

**SOUTH DAKOTA
DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES
523 EAST CAPITOL AVENUE
PIERRE, SOUTH DAKOTA 57501-3182**

SURFACE WATER DISCHARGE PERMIT

AUTHORIZING DISCHARGE

UNDER THE

SOUTH DAKOTA SURFACE WATER DISCHARGE SYSTEM

In compliance with the provisions of the South Dakota Water Pollution Control Act and the Administrative Rules of South Dakota, Chapters 74:52:01 through 74:52:11,

Dakota Layers, LLC – DL Specialty Eggs

is directed by the South Dakota Department of Agriculture and Natural Resources (DANR) to have **no discharge** of solid or liquid manure, litter, or process wastewater from their production areas or manure management system located in the Northeast $\frac{1}{4}$ of Section 10, Township 109 North, Range 48 West in Brookings County, South Dakota (44.260566, -96.57334) in accordance with the requirements as contain in the provisions of this permit. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the South Dakota Water Pollution Control Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

This permit shall become effective, **DATE**.

This permit and the authorization to discharge shall expire at midnight, **DATE 5 years from effective date**.

Signed this **DDth day of MMM, YEAR**.

Authorized Permitting Official

Hunter Roberts
Secretary
Department of Agriculture and Natural Resources

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1. EFFLUENT LIMITATIONS

1.1. Definitions

- 1.1.1. A “25-year, 24-hour Storm Event” is the amount of precipitation in a 24-hour period expected to occur only once every 25 years. Typically, the 25-year, 24-hour storm event is about 3 inches in western South Dakota and 5 inches in eastern South Dakota. The map at http://hdsc.nws.noaa.gov/hdsc/pfds/pfds_map_cont.html?bkmrk=sd shows the actual amount of precipitation that constitutes the 25-year, 24-hour storm event for South Dakota (*NOAA Atlas 14 Volume 8: Precipitation-Frequency Atlas of the United States, Midwestern States*, 2013). This map can be used with an operation’s longitude and latitude to find the 25-year, 24-hour storm event for that location.
- 1.1.2. “Animal Feeding Operation” (AFO) is a lot or facility that stables, confines, and feeds or maintains livestock in either an open or housed lot for a total of 45 days or more in any 12-month period. The open lot does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season over any portion of the lot or facility. Two or more AFOs under common ownership are a single AFO if they adjoin each other (within one mile), or if they use a common area or system for the disposal of manure.
- 1.1.3. “ARSD” means the Administrative Rules of South Dakota.
- 1.1.4. "Aquifer," a geologic formation, group of geologic formations, or part of a geologic formation that contains sufficient saturated permeable material to yield economical quantities of water to wells and springs;
- 1.1.5. “Best Management Practices” (BMPs) means schedules of activities, prohibitions of practice, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, manure disposal, manure application, manure stockpiles, or drainage from raw material storage.
- 1.1.6. A “Concentrated Animal Feeding Operation” (CAFO) is an AFO that meets the following criteria for a large, medium, or small CAFO:
- 1.1.6.1. A large CAFO as described in Table 1;
- 1.1.6.2. A medium CAFO as described in Table 1 and meets one of the following conditions:
- 1.1.6.2.a. Pollutants are discharged into waters of the state through a man-made ditch, flushing system, or other similar man-made device; or

- 1.1.6.2.b. Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation;
- 1.1.6.3. A small CAFO as described in Table 1 and designated as a CAFO by the Secretary considering the following factors:
 - 1.1.6.3.a. The size of the AFO and the amount of manure or process wastewater reaching waters of the state;
 - 1.1.6.3.b. The location of the AFO in relation to waters of the state;
 - 1.1.6.3.c. The means of conveyance of manure and process wastewater into waters of the state; and
 - 1.1.6.3.d. The slope, vegetation, precipitation, and other factors affecting the likelihood or frequency of discharge of manure and process wastewater into waters of the state.

Table 1. Number of Animals to Define Large, Medium and Small CAFOs

Type of Animal Feeding Operation	CAFOs		
	Large	Medium	Small
	Animal numbers equal to or more than:	Animal numbers equal to:	Animal numbers less than:
Dairy cows (mature - milked or dry) ¹	700	200 to 699	200
Veal calves ¹	1,000	300 to 999	300
Cattle other than mature dairy cows or veal calves ^{1,2}	1,000	300 to 999	300
Swine (weighing 55 pounds or more) ¹	2,500	750 to 2,499	750
Swine (weighing less than 55 pounds) ¹	10,000	3,000 to 9,999	3,000
Horses ¹	500	150 to 499	150
Sheep or Lambs ¹	10,000	3,000 to 9,999	3,000
Turkeys	55,000	16,500 to 54,999	16,500
Laying hens or broilers ³	30,000	9,000 to 29,999	9,000
Chickens, other than laying hens ⁴	125,000	37,500 to 124,999	37,500
Laying hens ⁴	82,000	25,000 to 81,999	25,000
Ducks ³	5,000	1,500 to 4,999	1,500
Ducks ⁴	30,000	10,000 to 29,999	10,000
Geese	30,000	10,000 to 29,999	10,000

¹ Animals are counted individually once separated from the mother.

² Cattle includes but is not limited to heifers, steers, and bulls.

³ AFO uses a liquid manure handling system.

