



FACT SHEET

For

**NEW YORK STATE
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
ECL SPDES GENERAL PERMIT
FOR
CONCENTRATED ANIMAL FEEDING OPERATIONS
(CAFOs)**

Permit No. GP-0-16-001

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

January 2017

Page left intentionally blank

INTRODUCTION

The New York State Department of Environmental Conservation (Department) is renewing and modifying the Environmental Conservation Law (ECL) State Pollutant Discharge Elimination System (SPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) as GP-0-16-001. The new ECL general permit will be effective on July 24, 2017. GP-0-16-001 replaces the previous general permit, GP-0-14-001, which was previously extended under the State Administrative Procedures Act.

GP-0-16-001 is a five (5) year permit that provides SPDES permit coverage for CAFOs that do not discharge from their production areas to surface waters of the State. The ECL general permit authorizes discharges of non-contact cooling water to non-trout surface waters of the State in cases where the discharge meets the characteristics outlined in the permit.

Operations that fit the definition of a CAFO as defined in 6 NYCRR 750-1.2(a)(21), constitute point sources, as defined in ECL §17-0105(16). Therefore, pursuant to ECL §17-0701(1)(a), an owner or operator must have coverage under this general permit prior to operation of a CAFO. An owner or operator of an existing permitted CAFO that becomes eligible for coverage under this general permit must obtain coverage under this permit prior to termination of coverage under any other SPDES permit.

A Department rulemaking to define the term “CAFO” for purposes of state law took effect on May 8, 2013 (6 NYCRR 750-1.2(a)(21)). Prior to this rulemaking, there was no definition of “CAFO” in state law. Under federal law, only CAFOs that discharge to surface water must obtain SPDES permit coverage. But state law is more protective of the environment, and therefore, non-discharging facilities defined as CAFOs under the Department’s rulemaking must obtain ECL SPDES permit coverage.

Permit transition:

ECL General Permit to ECL General Permit

Pursuant to section 401 of the State Administrative Procedure Act, and 6 NYCRR 621.11(l), GP-0-14-001 was administratively extended. Thus, facilities with effective coverage under GP-0-14-001 are eligible for continued permit coverage under GP-0-14-001 until the effective date of this general permit (GP-0-16-001). In order to maintain uninterrupted ECL general permit coverage, a completed Notice of Intent (NOI) form and CNMP Certification signed by the owner and AEM certified planner must be received by the Department within 150 calendar days from the date this general permit (GP-0-16-001) is issued. Coverage under GP-0-16-001 will begin 30 calendar days after the Department receives the completed NOI and signed CNMP Certification, but not prior to the effective date of this general permit. Within that 30 day time period, the Department will review the NOI form and the CNMP Certification and contact the facility if there are any deficiencies that need to be corrected.

CWA General Permit to ECL General Permit

Pursuant to section 401 of the State Administrative Procedure Act, and 6 NYCRR 621.11(l), GP-04-02 was administratively extended. Thus, facilities with effective coverage under GP-04-02 are eligible for continued permit coverage under GP-04-02 until the effective date of the CWA general permit (GP-0-16-002). If a facility chooses to seek coverage under the new ECL general permit (GP-0-16-001), it must submit a completed NOI form and CNMP Certification signed by the owner and AEM certified planner. In order to maintain uninterrupted coverage under a general permit, the Department must receive the completed NOI form and CNMP Certification within 150 calendar days from the date the new CWA general permit (GP-0-16-002) is issued. Coverage under GP-0-16-001 will begin 30 calendar days after the Department receives the completed NOI and signed CNMP Certification, but not prior to the effective date of this general permit. Within that 30 day time period, the Department will review the NOI form and the CNMP Certification and contact the facility if there are any deficiencies that need to be corrected.

Please note that the conditions outlined in Part II.A.4 of GP-0-16-001 also apply to facilities that want to transition between GP-0-16-002 and GP-0-16-001.

SIGNIFICANT CHANGES

Public Participation: Eligibility for the ECL general permit is contingent on having a CNMP written by an AEM certified planner. The New York State Department of Agriculture and Markets oversees planner certification and the quality assurance program for that certification. Each farm-specific CNMP identifies the environmental sensitivities of the farm and utilizes the technical standards set by the United States Department of Agriculture - Natural Resources Conservation Service (USDA - NRCS) to mitigate those environmental impacts (available at: <https://efotg.sc.egov.usda.gov/toc.aspx?CatID=10980>). These technical standards are the effluent limitations to be included in each farm-specific nutrient management plan. The public is

given the opportunity to comment, and request a hearing, on the effluent limitations and any other conditions of the permit when this ECL general permit is publicly noticed. See ECL Article 70; 6 NYCRR 621.7.

