DRAFT FACT SHEET

For

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

Permit No. GP-0-22-001

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

January 2022
INTRODUCTION

The New York State Department of Environmental Conservation (Department) proposes to renew and modify the Environmental Conservation Law (ECL) State Pollutant Discharge Elimination System (SPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) as GP-0-22-001. GP-0-22-001 will replace the previous general permit, GP-0-16-001, which expires July 23, 2022. The Department anticipates that the final GP-0-22-001 will be effective on July 24, 2022.

A CAFO is defined in 6 NYCRR 750-1.2(a)(23). 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 CAFOs must also obtain a SPDES permit. CAFOs, meeting that regulatory definition, are point sources, as defined in ECL §17-0105(16) and 6 NYCRR 750-1.2(a)(67). Pursuant to ECL §17-0701(1)(a), an owner or operator must have a SPDES permit prior to operation of a CAFO. As authorized by ECL §70-0117(6) and 6 NYCRR 750-1.21(b)(4), the Department may utilize a SPDES general permit for CAFOs.

Pursuant to ECL §17-0817(1) and 6 NYCRR 750-1.15, the Department may issue a SPDES permit for discharges to groundwater for a term not to exceed 10 years. The Department proposes draft GP-0-22-001 as a ten (10) year permit. The draft GP-0-22-001: 1) provides SPDES permit coverage for CAFOs that do not discharge from their production areas to surface waters of the State, and 2) authorizes discharges of non-contact cooling water (NCCW) to groundwater of the State in cases where the NCCW discharge meets the characteristics outlined in the permit.

Permit transition:

Continuing Coverage under ECL General Permit

In order to maintain uninterrupted ECL general permit coverage, a completed Request to Continue Coverage form and Comprehensive Nutrient Management Plan (CNMP) Certification, signed by both the owner and Agricultural Environmental Management (AEM) certified planner, must be received by the Department 30 calendar days prior to the effective date of GP-0-22-001. Within that 30 day time period, the Department will review the Request to Continue Coverage form and the CNMP Certification and contact the CAFO if there are any deficiencies that need to be corrected. Also, as GP-0-16-001 has not yet expired during that review period, GP-0-16-001 is effective for CAFOs who had coverage under that general permit. Coverage under GP-0-22-001 will begin 30 calendar days after the Department receives both the completed Request to Continue Coverage form and signed CNMP Certification, but not prior to the effective date of GP-0-22-001.
CHANGES

In response to stakeholder input, and based on the Department’s best professional judgement, draft GP-0-22-001 contains several changes that will result in a clearer permit and promote better compliance.

SIGNIFICANT CHANGES

Electronic Submission: Under draft GP-0-22-001, all forms required to be submitted as part of the permit must be submitted electronically in a format acceptable to the Department per 6 NYCRR 750-2.5(e). This change will help Department staff access and process forms remotely, allowing for faster entry into state and federal databases. Although the federal E-Reporting Rule (40 CFR 127.16) does not apply to draft GP-0-22-001, which is issued pursuant to state law, requiring electronic reporting is consistent with the Department’s administration of other SPDES general permits.

New Small CAFOs: New small CAFOs, voluntarily seeking coverage under GP-0-22-001, may do so in accordance with the implementation schedule required by Part III.A.3. The implementation schedule requires immediate elimination of any discharge and implementation of all non-structural best management practices (BMPs), followed by implementation of all required structural BMPs. The implementation of the structural BMPs must be completed: 1) within 24 months of submitting a complete NOI, or 2) prior to becoming operational, whichever comes first. “Operational” is defined in the draft GP-0-22-001 as meeting the CAFO animal thresholds, which are defined in 6 NYCRR 750-1.2(a)(23) and reiterated in draft GP-0-22-001. Once a CAFO is “operational,” it is a medium or large CAFO and the BMPs must be fully implemented and have permit coverage. Draft GP-0-22-001 requires that new medium or large CAFOs must fully implement all structural and non-structural best management practices prior to submission of a complete NOI. Therefore, the implementation schedule in the draft GP-0-22-001 is necessary to ensure that the new small CAFOs are still able to obtain coverage under GP-0-22-001 before becoming a medium or large CAFO subject to the full implementation requirement.

