MDE

MARYLAND DEPARTMENT OF THE ENVIRONMENT
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November 10, 2015

David B. McGuigan, Ph.D., Associate Director
Office of Permits and Enforcement
Water Protection Division
USEPA Region 3
1650 Arch Street
Philadelphia, PA 19103-2029

Dear Dr. McGuigan:

The Maryland Department of the Environment (MDE) has modified the General Discharge Permit for Animal Feeding Operations (GD Permit), NPDES Permit No. MDG01 and State discharge permit 14AF. This modification addresses a challenge to the issued GD Permit by Food and Water Watch and the Assateague Coastal Trust regarding the self-inspection requirements for manure storage sheds and the need for more frequent self-monitoring. A marked-up version highlighting the changes is enclosed for your review. Also enclosed for your information is a "FACT SHEET SUPPLEMENT, General Discharge Permit for Animal Feeding Operations, NPDES Permit No. MDG01A; State Discharge Permit No. 14AFA" and a copy of the "Tentative Determination to Modify General Discharge Permit for Animal Feeding Operations". This modified GD Permit will replace the current GD Permit, and will be numbered NPDES MDG01A, and State discharge permit 14AFA for Concentrated Animal Feeding Operations (CAFOs) and Maryland Animal Feeding Operations (MAFOs), respectively. The modification is in compliance with the CAFO Rule under 40 CFR Parts 122 and 412 and Code of Maryland Regulations (COMAR) 26.08.03.09, 26.08.04.09N and 26.08.04.09-1J. This modified permit expires on November 30, 2019. The Department's process includes a public hearing.

The changes include:

> Part IV.A.6(b)(4)(ii) and Part IV.A.7(a)(5)(ii): Animal waste storage and storm water routing structure inspection requirement (Pages 13 and 14) - This requirement was modified from "Once every three months for dry animal waste operations" to "Weekly for dry animal waste operations" under each section.

This reverts back to the original permit requirement to ensure consistency with 40 CFR Part 412.37(a)(1)(iii). This modification also provides consistency with the Effluent Limitations Guideline (ELG) under 40 CFR Part 412.45 and 40 CFR Part 412.46 that requires zero discharge from production areas of poultry CAFOs. The Chesapeake Bay Total Maximum Daily Load (TMDL)

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Watershed Implementation Plan supports this ELG by requiring zero discharge from CAFOs. More frequent inspections of manure storage structures would discover any problems early enough to prevent any unauthorized discharge to surface waters of the State.

The Bay TMDL describes CAFO loads as being "discharges from parts of the production area at some CAFOs or other discharges from CAFOs not covered by the "no discharge" standard; e.g., precipitation-based discharges that come in contact with dust, dander, feathers, and/or manure on the ground between the buildings or in ventilation systems." The document goes on to state that, "The nutrient and sediment controls, or Best Management Practices (BMPs), in the permit are the effluent limits of the permit. Therefore, it is required that the permittee be in compliance with implementing nutrient and sediment controls, which are consistent with the assumptions of the TMDL". The Phase II WIP (Watershed Implementation Plan) specifies a variety of practices that are required for CAFOs handling animal waste (Streamside Grass Buffers, Mortality Composting, Heavy Use Livestock Area Pads on farms which have been determined to have severe erosion and existing or the potential for water quality issues, 100 foot or 35 foot required setbacks for CAFO manure application, Manure Transport, Poultry Litter Storage Structures, Livestock Waste Storage Structures, Barnyard Runoff Control Systems, etc.) Since these practices are specified in the permit, the effluent limits in the permit would be consistent with the TMDL.

MDE's goal is to continue to implement one of the leading CAFO programs in the Region and this modified GD Permit will assist MDE in this endeavor. We look forward to addressing any issues that may arise during EPA's review of this document. Anything you can do to expedite EPA's review process is welcomed, since the State court's GD Permit judicial review action has been stayed pending this modification.

If you have any questions, please contact me at 410-537-3304 or hilary.miller@maryland.gov or Mr. Gary F. Kelman, Chief of the AFO Division at 410-537-4423 or gary.kelman@maryland.gov.

Sincerely,

Hilary Miller

Hilary Miller, Acting Director
Land Management Administration

Enclosures

cc: David Mister, MDA
Dwight Dotterer, MDA
Patricia Engler, NRCS
Stephanie Cobb Williams, Esq., OAG

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Land Management Administration

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GENERAL DISCHARGE PERMIT FOR ANIMAL FEEDING OPERATIONS

Maryland Permit No. 14AF~~A~~ ***NPDES Permit No. MDG01~~A~~***

Effective Date: ***Expiration Date: November 30, 2019***

Pursuant to the provisions of Title 9 of the Environment Article, Annotated Code of Maryland, and regulations promulgated thereunder, and the provisions of the Clean Water Act, 33 U.S.C. § 1251 et seq. and implementing regulations 40 CFR Parts 122, 123, 124, 125, and 412 the Department of the Environment, hereinafter referred to as the "Department," hereby authorizes Animal Feeding Operations (AFOs) registered under this General Discharge Permit to discharge animal waste, including manure, poultry litter, and process wastewater, to waters of the State in accordance with the following conditions.

Part I. Applicability and Authorized Discharges

A. Permit Required

1. Every **concentrated animal feeding operation (CAFO)** in Maryland shall have a discharge permit issued by the Department under both State and federal permitting authority. Medium and large **AFOs** in the AFO Table in Part I.A.6. of this permit are CAFOs if they discharge or propose to discharge pollutants including, but not limited to, manure, poultry litter, or process wastewater to surface waters of the State (as defined in paragraph (1) of Part II.JJ of this General Discharge Permit). Medium or Large AFOs where contact of confined animals with surface waters occurs are included in the definition of CAFOs and require a discharge permit. Any large CAFO, not otherwise required to obtain coverage under this General Discharge Permit, that land applies manure, litter, or process wastewater in a manner not in accordance with a NMP is a CAFO that is discharging or proposing to discharge pollutants to surface waters of the State and shall obtain coverage under this General Discharge Permit.

2. A small AFO may be designated a CAFO by the Department after a site inspection reveals that animals or animal waste come into contact with surface water. A small AFO using best management practices designed and approved by the local Soil Conservation District (SCD) to limit animal access to surface water will not be designated a CAFO unless animal waste comes into contact with surface water.

3. Pursuant to federal law, the Regional Administrator ("RA") of Region III of the U.S. Environmental Protection Agency may designate an animal feeding operation (AFO) as a CAFO if the RA has determined that one or more pollutants in the AFO's discharge contributes to an impairment in a downstream or adjacent State water that is impaired for that pollutant. If the RA designates an AFO a CAFO, the Department shall also designate the AFO a CAFO.

4. An AFO that does not meet the criteria of Parts I.A.1 through I.A.3 of this General Discharge Permit but meets the "Large" size category threshold in the **AFO** Table in Part I.A.6 based on either the number of animals or house capacity (ft^2) is a **Maryland Animal Feeding Operation** (MAFO). Every MAFO in Maryland is required to obtain a State discharge permit issued by the Department under State permitting authority.

5. Any medium size AFO may also be designated as a MAFO if the Department determines that the type or location of animal waste storage or animal access to surface water is likely to cause a discharge of pollutants to ground or surface waters of the State.

a. Certification of Conformance

i. A medium AFO, that is not otherwise categorized as a CAFO or MAFO, is required to submit to the Department a Certification of Conformance as defined under Part II.D of this permit if:

(a) it consists of the animal type "chickens (other than laying hens) with dry manure handling", has a house capacity greater than 75,000 ft.^{2} and less than 100,000 ft.^{2}; or

(b) it is an existing AFO that has enlarged or reduced the size of its operation so that it currently meets the criteria in Section I.A.5.a.i(a) of this permit;

ii. New AFOs meeting the criteria in Section I.A.5.a.i(a) of this permit shall submit the certification prior to beginning operation.

iii. The Department shall retain its authority to designate any operation a MAFO or a CAFO prior to or after the submittal of a Certification of Conformance.

iv. Failure to submit the required certification will result in the automatic designation of the operation as a MAFO, and the facility will be subject to enforcement and penalty for operating without a State discharge permit.

b. Any MAFO automatically becomes a CAFO upon the occurrence of a discharge of pollutants to surface waters of the State or when the MAFO proposes to discharge to surface waters of the State. A MAFO that has automatically become a CAFO shall submit a new Notice of Intent (NOI), required plans, and Annual Permit Fee in accordance with Part IV.F of this permit and shall comply with all CAFO permit requirements contained herein.

c. A MAFO that is designated as a CAFO under 40 CFR §122.23(c) must begin to comply with all CAFO permit requirements contained herein, including submission to the Department of an updated NOI within 15 calendar days of being designated by the Department, and submission of a current required plan and the required first Annual Permit Fee within 90 calendar days of being designated by the Department.

