

**BOARD OF MINERALS AND ENVIRONMENT  
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES**

Permit Number: GPCF 21-26

**GENERAL PERMIT FOR YARD WASTE COMPOST FACILITIES  
UNDER THE SOUTH DAKOTA WASTE MANAGEMENT PROGRAM**

South Dakota Codified Law (SDCL) 34A-6-1.6 authorizes the Board of Minerals and Environment (Board) to adopt rules relating to the issuance, renewal, revocation or suspension of solid waste facility permits. SDCL 34A-6-58 authorizes the Secretary of the Department of Agriculture and Natural Resources (DANR) to recommend that the Board issue general permits for certain categories of solid waste facilities.

This general permit authorizes the construction and operation of a yard waste compost facility within the State of South Dakota, subject to compliance with all conditions set forth in this general permit. If any of the conditions of this general permit are not met, the operator may be required to apply for and obtain an individual solid waste permit as specified in SDCL 34A-6-58 and the Administrative Rules of South Dakota (ARSD) 74:27:10:06. In addition, the operator may be subject to civil penalties set forth in SDCL 34A-6-1.4 and 34A-6-1.31.

Pursuant to SDCL 34A-6-58, this general permit is valid until suspended, revoked or modified by the Board.

This permit is effective as of November 2, 2021, and shall expire on November 2, 2026.

Signed this 2<sup>nd</sup> day of November, 2021.



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Hunter Roberts, Secretary  
Department of Agriculture and Natural Resources

**IMPORTANT NOTICE:** POSSESSION OF THIS DOCUMENT **DOES NOT** PROVE THE HOLDER IS LEGALLY AUTHORIZED TO OPERATE A YARD WASTE COMPOST FACILITY.

THE DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES ISSUES A CERTIFICATE AND LETTER OF AUTHORIZATION TO EACH LEGALLY AUTHORIZED OPERATOR. THE CERTIFICATE AND LETTER OF AUTHORIZATION ARE LEGAL PROOF OF AUTHORIZATION TO OPERATE.

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## **1.0 GENERAL STATEMENTS OF LAW AND OWNER/OPERATOR RESPONSIBILITIES**

### **1.01 Definitions**

Definitions used in this permit are as follows:

- A. "ARSD," the Administrative Rules of South Dakota.
- B. "Board," the Board of Minerals and Environment.
- C. "DANR," the South Dakota Department of Agriculture and Natural Resources.
- D. "Emergency," a condition that the secretary finds deleterious to the public health, safety, and welfare and that requires immediate action.
- E. "Occupied Dwelling," a house or building normally occupied as a residence.
- F. "Operator," a person responsible for the overall operation of a facility or part of a facility.
- G. "SDCL," South Dakota Codified Laws.
- H. "Secretary," the secretary of the South Dakota Department of Agriculture and Natural Resources, or authorized representative.

### **1.02 Applicability of General Permit**

This general permit is potentially applicable to operators of yard waste compost facilities in the State of South Dakota that accept less than 5,000 tons of yard waste per year.

### **1.03 Severability**

The provisions of this general permit are severable. If any provision of this general permit, or the application of any provision of this general permit to any circumstance, is held invalid, the application of such provisions to other circumstances and the remainder of this general permit, shall not be affected thereby.

### **1.04 Property Rights**

This general permit does not convey any property rights of any kind, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws and ordinances.

### **1.05 Amendments, Revocation, and Suspension of General Permit**

DANR may recommend to the Board that this general permit be amended as provided by ARSD 74:27:10:05. The Board may suspend or revoke this general permit as provided by SDCL 34A-6-1.21 and 34A-6-58.

### **1.06 Procedure for Requesting Authorization**

To obtain authorization to operate a yard waste compost facility under the terms and conditions of this general permit, the operator must submit a request for authorization and publish a notice of intent in an official newspaper in the county in which the proposed facility will be located. The request for authorization must be submitted to DANR at least 60 calendar days before the first anticipated use of the facility. The notice of intent must be published at least 20 calendar days before the first anticipated use of the facility. The notice of intent shall include:

- A. the name, address, and phone number of both the landowner and operator of the proposed yard waste compost facility;
- B. the number of acres comprising the proposed facility;
- C. the general location of the proposed facility;
- D. the legal description (quarter, section, township, range, and county) of the proposed facility;
- E. a description of the compostable waste materials to be accepted and managed at the proposed facility; and
- F. the estimated annual tonnage of waste materials to be accepted and managed.

