



FACT SHEET

For

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

New York State Pollutant Discharge Elimination System General Permit

For

CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs)

Permit No. GP-0-09-001

June 12, 2009

**Issued Pursuant to Article 17, Title 7 and Article 70
of the Environmental Conservation Law**

**New York State Department of Environmental Conservation
New York State Pollutant Discharge Elimination System (“SPDES”) General Permit for
Concentrated Animal Feeding Operations (CAFOs) (GP-0-09-001)**

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Summary

The New York State Department of Environmental Conservation (the Department) is issuing a New York SPDES Environmental Conservation Law General Permit (the ECL General Permit) for Concentrated Animal Feeding Operations (CAFOs) (GP-0-09-001).

Applicants seeking authorization for coverage under GP-0-09-001, are required to file a Notice of Intent and either a Comprehensive Nutrient Management Plan Certification or Annual Nutrient Management Plan Submittal to obtain such coverage. Applicable eligibility criteria are delineated in Part I of the ECL General Permit.

A notice of draft permits was published in the Environmental Notice Bulletin on December 17, 2008. This ECL General Permit has been revised to clarify the Department’s expectations of permittees while continuing to maintain terms and conditions adequately protective of the environment.

Copies of the ECL General Permit, responsiveness summary and applicable forms are available on the Department's website at: <http://www.dec.ny.gov/permits/6285.html> or may be requested from the contact information listed below:

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Introduction

This ECL General Permit for CAFOs prescribes a five (5) year permit term that covers operations meeting the definition of a “CAFO facility,” as per the New York Environmental Conservation Law (ECL) §17-0105 (16), Title 6 of the Codes, Rules and Regulations of the State of New York (6 NYCRR), Part 750-1.2(a) and Appendix A. of the ECL General Permit. These legal references, in addition to ECL §17-0701(1)(a) detail that a CAFO is a point source and based upon the creation, use and maintenance of that point source; the owner or operator of a CAFO must obtain coverage under this ECL General Permit prior to operating the CAFO

facility.

Specifically, ECL §17-0701(1)(a) provides (in relevant part) that, “it shall be unlawful for any person, until a written SPDES permit therefore has been granted by the Commissioner, or by his designated representative, and unless such permit remains in full force and effect, to: (a) make or cause to make or use any outlet or point source for the discharge of sewage, industrial waste, or other wastes or the effluent there from into the waters of this state....” Sewage is defined in ECL §17-0105(4) to mean “water-carried human or animal wastes from residences, buildings, industrial establishments or other places, together with such groundwater infiltration and surface water as may be present.”

The ECL General Permit does not regulate the discharges of pollutants from a CAFO facility per se, but rather requires all Medium and Large CAFOs who do not discharge or propose to discharge to seek State permit coverage, as New York law governs the creation of a point source.

CAFO facilities that discharge or propose to discharge are not eligible for coverage under this ECL General Permit. These facilities propose to discharge by being designed, constructed, operated and maintained such that they will discharge. CAFO facilities that discharge or propose to discharge must apply for coverage under the federal Clean Water Act SPDES General Permit (GP-04-02 or the forthcoming GP-0-09-002).

This ECL General Permit is issued pursuant to ECL Article 17, Title 7 and ECL Article 70. An *owner or operator* may apply for eligibility to obtain coverage under this ECL General Permit by submitting a Notice of Intent (NOI) and either a *Comprehensive Nutrient Management Plan Certification* (CNMP Certification) for a Medium CAFO or an *Annual Nutrient Management Plan* submittal (Annual NMP) for a Large CAFO, as applicable, to the Department.

Eligibility

Eligible existing facilities must apply for coverage under this ECL General Permit by March 31, 2010 or obtain or maintain CWA General Permit coverage. New facilities must apply for coverage prior to commencing operation as a CAFO facility.