6. *Table of Small, Medium, and Large Size AFO Categories*

Animal Type	Size Category - Number of Animals and/or **House Capacity (ft^2)**		
	Large	Medium	Small
Cattle (**includes** heifers)	≥ 1000 animals	300—999 animals	< 300 animals
Dairy cattle	≥ 700 animals	200—699 animals	< 200 animals
Horses	≥ 500 animals	150—499 animals	< 150 animals
Veal	≥ 1000 animals	300—999 animals	< 300 animals
Swine ≥ 55 pounds	≥ 2500 animals	750—2499 animals	< 750 animals
Swine < 55 pounds	≥ 10,000 animals	3,000—9,999 animals	< 3,000 animals
Sheep and lambs	≥ 10,000 animals	3,000—9,999 animals	< 3,000 animals
Ducks with liquid manure handling*	≥ 5,000 animals	1,500—4,999 animals	< 1,500 animals

Chickens with liquid manure handling	≥ 30,000 animals	9,000—29,999 animals	< 9,000 animals
Ducks with dry manure handling	≥ 30,000 animals	10,000—29,999 animals	< 10,000 animals
Laying hens with dry manure handling	≥ 82,000 animals	25,000—81,999 animals	< 25,000 animals
Chickens (other than laying hens) with dry manure handling	≥125,000 animals or ≥ 100,000 ft^2	37,500—124,999 animals and < 100,000 ft^2	< 37,500 animals
Turkeys	≥ 55,000 animals	16,500—54,999 animals	< 16,500 animals

* A separate discharge permit is required for large category duck CAFOs.

7. A CAFO or AFO located outside of the State of Maryland may be designated a CAFO and required to obtain a Maryland discharge permit if animal waste storage or any other part of its production or land application area is located in Maryland.

8. An AFO of any size that utilizes a spray irrigation system for wastewater application is required in COMAR 26.08.04 to obtain permit coverage under an individual or general permit and may apply for coverage under this General Discharge Permit.

B. Authorized Discharges

1. Discharges to waters of the State via application of animal waste to the soil are authorized under this General Discharge Permit provided such application is performed in accordance with an approved Nutrient Management Plan (NMP) and Conservation Plan as required herein. For MAFO facilities in existence prior to issuance of this permit, such discharges are allowed provided the facility is operating under a nutrient management plan previously developed and implemented in accordance with COMAR 15.20.06 through 15.20.08 while a Conservation Plan is being developed and submitted for approval by the Department (together with any update to the NMP to meet the permit requirements, including consistency with the Conservation Plan.)

2. No discharge of pollutants to surface waters of the State from CAFO production areas shall be permitted unless the discharge results from a storm event greater than the 25-year, 24-hour storm, as specified in Part IV.B.1. of this Permit, and the production area is designed, constructed, operated, and maintained in accordance with the applicable measures in Part IV.A. and IV.B. of this General Discharge Permit.

3. No discharge of pollutants to surface waters of the State from MAFO production areas is authorized under this permit, and no discharge of pollutants to ground water shall be permitted unless the discharge results from operations in accordance with the requirements in Part IV.A and IV.B of this General Discharge Permit.

4. This permit does not authorize discharges of pollutants to surface waters during dry weather conditions from land application areas or production areas.

5. The required plan(s) are essential parts of this permit, and failure to implement those plans in accordance with the approved specifications and schedules in those plans is a violation of this permit.

6. The permit authorization for a CAFO constitutes a NPDES discharge permit authorization under the federal act. The permit authorization for a MAFO does not require and does not constitute a NPDES discharge permit authorization under the federal act.

Part II. Definitions.

A. "Animal Feeding Operation" or "AFO" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met: (1) 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 (2) crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals or house capacity at an operation, if they adjoin each other or if they use a common area or system for the disposal of waste.

B. "Animal Waste" means liquid and/or solid waste from animal feeding, milking, holding, or other animal operations. Animal waste includes all manure, **poultry litter**, offal, and **process wastewater**.

C. "Approved Alternative" means a 35' **vegetated filter strip**, according to the Natural Resource Conservation Service (NRCS) standard 393, or other best management practices or systems as jointly approved by the Maryland Department of Agriculture (MDA), the Department, and the NRCS, in consultation with the University of Maryland Extension and listed on the Department's website.

D. "Certification of Conformance" means the certification provided for in COMAR 26.08.03.09F, and made by a qualifying AFO consisting of the animal type "chickens (other than laying hens) with dry manure handling," that: (1) the AFO has, and is implementing, a current nutrient management plan and a current soil conservation and water quality plan (conservation plan); (2) The AFO's **NMP and Conservation Plan** are consistent with the requirements for MAFOs in Part I.B and Part IV of this permit and incorporate all buffers, setbacks, and storage requirements otherwise applicable to MAFOs as required in this general permit at the time of the certification; (3) The AFO agrees to allow the Department the access necessary to confirm such conformance; and (4) The AFO agrees to provide researchers authorized by the MDA and the Department access to study the effectiveness of best management practices for manure management. Such certification shall include the statement and signatories required under Part III.E of this permit.

E. "Concentrated Animal Feeding Operation" or "CAFO" means an **AFO** that is designated as a CAFO in accordance with Part I.A., Sections 1 through 3, I.A.6 and I.A.7 of this **General Permit**. A CAFO is required to obtain authorization to discharge pollutants to waters of the State under this General Permit or an individual permit. CAFOs are authorized to discharge under State General Discharge Permit No. 14AF and federal NPDES General Permit No. MDG01, the requirements for both of which are included herein as a single document (referred to as the General Permit).

F. "COMAR" means Code of Maryland Regulations.

G. "Comprehensive Nutrient Management Plan" or "CNMP" describes and documents a conservation system that is unique to an **Animal Feeding Operation**. The CNMP addresses all aspects of the Animal Feeding Operation including **animal waste** handling, nutrient management, and conservation practices as described in the Natural Resources Conservation Service National Planning Procedures Handbook, Part 600.5, Amendment 4, March 2003, which is consistent with all requirements of **COMAR** 15.20.07 and 15.20.08 and federal effluent guidelines at Title 40 CFR 412.31.

H. (reserved - no defined term)

I. "Critical Areas" means all lands and waters defined in Natural Resources Article, §8-1807, Annotated Code of Maryland.

J. "Department" means the Maryland Department of the Environment (MDE).

K. "Field ditch" means a perennial or intermittent man-made drainage ditch that was never a natural stream. For purposes of this regulation, a field ditch will be distinguished from a natural stream by its landscape position and associated soil mapping unit(s), as found in the United States Department of Agriculture ("USDA") soil survey for the county. A field ditch is:

1. *not within a floodplain soil-mapping unit;*

2. *not within a hydric soil that is mapped as a narrow, elongated feature in a fluvial or floodplain position; and*

3. *not within a soil-mapping unit that has a "B" slope class or steeper.*

L. "Fecal coliform" means a group of bacteria found in the intestinal tract of warm-blooded animals and used as an indicator of pathogens, as measured by the analytical method described in Title 40 CFR § 141.74(a), by the procedure defined in Title 40 CFR § 141.21(f).

M. "Frozen ground" for the application of wastewater means that 1 ½ inches or more of the top 6 inches of soil is frozen, or the ground is frozen ½ inch deep and the air temperature is below 32 degrees Fahrenheit.

N. "General Permit" means a discharge permit issued to a category of dischargers within a geographical area. This General Permit, as a single document, includes requirements for AFOs in Maryland, including **CAFO**s and **MAFO**s.

O. "Ground water" means underground water in a zone of saturation.

P. "Includes" or "including" means includes or including by way of illustration and not by way of limitation.

Q. "Maryland Animal Feeding Operation" ("MAFO") means an **AFO** requiring a State discharge permit as designated in Parts I.A.4 through I.A.6 of this permit.

R. "Nutrient Management Plan (NMP)" means a plan written by a nutrient management planner certified by the Maryland Department of Agriculture (MDA) that meets all requirements of **COMAR** 15.20.07 and 15.20.08.

S. **"Required Plan(s)"** means those plans that CAFO and MAFO operators or owner/operators are required to submit to the Department pursuant to COMAR 26.08.04.09N(3)(b) and the federal regulations in 40 CFR 122.42(e). These plans include, but are not limited to, NMPs, Conservation Plans and CNMPs, depending on whether the AFO constitutes a CAFO or a MAFO.

T. "New Source Performance Standards" means additional **CAFO** discharge standards in Part IV.E.2 of this **General Permit** applicable to "new sources" as defined in COMAR 26.08.01.

U. "Notice Of Intent" **or NOI** means an application notifying the **Department** of an operation's intention to comply with the terms of this **General Permit**.

