NPDES Permit Number DE 5000N/11
Effective Date: April 1, 2016
Expiration Date: March 31, 2021

GENERAL PERMIT AUTHORIZATION FOR CAFOs TO DISCHARGE UNDER THE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

AND THE LAWS OF THE

STATE OF DELAWARE

(LARGE, MEDIUM, & DESIGNATED POULTRY CAFOS – MANURE GENERATION FACILITIES ONLY)

Pursuant to the provisions of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 (33 U.S.C. 1251 et seq.) (hereinafter referred to as "the Act"); 3 *Del.C.* §2200, Nutrient Management (Delaware Nutrient Management Law) and 7 *Del.C.* §6000, Environmental Control; and the National Pollutant Discharge Elimination System (NPDES) Permit Program regulations for Concentrated Animal Feeding Operations (CAFOs) which were promulgated pursuant to those statutes: 7 Del. Admin. C. §7201-9.5, *Regulations Governing the Control of Water Pollution*, (CAFO Regulations), the Department of Natural Resources and Environmental Control (hereinafter referred to as DNREC), hereby authorizes **Large, Medium, & Designated Poultry Concentrated Animal Feeding Operations (CAFOs)** registered under this General Permit to discharge in accordance with all limitations, monitoring and record keeping requirements and other permit conditions as set forth in Part I, II and III hereof.

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3/31/16
Date Signed

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Part I

A. GENERAL DESCRIPTION OF DISCHARGES AND FACILITIES

1. Large, Medium, and Designated Poultry CAFO's 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.

2. Total Maximum Daily Load (TMDL):

   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; 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, and; Shoreline Erosion Control.

B. REGULATORY AND SUPPORTING DOCUMENTS

The permittee's CAFO shall be conducted in accordance with the following documents:

1. DNREC's 7 Del. Admin. C. §7201-9.5, the CAFO Regulations; promulgated pursuant to the authority provided by 3 *Del. C.* §2200 et.al. and 7 *Del. C.* §6000 et.al. and 40 CFR 122 and 412.

2. Memorandum of Agreement between the Delaware Department of Agriculture (DDA) and the Delaware Department of Natural Resources and Environmental Control (DNREC) dated December 16, 2010;

3. The Delaware Department of Agriculture's Nutrient Management Regulations, 3 Del. Admin. C. §1201;

4. The Delaware Nutrient Management Law, 3 *Del. C.* §2200;

5. The facility's Animal Waste Management Plan (AWMP) or Nutrient Management Plan (NMP).; and

6. The facility's Notice of Intent (NOI).

C. 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 and Part I.C.2 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.23, 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.23, the discharge shall not be a violation of the Effluent Limitations in this permit.

D. MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

1. The permittee shall maintain records of implementation that address the nine (9) minimum required elements of its site specific AWMP/NMP for six (6) years in accordance with the State Technical Standards. The permittee shall also maintain a copy of the "Notice of Intent & Application for Coverage" and a copy of the most current AWMP/NMP at the CAFO with this issued NPDES CAFO Permit.

2. The permittee shall operate and comply with all applicable requirements in 7 Del. Admin. C. §7201-9.5.6.4.3.1.1 and §9.5.6.4.3.1.3 of the CAFO Regulations for Large CAFOs or 7 Del. Admin. C. §7201-9.5.6.6.2.1.1 and §9.5.6.6.2.1.3 of the CAFO Regulations for Medium CAFOs. The permittee shall maintain records of implementation for six (6) years at the CAFO in accordance with State Technical Standards. Applicable records of implementation in the production area include:

a. Records indicating mortality management to include number disposed and method of disposal. The total number of mortality disposed may be documented with integrator developed mortality sheets, integrator settlement sheets, or any other recording of the information.

b. Records of manure storage activities, length of storage, amount stored, and maintenance of manure storage facilities.

c. 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.

d. Records of implementation in the land application area are not applicable to this facility because the permittee does not propose land application of manure. Land application of manure is not permitted on any land that is under the direct control of the permittee unless the AWMP is revised to a NMP to account for such land applications of manure in accordance with Part II.A.2.a. and Part II.A.16. of this permit.

