Written Comments Regarding DE CAFO General Permit

https://dnrec.delaware.gov/events/public-hearing-npdes-cafo-general-permit-renewal/

General Concentrated Animal Feeding Operation (CAFO) Permit Number DE 0051233 (Large, Medium, & Designated Poultry CAFO – Facilities with Land Application of Manure), originally authorized on April 30, 2019

Public Comment deadline = February 4, 2026

The following written comments were prepared by Kathy J. Martin, environmental consultant, for SHEN and local community organizations in anticipation of submitting to Delaware Department of Natural Resources and Environmental Control (DNREC) regarding the renewal of the NPDES General Permit for Large, Medium and Designated Poultry CAFOs (with land application). SHEN is a coalition of stakeholders in Sussex County working to ensure a clean, healthy environment for current and future generations. SHEN brings attention to environmental health threats and environmental justice issues in Sussex County by partnering with local businesses, non-profit groups, community ambassadors, and residents to hold local, state, and federal government accountable. Ms. Martin has 25 years of experience reviewing CAFO permitting including waste management systems including dairy, poultry, swine, and beef in over 25 states across the country.

Documents reviewed in preparation of these comments include, but are not limited to, the current and proposed renewal permit and fact sheet, applicable state and federal regulations, reports, available public files, and regulations and standards cited in the proposed permit.

Topics to Consider **Page No.**

Comment Regarding Facility Changes

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> 3. Planned Alterations/Additions to the Permitted Facility
> The permittee shall give notice to the Secretary through the DDA/DNREC as soon as possible of any planned physical alterations or additions to the permitted facility. Notification is only required when one or more of the following conditions are satisfied:
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> a. New poultry houses are to be constructed at the permitted facility.
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> b. The alteration or addition meets criteria of a "New Source" in accordance with 7 Del. Admin. C. §9.5.7.0 of the CAFO Regulations.
>
> c. The alteration or addition changes the location of discharge points, if any.

Comment: The GP does include an obvious public notice requirement when new poultry houses are proposed to be added to the existing facility.

Suggestion: Refer to the Secretary's authority to require public review and comment as outlined in Part II. A. MANAGEMENT REQUIREMENTS AND RESPONSIBILITIES 2. Requirement to Implement a Site Specific Animal Waste Management Plan or Nutrient Management Plan paragraph b below:

From page 14 of 20:

> b. A substantial change to the NPDES CAFO Permit will be determined by the Secretary. Changes determined to be substantial are subject to public review and comment. The Secretary may include the changes to the incorporated Animal Waste Management Plan in the NPDES CAFO Permit, and will notify the owner or operator and the public of the final decision concerning revisions to the terms and conditions of the NPDES CAFO Permit.

Comment: The addition of a poultry house should surely qualify as a 'substantial change' to the Secretary and that admission should be hard baked into the general permit language so that the public is assured that there will be no doubt that public notice must be provided when the facility expands or replaces a poultry building.

Comment Regarding Poultry Facility Housekeeping

From page 15 of 20:

> 4. General Housekeeping Practices
> The permittee shall have manure residue and litter residue adequately cleaned up on a reasonable and necessary basis.

Comment: Poultry houses generate particulate matter from as large as feathers and feed dust to as small as ammonia-nitrogen. The general permit language should acknowledge that particulate matter pollution is a serious problem that needs to be controlled if not prevented whenever possible.

Question: Why doesn't DNREC require pollution control equipment to reduce the amount of particulate matter blown into the ambient environment by the massive building fans so that neighbors downwind are not negatively affected?

> 5. Layout Housekeeping Practices
> The permittee shall have manure residue and litter residue adequately cleaned up from the exterior area(s) of the poultry house(s) as soon as practically possible after bird movement not to exceed 14 days.

Comment: Generally the period of time for a flock of broilers to go from chick to marketable bird is six to eight weeks (42 to 54 days) depending on breed and end use. The downtime or 'layout' between flocks at a broiler facility is typically 2 weeks to allow for deep cleaning and to break the pathogen breeding cycle.

Question: Why doesn't DNREC acknowledge the importance of barn interior cleaning cycles to prevent pathogens from being transferred from one flock to another?

Question: Why would the outside of the building(s) only need to be cleaned up during this 'layout' time and not every day that the facility is in operation?

Suggestion: Perhaps this paragraph could be worded differently such that the operator understands that *additional* cleaning is expected during this 2-3 week downtime between flocks?

