



February 3, 2026

*[Via email DNRECHearingComments@delaware.gov](mailto:DNRECHearingComments@delaware.gov)*

Delaware Department of Natural Resources and Environmental Control  
Division of Water

**Re: Comments on NPDES CAFO General Permit No. DE 0051233  
Large, Medium, & Designated Poultry Operations  
with Land Applications of Manure**

To DNREC:

Socially Responsible Agriculture Project (“SRAP”) is a 501(c)(3) nonprofit organization incorporated in Delaware. For more than 20 years, SRAP has served as a mobilizing force to help communities protect themselves from the damages caused by industrial livestock operations, and to advocate for a food system built on regenerative practices, justice, democracy, and resilience. SRAP offers free support, providing communities with the knowledge and skills to protect their rights to clean air, water, and soil and to a healthy, just, and vibrant future.

**Permit Does Not Address Increased Size and Impacts of Poultry Facilities.**

Since the last permit, the typical boiler operation size has changed. As explained in SHEN’s August 2025 Comments, Delaware’s poultry industry has an increasing number of CAFOs with *very* large poultry houses, thus increasing the number of birds and environmental and public health footprints. The number, and size of operations, are essential factors for DNREC to disclose and consider when designing the permit terms and conditions intended to apply to the industry as a whole.

NPDES general permits are designed to cover multiple dischargers with similar operations and types of discharges based on the permit writer's professional knowledge of those types of activities and discharges. But if industry trends change, so too should a NPDES general permit. In comparing the 2019 NPDES general permit and the draft permit, we did not identify new terms and conditions that specifically identify, manage, or mitigate the industry's transition to very large poultry houses in the state. For several years, other states have recognized this trend towards very large or "mega" CAFOs, and adjusted their NPDES individual and general permit structure, and terms and conditions, in response.

SRAP requests that Delaware similarly recalibrate its NPDES permit framework. This could include, at a minimum, establishing an upper limit on size and number of CAFOs subject to the NPDES general permit in order to restrain environmental and public health impacts to a manageable size for operators, and DNREC, to proactively oversee, monitor, and enforce. For example, any facility over a certain size would be simply unpermittable, or required to seek an Individual Permit with meaningful and enforceable site-specific controls.

### **Monitoring**

The Draft Permit does not require monitoring for discharges from the production or land application areas. We appreciate DNREC adding the new BMPs to the 2026 draft permit for CAFOs in the Chesapeake - Delaware Watershed Implementation Plan, but none of these include additional surface or groundwater monitoring. DDA State Technical Standards also do not meaningfully address surface or groundwater protection by including monitoring.

The Clean Water Act requires that DNREC implement its NPDES program according to minimum federal standards, which includes the requirement that all NPDES permits include representative monitoring and reporting provisions sufficient to ensure compliance with the permit's effluent limits. 33 U.S.C. § 1342(b); 33 U.S.C. § 1318(a)(2)(A)(iii); 40 C.F.R. §§ 122.44(i)(1), 122.41(j)(1), 122.48(b). EPA's NPDES permit writers' manual (§ 5-1, § 8-2) makes clear that "[m]onitoring is performed to determine compliance with effluent limitations established in NPDES permits."

The Draft Permit's effluent limitations for Large CAFO production area is a "no discharge" standard. See Draft Permit § I.C.1. Delaware's definition of "state waters" or "waters of the state" includes "water under the ground" (CDR 7201-2.0, Draft Permit § I.G.28) and Delaware regulations prohibit discharges to groundwater. CDR 7201-3.2. The only Draft Permit reference to groundwater protection is in § II.A.8 Discharge Minimization, which simply says "the permittee shall take all reasonable and necessary steps to minimize any adverse impacts to groundwater."

Despite clear requirements and authorities, DNREC's Draft Permit does not include mandatory monitoring and reporting provisions to ensure permit compliance. Delaware's approach needs to be much stronger to ensure compliance with the Clean Water Act, EPA regulations, its own rules, and to keep pace with other states that do require monitoring.

Last August, SHEN's comments raised several questions regarding the lack of groundwater protection and gaps in how DNREC would administer and enforce groundwater protections. DNREC still has not addressed these concerns in the structural, design, operation, or monitoring provisions of the Draft Permit.

We urge DNREC to amend the Draft Permit to include monitoring and reporting provisions designed to detect exceedances of federally mandated effluent limits for the production area and land application areas.

### **Exported Waste Provisions Must be Stronger**

Nearly every industry that exports waste is regulated for the transport, movement, use, and disposal of that waste. For example, hazardous waste haulers, solid waste and junk haulers, infectious waste, and recycling waste are regulated industries in most state regulatory frameworks. This regulatory oversight provides a cradle to grave management and enforcement structure of waste that directly and indirectly impacts the environment and public health, and ensures that waste generators and waste recipients cannot evade liability. In the CAFO industry, however, only waste applied to land under a CAFO's "ownership or operational control", is subject to NPDES permits and accompanying requirements such as NMPs. Once waste leaves the CAFO's control, it magically "disappears" from regulatory oversight. This creates both environmental and enforcement oversight loopholes.

