



RESPONSIVENESS SUMMARY

NYSDEC DRAFT GENERAL SPDES PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs)

RESPONSE TO COMMENTS RECEIVED DURING THE PUBLIC NOTICE PERIOD FEBRUARY 25 - MARCH 31, 2004

The following is a summary of written comments received during the public notice period of the draft General SPDES Permit and the Department's response to those comments. Comments directly related to the provisions of the permit in some cases have resulted in changes to the permit conditions, or permit appendices and administrative procedures.

1. Comment: What records need to be kept at all CAFO operations?

Response: The permittee shall retain copies of all records required by the General Permit for a period of at least five years from the date reported. This period may be extended by request of the Department at any time.

2. Comment: What are the record-keeping requirements for all CAFOs?

Response: All permittees must keep the following records, as appropriate:

- ▶ A copy of the Comprehensive Nutrient Management Plan (CNMP) on-site
- ▶ The results of manure, litter, and process wastewater sampling and analysis
- ▶ The results of soil sampling and analysis
- ▶ Quantities, analysis and source of nutrients applied
- ▶ Dates and method of nutrient application including incorporation, if any
- ▶ Results of water, plant and organic by-product analysis
- ▶ Dates of review and person performing review and recommendations that resulted from review

3. Comment: What are the additional record-keeping requirements for all Large CAFOs (including horse, sheep, and duck CAFOs)?

Response: The permittee must keep at least the following records of transfers of manure, litter, and process wastewater to other persons:

- ▶ In cases where CAFO-generated manure, litter, or process wastewater is sold or given away to any one recipient in amounts greater than 50 tons annually, the permittee must comply with the following conditions:
 - Maintain records showing the date and amount of manure, litter, and/or process wastewater that leaves the permitted CAFO operation.

- Record the name and address of the recipient(s).
- Provide the recipient(s) with representative information on the nutrient content of the manure, litter, and/or process wastewater.
- These records are to be retained on-site, for a period of five years, and be submitted to the Department upon request.

Large CAFO are also explicitly required to keep records of :

- ▶ Daily and weekly inspections
- ▶ Depth marker readings
- ▶ Actions to correct deficiencies
- ▶ Handling and disposal of dead animals
- ▶ The design of manure and litter structures including volume of solids accumulation, number of days capacity, design treatment volume, total design volume and design calculations.
- ▶ Overflows from the production area
- ▶ Weather conditions at the time of application and 24 hours prior to and following application
- ▶ The dates on which application equipment was inspected

4. Comment: The General Permit does not address runoff of insecticides or antibiotics that are sometimes put in feed or water. Given the amounts that may be used for so many animals in one place, wouldn't there be a greater possibility of contamination to stormwater runoff?

Response: The permit states in Section VIII.C.ix. "The operator shall prevent the discharge of pesticide contaminated waters into waters of the State. All wastes from dipping vats, pest and parasite control units, and other facilities used for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent pollutants from entering the waters of the State."

5. Comment: Changing the determination of a CAFO from animal units to "classes" of livestock is a mistake.

Response: USEPA eliminated the formula for calculating whether an AFO is a CAFO because of the accumulation of several different animal types in confinement at one facility. According to the preamble to the USEPA rule, this was done to simplify the rules.

6. Comment: Deadline for CNMP implementation needs to be adjusted in accordance with funding availability.

Response: The Department established in the General Permit a CNMP completion schedule to assure consistent annual progress in completion of practices set forth within the CNMP. This is to allow the owner or operator to spread costs of implementation over a longer period of time to take advantage of funding opportunities and more favorable economic conditions.

7. Comment: A separate funding source for implementing BMPs on CAFO farms needs to be created with funds distributed in an equitable manner to all CAFO operations, regardless of water quality impacts.

Response: The Department presented potential funding sources for the development and/or implementation of Comprehensive Nutrient Management Plans (CNMPs) at the four scheduled public outreach meetings.

- ▶ Environmental Quality Incentives Program (EQIP)
- ▶ Ag Nonpoint Source Grant Program
- ▶ Farmland Viability Program
- ▶ Agricultural Management Assistance Program (AMA)
- ▶ Innovations in Agriculture NYSERDA

8. Comment: The draft permit's zero-discharge standard is meaningless without enforceable performance or monitoring standards. DEC must expressly incorporate the CNMP and its terms into the permit in order to ensure adequate enforceability of all permit requirements. The permit fails to contain adequate monitoring requirements and, potentially, improperly obscures monitoring data from public scrutiny.