⁴ AFO uses other than a liquid manure handling system.

NOTE: Other animal types not listed in the above table may be considered on a case-by-case basis.

- 1.1.7. “Containment Structure” means any structure designed to store, treat, or process manure, litter, or process wastewater at a CAFO or any structure designed to store, treat, or process manure, litter, process wastewater, or other organic by-products.
- 1.1.8. “Discharge” an addition of any pollutant or combination of pollutants to surface waters of the state from any CAFO.

- 1.1.9. “Housed Lot” means totally roofed buildings that may be open or completely enclosed on the sides. Animals are housed over solid concrete or earthen floors, slotted floors over pits, or manure collection areas in pens, stalls, or cages.
- 1.1.10. “Land Application” means the application of manure, litter, or process wastewater onto or incorporated into the soil.
- 1.1.11. “Local Government” means county or city governments that can adopt requirements applicable to AFOs located within their respective jurisdictions.
- 1.1.12. “Major Modification” means an expansion or increase to the lot area or feeding area; change in the location of the AFO; increase in the maximum permitted animal numbers; change in the methods of waste treatment, waste storage, or land application of waste; change in animal species or type; change in the size or location of the containment structure; increase in the amount of nutrients from the manure management system land applied, change in crop rotation, or the addition of land application fields. A temporary transfer of approved land application fields between permitted operations is not a major modification.
- 1.1.13. “Manure” means manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.
- 1.1.14. “Manure Management System” means any housed lots, open lots, piping, containment structures, and disposal appurtenances associated with the collection, storage, treatment, and land application of manure, litter, or process wastewater at an AFO.
- 1.1.15. “New or Expanding Operations” means CAFOs commencing construction of a new manure management system on or after February 12, 2003, (New operations) or existing operations proposing to increase the maximum number of animals that may be confined at the facility (Expanding operations).
- 1.1.16. “New Source” means any building or manure management system at a large CAFO the construction of which commenced after April 14, 2003, where the operation:
- 1.1.16.1. Constructs a new building, manure management system structure(s), or manure containment system at a location where no other CAFO exists;
 - 1.1.16.2. Totally replaces the animal housing, production equipment, or manure management system structures associated with the collection, storage, and treatment of manure or process wastewater at a site; or
 - 1.1.16.3. Constructs a new building, manure management system structure(s), or manure containment system at a location where another CAFO exists where the new operation will be operated substantially independently from the existing operation.
- 1.1.17. “Open Lot” means pens or similar confinement areas with earthen and/or paved surfaces. Animals are exposed to the outside environment except for possible small portions affording some protection by windbreaks or small shed type shade areas.
- 1.1.18. “Overflow” means the flowing over or spilling of manure or process wastewater resulting from filling of a containment structure beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure.
- 1.1.19. “Process Wastewater” means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming,

washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or by-products including manure, litter, feed, milk, eggs, or bedding.

- 1.1.20. “Producer” means the owner or operator of the CAFO. When a CAFO is owned by one person but is operated by another person, the operator shall apply for the permit. The producer is the person with coverage under this permit.
- 1.1.21. “Production Area” means the part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities.
- 1.1.22. “Secretary” means the Secretary of the South Dakota Department of Agriculture and Natural Resources or authorized representative.
- 1.1.23. “Setback” means a specified distance from waters of the state or potential conduits to waters of the state where manure, litter, and process wastewater may not be land applied or containment structures may not be located.
- 1.1.24. “Shall” means that the condition is an enforceable requirement of this permit.
- 1.1.25. “Should” means that the condition is a recommendation of the Secretary. If violations of the enforceable requirements of this permit occur, the Secretary will evaluate whether the producer implemented the recommendations contained in this permit that may have helped the producer to avoid the violation.
- 1.1.26. “Surface Waters of the State” are lakes, ponds, streams, rivers, and any other body or accumulation of water on the land surface that is waters of the state, but not waste treatment systems, including treatment ponds, lagoons, leachate collection ponds, or stormwater retention ponds.
- 1.1.27. “Waters of the State” means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, situated wholly or partly within or bordering upon the state.
- 1.2. **Obtaining Permit Coverage**
- 1.2.1. **Operations Required to Obtain Permit Coverage.** South Dakota Codified Laws (SDCL), Section 34A-2-36.2, requires each CAFO, as defined by Title 40 Codified Federal Regulations (C.F.R.) Part 122.23 (January 1, 2023), to operate under a general or individual water pollution control permit. Once a CAFO receives permit coverage, the permit requirements apply to all AFOs at the operation with respect to all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

