

**CHAPTER 33-16-03.1**  
**CONTROL OF POLLUTION FROM ANIMAL FEEDING OPERATIONS**

Section

33-16-03.1-01	Authority
33-16-03.1-02	Scope and Purpose
33-16-03.1-03	Definitions
33-16-03.1-04	Designation of Concentrated Animal Feeding Operations
33-16-03.1-05	Operations Requiring a Permit
33-16-03.1-06	No Potential to Pollute Determination
33-16-03.1-07	Permit Application Content and Procedures
33-16-03.1-08	Facility Requirements
33-16-03.1-09	Recordkeeping and Reporting Requirements
33-16-03.1-10	Enforcement and Compliance
33-16-03.1-11	Departmental Inspection
33-16-03.1-12	Prohibited Activities
33-16-03.1-13	Public Participation

**33-16-03.1-01. Authority.**

The North Dakota state department of health has been authorized to provide and administer this chapter relating to the control of pollution from animal feeding operations under the provisions of North Dakota Century Code section 61-28-04.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

**33-16-03.1-02. Scope and purpose.**

This chapter establishes procedures governing the application for, and the issuance, denial, modification, and revocation of, permits for animal feeding operations to maintain beneficial uses of and prevent degradation of quality of the waters of the state.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

**33-16-03.1-03. Definitions.**

As used in this chapter, unless the context otherwise indicates:

1. "Animal feeding operation" means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:
  - a. Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and
  - b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.
2. "Bedding material" means an absorbent substance applied to dirt or concrete flooring systems, including wood shavings, wood chips, sawdust, shredded paper, cardboard, hay, straw, hulls, sand, and other similar, locally available materials.
3. "Best management practices" means schedules of activities, prohibitions of practices, conservation practices, maintenance procedures, and other management strategies to

prevent or reduce the pollution of waters of the state. Best management practices also include treatment requirements, operating procedures, and practices to control production area and land application area runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

4. "Concentrated animal feeding operation" means an animal feeding operation that is defined as a large concentrated animal feeding operation, as a medium concentrated animal feeding operation, or is a small or other type of animal feeding operation designated as a concentrated animal feeding operation in accordance with section 33-16-03.1-04. For purposes of determining animal numbers, two or more feeding operations under common ownership are considered to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes. All concentrated animal feeding operations are required to obtain a North Dakota pollutant discharge elimination system permit pursuant to chapter 33-16-01.
5. "Department" means the North Dakota state department of health.
6. "Discharge of a pollutant" and "discharge of pollutants" each means any addition of any pollutant to the waters of the state from any source, including the disposal of pollutants into wells.
7. "Earthen storage pond" or "pond" means a topographic depression either below or above ground level, manmade excavation, or diked area formed primarily of earthen materials, although it may be lined with manmade materials or other seepage control materials, and used to store manure or process wastewater and runoff from the production area of a livestock facility.
8. "Engineer" means a professional engineer registered to practice in the state of North Dakota.
9. "Facility or livestock facility" has the same meaning as animal feeding operation or concentrated animal feeding operation.
10. "General permit" means a general North Dakota pollutant discharge elimination system permit or a general state animal feeding operation permit. This is a permit issued to cover multiple facilities of the same or similar type, without requiring each facility to be covered under an individual permit.
11. "Large concentrated animal feeding operation" means any animal feeding operation that stables or confines as many as or more than the numbers of animals specified in any of the following categories:
  - a. Seven hundred mature dairy cows, whether milked or dry;
  - b. One thousand veal calves;
  - c. One thousand cattle other than mature dairy cows or veal calves. For purposes of this subdivision, "cattle" includes heifers, steers, bulls, and cow-calf pairs;
  - d. Two thousand five hundred swine, each weighing fifty-five pounds [24.95 kilograms] or more;
  - e. Ten thousand swine, each weighing less than fifty-five pounds [24.95 kilograms];
  - f. Five hundred horses;
  - g. Ten thousand sheep or lambs;
  - h. Fifty-five thousand turkeys;