3. Manure testing shall be performed annually in accordance with the State Technical Standards. Records of the annual manure analysis must be retained by the permittee and also provided to the DDA each year as an attachment to the annual report submission.

4. If sampling and/or monitoring is performed, samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. Sampling and monitoring records shall include the date, place, and time of sampling or measurements, and the individuals who performed the sampling or measurements. The facility responsible for analysis of the sample shall document the date of the analysis, the individual who performed the analysis, the analytical techniques/methods used, and the results of such analysis in accordance with 7 Del. Admin. C. §7201-6.41.2.

5. The permittee shall comply with all annual reporting requirements and conditions and shall submit to the DDA an annual report that summarizes its activities and operations for the previous calendar year. The report shall be submitted on or before March 1st of each calendar year. The annual report shall include the information required in 7 Del. Admin. C. §7201-9.5.6.1.1.7.1 of the CAFO Regulations. A copy of the annual report and supporting documents must be retained by the permittee.

6. If for any reason a discharge occurs, the permittee shall follow the guidance in Part I.F.1. of this permit.

7. Violation of the Effluent Limitations in Part I.C. of this permit may result in additional monitoring requirements. In accordance with 7 Del. C. § 6019, the Department may ensure compliance with this permit through voluntary compliance measures such as warnings, notices, educational means or other enforcement actions.

E. SCHEDULES OF COMPLIANCE

None (N/A)

F. NOTIFICATION REQUIREMENTS

1. The permittee shall follow emergency notification procedures in accordance with 7 Del. Admin. C. §7201-9.5.6.1.1.7.2 of the CAFO Regulations. If for any reason there is a discharge of pollutants from the permittee's CAFO, the permittee shall verbally notify the DDA (Nutrient Management Program) at 1-800-282-8685 and the DNREC Emergency Response Branch at 1-800-662-8802 within 24 hours of becoming aware of the discharge and document the incident in writing within five (5) days. The information to be provided shall include:

   a. A description of the discharge and cause, including a description of the flow path to the receiving waters, an estimate of the flow and volume discharged;

   b. The period of discharge, including exact dates and times and if not corrected, the anticipated time the discharge is expected to continue and the steps being taken to reduce,

eliminate and prevent recurrence of the discharge;

c. If the discharge was caused by precipitation event(s), the amount of rainfall, as measured with a rain gauge at the site.

d. Results of any sampling and analysis of the discharge, if available.

2. If for any reason the permittee anticipates noncompliance with this permit, the permittee shall, as soon as possible, give advance notice to the DDA of any activity which may result in the noncompliance.

3. The permittee shall report instances of other noncompliance with this permit to the DDA as soon as possible. The DDA will then determine a method of compliance with the permittee and document any instance of noncompliance.

G. DEFINITIONS

1. **"Animal Feeding Operation"** or **"AFO"** means a facility (other than an aquatic animal production facility) where the following conditions are met: (1) Animals (other than aquatic) as referenced in 7 Del. Admin. C. §§7201-9.5.3.1.1 and 9.5.3.1.2 of the CAFO Regulations that have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and (2) the animal confinement areas do not sustain crops, vegetation, forage growth or post-harvest residues in the normal growing season. (3) Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals in an operation, if the production areas adjoin each other or if the AFOs use a common area or system for the disposal of wastes. (For example, facilities or production areas that are commonly managed, co-located and share manure storage systems are considered a single AFO. A poultry operation with many facilities in a single location or address is deemed a single AFO).

2. **"Animal Waste Management Plan"** means a plan written in accordance with State Technical Standards that documents and recommends a combination of conservation practices and management measures for the handling, storage, treatment and management of any or all of the following for use in connection with animal wastes, manures, composted dead animals, or process wastewater from any animal feeding operation.

3. **"Applicant"** means any person seeking and or required to obtain a CAFO NPDES permit.

4. **"Apply," "applying,"** or any variation of the word **"apply,"** as it relates to the application of nutrients, means the human controlled mechanical conveyance of nutrients to land for the purpose of applying organic or inorganic nutrients.

