

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

Permit Number: **GPWA 23-04**

**GENERAL PERMIT TO STORE AND/OR LAND APPLY DAIRY  
PROCESSING BY-PRODUCTS 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 storage and/or land application of dairy processing by-products 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 January 24, 2023, and shall expire on January 24, 2028.

Signed this 24<sup>th</sup> day of January, 2023.



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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 LAND APPLICATION DAIRY PROCESSING BY-PRODUCTS SOLID WASTE DISPOSAL FACILITY.

THE DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES ISSUES A CERTIFICATE AND LETTER OF AUTHORIZATION TO EACH LEGALY 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. "Dairy Processing By-Products," whey, whey permeate, waste milk, or other dairy processing by-products.
- D. "DANR," the South Dakota Department of Agriculture and Natural Resources.
- E. "Emergency," a condition that the secretary finds deleterious to the public health, safety, and welfare and that requires immediate action.
- F. "NMP," Nutrient Management Plan.
- G. "Occupied Dwelling," a house or building normally occupied as a residence.
- H. "Operator," a person responsible for the overall operation of a facility or part of a facility.
- I. "SDCL," South Dakota Codified Laws.
- J. "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 any operator in the State of South Dakota proposing to store and/or land apply dairy processing by-products, provided the operator meets the requirements of this general permit.

### **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 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 storage and/or land applications site(s) will be located. The request for authorization must be submitted to DANR at least 60 calendar days before the first anticipated use of the site(s). The notice of intent must be published at least 20 calendar days before the first anticipated use of the site(s). The notice of intent shall include:

- A. the name, address, and phone number of both the operator and landowner(s) of the proposed site(s);
- B. a description of the project and dairy processing by-products to be stored and/or land applied;
- C. the number of acres comprising the proposed storage and/or land application site(s);
- D. the general location of the proposed site(s);
- E. the legal description (quarter, section, township, range, and county) of the proposed site(s); and
- F. the estimated annual tonnage of dairy processing by-products to be stored and/or land applied.

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 site(s).

**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 Duty to Renew Authorization**

If the operator wishes to continue an activity regulated by this general permit, the operator must submit to DANR a complete renewal application 90 days prior to the authorization expiration date. If a renewal application is submitted 90 days prior to the date of expiration, then authorization to operate under the general permit shall remain in effect until the DANR takes final action on the renewal application, in accordance with SDCL 1-26-28. If the general permit expires prior to an authorization expiration date and if no substantive changes have taken place at the authorized site, then the authorization and expired general permit will remain in effect until such time as the authorization is issued under a new general permit.

**1.09 Changes to Request for Authorization**

The operator must notify DANR prior to implementing any proposed change to a site location, acreage, authorized waste, tonnage, design, 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 site 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 storage and/or land application solid waste disposal 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 storage and/or land application dairy processing by-product disposal site(s) 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 during regular business hours:

- A. to inspect or access all storage and/or land application site(s) 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 storage and/or land application site.

**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 storage and/or land application site(s) authorized under this general permit is responsible in perpetuity for the dairy processing

by-products and liable in perpetuity for any pollution or other detrimental effect caused by the dairy processing by-products.

**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.

**1.24 Landowner(s) Signature Requirement**

All landowners receiving dairy processing by-products for temporary storage and/or land application must sign the solid waste permit application (Section 4.0) before authorization can be issued to the operator.

**2.0 LOCATION AND DESIGN REQUIREMENTS**

**2.01 Facility Siting**

The operator **shall not** locate any storage site(s) or land apply any dairy processing by-products:

- A. within 1,000 feet of an occupied dwelling, unless the owner(s) provides written permission;
- B. within 200 feet of surface water, including wetlands, as defined by ARSD 74:51:01:01;
- C. within 50 feet of any natural or manmade drainage;
- D. within 1,000 feet of any private or public well that supplies drinking water for human consumption;
- E. within 200 feet of a property boundary, unless the adjacent property owner(s) provides written permission;
- F. where the depth to an aquifer, as defined by ARSD 74:54:02:01, is less than 10 feet;
- G. within 100 feet of a quarry or gravel pit;
- H. within a wetland as defined by ARSD 74:27:07:01;
- I. within a 100-year floodplain; or
- J. on land that has an average slope greater than six percent.

Occupied dwelling exemption: Any occupied dwelling constructed less than 1,000 feet from a storage and/or land application site after an initial general permit authorization has been granted will not be grounds to prevent future authorization renewals under this general permit.

**2.02 Surface Water Control**

The operator shall construct and maintain soil berms or diversion structures around storage 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.

**2.03 Access Controls**

The operator of any storage and/or land application site(s) open to the public shall:

- A. control access to the site(s) through the use of fences, gates, locks, or other similar controls; and
- B. post a sign or signs at the entrance to the site(s) stating the operator's name, phone number, type of facility, hours of operation, and wastes accepted for disposal.

The operator of any storage and/or land application site(s) not open to the public shall:

- A. control access to the site(s) through the use of fences, gates, or other similar controls; and
- B. post a sign or signs at the entrance to the site(s) stating "No Dumping Allowed."

