



## AUTHORIZATION TO DISCHARGE UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs)

**NPDES PERMIT NO: PA0276049**

In compliance with the Clean Streams Law (35 P.S. §§ 691.1 – 691.1001) and the Clean Water Act (33 U.S.C §§ 1251 – 1388),

**Pappy's Orchard LLC  
 2474 Urffers Road  
 Coopersburg, PA 18036-3807**

("permittee") is authorized to operate a Concentrated Animal Feeding Operation (CAFO) known as **Pappy's Orchard** ("operation"), located in **Lower Milford Township, Lehigh County**, to **Unnamed Tributary to Licking Creek (HQ-TSF, MF)** in Watershed(s) **3-E** in accordance with the effluent limitations, monitoring and reporting requirements, best management practices (BMPs) and other conditions set forth in Parts A, B and C herein.

**THIS PERMIT SHALL BECOME EFFECTIVE ON**       JULY 1, 2023      

**THIS PERMIT SHALL EXPIRE AT MIDNIGHT ON**       JUNE 30, 2028      

At the time of this authorization, the CAFO maintains an animal population of **552.61** Animal Equivalent Units (AEUs) consisting of the following animal types and numbers according to the application:

<u>Animal Type</u>	<u>Number</u>	<u>AEUs</u>
Turkey, hen heavy: 6-16 wk.	37,500	505.04
Turkey, hen brooder: 0-6 wk.	37,500	47.57
Acres Available for Manure Application: <u>      0      </u>	AEUs/acre: <u>      552.61      </u>	

The authority granted by this permit is subject to the following further qualifications:

1. If there is a conflict between the application, its supporting documents and/or amendments and the terms and conditions of this permit, the terms and conditions shall apply.
2. Failure to comply with the terms, conditions or effluent limitations of this permit is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. (40 CFR 122.41(a))
3. A complete application for renewal of this permit, or notice of intent to cease discharging by the expiration date, must be submitted to DEP at least 180 days prior to the above expiration date (unless permission has been granted by DEP for submission at a later date), using the appropriate NPDES permit application form. (40 CFR 122.41(b), 122.21(d))

In the event that a timely and complete application for renewal has been submitted and DEP is unable, through no fault of the permittee, to reissue the permit before the above expiration date, the terms and conditions of this permit, including submission of the Discharge Monitoring Reports (DMRs), will be automatically continued and will remain fully effective and enforceable against the discharger until DEP takes final action on the pending permit application. (25 Pa. Code §§ 92a.7(b), (c))

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4. This NPDES permit does not constitute authorization to construct or make modifications to wastewater treatment facilities necessary to meet the terms and conditions of this permit.

**DATE PERMIT ISSUED** 6/30/2023

**ISSUED BY** Maria D Bebenek  
**Maria D. Bebenek**  
**Environmental Program Manager**  
**Southcentral Regional Office**

## PART A

### EFFLUENT LIMITATIONS, MONITORING, RECORDKEEPING AND REPORTING REQUIREMENTS

#### I. EFFLUENT LIMITATIONS

- A. The permittee may not discharge pollutants from production areas to waters of the Commonwealth except when a storm event(s) causes an overflow of manure from a facility designed, constructed, operated and maintained to contain all process-generated manure plus the runoff from the design storm at the location of the facility. The applicable design storms are as follows:
1. New and existing operations containing horses and sheep – 25-year/24-hour storm.
  2. Existing operations containing ducks – numeric limitations set forth in 40 CFR 412.22.
  3. New operations containing ducks – 25-year/24-hour storm.
  4. New and existing operations containing dairy cows or cattle other than veal calves – 25-year/24-hour storm.
  5. Existing operations containing swine, poultry or veal calves (commencing operation prior to April 14, 2003) – 25-year/24-hour storm.
  6. New or expanded operations containing swine, poultry or veal (commencing operation on or after April 14, 2003) – 100-year/24-hour storm.
- B. The permittee shall comply with the applicable provisions of 40 CFR Part 412 and 25 Pa. Code Chapters 83, 91, 92a, 93, 95, 96, 102, and 105.
- C. The permittee shall implement BMPs or other control measures to ensure that the water quality standards of the receiving waters are attained, including additional BMPs required in writing by DEP. DEP may require additional BMPs and controls to protect public health and to protect, maintain and restore water quality and the existing and designated uses of waters of the Commonwealth.
- D. The permittee shall implement BMPs to prevent discharges from raw material storage areas, including feed storages, to surface waters.

#### II. DEFINITIONS

*25-year/24-hour storm* means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," and subsequent replacements, or equivalent regional or state rainfall probability information developed therefrom.

*100-year/24-hour storm* means the maximum 24-hour precipitation event with a probable recurrence interval of once in 100 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," and subsequent replacements, or equivalent regional or state rainfall probability information developed therefrom.

*Agricultural operation* means the management and use of farming resources for the production of crops, livestock or poultry. (25 Pa. Code § 92a.2 and Pa.C.S. § 503)

*Agricultural process wastewater* means wastewater from agricultural operations including from spillage or overflow from livestock or poultry watering systems; washing, cleaning or flushing pens, milk houses, barns, manure pits, or other facilities associated with the operation; silage leachate; direct contact swimming, washing or spray cooling of livestock or poultry; egg washing; or dust control. Agricultural process wastewater includes any water which comes into contact with any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs and bedding. (25 Pa. Code § 92a.2 and 40 CFR 412.2(d))

*Animal equivalent unit (AEU)* means one thousand pounds live weight of livestock or poultry animals, regardless of the actual number of individual animals comprising the unit. (25 Pa. Code § 92a.2 and 3 Pa.C.S. § 503)

*Animal feeding operation (AFO)* means a lot or facility (other than an aquatic animal production facility) where animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. CAOs and CAFOs are also considered AFOs. (40 CFR 122.23(b)(1))

*Animal heavy use area (AHUA)* means a barnyard, feedlot, loafing area, exercise lot, or other similar area on an agricultural operation where due to the concentration of animals it is not possible to establish and maintain vegetative cover of a density capable of minimizing accelerated erosion and sedimentation by usual planting methods. The term does not include entrances, pathways and walkways between areas where animals are housed or kept in concentration. (25 Pa. Code § 102.1)