Response: The Department developed an Annual Compliance Report (Appendix D) and a Incident Report (Appendix E) for performance and monitoring control. The final permit has also been modified (at section VIII E) in response to this comment to require compliance with the CNMP.

9. Comment: Land application areas and tile drains are point sources requiring coverage under a SPDES permit.

Response: The runoff from the application of CAFO manure, litter, or process wastewater to land that is under the control of a permitted CAFO is subject to the general permit requirements and the certified comprehensive nutrient management plan. Provided the manure is applied in accordance with these CNMP, it is exempt from permitting requirements in accordance with the agricultural stormwater exemption.

10. Comment: The permit does not provide sufficient response to violations of water quality standards.

Response: Under Section X. N of the General Permit the following has been added: "The Department may also undertake any other compliance action authorized by 6 NYCRR Part 750."

11. Comment: The Department's definition of a 25-year, 24-hour rain event as including both chronic and catastrophic storm events is inconsistent with the Clean Water Act.

Response: That definition is targeted at the design of storage, not the discharge events. It is therefore protecting for chronic rainfall events, not allowing discharges during chronic rainfall events.

12. Comment: The CNMP, as defined, will not prevent contamination of ground or surface waters by excess nitrogen or phosphorus, or by fertilizer and pesticide residues.

Response: The permittee must develop and implement a Comprehensive Nutrient Management Plan (CNMP) in accordance with Natural Resources Conservation Service - Conservation Practice Standard - Waste Management System (Number) Code NY312, to properly manage liquid and solid waste, including runoff from concentrated areas.

13. Comment. Neither the permit nor the CNMP require that manure applications be timed to maximize uptake of nutrients and minimize leaching or runoff.

Response. In accordance with NRCS NY 590, timing and method of nutrient application shall correspond as closely as possible with plant nutrient uptake characteristics, while considering cropping system limitations, weather and climatic conditions, and field accessibility.

14. Comment. The permit fails to contain a mandatory soil analysis requirement.

Response: NY 590 requires soil analysis to be no older than 3 years.

15. Comment. Neither the permit nor the CNMP contain an enforceable requirement that nutrients be applied at agronomics rates.

Response: NY 590 requires nutrients be applied at agronomic rates; the more stringent of nitrogen requirements or the P index.

16. Comment. CNMP will not control pathogen flows to surface or groundwater from land application areas.

Response: Application of manure at agronomic rates provides an incidental control of pathogen flows to surface and groundwater.

17. Comment. CNMP measures offer inadequate prevention of ammonia volatilization and redeposition in nearby surface waters.

Response: Through NY590, the permit requires that timing and method of nutrient application shall correspond as closely as possible with plant nutrient uptake characteristics, while considering cropping system limitations, weather and climatic conditions, and field accessibility. Such a requirement reduces, to the extent practicable, ammonia volatilization.

18. Comment: Neither the permit nor the CNMP prohibit the application of waste on saturated soils or in amounts that result in ponding.

Response: In accordance with NY 590, nutrients shall not be applied to saturated soil if the potential risk for runoff exists.

19. Comment: The permit must contain a prohibition of the application of waste prior to or during precipitation events.

Response: NY 590 suggests delaying field application of animal manure or other organic by-products if precipitation capable of producing erosion and runoff, or leaching to a subsurface drainage system is forecast within 24 hours of the time of the planned application.

20. Comment: The permit fails to require measures to control phosphorus discharges from CAFOs.

Response: NY 590 uses the P index to control Phosphorus discharges.

21. Comment: The permit does not require the calibration of waste application equipment or set standards for such calibration.

Response: Calibration of waste application equipment to ensure uniform distribution of material at planned rates is required under NY 590.

22. Comment: The permit must contain a prohibition against the application of manure to frozen or snow-covered ground.

Response: If potential of runoff exists, the P Index is used to evaluate runoff potential. The timing of nutrient application shall correspond as closely as possible with plant nutrient uptake characteristics, while considering

cropping system limitations, weather and climatic conditions, and field accessibility. Nutrients shall not be applied to frozen, snow-covered, or saturated soil if the potential risk for runoff exists.

