



Department of  
Environmental  
Conservation

## **Responsiveness Summary**

**For**

**Public Comments Received**

**On the**

NEW YORK STATE

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ECL SPDES GENERAL PERMIT

CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs)

Permit No. GP-0-16-001

And

CWA SPDES GENERAL PERMIT

CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOs)

Permit No. GP-0-16-002

January 2017

Issued Pursuant to Article 17, Titles 7, 8 and Article 70

of the Environmental Conservation Law

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## Introduction

The New York State Department of Environmental Conservation (“the Department”) is issuing two State Pollutant Discharge Elimination System (SPDES) General Permits for Concentrated Animal Feeding Operations (CAFOs):

- The Environmental Conservation Law (ECL) SPDES General Permit for Concentrated Animal Feeding Operations (CAFOs) (GP-0-16-001) (“the ECL general permit”) which replaces SPDES General Permit GP-0-14-001; and
- The Clean Water Act (CWA) SPDES General Permit for Concentrated Animal Feeding Operations (CAFOs) (GP-0-16-002) (“the CWA general permit”) which replaces SPDES General Permit GP-04-02.

Both are being issued pursuant to Article 17, Title 7 and Article 70 of the ECL. GP-0-16-002 is also being issued pursuant to the federal Clean Water Act for CAFO operations.

Operations that fit the definition of a “CAFO” as defined in Appendix A of both general permits, constitute construction of a point source, as defined in ECL §17-01-05(16), and therefore, pursuant to ECL 17-0701(1)(a), an owner or operator must have coverage under a SPDES permit prior to operation of a CAFO. Any owner/operator of a new CAFO that is eligible for coverage under either of these general permits must obtain coverage prior to operation of the CAFO. An owner or operator of an existing permitted CAFO that becomes eligible for coverage under either of these general permits must obtain coverage under the ECL or CWA general permit prior to termination of coverage under any other SPDES permit.

The ECL general permit (GP-0-16-001) authorizes construction of a point source that is designed, constructed, operated and maintained to **not** discharge manure, litter, or process wastewater to surface waters of the State. An owner or operator may apply for coverage under this general permit by submitting a Notice of Intent (NOI) and a Comprehensive Nutrient Management Plan (CNMP) Certification to the Department.

The CWA general permit (GP-0-16-002) authorizes construction of a point source that is designed, constructed, operated and maintained to discharge manure, litter, or process wastewater in excess of the 25 year/24 hour storm event to surface waters of the State. An owner/operator may apply for coverage under this general permit by submitting a NOI and a farm-specific Annual Nutrient Management Plan (ANMP) to the Department.

The New York State Department of Environmental Conservation has prepared this responsiveness summary to address the comments that were received on the draft SPDES General Permits for Concentrated Animal Feeding Operations, GP-0-16-001 and GP-0-16-002.

The draft general permits were published for public review and comment in the

Environmental Notice Bulletin (ENB) on December 23, 2015. The Department provided a 45 day comment period that ended on February 7, 2016.

This responsiveness summary generally addresses all comments received, with the exception of comments dealing with editorial or formatting changes. The comments have been organized to follow the format of the draft general permits with general comments addressed at the end of the responsiveness summary.

## I. PERMIT COVERAGE AND LIMITATIONS

### I.A.1.a)

*Agricultural Consulting Services, Inc.*

**Comment 1:** There are farms currently covered by the 2004 Clean Water Act permit that are not fully implemented. Neither permit seems to allow these farms to gain permit coverage. How will the Department handle the permitting of these farms?

Response: The CWA general permit issued in 2004 (GP-04-02) required all permitted farms to be fully implemented by June 30, 2009. The ECL general permit issued in 2014 (GP-0-14-001) required all permitted farms to be fully implemented by June 30, 2014. Any farm that is not fully implemented must immediately contact the Department to determine an appropriate pathway to compliance.

*Agricultural Consulting Services, Inc.*

**Comment 2:** Please clarify that farms currently under consent agreement are or are not eligible for ECL Permit coverage.

Response: The Department reviews each NOI on a case by case basis. CAFOs that are under a consent agreement with the Department may be eligible for coverage under the ECL general permit depending on the circumstances of the particular situation. There may be circumstances where a farm under a consent agreement will be required to obtain coverage under the CWA general permit.

*Agricultural Consulting Services, Inc.*

**Comment 3:** Will a small CAFO that has fully implemented a CNMP be given permit coverage under either permit if/when they apply for it?

Response: An AFO that meets the eligibility criteria outlined in Part I.A.1 of both CAFO general permits is eligible to obtain coverage under either one of the CAFO general permits. This includes farms with less animals than the animal thresholds defining a medium CAFO.