V. "Natural Resources Conservation Service ("NRCS") Practice Standard" means the latest edition of the NRCS Conservation Practice Standard for the practice specified. The conservation practice standard contains information on why and where the practice is applied, and sets forth the minimum quality criteria that must be met during the application of that practice in order for it to achieve its intended purpose(s). Maryland Conservation Practice Standards are available through the eFOTG (Electronic Field Office Technical Guide). If no State Conservation Practice Standard is available in the eFOTG, the NRCS National Practice Standard applies.

W. "Permittee" means the person holding a permit issued by the **Department**.

X. "Person" means an individual, receiver, trustee, guardian, personal representative, fiduciary, or representative of any kind, and any partnership, firm, association, corporation, or other entity. Person includes the federal government, this State, any county, municipal corporation, or other political subdivision of this State or any of their units.

Y. "Poultry Litter Manure" *or "litter"* means the fecal and urinary excretion of poultry, including poultry litter and materials used as bedding.

Z. "Process wastewater" means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

AA. "Production area" means that part of an **AFO** that includes, but is not limited to, the animal confinement area, the manure storage area, the raw materials storage area, the waste containment areas, any egg washing or egg processing operation, and any area used in the storage, handling, treatment, or disposal of mortalities. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storage, 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 settling basins, and areas within berms and diversions, which separate uncontaminated storm water.

BB. "Setback" means an area where no **animal waste** is applied between the fertilized field and waters of the State as defined in paragraph (1) of Part II.JJ of this **General Permit**.

CC. "Sinkhole" means a subsidence or collapse of the land surface in an area where the bedrock is comprised of carbonate rock.

DD. "Soil Conservation Plan and Water Quality Plan", referred to in this permit as "Conservation Plan", means a plan developed by a Soil Conservation District, MDA, a Natural Resources Conservation Service (NRCS) planner, or a technical service provider certified by the NRCS that is coordinated with the Nutrient Management Plan for the operation, and addresses the elements detailed in Part IV.A.1 of this permit.

EE. "Spray irrigation," means the distribution of wastewater by a pressurized sprinkler system, piped irrigation, or other systems of wastewater application that are designed to function for periods of time without requiring the presence of an operator. Irrigation via a truck or tanker is not spray irrigation under the terms and requirements of this permit.

FF. "State discharge permit" means a discharge permit issued under the Environment Article, Title 9, Subtitle 3, Annotated Code of Maryland.
GG. "Surface waters," means all **waters of the State** that are not ground waters.

HH. "Upset," means an exceptional incident in which there is unintentional and temporary noncompliance with a permit limit 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.

II. "Vegetated Filter Strip "or "Vegetated Buffer" means a setback consisting of a permanent strip of herbaceous vegetation where no **animal waste** is applied as described in **NRCS Practice Standard 393** (Filter Strip), to reduce sediment, particulate organics, sediment adsorbed contaminants, and dissolved contaminants in runoff. The area may be maintained as an alternative to the 100-foot **setback** from **waters of the State**.

JJ. "Waters of the State" includes:

1. Both surface and underground waters within the boundaries of this State subject to its jurisdiction, including that part of the Atlantic Ocean within the boundaries of this State, the Chesapeake Bay and its tributaries, and all ponds, lakes, rivers, streams, tidal and nontidal wetlands, public ditches, tax ditches, and public drainage systems within this State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and

2. The flood plain of free-flowing waters determined by the Department on the basis of the 100-year flood frequency.

Part III. Application Requirements.

A. Notice of Intent (NOI) and Required Plan

1. A new CAFO or MAFO shall not begin operation prior to receiving written notification from the Department that the AFO is registered under this General Discharge Permit.

2. CAFO and MAFO operators or owner/operators are required to submit to the Department a NOI on a form provided by the Department and a required plan as required in COMAR 26.08.04.09N(3)(b) and federal regulations in 40 CFR 122.42(e).

3. CAFO and MAFO operators or owner/operators are required to implement a required plan.

4. The required plan must be made available by the permittee at the facility during routine business hours for inspection by the Department.

5. The Department may notify the permitee, at any time, that the required plan does not meet the requirements in COMAR 26.08.04.09N(3)(b) or the federal regulations in 40 CFR 122.42(e), or that its implementation schedule is not satisfactory. The permittee shall, within 90 calendar days from the date of the Department's notification, submit to the Department the required plan that complies with the requirements in COMAR 26.08.04.09N(3)(b) and the federal regulations in 40 CFR 122.42(e).

B. Registration Process

1. After receipt and/or review of the submitted NOI, the Department may request additional information to determine whether or not the operation or proposed operation is in compliance with applicable regulations.

2. The applicant shall be notified by the Department of the effective date of registration (permit coverage) after acceptance and approval of the required information as follows:

a. A MAFO shall be registered for coverage under this General Discharge Permit upon Department acceptance and approval of the NOI and required plans.

b. A CAFO may be registered for coverage under this General Discharge Permit only upon Department acceptance of the NOI, approval of the required plan (s), and receipt of payment of the First Annual Permit Fee.

3. Prior to Department approval of the required plan(s), each NOI, CNMP, NMP, and Conservation Plan submitted to the Department will be available for public comment consistent with applicable public participation requirements in COMAR 26.08.04.09N(3), including public access to all submitted plans and opportunity to comment on all plans and NOIs. For CAFOs, the public may request a public hearing. For both CAFOs and MAFOs, an aggrieved party may request a contested case hearing on the content of the approved plans. CAFOs will not be issued permit coverage prior to completion of the public participation process.

4. Any AFO which discharges or proposes to discharge pollutants to waters of the State, and who fails to submit the required plan(s) and information by the specified due dates will be in violation of federal and/or State regulations for discharging to waters of the State without a permit.

5. The required plans and any subsequent modifications to the required plans, once approved by the Department, are incorporated into this General Discharge Permit.

C. Contents of NOI. The Department's **AFO NOI** form specifies the following submittal requirements: the name of the owner or operator; the operation's location and mailing addresses; latitude and longitude of the **production area** (obtained at the entrance to the production area); a topographic map of the geographic areas in which the AFO is located showing the specific location of the production area; specific information about the number and type of animals whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other); the type of containment and storage (anaerobic lagoon, roofed storage shed, storage ponds, under floor pits, above ground storage tanks, below ground storage ponds, concrete pad, impervious soil pad, other) and total capacity for **animal waste** storage (tons/gallons); for chickens (other than laying hens) with dry manure handling only: the total square footage of all poultry houses; the total number of acres under control of the applicant that are available for land application of animal waste; estimated amounts of animal waste generated per year (tons/gallons); and estimated amounts of animal waste transferred to other persons per year (tons/gallons). The Department may request additional information in the NOI.

D. Required Signatures.

1. Certification. *Any person signing an NOI or a Certification of Conformance shall make the following certification as part of the NOI or Certification of Conformance:*

> "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

2. Signatories. *All permit applications shall be signed as follows:*

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipal, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes:

(i) The chief executive officer of the agency; or

(ii) A senior executive officer having responsibility for the overall operation of a principal geographic unit of the agency.

E. Where to Submit.

Required submittal information (including signed copies of NOIs and required plans for MAFOs, but excluding any CAFO fee payments) shall be submitted to the following address:

The Maryland Department of the Environment
Land Management Administration
Waste Diversion and Utilization Program
Suite 610
Baltimore, MD. 21230-1719

(Do NOT submit any fees to this address.)

CAFOs shall submit a signed copy of the NOI, the required plan(s), and the required fee to the following address:

The Maryland Department of the Environment
P.O. Box 1417
Baltimore, MD. 21203-1417

F. CAFO Annual Permit Fee.

1. CAFOs shall pay an annual fee, the first of which shall be submitted to the Department with the NOI form, unless otherwise determined at the discretion of the Department. The annual permit fee for a CAFO is based upon the AFO size category during the previous year documented by the Annual Implementation Report. AFO sizes are defined in Part I.A.6 of this GD Permit and the following Fee Table. There is no fee for a MAFO, or for a Certificate of Conformance.

Fee Table - CAFOs

CAFO Size Category	Annual Permit Fee
Small	$ 60
Medium	$ 300
Large	$ 800

2. After the first year, the Department will verify the annual permit fee as per Section F.1 of this GD Permit and will invoice the permittee. The permittee shall pay the annual permit fee to the Department by the anniversary date of the receipt of the NOI each year after the first.

