



Department of
Environmental
Conservation

FACT SHEET

For

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

Permit No. GP-0-19-001

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

January 2019

INTRODUCTION

Pursuant to Section 402 of the Clean Water Act (CWA), discharges from Concentrated Animal Feeding Operations (CAFOs) are unlawful unless they are authorized by a National Pollutant Discharge Elimination System (NPDES) permit or by a state permit program. New York's State Pollutant Discharge Elimination System (SPDES) is a NPDES-approved program with permits issued in accordance with the Environmental Conservation Law (ECL).

Pursuant to the April 23, 2018 and June 1, 2018 decisions of the Albany County Supreme Court in *Riverkeeper, Inc. v. Seggos* (Index No. 902103), the New York State Department of Environmental Conservation (Department) is issuing a new CWA SPDES General Permit for CAFOs (GP-0-19-001). In accordance with those decisions, the Department publicly noticed a new draft CWA CAFO general permit on September 5, 2018 in the Environmental Notice Bulletin and in newspapers of general circulation on or before September 11, 2018. The public comment period ended October 11, 2018. The Department is issuing this final new CWA CAFO general permit by February 7, 2019 also in accordance with those decisions. The new CWA CAFO general permit will be effective on July 8, 2019 and will expire on July 23, 2022.

GP-0-19-001 provides coverage for CAFOs with a discharge from their production areas to surface waters of the State. GP-0-19-001 also 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 and discharges from the construction activities outlined in Appendix B Section B of the permit to surface waters of the State.

Any owner/operator of a new CAFO that is eligible for coverage under GP-0-19-001 must obtain coverage prior to operation of the CAFO.

TRANSITION

In order to obtain coverage under GP-0-19-001, CAFOs with effective coverage under GP-0-16-002, must submit a complete Notice of Intent (NOI) and CAFO-specific Nutrient Management Plan (NMP), at least 60 days before July 8, 2019, when GP-0-16-002 is vacated. That is to provide the Department staff with sufficient time to complete its review and publicly notice the NOI and NMP before the vacatur of GP-0-16-002. If a CAFO with coverage under GP-0-16-002 meets the conditions of the ECL General Permit, GP-0-16-001, and wishes to transition to coverage under that permit, the owner/operator must follow the process described in GP-0-16-001 to obtain coverage.

SIGNIFICANT CHANGES

The following is a summary of the significant changes from GP-0-16-002 to GP-0-19-001 made in order to comply with the court decisions mentioned above. The Department reviewed and relied on USEPA approved NPDES CAFO General Permits issued for other states in interpreting the federal CAFO regulations and converting them into permit terms and conditions for GP-0-19-001.

Replaced all references to a Comprehensive Nutrient Management Plan (CNMP) or an Annual Nutrient Management Plan (ANMP) with Nutrient Management Plan (NMP):

The Department is no longer requiring a CNMP and ANMP. In accordance with the federal CAFO regulations, GP-0-19-001 requires that CAFOs develop an NMP (40 CFR 122.42(e)(1)), and that the NMP is reviewed and approved by the Department and is publicly noticed (40 CFR 122.23(h)). The Department will respond to all significant comments received and may require the CAFO owner/operator to further revise the NMP, if necessary. Once the Department incorporates the revised terms of the NMP into the permit, the Department will notify the CAFO owner/operator and the public of the terms and conditions of the permit and that the owner/operator is approved to implement.

In addition, since any change is required to be submitted to the Department for review and approval (40 CFR 122.42(e)(6)), the requirement to annually submit the NMP was removed from GP-0-19-001. However, GP-0-19-001 maintains the requirement to submit an Annual Compliance Report to the Department.

The federal CAFO regulations require that the NMP contain site-specific effluent limitations. GP-0-19-001 lists all effluent limitations in Part I.B-C, in order to make compliance easier and more transparent.

