**Response to Comments Received on the Proposed Reissuance of the**
**General Water Pollution Control Permits for Concentrated Animal Feeding Operations**
**Livestock Services Program**
**Division of Agriculture and Environmental Services**
**Insert DATE ** Date will be inserted after a final permitting decision is made.**

The draft general permits were public noticed starting on November 18, 2025, and no later than November 20, 2025. The South Dakota Department of Agriculture and Natural Resources (DANR) Livestock Services Program received four petitions requesting a contested case hearing and public comments from seven commentors. The following is the draft response to the comments received in the petitions and public comments. This document will be finalized when the Secretary has made a final permit decision on these matters.

## Petition Comments

**Kiera Leddy, Leut Services, P.C. on behalf of Acker, Inc.**

**Petition Comment 1:** Section 1.1 Definitions. Alongside clarifying language, we appreciate the inclusion of definitions for "Processing Operation" and "Strip-till Cropland." These additions are important as they address emerging modern practices, such as methane digesters and conservation efforts.

**Response:** Comment noted.

**Petition Comment 2:** Section 1.2.2.3.b.3)c) Existing Operations Required to Obtain Permit Coverage. The phrase "warm water fishery or cold-water fishery" was amended to "warmwater fishery, cold-water fishery, or fish life propagation waters beneficial use." We request DANR to clarify what "fish life propagation waters beneficial use" is and the intent of the addition.

**Response:** Based on this comment, the Livestock Services Program is recommending the language in section 1.2.2.3.b.3)c) of the permit be changed as follows: "The containment structure is located within 150 feet of a ~~river~~ stream or lake classified in the South Dakota Surface Water Quality Standards, ARSD 74:51:02 and 74:51:03, for ~~a warmwater fishery, coldwater fishery, or fish life propagation waters beneficial use~~ coldwater permanent fish life propagation waters, coldwater marginal fish life propagation waters, warmwater permanent fish life propagation waters, warmwater semipermanent fish life propagation waters, warmwater marginal fish life propagation waters, and fish and wildlife propagation, recreation, and stock watering waters; or…"

These uses are defined in the Administrative Rules of South Dakota (ARSD) 74:51:01:01. The lakes and streams that have these beneficial uses can be found in ARSD Chapters 74:52:02 and 74:52:03. This setback is for a producer who intends to continue using existing liquid containment structures constructed prior to August 14, 1996. This setback has been in place since the 2003 general permit, which required existing CAFOs to be permitted. The purpose of the setback is to be protective of the fishery as liquid containment structures constructed prior to August 14, 1996, did not need to be constructed with the liner requirements put in place by the 2003 general permit.

**Petition Comment 3:** Section 1.4.1.2. Effluent Limits-Land Application. The language has been revised to state that the producer must have no discharge unless the discharge meets the "agricultural stormwater discharge definition." We request that DANR provide clarification on the revision of this section.

**Response:** This section was revised to include language about discharges meeting the agricultural stormwater discharge definition and reflect existing regulatory requirements and practices under the existing state permit. See the agricultural storm water discharge definition in permit item 1.1.2. This change was made for the permit to be consistent with language in federal law.

**Petition Comment 4:** Section 1.4.3.3.g. Pump Lines. We view the amendments in this section to be both positive and reasonable. The changes offer producers greater flexibility in the placement of pump lines.

**Response:** Comment noted.

**Petition Comment 5:** Section 1.4.3.3.r. Alternative Flood Map Methods. DANR has introduced an alternative approach for assessing a 100-year flood evaluation when FEMA or USGS 100-year flood delineations are unavailable. This addition is particularly useful given that much of South Dakota lacks floodplain mapping. These modifications will improve the engineers' efficiency while potentially reducing costs for producers.

**Response:** Comment noted.

**Petition Comment 6:** Section 1.4.3.4.4.a and 1.4.3.4.c. Ground Water Protection. We seek further clarification of these sections as they apply to feed storage areas. We would like to confirm that for feed storage areas, either an earthen or a concrete liner would be required, not both. For feed storage structures, we propose that a liner, either of clay or concrete, not both, be required, but only if the feed storage structure is located over a shallow aquifer. We also request DANR to specify which concrete standard would apply for feed storage areas, as discussed more thoroughly in Section 1.4.3.4.c. We believe it is unnecessary to impose a more stringent concrete standard for feed storage areas than those accepted under previous General Permits in areas that do not overlay a shallow aquifer. Therefore, we suggest that a higher concrete standard should only apply when a structure sits over a shallow aquifer. We have provided further details supporting our reasoning in the following section.