### I.A.3.a)

*Western New York Crop Management Association (WNYCMA), Agricultural Consulting Services, Inc, North East Dairy Producers Association (NEDPA), New*

*York Farm Bureau (NYFB), etc. The Department received several comments regarding this issue:*

**Comment 4:** CAFOs that the Department has determined, prior to date of coverage, to be causing or contributing to a water quality standards violation; Clarification is needed as to whether this is an “ongoing” or “prior” violation.

Response: CAFOs are ineligible for permit coverage if they are actively causing or contributing to a water quality standards violation. This does not include violations that have been resolved.

I.A.3.c)

*WNYCMA*

**Comment 5:** If a horse racetrack, above the Medium CAFO threshold exporting all of their waste, discharges all of their process wastewater to a publicly owned sanitary sewer system, are they required to obtain coverage under the ECL or CWA permit?

Response: Per Part I.A.3.c) of both of the general permits, if the facility properly exports all waste and discharges all of its process wastewater to a publicly owned wastewater treatment system that discharges in accordance with a SPDES permit, then the facility does not need coverage under a CAFO general permit.

I.B.

*The New York State Federation of Lake Associations, Inc., Finger Lakes Regional Watershed Alliance (FLRWA)*

**Comment 6:** Numeric Nutrient Criteria Development - We strongly feel that as Numeric Nutrient Water Quality Criteria are developed for New York State, CAFOs should be held to the numeric standard -especially for phosphorus. This should be implemented as soon as the numeric criteria are developed and should not wait until the next CAFO General Permit renewal.

Response: These general permits do not authorize a CAFO to discharge from the production area during dry weather events. Farms covered under the CWA general permit would only be authorized to discharge from the production area above and beyond the 25 yr/24hr storm event; under the ECL general permit discharges from the production area are prohibited unless there is a 100yr / 24hr storm event. Discharges from crop fields for all farms are exempt from permitting requirements under the Clean Water Act

Agricultural Stormwater Exemption as described in Part I.B.2 of the ECL general permit and Part I.B.3 of the CWA general permit. However, no discharge may cause or contribute to the violation of a water quality standard – current or forthcoming.

*Owasco Lake Watershed Association (OWLA), FLRWA, etc. The Department received several comments regarding this issue:*

**Comment 7:** The new permit conditions should contain a method for all CNMPs to be monitored with clearly defined measurable water quality metrics and outcomes compliant with the ECL and the CWA. This would provide a mechanism for determining the success or failure of the nutrient balance and application schedules for fertilizer and manure within the CNMP. Failure to meet these water quality metrics and outcomes would initiate review and revision of the CNMP and require remedial action.

Response: All permitted CAFOs are required to develop and implement a CNMP that is compliant with NY Natural Resources Conservation Services Conservation Practice Standard 590, “Nutrient Management” (NY NRCS 590). The Department reviews compliance with the CNMP during CAFO inspections and site visits. Additionally, any instances of non-compliance must be reported to the Department through the submission of the Annual Compliance Report.

#### I.B.1

*OWLA, FLRWA, Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Health Department, Cayuga County Board of Health, Town of Fleming, City of Auburn. The Department received several comments regarding this issue:*

**Comment 8:** The overflow of manure from a farm field into a road ditch should be considered a violation. The draft currently states that such an overflow is only a violation if it discharges directly into “surface waters of the State”, which do not include road ditches. The phosphorus in manure that enters a road ditch carries a high probability it will reach a “surface water”, greatly increasing the risk of water quality degradation and cyanobacteria blooms. To exempt this overflow and the corresponding water quality monitoring from regulation are serious flaws in these permits.

Response: SPDES permits regulate discharges to the waters of the State, while also specifically prohibiting overflows from waste storage structures are prohibited in both the ECL and the CWA general permits.

## I.B.2 (ECL) & I.B.3 (CWA)

*OWLA, FLRWA, Cayuga County Health, etc. The Department received several comments regarding this issue:*

**Comment 9:** The draft permits state that the discharge of manure, defined as a release of manure into the surface waters of the State, that is precipitation-related, is exempt from regulation if the manure was applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in manure. OWLA advocates the use of clearly defined measurable water quality metrics and outcomes to determine if manure, which is placed on the field in a manner that it runs off during a precipitation event, is an appropriate agricultural utilization of the nutrients in manure.

Response: The permit requires that when manure is land applied, the application must be carried out in accordance with site specific nutrient management plan to ensure appropriate agricultural utilization of the nutrients in the manure, litter or process waste water. The Clean Water Act defines “a precipitation-related discharge of manure, litter or process wastewater where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, with site specific conservation practices to control runoff, appropriate testing of manure, litter or process wastewater and soil, and adequate documentation and recordkeeping” as an “agricultural stormwater discharge”. Any such discharges are exempt from SPDES permitting requirements but may not cause or contribute to a violation of water quality standards.