5. **"Application Area"** means land under the control of an AFO owner or operator, whether it is owned, licensed, or leased to which manure, litter or process wastewater from the production area is or may be applied.

6. **"Best Management Practices"** or **"BMP"** means those practices that have been approved by the Delaware Nutrient Management Commission and meet State Technical Standards. Best Management Practices (BMPs) are recommended activities which enhance agronomic results, benefit the environment, and prevent or reduce pollution to Waters of the State. BMPs are not to be interpreted as mandatory implementation actions of a plan (e.g., Pre-side dress Soil Nitrate Test, cover crops, vegetative buffer strips, litter additives, manure incorporation,

timing/method, etc.) unless specified in the NMP, AWMP, or site-specific practices described in 7 Del. Admin. C. §7201-9.5.5.0 of the CAFO Regulations.

7. **"Best Professional Judgment" or "BPJ"** means the method used by permit writers to develop technology-based NPDES permit conditions, in those circumstances where there is no applicable effluent limitation guideline, on a case-by-case basis using all reasonably available and relevant data

8. **"Certified Nutrient Consultant"** means a person who is approved by the Delaware Nutrient Management Commission to engage in the activities of advising or consulting with another person who is required to have a certificate under the Delaware Nutrient Management Regulations, regarding the formulation, application, or scheduling of organic or inorganic nutrients within Delaware. Provided however any employee of any Federal, State or local government agency or the University of Delaware, or other organization duly recognized by the Commission for such purpose, who provides advice or consultation in his capacity as such an employee, without compensation, shall not be deemed to be a nutrient consultant unless such advice and consultation constitutes a direct and substantial part of a Nutrient Management Plan developed pursuant to these regulations.

9. **"Concentrated Animal Feeding Operation"** or **"CAFO"** means an animal feeding operation (AFO) subject to the terms and conditions of 7 Del. Admin. C. §7201-9.5.3.1 of the CAFO Regulations and defined as a "Large CAFO", or a "Medium CAFO", or "Designated" as a CAFO in accordance with 7 Del. Admin. C. §7201-9.5.3.2 of the CAFO Regulations.

10. **"Department"** means the Delaware Department of Natural Resources and Environmental Control who shall administer the program with the assistance of the Delaware Department of Agriculture.

11. **"Department of Agriculture"** means the Delaware Department of Agriculture (DDA).

12. **"Department of Natural Resources and Environmental Control"** means the Delaware Department of Natural Resources and Environmental Control (DNREC).

13. **"Discharge of a Pollutant"** or **"Discharge"** means the addition of any pollutant or combination of pollutants, to State Waters or the ocean, from any source or activity other than a vessel or other floating craft when being used as a means of transportation and in compliance with the Clean Water Act. This definition includes, but is not limited to additions of pollutants into State Waters from: (1) Surface runoff that is collected or channeled by man; (2) Discharges through pipes, sewers, and other conveyances which do not lead to a treatment works; and (3) Discharges through pipes, sewers, or other conveyances, leading into a treatment works other than a publicly owned treatment works (POTW).

14. **"Effluent Limitation"** means any restrictions, prohibitions, or permit requirements established under State or Federal law, including but not limited to, standards of performance for new sources, Best Management Practices or BMPs, effluent standards and ocean discharge criteria on the quantities, rates, and concentrations of the chemical, physical, biological, or other constituents discharged into State Waters.

15. **"Land Application Area"** is equivalent to "Application Area"

16. **"Layout"** means the time between a flock of birds leaving the farm for processing and a new flock entering the farm.

17. **"Manure"** means fecal and urinary defecations of animals as referenced in 7 Del. Admin. C. §§7201-9.5.3.1.1 and 9.5.3.1.2 of the CAFO Regulations, and may include, but is not limited to comingled spilled feed, bedding, soil, and compost.