- 1.2.2. **Certificate of Compliance Requirements.** This section describes requirements to obtain a Certificate of Compliance which allows the operation to populate to the maximum permitted animal numbers.
- 1.2.2.1. If there are any deviations from the approved plans, revised plans shall be submitted for review and approval prior to construction of these changes. Livestock Services Program staff shall conduct a minimum of one construction inspection in accordance with ARSD 74:57:01:03.
- 1.2.2.2. A Notice of Completion (Appendix A) signed by the producer's engineer indicating any new or modified components of the manure management system was constructed in accordance with the approved plans and is complete. This part of the application cannot be submitted prior to the Secretary's approval of plans or as-built plans, but shall be submitted before a Certificate of Compliance can be issued.
- 1.2.2.3. After verifying that any new or modified components of the manure management system were constructed in accordance with approved plans and specifications, the Secretary will issue a Certificate of Compliance. The Certificate of Compliance allows the producer to populate the facility up to the maximum number of animals listed on the Certificate of Compliance and to begin using the manure management system in accordance with the conditions of this permit. The producer shall not populate the facility in excess of 81,999 laying hens until the Secretary issues a Certificate of Compliance and the producer shall not exceed the maximum number of animals listed on their Certificate of Compliance.
- 1.2.2.4. **Change of Producer.** If the producer will no longer be the operator of the operation, they shall transfer permit coverage to the new producer. The producer shall comply with the following to transfer the permit to a new producer:
- 1.2.2.4.a. The current producer notifies the Secretary at least 30 days in advance of the proposed transfer date by submitting a Change of Producer form (Appendix D);
- 1.2.2.4.b. The new producer submits a Certification of Applicant form, a DANR General Information form, a U.S. EPA Form 2B, and an Operation and Maintenance Guideline;
- 1.2.2.4.c. If the applicant is a corporation, partnership, limited liability partnership (LLP), limited liability company (LLC), or trust, the applicant shall provide information on their legal structure including any parent corporation or subsidiary corporations of the applicant. The applicant shall also identify the name, title/position, and residential address (a P.O. Box is not acceptable) of every officer, general partner, LLP partner, LLC member, trustee, investor, director, or person performing a function similar to a director, the applicant, and each person who is the recorded or beneficial owner of 10 percent or more of any class of voting stock of the applicant, or any other responsible official(s) of the applicant with legal or decision making responsibility or authority for the operation. Documentation shall also be submitted indicating the producer has the authority to sign the application documents for the corporation, partnership, LLP, LLC, or trust;
- 1.2.2.4.d. If the new producer plans to make major modifications to a manure management system the operation shall go through the permit public notice process after being transferred;
- 1.2.2.4.e. The current producer is responsible for complying with the permit requirements until permit coverage is transferred to the new producer. The Secretary will notify the current and new producers if the transfer of permit coverage is granted and the effective date of the permit transfer; and
- 1.2.2.4.f. No later than one year after obtaining coverage under this permit, the new producer is required to attend an approved environmental training program on proper operation and

maintenance of a permitted operation and proper natural resource management or provide a copy of a training certificate dated after April 15, 2017, to DANR.

- 1.2.2.4.g. If no changes to the operation are planned, the permit will be transferred in accordance with ARSD 74:52:04:02. If changes to the operation are planned, the permit will be transferred in accordance with ARSD 74:52:04:01.
- 1.2.2.5. **Continuation of this Permit.** This permit is effective for five years. If this permit is not reissued prior to the expiration date, it continues in force and effect until the Secretary issues a new permit so long as the producer remains in compliance with the conditions of this permit, the approved plans and specifications, and the BMPs incorporated by the producer into the Operation and Maintenance Guideline.
- 1.3. **Permit Termination and Closure Requirements.** The producer shall notify the Secretary if coverage under this permit is no longer necessary because the AFO is no longer in operation or a change in the operation has eliminated the requirement for a permit and the producer wants to terminate permit coverage. The producer shall use the Notice of Termination of Coverage form provided in Appendix C of this permit for this notification.
- 1.3.1. If the AFO will continue to be used for livestock production, the manure management system shall be properly operated and maintained. The Secretary shall notify the producer when permit coverage is terminated and the effective date of permit termination.
- 1.3.2. If the AFO will no longer be used for livestock production, the producer is responsible for ensuring that upon closure of the AFO, all manure and wastewater has been removed in accordance with the terms and conditions of this permit. Once this is complete, the Secretary shall conduct an inspection of the operation to verify all conditions have been met for closure of the operation. The Secretary shall notify the producer when permit coverage is terminated and the effective date of permit termination.
- 1.4. **Effluent Limits**
- 1.4.1. Effective immediately and lasting through the life of this permit the producer shall have no discharge of manure, litter, process wastewater, raw materials, or other organic by-products from the production area to waters of the state.
- 1.4.2. **Discharge Monitoring**
- 1.4.2.1. In the event a discharge occurs at the permitted operation, the process wastewater shall be sampled at the point of discharge or overflow by at least one grab sample if the discharge lasts 24 hours or less, or by at least three grab samples per week if the discharge exceeds 24 hours. The producer shall record the date and time the discharge was identified, the date and time the discharge is halted, and an estimate of the volume of the discharge. The producer shall report the discharge within 24 hours as required by section 1.6 of this permit. The grab samples shall be analyzed for:
- 1.4.2.1.a. Total Suspended Solids (TSS) mg/L;
- 1.4.2.1.b. Total Nitrogen (as N) mg/L;
- 1.4.2.1.c. Ammonia – Nitrogen (as N) mg/L;
- 1.4.2.1.d. Total Phosphorus (as P) mg/L;
- 1.4.2.1.e. Five-Day Biochemical Oxygen Demand (BOD₅), mg/L;
- 1.4.2.1.f. *Escherichia coli* (*E. coli*), #/100 mL; and

1.4.2.1.g. Flow Rate - daily estimated, gallons per day.