*Best management practices (BMPs)* means schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce the pollutant loading to surface waters of the Commonwealth. The term also includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. The term includes activities, facilities, measures, planning or procedures used to minimize accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim, and restore the quality of waters and the existing and designated uses of waters within this Commonwealth before, during and after earth disturbance activities. (25 Pa. Code § 92a.2)

*Clean Streams Law* means Pennsylvania's Clean Streams Law, as amended. (35 P.S. §§ 691.1 – 691.1001)

*Clean Water Act* means the Federal Water Pollution Control Act, as amended. (33 U.S.C. §§ 1251 – 1388)

*Concentrated animal feeding operation (CAFO)* means a concentrated animal operation with greater than 300 AEUs, any agricultural operation with greater than 1,000 AEUs, or any agricultural operation defined as a large CAFO under 40 CFR 122.23(b)(4). The term CAFO also means an AFO that is defined as a Large CAFO or as a Medium CAFO under 40 CFR 122.23(b)(4) or 122.23(b)(6)(i), respectively, or that is designated as a CAFO in accordance with 40 CFR 122.23(c). (25 Pa. Code § 92a.2 and 40 CFR 122.23(b)(2))

*Concentrated animal operation (CAO)* means an agricultural operation that meets the criteria established by the State Conservation Commission under the authority of 3 Pa.C.S. Chapter 5 (relating to nutrient management and odor management) in Chapter 83, Subchapter D (relating to nutrient management). (25 Pa. Code § 92a.2)

*Earthen manure storage facility* means an in-ground facility constructed with or without a compacted soil or clay liner used to contain manure, precipitation and runoff. The term does not include manure storage facilities constructed with a synthetic liner system to contain manure.

*Erosion and Sediment Control (E&S) Plan* means a site-specific plan consisting of both drawings and a narrative that identifies BMPs to minimize accelerated erosion and sedimentation before, during and after earth disturbance activities. (25 Pa. Code § 102.1)

*Freeboard* means the vertical distance between the level of manure or agricultural process wastewater in a manure storage facility and the maximum waste elevation that can be maintained without an overflow.

*Impaired watershed* means land that drains to a surface water that fails to attain one or more of its designated uses under 25 Pa. Code Chapter 93, as listed in Categories 4 and 5 of Pennsylvania's Integrated Water Quality Monitoring and Assessment Report.

*Land application area* means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied. (40 CFR 412.2(e))

*Large CAFO* means an AFO that stables or confines a number of animals greater than or equal to any of the following:

- 700 mature dairy cows, whether milked or dry;
- 1,000 veal calves;
- 1,000 cattle other than mature dairy cows or veal calves (the term "cattle" includes but is not limited to heifers, steers, bulls and cow/calf pairs);
- 2,500 swine each weighing 55 pounds or more;
- 10,000 swine each weighing less than 55 pounds;
- 500 horses;
- 10,000 sheep or lambs;
- 55,000 turkeys;
- 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- 5,000 ducks (if the AFO uses a liquid manure handling system). (40 CFR 122.23(b)(4))

**Manure** means animal excrement, including poultry litter, which is produced at an agricultural operation. The term includes materials such as bedding and raw materials which are commingled with that excrement. The term also includes agricultural process wastewater that is commingled with animal excrement. (25 Pa. Code § 92a.2)

**Manure storage facility** means a permanent structure or pond, a portion of a structure or pond, or a group of structures or ponds at one agricultural operation, utilized for the purpose of containing manure or agricultural process wastewater. This includes concrete, metal or other fabricated tanks and underbuilding structures, as well as earthen and synthetically-lined manure storage ponds. Manure digesters are manure storage facilities. (25 Pa. Code § 91.1)

**Medium CAFO** means an AFO with the type and number of animals that fall within any of the ranges listed in 40 CFR 122.23(b)(6)(i) and which has been defined or designated as a CAFO, where pollutants are either discharged into waters of the Commonwealth through a man-made ditch, flushing system, or other similar man-made device or are discharged directly into waters of the Commonwealth which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

**Nutrient Management Plan (NMP)** means a written site-specific plan that incorporates practices to manage the use of plant nutrients for crop production and water quality protection in accordance with Chapter 83, Subchapter D (relating to nutrient management) and 40 CFR 122.42(e)(1)(i-ix). (3 Pa. C.S. § 503; 25 Pa. Code § 92a.42; 40 CFR 122.42)

**Overflow** means the discharge of manure or agriculture process wastewater resulting from the filling of agricultural wastewater or manure storage structures beyond the point at which no more manure, agricultural process wastewater, or stormwater can be contained by the structure.

**Person** means any individual, public or private corporation, partnership, association, municipality or political subdivision of this Commonwealth, institution, authority, firm, trust, estate, receiver, guardian, personal representative, successor, joint venture, joint stock company, fiduciary; department, agency or instrumentality of State, Federal or local government, or an agent or employee thereof; or any other legal entity. (25 Pa. Code § 92a.2)

**Point source (Outfall)** means a discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, Concentrated Aquatic Animal Production (CAAP) facility, CAFO, landfill leachate collection system, or vessel or other floating craft, from which pollutants are or may be discharged. (25 Pa. Code §§ 92a.2, 92a.3(b)(1) and 40 CFR 122.2)

**Pollutant** means a contaminant or other alteration of the physical, chemical, biological or radiological integrity of surface water that causes or has the potential to cause pollution as defined in section 1 of the Clean Streams Law (35 P.S. § 691.1). (25 Pa. Code §§ 92a.2, 92a.3(b)(1) and 40 CFR 122.2)

**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. The animal confinement area includes, but is not limited to, open lots (not including pasture fields), housed lots, feedlots, confinement houses, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included are egg washing or processing facilities and areas used in the storage, handling, treatment, or disposal of mortalities. (40 CFR 412.2(h))

*Regulatory freeboard* means the minimum freeboard required in a manure storage facility holding liquid or semi-solid manure in accordance with 25 Pa. Code § 91.36(a)(6).