18. **"New Source"** means any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commences:
    - After promulgation of standards of performance under §306 of the Act which are applicable to such source; or
    - After proposal of standards of performance under §306 of the Act which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal. In addition, any building, structure, facility or installation constructed after the effective date of the CAFO Regulations must also meet the criteria described in §7.0 of the CAFO Regulations.

19. **"NPDES"** or **"National Pollutant Discharge Elimination System"** means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of any pollutant or combination of pollutants and imposing and enforcing pretreatment and sludge requirements pursuant to the Clean Water Act.

20. **"Notice of Intent"** or **"NOI"** means the form used to serve as a notification of the intention of the facility identified on the form to adhere to the provisions of the CAFO Regulations.

21. **"Nutrient Management Plan"** or **"Plan"** means a plan written by a certified nutrient consultant in accordance with State Technical Standards to manage the amount, placement, timing and application of nutrients in order to reduce nutrient loss or runoff and to maintain the productivity of soil when growing agricultural commodities and turf grass.

22. **"Nutrients"** means nitrogen, phosphorus, and any other elements necessary for or helpful to plant growth.

23. **"Operator"** means any person in control of, or having responsibility for, the operation of the CAFO.

24. **"Overflow"** means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained in the structure.

25. **"Owner"** means any person who owns a CAFO.

26. **"Person"** means any individual, partnership, association, fiduciary, corporation, or any organized group of persons, whether incorporated or not.

27. **"Pollutant"** means for the purposes of these regulations any substance, which causes or contributes to, or may cause or contribute to, the degradation of water, and soil resources. Examples may include, but are not limited to excess nutrients, chemicals, toxic substances, industrial, municipal or agricultural wastes, etc.

28. **"Process Wastewater"** means any water directly or indirectly used in the operation of an

AFO including, but not limited to spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits; direct contact swimming, washing, or spray cooling of animals; dust control; or any water which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, eggs).

29. **"Production Area"** means, unless otherwise modified in 7 Del. Admin. C. §7201-9.5 of the CAFO Regulations, 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 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. Manure Storage Area includes but is not limited to lagoons, runoff ponds, storage sheds, and stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. Waste Containment Area includes but is not limited to settling basins, and areas within berms and diversion which separate uncontaminated storm water.

    As further defined in 7 Del. Admin. C. §7201-9.5.6.4 of the CAFO Regulations the production area for Large Poultry CAFOs 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.

    Delaware interprets the above clarified definition of Production Area to apply to both Medium and Large Poultry operations which meet the definition of a CAFO and have a duty to apply for coverage under this General Permit.

30. **"Secretary"** means the Secretary of the Delaware Department of Natural Resources and Environmental Control (or his/her designee), who shall administer the program with the assistance of the Secretary of the Delaware Department of Agriculture (or his/her designee).

31. **"State Nutrient Management Law"** means the law and associated regulations authorized in 3 *Del. C.* §2200 et.al.

32. **"State Nutrient Management Program"** or **"SNMP"** means all the nutrient management program elements developed by the Delaware Nutrient Management Commission, whether or not reduced to rules or regulations.

33. **"State Technical Standards"** means those technical standards established by the Secretary and in consultation with a collaborative group of technical experts representing technical resources and endorsed by the Delaware Nutrient Management Commission. State Technical Standards are available at the DDA.

34. **"State Waters"** or **"Waters of the State"** means all water, on the surface and under the ground, wholly or partially within, or bordering the State, or within its jurisdiction including but

not limited to: (1) waters which are subject to the ebb and flow of the tide including, but not limited to, estuaries, bays and the Atlantic Ocean; (2) all interstate waters, including interstate wetlands; (3) all other Waters of the State, such as lakes, rivers, streams (including intermittent and ephemeral streams), drainage ditches, tax ditches, creeks, mudflats, sand flats, wetlands, sloughs, or natural or impounded ponds; (4) all impoundments of waters otherwise defined as Waters of the State under this definition; (5) wetlands adjacent to waters (other than waters that are themselves wetlands) identified in the above four statements. (6) Waste and storm water treatment systems or waste storage structures including, but not limited to, treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (other than cooling ponds which otherwise meet the requirements of this definition) are not "State Waters" or "Waters of the State."