If the DANR determines the request for authorization is complete and meets the terms of this general permit, DANR will issue an authorization letter and certificate approving the development and operation of the facility.

**1.07 Duration of Authorization**

Initial authorization to operate under this general permit shall be valid for up to two years from the date of issuance and may be renewed for periods up to five years.

**1.08 Renewal of Authorization**

If the operator wishes to continue an activity regulated by this general permit after the expiration date of the letter of authorization, the operator must submit a renewal request for authorization to DANR at least 60 calendar days before the letter of authorization expires.

**1.09 Changes to Request for Authorization**

The operator must notify DANR prior to implementing any proposed change to a yard waste compost facility location, acreage, authorized waste acceptance, tonnage, or operational practice that would be different from the request for authorization initially submitted to DANR. All changes must be approved by DANR and be public noticed for at least 20 days prior to implementation.

**1.10 Transfers**

The authorization may be transferred to a new operator provided:

- A. the current authorized operator notifies DANR in writing at least 20 calendar days prior to the proposed transfer date;
- B. the notification to DANR includes a written agreement between the authorized and new operator containing the date of transfer of permit responsibility, coverage and liability;
- C. the notification to DANR includes written documentation demonstrating that the new operator is qualified to comply with the terms and conditions of this general permit;
- D. the new operator provides a financial assurance mechanism, if applicable, equal to that of the former operator;
- E. the new operator provides a Certification of Applicant required by SDCL 1-41-20;
- F. the transfer of facility ownership/operation is public noticed for at least 20 calendar days prior to the proposed transfer date; and
- G. DANR provides written approval of the transfer.

**1.11 DANR Limitation of Liability**

Any letter of authorization is specifically conditioned on the truth and accuracy of the statements made by the operator in the application to operate under this general permit. DANR assumes no liability for the truth and accuracy of the statements made by the operator in the application and any other submitted documents.

**1.12 Individual Permit Required**

DANR may require any operator requesting coverage under this general permit to apply for and obtain an individual solid waste permit if:

- A. the operator is not or cannot operate in compliance with the conditions of this general permit;
- B. the conditions or standards change such that yard waste compost facilities no longer qualify for a general permit; or
- C. an operator is removed from the jurisdiction of this general permit as a result of a complaint and Board action according to SDCL 34A-6-58.

When an individual permit is issued to an operator otherwise authorized under this general permit, the applicability of this general permit to that operator is automatically terminated upon the effective date of the individual permit.

**1.13 Individual Permit Requested**

Any operator authorized under this general permit may request to be excluded from the authorization by applying for an individual solid waste permit.

**1.14 Duty to Comply – Penalties for Violations**

The operator shall construct, operate and maintain the yard waste compost facility in accordance with SDCL 34A-6, ARSD 74:27, and the conditions of this general permit. If the provisions of the

laws, rules, or any conditions of this general permit are violated, DANR may take action to suspend or revoke a general permit authorization as provided for by SDCL 34A-6-1.21; may assess a civil penalty pursuant to SDCL 34A-6-1.4 and 34A-6-1.31; or issue a notice of violation with penalties pursuant to SDCL 34A-6-1.22.

**1.15 Stipulated Penalties**

In the event an authorized operator fails to comply with the provisions of this general permit, DANR reserves the right to develop and pursue an agreement with the operator for the assessment of stipulated penalties.

**1.16 Related Laws, Regulations and Permits**

No provision of this general permit exempts the operator from the requirements of any local, state, or federal laws, regulations, or rules in existence or promulgated after this general permit or an authorization becomes effective. It is the responsibility of the operator to obtain any other required permits and licenses.

**1.17 Duty to Provide Information**

The operator shall furnish DANR, within 10 business days, any information which DANR may request to determine compliance with this general permit.

