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TODD D. WILKINSON  
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December 18, 2025

RECEIVED

DEC 19 2025

OFFICE OF THE SECRETARY

Department of Agriculture and Natural Resources  
Division of Agriculture and Environmental Services  
Attn: Office of the Secretary  
Livestock Services Program  
523 East Capitol, Joe Foss Building  
Pierre, South Dakota 57501

Re: Petition to Intervene on State General Water Pollution Control Permit for Concentrated Animal Feeding Operations and NPDES General Water Pollution Control Permit for Concentrated Animal Feeding Operations

Dear Office of the Secretary,

Enclosed please find the **Petition to Intervene on State General Water Pollution Control Permit for Concentrated Animal Feeding Operations and NPDES General Water Pollution Control Permit for Concentrated Animal Feeding Operations** for South Dakota Cattleman's Association, South Dakota Pork Producers, and South Dakota Dairy Producers.

If you have any questions, do not hesitate to call. Thank you

Sincerely yours,

WILKINSON LAW PROF LLC



Todd D. Wilkinson

TDW: mo  
Encl.

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DEC 19 2025

SOUTH DAKOTA DEPARTMENT OF AGRICULTURAL  
AND NATURAL RESOURCES

OFFICE OF THE SECRETARY

In re:

REISSUANCE OF THE  
STATE GENERAL WATER  
POLLUTION CONTROL PERMIT  
FOR CONCENTRATED ANIMAL  
FEEDING OPERATIONS and  
NPDES GENERAL WATER  
POLLUTION CONTROL PERMIT  
FOR CONCENTRATED ANIMAL  
FEEDING OPERATIONS.

CONTESTED CASE

PETITION TO INTERVENE  
PURSUANT TO A.R.S.D  
74:50:02:05 AS A PARTY

COMES NOW South Dakota Cattleman's Association, and through its undersigned attorney, hereby submits its Petition to Intervene in this matter as an interested party pursuant to § 75:50:02:05 of the Administrative Rules of South Dakota. The basis for intervention is as follows:

1. Petitioner's interest in the involved matter: South Dakota Cattleman's Association represents farmers, ranchers, stockers, and feedlot operations across the State of South Dakota. Many of the South Dakota Cattleman's Association members are and will be impacted by the terms and conditions of the proposed permits and any modifications made to the State General Water Pollution Control Permit for Concentrated Animal Feeding Operations and the National Pollution Discharge Elimination System (NPDES) permit.

South Dakota is the 7<sup>th</sup> largest cow calf State in the United States and is home to a large number of stocker cattle feeding operations as well as cattle feedlot finishing operations. Changes in the General Permit and the NPDES permit process will impact existing operations and plans for future operations for cow calf operators, stockers

operations, and cattle feedlot operations located throughout the state.

South Dakota Cattleman's Association as the voice of its members has an interest in the revisions and reissuance of the South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations ("General Permit") and the National Pollutant Discharge Elimination System (NPDES) permit process as administered by the State. Any changes in the General Permit and the NPDES permitting regulations will impact current operations as well as plans and future operations of South Dakota Cattleman's Association members or affiliated producers who raise cattle or feed cattle or otherwise work or operate in a manner which may or will be affected by the rules and regulations adopted as a part of the State General Permit and NPDES permitting process.

2. Statement of the recommendation contested, if any, and the relief and decision requested from the board:

The South Dakota Cattleman's Association respectfully 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.

3. Statement alleging the relevant facts and issues known to the petitioner, upon which the petition bases the contesting or request to the board. 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.

4. Standard of the legal authority and jurisdiction under which the hearing would be held A.R.S.D 75:50:22:06, SDCL 1-26-17 and 1-26-27 and SDCL Chapter 34A-2.

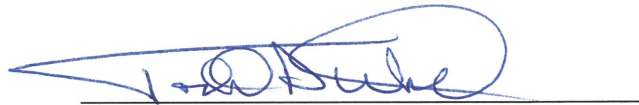
5. Reference to the particular statutes and rules involved:

SDCL 34A-2-93 (general authority); SDCL 34A-2-112 (authority of Secretary to issue permit); SDCL 34A-2-30 through 34A-2-35 (administrative procedures for permit adoption and revision). A.R.S.D 74:52:02:46 (requirement that must be met in order to issue a general permit); A.R.S.D 74:52:05:07.

South Dakota Cattleman's Association requests that it be allowed to appear as an intervener through undersigned counsel.

Dated this 18<sup>th</sup> day of December, 2025.

WILKINSON LAW PROF LLC



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Todd D. Wilkinson  
103 Joliet Ave SE  
PO Box 29  
De Smet, SD 57231  
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[todd@wslawfirm.net](mailto:todd@wslawfirm.net)  
*Attorney for South Dakota Cattleman's Association*

## CERTIFICATE OF SERVICE

South Dakota Cattleman's Association has made its filing with DANR by email and U.S.