#### **2.04 Plans and Specifications**

DANR reserves the right to require the submittal of engineering plans and specifications (P&S) prior to the construction of a storage pond, storage tank, or similar storage structure. The need for a P&S submittal will be determined based upon factors such as the proposed storage alternative, type of by-product being stored, volume of by-product being stored, and environmental setting. If required, P&S must be signed and sealed by a professional engineer licensed by the state of South Dakota. If required, P&S must be reviewed and approved in writing by DANR prior to construction.

### **3.0 OPERATIONAL REQUIREMENTS**

#### **3.01 Nutrient Management Plan & Waste Handling Requirements**

The application for authorization under this general permit requires the operator to develop a nutrient management plan (NMP) for the land application of dairy processing by-products. The NMP shall consider such things as: nutrient value of the waste, waste volumes, all waste characteristics, storage requirements, site (soil) characteristics, loading rates, maximum volume criteria, application methods, land use (crop or vegetative growth), nutrient uptake, soil monitoring, and wintertime operation. At a minimum, waste characterization shall include:

- total nitrogen compounds (total kjeldahl nitrogen and nitrates)
- phosphorous
- sodium
- chlorides

The NMP shall be developed by a qualified soil scientist, County Extension Agent, or consultant. The operator shall comply with all recommendations and requirements outlined in the NMP which must be approved by DANR prior to receiving authorization under this general permit. The approved NMP is considered part of this general permit by reference. The operator shall review the NMP annually, and update it when significant operational changes occur or when monitoring dictates the need for change. Changes or updates to the NMP may not require an amendment or renewal of the general permit authorization. Changes or updates to the NMP must be approved by DANR in writing before the changes are implemented.

Note: The DANR has previously issued a General Water Pollution Control Permit for Concentrated Animal Feeding Operations. This permit contains guidance for the development of a NMP. If applicable, the operator is encouraged to utilize the NMP guidance in this general permit.

#### **3.02 Authorized Waste(s)**

The operator is authorized to store and/or land apply only those dairy processing by-products specifically identified in the request for authorization and NMP.

#### **3.03 Alteration of Soil Structure**

The operator shall not alter the characteristics or structure of the soil to the extent that crops or soil structure are adversely affected by the volume or characteristics of dairy processing by-products applied to the land application site(s).

#### **3.04 Runoff and Pollution Prevention**

The operator shall immediately cease land application if runoff from a site occurs. The operator shall store and/or land apply dairy processing by-products in a manner that prevents pollution of surface or ground water. In addition, land application methods utilizing injection or incorporation are recommended.

#### **3.05 Ponding**

The operator shall apply dairy processing by-products in such a manner as to prevent ponding.

**3.06 Spray Control**

The operator shall not allow drifting of dairy processing by-products spray onto neighboring properties when land applying with high pressure spray guns.

**3.07 Storage**

The operator may temporarily store dairy processing by-products if normal operating procedures, ground conditions or weather conditions prevent immediate land application of the by-product. Storage of the by-product shall meet the requirements of Section 2.0 of this general permit.

**3.08 Vector Control**

The operator shall prevent or control populations of disease vectors at the storage and/or land application site(s) by using techniques appropriate for the protection of human health and for preventing degradation of the environment.

**3.09 Routine Inspection Requirements**

The operator shall inspect the storage and/or land application site(s) at least monthly to prevent and/or detect the disposal of unauthorized wastes, and shall promptly remove and dispose of any unauthorized waste at a properly permitted facility. The operator shall also monitor the storage of by-products to ensure that adequate run-on and runoff controls are maintained and that no release occurs.

**4.0 RECORDKEEPING AND REPORTING REQUIREMENTS**

**4.01 Required Records**

The operator shall maintain all records and information required by this general permit. At a minimum, the records shall include:

- A. copies of the request for authorization, letter of authorization from DANR, this general permit, and any other permits or licenses required by local, state, or federal laws, rules, and regulations;
- B. a copy of the DANR approved NMP and all records required by the plan. This may include, but is not limited to: waste volume tracking, waste testing and characterization, soil monitoring, loading rate calculations and monitoring, land use (acreage) tracking, and dates of land application;
- C. results of the monthly inspections required by condition 3.09 of this general permit;
- D. records of complaints received including the name, address, and phone number of the complainant, if known, the date of the complaint, and corrective actions taken;
- E. records of emergency conditions at the storage or land application sites and the operator's response to any emergency condition; and
- F. records of employee training.

**4.02 Maintenance of Records**

The operator shall maintain all required records and data required by the terms and conditions of this general permit for a period of three years from the date the records were generated.

**5.0 CLOSURE REQUIREMENTS**

**5.01 Notification Requirement**

The operator shall notify DANR of the intent to discontinue use of a storage and/or land application site at least 90 days prior to closure.

**5.02 Dairy Processing By-Products Removal**

Any dairy processing by-products remaining in storage or not land applied must be removed from the site and disposed or land applied at a solid waste facility permitted to accept such waste. If applicable, soil berms surrounding storage sites or storage ponds must be leveled and reseeded.



**5.03 Certification Requirement**

Upon completion of closure of a storage and/or land application site, the operator shall provide DANR with a certification confirming that the closure requirements of this section (Section 5.0) of this general permit have been carried out.

**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.