*Setback* means a specified distance from the top of the bank of surface waters, or potential conduits to surface waters, where manure and agricultural process wastewater may not be land applied. Examples of conduits to include, but are not limited to: open tile line intake structures, sinkholes and agricultural wellheads. (25 Pa. Code § 92a.2)

*Small CAFO* means an AFO that is designated as a CAFO and is not a Medium CAFO. (40 CFR 122.23(b)(9))

*Special protection watershed* means land that drains to a surface water with a designated or existing use under 25 Pa. Code Chapter 93 of High Quality or Exceptional Value.

*Surface waters* means perennial and intermittent streams, rivers, lakes, reservoirs, ponds, wetlands, springs, natural seeps and estuaries, excluding water at facilities approved for wastewater treatment such as wastewater treatment impoundments, cooling water ponds and constructed wetlands used as part of a wastewater treatment process. (25 Pa. Code § 92a.2)

*Vegetative buffer* means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for purposes that include slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential pollutants from leaving the field and reaching surface waters. (25 Pa. Code § 92a.2)

*Waters of the Commonwealth* means any and all rivers, streams, creeks, rivulets, impoundments, ditches, water courses, storm sewers, lakes, dammed water, ponds, springs and all other bodies or channels of conveyance of surface and underground water, or parts thereof, whether natural or artificial, within or on the boundaries of this Commonwealth. (35 P.S. § 691.1)

*Winter* means December 15 to February 28, or any time the ground is frozen at least 4 inches deep or is snow covered. (25 Pa. Code § 83.201)

### III. SELF-MONITORING, REPORTING AND RECORDKEEPING

A. Where water samples are collected and analyzed or measurements are taken under this permit, the permittee shall assure:

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(j)(1))
2. Records of monitoring information shall include:
  - a. The date, exact place, and time of sampling or measurements.
  - b. The individual(s) who performed the sampling or measurements.
  - c. The date(s) analyses were performed.
  - d. The individual(s) who performed the analyses.
  - e. The analytical techniques or methods used.
  - f. The results of such analysis. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(j)(3))

3. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136 unless another method is required under 40 CFR Subchapters N or O. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(j)(4))
- B. Records Retention – All records of monitoring activities and results, copies of all plans and reports required by this Permit, and records of all data used to complete the application for this Permit shall be retained by the permittee for at least 5 years from the date of the sample measurement, report or application. Such records must be submitted to DEP upon request or as required for annual reports. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(j)(2))
- C. Routine Inspections and Records. (25 Pa. Code § 92a.41(a))

The permittee shall maintain records of all inspections on-site and make these records available to DEP upon request in accordance with Part A III.B. The permittee shall document all inspection results on forms attached to the approval of coverage under this permit or a DEP-approved equivalent.

1. Daily Inspections – Where the operation maintains an animal population of mature dairy cows (whether milked or dry), cattle other than mature dairy cows, veal calves, swine, laying hens, broilers, chickens other than laying hens, or turkeys that meets the definition of a Large CAFO in Part A II of this permit, the permittee shall inspect water lines daily, including drinking water or cooling water lines, for the presence of leaks. The permittee shall correct any discovered leaks as soon as possible.
2. Weekly Inspections – The permittee shall conduct a visual inspection of the production area and surrounding area at least once per week and within 24 hours following stormwater events. Inspections shall, at a minimum, include evaluation of:
  - a. The adequacy, stability, and operation of manure storage facilities including freeboard, available storage capacity, and visible problems that could lead to pollution to waters of the Commonwealth.
  - b. Any devices channeling contaminated stormwater to manure storage facilities, stormwater diversion devices, and runoff diversion structures.
  - c. Leak detection systems, subsurface drains and related structures or equipment.
  - d. Whether manure is draining, flowing or otherwise being conveyed from the production area to areas outside of the production area, in a manner that is causing or threatens to cause pollution to waters of the Commonwealth, in which case the permittee shall notify DEP in accordance with Part A III.D.4 of this permit.

Where the permittee cannot correct deficiencies identified during the inspections within 30 days, the permittee shall provide an explanation of the factors preventing immediate correction and attach it to the appropriate inspection report form. Upon reviewing the reports, DEP may conduct its own follow-up compliance inspection(s) to assure the adequacy of facilities and implemented BMPs and other control measures to protect water quality.

3. Land Application Inspections – When manure is land applied, the permittee shall inspect the land application equipment for leaks. The permittee shall document the dates and results of these inspections and actions taken to remediate leakage, as applicable. The permittee shall also document weather conditions at the time of land application and for 24 hours prior to and following application, and the method used to apply the manure.
- D. Reporting, Fee and Notification Requirements.
  1. CAFO Annual Report. (25 Pa. Code § 92a.41(a) and 40 CFR 122.42(e)(4))

The permittee shall submit a complete CAFO Annual Report using DEP's annual report template (3800-PM-BCW0032f) to the DEP regional office that has jurisdiction over the county in which the operation is located by January 1 of each year. Use of DEP's template satisfies the requirements of 40 CFR 122.42(e)(4).

- a. The first annual report submitted to DEP under this permit shall have a reporting period starting on January 1 of the year the permit becomes effective, and ending on September 30 following one year of permit coverage. The first annual report is due by January 1 following one year of permit coverage.
- b. Following the first annual report, the reporting period shall thereafter be October 1 - September 30, which is the crop year used for the NMP, and the report shall be due by January 1.
- c. The permittee shall submit the CAFO Annual Report to DEP electronically upon receipt of written notification from DEP.

2. Annual Fee. (25 Pa. Code § 92a.62)

The permittee shall pay an annual fee of \$500 in accordance with 25 Pa. Code § 92a.62. Invoices for annual fees will be mailed to permittees approximately three months prior to the due date. In the event that an invoice is not received, the permittee is nonetheless responsible for payment. Permittees may contact DEP at 717-787-6744 with questions related to annual fees. The fee identified above is subject to change if DEP publishes changes to 25 Pa. Code § 92a.62.

Payment for annual fees shall be remitted to DEP at the address below or through DEP's electronic payment system ([www.depgreenport.state.pa.us/NPDESpay](http://www.depgreenport.state.pa.us/NPDESpay)) by the due date specified on the invoice. Checks, if used for payment, should be made payable to the Commonwealth of Pennsylvania.

