SDCL 1-40-27 will be met for these entities.

The permit includes a section that describes permit application processing. In response to a 2011 U.S. Court of Appeals for the Fifth Circuit decision in *National Pork Producers Council v. EPA*, which vacated portions of the Agency's 2008 CAFO rule, the EPA issued a regulation on July 19, 2012, that only requires NPDES permits for CAFOs that discharge. South Dakota Codified Law requires all CAFOs to operate under a general or individual water pollution control permit. Because of this difference, this permit gives CAFOs the option of applying for a state or NPDES permit. A state permit is issued using the Secretary's authority in SDCL 34A-2 and ARSD, Article 74:52. An NPDES permit is issued using the Secretary's authority in SDCL 34A-2, ARSD, Article 74:52, and the authority to issue NPDES permits granted to the Secretary by the U.S. EPA in the December 30, 1993, NPDES delegation document between U.S. EPA and State of South Dakota. The producer must indicate whether they are applying for a state or NPDES permit on the Notice of Intent form submitted as part of their application.

Differences between State and NPDES Permit Conditions	
State Permit Conditions	NPDES Permit Conditions
Any discharge from an operation's manure management system is a permit violation	Certain operations are allowed to have a discharge from their manure containment system in the event of a 25-year, 24-hour storm event if the manure management system is properly designed, constructed, operated, and maintained
Applications for new operations or for those increasing their animal numbers are public noticed in a local paper with a 30-day comment period. DENR will respond to any comments received during the comment period. No opportunity for a contested case hearing on the permit application.	Applications for new operations or for those increasing their animal numbers are public noticed in a local paper with a 30-day comment period. Permitted operations with a Certificate of Compliance making major modifications (see definitions) without increasing their animal numbers are public noticed on DENR's One Stop Public Notice web site for a 14-day comment period. DENR will respond to any comments received during the comment period. There is an opportunity for a contested case hearing on the Feedlot Permit Program's recommendation to issue or deny permit coverage
Annual reports must include the same information as in the current general permit	Annual reports must include the same information required by the state permit plus the actual crop(s) planted and actual yield(s) for each field where manure, litter, or process wastewater was applied, copies of the results from manure, litter, process wastewater and soil sampling, copies of the calculations showing the total nitrogen and phosphorus (if required) to be applied to each field including the amount of any supplemental fertilizer applied during the previous 12 months for fields owned, rented, or leased by the producer

Permit and reporting information will be maintained by the state	Permit and reporting information will at some time be maintained in an EPA data system
Results of the Natural Resource Conservation Services' Soil Plant Air Water (SPA) model verifying the manure management system is designed to not discharge is required for operations with open lots or open manure containment systems	Results of the Natural Resource Conservation Services' Soil Plant Air Water (SPA) model verifying the manure management system is designed to not discharge is only required for New Source swine, poultry, and veal operations with open manure containment systems

NPDES Permit Application Processing:

1. Upon receipt, the Secretary shall review the permit application to make a preliminary determination whether it is complete and to verify it meets the requirements of this permit. The Secretary may request additional information if the application is incomplete or if additional information needs to be submitted to verify the requirements of the general permit will be met.
2. The Feedlot Permit Program's recommendation of approval, conditional approval, or denial of permit coverage shall be public noticed once in a newspaper in the general locality of the feeding operation and on DENR's One Stop Public Notice website (<http://denr.sd.gov/public/>). The notice shall appear at least 30 days prior to the Secretary issuing final approval, conditional approval, or denial of the permit application. The producer shall be responsible for paying for the newspaper notice. The notice shall contain information on the feeding operation to include the location, number of animals, a brief description of the proposed manure management system, the legal description of the land in the nutrient management plan, the Feedlot Permit Program's recommendation, and where to obtain further information. The public notice shall include information on how to submit comments or request a contested case hearing. A request for a contested case hearing shall be in writing and shall be prepared and filed in accordance with ARSD 74:50:02:02.
3. The Feedlot Permit Program shall prepare a written response to all written comments received during this period and, if necessary, may require the producer to revise the permit application.
4. If a contested case hearing is requested, the Secretary shall schedule a contested case hearing.
5. The contested case hearing shall be public noticed once in a newspaper in the general locality of the feeding operation and on DENR's One Stop Public Notice website at least 30 days before the hearing.
6. If a contested case hearing is held, the Secretary shall issue a final decision based on the outcome of the hearing and issue permit coverage, issue permit coverage with conditions, or deny permit coverage. If permit coverage is granted at that time, the Secretary shall conditionally approve plans and specifications submitted as part of the permit application. It is a violation of this general permit if a producer does not follow the conditions of the Secretary's approval.
7. If no contested case hearing is requested, the Secretary shall conditionally approve or deny the operation's plans and specifications and grant or deny permit coverage. It is a violation of this general permit if a producer does not follow the conditions of the Secretary's approval.