- i. Thirty thousand laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;
  - j. One hundred twenty-five thousand chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system;
  - k. Eighty-two thousand laying hens, if the animal feeding operation uses other than a liquid manure handling system;
  - l. Thirty thousand ducks, if the animal feeding operation uses other than a liquid manure handling system; or
  - m. Five thousand ducks, if the animal feeding operation uses a liquid manure handling system.
12. "Litter" means a mixture of fecal material, urine, animal bedding material, and sometimes waste feed.
13. "Manure" or "livestock manure" means fecal material and urine, animal-housing wash water, bedding material, litter, compost, rainwater, or snowmelt that comes in contact with fecal material and urine, and raw or other materials commingled with fecal material and urine or set aside for disposal.
14. "Manure handling system" means all of the water pollution control structures used at the production area of a livestock facility.
15. "Manure storage pond" means an earthen storage pond that stores liquid manure and process wastewater from indoor confined animal feeding operations.
16. "Manure storage structure" means any water pollution control structure used to contain or store manure or process wastewater. It includes earthen manure storage ponds; runoff ponds; concrete, metal, plastic, or other tanks; and stacking facilities.
17. "Medium animal feeding operation" means any animal feeding operation that stables or confines the numbers of animals specified within any of the following ranges:
- a. Two hundred to six hundred ninety-nine mature dairy cows, whether milked or dry;
  - b. Three hundred to nine hundred ninety-nine veal calves;
  - c. Three hundred to nine hundred ninety-nine cattle other than mature dairy cows or veal calves. For purposes of this subdivision, "cattle" includes heifers, steers, bulls, and cow-calf pairs;
  - d. Seven hundred fifty to two thousand four hundred ninety-nine swine, each weighing fifty-five pounds [24.95 kilograms] or more;
  - e. Three thousand to nine thousand nine hundred ninety-nine swine, each weighing less than fifty-five pounds [24.95 kilograms];
  - f. One hundred fifty to four hundred ninety-nine horses;
  - g. Three thousand to nine thousand nine hundred ninety-nine sheep or lambs;
  - h. Sixteen thousand five hundred to fifty-four thousand nine hundred ninety-nine turkeys;
  - i. Nine thousand to twenty-nine thousand nine hundred ninety-nine laying hens or broilers, if the animal feeding operation uses a liquid manure handling system;

- j. Thirty-seven thousand five hundred to one hundred twenty-four thousand nine hundred ninety-nine chickens, other than laying hens, if the animal feeding operation uses other than a liquid manure handling system;
  - k. Twenty-five thousand to eighty-one thousand nine hundred ninety-nine laying hens, if the animal feeding operation uses other than a liquid manure handling system;
  - l. Ten thousand to twenty-nine thousand nine hundred ninety-nine ducks, if the animal feeding operation uses other than a liquid manure handling system; or
  - m. One thousand five hundred to four thousand nine hundred ninety-nine ducks, if the animal feeding operation uses a liquid manure handling system.
18. "Medium concentrated animal feeding operation" means a medium animal feeding operation that meets either one of the following conditions:
- a. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
  - b. Pollutants are discharged directly into waters of the state which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.
19. "North Dakota pollutant discharge elimination system permit" means the permit issued by the department pursuant to chapter 33-16-01 to a concentrated animal feeding operation that the department has determined will not cause, nor likely cause, pollution to waters of the state.
20. "Nutrient management plan" means a written description of the equipment, methods, and schedules by which:
- a. Manure, litter, and process wastewater is beneficially reused in an environmentally safe manner such as being applied to land at appropriate agronomic rates as nutrients or fertilizers; and
  - b. Water pollution and air pollution, including odors, are controlled sufficiently to protect the environment and public health.
21. "Open lot" means livestock pens, feeding, or holding areas at the production area of an animal feeding operation which are outside and not under roof, and where rain can fall directly on the lot area.
22. "Open manure storage structure" means an earthen pond or storage tank for holding liquid manure which is not covered so rainfall can fall directly into the pond or tank.
23. "Operation and maintenance plan" means a written description of the equipment, methods, and schedules for:
- a. Inspection, monitoring, operation, and maintenance of the animal feeding operation, including manure storage structures, water pollution control structures, and the production area; and
  - b. Controlling water pollution and air pollution, including odors, sufficient to protect the environment and public health.
- It includes emergency response actions for spills, discharges, or failure of a collection, storage, treatment, or transfer component.