1.4.2.2. Samples taken in compliance with the monitoring requirements established under this permit shall be collected prior to reaching the receiving waters. If the producer provides sufficient justification, by phone, the monitoring requirement may be waived by DANR staff due to unsafe conditions associated with sampling until conditions allow for samples to be collected safely. Samples and measurements shall be representative of the volume and nature of the monitored discharge. Monitoring shall be conducted according to test procedures approved under ARSD Section 74:52:03:06 (a.b.r. 40 CFR, Part 136), unless other test procedures have been specified in this permit or approved by the Secretary. Analysis methods shall be sufficiently sensitive to ensure the minimum detection level to determine water quality standards are met. If no sufficiently sensitive method is available, the method with the lowest minimum detection level shall be used.

The producer shall submit the sampling results using the form attached in Appendix F of this permit, including all laboratory report forms, to the Secretary no later than the 28th day of the month following the month when the discharge occurred. Sample results shall be submitted to the following address:

South Dakota Department of Agriculture and Natural Resources
Livestock Services Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Once notified by the Secretary, these sample results shall be submitted using electronic reporting.

1.4.3. Design, Construction, Operation, and Maintenance Requirements

1.4.3.1. The producer shall design, construct, operate, and maintain the CAFO in compliance with the conditions of this permit; the approved plans and specifications; and the BMPs incorporated by the producer into the permit application. The producer shall include the BMPs that will be implemented at the AFO in the Operation and Maintenance Guideline. The producer is responsible for implementing the BMPs to ensure compliance with the terms and conditions of this permit.

1.4.3.2. The site-specific manure management system design, construction, and operation and maintenance requirements will be placed in Appendix E of this permit when permit coverage is granted. These requirements are designed to protect South Dakota's surface water and groundwater quality.

1.4.3.3. **Surface Water Protection.** The producer shall design, construct, operate, and maintain manure management systems to contain all sources of process wastewater and liquid and solid manure. The manure management system shall be designed and constructed in accordance with accepted engineering and construction practices.

1.4.3.3.a. Ditches, dikes, berms, terraces, or other such structures shall be used to divert peak clean water flows away from the manure management system. These structures shall be designed with stable side slopes to carry the peak flow expected during the 25-year, 24-hour storm event without overtopping. Where peak flows are used to design ditches, dikes, berms, sediment basins, or other similar structures, appropriate rainfall distributions (MSE1, MSE2, and MSE3) shall be utilized (see the NRCS supplement to the National Engineering Handbook Part 650).

1.4.3.3.b. Chemicals and other contaminants handled on-site or transferred on-site cannot be disposed of in any storm water storage system or treatment system unless it is specifically

designed to treat such chemicals or contaminants and the Secretary approves the disposal method.

- 1.4.3.3.b.1) All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the management of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner sufficient to prevent pollutants from entering waters of the state. The producer's Operation and Maintenance Guideline should include any applicable chemical handling protocols.
- 1.4.3.3.c. The production area and manure management system, including all clean water conveyances, shall be located on land owned by the producer or the producer shall submit with the application an agreement with the landowner for the planned life of the operation.
- 1.4.3.3.d. Confined animals shall be prevented from contacting waters of the state.
- 1.4.3.3.e. All exterior animal confinement areas shall be operated in a manner that does not meet the definition of an AFO. If the Secretary determines that any exterior animal confinement area meets the definition of an AFO, the permit may be reopened and modified to require appropriate containment structure(s).
- 1.4.3.3.f. Animal mortalities shall be confined to the nutrient storage areas and handled to prevent the discharge of manure and process wastewater to surface waters of the state.
- 1.4.3.3.f.1) Unless plans and specifications approved by the Secretary are for systems specifically designed to handle mortalities, manure or process wastewater systems cannot be used for the disposal of mortalities; and
- 1.4.3.3.f.2) Animal mortality disposal is regulated by the South Dakota Animal Industry Board. The Animal Industry Board may be contacted at (605) 773-3321.
- 1.4.3.3.g. **Feed and Other Raw Materials Storage.** Processing areas and storage areas for feed or other raw materials cannot cause the generation of process wastewater which is not contained. If process wastewater is observed leaving processing and storage areas, the department will require plans and specifications for containment of the process wastewater and a construction schedule for process wastewater containment or elimination.
- 1.4.3.4. **Concrete Standards.** The producer shall comply with the requirements of this section and other requirements of this permit to prevent the migration of pollutants.
- 1.4.3.4.a. Concrete structures shall be properly designed using adequate structural reinforcement to minimize cracking of the concrete and to ensure the structural integrity. Structures shall also be properly designed to minimize or prevent seepage or leakage. Concrete design shall be appropriate for the intended use of the structure. American Concrete Institute Standards shall be used within the scope of the standards. Acceptable standards for concrete design are found in the following sources:
 - 1.4.3.4.a.1) American Concrete Institute Standards 318-25 (2025) *Building Code Requirements for Structural Concrete*;
 - 1.4.3.4.a.2) American Concrete Institute Standards 350-20 (2020) *Code Requirements for Environmental Engineering Concrete Structures*; or
 - 1.4.3.4.a.3) American Concrete Institute Standards 360R-10 (2010) *Guide to Design of Slabs-on-Ground* Chapter 8 "Design of slabs reinforced for crack-width control."
- 1.4.3.4.b. Any mechanical or structural damage shall be evaluated by an NRCS Engineer or Professional Engineer licensed in South Dakota within thirty (30) days of the damage and if necessary repaired as soon as possible.