PA Department of Environmental Protection  
Bureau of Clean Water  
Re: Chapter 92a Annual Fee  
PO Box 8466  
Harrisburg, PA 17105-8466

3. The permittee shall complete, maintain on-site, and submit to DEP the following forms as attached to the authorization to operate under the permit:
  - a. CAFO Non-Compliance Reporting Form (3800-FM-BCW0464): submit this completed form to the DEP regional office that has jurisdiction over the county in which the operation is located when there are instances of non-compliance in accordance with Part A III.D.5 of this permit.
  - b. CAFO General Self-Inspection Report: complete daily or weekly, as required, and submit to the DEP regional office that has jurisdiction over the county in which the operation is located no later than 15 days following the end of each calendar quarter.
  - c. CAFO Manure Storage Self-Inspection Report: complete weekly for each liquid or semi-solid manure storage facility on-site, and submit to the DEP regional office that has jurisdiction over the county in which the operation is located no later than 15 days following the end of each calendar quarter.
  - d. CAFO Manure Exportation Report (3800-FM-BCW0481): complete following manure transfers off-site in accordance with Part C I.B.1 of this permit. Form(s) containing equivalent information prepared by the State Conservation Commission to document compliance with the Chapter 83 nutrient management regulations may be used for this purpose. The permittee shall submit the reports to the DEP regional office that has jurisdiction over the county in which the operation is located no later than 15 days following the end of each calendar quarter.
  - e. Existing Earthen Manure Storage Facility Inspection Report (3800-FM-BCW0537): complete annually for earthen manure storage facilities on an operation in accordance with Part C V.D.4 of this permit and submit to DEP as an attachment to the CAFO Annual Report.
  - f. Winter Period Application of Manure Notification Form (3830-FM-BCW0532): complete anytime winter application of manure is proposed in accordance with Part C I.D.4 of this permit and submit



to DEP at least seven (7) days prior to the application, in accordance with the published instructions to this form.

4. Planned Changes to Physical Facilities. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(l))

The permittee shall give notice to DEP of planned physical alterations or additions to the permitted facility as soon as possible but no later than 30 days prior to making the alteration or addition. A permit application, or other written submission to DEP, can be used to satisfy the notification requirements of this section. This notice is required when:

- a. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in 40 CFR 122.29(b). For agricultural operations, this includes, but is not limited to new animal housing structures, barnyards, composting facilities, and manure storage and treatment facilities.
- b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. For agricultural operations, this includes, but is not limited to:
  - (i) Any change triggering an amendment to the NMP in accordance with 25 Pa. Code § 83.371 or 40 CFR 122.42(e)(6)(iii), including a net increase of greater than 10% in AEUs per acre of available land for manure application, except where the net increase is solely due to a change in standard animal weights as published in Agronomy Fact Sheet 54.
  - (ii) Structures, devices or equipment will be introduced or modified to change the manner by which manure is managed on the operation.
  - (iii) Changes regarding management of AHUAs.
- c. The planned change may result in non-compliance with permit requirements.

4. Unanticipated Non-Compliance or Potential Pollution Reporting. (25 Pa. Code §§ 91.33, 92a.41(b) and 40 CFR 122.41(l))

- a. Immediate Reporting – The permittee shall immediately report any incident causing or threatening pollution in accordance with the requirements of 25 Pa. Code §§ 91.33 and 92a.41(b) listed below:
  - (i) If, because of an accident, other activity or incident a toxic substance or another substance including but not limited to manure which would endanger users downstream from the discharge, or would otherwise result in pollution or create a danger of pollution or would damage property, the permittee shall immediately notify DEP by telephone of the location and nature of the danger. Oral notification to DEP is required as soon as possible, but no later than 4 hours after the permittee becomes aware of the incident causing or threatening pollution. The permittee shall, in addition, submit a written report describing the incident and remedial measures taken within 5 days of becoming aware of the incident.
  - (ii) If reasonably possible to do so, the permittee shall immediately notify downstream users of the waters of the Commonwealth to which the substance was discharged. Such notice shall include the location and nature of the danger.
  - (iii) The permittee shall immediately take or cause to be taken steps necessary to prevent injury to property and downstream users of the waters from pollution or a danger of pollution and, in addition, within 15 days from the incident, shall remove the residual substances contained thereon or therein from the ground and from the affected waters of this Commonwealth to the extent required by applicable law.

Examples of incidents requiring immediate oral notification to DEP at CAFOs include, but are not limited to, manure releases through overflows, leak detection systems or subsurface drains that discharge or have the reasonable potential to discharge to waters of the Commonwealth; the formation of sinkholes within earthen manure storage facilities; manure spills at land application sites

on roadways or on fields that discharge or have the reasonable potential to discharge to waters of the Commonwealth; and other farm-related accidents where manure or other substances are released to the environment and discharge or have the reasonable potential to discharge to waters of the Commonwealth.

- b. The permittee shall report any noncompliance which may endanger health or the environment, not caused by an accident or other incident, in accordance with the requirements of 40 CFR 122.41(l)(6). These requirements include the following obligations:
- (i) 24 Hour Reporting – The permittee shall orally report any non-compliance with this permit which may endanger health or the environment within 24 hours from the time the permittee becomes aware of the circumstances.
  - (ii) Written Report – A written submission shall also be provided within 5 days of the time the permittee becomes aware of any non-compliance which may endanger health or the environment, utilizing DEP's CAFO Non-Compliance Discharge Report Form (3800-FM-BCW0464). The written submission shall contain a description of the non-compliance and its cause; the period of non-compliance, including exact dates and times, and if the non-compliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the non-compliance.
  - (iii) Waiver of Written Report – DEP may waive the written report on a case-by-case basis if the associated oral report has been received within 24 hours from the time the permittee becomes aware of the circumstances which may endanger health or the environment. Unless such a waiver is expressly granted by DEP, the permittee shall submit a written report in accordance with this paragraph.

Examples of non-compliance requiring oral notification to DEP within 24 hours of becoming aware of the circumstances include, but are not limited to, a violation of manure storage freeboard requirements that do not involve an overflow; a violation of setback requirements associated with manure application that do not involve a discharge to waters of the Commonwealth; and spills of toxic substances into manure storage facilities that may affect the environment if land applied.