Part IV. Special Conditions

A. Operation of Animal Waste Storage and Distribution Systems.

1. All CAFO and MAFO **animal waste** storage and distribution systems, including land application, shall be operated and maintained in accordance with either a CNMP or 1) a **NMP** and 2) a **Conservation Plan** developed for the production area in accordance with the **NRCS** National Planning Procedures Handbook. Required plans for both CAFOs and MAFOs must address all production and land application areas associated with animal manure, chicken litter, and process wastewater, regardless of the source of the animal manure, chicken litter, or process wastewater.

a. The **NMP and Conservation Plan** shall together take into account all animal manure, chicken litter, or process wastewater associated with animal production, regardless of the

source of the animal manure, chicken litter, or process wastewater. The plans shall ensure that appropriate manure management measures are used to store, stockpile, and handle animal manure and waste nutrients associated with animal production to minimize the potential for nutrient loss or runoff. The manure management requirements shall encompass all land where animals are kept and all land used for manure storage, treatment, or utilization that is under the control of the permittee.

1) Piles of litter shall be formed in conformance with NRCS Practice Standard 633.

2) Additional NRCS Practice Standards for stockpiling may also be used as guidance in developing the required plans until such time that Maryland completes an interim or national practice standard for stockpiling.

3) The plans shall also address guidelines for manure management, including but not limited to requirements for temporary field storage. The NMP shall be prepared for the operation by a certified and licensed nutrient management consultant or a certified operator in accordance with the requirements of COMAR 15.20.04, and is in compliance with COMAR 15.20.07 and 15.20.08.

b. For CAFOs and MAFOs, the Conservation Plan included in the CNMP or the Conservation Plan must be based upon an assessment of possible resource concerns (such as those described in the Maryland Environmental Evaluation Checklist MD-CPA-052), and include scheduled practices that shall be implemented based on applicable NRCS conservation standards in effect upon the date of issuance of this General Permit, and any additional applicable Maryland interim or national NRCS conservation standards at the time of permit registration (if such standards have also been approved by the Department for use in addressing the requirements of this permit). Resource concerns identified in the assessment that must be addressed, include, but are not limited to, the following:

1) storage for animal manure and litter, including the need for any additional storage and/or manure transfer, in accordance with NRCS Practice Standards 313 and 634;

2) heavy use areas, including any recommendations to provide a stabilized surface in accordance with NRCS Practice Standard 561;

3) diversion of storm water in accordance with NRCS Practice Standard 362;

4) vegetation within less than or equal to 35 feet of the production area in accordance with NRCS Practice Standard 342;

5) mortality management in accordance with NRCS Practice Standard 316; and

6) if an existing production area is fewer than 35 feet from surface water, the use of a filter strip or water control structure, in accordance with NRCS Practice Standard 393 or 587.

c. In addition to the above requirements, a CNMP must meet the requirements of the NRCS National Planning Procedures Handbook, Part 600.5 - Comprehensive Nutrient Management Planning Technical Guidance, Subpart E Amendment 4, March 2003.

d. The **NMP and Conservation Plan** must also implement the minimum standards specified under Part IV.B of this permit.

e. For operations that include land application of animal waste, the applicable NMP or the nutrient management portions of the CNMP shall be in accordance with a **Nutrient Management Plan** as required in **COMAR** 15.20.07 and 15.20.08. The NMP or CNMP shall also note each field that contains one or more **sinkholes**.

f. The permittee shall implement the applicable NMP in accordance with soil, manure, and wastewater testing requirements in the Maryland Department of Agriculture's Nutrient Management Regulations (**COMAR** 15.20.07 and 15.20.08).

g. The approved required plan(s) shall be submitted with a schedule of implementation for all required best management practices. The permittee shall comply with the schedule of implementation following the Department's approval of the schedule.

2. Any impoundment storing liquid animal waste shall be equipped with a depth measuring device visible from the outside or bank of the storage area which indicates the maximum depth at which the 25 year, 24-hour storm can be contained. The level of animal waste in the storage area shall be at least 12 inches lower than the maximum depth. In addition, the outer embankment and top of the berm for any earthen embankment structure shall be kept free of shrubs, trees, and animal activity. In the case of new sources (for swine, poultry, and veal calves), all open surface manure storage structures associated with such sources must include a depth marker which indicates the maximum depth necessary to contain the maximum runoff and direct precipitation associated with the design storm used in sizing the liquid animal waste impoundment for no discharge.

3. **Liquid animal waste** impoundments shall be inspected on a weekly basis to record the depth of the manure and process wastewater as indicated by the depth marker. All earthen embankment structures shall also be inspected for structural stability. Records of inspections and maintenance shall be kept at the **AFO** for inspection by **Department** personnel. Documentation shall include the correction of any deficiencies found as a result of the inspections, and for any deficiencies not corrected within 30 calendar days, an explanation of factors preventing immediate correction.

4. Field application of animal waste shall not take place on frozen ground or snow covered ground without written permission from the Department, which may be granted to the extent allowed by applicable regulations if an imminent storage failure or other dire emergency exists.

5. Animal waste shall not be applied within 100 feet of a sinkhole, or directly onto an outcropping.

6. **Land Application Logbook:** Data describing all land application of manure, chicken litter, or process wastewater shall be kept in a land application logbook by the permittee and shall be maintained on-site for five years. The log shall be available for inspection by Department personnel upon request.

a. The logbook shall include a notation of periods when the facility is not in operation, and shall describe the following information for all periods when the **AFO** is operating, with records of land application data for each day that land application occurs:

1) Fields where **animal waste** is distributed;

2) Application method, rate, time, and date;

3) Soil conditions, including instances of ponding or runoff, saturated soil, and frozen ground or snow covered ground;

4) Weather conditions, including precipitation and temperature at the time of application and precipitation 24 hours prior to, and following, application; and

5) A record of mortality disposal including number of animals and method of disposal.

b. For all AFOs with liquid manure that land apply their manure, chicken litter, or process wastewater and all CAFOs that land apply their manure, chicken litter, or process wastewater, the logbook shall also include:

1) A weekly record of the liquid level in all impoundments;

2) A record of weekly inspections of all wastewater operations, including pumps; and

3) A record of daily inspections for all outdoor water lines, and those located inside buildings with grated floors; and

4) Documentation of inspections conducted of the animal waste storage areas:

i) Weekly for liquid animal waste operations; and

ii) ~~Once every three months~~ Weekly for dry animal waste operations.

5) Documentation of weekly inspections of the storm water routing structures.

c. For **CAFO**s that land apply their manure, chicken litter, or process wastewater, the following additional records shall also be maintained:

1) Test methods used to sample and analyze manure, litter, process wastewater, and soil;

2) Results from manure, litter, process wastewater, and soil sampling;

3) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;

4) Date(s) of manure application equipment inspection; and

5) Documentation for all manure, litter, and wastewater storage structures including the following information:

i) Volume for solids accumulation;

ii) Design treatment volume;

iii) Total design storage volume; and

iv) Days of storage capacity.

d. Documentation to comply with the requirements specified above shall include any deficiencies noted in the manure handling system, including application equipment, and actions taken to correct such deficiencies. For any deficiencies not corrected within 30 days, an explanation of factors preventing immediate correction shall be included.

7. **No-Land Operation Logbook:** The permittee that exports all manure, litter, or process wastewater shall maintain a no-land operation logbook on-site for five years. The logbook shall be available for inspection by Department personnel upon request.

a. The logbook shall include a notation of periods when the facility is not in operation, and shall describe the following information for all periods when the **AFO** is operating, with records of operational data for each day that the facility maintains animals:

1) The name and address of any recipient of transferred animal waste, including the date and the quantity of manure, litter, and process wastewater transferred. The permittee shall supply the recipient of the animal waste with the most recent annual nutrient analysis of the manure, litter, or process wastewater;

2) A record of mortality disposal including number of animals and method of disposal;

3) Test methods used to sample and analyze manure, litter, and process wastewater;

4) Documentation for all manure, litter, and wastewater storage structures including the following information:

i) Volume for solids accumulation;
ii) Design treatment volume;
iii) Total design storage volume; and
iv) Days of storage capacity; and

5) Documentation of inspections conducted of the animal waste storage areas:

i) Weekly for liquid animal waste operations; and
ii) ~~Once every three months~~ Weekly for dry animal waste operations.

6) Documentation of weekly inspections of the storm water routing structures.

B. Nine Minimum Standards to Protect Water Quality. The permittee's required plan(s) shall meet the following standards:

1. Ensure adequate storage capacity. Design, construct, operate, and maintain the production area and all animal waste storage structures to contain all animal waste, including any runoff or direct precipitation from a 25-year, 24-hour storm. Store dry manure in a way that prevents polluted runoff. Properly operate and maintain all storage facilities.

2. Ensure proper management of mortalities to prevent the discharge of pollutants into waters of the State. Do not dispose of mortalities in an animal waste or other storage or treatment system that is not specifically designed to treat animal mortalities without written permission from the Department, which may be granted if the Department determines catastrophic circumstances.