## I.B.6 (ECL) & I.B.7 (CWA)

*Cayuga County Health Department*

**Comment 10:** The draft CAFO permits say that any material that cannot be properly handled at the CAFO is prohibited from being stored in waste storage areas or land applied. The term "cannot be properly handled" is vague. The permits should be more specific on what material will be allowed to be discharged in a waste storage area or land applied.

Response: Part I.B.6 of the ECL general permit and Part I.B.7 of the CWA general permit specifically includes a “Prohibition on Unauthorized Substances: Sanitary waste, unless authorized pursuant to Part 360; unused

pesticides, unless done in accordance with label instructions; and any other material that cannot be properly handled at the CAFO, is prohibited from being stored in waste storage areas or conveyed through the waste storage transfer structures, or land applied.” This prohibits a farmer from putting contaminated diesel fuel, unused pharmaceuticals, etc. into the waste stream. Additionally, the permit also specifically defines “Food Processing Waste” to mean “waste resulting solely from the processing of fruits, vegetables, grains, dairy products, and related food products.”

*Agricultural Consulting Services, Inc.*

**Comment 11:** Land application of unused pesticides at labeled rates is the recommended practice for disposal. Simplify this section to prohibit the disposal of pesticides in manure handling facilities.

Response: Both general permits have been amended to read: “Prohibition on Unauthorized Substances: Sanitary waste, unless authorized pursuant to Part 360; unused pesticides, unless done in accordance with label instructions; and any other material that cannot be properly handled at the CAFO, is prohibited from being stored in waste storage areas or conveyed through the waste storage transfer structures, or land applied.”

## **II. OBTAINING/TERMINATING/CHANGING PERMIT COVERAGE**

### **II.A.**

*Onondaga County Council on Environmental Health, The New York State Federation of Lake Associations, Inc., FLRWA, Taconic Shores Property Owners Association, Inc., Cortland-Onondaga Federation of Kettle Lake Associations (C-OFOKLA), Brian S. Brundage NYS Resident, Sierra Club Niagara Group, Erin Riddle NYS Resident, Michael Decatur NYS Resident, Riverkeeper, Inc., Onondaga Nation, Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 12:** Public Availability and Review of CNMPs - Our understanding is that neither the NYSDEC Central or Regional offices maintain copies of CAFO CNMPs and the Plans are only kept at each CAFO facility. This clearly violates the intent of the *Waterkeeper Alliance Inc. vs EPA* 2005 2nd Circuit Court decision that ruled CNMPs should be made available for public review and comment. Certainly the agency charged with regulatory oversight needs to have these plans immediately available. An analogy would be the NYSDEC

not keeping copies of SPDES permits for wastewater treatment plants under their jurisdiction.

While more transparency and public review would be beneficial in many ways (see the *Waterkeeper Alliance Inc. vs EPA* 2005 2nd Circuit Court decision), the Council feels that copies of the CNMPs should be in the hands of ALL of the agencies that have any jurisdiction where spreading is taking place such as county health departments, soil and water conservation districts, local governing municipalities and if applicable, drinking water supply purveyors in drinking water supply lake watersheds.

Response: The *Waterkeeper* decision applies only to the CWA general permit. The 2<sup>nd</sup> Circuit in that decision held that the terms of the nutrient management plans are effluent limitations that are subject to the opportunity for public comment and hearing and must be reviewed and approved by the permitting authority. The permitting authority for the CWA in NY is the Department. Eligibility for both permits (ECL and CWA) is contingent on having a CNMP written by a certified planner. 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. These technical standards are incorporated into the general permits as the effluent limitations to be included in each farm-specific nutrient management plan. All farms seeking coverage under the CWA general permit, must also submit an Annual Nutrient Management Plan (ANMP) which describes the farm-specific effluent limitations in a consolidated format that allows for meaningful review by both the public as well as the Department. For the CWA general permit, the farm-specific ANMP must be submitted with the complete NOI prior to obtaining coverage and the availability of both documents will be publicly noticed, comments received for 30 days, and an opportunity to request a hearing provided.

#### *OWLA, FLRWA*

**Comment 13:** In the interest of transparency and the public need for greater scrutiny of the permit process, OWLA requests a copy of the NOI, the CNMP certification, any CAFO Incident Report, the Annual Certification Report, and any other CNMP related documents shall be made available to authorized reviewers through searchable secure informational technology mechanisms. Proprietary business information, if any, can be minimally redacted. Also a copy of a CAFO's CNMP Certification should be kept at the Albany DEC office or at the applicable regional DEC office.

Response: These documents may be requested from the Department by making a Freedom of Information Law (FOIL) request (<http://www.dec.ny.gov/public/373.html>). FOIL is governed by Sections 84-90 of the New York State Public Officers Law.