**Response:** Feed and other raw materials storage areas are only required to have a liner in instances where the stored material contains 30% or more moisture content or which have free draining liquids. Sections 1.4.3.4.a, 1.4.3.4.b, and 1.4.3.4.c specify the liner types that may be utilized for containment structures, and the producer has the option to construct a liner meeting the requirements of either 1.4.3.4.a, 1.4.3.4.b, or 1.4.3.4.c.

Either American Concrete Institute (ACI) 360R-10 Chapter 8 or ACI 350 are the specified concrete standards that would need to be utilized for slabs on grade, which are typical of manure, litter, feed, raw materials, and other organic by-products solid storage areas. If the feed storage area is a liquid containment structure, ACI 350-20 would be the standard for any concrete tank.

**Petition Comment 7:** 1.4.3.4.c Concrete Design References. The proposed changes to concrete standards represent a significant shift from current rules. The changes to this section retain four concrete codes for acceptable use: ACI 318, ACI 350, ACI 360R-10, or AWWA D115-20. Generally, ACI 318 is for structural concrete, ACI 350 is for environmental structures, and ACI 360R is for slabs on grade. Unlike the 2017 general permit, the proposed language contains the following statement: "Concrete design shall be appropriate for the intended use of the structure." We seek further clarification on that statement. Specifically, which concrete code will be applied to each type of structure? This statement does not provide permitholders with clear guidance on concrete standards and creates a subjective standard. DANR must clearly state an objective concrete design standard within the General Permit, as this will diminish confusion for developers and producers, and the risk of potential lawsuits.

South Dakota has already established higher standards, including extra testing on earthen liners, monitoring wells, and potential additional permits, when the structure is located over a shallow aquifer. However, without the clarification requested above, the acceptable concrete code is discretionary and does not explicitly consider site location and environmental factors that influence the risks associated with a specific structure, like a shallow aquifer. Conversely, other states consider site location and environmental factors when imposing higher concrete standards. In Iowa, non-dry (liquid) manure storage must conform to ACI 318, ACI 360 or ACI 350; or PCA EB075, EB001 or IS072; or MWPS-36 or MWPS TR-9 in addition to other specifications. Whereas dry manure storage must conform with ACI 318 or ACI 360; PCA EB075, EB001 or ISO72; or MWPS-36, Iowa requires higher concrete standards based on the region where the structure is located. For example, Iowa is home to karst terrain and alluvial aquifers. If a site is in such an area, then higher standards apply. Iowa has adopted a more site-specific and practical approach with its concrete standards. We believe South Dakota should follow this same approach.

With the removal of MWPS 36 and the introduction of imposing higher standards like ACI 350 and ACI 360R, producers will likely see substantial increases in building costs. While these updated regulations enhance environmental safety and long-term durability, we are concerned that requiring more stringent standards universally, with no discretion for site-specific risks, may overregulate and impose significant financial burdens on all producers. Those with limited budgets could experience disproportionately high costs, as these changes may raise initial construction costs by up to 25-35% and annual maintenance costs by 5-15%. These financial pressures could affect decisions regarding operational scale, the adoption of alternative technologies, or even lead to projects being built outside of South Dakota.

We propose that ACI 350 and 360R should only be required when the facility is located over a shallow aquifer. We believe that imposing higher concrete standards when the risk of leakage is low and adequate separation exists to prevent groundwater contamination reflects excess caution and does not weigh the environmental risks against the financial burden on producers. Additionally, history shows that when regulations are perceived as too burdensome, producers or developers are more likely to exploit loopholes to avoid permit coverage. Therefore, we recommend that DANR evaluate whether the additional leakage they intend to prevent justifies the potential trade-offs, such as an increase in unregulated facilities, hindered economic development, or an increase in nuisance complaints.

**Response:** South Dakota Codified Law (SDCL) 34A-2-29 gives the Secretary authority to require the submission of plans, specifications, and other information deemed necessary to carry out the provisions of the SDCL 34A-2, Water Pollution Control. The general permits set the standards to be used for plans and specifications submitted as part of a permit application. Most of the concrete standards referenced in the general permits are ACI Standards. The ACI's mission is to develop and disseminate consensus-based knowledge on concrete and its uses; its standards provide uniform guidelines to ensure safety, quality, and durability in concrete design, construction, and maintenance. The general permits update and revise acceptable standards for concrete design and require that the ACI standards be applied within the scope of use indicated by ACI for each specific standard.