3. Divert clean water, as appropriate, from the production area to keep it separate from process wastewater. For CAFOs, conduct daily inspections of all outdoor water lines, and those located inside buildings with grated floors, on all days the CAFO is in operation. Correct any deficiencies found as a result of the inspections as soon as possible, and maintain a log of deficiencies found and corrected. The log must contain records of any deficiencies not corrected within 30 days and an explanation of the factors preventing immediate correction.

4. Prevent direct contact of confined animals with waters of the State.

5. Chemical Handling. Ensure that chemicals and other contaminants handled on-site are not disposed in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants. No

pesticides, cleaning agents, or fuels shall be stored in any animal operation area, unless directly necessary for animal care and public health. These products shall not be allowed to enter waters of the State. The permittee shall notify the Department of any spills or other discharges as detailed under Part V.F. "Noncompliance Notification."

6. Conservation practices to control nutrient loss, including site-specific conservation practices.

a. An **AFO** shall maintain a setback of 100 feet or a 35 foot **vegetated filter strip** between stored **poultry litter** and **manure** and **waters of the State**, as well as field ditches. For existing permanent storage structures, an alternative to this requirement is provided in paragraph IV.A.1.b.6 of this permit.

b. For a poultry CAFO, permit condition IV.B.1. applies to the storage of poultry litter manure. In addition, poultry manure stored for more than 14 calendar days in the field, where manure may be applied as nutrients for crop growth under a nutrient management plan, shall be separated from ground water and storm water to prevent leaching or runoff of pollutants through the use of both a plastic liner and cover, at least 6 mils thick, or an equivalent method approved by the NRCS (if a standard is adopted by NRCS that meets federal requirements for CAFOs and is approved by the Department).

c. For a poultry MAFO, MDA and NRCS requirements apply to the field storage of poultry litter manure. The following additional requirements for poultry litter manure field storage areas do not include authorization to discharge pollutants to surface waters of the State:

i) **MAFO** poultry litter manure stored for more than 30 calendar days in the field shall be separated from ground water and storm water to prevent leaching or runoff of pollutants through the use of both a plastic liner and cover, at least 6 mils thick, or an equivalent method approved by the NRCS.

ii) If reputable research is performed, based on a plan approved by the Department and MDA, resulting in data that indicates that 30 calendar days is more restrictive than necessary to protect water quality, and/or other more effective approaches to controlling discharges from poultry manure stockpiles are recommended and available as a result of the study, the 30 calendar day requirement shall be automatically stayed and the permit reopened to implement appropriate permit revisions through a public process.

7. Protocols for manure and soil testing. Identify specific animal waste sample collection and analysis protocols to include at least annual analysis for phosphorus and nitrogen content. Include analysis of soil samples for pH and phosphorus content at least once every three years for all fields where animal waste may be applied. Protocols shall be consistent with Maryland's technical standards at COMAR 15.20.07 and 15.20.08.

8. Protocols for the Land Application of Manure and Wastewater. Follow protocols for development of a nutrient management plan and for the land application of animal waste in COMAR 15.20.07 and 15.20.08, which specify who is eligible to develop a NMP, determination of limiting nutrient, nutrient recommendations, acreage, and expected yield for each field. Animal waste shall not be applied at a rate higher than agronomic requirements in accordance with the Maryland Nutrient Management Manual. Animal waste shall be prevented from entering field ditches, adjacent properties, and other waters of the State, or conduits to waters of

the State, except floodplains. In addition, the following requirements for setbacks shall be maintained:

a. A **setback** of at least 100 feet from waters of the State, as well as field ditches, other conduits, intermittent streams, and drinking water wells, shall be maintained; or an **approved alternative** may be substituted for the 100 foot setback.

b. A setback of at least 100 feet from property lines shall be maintained, unless an approved alternative setback for property lines is established with the consent of the adjacent property owner.

c. Alternative Setback Requirements Applicable to Poultry MAFOs. For slopes of 2% or less, a MAFO may satisfy the land application setback and buffer requirements of this permit by maintaining 1) a vegetated filter strip at least ten feet wide along field ditches and in the final 35 feet of the field ditches (applicable to ditch embankments and, to the maximum extent practicable, the channel) adjoining the receiving waters or the operation boundary, whichever occurs first, and 2) a 35 foot vegetated filter strip or a 50 foot setback from all other surface waters of the State, as defined in Part II.JJ.1. In Critical Areas, other alternative setbacks may be required by the Department.

9. Record Keeping. Maintain all records necessary to document the development and implementation of the NMP and Conservation Plan and all other requirements of Parts IV and V of this permit. These records shall be maintained for five years.

C. Additional Requirements for Operations Land Applying Process Wastewater. For operations land applying process wastewater, the **CNMP** shall be consistent with sections 1 through 3 below.

1. The annual average hydraulic loading rate shall not exceed two inches per week, and process wastewater applied shall not exceed the long-term soil infiltration rate or result in surface runoff or ponding.

2. Distribution of process wastewater shall not take place during periods of precipitation or high winds, or on frozen ground or snow covered ground or saturated soil and shall be consistent with COMAR 15.20.07 and 15.20.08.

3. The permittee shall provide adequate means to prevent spray droplets from entering adjacent properties, either by direct application or wind carry-over. These means shall include a setback that is:

a. Two hundred (200) feet from the wetted perimeter of the **spray irrigation** site to property lines in an open area or one hundred (100) feet in an area with a **vegetated filter strip**;

b. Five hundred (500) feet from the wetted perimeter of the **spray irrigation** site to houses or other occupied structures in an open area or two hundred fifty (250) feet in an area with a **vegetated filter strip**; and

c. One hundred (100) feet from down gradient **surface waters** of the State, including intermittent streams; or

d. Approved by the **Department** as suitable to control the movement of spray onto adjacent land.

D. Other Best Management Practices.

1. The permittee shall calibrate, inspect for leaks, and perform maintenance on all animal waste storage and application equipment at least annually to insure accuracy of measurements.

2. The facility shall be operated at all times to minimize nuisance odors associated with process wastewater treatment and storage operations from escaping the facility boundaries.

E. New and Modified Operations.

1. Lagoon bottoms and the inner slopes of embankments designed or constructed or modified after the effective date of the permit shall be designed and built in accordance with a **CNMP** and all applicable NRCS standards and lined with impervious material such as clay, bentonite, or other sealing material to preclude pollution of ground water by seepage. The permeability of the liner shall be 10^{-7} cm/sec or less, and for materials other than synthetic liners, the liner shall be a minimum thickness of two feet.

2. New Source Performance Standards for Swine, Poultry, and Veal Calves: For new sources, not withstanding other requirements within this permit for waste management and storage, there shall be no discharge of animal waste or other pollutants into waters of the State from the production area. Waste management and storage facilities must be designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including runoff and direct precipitation.

F. Change in Permitted Operations.

1. The permittee shall submit to the Department a new NOI, a revised approved plan, and any required fee for any anticipated significant or substantial changes to the approved plan(s). These include, but are not limited to:

a. Changes in the ownership or control of the permitted operation except operations subject to Part VIIQ of this General Discharge Permit;
b. Increases in animal numbers resulting in change from medium to large operation;
c. Change from MAFO to CAFO or CAFO to MAFO; or
d. Change from a no-land to a land operation.
   i. The permittee for no-land AFOs shall not apply manure, litter, or process wastewater to fields under the control of the operator. Manure, litter, or process wastewater generated by the AFO shall be exported to an operation that is not under the control of the operator of the permitted AFO;
   ii. The permittee for land AFOs may apply all or a portion of the manure, litter, or process wastewater to fields under the control of the operator based on a current NMP.

2. The permittee shall notify the Department, in writing, on a form approved by the Department, before making any permanent modifications to its operation not included in section F(1), including, but not limited to:

a. Addition of new land application areas not previously included in the AFO's required plan(s) only when added cropland will receive manure, litter, or process wastewater;
b. Any changes to the field-specific maximum annual rates for land application;
c. Addition of any crop or other uses not included in the terms of the AFO's required plan(s); or
d. Changes to site-specific components of the AFO's required plan(s), where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the State.

3. The permittee shall notify the Department in writing before making any changes not anticipated in the current approved plans that have the potential to result in a violation of this permit. If changes are made in herd or flock size, animal waste handling methods, runoff management, or land available for application of animal waste, the permittee shall consult the local SCD about necessary adjustments in available storage, treatment and distribution facilities or the operation of existing facilities. Any adjustments determined necessary by the SCD shall be implemented within 60 calendar days.

4. If the permittee anticipates any changes not expected in the approved plans, excluding short term (less than 15 calendar days) reductions in animal numbers, such as decreases in the number of animals of 20 percent or more, process modifications or any other change that will not result in a violation of this permit, the permittee shall report the change to the Department in writing within 30 calendar days after the change.

