

FACT SHEET

NPDES CAFO GENERAL PERMIT LARGE, MEDIUM, & DESIGNATED POULTRY OPERATIONS WITH LAND APPLICATION OF MANURE

NPDES CAFO Permit No. DE 0051233

Large, Medium, & Designated Poultry CAFO's in Delaware that 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 BMP's to minimize phosphorus and nitrogen transport to waters of the state as a requirement of this permit. For Large and Medium Poultry 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; Cover Crops Traditional; Cover Crops Commodity; Soil Conservation and Water Quality Plans; Conservation Tillage; Continuous No-Tillage Conservation; Decision Agriculture Soil Conservation and Water Quality Plans; Heavy Use Poultry Area Pads; Livestock Waste Structures; Manure Relocation; Poultry Waste Structures; Mortality Composters; Streamside Grass Buffers; Streamside Forest Buffers; Wetland Restoration; Shoreline Erosion Control; Land Retirement; and Forest Harvesting Practices.

Statutory and 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 such as USGS.gov at the following web address:

[http://store.usgs.gov/b2c_usgs/usgs/maplocator/\(ctype=areaDetails&xcm=r3standardpitrex_prd&care=%24ROOT&layout=6_1_61_48&uiarea=2\)/.do](http://store.usgs.gov/b2c_usgs/usgs/maplocator/(ctype=areaDetails&xcm=r3standardpitrex_prd&care=%24ROOT&layout=6_1_61_48&uiarea=2)/.do)

Implementation and 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 govern 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 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 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.21. of this permit.

1. Large Poultry Effluent Limitation Guidelines (ELG's)
 - a. In accordance with 7 Del. Admin. C. §7201-9.5.6.4.1.1.1 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. §7201-9.5.6.4.1.1.1.2 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; and
 - ii. The production area is operated in accordance with the measures and records required in 7 Del. Admin. C. §7201-9.5.5.0 of the CAFO Regulations.
 - c. If the Secretary determines that a discharge from the production area is an "Upset" in accordance with Part II.A.25, the discharge shall not be a violation of the Effluent Limitations in this permit.
2. Medium & Designated Poultry Effluent Limitations
 - 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.25, the discharge shall not be a violation of the Effluent Limitations in this permit.
3. Large, Medium, and Designated Poultry Effluent Limitation for Land Application Area
 - a. The permittee shall develop and implement BMPs in accordance with State Technical Standards and a NMP as required in 7 Del. Admin. C. §7201-9.5.6.4.1.1.2.1.
 - 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 storm water exemption does not apply to discharges from the production area.

Requirement to Implement Animal Waste Management Plan (AWMP) 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 Poultry 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 and Process for Reaching a Final Decision

The public notice of the Department’s General CAFO NPDES permit for poultry farms with land application including all applicable supporting permit documentation was published in the Delaware State News and The News Journal, and posted on DNREC’s website on October 7, 2018. One commenter provided comments. They initially requested a hearing but later withdrew this request. The Department considered the comments provided; however, the Department’s review of the comments did not result any changes to the public noticed permit. The Department’s Response to the comments provided is included below.

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Response to Comments

- 1) **Based on documented precipitation patterns in Delaware, the basis of design for controlling storm water run-off should be increased from “a 25 year, 24 hour rainfall event” to “two back-to-back 100 year, 24 hour rainfall events. Furthermore, on Part 1.A.2 of the permit language to change stating “The Department *shall* require additional BMP’s to minimize phosphorous and nitrogen transport to the water of the state” as a requirement of the permit.**

Part 1.A.2 of the permit indicates that the permittee shall continue to implement all BMPs currently in place as required by their Animal Waste Management Plan (AWMP) and/or Comprehensive Nutrient Management Plan (CNMP) and *may* require additional BMP’s to minimize any phosphorous or nitrogen transport to waters of the state as stated in 7 Del. Admin. C. §7201- 9.5.5.1.4 of Delaware’s CAFO Regulations. The language used in Part 1.A.2 of the general permit addresses the use and implementation of additional BMP’s to prevent pollutant transport if those currently practiced are proving insufficient.