24. "Operator" means an individual or group of individuals, partnership, corporation, joint venture, or any other entity owning or controlling, in whole or in part, one or more animal feeding operations.
25. "Overflow" means the discharge of manure or process wastewater resulting from the filling of wastewater or manure storage structures beyond the point at which no more manure, process wastewater, or storm water can be contained by the structure.
26. "Pollutant" means wastes as defined in North Dakota Century Code section 61-28-02, including dredged spoil, solid waste, incinerator residue, garbage, sewage, sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.
27. "Process wastewater" means water directly or indirectly used in the operation of the animal feeding operation 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 animal feeding operation 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 material.
28. "Production area" means those areas of an animal feeding operation used for animal confinement, manure storage, raw materials storage, and waste containment. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milking rooms, milking centers, cattle yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under-house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins, areas within berms, and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility and any area used in the storage, handling, treatment, or disposal of mortalities.
29. "Runoff" means rainwater or snowmelt that comes in contact with manure at an open lot or open manure storage area and, therefore, is defined as manure.
30. "Runoff pond" means an earthen storage pond that is used to collect and store runoff from an open lot or from a manure storage area.
31. "Seepage" means the volume of flow through a manure storage structure.
32. "Sensitive ground water area" means vulnerable hydrogeologic settings as determined by the department such as glacial outwash deposits or alluvial or aeolian sand deposits that are critical to protecting current or future underground sources of drinking water. Areas designated as sensitive ground water areas by the department include alluvial or aeolian sand deposits shown on Geologic Map of North Dakota (Clayton, 1980, North Dakota geological survey) and glacial drift aquifers listed in North Dakota Geographic Targeting System for Groundwater Monitoring (Radig, 1997, North Dakota state department of health), or most recent editions of these publications, with DRASTIC scores greater than or equal to 100 based on methodology described in DRASTIC: A Standardized System for Evaluating Groundwater Pollution Potential (Aller et al., 1987, United States environmental protection agency).
33. "Small animal feeding operation" means any animal feeding operation that stables or confines less than the numbers of animals specified for a medium animal feeding operation.

34. "Small concentrated animal feeding operation" means any animal feeding operation that stables or confines less than the numbers of animals specified for a medium animal feeding operation and is designated as a concentrated animal feeding operation in accordance with section 33-16-03.1-04.
35. "State animal feeding operation permit" means a permit issued by the department pursuant to this chapter to an animal feeding operation that the department has determined will not cause, nor likely cause, pollution to waters of the state.
36. "Surface water" means waters of the state that are located on the ground surface, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on the surface of the earth, natural or artificial, public or private.
37. "Unconfined glacial drift aquifer" means a glacial drift aquifer that does not have an impervious soil layer which acts to prevent or minimize movement of water into, through, or out of the aquifer.
38. "Water pollution control structure" means a structure built or used for handling, holding, transferring, or treating manure or process wastewater, so as to prevent it from entering the waters of the state. The term also includes berms, ditches, or other structures used to prevent clean water from coming in contact with manure.
39. "Water quality standards" means the water quality standards contained in chapter 33-16-02.1.
40. "Waters of the state" means all waters within the jurisdiction of this state, including all streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, and all other bodies or accumulations of water on or under the surface of the earth, natural or artificial, public or private, situated wholly or partly within or bordering upon the state, except those private waters that do not combine or effect a junction with natural surface or underground waters just defined.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

#### **33-16-03.1-04. Designation of concentrated animal feeding operations.**

1. The department may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollutants to waters of the state. In making this designation, the department shall consider the following factors:
  - a. The size of the animal feeding operation and the amount of wastes reaching waters of the state;
  - b. The location of the animal feeding operation relative to waters of the state;
  - c. The means of conveyance of animal wastes, manure, and process wastewater into waters of the state; and
  - d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, manure, and process wastewater into waters of the state.
2. No medium or small animal feeding operation shall be designated a concentrated animal feeding operation under this section unless the department has conducted an onsite inspection of the operation and determined that the operation should and could be regulated under chapter 33-16-01. In addition, no small animal feeding operation with numbers of

animals below those established in subsection 17 of section 33-16-03.1-03 may be designated as a concentrated animal feeding operation unless:

- a. Pollutants are discharged into waters of the state through a manmade ditch, flushing system, or other similar manmade device; or
- b. Pollutants are discharged directly into waters of the state which originate outside the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

### **33-16-03.1-05. Operations requiring a permit.**

The operator of an animal feeding operation shall apply for a permit as follows:

1. Any animal feeding operation that has been defined as a concentrated animal feeding operation in section 33-16-03.1-03 or designated a concentrated animal feeding operation under section 33-16-03.1-04 must obtain a North Dakota pollutant discharge elimination system permit pursuant to chapter 33-16-01.
2. Any medium animal feeding operation where manure or process wastewater from the operation causes or is likely to cause water pollution or those that are located within one-fourth mile [.40 kilometer] of a stream or surface water that contains water, except for infrequent periods of severe drought, must apply for a state animal feeding operation permit pursuant to this chapter or a "no potential to pollute" determination pursuant to section 33-16-03.1-06. Waters completely contained on an owner's property and which do not combine or effect a junction with natural surface or underground waters are not included.
3. A small animal feeding operation shall apply for a state animal feeding operation permit pursuant to this chapter when the department has determined that manure or process wastewater from the operation causes or is likely to cause water pollution.
4. An animal feeding operation which stables or confines animals, other than the types of animals specified in the definition of medium animal feeding operation, shall apply for a state animal feeding operation permit pursuant to this chapter when the department has determined that manure or process wastewater from the operation causes or is likely to cause water pollution.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

### **33-16-03.1-06. No potential to pollute determination.**

1. The department, upon request, may make a case-specific determination that a livestock facility that is not a concentrated animal feeding operation has no potential to discharge pollutants to waters of the state and does not require a state animal feeding operation permit. The department shall review the determination at least every five years.
2. The department retains the authority to subsequently require a state animal feeding operation permit if circumstances at the facility change, if new information becomes available, or if there are other reasons for the department to determine that the operation has a potential to discharge pollutants into waters of the state.

3. No potential to pollute means the facility is located where there is:
  - a. No discharge of pollutants to ground water and no discharge of pollutants to surface water from a rainfall event that is less than or equal to a twenty-five-year, twenty-four-hour rainfall event; and
  - b. The facility follows a nutrient management plan for the utilization of manure and process wastewater that is consistent with this chapter.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

### **33-16-03.1-07. Permit application content and procedures.**

1. Any new livestock facility or existing livestock facility that is proposing an increase in the number of livestock above the level allowed in the current permit or above the level at which a permit is required under section 33-16-03.1-05 shall apply for and obtain a state animal feeding operation permit or a North Dakota pollutant discharge elimination system permit prior to construction or expansion. Any livestock facility that is proposing to expand the production area, or update or change the manure handling system, and which requires a permit under section 33-16-03.1-05, shall apply for and obtain a state animal feeding operation permit or a North Dakota pollutant discharge elimination system permit prior to construction.
2. An existing concentrated animal feeding operation shall submit a permit application pursuant to chapter 33-16-01 by February 12, 2006.
3. An existing medium animal feeding operation for which a permit is required as per section 33-16-03.1-05 shall submit a permit application pursuant to this chapter by July 1, 2008, or earlier if requested by the department when concerns of potential or actual pollution of waters of the state are documented.
4. Application forms for state animal feeding operation permits are available from the department. An operator shall furnish information requested by the department that is consistent with this chapter. The department will not process an application unless all of the necessary information is provided. The information within or attached to an application must include the following:
  - a. The owner's and operator's name and mailing addresses.
  - b. The facility's legal location and mailing address.
  - c. A topographic map of the area where the facility is or proposes to be located and showing the specific production area.
  - d. Specific information about the number, size, and type of animals proposed for the facility; the number of days per year animals will be handled; and the type of confinement (open or housed under roof).
  - e. The type of containment and storage (anaerobic lagoon, roofed storage shed, ponds, under-floor pits, aboveground storage tanks, underground storage tanks, concrete pad, impervious soil pad, water spreading system, other) and total capacity for manure, litter, and process wastewater storage (tons or gallons), or other measures to meet department requirements to prevent discharge of pollutants to waters of the state.
  - f. The total number of acres under control of the applicant and available for land application of manure, litter, or process wastewater.



- g. Estimated amounts of manure, litter, and process wastewater generated per year (tons or gallons).
- h. Estimated amounts of manure, litter, and process wastewater transferred to other persons per year (tons or gallons).
- i. Designs, including location, for all manure storage and water pollution control structures and site-specific background information as specified in the North Dakota Livestock Program Design Manual. Design plans developed by anyone other than the facility owner must be signed by the engineer who prepared or supervised the preparation of the plans under North Dakota Century Code chapter 43-19.1.
- j. Site-specific information on topography, surface water, ground water, and soil geology.
- k. A nutrient management plan or information related to a nutrient management plan as specified in subsections 4 and 5 of section 33-16-03.1-08.
- l. The signatures of individuals responsible for the animal feeding operation.
- m. A description of how dead animals will be handled and disposed of by the facility operator.