5. If a CAFO has completed physical and/or operational improvements to prevent wastewater discharges to surface water, the permittee may request that the Department revise its discharge permit authorization. The Department shall reduce an AFO's permit authorization category from CAFO to MAFO only if it determines, and the Department agrees, that there is no remaining potential to discharge animal waste to surface waters of the State.

6. Based on its evaluation of the NOI and required plan(s), the Department may:

a. Continue to authorize the discharge under this **General Permit**; or

b. Require the permittee to apply for an individual State discharge permit.

G. Water Quality Protection. Any unauthorized discharges resulting from the operation of a facility covered by this General Permit shall constitute a violation of the Permit and shall be subject to applicable penalties. If the Department documents an unauthorized discharge or the potential for a discharge from the design or operation of the CAFO or MAFO not addressed in the required approved plans, the permittee shall immediately seek consultation with the local Soil Conservation District (SCD) or the NRCS for a review of the existing systems and practices and submit a plan of correction within 30 calendar days. If the permittee fails to submit an acceptable plan for revisions to the systems and practices within 30 calendar days, the Department may require the permittee to implement additional measures as necessary to monitor and protect water quality.

Part V. Monitoring, Record Keeping and Reporting

A. Monitoring

1. To evaluate the effectiveness of the **CNMP**, **NMP**, or **Conservation Plan**, the Department may notify the permittee and require submittal of a sampling plan to determine whether there is a discharge to waters of the State from land application areas or **production areas**. The plan shall address collection of grab samples of surface discharge, including overflows or spills from waste storage structures or spray fields. The samples shall be analyzed for **fecal coliform** bacteria, biochemical oxygen demand, total suspended solids, total nitrogen, total phosphorus, any pesticide which the permittee has reason to believe could be in the discharge, and any other constituents as may be required by the Department. The Department may also require the permittee to implement additional monitoring of effluent, soils, and/or monitoring wells either through the issuance of an individual discharge permit to the permittee or through formal noncompliance enforcement procedures where appropriate.

2. For each measurement or sample taken to satisfy the requirements of this part, the permittee shall record the following information:

a. The exact place, date, and time of sampling or measurement;

b. The person(s) who performed the sampling or measurement;

c. The dates and times the analyses were performed;

d. The person(s) who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of all required analyses.

3. The sampling and analytical methods used shall conform to procedures for the analysis of pollutants as identified in 40 CFR Part 136 - "Guidelines Establishing Test Procedures for the Analysis of Pollutants" unless otherwise specified.

B. Record Keeping. All records and information resulting from the monitoring, record keeping, application equipment inspection, and reporting activities required by this permit, including all records of analyses performed, calibration and maintenance of instrumentation, and original recordings from continuous monitoring instrumentation, including records from the development and implementation of any CNMP, shall be retained for a minimum of five (5) years. This period shall be extended automatically during the course of litigation, or when requested by the Department.

C. Annual Report

1. Each MAFO shall submit annually to the Department, by March 1, a copy of the completed MDA Nutrient Management Annual Implementation Report addressing the previous calendar year.

2. Each CAFO shall submit annually to the Department, by March 1, a report on a form provided or approved by the Department, including a summary of daily data collected from the previous calendar year and the following information:

a. The type and maximum number of animals kept on site during the year on any given day, including the dates of delivery and shipment when the number of animals on site changes by 10% or more;

b. The estimated amount of total manure, litter, and process wastewater generated by the animals during the previous calendar year;

c. The amount of waste that was land applied and identification of fields used for this land application during the previous calendar year;

d. The amount of waste transported off site, by month, listing each recipient with address, and the amount received;

e. For any operation with liquid impoundment(s), the amount of freeboard in the waste storage structure on the same day of each month;

f. Total number of acres used for land application, including total crop acres used for land application under the permittee's control;

g. Summary of manure, litter, and process wastewater discharges from the production area during the previous year;

h. Information that confirms that the current NMP was developed by a certified planner; and

i. Any other information required to be reported under federal or State law.

D. Signatures on Reports

1. All reports required by permits, and other information requested by the Department shall be signed by a person described in Part III.E.2 of this permit or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part III.E.2;

b. The authorization specifies either an individual or position having overall responsibility for environmental matters for the company; and

c. The written authorization is submitted to the Department.

2. If an authorization under this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the AFO, a new authorization satisfying the requirements of Part III.E.2 must be submitted to the Department prior to or together with any reports, information, or applications to be signed by an authorized representative.

E. Report Submission. Required logbooks and monitoring results shall be maintained on site. The annual report described in Part V.C. shall be submitted to:

Maryland Department of the Environment
Land Management Administration
Waste Diversion and Utilization Program

Suite 610
1800 Washington Blvd.
Baltimore, MD 21230-1719

F. Noncompliance Notification.

1. Any discharge to surface or groundwaters of the State that is not in accordance with Part I.B of this permit is prohibited and shall be reported to the Department, including but not limited to any discharge to surface waters from the production area for MAFOs, or any discharge from the production area not resulting from greater than a 25 year storm event for CAFOs, and any discharge from the land application area that is not related to a precipitation event. Such discharges shall be reported by telephone, within 24 hours of discovery of the noncompliance, to the Department at (410) 537-3375.

2. Within 5 days, the permittee shall also provide the Department with the following information in writing to:

Maryland Department of the Environment
Land Management Administration
Waste Diversion and Utilization Program
Suite 610
1800 Washington Blvd.
Baltimore, MD 21230-1719
Fax (410) 537-3321

a. A description of the violation, including the date, time, estimated discharge volume, name of receiving water, and impact on the receiving water;

b. The cause of the violation;

c. The anticipated time the cause of the violation is expected to continue, or, if the condition has been corrected, the duration of the period of the discharge or other violation;

d. Steps taken by the permittee to eliminate the discharge or correct the violation;

e. Steps planned or implemented by the permittee to prevent the recurrence of the discharge or other violation; and

f. A description of the permittee's accelerated or additional monitoring to determine the nature and impact of any discharge.

3. The permittee shall take all reasonable steps to minimize or prevent any adverse impact to the waters of the State or to human health from a violation of any permit conditions. In addition, any discharge of liquid manure to waters of the State that poses an imminent threat to the safety of a drinking water supply shall be reported to the office of the local county Environmental Health Director as soon as possible but not later than 24 hours.

G. Demonstration of an Upset. An **upset** shall constitute an affirmative defense to an action brought for noncompliance with the (technology-based) effluent limitations of this permit only if the permittee demonstrates, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

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

2. The permitted facility was, at the time, being operated in a prudent and workman-like manner and in compliance with proper operational and maintenance procedures;

3. The permittee submitted notification of upset within 24 hours. If the notification was given orally, the permittee submitted written notification to the Department including documentation to support and justify the upset within five calendar days following the oral notification; and

4. The permittee complied with any remedial measures required to minimize adverse impact.

Part VI. Violation of Permit Conditions

A. Civil and Criminal Liability. In issuing or reissuing this permit, the **Department** does not waive or surrender any right to proceed in administrative, civil, or criminal action for any violations of State law or regulations occurring before the issuance or reissuance of this permit. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any civil or criminal responsibilities, liabilities, or penalties for violation of Title 9 of the Environment Article, Annotated Code of Maryland or any local or other State law or regulation or the federal Clean Water Act.

B. Penalties for Violations of Permit Conditions. Title 9 of the Environment Article, Annotated Code of Maryland, provides that any person who violates a permit condition implementing the requirements of Title 9 is subject to criminal and civil penalties under Sections 9-342 and 9-343 for violations of State water pollution control laws. The **NMP and Conservation Plan** are essential parts of this permit, and failure to implement those plans in accordance with the approved specifications and schedules in those plans is a violation of this permit.

C. Penalties for Tampering. Section 9-343 of the Environment Article, Annotated Code of Maryland, provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

D. Penalties for Falsification of Reports. Section 9-343 of the Environment Article, Annotated Code of Maryland, provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

Part VII. General Conditions.

A. Compliance with This General Permit and Water Pollution Abatement Statutes. The permittee shall comply at all times with the terms and conditions of this permit, the **NMP and Conservation Plan, or the CNMP,** the provisions of Title 7, Subtitle 2, and Title 9, Subtitles 2

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and 3 of the Environment Article, Annotated Code of Maryland, and the federal Clean Water Act.