35. **"Stockpiling"** means the temporary location of manure piles in the production area for no more than 14 days unless the manure/litter is located under cover in an approved manure storage structure. Stockpiling must be conducted and positioned in accordance with State Technical Standards.

36. **"Storm Water Treatment System"** means a system of vegetative, structural, and other facilities or measures that control the volume, conveyance and rate of storm water runoff, and manage water quality impacts of storm water runoff. This may include constructed wetlands developed for the purpose of storm water runoff management.

37. "**Upset"** means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit Effluent Limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

38. **"Vegetated Buffer"** means a permanent strip of dense perennial vegetation naturally occurring or established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters. For the purposes of the CAFO Regulations, vegetated buffers will be measured from the top of the bank of the water body that is being buffered.

39. **"25-Year, 24-Hour Rainfall Event"** means the runoff event produced by a storm having an annual probability of occurrence of 4%, as defined by the National Weather Service Technical Paper Number 40, "Rainfall Frequency Atlas of the United States"(as amended), equivalent to regional or state rainfall probability information developed there from, or a rain event resulting in 6.0 inches of rainfall for New Castle county, 6.5 for Kent county and 6.7 for Sussex county in a 24-hour period.

Part II

A. MANAGEMENT REQUIREMENTS AND RESPONSIBILITIES

1. Duty to Comply

   Failure to comply with the terms of this permit or the CAFO Regulations shall constitute a violation and shall be grounds for enforcement action as provided in 3 *Del. C.* §2200 et.al. and 7 *Del. C.* §6000 et.al. The Department may seek voluntary compliance with a warning, notice or other educational means. However, the law does not require that such voluntary means be used before proceeding with enforcement. Violations may be subject to, and enforced by the Environmental Protection Agency (EPA) through the Federal Clean Water Act of 1977.

2. Requirement to Implement a Site Specific Animal Waste Management Plan or Nutrient Management Plan

   A CAFO owner or operator under this permit shall implement and fully comply with the AWMP/NMP as described in 7 Del. Admin. C. §7201-9.5.5.0 of the CAFO Regulations developed by a Delaware certified nutrient consultant that contains site specific Best Management Practices necessary to meet the requirements of this permit and applicable Effluent Limitations and standards as specified in the CAFO Regulations. The AWMP/NMP submitted by the applicant for coverage is incorporated into this NPDES CAFO Permit and any violation of its terms shall constitute a violation of the NPDES CAFO permit.

   a. Anytime changes to an AWMP/NMP occur, the new updated plan and/or addendum to the plan must be submitted to DDA. The permittee shall provide the DDA with the revised/updated CAFO's AWMP/NMP within 90 days of any update, and shall identify changes from the previous version. The DDA will review the revised AWMP/NMP to ensure it meets the requirements of the regulations and the standards as described in the State Technical Standards, and will determine whether the changes to the AWMP/NMP require revision to the terms of the NPDES CAFO Permit issued to the CAFO. If revision to the terms of the AWMP/NMP is not necessary, the DDA will notify the CAFO owner or operator and upon such notification the CAFO may implement the revised AWMP. If the DDA determines that the changes to the terms of the AWMP/NMP are not substantial, the Secretary will make the revised AWMP/NMP publicly available and include it in the permit record, revise the terms of the AWMP/NMP incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the AWMP/NMP that are incorporated into the permit.

   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. A substantial change includes, but is not limited to, an annual increase in the facility's animal feeding capacity greater than 25% and/or any change to the operation that presents a risk of nitrogen and phosphorus runoff as determined by the Secretary constitutes a substantial change.

   If the permitting authority decides that the changes that have been implemented do not ensure compliance with state and federal regulations, the permittee would be subject to enforcement under 7 Del. Admin. C. §9.5.9.1 of the CAFO Regulations.

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:

a. New poultry houses are to be constructed at the permitted facility.

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.

4. General Housekeeping Practices

The permittee shall have manure residue and litter residue adequately cleaned up on a reasonable and necessary basis.

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.

6. 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.