Notification: Draft GP-0-22-001 includes several additional notification requirements. These additional notification requirements include: 1) changes to the AEM Certified Planner of Record (Part II.B.); 2) plans to construct or expand any earthen liquid waste storage (Part II.B.); 3) any application over the recommended single manure application rate in the CNMP (Part IV.B.); and 4) any instance where there is a liquid manure, liquid food processing waste, liquid digestate, or process wastewater spill that is reported by the owner/operator or delegated CAFO staff to the DEC Spills Hotline (Part IV.B.). The 24-hour reporting requirement contained in this general permit related to liquid manure, liquid food processing waste, liquid digestate, or process wastewater spills will be satisfied through reporting of the incident through the DEC Spills Hotline (Part IV.B.1.). Five-day incident reports will be required to be submitted following a report to the DEC Spills Hotline (Part IV.B.2.). It is the Department’s expectation that the CAFO reports through the DEC Spills Hotline any: 1) unintended, non-agricultural releases of
liquid manure, liquid food processing waste, liquid digestate, or process wastewater, in excess of di minimus amounts, and/or 2) release of liquid manure, liquid food processing waste, liquid digestate, or process wastewater reaching drinking or surface waters (ECL §17-1743). The follow-up incident reports will allow for the CAFO, planner, and the Department an opportunity to assess the effectiveness of a CAFO’s Emergency Action Plan. The completed forms required to be submitted through these new notification requirements are available to the public upon request and represent an important additional step towards transparency and oversight.

**Climate change resiliency:** In accordance with the Community Risk and Resiliency Act (CRRA), 6 NYCRR Part 490, and associated guidance, GP-0-16-001 includes climate resiliency considerations, such as: Wet Weather Standard Operating Procedures; emergency action plans; winter weather spreading procedures; and floodplain location. Draft GP-0-22-001 includes a number of additional conditions intended to provide greater climate change resiliency and prevent water quality violations during certain conditions. Specifically, in addition to the already required winter weather spreading procedures, draft GP-0-22-001 would require development of specific wet weather spreading application procedures in accordance with Cornell’s Winter/Wet Weather Spreading Guidelines (Part III.A.8.c). Additionally, in development of the CNMP, draft GP-0-22-001 would require consideration of the projected floodplains included in the Community Risk and Resiliency Act (CRRA), 6 NYCRR Part 490, and associated guidance (Part III.B.8.).

Pursuant to Section 17-a of CRRA, Chapter 355 of the Laws of 2014 (as amended by Section 9 of the Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019), the Department must identify “the most significant climate-related risks” and promote “measures that could mitigate significant climate-related risks.” To implement those requirements, the ECL General Permit requires Professional Engineers, developing design plans for critical structures\(^1\) and for non-critical facilities\(^2\), to consider future physical climate risks according to CRRA, 6 NYCRR Part 490, the criteria found in Table 4 of the “State Flood Risk Management Guidance” and “Estimating Guideline Elevations”.

Pursuant to Section 17-b of CRRA, Chapter 355 of the Laws of 2014 (as amended by Section 9 of the Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019), activities covered by major permits for regulatory programs subject to the Uniform Procedures Act, including the ECL General Permit, are required to demonstrate that future physical climate risk has been considered. Moreover, the Department can require activities covered by a major permit to mitigate significant risks to natural resources in the vicinity of the activity. To implement those requirements, the ECL General Permit requires Professional Engineers designing both critical and non-critical structures, as discussed above and as defined in the general permit, to adjust designs to prevent or minimize inundation at these elevations, or provide justification for deviating from these elevations in the CNMP.

\(^1\) structures designed to be functional during flooding (e.g. waste storage facilities)

\(^2\) structures designed to survive flooding and regain functionality within an acceptable period (e.g. vegetated treatment areas)
Non-Contact Cooling Water (NCCW) authorization: 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 CAFO, 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 CAFOs as this water may take up much needed storage capacity.