B. Right of Entry. The permittee shall permit the Secretary of the **Department**, or their authorized representatives, including researchers authorized by the Department and approved by MDA, and the United States Environmental Protection Agency (EPA), upon the presentation of credentials:

1. To enter, at reasonable times, upon the permittee's production and land application areas where a discharges' source is located or where any records are required to be kept under the terms and conditions of this permit;

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

3. To inspect, at reasonable times, any monitoring equipment or monitoring method required in this permit;

4. To inspect, at reasonable times, any collection, treatment, pollution management, or discharge facilities required under this permit;

5. To sample, at reasonable times, any discharge of pollutants;

6. To install and collect samples from ground water monitoring wells;

7. To take photographs; and

8. To conduct research regarding the relative effectiveness of various alternative Best Management Practices for manure management, including establishing and maintaining on-site data collection and monitoring systems.

9. The Department and authorized representatives shall comply with appropriate biosecurity measures in accordance with the recommendations and guidelines established by the MDA.

C. Property Rights/Compliance with Other Requirements. The issuance of this permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor does it authorize any infringement of federal, State or local laws or regulations.

D. Duty to Provide Information. The permittee shall furnish to the **Department**, within the time frame stipulated by the Department, any information that the Department may request to determine compliance with this permit. The permittee shall also furnish to the Department, upon request, copies of records required to be kept by this permit.

E. Submitting Additional or Corrected Information. When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI or in any other report to the **Department**, he or she shall submit, within 30 calendar days, the facts or information.

F. Availability of Reports. Except for data determined to be confidential under (§10-617 of the State Government Article, Annotated Code of Maryland), all submitted data must be available for public inspection at the offices of the **Department**.

G. Toxic Pollutants. The permittee shall comply with effluent standards or prohibitions for toxic pollutants established under Section 9-314 and Sections 9-322 to 9-328 of the Environment Article, Annotated Code of Maryland. Compliance shall be achieved within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

H. Oil and Hazardous Substances Prohibited. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibility, liability, or penalties to which the permittee may be subject under Section 311 of the Clean Water Act (33. U.S.C. § 1321), or under the Annotated Code of Maryland.

Permittees may be subject to additional requirements and regulations dictated by the Department's Oil Control Program and Emergency Planning and Community Right-to-Know Act (EPCRA) (Title 40 CFR 116). Any requirements listed in this permit which control grease, oil or fuel are to address potential pollutants not governed directly by Oil Pollution Prevention (Title 40 CFR 112), as the handling and storage of fuel and other petroleum products has a potential to cause negative impacts to waters of the State.

I. Water Construction and Obstruction. This permit does not authorize the construction or placing of physical structures, facilities, or debris or the undertaking of related activities in any waters of the State.

J. Reopener Clause For Permits

This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved under Sections 301, 304, and 307 of the Clean Water Act [33 USCS §§ 1311, 1314, 1317] if the effluent standard or limitation so issued or approved:

1. Contains different conditions or is otherwise more stringent than any effluent limitation in this permit; or

2. Controls any wastewater pollutant not limited in this permit. This permit, as modified or reissued under this section, shall also contain any other requirements of the Act then applicable.

K. Total Maximum Daily Loads. Permit requirements are consistent with existing Total Maximum Daily Loads (TMDLs) for impaired water bodies. Additional TMDLs and waste load allocations (WLAs) may be determined for nutrients in tidal waters. If the WLA assessment for nutrients in tidal waters or a later assessment of the wastewater discharged from these operations indicates that WLAs are required, additional or alternative controls or monitoring may be required.

1. Best management practices (BMPs) for AFOs are identified in the operation's Required Plan(s) which may include a CNMP, NMP, and Conservation Plan. At a minimum, the permittee shall implement these BMPs as specified in the Required Plan(s).
2. In order to ensure that this permit provides effluent discharge controls consistent with the assumptions and requirements of the Chesapeake Bay TMDL WLA, the Department

may require, during the permit review process, and at any time after the issuance of the permit coverage, 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 State. For AFOs within the Chesapeake Bay watershed, this may include additional BMPs listed in Maryland's Watershed Implementation Plan (WIP) for Chesapeake Bay. These BMPs may include, but are not limited to, the agricultural practices set forth under the following categories contained in the WIP: Nutrient Management/Annual Practice; Other Practices; Additional BMPs, and; Pasture BMPs.

L. Severability. The provisions of this permit are severable. If any provisions of this permit must be held invalid for any reason, the remaining provisions shall remain in full force and effect. If the application of any provision of this permit to any circumstances is held invalid, its application to other circumstances must not be affected.

M. Individual or General MAFO/CAFO Permit Coverage, Termination, and Closure

1. Each MAFO and CAFO shall be registered either under this General Permit or an individual, site-specific discharge permit. All applications for General Permit coverage shall be submitted in accordance with the requirements of Part III.A. of this Permit.

2. If the Department, in its sole discretion, determines that this general discharge permit is not adequately protective of state waters at an operation, the Department may require any person authorized by this permit to apply for an individual State discharge permit. If a person fails to submit an application for an individual State discharge permit as required by the Department, the owner's authorization to discharge under this General Permit is automatically terminated at the end of the day specified by the Department as the deadline for individual permit application submittal.

3. Any person authorized by this General Permit may request to be excluded from the coverage of this permit by applying for an individual State discharge permit. The request may be granted by issuing an individual State discharge permit if the reasons cited by the owner are adequate to support the request.

4. If an individual discharge permit for a MAFO or CAFO is issued to a person already covered under this permit, then coverage under this General Permit is automatically terminated on the effective date of the individual State discharge permit.

5. The Department may terminate coverage under this General Permit for an existing permittee by notifying the permittee of termination and providing an opportunity to request a contested case hearing if the Department finds that:

a. The Notice of Intent (NOI) contained false or inaccurate information;

b. Conditions or requirements of the discharge permit have been or have the potential to be violated;

c. The **MAFO** or **CAFO** is not in compliance with requirements of the applicable **Comprehensive Nutrient Management Plan**, **Nutrient Management Plan**, or **Conservation Plan**;

d. The Department has been refused entry to the site for the purpose of inspecting to insure compliance with the permit, or has been denied access to records or to take samples;

e. A change in conditions exists that requires temporary or permanent reduction or elimination of the permitted discharge;

f. Any State water quality stream standard has been violated as a result of the **MAFO** or **CAFO**'s operation; or

g. Any other conditions at the site cause a water quality or public health concern.

6. Former MAFO**s or** CAFO**s (Closure).** A permittee shall maintain compliance with applicable permit requirements until the Department terminates the permit registration or a new permit for the same activity is issued to a succeeding person. The Department shall terminate permit registration if there is no remaining potential for a discharge of animal waste that was generated while the operation was a MAFO or CAFO.

a. If all animals and all animal waste have been removed from the site, and no additional animals are to be placed on the site, or the number of animals housed has been reduced and the AFO is no longer a MAFO or CAFO, then the permittee shall certify that fact to the Department, in writing. Such certification shall be accompanied by a letter of recommendation to terminate the permit from a representative of the Soil Conservation Service or the MDA. Upon receiving such certification from the permittee, the Department shall, within 30 calendar days, either:

1) request a site inspection to verify that the AFO no longer requires a permit; or

2) terminate the permit registration.

b. If the Department conducts a site inspection, then the Department shall, within 30 calendar days, notify the permittee in writing that:

1) the permit registration has been terminated; or

2) the permittee shall implement certain actions to eliminate the potential to discharge animal waste.

c. If the Department is unable to conduct a site inspection within 90 calendar days through no fault of the permittee, the permit will terminate within 90 calendar days of receipt of certification, unless the permittee waives this provision in its request. Any such automatic termination does not relieve the operation from responsibility for any unauthorized discharges and the penalties associated with discharging without a permit.

N. Conversion from Individual Permit. A person currently covered under an individual State discharge permit may choose to request coverage under this **General Permit** by submitting a NOI and fee in accordance with the requirements of this Part.

O. Permit Renewal. Within 60 calendar days after the renewal and reissuance of this **General Discharge Permit** with new effective and expiration dates, the permittee is required to submit to the **Department**:

1. A notice of intent to cease discharging by the expiration date of this permit; or

2. A new NOI and any fee required by the new general permit.

P. Continuation of an Expired General Discharge Permit. A permittee wishing to continue to be covered by the general permit after its renewal shall submit a request for continuing coverage at least 60 calendar days before the permit expires. Once a request for continuing coverage has been filed, an expired general permit continues in force and effect until a new general permit is issued and any deadline for opportunity to register under the new permit is reached or the general permit is revoked or withdrawn.

Q. Transfer of Authorization.

1. The authorization under this permit is not transferable to any person except in accordance with this section.

2. Authorization to discharge under this permit may be transferred to another person if:

a. The current permittee notifies the Department in writing of the proposed transfer;

b. A written agreement signed by both parties, indicating the specific date of the proposed transfer of permit coverage and acknowledging the responsibilities and liabilities of the current and new permittee for compliance with the terms and conditions of this permit, is submitted to the Department;

c. The new permittee signs the existing required plan(s) and sends the cover page(s) of the required plan(s) to the Department and MDA; and

d. Neither the current permittee nor the new permittee receives notification from the Department, within 30 days of receipt of items VII.Q.2.a through c above, of intent to revoke the existing authorization to discharge or modify the terms of the existing approved plans.