7. 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.

8. Duty to Mitigate

The permittee shall take all reasonable steps to minimize any adverse impact to Waters of the State, human health or the environment resulting from noncompliance with this permit.

9. Right of Entry

Pursuant to 7 *Del.C.* §6024; The Secretary, or the Secretary's duly authorized designee, in regulating water pollution, air pollution, solid waste disposal or any other matter over which he or she has jurisdiction pursuant to this chapter, may enter, at reasonable times, upon any private or public property for the purpose of determining whether a violation exists of a statute or regulation enforceable by him or her, upon given verbal notice, and after presenting official identification to the owner, occupant, custodian or agent of said property.

The permittee shall allow the right of entry to the Secretary of the DNREC, the Secretary of Agriculture, the EPA Regional Administrator, or their authorized representatives, jointly and severally, upon the presentation of his or her credentials.

In accordance with 7 Del. Admin. C. §7201-9.5.6.1.1.11.1 of the CAFO Regulations, the Secretary, or authorized designee, shall be authorized to evaluate implementation of the permit and furthermore be allowed to:

a. Enter and inspect the CAFO;

b. Have access to and copy, at reasonable times, any records required to be kept under the terms and conditions of this permit; and

c. Sample or monitor any soil, manure, litter, process wastewater, Waters of the State, and discharges from the site.

Any sampling and/or monitoring undertaken will be performed as prescribed in Part I.D.4 supra.

Additionally, in accordance with 7 Del. Admin. C. §7201-9.5.6.1.1.11.2 of the CAFO Regulations, the owner or operator may or may not be notified in advance of entry and evaluation. Entry and evaluation shall be in accordance with any biosecurity requirements of the individual or commodity industry involved. As a general practice the DDA/DNREC will provide advance notice of inspections; however, in order to ensure compliance, unannounced inspections may be performed.

The permitted facility shall have a minimum of one (1) site visit within the five (5) year duration of this permit from the Department.

10. Property Rights

The issuance of a NPDES CAFO permit under the requirements of the CAFO Regulations does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property, nor any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

11. Duty to Provide Information Requested by the Department

The permittee shall furnish to the DDA/DNREC, within a reasonable time, any information which the DDA/DNREC may request to determine compliance with this permit or to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit. The permittee shall also furnish, upon request, copies of records required to be kept by this permit.

12. Duty to Provide Information Found to be Missing or Inaccurate

When the permittee discovers that it failed to submit any relevant facts in a permit application or that it submitted any incorrect information in any permit application or in any report to the DDA/DNREC, it shall promptly submit such facts or information.

13. Signatory Requirements

All applications, reports, or information submitted to the DNREC or the DDA shall be signed and certified in accordance with 7 Del. Admin. C. §7201.

14. Public Access to Information

All information pertaining to this 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 permits shall be available for review by the public. Annual reports, including without limitation a statement by the owner or operator stating whether or not the owner or operator met or exceeded the projected crop yields provided in the CAFO's NMP, shall be available for review by the public, provided that the actual crop yields provided and contained in annual reports shall be confidential and non-public to the maximum extent permitted under Delaware law. The crop yields provided and contained in annual reports may be used for data compilation in an aggregated form, and such data compilation in an aggregated form may be made public. Information transmitted by the Secretary to EPA shall be subject to appropriate Federal regulations. Knowingly making

any false statement in any such report may result in the imposition of criminal penalties as provided for under 7 *Del.C.* §6013.

15. Reapplication for a Permit

    Duty to maintain NPDES CAFO Permit coverage; no later than 180 days before the expiration of the NPDES CAFO Permit, the owner or operator shall submit an NOI to renew its NPDES CAFO Permit, unless the CAFO has ceased to operate as a CAFO, or will not discharge or propose to discharge upon the expiration of the NPDES CAFO Permit.

    In the event that a timely and sufficient reapplication has been submitted and the Department is unable, through no fault of the permittee, to issue a new permit before the expiration date of this permit, the terms and conditions of this permit are continued and remain fully effective and enforceable.