8. Starting construction of the manure management system before receiving general permit coverage is a violation of this permit. If permit coverage is granted, the producer can begin any construction included as part of their permit application. Once construction has commenced, the producer has three years to complete construction and submit a Notice of Completion. If construction has not started within two years of receiving permit coverage, or if construction has not been completed within three years following the start of construction, approval of the plans and specifications is expired. Operations that received an approval letter from the Secretary under the 2003 general permit with approval that has not expired can proceed with construction of the manure management system as long as the operation will meet the requirements of this permit. If additional documentation is needed to demonstrate the requirements of this permit will be met, it shall be submitted with revised plans or as-built plans with a Notice of Completion.
9. Feedlot Permit Program staff shall conduct a minimum of one construction inspection in accordance with ARSD 74:57:01:03.
10. Upon completion of construction, the producer shall submit to DENR the results of any required construction testing and a Notice of Completion (Appendix A) that has been completed by a South Dakota licensed professional engineer or, to the extent authorized by state law, prepared by the U.S. Department of Agriculture – Natural Resources Conservation Service.
11. If all conditions of approval and permit conditions are met, the Secretary shall issue a Certificate of Compliance and the operation can populate its production area. Populating the production area before the Secretary issues a Certificate of Compliance and at any time exceeding the maximum number of animals listed on the Certificate of Compliance is a violation of this permit.
12. If at any time after a permit application is public noticed and before a Certificate of Compliance is granted, the producer's permit application is significantly changed; the application shall start the permitting process over. This includes a new public notice. Significant changes include:
 - a. Any revised or as-built plans that include a change in location of the process wastewater containment system where additional soil borings are required;
 - b. A change to the type of manure or process wastewater storage structure;
 - c. An increase in the amount of manure or process wastewater generated;
 - d. A decrease in the manure or process wastewater storage volume in the manure containment system; or
 - e. A modification to the nutrient management plan resulting in a change in a planned crop rotation or an increase in land application field acres.
13. If after an operation receives a Certificate of Compliance, the producer plans to make a major modification to their operation, excluding an increase in animal numbers, the producer must submit a modified permit application. The Feedlot Permit Program's recommendation for approval, conditional approval, or denial shall only be public noticed on DENR's one stop public notice website (<http://denr.sd.gov/public/>) for 14 days. The notice shall contain information on the feeding operation to include the location, number of animals, a brief

description of any proposed modifications to the manure management system or the nutrient management plan, and where to obtain further information. The department shall respond to any comments submitted. A contested case hearing can be requested, but only addressing the modifications being proposed in the notice. The requirement for a 14 day public notice period only on the department's website is included in the permit because many nutrient management plan changes, such as field additions, are requested in the Spring and Fall when producers may have a short time to land apply manure due to cropping practices and the weather. The U.S. EPA's 2012 regulations gave delegated states the authority to set the notice length and method for these types of changes.

14. If after an operation receives a Certificate of Compliance, the producer plans to have more animals present than the maximum number of animals listed on their Certificate of Compliance, the producer must submit a modified permit application. The Feedlot Permit Program's recommendation of approval, conditional approval, or denial of permit coverage shall be public noticed once in a newspaper in the general locality of the feeding operation and on DENR's One Stop Public Notice website (<http://denr.sd.gov/public/default.aspx>). The notice shall appear at least 30 days prior to the Secretary issuing final approval, conditional approval, or denial of the permit application. The notice shall contain information on the feeding operation to include the location, number of animals, a brief description of the proposed manure management system, the legal description of the land in the nutrient management plan, the Feedlot Permit Program's recommendation, and where to obtain further information. The public notice shall include information on how to submit comments or request a contested case hearing. A request for a contested case hearing shall be in writing and shall be prepared and filed in accordance with ARSD 74:50:02:02. The requirement to public notice an increase in animal numbers has been a permit requirement since the department's general permit for concentrated swine feeding operations was issued in 1997 so is included in this permit.