*Sierra Club Niagara Group, Erin Riddle NYS Resident, Michael Decatur NYS Resident. The Department received several comments regarding this issue:*

**Comment 14:** Require public participation in the permit application process by requiring notification of local elected county and municipal officials and by providing a required public comment period on each application.

Response: NOIs are required for all individuals seeking coverage under either of the CAFO general permits. Under the CWA general permit, the NOI will be available to the public for comment for 30 days prior to permit authorization. See the GP-0-16-002 Fact Sheet for more information on public participation.

*Onondaga Nation*

**Comment 15:** DEC does not provide the necessary agency review of or opportunity for meaningful public comment on the potential discharges from land application of wastes under the draft general permit for Non-Discharging CAFOs (GP-0-16-001). This draft permit should be revised to do so.

Response: The public has been afforded an opportunity to review and comment on the draft general permits including the technical requirements that must be met in each facility-specific CNMP.

*Consulagr, Inc.*

**Comment 16:** Having worked through the submission of several plans for the prior Large CAFO permit, that was later dropped, I have some experience with the process. First, it is a large piece of work. Once a plan is prepared for the farm, making the copies of maps, the printing of the necessary schedules (templates), and sending it to DEC, becomes a very large project. I have farms with over 300 individual fields. I hope the department is prepared to handle it. It is enough work to do it twice per year (the plan and the follow-up with the compliance report), but having to amend the plan becomes oppressive. My earlier experience and general experience with farms, is that the March 31 deadline is too soon. Many times the conditions on the farms during April cause changes to the crop and manure plans for the year. My suggestion is that the deadline for the plan submission should be moved to

the end of April to reduce the need to revise the plan and the submission of those revisions. Electronic submission of those plans is not an easier process. I would have to first do the plan, go through the process of doing a .pdf and then send it through a carrier that could handle the large files. Some internet providers cannot handle fields that large. It is not a time saver. Printing it out and the using the mail still works.

Response: Electronic submission is an option under the draft permits although it is not a requirement at this time.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 17:** DEC must clarify that ECL-permitted CAFOs cannot avail themselves of a defense to a discharge from their production areas unless their CNMPs have been subject to public review.

Response: Part I.B.1 of the ECL general permit states: “It shall be a violation of this general permit and the Environmental Conservation Law (ECL) for a CAFO with coverage under this general permit to discharge from their production area to surface waters of the State.”

*OWLA, FLRWA, The New York State Federation of Lake Associations, Inc, Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Board of Health, Town of Fleming, City of Auburn, Cayuga County Health Department, Ann M. Robson NYS Property Owner. The Department received several comments regarding this issue:*

**Comment 18:** There is no provision proposed for any independent third party review of a CNMP. OWLA proposes that changes be made in such a way as to increase the assurance of compliance. Adequate review of comprehensive nutrient management plans (CNMP) and oversight of certified planners are currently lacking in the draft permits. In the past, farms following comprehensive nutrient management plans prepared by certified planners have experienced significant loss of soil and nutrients through runoff. Plans, once they are created, are not subject to a rigorous review by an objective third party. The draft CAFO permits do not address this significant deficiency. We request that the State provide adequate resources to enable an objective third party review of the CNMPs.

Response: CAFOs seeking coverage under the CWA general permit must submit a complete Notice of Intent (NOI) and Annual Nutrient Management Plan (ANMP) for review and approval by the Department before coverage under that permit will be granted. Once the Department receives these documents, their availability will be posted to the Environmental Notice Bulletin for public review and comment for 30 days. The public may also request a hearing during this 30 day period. In addition, if, at any time, the individual farm proposes an action that does not meet NRCS standards than a revised ANMP must be submitted, made available to the public for comment and an opportunity for hearing provided.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 19:** DEC should clarify that final CNMPs and substantial CNMP modifications for all permitted CAFOs will be publicly available.

Response: The availability of all ANMPs, required under the CWA general permit, and substantially modified ANMPs (as defined by the Department in GP-0-16-002) will be posted to the Environmental Notice Bulletin as discussed in the Fact Sheet for GP-0-16-002.

### II.A.3

*Agricultural Consulting Services, Inc.*

**Comment 20:** For many reasons new operations need their permitting to be certain before large capital investments are made in facility construction. As currently written, this section does not adequately state that new operations can gain permit coverage before they construct a facility (the use of “above documents” could be interpreted to include the certification that BMPs required by the CNMP are complete).

Please clarify that ECL permit coverage can be obtained before a new facility is constructed by replacing: “Coverage under this general permit will begin 30 calendar days after the Department receives completed versions of the above documents, unless otherwise notified by the Department.” with:

“Coverage under this general permit will begin 30 calendar days after the Department receives completed versions of the farm specific NOI form and

CNMP Certification signed by the owner and AEM certified planner, unless otherwise notified by the Department.”