23. Comment: At a minimum, the permit must contain the setback and buffers specified in the Federal NPDES regulations for CAFOs.

Response: NY590 defines setback requirements and NY393S and NY391A (among others) define buffer requirements. The NY590, 393S et al. meet the requirements of the Federal Rules.

24. Comment: The permit contains no measures to protect groundwater.

Response: In accordance with the N index (leaching) required in NY 590, control measures are placed in the site-specific Comprehensive Nutrient Management Plan (CNMP) to reduce nitrate level by reducing the rate at which manure is spread, thus reducing the rate at which pollutants will leach through soils and reach groundwater. In addition, NY312 standards for barnyards and storage contain explicit language to protect groundwater.

25. Comment: Does a Medium CAFO that expands to meet the Large CAFO criteria need to file a new NOI? A certified plan is already in place, but would that farm now be required to meet the Large CAFO implementation date?

Response: Yes, the permittee would need to file a new NOI, the certified comprehensive nutrient management plan would need to be amended in accordance with Large CAFO requirements, and meet the Large CAFO implementation dates.

26. Comment: Within the ELG 40 CFR 412, Subpart C 412.37 (a)(2) it is stated that a depth marker is needed for any open surface liquid impoundment. Could a flow meter be used in the barn to record daily inputs to the storage structure with a cumulative total being recorded and compared to a storage volume that factors in the minimum capacity necessary to contain runoff and direct precipitation?

Response: No, the depth marker is intended to be a simple check.

27. Comment: Are goats exempt from CAFO regulations? If not, what would be the animal numbers for Medium and Large CAFO designations?

Response: Goat operations, as well as any other unlisted operation is not, a priori, required to have a permit, but the Department or the USEPA can designate such an operation as a Small CAFO.

28. Comment: Appendix E, CAFO Annual Compliance Report, Section VII, Annual Compliance Certification - questions A, B, C make sense, but the responses are unclear. Should the responses be "Yes", "No", "No Change," with "Yes" and "No" requiring explanations?

Response: The draft permit was modified to make these questions more clear.

29. Comment: Within the ELG 40 CFR 412, Subpart C 412.37 (b)(4) it states that records of mortalities management and practices used must be kept. The practices used should be addressed within the nutrient management plan. Does the farmer need to keep records of all dead animals from the facility, especially if the dead animals are removed by a rendering company?

Response: Yes, see response to comments 1-3.

30. Comment: When the annual report is filled out for the first time, should practices that are called for in the CNMP, but are already implemented, be listed in Section VIII, CNMP Completion Schedule.

Response: Yes. All practices need to be identified in the Comprehensive Nutrient Management Plan (CNMP) schedule.

31. Comment: Under Section VIII, Generic Best Management Practices, of the general Permit, Section A refers to prohibiting unauthorized substances in the retention facilities. Many farmers use a foot bath, usually including copper sulfate, to treat hoof problems that their cattle have. The normal course of action is to empty this footbath to the manure handling system. Would this substance be considered a process-generated wastewater similar to water used to spray cool animals?

Response: This should be handled in accordance with best management practices in a way that “.. prevents the discharge of pesticide contaminated waters into waters of the State. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent pollutants from entering the waters of the State and separated from the process wastewater.”

32. Comment: What will be the time period to be reported for the annual report? Will it be calendar year, January to December?

Response: Yes. The permittee shall submit an Annual Compliance Report (Appendix D) to the Department. The permittee must submit an annual compliance report annually by March 31st of each year for the proceeding calendar year.

33. Comment: The permit should adopt measures to control the spread of e.coli and other pathogens.

Response: Implementation of NY312, although not designed to control e.coli and other pathogens, provides an incidental control of the spread of e.coli and other pathogens.

34. Comment: There is no need for a second party to fill out the annual report.

Response. The Department agrees that the annual report can be filled out by the operator. However, because the NY590 requires an annual review of the CNMP, the report does include a requirement for the planner to certify the plan is up to date.

35. Comment: The requirement to read the pole meter in the lagoons is not a very practical request in the winter. Because of odor and risk, many lagoons are located a substantial distance from the main facilities. The level of the lagoon is an additional job.

Response: The additional requirements mandated by the USEPA must be implemented.