- ACI 318 has been updated to ACI 318-25 (2025) *Building Code Requirements for Structural Concrete*.
- ACI 350 has been updated to ACI 350-20 (2020) *Code Requirements for Environmental Engineering Concrete Structures*.
- ACI 360R-10 (2010) *Guide to Design of Slabs-on-Ground* Chapter 8 "Design of slab reinforced for crack-control width control" has been added to address the requirement to use steel rebar for slabs on ground such as feed storage pads and solid manure storage structures.
- American Water Works Association (AWWA) D115-20 (2020) "Tendon-Prestressed Concrete Water Tanks" has been added to provide a design standard for these types of tanks.

Since the issuance of the 2017 permit, the Livestock Services Program became aware that standard ACI-318 is not intended for certain uses:

<u>Concrete Tanks and Reservoirs</u>

ACI 318 Section 1.4.10 states "This code does not apply to the design and construction of tanks and reservoirs." Because of this section, ACI 318 is not applicable to construction of any structures that are reasonably considered tanks or reservoirs. Examples are deep pits, lift station wet wells, pull-plug pit barns, sand lanes, and other structures that typically contain liquids under normal operation. The commentary for this section of the code indicates requirements and recommendations for the design and construction of tanks and reservoirs are given in ACI 350, ACI 334.1R, and ACI 372R. The Livestock Services Program is following the guidance of ACI and limiting the use of ACI 318 to structures and components not typically containing liquids under normal operations.

ACI 350 Section 1.1.1.1 states "Environmental engineering concrete structures are defined as concrete structures intended for conveying, storing, or treating water, wastewater, or other liquids and non-hazardous material such as solid waste, and for secondary containment of hazardous liquids. For ancillary structures for which liquid tightness, gas tightness, or enhanced durability are essential, design considerations shall also conform to requirements of environmental engineering concrete structures." The Livestock Services Program is following the guidance of ACI and is requiring the use of ACI 350 for containment structures and for other structures that contain liquids under normal operation.

AWWA D115-20 was added to address prestressed tanks routinely constructed in the water and wastewater industry. Section 1.1 states "This standard describes current and recommended practice for the design, construction, and field observations of concrete tanks using internal tendons for prestressing. This standard applies to containment structures for use with potable water, raw water, or wastewater." The Livestock Services Program is following the guidance of AWWA and is allowing the use of AWWA D1150-20 as an option for applicable containment structures and for other structures that contain liquid under normal operation.

Slabs on Ground

ACI 318 Section 1.4.8 states "This code does not apply to design and construction of slabs-on-ground, unless the slab transmits vertical loads or lateral forces from other portions of the structure to the soil." Based on this section, ACI 318 is not applicable for slabs on ground as typically found in pack barns, solid manure stacking pads, and solid raw material storage areas where the stored material contains thirty percent or more moisture content or which have free draining liquids. The appropriate code for these types of construction is either ACI 350 or ACI 360. The Livestock Services Program is requiring the use of ACI 350 and ACI 360 Chapter 8 to comply with ACI's guidance. The Livestock Services Program is limiting use of ACI 360 to Chapter 8, as this chapter contains similar requirements to those in ACI 350 for crack control and DANR has not allowed the use of unreinforced concrete in liner applications.

Containment structures, whether storing solid manure or liquid manure, require concrete construction meeting the minimum requirements of ACI 350 or ACI 360 Chapter 8. Use of ACI 318 for construction will be limited to structures for solid manure where storage is not planned. Examples are stub walls in a barn with no manure storage or other structures where manure is not stored as part of the normal operation of the structure.

Removed Concrete Standard

The 2017 general permit referenced Midwest Plan Service 36 (MWPS-36) *Concrete Manure Storages Handbook* (1994). The most recent edition was published in 2005 which the publisher indicates is not intended to be used as a code or standard. The designs in MWPS-36 are based on ACI 318. Additionally, MWPS-36 does not require steel rebar reinforcement for slabs on ground as required by ACI 350 which is applicable to all concrete containment structures included in this permit. Also, the Livestock Services Program found this standard being used to not require the use of rebar chairs. For these reasons, MWPS-36 has been removed as an acceptable standard for concrete design.