1.4.4. **Nutrient Management Requirements.** Effective immediately and lasting through the life of this permit, this permit does not allow the producer to land apply any manure, litter, or process wastewater. If the Secretary determines that manure, litter, or process wastewater are being land applied and are not being converted to commercial fertilizer, the Secretary may reopen this permit and establish nutrient management planning requirements for this permit.

As a condition of this permit, the permittee shall comply with DANR's Commercial Fertilizer License and Bulk Commercial Fertilizer Storage Facility Permit issued to the facility.

1.4.5. **Site Inspection Requirements.** At a minimum, the producer shall visually inspect and document the following:

- 1.4.5.1. Weekly inspect all storm water diversion devices, runoff diversion structures, barns, exterior animal confinement areas, and mortality management facilities;
- 1.4.5.2. Daily inspect water lines, including drinking water or cooling water lines;
- 1.4.5.3. Weekly inspect manure management system and nutrient storage structures for signs of damage (including but not limited to seepage, erosion, animal burrows, or adverse vegetation); and
- 1.4.5.4. Any deficiencies found as a result of these inspections shall be documented when they are found and when they are corrected.

1.4.6. **Record Keeping Requirements**

- 1.4.6.1. Records documenting the required inspections.
- 1.4.6.2. Records documenting the dates that animals are present in the exterior animal confinement areas.
- 1.4.6.3. Records documenting the condition of the vegetation in the exterior animal confinement areas.
- 1.4.6.4. Records documenting any actions taken to correct deficiencies required. Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing immediate correction.
- 1.4.6.5. Records of mortalities management and practices used by the CAFO.
- 1.4.6.6. Records documenting the current design of any containment structures, including volume for solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity.
- 1.4.6.7. Records of the date, time, and estimated volume of any overflow, spill, or discharge of manure or process wastewater from the production area.
- 1.4.6.8. Records of samples from discharge monitoring, collected in accordance with section 1.4.2.
- 1.4.6.9. At least annually, the producer shall provide the person converting the manure and litter to a commercial fertilizer with a nutrient analysis done in the past year. The analysis provided must be consistent with the requirements of 40 CFR part 412. The producer must keep records of the name and address of the recipient of the manure and litter and the approximate amount of manure and litter transferred each month.

1.4.7. **Annual Reporting Requirements**

- 1.4.7.1. On or before March 28th of each year, the producer shall submit an annual report to the Secretary, on a form provided by the Secretary, to the following address:

South Dakota Department of Agriculture and Natural Resources

Livestock Services Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Once notified by the Secretary, the annual report shall be submitted using electronic reporting.

- 1.4.7.2. The annual report shall be for the previous calendar year and shall include:
- 1.4.7.2.a. The maximum number of poultry confined at any one time at the operation;
 - 1.4.7.2.b. A summary of all manure, litter and process wastewater discharges that have occurred from the production area, including date, time, and approximate volume;
 - 1.4.7.2.c. Estimated amount of total manure, litter and process wastewater generated by the producer (tons/gallons);
 - 1.4.7.2.d. Estimated amount of total manure, litter and process wastewater transferred to other persons by the producer (tons/gallons);
- 1.5. **Retention of Records.** The producer shall retain records of all monitoring information, maintenance and inspection records, copies of reports required by this permit, and data used to complete the Notice of Completion for this permit. The producer shall keep the records for at least five years from the date of the sample, measurement, report, or application. Data collected and a copy of this permit shall be kept at the AFO or the usual place of business where employees of the operation have access to these documents.
- 1.6. **Twenty-four Hour Reporting.** The producer shall report any overflow spill, or discharge of manure or process wastewater that leaves the exterior boundary of the production area, reaches water of the state, or may endanger health or the environment. The report shall be made to the South Dakota Department of Agriculture and Natural Resources at (605) 773-4647 as soon as possible, but no later than twenty-four (24) hours from the time the producer first became aware of the overflow, spill, or discharge. If after normal hours (8:00 am to 5:00 pm Central Time, Monday through Friday), the producer shall report the overflow, spill, or discharge and notify anyone downgradient who may be impacted by the overflow, spill, or discharge. In the event of an overflow or spill, the producer shall fill out the CAFO Discharge, Overflow, or Spill Form located in Appendix F and submit to DANR within 30 days from the date when the overflow or spill occurred. In the event of a discharge, the producer shall fill out the CAFO Discharge, Overflow, or Spill Form located in Appendix F and submit to DANR no later than the 28th day of the month following the month when the discharge occurred. The form shall be submitted to the following address:

South Dakota Department of Agriculture and Natural Resources
Livestock Services Program
523 East Capitol Avenue
Pierre, SD 57501-3182

Once notified by the Secretary, these reports shall be submitted using electronic reporting.

- 1.7. **Bankruptcy Reporting.** Within 10 days after commencement of a voluntary or involuntary bankruptcy proceeding naming a producer as a debtor, the producer shall notify the Secretary by certified mail at the address listed in Section 1.4.7.1. of this permit. The notice shall provide information on the producer's continued ability to operate and maintain the operation in compliance with this general permit and include the bankruptcy bar date. If a trustee or other entity becomes responsible for the operation, including the responsibility for compliance with this permit, the Secretary shall be notified within 10 days of that change.