State Permit Application Processing:

1. Upon receipt, the Secretary shall review the permit application to make a preliminary determination whether it is complete. The Secretary may request additional information if the application is incomplete or additional information needs to be submitted to verify the requirements of the general permit will be met.
2. If the Secretary makes a preliminary determination that the application is complete, the Secretary shall notify the public as described in Item 3 below.
3. For any permit application for a new operation or existing operation covered under this permit increasing its maximum permitted animal numbers the Secretary shall prepare a notice. If an operation has coverage under the 2003 general permit, a public notice is only required if the operation is increasing its maximum permitted animal numbers. The notice shall be published once in a newspaper of general circulation in the locality of the feeding operation and on DENR's one stop public notice website (<http://denr.sd.gov/public/default.aspx>). The notice shall appear at least 30 days prior to the Secretary issuing approval of the permit application. The producer shall be responsible for paying for the newspaper notice. The notice shall contain information on the feeding operation to include the location, number of animals, a brief description of the proposed manure management system, the legal description of the land in the nutrient management

plan, where to obtain further information, and how to submit written comments. There is no opportunity for a contested case hearing on the application.

4. The Feedlot Permit Program shall prepare a written response to all written comments received during this period and, if necessary, may require the producer to revise the permit application.
5. If the Secretary determines the permit application meets the terms and conditions of this permit, the Secretary shall issue an approval letter with or without conditions. It is a violation of this general permit if a producer does not follow the conditions of the Secretary's approval.
6. If the Secretary denies an application, the Secretary shall give written notice of the denial to the applicant giving the applicant 30 days to request in writing a hearing before the Secretary. The Secretary may affirm, modify, or reverse the initial decision based upon evidence presented at the hearing.
7. Approval from the Secretary authorizes the producer to proceed with construction of the manure management system. Starting construction of the manure management system before receiving the Secretary's approval is a violation of this permit.
8. Upon approval from the Secretary, the producer shall start construction of the manure management system within two years. Once construction has commenced, the producer has three years to complete construction and submit a Notice of Completion (Appendix A). If construction has not started within two years of the approval date or if construction has not been completed within three years following the start of construction, approval is expired. Operations that received an approval letter from the Secretary under the 2003 general permit with approval that has not expired can proceed with construction of the manure management system as long as the operation will meet the requirements of this general permit. If additional documentation is needed to demonstrate the requirements of this general permit will be met, it shall be submitted prior to obtaining permit coverage.
9. Feedlot Permit Program staff shall conduct a minimum of one construction inspection in accordance with ARSD 74:57:01:03.
10. Upon completion of construction, the producer shall submit to DENR the results of any required construction testing and a Notice of Completion (Appendix A) that has been completed by a South Dakota licensed professional engineer or, to the extent authorized by state law, prepared by the U.S. Department of Agriculture – Natural Resources Conservation Service.
11. If all conditions of approval and requirements of this permit have been met for issuing permit coverage, the Secretary shall issue coverage under this general permit, a Certificate of Compliance, and a letter informing the producer of when coverage under this general permit begins. The Certificate of Compliance allows the producer to populate the facility up to the maximum number of animals listed on the Certificate of Compliance and to begin using the manure management system in accordance with the conditions of this permit. Populating the production area before the Secretary issues a Certificate of Compliance and at any time exceed the maximum number of animals listed on the Certificate of Compliance is a violation of this general permit.

12. If at any time after a general permit application is public noticed and before general permit coverage is granted, the permit application is modified as follows; it shall start the permitting process over. This includes a new public notice. Modifications include:
 - a. Any revised or as-built plans that include a change in location of the process wastewater containment system where additional soil borings are required;
 - b. A change to the type of manure or process wastewater storage structure;
 - c. An increase in the amount of manure or process wastewater generated;
 - d. A decrease in the manure or process wastewater storage volume in the manure containment system; or
 - e. A modification to the nutrient management plan resulting in a change in crop rotation or an increase in land application field acres.
13. In the event a discharge occurs at a CAFO designed to not discharge, the operation shall be allowed to maintain its no discharge status and state permit when the following conditions are met:
 - a. The Secretary determines that the specific cause has been appropriately corrected so the CAFO does not discharge; and
 - b. The CAFO has not had two discharges at a given site for the same cause in any five year period.
14. If at any time the producer wants to change the status of their operation from designed to not discharge (state permit) to an NPDES permit where a discharge may be allowed, the producer needs to submit notice to DENR and DENR shall process their request in accordance with the requirements in Section 1.2.3. of this permit where certain discharges are allowed.

