

**BOARD OF MINERALS AND ENVIRONMENT  
DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES**

Permit Number: GPWA 03-06

**GENERAL PERMIT TO STORE AND/OR LAND APPLY DAIRY  
PROCESSING BY-PRODUCTS UNDER THE SOUTH DAKOTA  
WASTE MANAGEMENT PROGRAM**

South Dakota Codified Law (SDCL) 34A-6-1.6 authorizes the Board of Minerals and Environment (Board) to adopt rules relating to the issuance, renewal, revocation, or suspension of solid waste facility permits. SDCL 34A-6-58 authorizes the Secretary of the Department of Environment and Natural Resources (DENR) to recommend that the Board issue general permits for certain categories of solid waste facilities.

This general permit authorizes the storage and/or land application of dairy processing by-products within the state of South Dakota, subject to compliance with all conditions set forth in this general permit. If any of the conditions of this general permit are not met, the operator may be required to apply for and obtain an individual solid waste permit as specified in SDCL 34A-6-58 and the Administrative Rules of South Dakota (ARSD) 74:27:10:06. In addition, the operator may be subject to civil penalties set forth in SDCL 34A-6-1.31.

Pursuant to SDCL 34A-6-58, this general permit is valid until suspended, revoked or modified by the Board.

This permit shall become effective January 29, 2003 and shall expire January 29, 2008.

Signed this 29th day of January, 2003.



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Richard C. Sweetman, Chairman  
Board of Minerals and Environment

**IMPORTANT NOTICE** – POSSESSION OF THIS DOCUMENT DOES NOT PROVE THE HOLDER IS LEGALLY AUTHORIZED TO OPERATE A LAND APPLICATION DAIRY PROCESSING BY-PRODUCTS SOLID WASTE DISPOSAL FACILITY.

THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES ISSUES A CERTIFICATE AND LETTER OF AUTHORIZATION TO EACH LEGALLY AUTHORIZED OWNER/OPERATOR. THE CERTIFICATE AND LETTER OF AUTHORIZATION ARE LEGAL PROOF OF AUTHORIZATION TO OPERATE A LAND APPLICATION SOLID WASTE DISPOSAL FACILITY.

# TABLE OF CONTENTS

## Cover Sheet – Issuance and Expiration Dates

<b>1.0</b>	<b>General Statements of Law and Operator’s Responsibilities</b>	<b>3</b>
1.01	Definitions	
1.02	Applicability of General Permit	
1.03	Severability	
1.04	Property Rights	
1.05	Amendments, Revocation, and Suspension of General Permit	
1.06	Procedure for Requesting Authorization	
1.07	Renewal of Authorization	
1.08	Duration of Authorization	
1.09	Changes to Request for Authorization	
1.10	Transfers	
1.11	Individual Permit Required	
1.12	Individual Permit Requested	
1.13	Duty to Comply	
1.14	Duty to Provide Information	
1.15	Proper Operation and Maintenance	
1.16	Emergency Procedures	
1.17	Penalties for Violations of Permit Conditions	
1.18	Duty to Provide Access	
1.19	Administrative Changes Authorized	
1.20	Need to Halt or Reduce Activity not a Defense	
1.21	Duty to Mitigate	
1.22	DENR Limitation of Liability	
1.23	Stipulated Penalties	
1.24	Landowner(s) Signature Requirement	
<b>2.0</b>	<b>Location and Design Requirements</b>	<b>6</b>
2.01	Facility Siting	
2.02	Storage Area Design Requirements	
2.03	Surface Water Control	
2.04	Access Controls	
<b>3.0</b>	<b>Operational Requirements</b>	<b>7</b>
3.01	Nutrient Management Plan & Waste Handling Requirements	
3.02	Ponding	
3.03	Spray Control	
3.04	Application from County Roads	
3.05	Alteration of Soil Structure	
3.06	Runoff and Pollution Prevention	
3.07	Storage	
3.08	Routine Inspection Requirements	
<b>4.0</b>	<b>Recordkeeping and Reporting Requirements</b>	<b>8</b>
4.01	Required Records	
4.02	Retention of Records	
4.03	Availability of Records	
<b>5.0</b>	<b>Closure Requirements</b>	<b>9</b>
5.01	Notification Requirement	
5.02	Dairy Processing By-Products Removal	
5.03	Certification Requirement	
<b>6.0</b>	<b>Financial Assurance</b>	<b>9</b>
6.01	Financial Assurance Required	

## **1.0 GENERAL STATEMENTS OF LAW AND OWNER/OPERATOR RESPONSIBILITIES**

### **1.01 Definitions**

Definitions used in this permit are as follows:

- A. ARSD – the Administrative Rules of South Dakota.
- B. Board – the Board of Minerals and Environment.
- C. Dairy Processing By-Products – whey, whey permeate, waste milk, or other dairy processing by-products.
- D. DENR – the South Dakota Department of Environment and Natural Resources.
- E. Emergency – a condition that the secretary finds deleterious to the public health, safety, and welfare and that requires immediate action.
- F. NMP – Nutrient Management Plan.
- G. Occupied Dwelling – a house or building normally occupied as a residence.
- H. Operator – the person responsible for the overall operation of a facility or part of a facility.
- I. SDCL – South Dakota Codified Laws.
- J. Secretary – the secretary of the South Dakota Department of Environment and Natural Resources, or authorized representative.

### **1.02 Applicability of General Permit**

This permit is potentially applicable to any operator in the state of South Dakota proposing to store and/or land apply dairy processing by-products, provided the operator meets the requirements of this general permit.

### **1.03 Severability**

The provisions of this general permit are severable. If any provision of this general permit, or the application of any provision of this general permit to any circumstance, is held invalid, the application of such provisions to other circumstances and the remainder of this general permit, shall not be affected thereby.

### **1.04 Property Rights**

This general permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state, or local laws and ordinances.

### **1.05 Amendments, Revocation, and Suspension of General Permit**

DENR may recommend to the Board that this general permit be amended as provided by ARSD 74:27:10:05. The Board may suspend or revoke this general permit as provided by SDCL 34A-6-1.21 to 34A-6-1.27, inclusive.

### **1.06 Procedure for Requesting Authorization**

To obtain authorization to operate under the terms and conditions of this general permit, the operator must submit a request for authorization and publish a notice of intent in an official newspaper in the county in which the proposed storage and/or land application site(s) will be located. The request for authorization must be submitted to DENR at least 60 calendar days before the first anticipated use of the site(s). The notice of intent must be published at least 20 calendar days before the first anticipated use of the site(s). The public notice shall include:

- A. the name, address, and phone number of both the operator and landowner(s) of the proposed site(s);
- B. a description of the project and dairy processing by-products to be stored and/or land applied;
- C. the number of acres comprising the proposed storage and/or land application site(s);
- D. the general location of the proposed site(s); and

- E. the legal description (quarter, section, township, range, and county) of the proposed storage and/or application site(s).

If DENR determines the request for authorization is complete and meets the terms of this general permit, DENR will issue an authorization letter and certificate approving the development and operation of the site(s).

**1.07 Renewal of Authorization**

If the operator wishes to continue an activity regulated by this permit after the expiration date of the letter of authorization, the operator must submit a renewal request for authorization to DENR at least 60 calendar days before the letter of authorization expires.

**1.08 Duration of Authorization**

Initial authorization to operate under this general permit shall be valid for up to two years from the date of issuance and may be renewed for periods of up to five years.

**1.09 Changes to Request for Authorization**

The operator must notify DENR at least 20 calendar days prior to implementing any proposed change to a site location, acreage, design, or operational practice that would change the request for authorization initially submitted to DENR. All changes must be approved by DENR prior to implementation.

**1.10 Transfers**

The authorization may be transferred to a new operator provided:

- A. the authorized operator notifies DENR at least 20 calendar days prior to the proposed transfer date;
- B. the notification to DENR includes a written agreement between the authorized and new operator containing the date of transfer of permit responsibility, coverage and liability;
- C. the new operator is qualified to operate the storage and/or land application site(s); and
- D. the new operator provides a financial assurance mechanism, if applicable, equal to that of the former operator.

**1.11 Individual Permit Required**

DENR may require any person requesting coverage under this general permit to apply for and obtain an individual solid waste permit if:

- A. the operator is not or cannot operate in compliance with the conditions of this general permit;
- B. the conditions or standards change such that storage and/or land application sites no longer qualify for a general permit; or
- C. a change has occurred in the availability of demonstrated technologies or practices for the control or abatement of pollutants applicable to dairy processing by-products storage facilities.

When an individual permit is issued to an operator otherwise covered under this general permit, the applicability of this general permit to that operator is automatically terminated upon the effective date of the individual permit.

**1.12 Individual Permit Requested**

Any operator covered under this general permit may request to be excluded from the coverage by applying for an individual solid waste permit.

**1.13 Duty to Comply**

The operator must comply with all of the conditions of this general permit. Any permit condition that an operator is not in compliance with constitutes a violation of SDCL 34A-6, and is grounds for enforcement as described in Section 1.17 of this general permit.