Comment Regarding Proper Operation and Maintenance

From page 15 of 20:

> 7. Proper Operation and Maintenance
> The permittee shall at all times maintain in good working order and operate as efficiently as possible all BMP's installed or used by the permittee for water pollution control to achieve compliance with the terms and conditions of this permit. Proper operation and maintenance includes, but is not limited to, good housekeeping practices, appropriate chemical storage and handling, proper handling and storage of manure, and proper handling of mortalities as addressed in the AWMP or NMP.

Comment: This paragraph represents important behavior during the operation of a permitted facility, yet the language falls short in giving specific requirements such as frequency, monitoring, and recordkeeping that would allow for third-party evaluation of the efficacy of the BMPs to satisfactorily prevent water pollution.

Question: How is this paragraph enforceable as written? What would the DNREC inspector look for to determine compliance for *each of the 4 items* listed (housekeeping, chemical storage, manure handling, mortalities)?

Question: How would the operator understand what are the minimum BMPs that should be used for the 4 categories?

Suggestion: Perhaps DNREC could refer to NRCS conservation practice standards and specific regulations (related to the 4 items) that would serve as minimum BMPs?

Question: Shouldn't the permit provide for mechanisms for the operator to accumulate data and other records that could be used to prove the BMPs chosen for the permitted facility do in fact work to reduce water pollution?

Suggestion: This paragraph could use subparagraphs that list minimum BMPs to be used that are *published peer reviewed BMPs* and a list of actions that shall be done by the operator to *document and measure the efficacy of each* water pollution control BMP.

Comment Regarding Discharge Minimization

From page 15 of 20:

> 8. Discharge Minimization
> The permittee must take immediate steps to stop, contain, and adequately clean up any discharge resulting from manure, litter, and/or process wastewater that materially adversely affect surface water. Additionally, the permittee shall take all reasonable and necessary steps to minimize any adverse impacts to groundwater.

Question: Why did DNREC include this disclaimer of only cleaning up discharges 'that materially adversely affect surface water'? Is DNREC implying that other types of discharge do not need to be cleaned up immediately? If so, why? If not, then perhaps this language needs to be amended.

Suggestion: add the words 'during the operation of the facility, especially when there is potential for' as follows:

> 8. Discharge Minimization
> The permittee must take immediate steps to stop, contain, and adequately clean up any discharge resulting from manure, litter, and/or process wastewater during the operation of the facility, especially when there is potential for that materially to adversely affect surface water. Additionally, the permittee shall take all reasonable and necessary steps to minimize any adverse impacts to groundwater.

Question: How will DNREC determine compliance with this paragraph? What efforts are made in this permit language to inform the public when discharges/releases occur that have the potential to adversely impact water quality (surface and/or ground)?

Suggestion: Require recordkeeping logs for each discharge event that explains how the discharge occurred, the volume of solid/liquid waste that was released, how long the event occurred until it was noticed and stopped, how the material (solid and liquid) was collected and disposed of, and how the operator will change behavior so that the incident will not occur again. This information should be submitted in a quarterly report to DNREC and kept in the public file so that the potentially impacted community has access to this important information.

Comment Regarding Land Application Setback Standards

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> 9. Land Application Setback Standards
> As described in 7 Del. Admin. C. §7201-9.5.5.1.4.6 Identify manure and processed wastewater application setbacks to be implemented for the land application areas in accordance with State Technical Standards. The direct application of manure or processed wastewater to Waters of the State is prohibited.

Surface Water Discharges Section
7201 Regulations Governing the Control of Water Pollution
https://regulations.delaware.gov/AdminCode/title7/7201

> 9.5.5.1.4.6 Describe conservation practices to control nutrient loss sufficient to minimize the discharge of pollutants to Waters of the State to be implemented on the CAFO in accordance with State Technical Standards.
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> 9.5.5.1.4.6.1 Identify manure and processed wastewater application setbacks to be implemented on the CAFO in accordance with State Technical Standards. The direct application of manure or processed wastewater to Waters of the State is prohibited. The following three setback standards are provided as three options:
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> > **9.5.5.1.4.6.1.1** One-hundred (100) foot application setback measured from the top of the bank of the water of the state to be protected, (Unless the CAFO exercises one of the compliance alternatives provided for in paragraphs 5.1.4.6.1.2, or 5.1.4.6.1.3, of this section, manure, litter and process wastewater may not be applied closer than 100 feet to any down-gradient surface waters, open tile intakes structures, sinkholes, agricultural well heads or other conduits to surface water) and/or
> >
> > **9.5.5.1.4.6.1.2** Thirty-five (35) foot vegetated buffer measured from the top of the bank of the water of the state to be protected, where applications of manure, litter, and process wastewater are prohibited, and/or
> >
> > **9.5.5.1.4.6.1.3** Alternative compliance practices as follows:

9.5.5.1.4.6.1.3.1 Minimum ten (10) foot vegetated buffer measured from the top of the bank of the water of the state to be protected, and plant a winter cover crop in accordance with State Technical Standards following the crop receiving manure, litter or process wastewater for fields with high phosphorus soils and; or

9.5.5.1.4.6.1.3.2 Minimum ten (10) foot application setback measured from the top of the bank of the water of the state to be protected, and plant a winter cover crop in accordance with State Technical Standards following crops receiving manure, litter or process wastewater in areas without high phosphorus soils.

9.5.5.1.4.6.1.3.3 Any additional approved alternative compliance practices identified in the State Technical Standards.

Comment: The rule provides three options: 100 feet setback, 35 feet vegetated buffer strip, or alternative compliance. The alternative compliance allows for even smaller setbacks (literally 90% less when comparing 100 feet to 10 feet) and only requires the vegetated buffer (rather than plain soil) when there are high phosphorus soils.

Comment: We understand that land application setbacks equate to sacrificing a certain amount of crop land if the farmer wants to utilize manure as a nutrient source. We understand that farmers may want to minimize the amount of acreage lost to setbacks.

Comment: The regulation may allow for significant reduction in acreage by allowing for setbacks to be reduced from 100 feet to 35 feet and then to 10 feet. However, there is the generally understood legal interpretation that one regulation cannot legalize the violation of another regulation. In this case, the other regulation would be state water quality standards.

Comment: There seems to be more emphasis in this regulation to provide opportunities for the farmer to *escape the setback requirement* of sacrificing land available for manure disposal to protect surface water quality than there is to loudly and plainly require all manure to be land applied such that the surface water quality is the number one concern – not the loss of crop land.

Suggestion: Include the caveat that these setback options *are only viable if the operator can prove that water quality standards will not be violated*. This proof should be in the form of water quality monitoring upstream and downstream of all land application areas that border waters of the state.

Comment: The regulation refers to the State Technical Standards many times and thus the intent of the rule is to rely upon the document. However, DNREC has not updated this document and sought USEPA review and approval since 2012.

Delaware State Technical Standards (38 pages) – reviewed by EPA December 2012
https://documents.dnrec.delaware.gov/Admin/Documents/dnrec-hearings/2021-P-W-0013/exhibits/State-Technical-Standards.pdf

Question: Why hasn't DNREC updated their State Technical Standards considering the version used today is *13 years old* and thus was written before the significantly larger poultry operations were being proposed and built (barns that can house 40,000 to 50,000 birds apiece and then 12 to 24 barns per location)? Does DNREC have a final version of the State Technical Standards (that does not have the DRAFT watermark)?

State Technical Standards are defined in Department of Agriculture regulations 3 DE Admin. Code 1201 as follows:
https://regulations.delaware.gov/register/july2017/proposed/21%20DE%20Reg%2010%2007-01-17.htm

> "State Technical Standards" are the practices and conduct required of individuals or entities overseen by the Nutrient Management Commission that were developed by a group of environmental scientists, agronomists, engineers, planners, agricultural operators, and policy makers from the Nutrient Management Commission, Department of Agriculture, the Department of Natural Resources and Environmental Control, the University of Delaware, USDA NRCS and the private sector. The Commission hereby adopts the State Technical Standards in their entirety by reference.

As mentioned in our previous comments and reiterated here because it is so important to know and understand that the permit relies upon highly outdated technical standards and thus could NEVER be considered the most protective permit:

> Note: Some of the State Technical Standards are grossly outdated, such as the Waste Storage Facility which is dated 2001 – or *nearly 25 years old*. Yet there are NRCS Conservation Practice Standards that are more current and updated to include modern information and regulatory changes.

Question: Why hasn't Delaware contracted with NRCS to update many of these important state-specific NRCS conservation practice standards?