Permit Termination and Closure Requirements

The permit contains permit and closure requirements that are the same as in the department's current general permit to ensure that manure and process wastewater is properly land applied before permit coverage is terminated at operations that are closing.

Effluent Limits

The following effluent limits apply to CAFOs. The limits are based on 40 CFR (Code of Federal Regulations) Part 412 and ARSD Chapter 74:52:10 and best professional judgement.

1. **All Operations with a State Permit or New Source Swine, Poultry, and Veal Operations, and Other Housed Lots with Covered Manure Containment Systems with an NPDES Permit.** Effective immediately and lasting through the life of this permit, the producer shall have no discharge of solid or liquid manure, litter, compost, raw material, or process wastewater from the animal feeding operation and the manure management system to waters of the state.
2. **Open Lots or Housed Lots with Uncovered Manure Containment Systems with an NPDES Permit.** Effective immediately and lasting through the life of this permit, the producer shall have no discharge of solid or liquid manure, litter, compost, raw materials, or

process wastewater from the animal feeding operation and the manure management system to waters of the state. The only time this permit allows a discharge of process wastewater to waters of the state is when precipitation causes a discharge from a manure management system containment structure as long as:

- a. The manure containment system is designed, constructed, operated and maintained at all times to contain all manure, litter, and process wastewater, including the runoff and direct precipitation from a 25-year 24-hour precipitation event and is in compliance with the terms and conditions set forth in this permit;
- b. A daily record of measurable rainfall events shall be recorded. The producer can use an onsite rain gauge to measure precipitation amounts. Measurements taken from the rain gauge must be recorded to the nearest half (1/2) of an inch. Producers do not need to update their records on any day when there is no precipitation.
- c. The producer has inspection records indicating the operation has been properly operated and maintained;
- d. The discharge is the result of the precipitation event(s);
- e. No feasible alternative to discharging existed;
- f. Only manure or process wastewater in excess of the storage capacity of the manure containment system or necessary to prevent system failure is discharged to waters of the state; and
- g. DENR is notified in accordance with the twenty-four hour reporting section of this permit, and the county emergency manager for the county where the operation is located is notified.

Design, Construction, Operation, and Maintenance Requirements

The general permit contains design, construction, operation, and maintenance requirements to ensure operations can comply with the permit's effluent limits, protect surface water quality, protect ground water quality, and ensure manure management systems are designed and constructed using proper engineering and construction standards. This section of the permit and Appendix G of the permit contains requirements to determine whether process wastewater containment structures are located over a shallow aquifer and whether a ground water discharge permit and/or ground water monitoring is required based on SDCL 34A-3A-24.

Manure and Wastewater Land Application Sites

This permit requires the producer to develop, maintain, and follow a nutrient management plan to ensure proper application of manure and protection of surface and ground water. The Secretary must approve the initial plan prior to land application of any manure. The initial nutrient management plan is planning documents that must be provided to ensure that the producer has enough land available to properly land apply the manure. For the actual application of manure, the producer shall also follow the annual nutrient management plan section of the general permit.

The permit contains state technical standards for nutrient management plan development that a producer must use to determine if the land application shall be based on nitrogen need, one-year

phosphorous crop removal, five-year phosphorous crop removal, or if no application is allowed. Tools are available for use in developing the initial nutrient management plan and determining proper application rates for nitrogen need and phosphorous crop removal. The Natural Resources Conservation Service is the main source of information to assist in developing and implementing the initial and annual nutrient management plan and the nutrient management planning tools.

Each producer shall maintain on-site, for a period of five years from the date they are created, a complete copy of the nutrient management plan for their operation and the records specified in the permit. The producer shall make these records available to the Secretary upon request.

Soil and Manure Testing

The producer is required to use the procedure described in the general permit to determine the appropriate application rates of manure and process wastewater. The application rate is based upon the operation's initial nutrient management plan; Table 2 of the permit; soil and manure analysis for nitrogen and phosphorous; type of crop; expected crop yields; legume credits; and the sampling date. Upon determining an application rate, the producer shall apply manure and process wastewater at or below the calculated rate. Failure to apply manure at or below the calculated rate is a violation of the general permit.