Medium CAFOs newly authorized under this ECL General Permit must: (1) have all non-structural practices identified in the CNMP fully implemented, unless the Agricultural Environmental Management (AEM) certified planner and the owner and operator determine that a structural practice not yet scheduled to be installed is required in order for the non-structural practice to be fully operational, (2) be in compliance with the implementation schedule requirements in Part III.C. of the ECL General Permit and (3) be appropriately operating and maintaining all practices implemented prior to obtaining permit coverage.

Large CAFOs newly authorized under this ECL General Permit will need to have a fully implemented CNMP prior to obtaining permit coverage. A fully implemented CNMP includes

having all BMPs implemented that are required in the site-specific CNMP. CAFO facilities not meeting these eligibility requirements cannot obtain coverage under this ECL General Permit and must apply for or maintain coverage under the federal Clean Water Act SPDES General Permit.

Permit Coverage

The current Clean Water Act SPDES General Permit for CAFOs (the CWA General Permit), GP-04-02, expires on June 30, 2009. Pursuant to New York's State Administrative Procedure Act, Section 401(2), the Department will administratively renew the current General Permit, GP-04-02 until the subsequent CWA CAFO General Permit, GP-0-09-002, is issued. The renewal of the CWA General Permit is necessary to prevent a coverage lapse while facilities assess eligibility for the ECL General Permit, GP-0-09-001. All permittees covered by the current CWA CAFO General Permit, GP-04-02, will be notified and permittees' coverage shall be continued, unless otherwise prohibited, and shall be considered authorized without interruption.

To obtain coverage under this ECL General Permit, eligible existing facilities covered by the current CAFO CWA General Permit, GP-04-02, must submit a complete NOI and either a CNMP Certification form for Medium CAFOs or an Annual NMP submittal for Large CAFOs. Once the items are submitted and the Department determines that the CAFO meets eligibility requirements articulated in Part I of the ECL General Permit, the facility will then be authorized under this ECL General Permit (GP-0-09-001). Following notification to the facility that coverage has been granted under the ECL General Permit, the Department will automatically terminate coverage under the CWA CAFO General Permit. Existing facilities not covered by the CWA General Permit, GP-04-02, must submit a complete NOI and either a CNMP Certification form for Medium CAFOs or an Annual NMP submittal for Large CAFOs by March 31, 2010 or they must obtain coverage under the CWA General Permit. New facilities and facilities directed by the Department to obtain coverage under GP-0-09-001 must submit a complete NOI form and either a CNMP Certification form for Medium CAFOs or an Annual NMP submittal for Large CAFOs at least 30 days prior to commencing operation.

Facilities that discharge or propose to discharge are not eligible for coverage under this ECL General Permit and must have CWA General Permit coverage. If a facility that is permitted under the CWA General Permit becomes eligible for the ECL General Permit in the future, that facility may submit a complete NOI and either a CNMP Certification form for Medium CAFOs or an Annual NMP submittal for Large CAFOs to request ECL General Permit coverage. Once the items are submitted and the Department determines that the CAFO meets eligibility requirements articulated in Part I of the permit, the facility will then be authorized under this ECL General Permit (GP-0-09-001). Following notification to the facility that coverage has been granted under the ECL General Permit, the Department will automatically terminate coverage under the CWA CAFO General Permit.

The Department, in its sole discretion, may require any owner or operator authorized by this

permit to apply for and obtain an individual SPDES permit as provided in 6NYCRR Part 750 *et seq.* Any CAFO facility may also request an individual SPDES permit as provided in 6NYCRR Parts 621 and 750 *et seq.* When an individual SPDES permit is issued to an owner or operator otherwise subject to this permit, coverage under this ECL General Permit is automatically terminated on the effective date of the individual permit.

