

FACT SHEET

NPDES CAFO GENERAL PERMIT

LARGE, MEDIUM, & DESIGNATED ALL OTHER SPECIES & DIVERSIFIED CAFOS

MANURE GENERATION AND LAND APPLICATION FACILITIES

NPDES CAFO Permit No. DE 0051250

Large, Medium, & Designated All Other Species & Diversified CAFOs in Delaware that discharge or propose to discharge to Waters of the State shall have a NPDES CAFO discharge permit issued by DNREC under both State and Federal permitting authority.

**Total Maximum Daily Loads**

Permit Requirements are consistent with existing and applicable Total Maximum Daily Loads (TMDLs) for impaired water bodies. The permittee shall continue to implement all BMPs currently in place and shall implement any additional BMPs required by the permittee's AWMP/NMP and this permit. The Department may require additional BMPs to minimize phosphorus and nitrogen transport to waters of the state as a requirement of this permit. For Large, Medium, and Designated All Other Species & Diversified CAFOs within the Chesapeake Bay watershed, BMPs have been identified in Delaware's Phase II Watershed Implementation Plan (WIP) as specific production area practices to meet Agricultural Waste Load Allocations (WLAs). Such BMPs may include, but are not limited to: nutrient management compliance, soil conservation, water quality plans, heavy use area pads, livestock waste structures, manure relocation, animal waste structures, mortality composters, streamside grass buffers, streamside forest buffers, wetland restoration, shoreline erosion control, cover crops traditional, cover crops commodity, conservation tillage, continuous no-tillage conservation, retire highly erodible land, and forest harvesting practices.

**Statutory & Regulatory Basis**

Section 402 of the federal Clean Water Act, as amended, and Title 7, Delaware Code, Chapter 60, Section 6003, provide the statutory authority for permit issuance. Federal and state regulations promulgated pursuant to these statutes form the regulatory basis for permit issuance. Each CAFO must operate pursuant to the permit and must meet or exceed all standards and guidelines in the DNREC's *Regulations Governing the Control of Water Pollution*, Section 9.5 (CAFO Regulations); the Delaware Nutrient Management Regulations, the Delaware Nutrient Management Law, and each facilities individualized Animal Waste Management Plan (AWMP) or Nutrient Management Plan (NMP). Each

facility must operate pursuant to the permit and must meet or exceed all standards and guidelines in accordance with the Animal Waste Management Plan or Nutrient Management Plan as well as any future revisions of its Animal Waste Management Plan or Nutrient Management Plan (NMP) and Delaware's State Technical Standards.

### **Notice of Intent (NOI)**

The Notice of Intent (NOI) submitted by individual CAFOs for consideration of coverage under the General CAFO NPDES permit will be considered incomplete until an Animal Waste Management Plan (AWMP) and/or Nutrient Management Plan (NMP) is submitted to the Delaware Department of Agriculture (DDA).

### **Topographical Maps**

Topographical maps of the CAFO's production area(s) may be reviewed with the NOI application. A hard copy of the topographical map can be obtained from the Departments upon request. Topographic maps can be accessed through online sources.

### **Implementation & Enforcement of this General NPDES CAFO Permit**

In the State of Delaware, the NPDES CAFO program is implemented and overseen jointly by the Department of Natural Resources and Environmental Control (DNREC) and the Delaware Department of Agriculture (DDA), with the cooperation of the Nutrient Management Commission. The U.S. Environmental Protection Agency (EPA) has delegated the legal authority to implement the NPDES permit program under the Clean Water Act in the State of Delaware to the DNREC, which serves as the lead agency for coordination with the EPA. The DDA is the primary initial point of contact with the regulated community: conducting inspections, collecting necessary documents, and reviewing Nutrient and Animal Waste Management Plans. The DDA, with the assistance and concurrence of the DNREC, has developed this permit to meet all necessary requirements. The DNREC, with the assistance of the DDA, will issue this final permit. The Nutrient Management Commission oversees the Nutrient Management Law and Regulations which governs the content of the Nutrient and Animal Waste Management Plans, which are an integral component of the CAFO program.

The DDA will be responsible for conducting inspections of farms covered under this permit to ensure compliance with its requirements. The DNREC retains its inspection authority. The DDA will take the lead in developing and implementing voluntary compliance strategies to bring an operation into compliance when needed. The DNREC will take the lead in developing and implementing compulsory compliance strategies to bring operations into compliance when voluntary measures have not been successful. The DDA will assist the DNREC in its enforcement activities and may act as DNREC's agent. The DNREC will initiate an enforcement action, should the DDA unsuccessfully resolve an enforcement issue.

### **Description of Discharge**

Discharges in the form of manure, litter or process wastewater pollutants are permitted, provided that each facility operates its CAFO in accordance with Part I.C. of the attached permit which defines all applicable Effluent Limitations.

### **Duration of NPDES CAFO Permit**

DNREC proposes to issue this NPDES General CAFO permit for a period not to exceed five (5) years, subject to the Effluent Limitations in the attached permit. The following are the basis for the proposed limitations.