**Petition Comment 8:** Section 1.4.3.5 Stockpiling. These changes are beneficial, especially for poultry producers. Turkey litter, for example, typically consists of a mixture of manure and bedding materials, like wood shavings. Increasing the temporary stockpile storage to 30 days is a sensible adjustment that aligns with industry practices.

**Response:** Comment noted.

**Todd Wilkinson, Wilkinson Law Prof, L.L.C. on behalf of South Dakota Cattleman's Association, South Dakota Pork Producers, and South Dakota Dairy Producers**

**Petition Comment 9:** The South Dakota Cattleman's Association respectively request that the Secretary adopt the changes in the General Permit as recommended by the DANR staff in the public comment period with limited exceptions or clarification and opposes any proposed changes which adversely affect animal agriculture production.

South Dakota Cattleman's Association opposes restrictions or conditions on approved or proposed confined animal feeding operations suggested by others filing comments that are not in the interest of the general public procedures or justified by scientific or appropriate objective metrics and evidence.

**Response:** Comment noted.

**Petition Comment 10:** The South Dakota Dairy Producers respectively request that the Secretary adopt the changes in the General Permit as recommended by the DANR staff in the public comment period with limited exceptions or clarification and opposes any proposed changes which adversely affect animal agriculture production.

South Dakota Dairy Producers opposes restrictions or conditions on approved or proposed confined animal feeding operations suggested by others filing comments that are not in the interest of the general public, producers, or justified by scientific or appropriate objective metrics and evidence.

**Response:** Comment noted.

**Petition Comment 11:** The South Dakota Pork Producers Council respectively request that the Secretary adopt the changes in the General Permit as recommended by the DANR staff in the public comment period with limited exceptions or clarification and opposes any proposed changes which adversely affect animal agriculture production.

South Dakota Pork Producers Council opposes restrictions or conditions on approved or proposed confined animal feeding operations suggested by others filing comments that are not in the interest of the general public, producers, or justified by scientific or appropriate objective metrics and evidence**.**

**Response:** Comment noted.

**Public Comments**

**Public Comment 1:** With regards to Table 2, it is commendable to DANR and SD NRCS that the Phosphorus Index closely mirrors the recommendations in the South Dakota version of *Conservation Practice Standard 590*. Close coordination of recommended practices at the state and federal level makes it much easier for producers to comply, especially when cost share dollars are involved. I strongly encourage such coordination to continue.

**Response:** DANR and the South Dakota Natural Resources Conservation Service (NRCS) have worked together for many years on nutrient management plan (NMP) requirements and planning

tools. This partnership makes it easier for producers and crop consultants to work with either agency on initial and annual plans and required records. We expect this teamwork to continue.

**Public Comment 2:** When the Phosphorus Index was being developed and validated a major concern was the potential buildup of phosphorus in soils receiving manure on a regular basis. My experience has shown that in a corn soybean rotation this concern has failed to materialize.

**Response:** Comment noted.

**Public Comment 3:** Limiting the application of liquid manure to frozen and/or snow-covered soil only for the management of emergency situations makes good sense. Allowing the application of solid manure to frozen and/or snow-covered soils to occur if certain conditions are met as described in 1.4.4.2.k. also makes good sense. A significant amount of solid manure accumulated during the winter in open feedyards contains a lot of "brown snow" and ice. Allowing the application of this type of manure product to uplands and certain lands protected by setbacks to protect waterways is a better option than stockpiling brown snow that will melt in a concentrated site in the spring. Also the spring application of manure tends to compact soils which tends to reduce yields and promote runoff. From a producer workload point of view, allowing the winter application of manure also likely allows the producer more time to better manage his or her nutrient management program.

**Response:** Comment noted.

**Public Comment 4:** Section 1.4.4.1.q discusses the application of manure to property owned by other persons. I understand the need for regulators to know who is applying what to where should a "violation" of some sort occur. In today's world of large operations buying silage, buying haylage, contracting manure application, selling manure, composting, switching renters, and switching land owners; keeping track of all of this poses a logistical challenge at best.

**Response:** During the contested case hearing for the 1997 swine general permit, the Secretary heard concerns about who would be responsible for the land application of manure generated at swine concentrated animal feeding operations (CAFOs) in compliance with the permit's NMP requirements. The Secretary decided the producer should be responsible. Section 1.4.4.1.q. of the permit requires any NMP land not owned by the producer to have a written agreement from the legal landowner that is submitted as part of the initial NMP. This agreement makes it clear that manure may be land applied to those fields as a fertilizer and the producer can count the acres available in this field to ensure the CAFO has adequate acres in its initial NMP.