1.8. Inspection and Entry

- 1.8.1. The producer shall allow the Secretary, upon presentation of credentials, to:
 - 1.8.1.1. Enter the premises of the AFO, or where records are kept;
 - 1.8.1.2. Inspect any AFO covered under this permit;
 - 1.8.1.3. Access and copy, at reasonable times, records specified under this permit; and
 - 1.8.1.4. Sample or monitor any substance or parameter, at reasonable times, to determine compliance with this permit or other requirements of the South Dakota Water Pollution Control Act.
- 1.8.2. The Secretary shall only have access to the animal confinement areas if it becomes absolutely necessary to determine compliance with this permit. If access becomes necessary, the Secretary will abide by all security measures implemented by the producer to ensure protection of the health of the animals at the AFO. The Secretary will also follow all security measures the producer has implemented for all offsite visitors at open lot facilities.
- 1.8.3. In accordance with ARSD 74:57:01, the Secretary shall inspect the facility at least once in the first 18 months of operation and at least once every year during operation.

2. COMPLIANCE RESPONSIBILITIES

- 2.1. **Duty to Comply.** In accordance with ARSD 74:52:03:02, the producer shall comply with all the conditions of the permit; the approved plans and specifications; and the BMPs incorporated by the producer into the operation's Operation and Maintenance Guideline.
- 2.2. **Penalties for Violations of Permit Conditions.** The South Dakota Water Pollution Control Act provides that any producer in noncompliance with this permit may be subject to a fine of not more than \$10,000 per day per violation.
- 2.3. **Need to Halt or Reduce Activity not a Defense.** In enforcing violations of this permit, the Secretary will not consider that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the permit.
- 2.4. **Duty to Mitigate.** The producer shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.
- 2.5. **Proper Operation and Maintenance.** The producer shall at all times properly operate and maintain the manure management system in a manner to achieve compliance with the conditions of this permit.
- 2.6. **Removed Substances.** The producer shall accumulate, transport, and convert the manure and litter to commercial fertilizer in accordance with the conditions of this permit to prevent any pollution of surface water or groundwater of the state or create a health hazard.
- 2.7. **Local Requirements.** The producer shall contact the local planning and zoning office to determine all local requirements. The producer is responsible for complying with all local ordinances and requirements. Local governments may have setback distances, buffer zone widths, and other siting or environmental requirements established in local ordinances.

3. GENERAL REQUIREMENTS

- 3.1. **Planned Changes.** The producer shall give notice to the Secretary as soon as possible of any planned physical alterations or additions that significantly change the permitted AFO. During and

after implementation of those changes, the producer is bound to the terms and conditions of this general permit.

- 3.2. **Permit Actions.** The Secretary may modify, revoke and reissue, or terminate this permit in accordance with ARSD 74:52:04:03. If the Secretary decides to modify or revoke and reissue the permit, the terms and conditions of this general permit will remain in effect until a new or modified permit becomes effective.
- 3.3. **Duty to Reapply.** Before the expiration of this permit, the Secretary will provide each producer authorized to operate under this permit with a renewal application. The producer shall be responsible for returning the DANR General Information Form and U.S. EPA Form 2B to the Secretary to receive coverage under the new permit at least 180 days before the expiration of the existing permit. The producer need not continue to seek permit coverage or reapply for a permit if:
 - 3.3.1. They have notified the Secretary that their operation has ceased operation or is no longer a CAFO; and
 - 3.3.2. The Secretary has notified the producer that the operation is no longer a CAFO.
- 3.4. **Duty to Provide Information.** The producer shall provide any information that the Secretary requests in order to determine whether cause exists for revoking or terminating coverage under this permit. The Secretary may also request information to determine if the producer is in compliance with this permit. The producer shall provide to the Secretary, upon request, copies of records that the permit requires the producer to keep.
- 3.5. **Other Information.** If the producer becomes aware that any relevant facts in the Notice of Completion and Certification of Applicant Forms were not submitted, or incorrect information was submitted, the correct information shall be promptly submitted to the Secretary.
- 3.6. **Signatory Requirements.** The producer shall sign and certify all reports submitted to the Secretary.
 - 3.6.1. The producer who owns or operates the AFO shall sign all permit applications or forms to receive coverage under this permit.
 - 3.6.2. The producer, or a duly authorized representative, may sign all reports required by the permit and other information requested by the Secretary. A person is a duly authorized representative only if:
 - 3.6.2.1. The authorization is made in writing by the producer and submitted to the Secretary; and
 - 3.6.2.2. The authorization specifies either an individual or a position having responsibility for the overall operation of the permitted facility. This position may be a manager, operator, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
 - 3.6.3. **Changes to authorization.** If an authorization under Section 3.6.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Section 3.6.2. shall be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.
 - 3.6.4. **Certification.** Any person signing a document under this section shall make the following certification:

“I also certify under penalty of law that this document and all other plans and application documents to obtain coverage under the animal feeding general permit were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel

properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are penalties for submitting false information.”