#### 5. Other Non-Compliance.

The permittee shall report all instances of non-compliance not reported under paragraph D.4 of this section on the CAFO Non-Compliance Reporting Form (3800-FM-BCW0464). The reports shall contain the information listed in paragraph D.4.b.(ii) of this section. The permittee shall maintain the reports on-site in accordance with Part A III.B of the Permit.

#### 6. Signatory Requirements. (25 Pa. Code § 92a.22)

- a. Completed Annual Reports and all other reports, NOIs, and information submitted to DEP shall be signed and certified by either of the following applicable persons, as defined in 25 Pa. Code § 92a.22:
- For a corporation – by a principal executive officer of at least the level of vice president, or an authorized representative, if the representative is responsible for the overall operation of the facility from which the discharge described in the NPDES form originates.
  - For a partnership or sole proprietorship – by a general partner or the proprietor, respectively.
  - For a municipality, state, federal or other public agency – by a principal executive officer or ranking elected official.
- b. If signed by a person other than the above, the person must be a duly authorized representative of the permittee. A person is a duly authorized representative only if:
- The authorization is made in writing by a person described in paragraph a., above, and submitted to DEP.

- The authorization specifies either an individual or a position having responsibility for the operation of the regulated system, facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position.
- c. Changes in Signatory Authorization – If an authorization is no longer accurate because a different individual or position has responsibility for the overall operation of the system or facility, a new authorization satisfying the requirements of paragraphs 7.a and 7.b, above, must be submitted to DEP prior to or together with any reports, information or NOI to be signed by an authorized representative.

## PART B

### GENERAL CONDITIONS

#### I. MANAGEMENT REQUIREMENTS

A. Compliance. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(a))

The permittee shall comply with all conditions of this permit. Any permit non-compliance constitutes a violation of the Clean Water Act and Clean Streams Law and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or denial of a permit renewal application.

B. Permit Modification, Termination, or Revocation and Reissuance. (25 Pa. Code §§ 92a.41(a), 92a.72 – 92a.75 and 40 CFR 122.41(a)(1) and (f))

1. DEP may modify, terminate or revoke and reissue this permit during its term.
2. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
3. In the absence of DEP action to modify or revoke and reissue this permit, the permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants within the time specified in the regulations that establish those standards or prohibitions.

C. Duty to Provide Information. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(h) and (l)(8))

1. The permittee shall furnish to DEP, within a reasonable time, any information which DEP may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this Permit, or to determine compliance with this permit.
2. The permittee shall furnish to DEP, upon request, copies of records required to be kept by this permit.
3. Other Information – Where the permittee becomes aware that it failed to submit any relevant facts in an NOI, or submitted incorrect information in an NOI or in any report to DEP, it shall promptly submit the correct and complete facts or information.

D. Proper Operation and Maintenance. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(e))

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), including but not limited to manure storage facilities, manure application equipment, and BMPs, which are installed or used by the permittee to achieve compliance with the terms and conditions of this permit. The permittee shall properly operate and maintain backup or auxiliary facilities or similar systems installed by the permittee, as necessary to achieve compliance with the terms and conditions of this permit.

E. Duty to Mitigate. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(d))

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

#### II. PENALTIES AND LIABILITY

A. Violations of Permit Conditions.

DEP may take an enforcement action to restrain violations, to impose criminal or civil penalties, to withhold a permit, or to seek other remedies or relief as authorized by the Clean Streams Law against a permittee that violates any condition or limitation of this permit, or any rule, regulation or order issued by DEP pursuant to the Clean Streams Law.

In addition, EPA may take an enforcement action to restrain violations, to impose criminal or civil penalties, or to seek other remedies or relief as authorized by the Clean Water Act against a permittee that violates any condition or limitation of this permit, or any rule, regulation or order issued by EPA pursuant to the Clean Water Act.

B. Falsifying Information. (18 Pa.C.S. § 4904; 25 Pa. Code § 92a.41(a); 40 CFR 122.41(j)(5) or (k)(2))

The permittee or any person who engages in the conduct described below may, upon conviction, be punished by a fine and/or imprisonment.

- Falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Permit, or
- Knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit (including monitoring reports or reports of compliance or non-compliance).

C. Liability.

Nothing in this permit shall be construed to relieve the permittee from civil or criminal penalties for non-compliance pursuant to Section 309 of the Clean Water Act (33 U.S.C. § 1319) or Sections 602, 603 or 605 of the Clean Streams Law (35 P.S. §§ 691.602, 691.603 or 691.605).

Nothing in this permit shall be construed to preclude the institution of any legal action or to relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject to under the Clean Water Act and the Clean Streams Law.

D. Need to Halt or Reduce Activity Not a Defense. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(c))

The permittee may not maintain as a defense in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### III. OTHER RESPONSIBILITIES

A. Right of Entry. (35 P.S. §§ 691.5(b) and 305, 25 Pa. Code § 92a.41(a) and 40 CFR 122.41(i))

The permittee shall allow authorized representatives of DEP and EPA to conduct the following activities upon the presentation of credentials and other documents as may be required by law:

1. To enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit, while following reasonable biosecurity measures to protect animal and human health.
2. To have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit.
3. To inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices or operations regulated or required under this permit.
4. To sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act or the Clean Streams Law, any substances or parameters at any location.

B. Transfer of Permits. (25 Pa. Code § 92a.71 and 40 CFR 122.61)

1. Transfers by modification. Except as provided in paragraph B.2 of this section, permit coverage may be transferred by the permittee to a new owner or operator only if both parties request a modification of permit coverage and DEP approves the modification or revokes and reissues the permit coverage.

permit coverage may be transferred both during the term of this permit and during period(s) of administrative extension of this permit.