These requirements are based on ARSD 74:52:02, the requirements in the South Dakota Natural Resource Conservation Services' 590 nutrient management planning technical standard, and best professional judgment.

Inspection and Record Keeping Requirements

The permit contains inspection and recordkeeping requirements for the production area and the land application area.

Site and NMP Inspection Requirements. At a minimum, the producer shall visually inspect and document the following:

1. Weekly inspect all storm water diversion devices, runoff diversion structures, barns, mortality management facilities, and devices channeling process wastewater to the process wastewater containment structure;
2. Daily inspect water lines, including drinking water or cooling water lines;
3. Weekly inspect manure, litter, and process wastewater containment structures; the inspection will note the level of the manure and process wastewater in the process wastewater containment structures in relation to the maximum operating level marker;
4. The producer, or agent acting on behalf of the producer, shall inspect the land application equipment, land application sites and irrigation equipment, if used, on a daily basis while land application of process wastewater or manure is occurring. This inspection is to ensure that the land application equipment is not leaking and runoff from the land application site and irrigation system is not occurring. If a discharge or leak is found where process wastewater or manure is reaching any surface waters of the state, flowing onto property not owned by the producer, or not included in the nutrient management plan, the producer is responsible for taking immediate steps to stop the discharge or leak and following the reporting requirements of this permit. The producer shall keep

documentation of these inspections so the Secretary can review them upon request or during an inspection; and

5. Any deficiencies found as a result of these inspections shall be corrected as soon as possible.

Record Keeping Requirements for the Production Area

1. Records documenting the required inspections.
2. Weekly records of the level of the manure and process wastewater in the process wastewater containment structures in relation to the maximum operating level marker.
3. Records documenting any actions taken to correct deficiencies required. Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing immediate correction.
4. Records of mortalities management and practices used by the CAFO.
5. Records documenting the current design of any manure, process wastewater, or litter containment structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.
6. Records of the date, time and estimated volume of any overflow or discharge of manure or process wastewater from the manure management system.

These inspection and recordkeeping requirements are based on ARSD 74:52:02, and best professional judgment.

Annual Reporting Requirements

On or before March 28th of each year, the producer will be sent a report form that must be completed and returned to the department. The report must include the following information for the previous calendar year:

1. The type of animals confined (swine weighing 55 pounds or more, swine weighing less than 55 pounds, beef cattle, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, geese, broiler chickens, layer chickens, or other), the maximum number of each type of animal confined at any one time, and whether confined in open lots or housed under roof;
2. A summary of all manure, litter and process wastewater discharges that have occurred from the production area or during land application, including date, time and approximate volume;
3. Estimated amount of total manure, litter and process wastewater generated by the producer (tons/gallons);
4. Estimated amount of total manure, litter and process wastewater transferred to other persons by the producer (tons/gallons);
5. Total number of acres for land application covered by the nutrient management plan developed in accordance with this permit;
6. Total number of acres under control of the producer that were used for land application of manure, litter and process wastewater;

7. A statement indicating whether the current version of the permittee's nutrient management plan was developed or approved by a certified nutrient management planner; and
8. For operations with an NPDES permit, the annual report includes the actual crop(s) planted and actual yield(s) for each field where manure, litter, or process wastewater was applied, copies of the results from manure, litter, process wastewater and soil sampling, copies of the calculations showing the total nitrogen and phosphorus (if required) to be applied to each field including the amount of any supplemental fertilizer applied during the previous 12 months for fields owned, rented, or leased by the producer.

These inspection and recordkeeping requirements are based on ARSD 74:52:02, and best professional judgment.

Endangered Species

The general permit prohibits all discharges from operations with a state permit. Operations that apply for an NPDES permit are only allowed to discharge where provided for under federal law. An NPDES permit will only allow discharges when operations meet the requirements of the general permit by having a manure containment system that is properly designed, constructed, operated, and maintained and a 25-year 24-hour storm event occurs; therefore, any potential impacts will be minimized due to the increased flow in the receiving streams. Due to the expected conditions when discharges are allowed, no listed endangered species are expected to be impacted by the issuance of the general permit.