Furthermore, a 25-Year, 24-Hour Rainfall Event is defined in National Weather Service Technical Paper No. 40, “*Rainfall Frequency Atlas of the United States*” as the runoff event produced by a storm having an annual probability of occurrence of 4%. This is equivalent to regional or state rainfall probability information from a rain event resulting in 6.0 inches of rainfall for New Castle County, 6.5 inches for Kent County and 6.7 inches for Sussex County during a 24 hour period and is consistent with Delaware CAFO Regulations (7 Del. Admin. C. §7201-9.5.6.2.1 and 9.5.6.5.3) and EPA Federal Regulations (40 CFR §412.31).

- 2) **The definition of “State Waters” or “Waters of the State” in the general permit to include “Waters of the United States.”**

The general permit provides a descriptive definition for “state waters” or “waters of the state” that includes all water, on the surface and under the ground bordering the State of Delaware or within its jurisdiction. The language used herein is consistent with Delaware CAFO Regulations and meets the requirements of the Clean Water Act.

- 3) **On site ground water monitoring, and up- and down-stream surface water monitoring (if applicable) should be required as a part of NPDES permit approval. Groundwater monitoring should require the installation of a minimum of three groundwater monitoring wells screened within the upper most zone of saturation, the determination of groundwater flow direction and velocity, and the periodic sampling of downgradient well(s) for chemical parameters in accordance with 7 Del.Admin C. Sec. 7201-6.41.2**

The Delaware CAFO Regulations (7 Del. Admin. C. 7201-9.5) as well as Federal EPA CAFO Regulations (40 CFR §122 and 412) do not require ground water monitoring wells at CAFO facilities nor is it a requirement of the permitting approval process. The Department believes that it is critical to prevent the transport of pollutants into waters of the state, and therefore regulate facilities closely to ensure that they are operating according to their AWMP/CNMPs. Part II.11.C of the general permit states that the Department has the ability to monitor any soil, manure, litter, process wastewater, Waters of the State, and discharges from the site. Additionally, any sampling or monitoring will be performed as indicated in Part 1.D.4 and are in accordance with 7 Del. Admin. C. §7201-6.41.2.

- 4) **Part II.A.16 of the general permit (Public Access to Information) should be amended to make it explicit that such publicly-available documents be available on-line, and also provide the website in this section of the permit.**

The public has the ability to review all information pertaining to the NPDES CAFO permit issuance, reissuance, modification, revocation or termination, including NOIs, attachments including the AWMP/NMP, comments received by the public and draft NPDES CAFO permit. The Department encourages public participation regarding the CAFO Program and currently provides links to the websites where copies of the NOIs, Draft Permit, and Fact Sheet can be reviewed. Furthermore, the public is welcomed to contact the Department with any questions or concerns Monday-Friday 8:00 a.m. to 4:00 p.m.

- 5) Part II.A.25 (Management Requirements and Responsibilities), “Upset” section should be struck from the permit as it vitiates the purpose and intent of the NPDES permit process. This section should be replaced with an appropriate “required notification of violations” section.**

Part II.A.25 of the general permit constitutes an affirmative defense to an action brought for noncompliance and describes in detail the evidence that the permittee will demonstrate if such event occurs. The Delaware CAFO Regulations (7 Del. Admin. C. 7201-9.5) and Federal EPA CAFO Regulations (40 CFR §122 and 412) define an “upset” as an exceptional incident in which there is unintentional and temporary noncompliance. Part I.F.1 of the general permit, titled “Notification Requirements” discusses the emergency notification procedures in accordance with 7 Del. Admin. C. §7201-9.5.6.1.1.7.2 of the Delaware CAFO Regulations.