Mail postage prepaid, on December 18<sup>th</sup> 2025 at the following address:

Department of Agriculture and Natural Resources  
Division of Agriculture and Environmental Services  
Livestock Services Program  
523 East Capitol, Joe Foss Building  
Pierre, South Dakota 57501  
Attn: Office of the Secretary

And the undersigned has caused the foregoing to be served by email on the following individuals or organizations that have filed Petitions to Intervene at the time of this filing:



Todd D Wilkinson

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AND NATURAL RESOURCES

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In re:

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FOR CONCENTRATED ANIMAL  
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CONTESTED CASE

PETITION TO INTERVENE  
PURSUANT TO A.R.S.D  
74:50:02:05 AS A PARTY

COMES NOW South Dakota Pork Producers Council, and through its undersigned attorney, hereby submits its Petition to Intervene in this matter as an interested party pursuant to § 75:50:02:05 of the Administrative Rules of South Dakota. The basis for intervention is as follows:

1. Petitioner's interest in the involved matter: South Dakota Pork Producers Council is a unified and engaged advocate promoting, with integrity, the image and growth of the South Dakota pork industry. Pork producers across the State of South Dakota will be impacted by the terms and conditions of the proposed permits and any modifications made to the State General Water Pollution Control Permit for Concentrated Animal Feeding Operations and the National Pollution Discharge Elimination System (NPDES) permit.

South Dakota is home to many pork producers operating in confined feeding facilities and changes in the General Permit and the NPDES permit process will impact existing operations and plans for future operations for pork producers and operations.

South Dakota Pork Producers Council as the voice of its members has an interest in

the revisions and reissuance of the South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations ("General Permit") and the National Pollutant Discharge Elimination System (NPDES) permit process as administered by the State. Any changes in the General Permit and the NPDES permitting will directly affect current operation plans as well as future operations of South Dakota Pork Producers Council members or affiliated producers who raise swine or otherwise work or operate in a manner which may or will be affected by the rules and regulations adopted as a part of the State General Permit and NPDES permitting process.

2. Statement of the recommendation contested, if any, and the relief and decision requested from the board:

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.

3. Statement alleging the relevant facts and issues known to the petitioner, upon which the petition bases the contesting or request to the board. 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.
4. Standard of the legal authority and jurisdiction under which the hearing would be held A.R.S.D 75:50:22:06, SDCL 1-26-17 and 1-26-27 and SDCL Chapter 34A-2.

5. Reference to the particular statutes and rules involved:

SDCL 34A-2-93 (general authority); SDCL 34A-2-112 (authority of Secretary to issue permit); SDCL 34A-2-30 through 34A-2-35 (administrative procedures for permit adoption and revision). A.R.S.D 74:52:02:46 (requirement that must be met in order to issue a general permit); A.R.S.D 74:52:05:07.

South Dakota Pork Producers Council requests that it be allowed to appear as an intervener through undersigned counsel.

Dated this 18<sup>th</sup> day of December, 2025.

WILKINSON LAW PROF LLC



---

Todd D. Wilkinson  
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*Attorney for South Dakota Pork  
Producers Council*

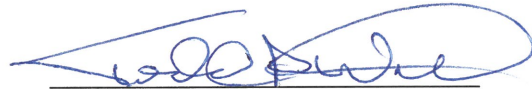
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In re:

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STATE GENERAL WATER  
POLLUTION CONTROL PERMIT  
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FEEDING OPERATIONS.

CONTESTED CASE

PETITION TO INTERVENE  
PURSUANT TO A.R.S.D  
74:50:02:05 AS A PARTY

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COMES NOW South Dakota Dairy Producers, and through its undersigned attorney, hereby submits its Petition to Intervene in this matter as an interested party pursuant to § 75:50:02:05 of the Administrative Rules of South Dakota. The basis for intervention is as follows:

1. Petitioner's interest in the involved matter: South Dakota Dairy Producers is a voice for dairy farmers and producers located throughout South Dakota. Dairy Producers will be impacted by the terms and conditions of the proposed permits and any modifications made to the State General Water Pollution Control Permit for Concentrated Animal Feeding Operations and the National Pollution Discharge Elimination System (NPDES) permit.

Dairy production is growing in the State of South Dakota and is home to many dairy producers operating in confined feeding facilities and changes in the General Permit and the NPDES permit process will impact existing operations and plans for future dairy producers and farmers.

South Dakota Dairy Producers as the voice of its members has an interest in the

revisions and reissuance of the South Dakota General Water Pollution Control Permit for Concentrated Animal Feeding Operations ("General Permit") and the National Pollutant Discharge Elimination System (NPDES) permit process as administered by the State. Any changes in the General Permit and the NPDES permitting will impact current operations and plans for future operations of South Dakota Dairy Producers members or affiliated producers who raise dairy animals or otherwise work or operate in a manner which may or will be affected by the rules and regulations adopted as a part of the State General Permit and NPDES permitting process.