Changes made to NMP: GP-0-16-002 required significant changes to be submitted to, and receive approval from, the Department prior to implementation. GP-0-16-002 required that insignificant or *de minimus* changes to the NMP be done in consultation with the CAFO's Agriculture Environmental Management (AEM) certified planner and the Department notified when such changes occurred, but did not require Department approval prior to implementation. GP-0-19-001 now requires submission to, and prior approval by, the Department of *any* changes made to the NMP. In addition, all revised NMPs, that necessitate changes to the terms of the NMP incorporated into the permit issued to the CAFO, will be publicly available. (40 CFR 122.42(e)(6)(ii)).

As further described in Part III.D of GP-0-19-001, when revised NMPs are submitted to the Department, the Department will first review the revised NMP to ensure that it meets the requirements of Parts I.B-C and Part III. The Department must then determine whether such changes are substantial (40 CFR 122.42(e)(6)(ii)(B)):

- If it is determined that the changes are not substantial, the Department will include the revised NMP in the permit record, revise the terms of the permit based on the site-specific NMP, and notify the owner/operator and the public of any changes to the terms of the permit based on revisions to the NMP. This notification to the public will be through the Environmental Notice Bulletin.
- If the Department determines that the changes are substantial, the Department will notify the public of the proposed changes through the Environmental Notice Bulletin and provide a 30-day comment period. 40 CFR 122.42(e)(6)(ii)(B) allows the Department to determine an appropriate timeframe for public comment. The Department will use this permit term to gather information on an appropriate timeframe for public comment and may re-assess this condition upon permit renewal. The Department will respond to all significant comments received and may require the CAFO owner/operator to further revise the NMP, if necessary. Once the Department incorporates the revised terms of the NMP into the permit, the Department will notify the CAFO owner/operator and the public of the revised terms and conditions of the permit through the Environmental Notice Bulletin and the owner/operator is approved to implement.

The term "significant changes" used in GP-0-16-002 has been replaced with "substantial changes" in GP-0-19-001 for consistency with federal CAFO regulations (40 CFR 122.42(e)(6)(iii)).

For a comparison between the conditions of the GP-0-19-001 and the federal CAFO regulations, see Table 1 below.

AEM certified planners continue to have an essential role in developing the NMPs. In this regard, planners are an integral piece to the CAFO program and they are ethically and legally required to only certify true and accurate information. The NYS Department of Agriculture and Markets (DAM) is responsible for implementation of the AEM certification program and for executing a robust Quality Assurance/Quality Control program periodically auditing planners. DAM, as well as this Department, have a history of taking action against planners found to be violating their code of ethics and/or falsifying information. Under GP-0-19-001, the Department, as described in Part III.D., will review and approve the NMPs. The Department relies on self-certification throughout the SPDES program, the strength of which is supported by statute and regulation. SPDES applications and reports are signed under penalty of law. 6 NYCRR 750-2.5(b).

CHANGES from draft to final GP-0-19-001 based on public comments received

The Department made available for public comment and review a draft of the permit. Below is a summary of changes made in the final permit in response to comments received on the publicly noticed draft permit. For a summary and detailed response to all comments received, please see the Responsiveness Summary document dated January 2019.

- The public comment period for substantial changes made to approved NMPs was changed from 14-days to 30-days;
- Testing for Nitrogen, as part of the required soil sampling, was removed for consistency with federal regulations (40 CFR 412.4(c)(3)), as well as to eliminate contradiction with NY NRCS Standard 590;
- Language was modified in Part III.A.4.c to clarify the acquisition process for CAFOs;
- The change to the definition of a Medium CAFO in the draft GP-0-19-001 was done in error. The definition for a Medium CAFO in the final GP-0-19-001 was changed back to the definition that was provided in GP-0-16-002, which now mimics the definition in 6 NYCRR 750-1.2(a)(23) again.