Please clarify that CWA permit coverage can be obtained before a new facility is constructed by replacing: “Coverage under this general permit will begin 60 calendar days after the Department receives completed versions of the above documents, unless otherwise notified by the Department.” with:

“Coverage under this general permit will begin 60 calendar days after the Department receives completed versions of the farm specific NOI form, ANMP and CNMP Certification signed by the owner and AEM certified planner, unless otherwise notified by the Department.”

Response: Both general permits have been modified to provide clarification.

#### II.A.4 (ECL)

*NYFB*

**Comment 21:** For existing CWA permitted operations that are requesting ECL permit coverage, there is no specified timeframe in which DEC will respond to permittees regarding approval or denial of their requested ECL permit coverage. NYFB respectfully requests DEC amend this section to include a specified timeframe for agency response to the farmer after receipt of their NOI and CNMP certification. NYFB recommends that DEC provide a response as to whether coverage is granted no later than 60 days following submission of their NOI and CNMP certification.

Response: Part II.A.4. of the ECL general permit has been modified to state that coverage under the ECL general permit will begin 30 calendar days after the Department receives completed versions of the NOI and CNMP Certification, unless otherwise notified by the Department.

#### II.B.2.a)(1)

*WNYCMA, McClelland Agronomics. The Department received several comments regarding this issue:*

**Comment 22:** Clarification is needed as to whether the 20% increase is from the animal numbers reported in the Notice of Intent or the animal numbers reported in most recent Annual Compliance Report, or 20% above the number specified in the CNMP.

Response: Part II.B.2.a)(1) of both general permits states: “At least 15 calendar days before the CAFO expands its operation and increases the

number of animals 20% above the number specified in the existing CNMP". Important to note that Part III.E.1 of both general permits also requires the CNMP to be updated annually in addition to any other update requirements specified in the permits.

II.B.2.a)(2)

*Kreher Enterprises*

**Comment 23:** Filing a Change of Operation form at least 30 days before constructing or expanding a liquid or semisolid waste storage facility by greater than one million gallons.

-Does this filing of a Change of Operation form apply to solid storages, and if so, what determination of size is used as a trigger for filing?

Response: No, this does not apply to solid storages.

II.B.2.a)(5)

*WNYCMA, NEDPA, NYFB. The Department received several comments regarding this issue:*

**Comment 24:** While it is important to notify the Department when a CAFO downsizes from the Large to a Medium, not all "downsizing" plans come to fruition; it would be impossible to give notice in a catastrophic event. It is recommended that such notice be "within 30 calendar days after" the CAFO downsizes.

Response: Part II.B.2.a)(5) of the both permits has been modified to, "Within 30 calendar days after the CAFO downsizes from a Large CAFO to a Medium CAFO".

II.B.2.a)(2-5)

*McClelland Agronomics*

**Comment 25:** Standardize the numbers to 15 days to reduce confusion and complexity.

Response: The Department feels the timeframes provided in the general permits are appropriate.

II.C.a) (ECL)

*NYFB, McClelland Agronomics, Agricultural Consulting Services, Inc.*

**Comment 26:** Duty to File Notice of Termination – NYFB does not contest that farms terminating permit coverage due to declining animal numbers below the minimum threshold that defines a medium CAFO should maintain structural BMPs and continue their land applications and manure management under the guidance of a nutrient management plan. However, NYFB questions how the agency intends to compel compliance with this section once the farm is no longer a permitted CAFO and outside the parameters of its authority. NYFB respectfully recommends that this paragraph be removed from the permit draft.

Response: This section of the ECL general permit has been reworded to contain the following: AFOs that fall below the CAFO threshold of 300 mature dairy cows but are above 200 mature dairy cows must maintain their structural BMPs and continue their land applications and manure management under the guidance of a nutrient management plan to maintain their no discharge status. This section has been deleted from the CWA general permit.

### III. COMPREHENSIVE NUTRIENT MANAGEMENT PLANS

III

*WNYCMA, Agricultural Consulting Services, Inc., etc.*

**Comment 27:** A CNMP is a planning tool that contains detailed recommendations of practices and measures necessary to prevent and properly manage liquid and solid waste, including runoff from production areas. The CNMP cannot “ensure the implementation of practices”. It is suggested that “and ensure the implementation of” be replaced with “the”.

Response: Part III of both permits has been modified to state, “The CNMP shall describe and document the implementation of the practices that are used to assure compliance with the conditions of this permit”.

III.A.1

*McClelland Agronomics*

**Comment 28:** Does a change in contact information also require a change in status form to be submitted?

Response: A Change In Operation form is required if the change in contact is a change in the legally responsible party.