2. Automatic transfers. As an alternative to transfers under paragraph B.1 of this section, any NPDES permit may be automatically transferred to a new permittee on the date identified in paragraph 2.b. of this section if:
  - a. The current permittee notifies DEP at least 30 days in advance of the proposed transfer date in paragraph 2.b. of this section;
  - b. The notice includes the appropriate DEP transfer form signed by the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between them;
  - c. DEP does not notify the existing permittee and the proposed new permittee in writing prior to the transfer date of its intent to modify or revoke and reissue this permit; and
  - d. The new permittee is in compliance with existing DEP issued permits, regulations, orders and schedules of compliance, or has demonstrated that any non-compliance with the existing permits has been resolved by an appropriate compliance action or by the terms and conditions of the permit (including compliance schedules set forth in the permit), consistent with 25 Pa. Code § 92a.51 (relating to schedules of compliance) and other appropriate DEP regulations.
3. In the event DEP does not approve transfer of this permit, the new owner or operator must submit a new application.

C. Property Rights. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(g))

The approval of coverage under this permit does not convey any property rights, or any exclusive privilege.

D. Duty to Reapply. (25 Pa. Code § 92a.41(a) and 40 CFR 122.41(b))

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

E. Other Laws.

The approval of coverage under this permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of state or local law or regulations.

F. Termination of Permit Coverage. (25 Pa. Code § 92a.74 and 40 CFR 122.64)

1. Notice of Termination (NOT) – If the permittee plans to cease operations or will otherwise no longer require coverage under this permit, the permittee shall submit DEP's NPDES Notice of Termination (NOT) for Permits Issued Under Chapter 92a (3800-BCW-0410), signed in accordance with Part A III.D.6 of this permit, at least 30 days prior to cessation of operations or the date by which coverage is no longer required. The NOT shall be accompanied by the following certification statement, signed in accordance with Part A III.D.6 of this permit:

"I certify under penalty of law that the operation named herein has ceased operation or will cease operation as a CAFO on the date shown at the location specified in this Notice of Termination. I understand that by submitting this Notice of Termination I am no longer authorized to operate a CAFO at this location. I also understand that operating CAFOs without an NPDES permit in the Commonwealth is unlawful under the Clean Water Act and Clean Streams Law."

2. Where the permittee plans to cease operations, NOTs must be accompanied with an operation closure plan that shall include:
  - a. Where not otherwise required by the NMP, a plan for the removal and disposing of all manure in an environmentally safe manner. Manure and manure-contaminated biodegradable material, including

soils, may be land applied in accordance with the Manure Management for Environmental Protection Manual or the facility's NMP.

- b. An estimate of the date or season and year in which final operation closure will occur.
  - c. Erosion and sedimentation control with a schedule of steps.
  - d. Re-grading, re-vegetation, and stabilization of the affected area.
  - e. For existing earthen manure storage facilities with groundwater monitoring wells in place, an operation plan for post-closure monitoring for a one (1) year period to assure protection of groundwater resources. A written report of monitoring results shall be submitted to DEP at the end of that period. A final closeout inspection of the leak detection system following removal of the manure storage facility must be completed within 30 days of the expected termination date for the operation. A written report of the closeout inspection shall be submitted to DEP 30 days after the final close out of the facility.
  - f. The name, address, and telephone number at which the permittee and or person in charge of the closure operation can be reached.
3. The permittee shall submit the NOT to the DEP regional office with jurisdiction over the county in which the operation is located.
- G. Amending Permit Coverage. The permittee shall submit an application to amend the permit as follows:
1. When required to do so by DEP for the reasons identified in Part A III.D.3 of this permit or other reasons.
  2. When the permittee plans to increase the animal population on the operation by more than 10%, in terms of AEU's, in comparison to the AEU's identified in the approval of coverage under this permit, except where the increase is solely due to a change in standard animal weights.
  3. When the permittee proposes to export manure generated on the permittee's operation to a new importing operation, not identified in the permit application, in which the importing operation is located in a special protection or impaired watershed. The permittee shall provide DEP with an Erosion and Sediment Control Plan for plowing and tilling activities under 25 Pa. Code 102.4(a) for the importing operation, or written verification from the State Conservation Commission (SCC) or a delegated county conservation district (CCD) that the Plan has been developed and is on file, as an attachment to the application for permit amendment.

The permittee shall use DEP's Application for Permit Amendment form (3800-PM-BCW0027b) to seek an amendment to this permit.

## PART C

### OTHER REQUIREMENTS

#### I. NUTRIENT MANAGEMENT PLANS AND MANURE MANAGEMENT

Implementation of the provisions in this section will assure compliance with the BMPs associated with land application of manure, litter, and process wastewater on operations containing dairy and beef cattle, swine, poultry and veal calves contained in 40 CFR 412.4.

##### A. General Requirements.

1. The permittee shall implement a site-specific Nutrient Management Plan (NMP) for the land application of manure that is approved by the State Conservation Commission or delegated county conservation district and meets the requirements of 25 Pa. Code Chapter 83, Subchapter D and 40 CFR 122.42(e)(1)(i-ix). The NMP requirements under 25 Pa. Code Chapter 83 are consistent with the linear approach for nutrient applications set forth in 40 CFR 122.42(e)(5)(i).
2. The permittee shall maintain the NMP on-site, make the NMP available to DEP upon request, and implement all BMPs identified in the NMP as scheduled for land application and manure management, as applicable.
3. The permittee shall maintain an approved NMP for the current crop year that runs from October 1 through September 30 of each year.
4. The permittee shall submit a copy of all new, amended or updated NMPs to DEP within 30 days of approval, including the approval letter.
5. The permittee shall test all manure and agricultural process wastewater annually for each manure type generated on the operation in accordance with 25 Pa. Code § 83.291.
6. The permittee shall complete soils tests for each crop management unit at least every three years from the date of the last test in conformance with 25 Pa. Code § 83.292.
7. Recordkeeping related to nutrient applications shall be implemented in accordance with 25 Pa. Code § 83.342. All records shall be maintained on-site in accordance with Part A III.B of this permit.

##### B. Exporting Manure.

1. Where the permittee exports manure from the permitted operation, the planning and implementation shall be in accordance with 25 Pa. Code § 83.301. The permittee shall complete and maintain current export records on DEP's CAFO Manure Exportation Report form (3800-FM-BCW0481), or forms issued by the State Conservation Commission containing equivalent information, in addition to the manure export records required under 25 Pa. Code § 83.343. All records shall be maintained on-site in accordance with Part A III.B of this Permit.
2. Manure generated and exported by the permittee of a CAFO shall be hauled and transported in compliance with requirements of the Commercial Manure Hauler and Broker Certification Act (3 P. S. §§ 2010.1—2010.12) and regulations promulgated hereunder, as applicable.
3. The permittee shall provide a copy of the most recent manure sampling results to the person receiving the manure or his representative.