### **Proposed Effluent Limitations**

Each permittee is authorized to discharge from the facility in accordance with the conditions set forth in this permit, including Part I.C.1, Part I.C.2, and if applicable, Part 1.C.3 of this permit, from the date noticed of permit coverage, lasting through the expiration date of this General Permit. Violations of any of the following Effluent Limitations may result in enforcement action in accordance with Part II.A.22. of this permit.

1. Large Non-Poultry Effluent Limitation Guidelines (ELGs) for Production Areas
  - a. In accordance with 7 Del. Admin. C. §7201-9.5.6.2.1.1.1, §6.2.1.2.1, §6.3.1.1.1, §6.3.1.2.1, §6.4.1.1.1, §6.4.2.1.1, §6.5.2.1, and §6.5.3.1 of the CAFO Regulations, there shall be no discharge of manure, litter, or process wastewater pollutants to Waters of the State from the production area.
  - b. In accordance with 7 Del. Admin. C. §7201-9.5.6.2.1.2.2, §6.3.1.1.1.1, §6.4.1.1.1.2, and §6.5.3.2 of the CAFO Regulations, whenever precipitation causes an overflow of manure, litter, or process wastewater, the overflow may be discharged into Waters of the State if:
    - i. The production area is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewaters plus the runoff and direct precipitation from a 25-year, 24-hour rainfall event
    - ii. The production area is operated in accordance with the measures and records required in §5.0 of these regulations
  - c. If the Secretary determines that a discharge from the production area is an "Upset", in accordance with Part II.A.24, the discharge shall not be a violation of the effluent limitations in this permit.
2. Medium & Designated Non-Poultry Effluent Limitations for Production Areas
  - a. The permittee shall operate according to all Best Management Practices (BMPs) addressed in the Animal Waste Management Plan (AWMP) and/or the Nutrient Management Plan (NMP)

- concerning management activities of manure, litter, or process wastewater in accordance with the State Technical Standards.
- b. If the Secretary determines that a discharge from the production area is an “Upset”, in accordance with Part II.A.24, the discharge shall not be a violation of the effluent limitations in this permit.
3. Large, Medium, & Designated Non-Poultry Effluent Limitations for Land Application Areas
- a. The permittee shall develop and implement BMPs in accordance with State Technical Standards and an AWMP/NMP as required in 7 Del. Admin. C. §7201-9.5.6.3.1.1.2.1 and §6.4.1.1.2.1.
  - b. Discharges are exempt from the land application area provided the manure, litter, or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, which minimize nitrogen and phosphorus movement to surface waters. The agricultural stormwater exemption does not apply to discharges from the production area.

**Requirement to Implement Animal Waste Management Plan (AWMP) and/or Nutrient Management Plan (NMP)**

Each permittee must implement its AWMP/NMP in accordance with Part II.A.2. of the attached permit. The AWMP/NMP must address the following nine (9) minimum requirements: 1) ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities; 2) ensure proper management of mortalities (dead animals) to ensure they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities; 3) ensure that clean water is diverted, as appropriate, from the production area; 4) prevent direct contact of confined animals with Waters of the State; 5) ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants; 6) site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to Waters of the State; 7) protocols for appropriate testing of manure, litter, process wastewater, and soil; 8) establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater; and 9) identify specific records that will be maintained to document the implementation and management of the minimum elements described in this section.

**Production Area Definition**

Delaware interprets the following clarified definition of Production Area to apply to Medium, Large, and Designated Animal operations which meet the definition of a CAFO and have a duty to apply for coverage under this General Permit.

As defined in 7 Del. Admin. C. §7201-9.5.6.4 of the CAFO Regulations, the production area means that part of an AFO that includes the “animal confinement area”, the “manure storage area”, the raw materials storage area and the “waste containment areas”, egg washing or processing facility and any area used in the storage, handling, treatment or disposal of mortalities. Animal confinement area includes the areas inside the poultry confinement houses and end pads in accordance with State Technical Standards. Manure storage and waste containment areas include storage sheds, and stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles.

### **Special Conditions**

Special Conditions in National Pollutant Discharge Elimination System (NPDES) permits require facilities to undertake activities designed to reduce the overall quantity of pollutants being discharged to Waters of the State. Special Conditions address unique situations and incorporate preventative requirements to reduce the potential for discharge of pollutants.

There are currently no special conditions applicable with this CAFO NPDES General Permit.

### **Public Notice & Process for Reaching a Final Decision**

The public notice of the Department’s General CAFO NPDES permit including all applicable supporting permit documentation was published in the Delaware State News and The News Journal, and posted on DNREC’s and DDA’s websites as well on May 30, 2021. Should this General Permit be issued to the state, Delaware intends to then proceed with public noticing groups of completed NOI’s that have met all the requirements to be covered under this General Permit. Delaware will continue with this process until all facilities which are required to be under the permit are covered.

### **Department Contact for Additional Information**

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