36. Comment: A Medium AFO is a Medium CAFO only if a discharge occurs. Yet, contrary to this intent and the definition of a Medium CAFO in the draft permit, CAFO Fact Sheet No. 3 states that: “If such discharge may occur, a permit is required, “ creating a “potential to discharge” classification. Due to this conflict, we request that the word “may” be eliminated from the sentence to ensure that the permit is clear that a discharge needs to occur for a Medium AFO to be considered a Medium CAFO.

Response: The Department has amended CAFO Fact Sheet No. 3 to state “In this determination the discharge must include process wastewater. If such a discharge occurs under any climatic condition (not limited by storm intensity), a permit is required.”

37. Comment: Request the Department include a definition of “Discharge” within the CAFO permit.

Response: The Department will continue to consult with the CAFO workgroup to refine CAFO Fact Sheet No. 3.

38. Comment: Recommend that a new “discharge” definition promote the use of AEM planners in determining if a farm actually discharges. Further in order to maintain the integrity of the regulation, DEC needs to recognize sound science and state that farms with properly installed and operated BMPs do not discharge for events within the BMPs tolerances.

Response: The Department will continue to consult with the CAFO workgroup to refine CAFO Fact Sheet No. 3.

39. Comment: Recommend an additional appendix be added to the permit listing the requirements presented in ELG 40 CFR 412.

Response: The Department added the additional permit requirements for Large CAFOs to the final General Permit.

40. Comment: Request that DEC counsel perform a review to determine what sections of the annual report fall under FOIL and act to protect this information, particularly with regards to the release of information that may cause financial harm to the business.

Response: The Department is working with the Department of Agriculture and Markets to determine which sections of the Annual Compliance Report (Appendix E) fall under FOIL.

41. Comment: Recommend DEC implement an internal policy of notifying CAFO permit holders when information is requested on the CAFO under FOIL.

Response: The criteria for FOIL notifications are set forth in 6NYCRR Part 750 and do not include notifications to any parties, about which, information is requested.

42. Comment: Recommend the Department to delete the sentence regarding two AFOs and common ownership in definition I.

Response: Under Federal NPDES regulations for CAFOs, two or more AFOs under common ownership are considered one operation if, among other things, they adjoin each other, including facilities that are separated by a right-of-way or public road, or if they use a common area or system for the disposal of wastes.

43. Comment: Recommend DEC continually monitor the CAFO implementation programs of other states to ensure that New York’s program is no more burdensome to farms than any other program across the nation.

Response: The Department has been and will continue to monitor other states programs and participate in CAFO outreach workgroups to better understand other state’s CAFO programs, other state programs’ effect on NYS CAFO program and NYS pollution control in general.

44. Comment: Recommend that the CAFO workgroup continue to meet regularly so that a workable implementation of the CAFO program is put into place.

Response: The Department will continue to work with the CAFO workgroup to support and provide information on industry trends and assist in outreach efforts.

45. Comment: The definition for the Large and Medium CAFOs should be revised to include farms that contain an overlap of the live categories listed and not just one distinct category such as cows.

Response: The definition for Large and Medium CAFO is consistent with the Federal Rule.

46. Comment: A Small CAFO should be defined in the regulations in detail similar to the Large and Medium CAFOs.

Response: The criteria for designating Small CAFOs are set forth in the Federal Rule. A Small CAFO means an AFO that is designated by the Department or the USEPA Regional Administrator or his or her designee as a CAFO and is not a Medium or Large CAFO.

47. Comment: The schedule for compliance with the General Permit for Medium CAFOs extends into 2009. This schedule should be made tighter to protect the waters of the state.

Response: The Department established in the General Permit a CNMP Completion Schedule to assure consistent annual progress in completion of practices set forth within the CNMP. This is to allow the owner or operator to spread costs of implementation over a longer period of time to take advantage of funding opportunities and more favorable economic conditions.

48. Comment: The USEPA Regional Administrator can designate CAFOs in addition to the New York State Department of Environmental Conservation.

Response: The Department has amended the General Permit to include the USEPA Regional Administrator for designation of a CAFO.

49. Comment: The Annual Compliance Report requirements should be kept as simple as possible with the goal of having the form be one page, front and back.

Response: The Annual Compliance Report has been simplified to the extent practicable. While it is not one page, Department staff believe it to be as simple as it can be while still providing useful and required information.