2. Statement of the recommendation contested, if any, and the relief and decision requested from the board:

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.

3. Statement alleging the relevant facts and issues known to the petitioner, upon which the petition bases the contesting or request to the board. 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.
4. Standard of the legal authority and jurisdiction under which the hearing would be held A.R.S.D 75:50:22:06, SDCL 1-26-17 and 1-26-27 and SDCL Chapter 34A-2.
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South Dakota Dairy Producers requests that it be allowed to appear as an intervener through undersigned counsel.

Dated this 18<sup>th</sup> day of December, 2025.

WILKINSON LAW PROF LLC



Todd D. Wilkinson  
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[todd@wslawfirm.net](mailto:todd@wslawfirm.net)  
*Attorney for South Dakota Dairy Producers*

## CERTIFICATE OF SERVICE

South Dakota Dairy Producers has made its filing with DANR by email and U.S. Mail postage prepaid, on December 18, 2025 at the following address:

Department of Agriculture and Natural Resources  
Division of Agriculture and Environmental Services  
Livestock Services Program  
523 East Capitol, Joe Foss Building  
Pierre, South Dakota 57501  
Attn: Office of the Secretary

And the undersigned has caused the foregoing to be served by email on the following individuals or organizations that have filed Petitions to Intervene at the time of this filing:



Todd D Wilkinson

**From:** [Kiera Leddy](#)  
**To:** [DANR Mail](#)  
**Cc:** [Roth, Troy](#); [Kellie Ripp](#); [Daneen Petty](#)  
**Subject:** [EXT] State CAFO Permit-Petition  
**Date:** Monday, December 22, 2025 8:50:40 AM  
**Attachments:** [image001.png](#)  
[12222025 ACKER Petition Final-signed.pdf](#)  
**Importance:** High

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Good morning,

Attached you will find a petition to initiate a contested case hearing on behalf of ACKER, Inc., for the state CAFO permit. Please let me know when it has been accepted and filed.

Thank you,



**Kiera Leddy, Attorney**  
**Leut Services, P.C.**

[kleddy@leutservicespc.com](mailto:kleddy@leutservicespc.com)

605-924-0271

713 S. Main St., Dimock, SD 57331

[www.leutservicespc.com](http://www.leutservicespc.com)

**NOTICE OF CONFIDENTIALITY:** This email and any files transmitted with it are confidential and intended only for the use of the individual or entity to which they are addressed. If you have received this email in error, please notify the system manager. This message contains confidential information and is intended only for the recipient. If you are not the named addressee you should not disseminate, distribute or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

**SOUTH DAKOTA DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES**

<p>REISSUANCE OF STATE GENERAL PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS</p> <p>ARSD ARTICLE 74:52</p>	<p>PETITION TO INITIATE CONTESTED CASE HEARING ARSD 74:50:02:05</p>
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**I. STATEMENT OF INTEREST**

Please be advised that I represent ACKER, Inc. (“ACKER”). Acker is a nonprofit corporation whose members are engaged in agricultural pursuits, including but not limited to cattle, hog, poultry, and crop production in South Dakota. This requires them to hold a General Water Pollution Control Permit for Concentrated Animal Feeding Operations (“General Permit”). Due to its membership, Acker holds a vested interest in advocating for agricultural policy, specifically regarding surface water discharge compliance and environmental management within South Dakota.

**II. STATEMENT OF FACTS AND ISSUES**

This petition is filed pursuant to SDCL Chapter 1-26 and ARSD 74:50:02:02, which grant interested parties the right to request a contested case hearing. We are filing a petition to initiate a contested case hearing regarding the reissuance of the General Permit. The South Dakota Department of Agriculture and Natural Resources (“DANR”) has jurisdiction under ARSD 74:50:02:06 and related statutes governing water quality and discharge permits.

We contest the proposed amendments to ARSD Article 74:52, which modify effluent limitations and monitoring requirements. We respectfully request that DANR schedule a contested case hearing to either deny or revise these proposed changes, ensuring they align with statutory authority and practical feasibility. Below, we provide a detailed analysis of the proposed amendments we are contesting and commending

**III. RECOMMENDATIONS CONTESTED**

*a. 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.

***b. 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, coldwater 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.

***c. 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.

***d. 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.

***e. 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.

***f. 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.

***g. 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.

#### ***h. 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.

**IV. RELIEF REQUESTED**

We respectfully request that DANR schedule a contested case hearing to either deny or revise these proposed changes, ensuring they align with statutory authority and practical feasibility. (ARSD 74:50:02:02). Additionally, we reserve the right to call expert witnesses and arrange for a court reporter to be present at the hearing.

*CERTIFICATION: I certify that a copy of this petition has been or will be served upon all known persons affected by the request, including the Department of Agriculture and Natural Resources and other interested parties.*

DATE: Dec. 22, 2025

/s: Kiera Leddy  
Kiera Leddy of Leut Services, P.C.  
Attorney for Petitioner, ACKER, Inc.