C. Land Application Setbacks. (25 Pa. Code § 83.294(f))

Manure shall not be mechanically applied:

1. Within 100 feet of the top of the bank of a perennial or intermittent stream with a defined bed and bank, a lake or a pond, unless a permanent vegetated buffer of at least 35 feet in width is used to prevent manure runoff into the stream, lake or pond, in which case a 35-foot buffer is required.
2. Within 100 feet of an existing open sinkhole unless a permanent vegetated buffer of at least 35 feet in width is used, in which case a 35-foot buffer is required.
3. Within 100 feet of active private drinking water sources such as wells and springs.
4. Within 100 feet of an active public drinking water source, unless other state or federal laws or regulations require a greater isolation distance.
5. On crop management units having less than 25% plant cover or crop residue at the time of application, unless:
  - a. For fall applications, the crop management unit is planted to a cover crop in time to allow for appropriate growth to control runoff until the next growing season, or the manure is injected or mechanically incorporated within 5 days using minimal soil disturbance techniques consistent with no-till farming practices. The Pennsylvania Technical Guide contains practices which may be used to satisfy the fall applications requirement. Other practices shall be approved by the State Conservation Commission. The practices must be consistent with those in the agricultural erosion and sediment control plan prepared under 25 Pa. Code § 102.4(a).
  - b. For applications in the spring or summer, the crop management unit is or will be planted to a crop that growing season.

DEP may require the permittee to install field markers to delineate setbacks to assure compliance with the permit.

D. Winter Application. (25 Pa. Code §§ 83.294(g), 83.351, 83.372)

1. The permittee shall not apply manure during the winter, except as authorized in the permittee's NMP, or unless the permittee has fully complied with 25 Pa. Code § 83.372, and has developed an NMP amendment due to unforeseen circumstances that is approved.
2. The NMP must contain a determination of adequate manure storage capacity for the winter period, accounting for the required freeboard, precipitation from the design storm, and residual solids after liquids have been removed.
3. The permittee shall provide sufficient capacity in manure storage facilities at the start of winter to implement the NMP.
4. The permittee shall notify DEP in writing at least seven (7) days prior to land application of manure during the winter period, using DEP's Winter Period Application of Manure Notification form (3830-FM-BCW0532). The permittee shall certify in the notification that:
  - a. Consistent with the approved NMP and field conditions, actions have been taken to maximize the available capacity in the manure storage facility prior to the winter period to prevent pollution of ground and surface water.
  - b. The manure storage facility has been properly operated and maintained.
  - c. Manure applied during the winter shall be applied in an amount and in a manner consistent with the approved NMP.

5. In addition to the setbacks identified in paragraph I.C, above, the permittee shall not apply manure during winter under the following conditions:
  - a. Within 100 feet of an above-ground inlet to an agricultural drainage system, if surface flow is toward the above-ground inlet.
  - b. Within 100 feet of a wetland on the National Wetland Inventory maps which is within the 100-year floodplain of an Exceptional Value stream segment if surface flow is toward the wetland.
  - c. The field(s) where application will occur does not have at least 25% residue or an established cover crop.
- E. Stockpiling – Manure that is stockpiled for 15 consecutive days or longer shall be maintained under cover or otherwise stored to prevent discharge to surface water during a storm event up to and including the appropriate design storm identified in Part I.A of the Permit.

## **II. EROSION AND SEDIMENT CONTROL (E&S) PLANS (25 Pa. Code Chapter 102)**

- A. The permittee shall develop and implement a written E&S Plan for plowing or tilling activities and animal heavy use areas (AHUAs) on all land owned, rented or leased by the permittee in accordance with 25 Pa. Code § 102.4(a) where these activities and operations disturb 5,000 square feet or more of land. The permittee shall design, operate and maintain AHUAs consistent with Natural Resources Conservation Service (NRCS) Technical Standards PA561 and PA528, as applicable. The E&S Plan must meet the minimum requirements of 25 Pa. Code §§ 102.4(a)(4) - (7) and contain an implementation schedule. The permittee shall retain the E&S Plan on-site and make the plan available to DEP upon request. The permittee shall update the E&S Plan for plowing or tilling activities and AHUAs as necessary to reflect actual practices occurring at the operation.
- B. When applicable, the permittee shall develop and implement a written E&S Plan meeting the requirements of 25 Pa. Code § 102.4(b) for earth disturbance activities associated with construction activities where these activities will disturb 5,000 square feet or more of land. In addition, if the earth disturbance will involve at least one acre of land, the permittee shall apply for and obtain an NPDES permit for stormwater discharges associated with construction activity. The permittee shall retain the E&S Plan on-site and make the plan available to DEP upon request.
- C. E&S BMPs shall be implemented and maintained for all earth disturbance activities to minimize accelerated erosion, including those activities that disturb less than 5,000 square feet of land.

## **III. PREPAREDNESS, PREVENTION AND CONTINGENCY (PPC) PLAN**

In addition to the Contingency Plan for manure spills required as part of the NMP, the permittee shall develop, implement and, when necessary, update the PPC Plan submitted with the application for this CAFO. The permittee shall maintain the PPC Plan on-site and make the plan available to DEP upon request. DEP may, upon written notice, require revisions and corrections to the PPC Plan if it determines the plan to be inadequate.

## **IV. ANIMAL MORTALITY**

- A. The permittee shall comply with the requirements of the Domestic Animal Law (3 Pa.C.S. § 2352) for the disposal of dead domestic animals and 25 Pa. Code § 243.11 when handling and disposing of dead animals. The carcass of a dead animal, other than animals slaughtered for food production as part of the agricultural operation, shall be removed and disposed of by burial, incineration, composting, rendering or some other sanitary method, as appropriate, within 24 hours after death. If the carcass is buried, it must be placed so that every part shall be covered by at least 2 feet of earth and at a location not less than 100 feet from waters of the Commonwealth, 100 feet from an open sinkhole, and outside of the 100-year floodplain. In all cases of death from communicable disease, the carcass must be thoroughly enveloped in unslaked lime. If composted, the compost shall be accounted for in the NMP. Carcasses must not be disposed of in any liquid manure storage facility or process wastewater system.
- B. The permittee shall maintain records of animal mortality management on-site and make these records

available to DEP upon request, in accordance with Part A III.B.