- 3.7. **Penalties for Falsification of Reports.** Any person who knowingly makes a false statement in any record submitted or required to be maintained under this permit, shall be subject to enforcement under the South Dakota Water Pollution Control Act.
- 3.8. **Availability of Reports.** Except for data determined to be confidential under ARSD 74:52:02:17, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Secretary. The Secretary will not consider applications, Operation and Maintenance Guidelines, Notices of Completion, permits, plans and specifications, and monitoring data, or any correspondence related to these items, to be confidential information.
- 3.9. **Property Rights**
- 3.9.1. The Secretary’s issuance of this permit, adoption of design criteria, and approval of plans and specifications, does not convey any property rights of any sort, any exclusive privileges, any authorization to damage, injure or use any private property, any authority to invade personal rights, any authority to violate federal, state, or local laws or regulations, or any taking, condemnation or use of eminent domain against any property owned by third parties.
- 3.9.2. The State does not warrant that the permittee’s compliance with this permit, design criteria, approved plans and specifications, and operation under this permit, will not cause damage, injury or use of private property, an invasion of personal rights, or violation of federal, state or local laws or regulations. The permittee is solely and severably liable for all damage, injury or use of private property, invasion of personal rights, infringement of federal, state or local laws and regulations, or taking or condemnation of property owned by third parties, that may result from actions taken under the permit.
- 3.10. **Severability.** Any portion of this permit that is found to be void, or is challenged, shall not affect the validity of the other permit requirements that are not voided or challenged.
- 3.11. **Transfers.** The Secretary will transfer a permit application approval or coverage under this permit to a new producer if the requirements in Section 1.2.2.4. of this permit are met.
- 3.12. **Reopener Provision.** If state or federal statutes or regulations change, the Secretary may reopen and modify this permit (following proper administrative procedures) to include appropriate conditions (and a compliance schedule, if necessary), to address the additional requirements.
- 3.13. **Appeals Provision.** If the Secretary recommends revoking, suspending, or modifying this permit, the Secretary shall give written notice of the action to the permit holder. The permit holder may request a hearing before the Secretary. The hearing shall be held within thirty days of receipt of the written request. The Secretary may affirm, modify, or reverse the initial decision based upon the evidence presented at the hearing.

APPENDIX A

NOTICE OF COMPLETION

and

CERTIFICATION OF APPLICANT FORMS

DRAFT

NOTICE OF COMPLETION OF
MANURE MANAGEMENT SYSTEM CONSTRUCTION

Please complete this form for receiving a Certificate of Compliance from the Department of Agriculture and Natural Resources. Use this form if a licensed Professional Engineer in the State of South Dakota designed the manure management system. Please return the form to:

South Dakota Department of Agriculture and Natural Resources
Livestock Services Program
523 East Capitol Avenue
Pierre, SD 57501-3182

FACILITY (Please print): _____ (PRODUCER)

LAST NAME FIRST NAME

ADDRESS

CITY STATE ZIP CODE

Construction of the manure management system for the above producer that had plans and specifications approved by letter by the DANR on _____ is completed. The system was designed for a _____ operation for _____ and _____ acres of drainage area. I hereby certify that I am a licensed professional engineer in the State of South Dakota. To the best of my knowledge, information and belief, the _____ was constructed in general conformance with the plans and specifications, and in my professional opinion, is in compliance with applicable laws, codes, and ordinances as of the date of construction (or this date).

Dated at _____, South Dakota this _____ day of _____, 20_____.

Design Engineer's Signature

(Stamp)

INSERT CERTIFICATION OF APPLICANT HERE

DRAFT

APPENDIX B

DANR GENERAL INFORMATION FORM

and

U.S. EPA FORM 2B

DRAFT

INSERT DANR GENERAL INFORMATION FORM HERE

DRAFT

INSERT EPA FORM 2B HERE

DRAFT

APPENDIX C

NOTICE OF TERMINATION OF COVERAGE FORM

DRAFT



DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

NOTICE OF TERMINATION OF COVERAGE
UNDER THE GENERAL WATER POLLUTION CONTROL PERMIT
FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

This form is required to be submitted when a discharge permit is no longer required or necessary. Submission of this form shall in no way relieve the producer of permit obligations required prior to submission of this form. Please submit this form to the following addresses:

Original to: South Dakota Department of Agriculture and Natural Resources
Livestock Services Program
523 East Capitol Avenue
Pierre, SD 57501-3182
Telephone: (605) 773-4647 FAX: (605) 773-5286

PLEASE PRINT OR TYPE

1. **Name of animal feeding operation:** _____

2. **Mailing Address of Producer:**

Name: _____ Phone: _____
Street: _____ Fax: _____
City: _____ State: _____ County: _____ Zip Code: _____

3. **Mailing address of the animal feeding operation (if different from producer):**

Name: _____ Phone: _____
Street: _____ Fax: _____
City: _____ State: _____ County: _____ Zip Code: _____

4. **Check the reason for termination of permit coverage:**

- You are no longer the operator of the facility
- Concentrated Animal Feeding Operation is no longer in operation
- Other reason(s): _____

I certify under penalty of law that all concentrated animal feeding operations at the above facility that are authorized by a Surface Water Discharge permit have been eliminated or that I am no longer the operator of the facility. I understand that by submitting the Notice of Termination, I am no longer covered under the General Water Pollution Control Permit for Concentrated Animal Feeding Operations. I also understand that the submittal of this Notice of Termination does not release me from liability for any violations of this permit or the South Dakota Water Pollution Control Act. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

NOTE: Notice of Termination shall be signed by the authorized chief executive officer of the applicant, or by the applicant, if an individual.