Removal of the requirement for Large CAFOs to submit an Annual Nutrient

Management Plan: In developing this permit, the Department looked at current permit conditions to determine their applicability in the next ECL general permit cycle. Among those conditions was the requirement for large CAFOs to submit an Annual Nutrient Management Plan (ANMP). It was determined that this process is not required by law given the “no discharge” nature of this ECL general permit. Additionally, in practice the ANMP was not used by the Department to determine the compliance status of farms, nor was it helpful in addressing or mitigating water quality impacts from CAFOs. As such, the condition has been removed from the ECL general permit.

The permit requires that if waste is land applied, this must be carried out in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process waste water. As a result, any precipitation related discharge from land areas under control of the CAFO would be an “agricultural stormwater discharge” that falls within the exemption in ECL §17-0105(16).

Advanced notification: Advanced notification must be made to the Department when significant operational changes are made at the facility including: 1) increasing the number of animals by 20%; or 2) constructing or expanding a liquid or semisolid waste storage facility greater than one million gallons. This information was deemed significant by the Department based on a risk to water quality and public interest, respectively. The information submitted will be made available to the public upon request.

Clarification of “No Discharge”/addition of Wet Weather Standard Operating

Procedures: The Clean Water Act states that CAFOs who discharge to surface waters are required to obtain coverage under a NPDES/SPDES permit prior to the discharge. In order for a non-discharging CAFO to reasonably assert that they are meeting the “no discharge” requirement of the ECL general permit, Part III. of the ECL general permit requires CAFOs to develop Wet Weather Standard Operating Procedures (WWSOPs) as part of their Comprehensive Nutrient Management Plans (CNMPs). These WWSOPs are those management strategies, above applicable NRCS standards, that the AEM certified planner determines the farmer must employ to prevent discharges to surface waters of the State up to, and including, the 100-year, 24-hour storm event. Practices, including waste storage structures, must all be designed, operated, and maintained to the 25-year, 24-hour storm. Overflows from waste storage structures, whether or not they result in a discharge to surface waters of the State, are considered to be violations of the ECL general permit. Overflows from practices, other than waste storage structures, are considered to be violations of the ECL general permit only if the overflow results in a discharge to surface waters of the State. WWSOPs are farm-specific and may include enhanced operating and maintenance schedules,

additional clean water diversion techniques during high flow events, increased containment/freeboard, extended weather forecast considerations, emergency spreading procedures, or re-routing of Best Management Practice (BMP) overflow paths during high flow events.

The 2003 Federal Register preamble described that “a CAFO may meet the zero discharge standard by designing, construction, operating, and maintaining its waste management and storage facilities to contain all manure, litter and process wastewater including the direct precipitation and runoff from a 100-year, 24-hour rainfall event.” The Federal Register goes on to describe this criteria as providing the protection of the resource that EPA intended. [Federal Register/Vol. 68., No. 29, pg 7220 (2003)].

In 2008, EPA deleted that provision in the Federal Register as it determined a discharge beyond the 100 year storm is technically still a discharge and therefore should not be described as “zero discharge”. The 2008 CAFO Rule, however, allows for site specific evaluations to demonstrate a system to be capable of achieving the no discharge requirement. The Federal Register [Vol. 73., No. 225, pg 70460 (2008)] goes on to explain that this demonstration is designed to show that there will be no discharge from the CAFO except in exactly the circumstances provided in EPAs upset/bypass regulations. In those regulations [40 CFR 122.41(n)], an “upset” is defined as “an unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee.”

The Department performed a technical evaluation for a class of specific facilities (CAFOs) within a specified geographical area (NY) and determined that an upset/bypass is beyond the reasonable control of the CAFO if the 100-year storm criteria coupled with WWSOPs are properly managed (40 CFR 122.41(n)). The Department believes the demonstration provided in the newly required WWSOPs may demonstrate that there will be no discharge from the CAFO except in the circumstances provided in EPAs upset/bypass regulations.