Legal locations of fields in the NMP are public noticed for new and expanding operations. Having this agreement eliminates questions on whether the landowner has agreed to allow land application. Counties with zoning may also use this information for the development of road haul agreements and to address other land use issues.

**Public Comment 5:** CAFO regulators want a nutrient management plan to include more land than is necessary. This then means that some of the land in the nutrient management plan will not receive enough manure, if any, to meet nutrient requirements for crop production.

**Response:** The NMP does require more land than is necessary for application in one normal year. This provides the producer with flexibility when unexpected situations arise. Examples are when drought occurs and all of the nutrients applied are not utilized by the growing crop or during periods of excessive rainfall when fields in the plan may be unavailable or inaccessible due to excessive soil moisture.

**Public Comment 6:** DANR does allow lands to be moved from one plan to another (1.4.4.3.b.) but this typically takes months to accomplish when manure and land availability is sorted out in a matter of weeks or days after harvest and before freezing up in the fall of the year. This situation needs to be timelier and user friendly.

**Response:** DANR agrees the process for temporarily transferring NMP fields must be timely. Including and identifying the requirements for temporarily transferring fields in the permit (1.4.4.3.b.) provides clarity for producers. This allows them to submit the correct information necessary for temporarily transferring fields. Upon receipt of complete temporary field transfer information including appropriate documentation and if the field is eligible to be transferred between the permitted operations, the Livestock Services Program prioritizes timely approval of the transfer as we recognize the window for manure application can be short. The average approval time for temporary transfers for eligible fields is less than 9 days, with approximately 80% of temporary field transfers approved within 7 days of submission.

**Public Comment 7:** As the permit now reads (1.4.4.2.w.) a manure producer can sell manure to a separate entity with no nutrient management plan and that entity can land apply the manure and not be in violation of the permitting process. The 100-ton limit is five big spreaders full, covers maybe twenty acres, and makes little sense. My favorite wife's 100 ewes and their lambs produce more manure than that annually. Liquid manure is not even mentioned. The 100-ton limit needs expanding.

**Response:** Prior to the issuance of the 2017 general permit, the department received comments from producers asking that the general permit allow the producer to give away de minimis amounts of solid manure for uses like fertilizing a neighbor's garden. In the 2017 general permit, the de minimis amount of solid manure that could be transferred to others was 100 cubic yards of solid manure. After discussion with DANR staff, the proposed general permit allows a producer to sell or give away up to 100 tons of solid manure per year. The intent is to continue to allow for the previously requested de minimis amounts of solid manure without use of an NMP.

If a CAFO producer wants to sell or give away more than 100 tons of solid manure a year, they may apply for an individual permit. Some states where manure was allowed to be given away, such as Minnesota, have recently put in place requirements to document and ensure that all transferred manure is properly land applied. Any transferred manure may also be regulated as a commercial fertilizer by DANR's Inspection, Compliance, and Remediation Program.

See response to public comment 4.

**Public Comment 8:** The over application of manure is most likely to occur when a manure producer over applies manure to lands adjacent to the manure production facility because he/she does not want to incur the transportation costs to move the manure a significant distance from the

production facility. Making it easier to add fields or "switch" fields would likely encourage manure producers to approach neighbors to utilize the manure when such situations occur.

**Response:** Title 40 of the Code of Federal Regulations (40 CFR) 122.42(e)(6) adopted by reference in ARSD 74:52:02:22 sets the requirements for changes to an NMP. Two items that the U.S. EPA specifically list in their definition of substantial modification and set requirements for are: additional acres in the NMP and change in crop rotation. The Livestock Services Program does not have the ability to modify or not follow federal regulations. The Livestock Services Program prioritizes changes to NMPs that have all required documents as we recognize the window for manure application can be short.

See response to public comment 6.

**Public Comment 9:** Compliance checks and annual inspections should include verification that actual inspection soil sample results compare favorably with records in the files of the permit holder. Understanding that inspections take time, manpower, and dollars many producers may willingly pay a significant portion of such inspection costs if the end results are likely sufficient to blunt frivolous nuisance complaints as well as expose those that are not in compliance and give everyone else a less than favorable view in the public's eye.