Name (*print*)

Title

Signature

Date

Permit Number: _____ Date Received: _____ Date Terminated: _____ PCS: _____

APPENDIX D

CHANGE OF PRODUCER FORM

DRAFT

DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

CHANGE OF PRODUCER FORM
FOR THE GENERAL WATER POLLUTION CONTROL PERMIT
FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

In accordance with the Administrative Rules of South Dakota, Chapter 74:52:04, a permit may be transferred to a new producer if the current permittee notifies the secretary at least 30 days in advance of the proposed transfer date. This form and a Certification of Applicant form shall be completed and submitted prior to a change in ownership at a concentrated animal feeding operation. This form shall serve as a request by the current and new owner to modify the permit solely for a change in ownership.

NOTE: If the new producer plans to make changes to the permitted manure management system or nutrient management plan, additional information showing that the changes will meet the requirements of the general permit shall be submitted with this form. If applicable, any written agreement between the permittee and the land owner where manure will be applied shall be written so it is transferable or new agreements shall be submitted.

Please submit this form to the following address: South Dakota Department of Agriculture and Natural Resources
Livestock Services Program
523 East Capitol Avenue
Pierre, South Dakota 57501-3182
Telephone: (605) 773-4647 Fax: (605) 773-5286

PLEASE PRINT OR TYPE

1. Facility Information: Permit Number _____ Location of Operation _____ / _____
1/4 Section Section Township / Range County

2. Producer Information Prior to Change:
Legal name of facility prior to change _____
Name of Owner Prior to Change _____ Phone: _____
Street _____ Fax: _____
City _____ State _____ Zip Code _____

3. New Producer Information:
Legal name of facility after ownership change _____
Name of New Owner _____ Phone: _____
Street _____ Fax: _____
City _____ State _____ Zip Code _____

4. Proposed Transfer Date of Permit Responsibility: Date: _____

5. Description of Facility Modifications:
The new producer shall complete this section and check only one of the following boxes:
[] Modifications consist only of a change in ownership of the facility. No other modifications affecting the manure management system are proposed for this facility.
[] Modifications consist of a change in ownership of the facility and the additional modifications are described in detail below. Contact DANR for information required to be submitted. Attach additional pages if necessary.

6. Producer Training:
Permittees are required to attend a DANR approved environmental training course.
[] I have attended training (please submit a copy of your training certificate).
[] I will attend the next DANR approved environmental training course (please submit a copy of your training certificate after the training).

7. Operation and Maintenance Guideline:
[] A new Operation and Maintenance Guideline signed by the new permit applicant is attached.

8. New Producer Certification:
I hereby certify that I am the new owner of the facility described above and that I have read and understand the requirements identified in this form. I hereby certify that the construction and/or operation of the facility referenced above will be in accordance with the plans, specifications, reports, permit application submittals approved by DANR. I am aware that there are significant penalties for submitting false information, including the possibility of a fine and imprisonment for knowing violations.

Name of Current Permittee (print): _____ Signature of Current Permittee: _____ Date: _____

Name of New Permittee (print): _____ Signature of New Permittee: _____ Date: _____

APPENDIX E

SYSTEM DESIGN, CONSTRUCTION, AND OPERATION AND MAINTENANCE GUIDELINE

DRAFT

INSERT SITE-SPECIFIC DOCUMENTS HERE

DRAFT

APPENDIX F

DISCHARGE REPORTING FORM

DRAFT

CAFO DISCHARGE, OVERFLOW, or SPILL REPORTING FORM

Sheet A

This form is to be used to summarize the reporting requirements for any discharge, overflow, or spill.

Address:		
Facility Contact:		Phone:
Description of Event <i>(Attach additional sheets if necessary)</i>		
<i>Please check the boxes below, as appropriate, to indicate the type of release being reported (See Definitions for an explanation of each term).</i>		
<input type="checkbox"/> Discharge <input type="checkbox"/> Overflow <input type="checkbox"/> Spill		
Date and Time the event began or was discovered:		
Date and Time the event was stopped:		
Estimated volume, gallons:		
Describe the cause(s) of the event:		
Where did the event occur and where was the manure or process wastewater released to:		
Describe the steps taken or planned to reduce, eliminate, and prevent reoccurrence:		
Time and Date 24-Hour Notice of Noncompliance given to DANR (include who notice was given to):		
Describe any adverse effects, such as fish kills, etc.:		

ANALYTICAL RESULTS

Sheet B

Enclose laboratory report forms with this form.

Parameter	Sample 1	Sample 2	Sample 3	Sample 4
Date and time of sample				
Total Suspended Solids (TSS) mg/L				
Total Nitrogen (as N), mg/L				
Total Ammonia-Nitrogen (as N), mg/L				
Total Phosphorus (as P), mg/L				
Five-Day Biochemical Oxygen Demand (BOD ₅), mg/L				
<i>Escherichia coli</i> (<i>E. coli</i>), no./100 mL				
Estimated Volume of Discharged Water, gallons per day				
Estimated Volume of Discharged Water, gallons per day				

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Name (print): _____	Title: _____
Signature: _____	Date: _____