In preparing an application, the operator shall follow the North Dakota Livestock Program Design Manual.

The operator of an existing animal feeding operation may reference any information previously submitted to the department rather than resubmitting it. Existing information shall be updated if changes to the operation have been made since the prior application.

- 5. Permit conditions. The department may impose any conditions upon a state animal feeding operation permit to ensure proper operation of the facility to protect water and air quality, including:
  - a. Sampling, testing, and monitoring at or adjacent to the facility of manure, process wastewater, ground water, or runoff.
  - b. Steps to prevent the facility from causing exceedances of water quality standards or air quality standards and to minimize odors during land application of manure.
  - c. Recordkeeping and reporting.
  - d. Compliance schedules for upgrades at facilities to meet the requirements of this chapter.
- 6. If the department determines that the animal feeding operation will not cause nor likely cause pollution of waters of the state, either after upgrades are made or at its current status, and the department determines that it is not likely to exceed air quality standards, a state animal feeding operation permit or a no potential to pollute determination will be issued.
- 7. If manure storage or water pollution control structures were required at the facility, the operator shall notify the department within thirty days of construction completion and provide certification from an engineer or the designer that construction of manure storage and water pollution control structures was completed according to designs provided with the application or to department-approved changes.
- 8. The permit shall be valid until its expiration date as long as the animal feeding operation is not materially changed or waters of the state are not impacted pursuant to chapter 33-16-02.1. If an operator plans to change the type or increase the number of animals or change the facility, including expanding barns or pens or changing manure storage or water pollution control

structures, the operator shall inform the department in writing prior to implementation of these changes.

9. Expiration of permits. Every state animal feeding operation permit issued by the department shall have a fixed term not to exceed five years.
10. Renewal of permits. One hundred eighty days prior to the expiration of an existing permit, an application for permit renewal shall be submitted to the department for review. If an operator submits a complete application for a permit renewal at least one hundred eighty days prior to the expiration date, but the department, through no fault of the operator, fails to issue a new permit prior to the expiration of the previous permit, the department may extend the expired permit until the permit is reissued. All conditions and stipulations of permits extended under this subsection remain fully effective and enforceable.
11. Transfer of permits. The holder of a state animal feeding operation permit may transfer it by notifying the department in writing at least thirty days in advance of the proposed transfer date. The notice shall include a written agreement between the current and new owners or operators and contain a specific date for the permit transfer and the name and address of the individual responsible for compliance with the permit.
12. General permits. The department may issue a general state animal feeding operation permit covering similar facilities. Any general permit shall comply with all requirements of this chapter and shall identify criteria by which facilities may qualify for the general permit. Facilities that would qualify for a general permit shall apply to the department for coverage under the terms of the general permit. The department may grant a facility's request to construct and operate under a general permit or, at its discretion, issue an individual permit if circumstances warrant.
13. Confidentiality. If the department determines that certain information should be accorded confidential status for reason of being a trade secret, it shall disclose such information to the administrator upon the latter's request. The administrator shall maintain the disclosed information in confidence, unless the administrator determines that such information, if made public, would not divulge methods of processes entitled to protection as trade secrets.

**History:** Effective December 1, 2004; amended effective January 7, 2005.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

### **33-16-03.1-08. Facility requirements.**

1. A livestock facility requiring a permit under this chapter must be located, designed, built, maintained, and operated to limit or prevent pollution of or the discharge of pollutants into waters of the state consistent with the North Dakota Livestock Program Design Manual, best professional judgment, best management practices, and pursuant to the requirements of North Dakota Century Code chapter 61-28, this chapter, and the facility's state animal feeding operation permit.
2. All concentrated animal feeding operations must be located, designed, built, maintained, and operated to limit or prevent pollution of or the discharge of pollutants into waters of the state consistent with the North Dakota Livestock Program Design Manual, best professional judgment, best management practices, and pursuant to the requirements of North Dakota Century Code chapter 61-28, North Dakota Administrative Code chapter 33-16-01, this chapter, and the operation's North Dakota pollutant discharge elimination system permit.
3. Nutrient management plan. A nutrient management plan must be developed and a copy maintained onsite by the owner or operator of any livestock facility that land applies manure, litter, or process wastewater to cropland or grassland and is required to obtain a permit or a no

potential to pollute determination pursuant to this chapter or chapter 33-16-01. These facilities must land apply manure litter or process wastewater in accordance with the current properly developed nutrient management plan. At a minimum the nutrient management plan must contain the following information:

- a. Description of the land to which an operator has access for applying manure or process wastewater, or both, and adequate information to demonstrate that manure or process wastewater, or both, will be applied at agronomic rates. The agronomic rate for nitrogen must not exceed the plant utilization rate for the cropping year. Phosphorous must not be applied at rates exceeding the recommendations based on either the North Dakota phosphorous index, the North Dakota state university extension service soil tests, or other risk assessment methods approved by the department.
  - b. The proposed method and timing of land application of manure and process wastewater.
  - c. The precautions that will be taken to:
    - (1) Prevent manure and process wastewater from reaching waters of the state or areas where they have the potential to impact waters of the state; and
    - (2) Minimize odors to residences and public areas where people are present during transport and land application of manure.
  - d. Other information specified in the North Dakota Livestock Program Design Manual.
4. Of the facilities identified in subsection 3, the following facilities must submit a copy of their current nutrient management plans to the department along with their application or design, or both, plans:
- a. Concentrated animal feeding operations;
  - b. Livestock facilities that plan to apply manure on frozen ground;
  - c. Livestock facilities with land that is designated for manure application and which also has soil phosphorous levels that meet or exceed the very high levels for crop production based on North Dakota state university extension service information;
  - d. Livestock facilities that daily haul and land apply manure; and
  - e. Livestock facilities that fail to comply with these rules or permit conditions.
5. Livestock facilities identified in subsection 3, which do not meet conditions in subsection 4, must submit to the department, along with their application or design, or both, plans, the following information:
- a. An indication that the facility has a nutrient management plan that meets the department requirements;
  - b. The name of the individual who developed the nutrient management plan and the organization with which that individual is affiliated;
  - c. The amount of land available for land application of manure;
  - d. The type of crops or vegetation grown on this land;
  - e. The typical manure application rate for each crop or vegetation grown;
  - f. The method and timing of application;

- g. The precautions used to prevent manure from reaching waters of the state; and
  - h. The precautions, if needed, used to minimize odors to residences and public areas where people are present during transport and land application of manure.
6. Manure storage structures. All livestock facilities requiring permits under chapter 33-16-01 and this chapter, which are constructed or expanded after the effective date of the respective rule, must meet the following requirements:
- a. All facilities regulated under this chapter shall have manure storage structures designed and constructed to store runoff from a twenty-five-year, twenty-four-hour rainfall event, except swine, chicken, turkey, and veal calf facilities which shall be designed and constructed to store runoff from a one hundred-year, twenty-four-hour rainfall event. In addition, all facilities shall collect and store all manure, process wastewater, and runoff for a minimum of two hundred seventy days. Overflows from a properly operated manure storage structure due to a chronic or catastrophic rainfall event in excess of those specified or seepage from the storage structure that is within the standards as specified in the North Dakota Livestock Program Design Manual are not considered violations of this chapter.
  - b. A ground water site assessment is required for all manure storage structures.
  - c. All manure storage structures must be designed and maintained to withstand natural forces, to prevent impacts to waters of the state, and minimize seepage.
  - d. All earthen storage ponds shall have a properly designed and constructed liner to minimize seepage, unless the department has determined a liner is not necessary based on site conditions.
  - e. Other manure storage structure requirements specified in the North Dakota Livestock Program Design Manual must be met.
  - f. The department may specify additional design or monitoring requirements as needed to ensure facilities will satisfactorily prevent pollution to waters of the state.
7. Liquid storage facilities. All livestock facilities requiring permits under this chapter and all concentrated animal feeding operations requiring permits under chapter 33-16-01 which store liquid manure, process wastewater, or manure-contaminated runoff must meet the following requirements:
- a. New facilities, expanding facilities significantly increasing their number of livestock, or those facilities that have not housed livestock within five years must not be located over an unconfined glacial drift aquifer unless approved by the department.
  - b. All livestock facilities requiring permits under chapter 33-16-01 or this chapter, which are constructed or expanded after the effective date of the respective rule, must be designed by the facility owner or designed by or under the direct supervision of an engineer. If designed by an engineer, all final drawings, specifications, plans, reports, or other engineering documents, when issued, shall be signed by the engineers or land surveyors who supervised the preparation of these documents under North Dakota Century Code chapter 43-19.1. After construction completion, an engineer or the designer shall certify that the construction was completed according to the design plan.
  - c. Other requirements specified in the North Dakota Livestock Program Design Manual.
8. Odor management. An operator shall manage a facility to minimize the impact of odors on neighboring residents and public areas and comply with the odor requirements of North

Dakota Century Code section 23-25-11, North Dakota Administrative Code chapter 33-15-16, and the North Dakota Livestock Program Design Manual.