**1.14 Duty to Provide Information**

The operator shall furnish to DENR, within 14 calendar days, any information that DENR may request to determine compliance with this general permit.

**1.15 Proper Operation and Maintenance**

The operator shall at all times properly operate and maintain the storage and/or land application sites.

**1.16 Emergency Procedures**

The operator must notify DENR, within one business day, of any emergency situation that arises at a storage and/or land application site.

**1.17 Penalties for Violations of Permit Conditions**

As provided for in SDCL 34A-6-1.31, any person who violates a permit term or condition may be subject to enforcement action or a Class 1 misdemeanor. The violator is also subject to a civil penalty of up to \$10,000 per day per violation.

**1.18 Duty to Provide Access**

The owner/operator shall allow DENR:

- A. to inspect or access all of the storage and/or land application site(s) authorized under this general permit and identified in the authorization application;
- B. to inspect any facilities, equipment, records, practices or operations regulated or required under this general permit; and
- C. to sample or monitor any substances for any parameter.

**1.19 Administrative Changes Authorized**

DENR reserves the right to incorporate administrative changes and/or modifications to this general permit. Administrative changes are authorized for the purposes of changing or correcting:

- A. typographical errors;
- B. regulatory references;
- C. titles of organizations or regulatory agencies; or
- D. similar items that do not substantially change the requirements of this general permit.

**1.20 Need to Halt or Reduce Activity not a Defense**

DENR will not consider that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with this general permit, when enforcing the conditions of this general permit.

**1.21 Duty to Mitigate**

The operator shall take all reasonable steps to minimize or prevent any adverse effect on human health or the environment.

**1.22 DENR Limitation of Liability**

Any letter of authorization is specifically conditioned on the truth and accuracy of the statements made by the operator in the application to operate under this general permit. DENR assumes no liability for the truth and accuracy of statements made by the operator in the application or any other submitted documents.

### **1.23 Stipulated Penalties**

In the event an authorized operator fails to comply with the provisions of this general permit, DENR reserves the right to develop and pursue an agreement with the operator for the assessment of stipulated penalties.

### **1.24 Landowner(s) Signature Requirement**

All landowners receiving wastes for temporary storage and/or land application must sign the solid waste permit application (Section 4.0) before authorization can be issued to the operator.

## **2.0 LOCATION AND DESIGN REQUIREMENTS**

### **2.01 Facility Siting**

The operator of a new facility **shall not** locate any storage site(s) or land apply any wastes:

- A. within 1,000 feet of an occupied dwelling, unless the owner has given written permission to do so;
- B. within 200 feet of surface water, including wetlands, as defined by ARSD 74:51:01:01;
- C. within 50 feet of any natural or manmade drainage;
- D. within 1,000 feet of any private or public well that supplies drinking water for human consumption;
- E. within 200 feet of a property boundary, unless the adjacent landowner has given written permission to do so;
- F. where the depth to an aquifer, as defined by ARSD 74:54:02:01, is less than 10 feet;
- G. within 100 feet of a quarry or gravel pit;
- H. within a wetland;
- I. within a 100-year floodplain; and
- J. on land that has an average slope greater than six percent.

### **2.02 Storage Area Design Requirements**

The operator shall submit plans and specifications for storage areas to DENR for approval prior to construction.

### **2.03 Surface Water Control**

The operator shall construct and maintain dikes or diversion structures around storage areas to divert run-on and contain runoff from a 25-year, 24-hour storm event. The operator shall adequately construct the dikes or structures to prevent leakage.

### **2.04 Access Controls**

The operator of any storage and/or land application site(s) open to the public shall:

- A. control access to the site(s) through the use of fences, gates, locks, or other similar controls; and
- B. post a sign or signs at the entrance to the site(s) stating the operator's name, phone number, type of facility, hours of operation, and wastes accepted for disposal.

- The operator of any storage and/or land application site(s) not open to the public shall:
- A. control access to the site(s) through the use of fences, gates, or other similar controls; and
  - B. post a sign or signs at the entrance to the site(s) stating “No Dumping Allowed.”