**Response:** As part of annual or triennial inspections of CAFOs, soil sample results and the producer's annual NMP records are reviewed. The Livestock Services Program does not collect soil samples during routine inspections.

**Public Comment 10:** Solid manure often contains long fibrous material that actually acts much like mulch when surface applied to frozen and snow covered lands. Recognizing this can be an asset. Setbacks provide good protection guidance for waterways but need to be reasonable.

**Response:** The general permit's setbacks to surface waters come from 40 CFR 412.4(c)(5) adopted by reference in ARSD 74:52:10:01. The Livestock Services Program does not have the ability to modify or not follow federal regulations.

**Public Comment 11:** Manure is a slow-release fertilizer. When properly incorporated into the soil it is less likely to leach than commercial fertilizer. This fact needs to be recognized as a positive asset when writing manure management regulations, especially in today's world of renewability and sustainability.

**Response:** Comment noted.

**Public Comment 12:** A commentor indicated they "would like to highlight Section 1.4.3.4.c, which addresses standards for concrete design. Our intent is to ensure this provision is both technically sound and enhances long-term structural integrity. Members of our team, including professionals with advanced engineering expertise, have noted that in certain applications increased rebar requirements may not improve safety and, in some cases, could result in less effective structural performance. Containment structure designs have performed reliably for decades, and there is no clear indication that the existing standards have been inadequate." The commentor "respectfully requests that the agency consult with qualified subject matter experts to

confirm that the proposed revisions will provide a measurable benefit to the long-term strength and stability of these facilities."

**Response:** See response to petition comment 7.

**Public Comment 13:** SDCL § 1-41-3.4 states that "no rule that has been promulgated pursuant to Title 34A, 45, 46, or 46A may be more stringent than any corresponding federal law, rule, or regulation governing an essentially similar subject or issue." The State Permit is promulgated pursuant to Title 34A and governs CAFOs. The Code of Federal Regulations provides corresponding federal rules and regulations governing CAFOs as well. Therefore, pursuant to SDCL § 1-41-3.4, South Dakota rules governing CAFOs may not be more stringent than the federal rules. Despite this, the proposed State Permit appears to exceed the corresponding federal rules in several respects and should therefore be revised to ensure compliance with SDCL § 1-41-3.4.

**Response:** SDCL § 1-41-3.4 applies to administrative rules not general permits. For the general NPDES permit, DANR has adopted the federal NPDES CAFO regulations by reference in ARSD 74:52:02:22 and 74:52:10:01. For the general state permit ARSD 74:52:01:05.01 adopts by reference the same federal regulations except the requirements of 40 C.F.R. §§ 122.23(h) and 122.42(e)(4) in ARSD § 74:52:02:22 are those of February 12, 2003.

The general permit also includes conditions based on decisions made by the Department Secretary during previous contested case hearings; manure management design standards not addressed by the EPA; NMP requirements that follow the EPA nutrient management planning narrative approach that make sense for South Dakota based on work with the South Dakota NRCS and South Dakota State University; and conditions based on best professional judgement. We believe these permits successfully lay out a roadmap for producers' environmental compliance. However, a producer always has the option of applying for an individual permit.

**Public Comment 14:** Land application fields in NMPs should be identified and approved by operators of the land, not titled landowners. The draft State Permit requires that lands enrolled in an NMP require written agreements from the legal landowners of those lands. We do not believe this is required by the federal rules, and it is inconsistent with typical farming practices in South Dakota, where operators of the land typically make cropping and fertilizing decisions. We suggest revising the proposed State Permit accordingly so that operators of the land can sign land application agreements to enroll their fields in a permittee's NMP.

**Response:** Though typical farming practices may allow operators of the land to make cropping and fertilizer decisions, DANR has no way of knowing if those rights have been granted by the landowner. The legal landowner ultimately has decision making authority over land use decisions on their property.

See response to public comment 4.

**Public Comment 15:** Land application fields should not require pre-approval in every instance. The Department currently requires all fields used for land application of manure or process wastewater be identified and pre-approved in an NMP, even those being added to an NMP that

already has enough land application acres. The pre-approval process, however, is often cumbersome and does not always occur in a timely manner. This creates challenges for permittees. Land application of manure can be a dynamic process, that often requires adaptation to changing conditions, such as weather and the desires and actions of NMP field operators. By expressly allowing permittees to identify land application fields and application activities in an annual report (for example) versus a pre-approval process, the Department could reduce administrative burdens and allow a more-streamlined land application process, while maintaining a reporting mechanism that ensures compliance and transparency in the land application process.