Compliance with the ECL General Permit

The Department emphasizes that it will be highly unlikely for a CAFO that is designed, constructed, operated and maintained in accordance with the eligibility criteria in Part I of the ECL General Permit to discharge. Furthermore, the Department supports EPA's position stated in the Preamble to the 2008 CAFO Rule that a recurring discharge is evidence that a CAFO needs to seek CWA permit coverage. However, given the possibility of a discharge from a properly designed, constructed, operated and maintained CAFO, albeit remote, the Department believes it is necessary for the ECL General Permit to allow a CAFO seeking to maintain ECL General Permit coverage after a discharge. In response to comments, the Department has established specific criteria that limit a CAFO's ability to maintain ECL General Permit coverage after a discharge to include, but is not limited to, the following circumstances:

- (1) the CAFO was being designed, constructed, operated and maintained for no discharge in accordance with all provisions of the CNMP and the ECL General Permit at the time of the discharge;
- (2) the CAFO owner or operator has made all necessary changes to the CAFO facility's design, construction, operation and maintenance to permanently address the cause of the discharge and ensure that no discharge from this cause occurs in the future; and
- (3) the CAFO has not previously had a discharge from the same cause while authorized under the ECL General Permit.

In addition, a CAFO having a discharge must comply with all of the reporting and recordkeeping requirements of the ECL General Permit including submittal of an Incident Report Form detailing the circumstances of the incident and the steps taken by the CAFO to permanently address the cause of the discharge.

The ECL does not contain a citizen suit provision for violations of Article 17 and the associated regulations, which would authorize third-party enforcement rights. Because the ECL General Permit, GP-0-09-001 is issued pursuant to the State's independent SPDES authority contained within ECL Article 17, Title 7, citizens may rely solely on the CWA's jurisdiction to enforce violations (33 U.S.C. §1365). Accordingly, citizens may not commence suit for violations of the ECL General Permit, GP-0-09-001, but may continue to exercise their CWA authority to enforce illegal discharges of pollutants from CAFOs to waters of the United States.

Additions to this ECL General Permit

1. Permit Coverage & Eligibility:

- A. Any CAFO that discharges or proposes to discharge is not eligible for coverage under this ECL General Permit. An ineligible CAFO will need to seek either federal CWA SPDES General Permit or Individual SPDES permit coverage.
- B. Any CAFO meeting the minimum animal requirements for a Medium or Large CAFO as per Appendix A. of the ECL General Permit must obtain coverage under GP-0-09-001 or obtain or maintain coverage under the CWA CAFO General Permit (GP-04-02 or GP-0-09-002), unless they are excluded from obtaining coverage as outlined in Part I of the ECL General Permit.

2. Document submittals:

- A. All CAFOs must submit an Annual Compliance Report, formerly known as Appendix D in GP-04-02, by March 31st of each year for the previous year's activities. Existing CAFO facilities permitted in accordance with either the CWA General Permit or the ECL General Permit who change permit coverage during the calendar year must comply with the Annual Reporting requirements for the permit authorizing the facilities' activities on December 31st of that reporting year. A CAFO facility need not submit multiple Annual Compliance Reports unless otherwise notified by the Department to provide such documentation.
- B. Large CAFOs must amend the CNMP yearly and submit an Annual NMP by March 31st of each year for the next year's activities.
- C. These forms will be accessible to the public via Freedom of Information Law (FOIL) request procedures. The public may access information retained by the Department, as a government agency, by sending a written request to the attention of "Records Access Officer," 625 Broadway, 14th Floor, Albany, New York, 12233-1500 or via email at foil@dec.ny.gov. The Department's website provides the public with a link to request access to documents through the FOIL process.

3. Implementation Deadlines:

Medium CAFOs have until March 31, 2012 to have all NRCS practices fully operational unless:

- A. an extension is applied for and approved by the Department by March 31, 2012, or