### **3.0 OPERATIONAL REQUIREMENTS**

#### **3.01 Nutrient Management Plan & Handling Requirements**

The application for authorization under this general permit requires the operator to develop a nutrient management plan (NMP) for the land application of dairy processing by-products. The NMP shall consider such things as: waste volumes, waste characteristics, storage requirements, site (soil) characteristics, loading rates, maximum volume criteria, application methods, land use (crop or vegetative growth), nutrient uptake, soil monitoring, waste characterization monitoring, and wintertime operation. At a minimum, waste characterization shall include:

- total nitrogen compounds  
(total kjeldahl nitrogen and nitrates)
- phosphorous
- sodium
- chlorides

The NMP shall be developed and signed by a Certified Crop Advisor, County Extension Educator, or qualified soil scientist or consultant. The operator shall comply with all recommendations and requirements outlined in the NMP which must be approved by DENR prior to receiving authorization under this general permit. The operator should review the NMP annually, and update it when land application sites or significant operational changes occur or when monitoring dictates the need for change. Amendments to the NMP may not require a renewal of authorization under the general permit. Amendments to the NMP must be approved by the department, in writing, before the changes take place.

#### **3.02 Ponding**

The operator shall apply dairy processing by-products in such a manner as to prevent ponding.

#### **3.03 Spray Control**

The operator shall not allow drifting of dairy processing by-products spray onto neighboring properties when applying the waste with high-pressure spray guns.

#### **3.04 Application from County Roads**

The operator shall not spray dairy-processing by-products onto a land application site(s) from county roads, or right-of-ways except in emergency situations only. Approval shall be obtained in advance from the local authority to ensure that the land application does not hinder or obstruct traffic.

### **3.05 Alteration of Soil Structure**

The operator shall not alter the characteristics or structure of the soil to the extent that crops or soil structure are adversely affected by the volume of dairy processing by-products applied to the land application site(s).

### **3.06 Runoff and Pollution Prevention**

The operator shall immediately cease land application if runoff from the site occurs. The operator shall store and/or land apply wastes in a manner that prevents pollution of surface or ground water.

### **3.07 Storage**

The operator may temporarily store dairy processing by-products if normal operating procedures, ground conditions or weather conditions prevent immediate land application of the waste. Storage of the waste shall meet the requirements of Section 2.0 of this general permit.

### **3.08 Routine Inspection Requirements**

The operator shall inspect the storage and/or land application site(s) at least monthly to prevent and/or detect the disposal of unauthorized wastes, and shall promptly remove and dispose of any unauthorized waste at a properly permitted facility. The operator shall also monitor the storage of waste to ensure that adequate run-on and runoff controls are maintained and that no release to surface water occurs.

## **4.0 RECORDKEEPING AND REPORTING REQUIREMENTS**

### **4.01 Required Records**

The operator shall maintain all records and information required by this general permit. At a minimum, the records shall include:

- A. copies of the request for authorization, letter of authorization from DENR, this general permit, and any other permits or authorizations required by local, state, or federal laws, rules, regulations, and ordinances;
- B. a copy of the DENR approved NMP and all records required by the plan. This may include, but is not limited to: volume tracking, testing and characterization, soil monitoring, loading rate calculations and monitoring, land use (acreage) tracking, and dates of land application;
- C. results of the monthly inspections required by Section 3.08 of this general permit;
- D. records of complaints received including the name, address, and phone number of the complainant, if known, the date of the complaint, and corrective actions taken;
- E. records of emergency conditions at the storage or land application sites and the operator's response to any emergency condition; and
- F. records of employee training.

### **4.02 Retention of Records**

The operator shall maintain all records and data required by the terms and conditions of this general permit for a period of one-year following closure of the site(s).

### **4.03 Availability of Records**

The operator shall make available to DENR upon request all required records, data and information necessary to determine compliance with this general permit.

## **5.0 CLOSURE REQUIREMENTS**

### **5.01 Notification Requirement**

The operator shall notify DENR of the intent to discontinue use of a storage and/or land application site at least 90 days prior to closure.

### **5.02 Dairy Processing By-Products Removal**

Any dairy processing by-products remaining in storage or not land applied must be removed from the site and disposed or land applied at a solid waste facility permitted to accept such waste. If applicable, berms surrounding the storage site(s) and storage pond(s) must be leveled and reseeded.

### **5.03 Certification Requirement**

Upon completion of closure of a storage and/or land application site, the operator shall provide DENR with a certification confirming that the closure requirements of this section (Section 5.0) of this general permit have been carried out.

## **6.0 FINANCIAL ASSURANCE**

### **6.01 Financial Assurance Required**

DENR will not normally require financial assurance as a condition of authorization under this general permit. However, DENR reserves the right to require financial assurance if the owner/operator fails to comply with the environmental laws and rules of the state, the conditions of this general permit, or the NMP. DENR may also require financial assurance if the characteristics of the waste or environmental conditions warrant it.