

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

Permit Number: GPPCS 21-24

**GENERAL PERMIT TO TREAT PETROLEUM-CONTAMINATED
SOIL BY LAND APPLICATION 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 land application treatment of petroleum-contaminated soil 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 2nd day of November, 2021.



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 PETROLEUM-CONTAMINATED SOIL TREATMENT 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 facilities in the State of South Dakota accepting less than 25,000 tons of soil contaminated with gasoline, diesel fuel, fuel oil or similar petroleum hydrocarbons for treatment by land application.

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 petroleum-contaminated soil treatment 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 petroleum-contaminated soil treatment 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 contaminated soils to be accepted and managed at the proposed facility;
- and
- F. the estimated annual tonnage of contaminated soil 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 petroleum-contaminated soil treatment 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 petroleum-contaminated soil treatment facility location, acreage, 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 operating or cannot operate in compliance with the conditions of this general permit;
- B. the conditions or standards change such that petroleum-contaminated soil treatment 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 petroleum-contaminated soil treatment 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 petroleum-contaminated soil treatment 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 petroleum-contaminated soil treatment 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 petroleum-contaminated soil treatment facility authorized under this general permit is responsible in perpetuity for the contaminated soil and liable in perpetuity for any pollution or other detrimental effect caused by the contaminated soil.
- 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 a petroleum-contaminated soil treatment 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 500 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 a delineated wellhead protection area;
- F. within 1,000 feet of any private or public well which supplies drinking water for human consumption;
- G. within the incorporated limits of any municipality;
- H. within a 100-year floodplain;
- I. where the depth to an aquifer, as defined by ARSD 74:54:02:01, is less than 20 feet;
- J. where the primary subsurface material is sand or gravel (as determined by the Unified Soil Classification System) within 20 feet of the ground surface;
- K. on land that has an average slope greater than five percent; or
- L. 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 500 feet from a petroleum-contaminated soil treatment 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 petroleum-contaminated soil treatment 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, and acceptable soil types. Livestock shall be excluded from the treatment facility.

2.03 Surface Water Control

The operator shall construct and maintain soil berms or containment structures around the petroleum-contaminated soil treatment area(s) 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.

3.0 OPERATIONAL REQUIREMENTS

3.01 Authorized and Unauthorized Wastes

The operator may accept for treatment soils contaminated with gasoline, diesel fuel, fuel oil or similar petroleum hydrocarbons. The operator may also accept water contaminated with the same petroleum hydrocarbons listed above. The operator shall obtain pre-treatment laboratory results or other acceptable documentation demonstrating that contaminated soil accepted for treatment contains only the petroleum hydrocarbons listed above.

The operator may not accept:

- A. soils contaminated with motor oil, transformer oil, crude oil or other petroleum lubricants;
- B. soils contaminated with hazardous waste (as defined in ARSD 74:28); or
- C. solid waste materials unsuitable for land application treatment.

3.02 Routine Inspections Required

The operator shall inspect all loads of petroleum-contaminated soil to ensure that foreign objects such as metal, plastic, and other unauthorized wastes are not delivered to the treatment area. Unauthorized wastes present in the contaminated soil must be collected and disposed of properly within seven days after the initial application of the soil.

During routine inspections, the operator shall also evaluate storm water management berms and make any repairs necessary to prevent run-on and runoff.

3.03 Stockpiling Limitations

Stockpiling of petroleum-contaminated soil shall not be conducted unless ground or weather conditions prevent spreading of the soil. The operator shall ensure that any contaminated soil stockpiled on-site is placed inside the bermed area.

3.04 Spreading Requirements

Petroleum-contaminated soil shall be spread as soon as physically possible. The operator shall spread soil within the bermed treatment area in lifts no greater than six inches in depth (approximately 800 tons per acre).

3.05 Petroleum-Contaminated Water Acceptance

Petroleum-contaminated water (may not contain free phase product) may be accepted for land application within the bermed treatment area. The contaminated water shall be uniformly land applied at a rate of one-quarter inch (approximately 6,500 gallons) or less per acre.

The application of petroleum-contaminated water is limited to once per month during April through October. The application of petroleum-contaminated water during November through March must be approved in writing by DANR prior to application.

3.06 Treatment / Aeration

The operator shall treat (disk or aerate) the petroleum-contaminated soil twice within the first 30 days following the application and at least monthly from April through October. The operator shall treat the soil until it meets the post-treatment standard specified in permit condition 3.07.

3.07 Sampling and Testing

The operator shall treat petroleum-contaminated soil until it meets a post-treatment standard of 10 parts per million (ppm) or less Total Petroleum Hydrocarbons (TPH).

For post-treatment testing, the operator shall collect a minimum of one composite sample per acre. If soil from more than one source (or remedial site) has been spread in any one-acre area, at least one composite sample per source is required unless otherwise approved by DANR. Each composite sample must consist of a minimum of four representative samples taken from a depth of four inches.

The collection, packaging, storage and preservation of soil samples shall be conducted according to directions provided by the laboratory. Laboratory soil analysis must be conducted for both gas and diesel range organics by the methods specified in ARSD 74:56:05:05.

3.08 Land Application Frequency

The operator shall not apply a second layer of petroleum-contaminated soil to any area of the facility until soil analysis demonstrates that the prior application of soil has met the post-treatment soil standard of 10 ppm TPH.

3.09 Removal of Treated Soil

The operator shall not remove any soil from the site until soil analysis demonstrates that the soil meets the post-treatment standard of 10 ppm TPH.

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 contaminated soils received;
- B. documentation of the required routine site inspections;
- C. documentation of unauthorized waste found on-site and the steps taken in response;
- D. records of any emergency conditions at the petroleum-contaminated soil treatment facility;
- E. documentation of complaints received and responses to complaints; and
- F. 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.

4.03 Annual Reporting

The operator shall submit to DANR, by January 31 of each year, an annual report for the previous year's petroleum-contaminated soil treatment site activities. The report shall be submitted on a form provided by the DANR and shall include the following information:

- A. the origin of all soil received;
- B. the date soil was received;
- C. the date soil was spread;
- D. the type of petroleum contamination in the soil;
- E. the quantity of soil;
- F. the area of land soil was spread on;
- G. the dates soil was treated (disked or aerated); and
- H. the post-treatment soil analysis data.

5.0 CLOSURE REQUIREMENTS

5.01 Closure Notification

The operator shall notify DANR of the intent to close the petroleum-contaminated soil treatment facility at least 90 days prior to closure.

5.02 Startup of Closure Activities

The operator shall begin closure activities for the petroleum-contaminated soil treatment facility within 30 days of documenting that all soil meets the post-treatment standards specified in permit condition 3.07. Closure of the facility may not be conducted until all soil meets the post-treatment standards in permit condition 3.07.

5.03 Final Closure Requirements

The final closure activities for the petroleum-contaminated soil treatment facility shall meet the requirements of ARSD 74:27:15:03 and include:

- A. incorporating contours of the soil treatment area(s) into the contours of the surrounding area;
- B. grading to prevent ponding of water; and
- C. seeding and revegetating the entire closed facility in accordance with Natural Resources Conservation Service recommendations.

5.04 Completion of Final Closure

The operator shall complete all closure activities for the entire petroleum-contaminated soil treatment facility within 180 days of documenting that all soil meets the post-treatment standards specified in permit condition 3.07.

5.05 Certification of Closure

Upon completion of closure of the petroleum-contaminated soil treatment 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.