*Agricultural Consulting Services, Inc.*

**Comment 29:** Remove the requirement to notify the Regional Water Engineer within 15 days and instead require that the contact information is updated annually on the Annual Compliance Report.

Response: Comment noted. However, it is important that the Department have the most current contact information available.

### III.A.2

*Agricultural Consulting Services, Inc.*

**Comment 30:** Replace the words “nutrient sources” with “manure and/or process wastewater”.

Response: The term nutrient sources is specifically used to ensure that the CNMP accounts for all sources of nutrients on the farm, not just manure and process wastewater.

### III.A.3

*Agricultural Consulting Services, Inc.*

**Comment 31:** AEM Planners are not qualified to prescribe a management system for engineered practices. Please replace the word “prescribe” with the word “describe” and require a qualified professional to develop these plans.

Response: The language is consistent with the two previous ECL permits GP-0-09-001 and GP-0-14-001.

### III.A.3.c)(2) & III.(C,D,E)

*Agricultural Consulting Services, Inc.*

**Comment 32:** Based on these sections, we understand that the minimum role of the AEM Certified Planner is to:

1. develop or review the CNMP, and
2. certify that the CNMP has been prepared in accordance with “all applicable NRCS Conservation Practice Standards” and this general permit, and
3. visit newly acquired AFO or CAFO operations, acquired by an existing, compliant, permitted CAFO”

Please verify that these are the only requirements of an AEM Certified Planner.

Response: The Permittee is the legally responsible party for permit compliance.

III.A.3.c)

*NEDPA, NYFB, WNYCMA, Jefferson Co. SWCD, etc. The Department received several comments regarding this issue:*

**Comment 33:** There are scenarios where a fully compliant CAFO operation acquires a non-regulated AFO and wishes not to integrate the new operation into the existing CAFO permit. (Example: A compliant CAFO owner/operator purchases a new farming operation for the purpose of housing specialty livestock or producing alternative agricultural products, such as organic milk. The operations are not contiguously connected and both have independent land application areas, so nutrients are not mixed between the two.) The current permits (GP-04-02 / GP-0-14-001) do not require the newly acquired facility to be incorporated into the permitted facility unless there is “Common Ownership”. The draft permits should evaluate whether operations “share fundamental resources” only if the facilities first meet the definition of “Common Ownership.”

Response: The referenced section of this general permit provides CAFOs acquiring facilities, a path for compliance. The permitted CAFO can choose to keep the acquisition separate as long as they can show that the operations are not under common ownership. The term “share fundamental resources” has been removed from the permits.

III.A.3.d)

*Madison County SWCD*

**Comment 34:** Throughout the document there are references to both a 100 year storm event as well as a 25 year storm event. Since all of the structures installed to control both clean water and waste on the farm were designed by either a licensed engineer or NRCS employee with appropriate approval authority, it only follows that all of these systems will be required to be reevaluated for no discharge in a 100 year storm event at considerable cost to the farming community. This is an extremely large workload as well and there is no mention that we can find about how long existing CAFO's will have to comply with these new requirements.

Response: Practices, including waste storage structures, must all be designed, operated, and maintained to the 25-year, 24-hour storm. In order for a non-discharging CAFO to reasonably assert that they are meeting the “no discharge” requirement of the ECL general permit, or the “no discharge” requirement for New Swine, Poultry, and Veal CAFOs under the CWA general permit, CAFOs must implement 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.

#### III.A.3.e)

*NYFB*

**Comment 35:** BMP Enhancements – NYFB strongly supports enhancement practices on the farm whenever possible but appreciates the stated clarification that enhancement practices are not subject to the requirements and timeframes established in this section.

Response: No changes have been made to these sections of the permits.

#### III.A.4

*NYFB*

**Comment 36:** NYFB strongly supports this section which allows all existing BMPs that meet the water quality protection intent of the current NRCS standards or that can be updated to meet their water quality protection intent through either structural or non-structural changes to remain in place. Our farmers know that newer is not necessarily better and effectiveness takes precedent over trending practices. This important CAFO program policy reflects this practical environmental planning strategy by allowing farms to implement environmental protection in a cost effective manner and enable scarce financial resources to be used on other required BMPs in furtherance of actual water quality protection.

Response: No changes have been made to these sections of the permits.

*Cayuga County Health Department, Ann M. Robson NYS Property Owner, Jonathan Robson NYS Property Owner, etc. The Department has received several comments regarding this issue:*

**Comment 37:** Technical standard Nutrient Management -NY 590 is an important part of the draft CAFO permits, however public comment or hearing regarding this standard was never afforded. We believe that this is a significant oversight that should be addressed.