The addition of WWSOPs to the ECL general permit is intended to clarify the no discharge criteria of this permit and is consistent with the language provided in the Federal Register and 2008 CAFO Rule.

Winter Spreading Restrictions: The Department has added a number of conditions to the ECL general permit intended to prevent water quality violations during winter conditions. Part III.A.8.a.1. of the ECL general permit provides for a ban on spreading when soils are saturated (frozen or fluid) or at a rate that exceeds the saturation capacity of that field at the time of application. In addition, conditions contained in Part III.A.8.c) - e) and Part III.B.4. were added to further address high risk situations that have resulted in water quality violations in the past. Of particular importance, Part III.A.8.c.1. of the permit requires that the certified planner include detailed winter application procedures in the CNMP and the farmer is required to follow those

procedures in order to maintain compliance with this permit.

The NRCS NY 590 Standard was updated in January 2013 to include additional restrictions on winter spreading, and is incorporated into the ECL general permit. The Department expects that these restrictions coupled with the supplementary ECL general permit conditions described above will greatly reduce the number and severity of water quality violations resulting from winter spreading because they specifically address the source of the problems identified.

Non-Contact Cooling Water (NCCW) authorization: Part III.B.1. of the ECL general permit provides characteristics of NCCW from CAFOs that are authorized to be discharged under this permit if the listed set of conditions are met.

Producers in the dairy industry utilize pre-coolers as an option to reduce energy costs. These pre-coolers typically use groundwater as a coolant to lower milk temperature prior to entering a refrigeration system. The NCCW generated by these pre-coolers (typically between 62-67° F) is often re-used on the farm to the maximum extent possible as drinking and/or wash water for animals, but it is common practice to add the remainder to manure storage. Adding this NCCW to manure storage is problematic for farmers as this water may take up much needed storage capacity.

Temperature is one of the most important variables that determine the quality of aquatic habitats; with fish species being among the most sensitive organisms for specific thermal ranges. The Water Quality Standard for Thermal Discharges and subsequent thermal discharge criteria contained in 6 NYCRR 704.1 address this point.

The Water Quality Standard for Thermal Discharges (6 NYCRR 704.1) states “[a]ll thermal discharges to the waters of the State shall assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water.” By requiring the discharge to non-trout waters to meet the conditions outlined in Part III.B.1. of the ECL general permit, the permit reasonably protects the classified water use and assures compliance with the standard, 6 NYCRR 704.1.

The Department also has the authority to require an application for an individual SPDES permit if a discharge is found to be noncompliant with the conditions of the ECL general permit and/or is causing or contributing to a water quality violation.

Construction Stormwater General Permit/State Historic Preservation Act (SHPA): Certain construction activities related to CAFOs may require coverage under the Construction Stormwater General Permit. Tables 1 and 2 of that permit include a list of such construction activities. The requirement to comply with SHPA is included as an eligibility criteria as part of obtaining coverage under that permit. Construction activities occurring on CAFOs with coverage under this ECL general permit are further discussed in Appendix B of the permit.

OTHER CHANGES

The following changes were included at the request of stakeholders and/or to provide clarity to the regulated community. Based on its best professional judgement, the Department believes these changes will result in a more understandable CAFO program which will promote better compliance.

- **Clarification that *New* CAFOs must fully implement their CNMP prior to becoming *operational* (vs. prior to submitting an NOI)**
- **A Change of Operation form must be submitted instead of a Change of Status form if the facility intends to increase the number of animals by more than 20% or if a manure storage structure of more than 1 million gallons will be constructed**
- **List of specific NRCS Standards, which are the effluent limitations**
- **Acquired farm implementation schedule**
- **Existing farms with existing practices have 12 months to get required certifications**
- **Limited PE evaluations for waste transfer systems**
- **Contractor Certification**
- **Single Application Rate**
- **Retention facilities must be designed, operated and maintained to prevent discharge to surface waters**
- **Barnyards isolated from a minimum 25 year storm and solids collected**
- **Increased farm staff education requirements (Planner on-site CNMP Review and staff attend manure applicator training)**
- **Recordkeeping requirements same for Medium and Large CAFOs under this ECL general permit (GP-0-16-001)**
- **Electronic Recordkeeping**
- **Definitions added: 100-year storm, Acquire, Winter Spreading Conditions, ANMP, Field, Saturated, Frozen-saturated, Litter**