

ROY COOPER  
Governor


ELIZABETH S. BISER  
Secretary

RICHARD E. ROGERS, JR.  
Director



## MEMORANDUM

**DATE:** 04-05-2023

**FROM:** Richard E. Rogers, Jr., Director, Division of Water Resources 

**TO:** Animal Feed Operation Permitted Facilities

**SUBJECT:** Waste-Level Gauge Certification per permit condition III.2.b. of Animal Waste General Permits (AWG100000 (Swine), AWG200000 (Cattle), and AWG300000 (Wet poultry)) and Farm Digester General Permits (AWG400000 (Swine Farm Digester), AWG500000 (Cattle Farm Digester), and AWG600000 (Wet poultry Farm Digester))

The subject Animal Waste General permits were issued effective Oct 1, 2019, and will expire on Sep 30, 2024. The subject Farm Digester General Permits were issued effective July 1, 2022 with an expiration date of Sep 30, 2024. In all of the subject permits, permit condition III.2.b. requires that:

*All waste-level gauges must be certified, at least once every five (5) years, that it complies with the structure design and CAWMP, is representative of the low point of the lagoon embankment, and accurate to within 1/10 of a foot. Certification must be recorded on forms provided or approved by the Division. – [15A NCAC 02T .0108(b)].*

The Division of Water Resources (DWR) is responsible for developing the waste-level gauge certification process referenced in permit condition III.2.b. For a number of reasons, including the COVID-19 pandemic, DWR staff remain engaged in the process of developing this certification program.

In light of the additional time needed to develop the waste level gauge certification process and provide training to individuals to perform the certification, the Director of DWR has determined that it is appropriate to exercise enforcement discretion not to pursue a civil or administrative enforcement action against permittees for failure to comply with permit condition III.2.b. of all the subject permits, subject to the conditions in this memorandum.

This exercise of discretion is subject to the following conditions:

The permittee shall comply with all other permit conditions related to ensuring proper lagoon level management, including but not limited to:

- Permit condition I.1 (requiring, among other things, that facilities be operated and maintained to contain all waste plus the runoff from a 25-year, 24-hour rainfall event)
- Permit condition II.1 (requiring, among other things, that collection, treatment, and storage facilities be properly operated and maintained at all times)
- Permit condition III.1 (requiring, among other things, that inspections of waste collection, treatment, and storage structures be conducted and documented at a frequency to insure proper operation but at least monthly and after all storm events of greater than one (1) inch in 24 hours)



- Permit condition III.2.a. (requiring, among other things, that a highly visible waste-level gauge to be maintained in certain lagoons, and requiring monitoring and recording of the waste level in each lagoon)
  - Permit condition III.2.c. (requiring additional monitoring and recording of waste levels if required by the Director)
  - Permit condition III.2.d. (requiring new or modified waste-level gauges upon a determination of existing gauge's inadequacy)
  - Permit condition IV.1 (requiring permittees to allow inspections by Department personnel)
  - Permit condition V.2 (requiring, among other things, that the maximum waste level in lagoons shall not exceed that specified in the Certified Animal Waste Management Plan and shall not exceed the level that provides adequate storage to contain the 25-year, 24-hour storm event plus an additional one (1) foot of structural freeboard)
- This determination to exercise enforcement discretion is only applicable when the permittee and the operator in charge reasonably believe that the waste-level gauge is accurate. If DWR staff indicate to the permittee that the waste-level gauge appears inaccurate and should be calibrated, modified, or replaced, the permittee does not have a reasonable belief that the waste-level gauge is accurate for purposes of this memorandum. See permit condition III.2.d. referenced above.
  - This determination to exercise enforcement discretion is to remain in effect for the above-listed permit condition until September 30, 2024, or written notice from DWR revoking or modifying this determination, whichever occurs earlier. DWR will assess whether an extension of or revision to this determination is appropriate.
  - DWR reserves the right to revoke or modify this determination to exercise enforcement discretion.

Nothing in this determination to exercise enforcement discretion affects any other permit conditions or DWR's enforcement of the same. The permittee continues to have full responsibility for the proper operation and maintenance of all components of the animal waste management system. Furthermore, this determination does not apply to criminal violations or to situations where circumstances exist that may cause serious harm or that may present an imminent and substantial endangerment to public health or the environment. DWR also reserves the right, at any time, to exercise its discretion to address a specific violation of permit condition III.2.b. should circumstance warrant.

Furthermore, this determination will not allow any adverse impacts to human health or the environment because covered facilities are still subject to all other permit conditions as well as ongoing inspections by DWR staff.

If you have any questions concerning this memorandum, please contact Animal Feeding Operations Program Supervisor Ramesh Ravella at (919) 707-3702, email: [ramesh.ravella@ncdenr.gov](mailto:ramesh.ravella@ncdenr.gov)

cc: Regional Offices, Water Quality Regional Operations Section  
Division of Soil and Water Conservation