To eliminate the need to store NCCW (i.e. clean water) in manure storage areas, Part III.B.1. of GP-0-16-001 authorizes discharges of NCCW from CAFOs to non-trout surface waters of the State, if certain conditions are met. Given the changing climate in New York, and strain on existing water resources, draft GP-0-22-001, Part III.B.1. would only authorize discharges of NCCW to groundwater of the State, instead of surface waters. This approach continues to encourage re-use of this water to the maximum extent practicable while still allowing for incidental discharges to groundwater, which provides recharge to the groundwater resource in lieu of discharging off-site. This change also increases climate resiliency by further encouraging water re-use on site to the maximum extent practicable and where total re-use is not possible, allowing for recharge to the original groundwater source helping to maintain the resource.

Although facilities who discharge NCCW to dry wells on site are likely subject to EPAs Underground Injection Control (UIC) Program, the conditions in this permit were developed with the UIC program requirements in mind and will likely result in compliance with that program. See [https://www.epa.gov/sites/default/files/2015-08/documents/class5_state_imp_guid.pdf](https://www.epa.gov/sites/default/files/2015-08/documents/class5_state_imp_guid.pdf) for further guidance on EPAs UIC program requirements.

CAFOs continue to have the option to apply for an individual SPDES permit if they wish to continue to discharge NCCW to surface waters. In addition, pursuant to 6 NYCRR 750-1.21(e)(1)(i) and (viii), 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 SPDES general permit and/or is causing or contributing to a water quality violation.

Construction Stormwater General Permit: Tables 1 and 2 of the Construction Stormwater General Permit include a list of construction activities related to CAFOs that may require coverage under the Construction Stormwater General Permit. Instead of obtaining coverage under the Construction Stormwater General Permit, GP-0-16-001 authorizes a subset of construction activities, which are listed in Appendix B, section B. Those activities would no longer be authorized under draft GP-0-22-001 but would be required to obtain separate coverage under the Construction Stormwater General Permit. This does not represent a change in the substantive requirements that apply to such activities.

It should continue to be noted however, that constructing one of the following operational and vegetative agricultural BMPs, as identified in the New York State Department of

Page 6 of 8
Agriculture and Markets document, “Agricultural Management Practices Catalogue for Nonpoint Source Pollution in New York State,” is **not required** to obtain coverage under the SPDES Construction Permit:

- Conservation Tillage
  - Minimum Till
  - No Till
- Contour Farming
- Cover and Green Manure Crop
- Critical Area Protection
  - Permanent Vegetative Cover
- Crop Rotation
- Filter Strips
- Integrated Pest Management
  - Biological Controls
- Cultural Practices
- Resistant Crop Varieties
- Scouting
- Trap Crops
- Irrigation Water Management
- Scheduling
- Nutrient Management
  - Fertilizer Management
- Land application of Manure
- Manure Nutrient Analysis
- Soil Testing
- Pathogen Management
- Pesticide Management
- Computerized Precision Application
- Evaluation of Site-Specific Leaching and Surface Loss Potential
- Pesticide Application Education and Training
- Proper Equipment Calibration
- Proper Timing of Pesticide Application
- Read and Follow the Label Directions
- Riparian Forest Buffer
- Strip-cropping

**OTHER CHANGES**

Draft GP-0-22-001 would also:

- Change and clarify language to require submission of a Change of Operation (COO) form 15 days before a CAFO expands its operation by 20% or more above the number of animals specified as in confinement in the last submitted an Annual Compliance Report (Part II.B.3.a)(1);
• require existing CAFOs to sign off on the COO form when being acquired. The COO form will act as the acquired CAFO’s Notice of Termination (NOT) (Part II.B.3.a)(4));

• provide an implementation schedule for existing CAFOs to allow for phasing in of the new 2.0 Phosphorus Index (Part III.A.3.a) and d));

• in accordance with 6 NYCRR 750-1.14(b), require interim progress reports every 6 months for the implementation of structural practices for a new Small CAFO or when an existing, compliant, permitted CAFO acquires an AFO or CAFO operation (Part III.A.3.c)(4) and Part III.A.3.d)(4));

• require use of the current versions of the Natural Resource Conservation Service Standards in effect at the time of the public notice of the draft (Part III.A.4.);


• clarify language regarding non-CAFO generated organics (Part III.B.3.c));

• allow for internet-based annual manure applicator training for an AEM certified planner (Part III.C.1.); and