Response: NRCS has its own procedures for developing its technical standards which does involve a public review period. Draft Standards are posted to the Federal Register for public review and comment (<https://www.federalregister.gov/documents/2016/08/22/2016-19866/notice-of-proposed-changes-to-the-national-handbook-of-conservation-practices-for-the-natural>).

*Agricultural Consulting Services, Inc.*

**Comment 38:** Please replace the words "...in accordance with (b)-(e) below." with "...in accordance with (b)-(d) or (e) below."

Response: Comment noted, the permit language remains unchanged. Section III(A)(4)(e) is not a substitute for the requirements of sections III(A)(4)(b) thru (d).

III.A.4.a)

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 39:** The Draft Permits must clearly identify all external standards that CAFO owners and operators must comply with as a term of the Permit, including any external standards within referenced external standards that are incorporated into the Permits. DEC should include all referenced (and internally referenced) standards on its website and the Draft Permits should include a link to the page of the DEC website where those standards can be found through the full term of the Permits.

Response: All Standards and guidance referenced in the permits will be available on the CAFO main page on DEC's public website.

Footnote linked to Part III.A.4.a)(9) in both General Permits

*WNYCMA*

**Comment 40:** It is recommended that "2014 Cornell Waste Management Institute – Composting Animal Mortalities" be added.

Response: The permits have been amended to cite the updated document.

III.A.4.b)

*JESS Engineering PLLC, Agricultural Consulting Services, Inc., Jefferson Co. SWCD, WNYCMA. The Department received several comments regarding this issue:*

**Comment 41:** It has not been my practice to include soil test results within the design or as built. To meet NRCS Standards any storage designed after the 2006 NRCS Standard (and potentially earlier versions of the standard) would need to be based upon a soil sample. If you were to require farms to have a design that specifically has the soil sample test results included it would require all of our existing as-builts be redone. I would suggest that you consider stating that any existing as-builts completed by a qualified professional and based on NY 313 NRCS 08/2006 or newer would satisfy this requirement.

Response: The 2006 standard included the need to provide soil testing. The Department feels this was a significant change that warrants re-evaluation if not included. The permit has been modified to state: “Existing Open Waste Storage Structures, that do not have a *design report* or as-builts containing soil sample test results and signed by a qualified professional; or...”

*TeamAg, Inc.*

**Comment 42:** The proposed permit requirements do not make a distinction for open concrete or steel structures where the “soil sample test results” would not be applicable for the design of the containment. Soil testing is typically employed on clay lined structures and the testing information has always been included in the design report, not the as-built drawing.

Response: The permits have been modified as described in the response to Comment 41. In addition, the permits require that the owner/operator maintain either a design report or as-builts containing soil sample test results or a certification from a qualified professional documenting equivalence to one of the listed versions of NY 313 NRCS Standard. In the example described, the owner/operator would not need to provide soil sample test results for a open concrete or steel structure if they had a certification from a qualified professional documenting equivalence to the listed NY 313 NRCS Standard.

*Jeffrey Carlson NYS Resident*

**Comment 43:** There is reference to NRCS Standard 313 0812006. Does this standard exist and if so, can you provide a copy? The NRCS website does not indicate that standard with that date. Please check records.

Response: All standards referenced in either of the general permits will be available on the NYSDEC CAFO webpage once the final permits are posted.

*McClelland Agronomics*

**Comment 44:** Seems as though under barn/roofed storages remain exempt from requiring an evaluation?

Response: Yes under these general permits, under barn storages are exempt from needing to be evaluated by a qualified professional.

Footnote linked to Part III.A.4.b. in both permits

*Agricultural Consulting Services, Inc.*

**Comment 45:** Does a “statement of job approval authority” exist? The Planner and farm communities have no knowledge of this process.

Response: Each NRCS employee has some level of delegated engineering job approval authority (EJAA). The EJAA is delegated down from the State Engineer to the Area Engineers then down to area staff as earned, per National Engineering Policy (Title 210 NEM Part 501 Subpart A).

III.A.4.e)(1)

*Agricultural Consulting Services, Inc.*

**Comment 46:** We have not reviewed the Annual Compliance Report. How should these considerations be documented in the Annual Report, and what is meant by “differences”?

Response: With regard to “differences” as used in the above permit section, the AEM certified planner or qualified professional is required to provide an evaluation of an existing BMP reflecting the applicable NRCS standard. The variances between the BMP and the NRCS standard need to be documented in the CNMP and in the comments field under the compliance section of the ACR.

III.A.5. (ECL) and I.B.1. (CWA)

*Agricultural Consulting Services, Inc.*

**Comment 47:** As currently written Wet Weather Standard Operating Procedures (WWSOPs) could only be created by a qualified professional using a site survey. Any WWSOPs that are developed without a site survey by someone other than a qualified professional will provide little or no environmental protection. Ideally, this requirement will be removed from the permits. If the WWSOPs requirement is not removed, please clarify in the permits that WWSOPs must be developed by a qualified professional and give permitted farms ample time to retain a qualified professional and to develop and implement the practices. Also, please recognize that this will create a financial hardship for all permitted farms.