**1.18 Duty to Provide Access**

The owner/operator shall allow DANR:

- A. to inspect or access the entire yard waste compost facility area authorized under this general permit and identified in the request for authorization;
- B. to inspect any facilities, equipment, records, practices or operations regulated or required by this general permit; and
- C. to sample or monitor any substances for any parameter.

**1.19 Emergency Procedures**

The operator must notify DANR, within one business day, of any emergency situation that arises at a yard waste compost facility.

**1.20 Need to Halt or Reduce Activity not a Defense**

DANR will not consider that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this general permit, when enforcing the conditions of this general permit.

**1.21 Duty to Mitigate**

The operator shall take all reasonable steps to minimize or prevent any adverse effect on human health or the environment.

**1.22 Responsibility and Liability of Owner or Operator**

In accordance with SDCL 34A-6-1.10, the owner or operator of a yard waste compost facility authorized under this general permit is responsible in perpetuity for the solid waste and liable in perpetuity for any pollution or other detrimental effect caused by the solid waste.

**1.23 Administrative Changes Authorized**

DANR reserves the right to incorporate administrative changes and/or modifications to this general permit. Administrative changes are authorized for the purposes of changing or correcting:

- A. typographical errors;
- B. regulatory references;
- C. titles of organizations or regulatory agencies; or
- D. similar items that do not substantially change the requirements of this general permit.

## **2.0 LOCATION AND DESIGN REQUIREMENTS**

### **2.01 Facility Siting**

The operator **shall not** locate the yard waste compost facility:

- A. within a wetland as defined by ARSD 74:27:07:01;
- B. within 200 feet of surface water, excluding wetlands, as defined by ARSD 74:51:01:01;
- C. within 1,000 feet of an occupied dwelling, unless the owner(s) provides written permission;
- D. within 100 feet of a property boundary, unless the adjacent property owner(s) provides written permission;
- E. within 1,000 feet of any private or public well which supplies drinking water for human consumption;
- F. where the depth to an aquifer, as defined by ARSD 74:54:02:01, is less than 10 feet;
- G. within a 100-year floodplain;
- H. where the primary subsurface material is sand or gravel as determined by the Unified Soil Classification System; or
- I. in an area that adversely affects wildlife, recreation, aesthetic value of an area, or any threatened or endangered species.

Occupied dwelling exception: Any occupied dwelling constructed less than 1,000 feet from a yard waste compost facility after an initial general permit authorization has been granted will not be grounds to prevent future authorization renewals under this general permit.

### **2.02 Access Control**

The operator shall control access to the yard waste compost facility through the use of fences and locked gates. In addition, the operator shall post a sign or signs at the site entrance stating the operator's name, phone number, type of facility, days/hours of operation, and acceptable compost materials.

### **2.03 Surface Water Control**

The operator shall construct and maintain soil berms or containment structures around active composting areas and open burning areas to divert run-on and contain runoff from a 25-year, 24-hour storm event. The berms or structures shall be adequately constructed to prevent leakage.

### **2.04 Fire Control**

The operator shall maintain a minimum 25-foot fire lane around areas used for open burning.

## **3.0 OPERATIONAL REQUIREMENTS**

### **3.01 Authorized and Unauthorized Wastes**

The operator may accept the following yard waste materials for composting: grass clippings, leaves, garden waste, and similar vegetative material. Yard waste may not be open burned.

Tree branches, brush and clean, untreated wood may be accepted at the facility for open burning. Painted, stained, glued or chemically treated wood is considered treated and may not be accepted or burned at the facility. Ash resulting from authorized on-site open burning may be buried on the permitted property.

All other types of waste materials (garbage, construction debris, furniture, waste tires, scrap metal, appliances, etc.) are considered unauthorized waste and may not be accepted at the facility. Unauthorized wastes must promptly be removed from the facility and be disposed at a facility permitted to accept the waste material or taken to an approved recycling facility.

**3.02 Routine Inspections Required**

The operator shall inspect the facility at least weekly to evaluate permit compliance and to prevent and/or detect the acceptance of unauthorized wastes. The site inspections shall be documented as required by Section 4.01(b) of this general permit.