- 6) The permit needs to sufficiently track and protect groundwater discharges, as we are experiencing significant groundwater contamination near industrial agricultural processes, especially in Sussex County-where most of the CAFOs are located within Delaware. Inspections are insufficient to protect public health and prevent groundwater contamination. In too many cases, facilities are being stocked with birds with no permits or even "temporary" mortality structures or BMPs. There has been no public notice prior to building or operating these facilities in many cases. Ammonia emissions should be taken into account as it contributes to eutrophication, in which water bodies are enriched with excess nutrients, like nitrogen and phosphorus. Many of these facilities are in sensitive geology-coastal zones which include sandy soils, high water table and shallow private wells. Also, many fields are saturated with excessive phosphorus.**

Delaware CAFO Regulations do not regulate the overall construction of new CAFOs and therefore do not require a legal notice for construction activities; however, newly constructed CAFOs not subject to effluent guidelines and new sources are required to submit a notice of intent (NOI) 180 days before beginning their operation according to 7 Del. Admin. C. §7201-9.5.4.1.2.1. The owner/operator must acquire a preliminary animal waste management plan (AWMP) or comprehensive nutrient management plan (CNMP) written by a certified nutrient consultant that addresses the EPA's nine minimum requirements found on the CAFO Fact Sheet. Once the DDA receives a copy of the AWMP/CNMP and the NOI from the operation seeking coverage under one of the CAFO General Permits, the operation will then be public noticed by DNREC. The overall construction of poultry buildings is facilitated through the county conservation districts, DNREC's Sediment and Stormwater Section, DeIDOT, NCRS, and FSA, not the Delaware CAFO Program itself. For more information please follow this link: <http://dechickenchecklist.com/the-building-process>.

CAFOs with the requisite number of animals to qualify for a CAFO permit are required to file a NOI and comply with the Nutrient Management Law and Regulations. Once their duty to comply (AWMP/CNMP and NOI) has been submitted and the Departments have

determined that the permit application and supporting information is technically complete, the CAFO can operate within the confines of the law. Temporary mortality structures can be utilized provided they are robust enough to contain composting material and keep the material dry. Required BMPs address a resource concern and temporary measures can be permitted to address these concerns as long as progress toward a permanent solution is being made.

The definition of “state waters” or “waters of the state” includes all water on the surface and underground wholly or partially within, or bordering the State. The DNREC, DDA, and Nutrient Management Commission have worked jointly to ensure that CAFO owners/operators are implementing BMPs and are operating in accordance to their management plans to minimize the discharges of pollutants into state waters. 40 CFR §§ 412.37, 412.47 addresses the specific monitoring requirements for inspections of specific aspects of the production area and monitoring requirements associated with CAFOs land applying manure. These include manure and soil analysis as well as inspecting land application equipment. Soil tests, as identified by State Technical Standards, ensure that the right amount of fertilizer/manure is added to crops to prevent the application of excess nutrients such as Nitrogen and Phosphorous (7 Del. Admin. C. §7201-9.5.5.1.3.5). 7 Del. Admin. C. §7201-9.5.5.1.2.2 requires the permittee to have a copy of a soil survey map identifying soil type and texture on each field which is taken into consideration regarding land application rates within their AWMP/CNMP. Additional BMPs may be included at the discretion of the Departments to minimize potential discharge of pollutants from entering the ground water. Furthermore, DDA and DNREC have committed to thoroughly inspecting permitted CAFOs at least once during the 5-year effective period of the general permit. Non-compliance issues on permitted facilities will result in an increase of follow-up inspections to ensure that the operation falls back into and remains in compliance once a violation occurs.

CAFOs with land application are required to implement a nutrient management plan developed by a Delaware Certified Nutrient Consultant. One of the requirements of a NMP is to manage phosphorus in soil through a phosphorus management tool and by utilizing approved best management practices. These management strategies minimize potential phosphorus impacts from CAFO's to groundwater.

The Department sincerely appreciates and encourages public participation in the permitting process and will address every concern in accordance with Delaware Law.