When EPA promulgated initial CAFO regulations in the 1980s and 1990s, it did contemplate situations where waste transfer to other persons could occur with some minimal recordkeeping and reporting requirements. See 40 C.F.R. § 122.42(e), 40 C.F.R. § 122.21(i)(1). EPA requirements include: large CAFOs providing the waste recipient with the most current nutrient analysis; large CAFOs retaining for 5 years records documenting the date of the transfer and name of recipient and recipient address and the "approximate" amount of manure, litter, or process wastewater transferred. In the intervening decades, CAFO size, animal numbers, and waste quantities have dramatically increased. Regardless of what this practice is called (transfer, export, remove, manifest, sell, give, grant, move, distribute, etc.), it has also significantly increased, allowing exported waste to be spread across watersheds with no oversight. Additionally, SRAP has seen multiple instances across the U.S. where CAFOs attempt to evade the "ownership or operational control" requirement and associated responsibilities by papering their way around it with various related corporate structures and entities, essentially exporting waste to themselves which normally would be subject to permits and NMPs, but is not because of a paper veil.

Delaware regulations do not improve on EPA's outdated regulations. See, e.g., CDR 7201-9.5.5 (Nutrient Management Plans or Waste Management Plans), CDR 7201-9.5.6.2.2.1.3 and 9.5.6.3.2.1.3 and 9.5.6.4.3.1.3.1 (Off site use of manure, litter or process wastewater regulations), nor does the Draft Permit § I.D.2.c. which says:

If manure, litter or process wastewater is sold or given to other persons for disposal or utilization, the following information shall be maintained at the CAFO generating the manure, litter or process wastewater:

- i. The date of manure, litter or process wastewater removal.
- ii. Name of receiver and contact information.
- iii. Quantity (tons/gallons) of manure, litter or process wastewater removed.
- iv. A copy of the most recent manure, litter and process wastewater nutrient analysis shall be given to the receiver on or before the date of transfer.

There are several problems with Delaware’s approach. Notably:

- A recipient’s “contact information” is not equivalent to the federal EPA requirement of the recipient’s “address.” An “address” gives Delaware, and the public, potentially *some* information as to where the waste may actually go, and where its water and public health impacts may go. Simply providing a recipient’s “contact information” does not do this.
- Without specific state-level supervision over how a third party **utilizes** the manure, Delaware has no enforcement authority under the CAFO permit system.
- There is no way a CAFO can guarantee effluent limitations and water quality protections are met, or agronomic rate applications because the CAFO and the state have no control over how the other person will use the waste.

Other states are making more headway on this problem, for example, Michigan,<sup>1</sup> Wisconsin,<sup>2</sup> Minnesota,<sup>3</sup> and Missouri.<sup>4</sup> Delaware needs significant improvement to have meaningful terms and conditions of the permit on this issue, to assess the scope of the problem in the state, and take more impactful action to control CAFO waste from cradle to grave and prevent the creation of “wastesheds” of untracked waste in the state’s waters. Delaware’s current approach simply allows the exported waste loophole to continue, with CAFO waste being untraceable, agronomic applications unenforceable, and simply going “away.”

## **Conclusion**

In the intervening years since DNREC’s 2019 permit, other states have progressed the terms and conditions of their NPDES CAFO General Permits as industry has changed. Several states are recognizing the environmental and public health impacts of the CAFO industry and its waste, and going beyond the (outdated) and rudimentary EPA regulatory requirements. As one of the largest poultry producing states in the U.S., with the CAFO waste to prove it, there is no reason Delaware should not do the same. Delaware has been a hotbed of CAFO water pollution

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<sup>1</sup> Michigan requires both manure generators and manure recipients take responsibility for CAFO waste being used off-site. Michigan requires several pieces of information to assist the farmers in applying this waste agronomically, and to provide transparency to regulators and the public. See Michigan Department of Environment, Great Lakes & Energy, Form 9328 at <https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Forms/WRD/CAFO/EQP9328-Manifest-for-CAFO-Waste.pdf>

<sup>2</sup> See, e.g., Wisconsin Department of Natural Resources Admin. Code 243.142 and 243.14(1)(b).

<sup>3</sup> See Minnesota Pollution Control Agency, Authorization to Construct a CAFO Under the NPDES Program, MNG 440000, Section 9, Section 10 at <https://www.pca.state.mn.us/sites/default/files/wq-f3-62.pdf>

<sup>4</sup> See, e.g., Missouri Department of Natural Resources 10 Code of State Regulations 20-6.300; Missouri setbacks and enforcement and penalties for manure purchased or received by third parties (Missouri Revised Statutes 640.760, 644.076), and Missouri DNR Manure Export Guidance Publication 3036 (7/2022) at <https://dnr.mo.gov/document-search/manure-export-guidance-pub3036>.

for decades, and the current draft permit should be modified to start to bring Delaware in line with other states and to control the scope of pollution stemming from the CAFO industry.

Sincerely,

A handwritten signature in black ink that reads "Elisabeth A. Holmes". The signature is written in a cursive, flowing style.

Elisabeth Holmes, Senior Counsel  
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cc: [Jessica.Brewer@delaware.gov](mailto:Jessica.Brewer@delaware.gov)