9. Best management practices. An operator of a livestock facility requiring a permit under this chapter or a concentrated animal feeding operation requiring a permit under chapter 33-16-01 is responsible for applying best management practices to ensure compliance with the requirements of this chapter and the permit and to prevent pollution of waters of the state. The best management practices used must be included in the design plans or in the nutrient management plan.
10. Additional requirements which the department may require for livestock facilities requiring permits under this chapter and concentrated animal feeding operations requiring permits under chapter 33-16-01. The department may:
  - a. Require the operator to install and collect routine samples from monitoring wells to ensure that potentially usable ground water resources are not adversely impacted.
  - b. Require odor control for manure storage and livestock housing areas and require steps to minimize odors to residences or public areas during transport and land application of manure.
  - c. Based on site-specific conditions, specify additional design or monitoring requirements as needed to ensure the facility will satisfactorily prevent pollution of waters of the state.

**History:** Effective December 1, 2004; amended effective January 7, 2005.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

### **33-16-03.1-09. Recordkeeping and reporting requirements.**

1. The operator of a livestock facility requiring a permit under this chapter shall record and maintain the following for a period of not less than three years:
  - a. Any sampling, testing, and monitoring results as required by this chapter or by the department;
  - b. Maintenance and inspection records for water pollution control structures;
  - c. Reports and data required by this chapter, the North Dakota Livestock Program Design Manual, and the permit; and
  - d. A copy of this permit.

The department may request an extension of the record retention period if a facility has failed to comply with these rules or permit conditions or during the course of any unresolved litigation regarding the discharge of pollutants by the operation. The information shall be provided to department representatives upon request. A concentrated animal feeding operation must keep records as required under chapter 33-16-01.

2. Reports shall be submitted to the department in accordance with the schedule prescribed and on the appropriate forms supplied by the department or in a manner specified by the department if required as a condition of the state animal feeding operation permit or the North Dakota pollutant discharge elimination system permit for concentrated animal feeding operations or based on site-specific conditions. Information requested may include sampling, testing, and monitoring results; maintenance and inspection records; records related to facility operation; or nutrient management plan information or records.

**History:** Effective December 1, 2004; amended effective January 7, 2005.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

**33-16-03.1-10. Enforcement and compliance.**

1. The department shall evaluate all reports, notifications, and data submitted by an operator in compliance with this chapter and the state animal feeding operation permit. The department shall investigate all apparent violations for possible enforcement action pursuant to North Dakota Century Code section 61-28-08.
2. No person may knowingly make a false statement, representation, or certification in any application, record, report, plan, or other document filed or required under this chapter or the permit. No person may knowingly falsify, tamper with, or provide inaccurate information regarding a monitoring well or other device required under this chapter or the permit.
3. Operators of permitted facilities that are not operating properly shall update those facilities to achieve compliance with this chapter and the conditions of the permit within a timeframe approved by the department.
4. If the department finds that a facility, which has not been covered by a state animal feeding operation permit or a North Dakota pollution discharge elimination system permit within the last five years, is causing or is likely to cause pollution of waters of the state, or poses a significant threat to public health or safety, the operator will be notified that actions shall be taken to prevent the pollution.
5. Within one hundred twenty days following the notification described in subsection 4, the operator shall submit a compliance plan to prevent the facility from impacting waters of the state.
  - a. The compliance plan shall be prepared in accordance with the minimum requirements of this chapter and the North Dakota Livestock Program Design Manual. The plan shall contain adequate information to enable the department to determine whether the proposed measures will abate or prevent pollution of waters of the state. The operator also shall present a proposed schedule for plan implementation and completion.
  - b. If the compliance plan allows for operation of the facility in a manner that will not cause nor likely cause pollution of waters of the state, the department will issue a permit with a compliance schedule for construction. Approval of the permit shall be contingent upon any changes which may be required by the department after its review of the proposed plan. The construction must be completed within the timeframe specified in the compliance schedule.
  - c. If the approved compliance plan needs to be modified or amended during construction, the operator shall notify the department prior to making any modifications or amendments and they must be approved by the department.
6. If the department revokes a state animal feeding operation permit for cause, the operator can finish feeding the animals for up to one hundred twenty days from the date of revocation, provided public and environmental health are not threatened. The operator will not be allowed to bring any other animals into the facility until the requirements of the permit, this chapter, and the North Dakota Livestock Program Design Manual have been met as approved by the department.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