Table 1. Comparison between the GP-0-19-001 and federal CAFO regulations

	Permit Section	Federal Regulation
Effluent Limitations for Land Application Area		
	Part I.C.1.a	40 CFR 412.c.1
	Part I.C.1.b	40 CFR 412.c.1

	Part I.C.1.c	40 CFR 412.c.2
	Part I.C.1.d	40 CFR 122.42(e)(1)(vi)
	Part I.C.1.e	40 CFR 122.42(e)(1)(viii)
	Part I.C.1.f	40 CFR 412.c.3 and 40 CFR 122.42(e)(1)(viii)
	Part I.C.1.g	40 CFR 412.c.4
	Part I.C.1.h	40 CFR 412.c.5
NMP BMPs		
	Part III.A.2.a	40 CFR 122.42(e)(1)(i)
	Part III.A.2.b	40 CFR 122.42(e)(1)(ii)
	Part III.A.2.c	40 CFR 122.42(e)(1)(iii)
	Part III.A.2.d	40 CFR 122.42(e)(1)(vi)
	Part III.A.2.e	40 CFR 122.42(e)(1)(v)
	Part III.A.2.f	40 CFR 122.42(e)(1)(vi)
	Part III.A.2.g	40 CFR 122.42(e)(1)(vii)
	Part III.A.2.h	40 CFR 122.42(e)(1)(viii)
	Part III.A.2.i	40 CFR 122.42(e)(1)(ix)
	Part III.A.2.j	40 CFR 122.42(e)(5)
(Linear Approach)	Part III.A.2.j.(1)(a)	40 CFR 122.42(e)(5)(i)
	Part III.A.2.j.(1)(a)(i)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(ii)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(iii)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(iv)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(v)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(vi)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(vii)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(viii)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(ix)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(x)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(xi)	40 CFR 122.42(e)(5)(i)(A)
	Part III.A.2.j.(1)(a)(xii)	(State addition)
	Part III.A.2.j.(1)(b)	40 CFR 122.42(e)(5)(i)(B)
(Narrative Rate Approach)	Part III.A.2.j.(2)(a)	40 CFR 122.42(e)(5)(ii)

	Part III.A.2.j.(2)(a)(i)	40 CFR 122.42(e)(5)(ii)(A)
	Part III.A.2.j.(2)(a)(ii)	40 CFR 122.42(e)(5)(ii)(A)
	Part III.A.2.j.(2)(a)(iii)	40 CFR 122.42(e)(5)(ii)(A) & (B)
	Part III.A.2.j.(2)(a)(iv)	40 CFR 122.42(e)(5)(ii)(A) & (B)
	Part III.A.2.j.(2)(a)(v)	40 CFR 122.42(e)(5)(ii)(A) & (B)
	Part III.A.2.j.(2)(a)(vi)	40 CFR 122.42(e)(5)(ii)(A)
	Part III.A.2.j.(2)(a)(vii)	State requirement
	Part III.A.2.j.(2)(b)	40 CFR 122.42(e)(5)(ii)(C)
	Part III.A.2.j.(2)(b)(i)	40 CFR 122.42(e)(5)(ii)(C)
	Part III.A.2.j.(2)(b)(ii)	40 CFR 122.42(e)(5)(ii)(C)
	Part III.A.2.j.(2)(b)(iii)	40 CFR 122.42(e)(5)(ii)(C)
	Part III.A.2.j.(2)(b)(iv)	40 CFR 122.42(e)(5)(ii)(C)
	Part III.A.2.j.(2)(b)(v)	40 CFR 122.42(e)(5)(ii)(C)
	Part III.A.2.j.(2)(b)(vi)	40 CFR 122.42(e)(5)(ii)(C)
	Part III.A.2.j.(2)(c)	40 CFR 122.42(e)(5)(ii)(D)
Duty to Amend/Submit NMP		
	Part III.D	40 CFR 122.42(e)(6)(i)
	Part III.D.3.a	40 CFR 122.42(e)(6)(ii)
	Part III.D.3.b.	40 CFR 122.42(e)(6)(ii) & (ii)(B)
	Part III.D.3.b.1	40 CFR 122.42(e)(6)(iii)(A)
	Part III.D.3.b.2	40 CFR 122.42(e)(6)(iii)(B)
	Part III.D.3.b.3	40 CFR 122.42(e)(6)(iii)(B)
	Part III.D.3.b.4	40 CFR 122.42(e)(6)(iii)(C)
	Part III.D.3.b.5	40 CFR 122.42(e)(6)(iii)(D)
	Part III.D.3.c	40 CFR 122.42(e)(6)(ii)(A)
	Part III.D.3.d	40 CFR 122.42(e)(6)(ii)(B)