**3.03 Vector Control**

The operator shall prevent or control on-site populations of disease vectors (rats, rodents, mosquitoes, etc.) by using techniques appropriate for the protection of public health and for preventing degradation of the environment.

**3.04 Waste Separation Required**

Compost areas shall be well separated from burn piles.

**3.05 Yard Waste – Composting Required**

The operator shall place yard waste in piles or windrows to be composted. Yard waste may not be open burned or buried. The piles or windrows of yard waste shall be turned as needed to provide sufficient air to promote biological decomposition and to prevent odors. Moisture levels in yard waste piles or windrows should be maintained to also promote biological decomposition. Precipitation that collects within the runoff control area may be used to maintain moisture levels.

Reminder: Permit condition 2.03 requires the operator to divert storm water run-on around the composting area and contain runoff from the composting area.

**3.06 Open Burning Requirements**

The operator may periodically open burn trees, branches, brush, and untreated wood subject to existing state, federal, and local laws, rules, and regulations. The operator is responsible for removing waste materials other than trees, branches, brush, and untreated wood from the burn pile prior to burning. The local fire department, local law enforcement, and DANR shall be notified prior to open burning.

Open burning shall occur only:

- A. when the prevailing winds are away from adjacent residences;
- B. when smoke will not obscure visibility or create a traffic hazard on any public road; and
- C. during daylight hours.

**4.0 RECORDKEEPING AND REPORTING REQUIREMENTS**

**4.01 Required Records**

The operator shall maintain all records required by this general permit and shall make records available to DANR as stated in ARSD 74:27:13:22. At a minimum, the records shall include:

- A. the amounts, sources, types, and dates for wastes received;
- B. documentation of the weekly site inspections;
- C. documentation of unauthorized waste found on-site and the steps taken in response;
- D. records of any emergency conditions at the yard waste compost facility;
- E. documentation of complaints received and responses to complaints;
- F. data on open burning activities at the site to include dates, weather conditions, and an estimate of the quantity of wood in the pile; and
- G. copies of the current general permit, request for authorization, authorization letter, certificate to operate, and any other permits or licenses required by state, local, or federal laws, rules, and regulations.

**4.02 Maintenance of Records**

The operator shall maintain all required records for a period of three years from the date the records were generated.

## **5.0 CLOSURE REQUIREMENTS**

### **5.01 Closure Notification**

The operator shall notify DANR of the intent to close the yard waste compost facility at least 30 days prior to closure.

### **5.02 Removal of Stored Wastes**

The operator shall remove all yard waste, compost, tree branches and ash prior to closing the facility. Removed materials shall be taken to a permitted solid waste disposal facility.

### **5.03 Final Closure Requirements**

The final cover and closure activities for the yard waste compost facility shall meet the requirements of ARSD 74:27:15:03 and include:

- A. incorporating contours of the closed site into the contours of the surrounding area;
- B. grading to prevent ponding of water;
- C. seeding and revegetating the entire closed facility site in accordance with Natural Resources Conservation Service recommendations; and
- D. posting a sign stating that the facility is closed.

### **5.04 Completion of Final Closure**

The operator shall complete closure activities for the entire yard waste compost facility within 180 days of notifying DANR about the intended closure.

### **5.05 Notation on Deed Required**

The operator shall record a notation on the deed to the property or on some other instrument that is normally examined during a title search. The deed notation shall state that the land has been used as a yard waste compost facility.

### **5.06 Certification of Closure**

Upon completion of closure of the yard waste compost facility, the operator shall provide DANR with a certification confirming that the provisions of the closure plan (if applicable) have been carried out, and that the facility has been closed in accordance with Section 5.0 of this general permit and the applicable performance standards of ARSD 74:27:15.

## **6.0 FINANCIAL ASSURANCE**

DANR will not typically require financial assurance for a facility authorized under this general permit as long as the operator complies with the environmental laws and rules of the state and the conditions of this general permit. However, DANR reserves the right to require financial assurance if violations occur or if unique circumstances dictate the need for financial assurance. If required, financial assurance shall comply with SDCL 34A-6-1.11 and 34A-6-1.12, and ARSD 74:27:16.