### **33-16-03.1-11. Departmental inspection.**

Authorized representatives of the department may request access to a facility site under authority of North Dakota Century Code section 61-28-04. The owner or operator of a livestock facility may request to see the representatives' credentials. Authorized representatives of the department shall be allowed:

1. To enter the facility site or area in which any records required to be kept under terms and conditions of the permit are stored;
2. To have access to and copy any records required to be kept under terms and conditions of the permit;
3. To inspect any monitoring equipment or water pollution control structures at the facility; or
4. To sample any discharge of pollutants.

The department representatives will abide by all security measures implemented by the owner or operator to protect the health and safety of the workers and the animals at the facility.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

### **33-16-03.1-12. Prohibited activities.**

It shall be unlawful for any person:

1. To feed any livestock on the ice cover of streams or lakes.
2. To create or maintain an immediate threat to human, public, or environmental health.
3. To dispose of an animal carcass along or in any stream, lake, river, or other surface water; to bury the carcass near any such surface water; to dispose of a carcass in an area that will discharge into waters of the state; to dispose of a carcass in any structure used to store or treat liquid manure, process wastewater, or storm water unless the department-approved system is designed for such a purpose; or to dispose of a carcass in a manner that is in violation of North Dakota Administrative Code article 33-20 or North Dakota Century Code chapter 36-14.
4. To cause pollution of waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of waters of the state.
5. To discharge any pollutants into waters of the state thereby reducing the quality so as not to comply with the water quality standards established by the department, except facilities that are in compliance with subsection 6.
6. To discharge manure or process wastewater from a livestock facility except:
  - a. The overflow of a properly operated manure storage structure due to a chronic or catastrophic rainfall greater than a twenty-five-year, twenty-four-hour event or greater than a one hundred-year, twenty-four-hour event for swine, chicken, turkey, or veal calf facilities; or
  - b. Seepage from the manure storage structures that is within the standards as specified in the North Dakota Livestock Program Design Manual.

**History:** Effective December 1, 2004.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04

**33-16-03.1-13. Public participation.**

1. If the department determines a significant degree of public interest exists regarding new or expanding facilities, it shall issue a public notice requesting comment on applications for both individual permits and general state animal feeding operation permits.
2. The department shall provide a period of not less than thirty days during which time interested persons may submit comments. The period of comment may be extended at the discretion of the department.
3. The public notice must be placed in the official county newspaper or other daily or weekly newspaper circulated in the area of the proposed animal feeding operation. In the case of draft general permits, the public notice will be placed in applicable official county newspapers. The department may also use any other reasonable means to provide the public notice information to parties potentially affected.
4. The public notice must include at least the following:
  - a. Name, address, and telephone number of the agency issuing the public notice.
  - b. Name and address of the applicant and a brief description of the application information, including the proposed location of the facility. The exception would be draft general permits for which there is no specific applicant.
  - c. The date, time, and location of any scheduled public meeting or hearing.
  - d. An explanation of how to view or obtain materials (e.g., copy of design plans) related to the application and the department's review.
  - e. An explanation of how to submit comments.
5. The department shall send copies of the public notice to the applicant and to local governmental entities which have jurisdiction over the area where the facility is located or is proposed to be located.
6. The department shall hold a public meeting or hearing as it deems appropriate to allow additional public input or to provide information to the public concerning the department's review of the facility.
7. In making its final decision on the application or draft permit, the department shall consider all comments submitted within a timeframe specified in the public notice and all comments received at any public hearing. Within twenty days of the close of the public comment period, the applicant, if any, may submit a written response to the public comments. The department shall consider the applicant's response in making its final decision.
8. Pursuant to the requirements of this chapter and within sixty days of the applicant's response to the public comments, the department shall make a final determination as to whether the permit should be approved, approved with conditions, or denied.
9. The department shall notify the applicant in writing of its final determination and provide to the applicant a copy of the final permit, if issued. Upon request, other interested individuals may also obtain copies of the final permit.
10. Once finalized, information on general permits and their availability must be provided to potentially eligible or affected facilities.



**History:** Effective December 1, 2004; amended effective January 7, 2005.

**General Authority:** NDCC 61-28-04

**Law Implemented:** NDCC 61-28-04