The permit also requires producers to develop and follow a nutrient management plan based on U.S. EPA requirements and South Dakota Natural Resource Conservation System technical standards for nutrient management. The general permit also requires all operations with production areas or land application areas within ¼ mile of streams, where according to the U.S. Fish and Wildlife Service, Topeka shiners have been observed or have potentially occupied (http://www.sddot.com/business/environmental/endangered/docs/Topeka_dist.pdf) to develop and implement an Endangered Species Action Plan. The Endangered Species Action Plan shall identify BMP(s) that shall be implemented upon receiving permit coverage to minimize the likelihood of a discharge from entering waters of the state occupied by Topeka shiners. The Endangered Species Action Plan shall be included as an element of the submitted initial nutrient management plan and for revisions to any initial nutrient management plan.

Antidegradation

Antidegradation does not apply to this general permit because discharges are not allowed except during a chronic or catastrophic storm event, due to the temporary nature of any discharge, and expected limited impact of any discharge. The results of this review are included in Attachment A.

General Permit Duration

The permit shall be effective for five years from the effective date.

The contacts for this permit within the Department of Environment and Natural Resources are Kent Woodmansey, Paul Wegleitner, and Jason Roggow. The telephone number of the department is (605) 773-3351.

ATTACHMENT A

Antidegradation Review

Permit Type: CAFO
Permit #: SDG100000
Receiving Stream: Varies Classification: Varies
If the discharge affects a downstream waterbody with a higher use classification, list its name and uses: N/A

APPLICABILITY

1. Is the permit or the stream segment exempt from the antidegradation review process under ARSD 74:51:01? Yes No If no, go to question #2. If yes, check those reasons why the review is not required:
- Existing facility covered under a surface water discharge General Permit is operating at or below design flows and pollutant loadings;
 - *Existing effluent quality from a surface water discharge General Permitted facility is in compliance with all discharge General Permit limits;
 - *Existing surface water discharge General Permittee was discharging to the current stream segment prior to March 27, 1973, and the quality and quantity of the discharge has not degraded the water quality of that segment as it existed on March 27, 1973;
 - *The existing surface water discharge General Permittee, with DENR approval, has upgraded or built new wastewater treatment facilities between March 27, 1973, and July 1, 1988;
 - The existing surface water discharge permittee discharge to a receiving water assigned only the beneficial uses of (9) and (10); the discharge is not expected to contain toxic pollutants in concentrations that may cause an impact to the receiving stream; and DENR has documented that the stream cannot attain a higher use classification. This exemption does not apply to discharges that may cause impacts to downstream segments that are of higher quality;
 - Receiving water meets Tier 1 waters criteria. Any permitted discharge must meet water quality standards;
 - The permitted discharge will be authorized by a Section 404 Corps of Engineers permit, will undergo a similar review process in the issuance of that permit, and will be issued a 401 certification by the department, indicating compliance with the state's antidegradation provisions; or
 - Other: No discharge is allowed by this permit for state permits and New Source swine, veal, and poultry or any housed lots with covered manure containment systems with NPDES permits. NPDES permits may not have a discharge except in the event of a 25-year, 24-hour storm event with documentation showing the facility is meeting the conditions of this permit.

*An antidegradation review is not required where the proposal is to maintain or improve the existing effluent levels and conditions. Proposals for increased effluent levels, in these categories of activities are subject to review.

No further review required.

ANTIDEGRADATION REVIEW SUMMARY

2. The outcome of the review is:

- A formal antidegradation review was not required for reasons stated in this worksheet.
- The review has determined that degradation of water quality should not be allowed. Any General Permitted discharge would have to meet effluent limits or conditions that would not result in any degradation estimated through appropriate modeling techniques based on ambient water quality in the receiving stream, or pursue an alternative to discharging to the waterbody.
- The review has determined that the discharge will cause an insignificant change in water quality in the receiving stream. The appropriate agency may proceed with General Permit issuance with the appropriate conditions to ensure water quality standards are met.
- The review has determined, with public input, that the General Permitted discharge is allowed to discharge effluent at concentrations determined through a total maximum daily load (TMDL). The TMDL will determine the appropriate effluent limits based on the upstream ambient water quality and the water quality standard(s) of the receiving stream.
- The review has determined that the discharge is allowed. However, the full assimilative capacity of the receiving stream cannot be used in developing the General Permit effluent limits or conditions. In this case, a TMDL must be completed based on the upstream ambient water quality and the assimilative capacity allowed by the antidegradation review.
- Other: _____

3. Describe any other requirements to implement antidegradation or any special conditions That are required as a result of this antidegradation review: _____

Peter Adair
Reviewer

October 8, 2015
Date

Kent Woodmansey
Program Administrator

October 8, 2015
Date