## V. MANURE STORAGE FACILITIES

### A. General Requirements.

1. The permittee shall design, construct, operate and maintain manure storage and handling facilities to collect all liquid and semi-solid manure and agricultural process wastewater from production areas unless otherwise approved by DEP and accounted for in the NMP. Manure storage facilities must be structurally sound, watertight, and located and sized properly to prevent discharges to surface waters for any storm up to and including the design storm event identified in Part A I.A of this Permit. (25 Pa. Code § 91.36(a))
2. The permittee shall design and maintain manure storage facilities to ensure adequate storage capacity is available between periods of planned land application or other use so that the permittee does not exceed application rates established in the current approved NMP developed under 25 Pa. Code Chapter 83, Subchapter D and 40 CFR 122.42(e)(i-ix).
3. If the permittee or its agents discover evidence of a discharge from a manure storage facility to waters of the Commonwealth, the permittee shall immediately notify DEP in accordance with Part A III.D.4 of this permit and investigate and repair the manure storage facility as soon as practicable in accordance with instructions provided by DEP.
4. Where DEP discovers conditions that are or may result in a discharge from a manure storage facility to waters of the Commonwealth, including but not limited to leaks, discolored seepage, discolored discharge from leak detection systems or subsurface drains, or improper maintenance, the permittee shall develop and submit a corrective action plan (CAP) to DEP within 15 days of the receipt of DEP's notification. The permittee shall implement the plan upon the receipt of written or verbal approval from DEP.
5. A Pennsylvania-registered professional engineer shall design, certify, and oversee the construction of all new or expanded manure storage facilities that will contain liquid or semi-solid manure. The permittee shall maintain a copy of the engineer's certification on-site in accordance with Part A III.B of this permit. (25 Pa. Code § 91.36(a)(2))
6. Chemicals and other contaminants handled on-site may not be disposed of in any manure storage facility or treatment system unless the facility or system is specifically designed to process such chemicals and contaminants and the activity is approved by DEP.

### B. Depth Markers.

1. The permittee shall install and maintain a permanent depth marker or other indicator within all manure storage facilities containing liquid and semi-solid manure to provide a visual indication of the depth of manure within the facilities and the regulatory freeboard level described in paragraph V.C, below. Depth markers are not required for shallow pits below animal confinement facilities and other structures used for temporary storage and conveyance to long-term storage facilities, and may otherwise be waived in writing by DEP.
2. For impoundments and other manure storage facilities receiving direct precipitation, the permittee shall also identify on the depth marker the maximum level of manure that may be maintained below the regulatory freeboard level to accommodate runoff and direct precipitation associated with the design storm event listed in Part A I.A.

### C. Earthen Manure Storage Facilities.

The permittee of an operation that utilizes an earthen manure storage facility shall comply with the following:

1. Where vegetation is grown on embankments (inside or outside slopes) or on the top of the berm, the vegetation shall be maintained at a height no greater than 12 inches to allow for inspection.

2. The permittee shall prevent the growth of dense or woody vegetation with roots on embankments and the top of the berm.
3. Where an embankment or top of the berm of an earthen manure storage facility is damaged by burrowing animals, the permittee shall immediately repair the damage by removing manure as necessary and excavating, filling and compacting the damaged area as necessary to restore the functions of the facility.
4. The permittee shall complete an annual inspection of all earthen manure storage facilities on the operation using DEP's Existing Earthen Manure Storage Facility Inspection Report form (3800-FM-BCW0537). The permittee shall submit the inspection report, including photographs of the facilities, as an attachment to the CAFO Annual Report by January 1 each year. The report may be completed by either the permittee or a consultant.
5. If DEP determines that corrective action should be taken to ensure the ongoing integrity of an earthen manure storage facility, DEP may require the development and submission of a CAP to DEP that is prepared by a Pennsylvania-registered professional engineer.

D. Water Quality Management (WQM) Permits and Engineer Certifications.

1. The permittee shall obtain a WQM permit for a new or expanded manure storage facility, including a manure digester, that will contain liquid or semi-solid manure and meets any of the following criteria:
  - a. The new or expanded manure storage facility is located on an agricultural operation with greater than 1,000 AEUs.
  - b. The new or expanded manure storage facility is a pond or impoundment, in which the total liquid and semi-solid manure storage capacity on the operation will be between 1 and 2.5 million gallons, and the nearest downgradient surface water is listed as an impaired water on Pennsylvania's Integrated Water Quality Monitoring and Assessment Report under categories 4, 5 or 5a with the cause attributed to agricultural activities.
  - c. The new or expanded manure storage facility will result in a total liquid and semi-solid manure storage capacity on the operation to exceed 2.5 million gallons.
2. The permittee shall maintain the following documentation on-site for all liquid or semi-solid manure storage facilities at the operation, and make these documents available to DEP upon request.
  - a. Where a WQM permit was issued for the design, construction, and operation of manure storage facilities, the WQM permit, as-built drawings, engineer's report, and operation and maintenance (O&M) plan.
  - b. Where a WQM permit was not issued for the design, construction, and operation of manure storage facilities constructed after January 29, 2000, a certification by a registered professional engineer that the facilities meet the Manure Management Manual and Pennsylvania Technical Guide.
  - c. For all other manure storage facilities, any engineer certifications, as-built drawings, O&M Plans or other documentation that have been prepared in order to satisfy the requirements of prior NPDES permit coverage.
3. For new or expanded CAFOs that commenced operations after April 13, 2003, and that include swine, poultry or veal calves, the CAFO shall prevent discharges to surface waters during a storm event up to and including a 100-year/24-hour storm from manure storage facilities that contain manure from those swine, poultry or veal calves.

**VI. SITE-SPECIFIC REQUIREMENTS**