16. Modification, Termination, or Revocation and Reissuance

    This permit may be modified, terminated or revoked and reissued in whole or in part, during its term, for cause by the Secretary. The filing of a request for permit modification, or revocation and reissuance, or termination, or a notification of any changes or anticipated noncompliance does not stay any permit condition. In the event that the Department's *Regulations Governing the Control of Water Pollution,* CAFO Regulations or any applicable Federal regulations are revised, this permit may be reopened and modified accordingly after notice and opportunity for a public hearing.

17. Permit Transfer

    This permit is not transferrable to any person, except after notice to and with the concurrence of the Secretary; the owner or operator may request a NPDES CAFO Permit transfer by:

    a. Notifying the DDA/DNREC in writing at least 30 days prior to the proposed transfer; and

    b. The permittee submits to the DDA/DNREC a written agreement signed by all parties to the transfer, containing a specific date for transfer of permit responsibility, coverage and liability to the new permittee. The written agreement shall expressly acknowledge the current permittee is responsible and liable for compliance with the terms and conditions of this permit up to the date of transfer and the new permittee is responsible and liable for compliance from that date on; and

    c. The DDA/DNREC, within 30 days of receipt of the notification of the proposed transfer, will notify the current permittee and the new permittee of the Secretary's intent to modify, to revoke and reissue, or terminate the permit and require that a new application be submitted.

    The permittee is encouraged to provide as much advanced notice as possible of any proposed transfer, to allow sufficient time for the Department to modify this permit to identify the new permittee and to incorporate such other requirements as may be necessary under the Law.

18. Cease Permit Coverage

    The owner or operator may request to cease NPDES CAFO permit coverage by submitting a request in writing to the DDA/DNREC with a justification for the request. The justification shall explain why the owner or operator no longer has a duty to apply for NPDES CAFO permit coverage. The Secretary will approve or deny the request within 180 days.

19. Out of Operation Structure(s)

In the event that structure(s) are taken out of production, the following closing procedures must occur:

a. The permittee must notify the DDA/DNREC;

b. A total clean out of the structure(s) must be performed in order to remove out of operation structure(s) from this permit; and

c. Visual verification of the total clean out will be performed and documented by the DDA/DNREC.

In the event that all structure(s) are being taken out of production, the additional following closing procedure must occur to cease permit coverage:

d. The permittee must follow the guidelines provided in Part II.A.18 of this permit.

If manure is not removed from the structure(s) then the structure(s) will be considered manure storage buildings and therefore remain under NPDES CAFO permit coverage.

20. Severability

If any provision of this permit is held invalid, the remainder of this permit shall not be affected. If the application of any provision of this permit to any circumstance is held invalid, its application to other circumstances shall not be affected.

21. State Laws, Enforcement, Fines, and Penalties

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under 7 *Del.C.* §6000 and 3 *Del C.* §2200, or any other State law or regulation.

Whoever violates this permit and/or the CAFO Regulations shall be subject to the fines and penalties established in 3 *Del. C.* §2200 and 7 *Del C.* §6000 at the discretion of the Secretary and appropriate Court.

The discharge of any pollutant more frequently than, or at a level in excess of that identified and authorized herein shall constitute a violation of the terms and conditions of this permit. The violation of any Effluent Limitation or of any other condition specified in this permit is a violation of 7 *Del.C.* §6000. Violations may be subject to, and enforced by the Environmental Protection Agency (EPA) through the Federal Clean Water Act.

22. Need to Halt or Reduce Activity Not a Defense

Owners and operators may not use as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in question to maintain compliance with the conditions of this permit.

23. Upset

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit Effluent Limitations if the requirements of the following paragraph are met.

Conditions necessary for a demonstration of upset: A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated in accordance with Part II.A.6. of this permit; and

c. The permittee submitted notice of the upset in accordance with the Noncompliance Notification section of this permit (Part I.F.1.).

d. The permittee complied with any remedial measures in accordance with the Duty to Mitigate section of this permit (Part II.A.8).

Burden of proof: In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

Part III

A. SPECIAL CONDITIONS

None (N/A)