**Response:** See response to public comments 4, 6, and 8.

**Public Comment 16:** Alternative manure application setbacks should be allowed when sufficiently protective of surface waters. The draft State Permit language requires producers to maintain at least a 100-foot buffer zone or 35-foot vegetated buffer between any manure land application areas and any downgradient surface waters or tile intakes. It is our understanding that alternative setbacks are allowed under the federal rules for protective land application practices. For example, direct injection or immediate incorporation of manure is an alternative land application practice that should allow for reduced buffer zones between land application areas and tile intakes.

**Response:** See response to public comment 10. The federal regulations adopted by reference by DANR allow implementation of alternative conservation practices or field-specific conditions that will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback. No person has submitted this documentation to DANR. If this is something you would like DANR to consider, we recommend you work with South Dakota State University on a study or studies that demonstrate conservation practices that provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot setback. DANR received a similar comment during reissuance of the 2017 general permit pointing to Minnesota requirements. When we reached out to the Minnesota Pollution Control Agency, we were told those requirements were not based on science but were political decisions.

**Public Comment 17:** Allowing manure and process wastewater transfers between permitted CAFOs can help streamline manure field transfer among cooperating feedlots. The current process for transferring manure and process wastewater between the nutrient management plans ("NMPs") of permitted CAFOs requires paper forms with multiple signatures each year, which need to be reviewed and pre-approved before transfers occur. This is a cumbersome process that adds to the administrative workload for both the feedlot and the Department. Section 1.4.4.1t of the proposed permit would give operators greater flexibility to transfer manure and process wastewater. This provision would create more options while ultimately ensuring that each field used for manure application has been vetted and approved.

**Response:** Comment noted.

**Public Comment 18:** Stormwater gravity pipe testing requirements. In consultation with our engineers, we are of the belief that if a pipe is consistently full, (e.g. pipe connecting stormwater basins) water leaking into the pipe is not a major concern. Pipes installed under production areas with approved liners would also have little to no risk of contamination. Focusing the testing

requirements on pipes installed under liquid manure containment structures would be a more practical approach for operators.

**Response:** Installation of storm water piping beneath liquid containment structures is generally prohibited, and any design proposing such installation would be evaluated on a case-by-case basis. Testing of stormwater piping that passes beneath production areas and all other containment structures has been required to ensure the installed piping meets the design requirements. While the Livestock Services Program recognizes the risk of leaching into the piping is limited where placed below a concrete or earthen liner, the risk of failure due to a construction or material defect exists. Once the liner is constructed and placed into service, effort to repair the piping would be significant. By testing the piping when installed, there can be assurance that the joints are joined and intrusion of fines that may cause settlement or distortion of the liner is limited.

**Public Comment 19:** Snowmelt on impermeable covers. The proposed permit would require that snowmelt (or other precipitation) accumulated on top of impermeable covers be treated as process wastewater. Producers would thus have two primary options for managing this liquid: 1) Contain it using current storage structures or 2) obtain an NPDES permit to be able to discharge it. However, manure storage covers are impermeable, made from acceptable liner material, and seam tested for proper installation. All this makes for a watertight barrier that prevents the mixing of cover precipitation with manure and process wastewater. The currently proposed language would require operators to either revisit their storage capacities to accommodate the additional volume or change the permit under which they operate. Both options create additional economic hardship for producers since they come with additional costs and timelines.

**Response:** Snowmelt and other precipitation on covers may be comingled with manure or process wastewater due to failures caused by cover defects, normal wear and tear, or operational factors. Testing of the accumulated water on top of the cover is required to demonstrate the operation is not discharging manure or process wastewater without a permit. As the state permit does not allow any discharges of manure or process wastewater, an NPDES permit would be required if the operation desires to discharge the accumulated water.

**Public Comment 20:** Comments were received in support of lengthening the term of the state permit to ten years, issuing two separate permits, consulting with NRCS and the Cooperative Extension Service to incorporate their standards and ensure consistency, working with and informing livestock producers and producer groups throughout the permit development process, including new technology and allowing for the flexibility to update technical references, and maintaining state authorized permits for CAFOs.

**Response:** Comments noted.