- B. an AEM Certified Planner deems the practice to be of lower environmental risk as defined in the Agricultural Environmental Management risk evaluation protocols and has documented this deviation in the CNMP.
- 4. Manure Applicator Training:
Two individuals from each Large CAFO must attend manure applicator training within the permit term.
- 5. Major Changes Defined:
 - A. If a CAFO increases the number of animals 20% above the number specified in the CNMP, the CAFO must update its CNMP consistent with the permit requirements and update all system components identified as being in need of upgrading in accordance with current NRCS standards including, but not limited to, the addition of any necessary waste storage capacity, feed storage treatment or additional lands for waste applications. A Medium CAFO must submit an amended CNMP Certification form; or a Large CAFO must submit an amended Annual NMP to the Department documenting this change.
 - B. If a CAFO plans to construct a new or expanded liquid or semisolid waste storage facility greater than one million gallons; a Medium CAFO must submit an amended CNMP Certification form; or a Large CAFO must submit an amended Annual NMP to the Department documenting this change prior to implementation of the change.
- 6. Farmstead Practices:
 - A. Export encourages better distribution of nutrients and lessens the burden on lands and watersheds located closest to the CAFO facility. The Department recognizes that most exports are done appropriately; the revisions detailed in the ECL General Permit are intended to provide clarity to the producer and recipient of the waste exports.
 - B. Newly constructed feed and waste storage structures may not be built within 100 feet of a New York State classified stream regardless of design.
 - C. New facilities must be built outside of the 100-year floodplain.

Unchanged Permit Conditions

- A. The facility-specific CNMP, as written by an AEM certified planner, is expressly incorporated into this ECL General Permit. Therefore,

compliance with the CNMP is a requirement for full compliance with this ECL General Permit.

- B. This ECL General Permit continues to require compliance with NRCS standards. This requirement includes all NRCS Standard-compliant BMPs necessary to address facility-specific resource concerns, as well as universal requirements for land applications to be made in accordance with NRCS NY590. In this manner, this ECL General Permit strictly adheres to the land grant university requirements including: the Phosphorus Runoff Index, the Nitrogen Leaching Index and RUSLE 2 for erosion control. All CAFOs, through their AEM certified planner, must use these technical tools to determine appropriate application rates and timing on a field-by-field basis.
- C. The ECL General Permit requirement that all BMPs be implemented in accordance with all applicable NRCS Conservation Practice Standards includes the use of NRCS NY635 “Vegetated Treatment Areas” (VTAs) for the treatment of CAFO wastewater. A VTA must be designed, constructed, operated and maintained in accordance with NRCS NY635 and any site-specific requirements as described in the facilities’ CNMP. VTAs shall comply with all applicable laws, rules, regulations, requirements of NRCS NY635 and of the ECL General Permit. Compliant VTAs shall allow nutrient loading based consideration of estimated reduction due to volatilization, de-nitrification, immobilization, adsorption, leaching and crop removal of the vegetation used in the VTA. Improperly designed, constructed, operated or maintained VTAs are a violation of the ECL General Permit and may result in a discharge and a violation of State water quality standards. VTAs are not considered part of the production area and, therefore, are a part of the land application area of the CAFO facility. All applications of waste to the VTA must be done in accordance with the NY635 Standard, the site-specific CNMP and standard agriculture practices. Any discharge that is composed entirely of stormwater from the VTA upon which manure, litter and/or process wastewater has been applied in accordance with a site-specific nutrient management plan is agricultural stormwater. As such, this discharge is exempt from CWA permitting requirements.
- D. The ECL General Permit requirement that all BMPs be implemented in accordance with all applicable NRCS Conservation Practice Standards does, therefore, require these BMPs to be *operated* and *maintained* in accordance with the requirements of the applicable NRCS standards. Failure to appropriately operate and maintain a BMP is a violation of the ECL General Permit, may cause a facility to be ineligible for ECL General

Permit coverage, and could cause or contribute to a discharge or violation of State water quality standards. Similarly, a non-functioning BMP is not considered implemented and therefore may be a violation and make a facility ineligible for the ECL General Permit. A non-functioning BMP must be corrected and re-evaluated under the direction of an AEM certified planner in accordance with the ECL General Permit.

- E. The minimum threshold number of animals to be considered a Medium or Large CAFO remains the same as in GP-04-02.
- F. Transfer of manure, litter and process wastewater in excess of 50 tons per year to any one recipient continues to trigger certain reporting and record retention requirements.