3. If the new permittee needs a new required plan(s) , the permittee must submit a new Notice of Intent with the appropriate plans(s).

Part VIII. Authority to Issue General NPDES Permits

On September 5, 1974, the Administrator of the EPA approved the proposal submitted by the State of Maryland for the operation of a permit program for discharges into navigable waters under Section 402 of the federal Clean Water Act, 33 U.S.C. Section 1342. On September 30, 1990, the Administrator of the EPA approved the proposal submitted by the State of Maryland for the operation of a **General Permit** program.

Under the approvals described above, this general discharge permit is both a State of Maryland general discharge permit and an NPDES general discharge permit.

Hilary Miller ~~Horacio Tablada~~,

Acting Director

Land Management Administration

GENERAL FEDERAL AND STATE INFORMATION

Section 301(a) of the Clean Water Act (CWA), 33 USC §1311(a), prohibits the discharge of pollutants to waters of the United States in the absence of authorizing permits, including National Pollutant Discharge Elimination System (NPDES) permits. The Maryland Department of Environment (MDE) is the State agency with the authority to administer the federal NPDES Program in Maryland pursuant to Section 402 of the Clean Water Act, 33 USC §1342. The United States Environmental Protection Agency (EPA) maintains concurrent enforcement authority with authorized states for violations of the CWA.

Code of Maryland Regulations (COMAR) 26.08.03.09B(1) incorporates by reference the federal Concentrated Animal Feeding Operations (CAFO) requirements. COMAR 26.08.04.09N(3) includes public participation requirements thus providing consistency with the federal requirements regarding Nutrient Management Plans (NMPs). Maryland's General Discharge (GD) Permit requires a "required plan" defined in COMAR 26.08.04.09N(3)(b) as a Comprehensive Nutrient Management Plan (CNMP), or Nutrient Management Plan (NMP) and a Soil Conservation and Water Quality Plan ("conservation plan") (the "required plan") for CAFOs and Maryland Animal Feeding Operations (MAFOs) to comply with the federal requirements for a NMP and State requirements for a required plan, respectively, for CAFOs and MAFOs. MDE applies a subset of CAFO requirements to MAFOs.

The GD Permit requirements and procedures are consistent with the applicable federal requirements and procedures. The federal regulations at 40 CFR Parts 122 and 412 provide the minimum requirements for compliance with Maryland's implementation of the federal CAFO Program.

The GD Permit implements the discharge requirements for those CAFOs and MAFOs that are required to obtain a permit under federal regulations (and other facilities that require a permit under State regulations). For those animal feeding operations (AFOs) that do not otherwise require permits under federal or State regulations, COMAR 26.08.03.09 identifies applicable requirements.

Under the CWA, the Permitting Authority may issue general permits to regulate facilities that have similar discharges and are subject to the same conditions and limitations within a specified geographic area [40 CFR §122.28]. Using general permits conserves resources and reduces the paperwork burden associated with obtaining discharge authorization for both the regulated community and the Permitting Authority.

MDE has determined that a general permit is the appropriate mechanism to regulate the majority of CAFOs and MAFOs in Maryland that are subject to the requirements of the State's water pollution control law and implementing regulations and the CWA and implementing regulations.

MODIFICATIONS TO EXISTING GD PERMIT

The proposed modifications are being made pursuant to a limited remand to ensure consistency with applicable federal regulations and to provide maximum protection for State waters and the environment.

> Part IV.A.6(b)(4)(ii) and Part IV.A.7(a)(5)(ii): Animal waste storage and storm water routing structure inspection requirement (Pages 13 and 14) - This requirement was modified from "Once every three months for dry animal waste operations" to "Weekly for dry animal waste operations" under each section.

This reverts back to the original permit (09AF) requirement to ensure consistency with 40 CFR Part 412.37(a)(1)(iii). This modification also provides consistency with the Effluent Limitations Guideline (ELG) under 40 CFR Part 412.45 and 40 CFR Part 412.46 that requires zero discharge from production areas of poultry CAFOs. The Chesapeake Bay Total Maximum Daily Load (TMDL) Watershed Implementation Plan supports this ELG by requiring zero discharge from CAFOs. More frequent inspections of manure storage structures would discover any problems early enough to prevent any unauthorized discharge to surface waters of the State.

The Bay TMDL describes CAFO loads as being "discharges from parts of the production area at some CAFOs or other discharges from CAFOs not covered by the "no discharge" standard; e.g., precipitation-based discharges that come in contact with dust, dander, feathers, and/or manure on the ground between the buildings or in ventilation systems." The document goes on to state that, "The nutrient and sediment controls, or Best Management Practices (BMPs), in the permit are the effluent limits of the permit. Therefore, it is required that the permittee be in compliance with implementing nutrient and sediment controls, which are consistent with the assumptions of the TMDL". The Phase II Watershed Implementation Plan (WIP) specifies a variety of practices that are required for CAFOs handling animal waste (Streamside Grass Buffers, Mortality Composting, Heavy Use Livestock Area Pads on farms which have been determined to have severe erosion and existing or the potential for water quality issues, 100 foot or 35 foot required setbacks for CAFO manure application, Manure Transport, Poultry Litter Storage Structures, Livestock Waste Storage Structures, Barnyard Runoff Control Systems, etc.) Since these practices are specified in the permit, the effluent limits in the permit would be consistent with the TMDL.

DEPARTMENT OF THE ENVIRONMENT

LAND MANAGEMENT ADMINISTRATION

Tentative Determination to Modify
General Discharge Permit for Animal Feeding Operations

The Maryland Department of the Environment (MDE) has made a tentative determination to modify the General Discharge Permit for Animal Feeding Operations, NPDES # MDG01, State Discharge Permit # 14AF (GD Permit). If modified, the GD Permit will be identified as NPDES # MDG01A and the State Discharge Permit number will be # 14AFA.

The permit is necessary to protect water quality and to comply with federal requirements under Code of Federal Regulations 40 CFR Parts 122, 123, 124, 125, and 412, as well as State requirements under Code of Maryland Regulations (COMAR) 26.08.04.09N. All large and medium animal feeding operations (AFOs) that discharge or propose to discharge to surface or ground water, or both, as defined in COMAR 26.08.03.09A must be covered under the GD Permit. Other AFOs may be required to be covered under the GD Permit at the discretion of MDE and the United States Environmental Protection Agency (EPA).

The proposed modification to the current GD Permit is as follows:

Part IV.A.6(b)(4)(ii) and Part IV.A.7(a)(5)(ii): Animal waste storage and storm water routing structure inspection requirement (PP. 13 and 14) - This requirement was modified from "Once every three months for dry animal waste operations" to "Weekly for dry animal waste operations" under each section.

This reverts back to the original permit requirement to ensure consistency with 40 CFR Part 412.37(a)(1)(iii). This modification also provides consistency with the Effluent Limitations Guideline (ELG) under 40 CFR Part 412.45 and 40 CFR Part 412.46 that requires zero discharge from production areas of poultry CAFOs. The Chesapeake Bay Total Maximum Daily Load Watershed Implementation Plan supports this ELG by requiring zero discharge from CAFOs. More frequent inspections of manure storage structures would discover any problems early enough to prevent any unauthorized discharge to surface waters of the State.

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NOTE: A public hearing on the tentative determination is scheduled to be held in Princess Anne, Maryland on _____ at 6:00 PM at the Richard A. Henson Center, University of Maryland Eastern Shore, 30665 Student Services Center Lane, Princess Anne, MD 21853.

Written comments concerning the tentative determination will be considered in the preparation of a final determination if submitted to MDE by the close of business on _____ to the attention of Ms. Hilary Miller, Acting Director, Maryland Department of the Environment, Land Management Administration, 1800 Washington Blvd., Suite 610, Baltimore, Maryland 21230-1719. Written comments must include the name, address and telephone number (home and work) of the person making the comments and the party whom the person making the comment may represent. Please include the GD Permit number on the comment document (i.e., NPDES # MDG01A, State Discharge Permit # 14AFA.) If MDE does not receive any adverse comments, this tentative determination shall become a final determination. The fact sheet for the tentative determination and a copy of the modified GD Permit for AFOs may be viewed on the MDE website, www.mde.maryland.gov. Persons may also review the supporting documentation by contacting Mr. Gary Kelman at 410-537-4423 or gary.kelman@maryland.gov to make an appointment or by written request to Mr. Kelman at the MDE address. Copies of documents may be obtained at a cost of $0.36 per page.