Response: 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. 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.

*Cayuga County Health Department*

**Comment 48:** The required Wet Weather Standard Operating Procedures are defined as management strategies determined by the planner. This vague language is unacceptable in a CAFO permit as no one knows what they are and therefore comments on their acceptability cannot be made.

Response: Wet Weather Standard Operating Procedures are those management strategies determined by the planner and employed by the facility to prevent discharges to surface waters of the State up to, and including, the 100-year, 24-hour storm event. Overflows from practices other than waste storage structures, which are designed, operated and maintained to the 25-year, 24-hour storm, that do not result in a discharge to the surface waters of the State, are not considered to be violations of this permit. When determining wet weather management strategies, the planner should consider the risks associated with the site layout and protection needed on an individual basis. These procedures could include, but are not limited to; 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 BMP overflow paths during high flow events.

*NYFB*

**Comment 49:** Wet Weather Standard Operating Procedures – Our members have a strong commitment to environmental sustainability and protection under the new weather “norm” that has established itself over the last few years. Our farmers are focused on eliminating run-off risk in this protracted pattern of wetter winters, more extreme storm events and capricious weather variability. NYFB believes the wet weather standard operating procedures (WWSOPs) introduced in this permit draft may provide deeper insight and oversight by farmers into the more intensive weather-related farm impacts that are now anticipated, such as steeper changes in rain erosivity in production areas. However, because this is a new component of a CAFO plan and both planners and farmers will be learning how best to develop these WWSOPs, we encourage the Department to work with planners and farmers in an educational setting after the permit is finalized to talk through questions and concerns that may arise as we begin to actually implement this component. NYFB believes the best way to implement this new aspect is through a close cooperative relationship with DEC and the regulated community.

Response: Department staff are available to answers questions from farmers, planners and the public regarding this new permit requirement at any time.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 50:** To prevent confusion, Section III.5 of the ECL Permit should reference the Spreading Guidelines and specify that the WWSOPs that are included in all CNMPs must prohibit spreading in all circumstances that the Spreading Guidelines identify as risky scenarios.

Response: WWSOPs apply to the production area. The Spreading Guidelines apply to land application areas.

III.A.6. (ECL) & III.A.5. (CWA)

*Jefferson Co. SWCD*

**Comment 51:** Operation and Maintenance. Wording in the last line states that failure to properly operate and maintain a BMP is a violation of this general permit. We can all agree the proper O&M is necessary for the operation of all BMPS, however, I feel that there should be no permit violation unless there is a discharge.

Response: Proper O&M is necessary in order to prevent discharges and protect water quality.

### III.A.7. (ECL) & III.A.6. (CWA)

*Consulagr, Inc., Agricultural Consulting Services, Inc. The Department received several comments regarding this issue:*

**Comment 52:** Emergency plans are important for farms. By adding “pesticide spillage, fuel handling and storage, and catastrophic emergency situations” to the planning requirement adds an entirely new dimension to the planning and implementation process. Most large farms with a permitted fuel storage already have an emergency plan for those storages. Pesticide spillage may already be covered by the specific pesticide label. A “catastrophic emergency situation” is a black hole of potential situations. I would prefer to focus on the emergencies that may occur around manure and other nutrient handling situations. Frankly, liquid fertilizer handling and liquid feed storage is a risk equivalent to handling manure, yet is not specifically addressed in the permit

Response: Comment noted.

### III.A.7.b)

*NYFB*

**Comment 53:** NYFB believes a narrative identifying potential water resources that could be impacted by spillage or an emergency situation should be an option to satisfy the requirement listed under this subsection. All necessary information can be obtained through the use of a narrative by the farm, including a description of the water body combined with the specific latitude and longitude of the farm.

Response: Comment noted. However, the Department feels a map provides an important level of detail for responsive farm staff.

### III.A.8. (ECL) & III.A.7. (CWA)

*Onondaga County Council on Environmental Health, David Snutes, NYS Property Owner, Russell & Lisa Germond, NYS Property Owner, etc. The Department received several comments regarding this issue:*

**Comment 54:** Adequacy of CNMPs to Prevent Manure Runoff Events -

Realistically, the causes of manure runoff events are due to the following: i) an extraordinary precipitation or runoff generated event, ii) failure to follow/implement the CNMP stipulations, or iii) the inadequacy of the CNMP whether in general or for specific practice(s). The breakdown under those categories statewide is not known, but hopefully the NYSDEC has suitable documentation and will issue a report containing that information.

In the three local events in Onondaga County that the Council has studied, it appears that the agricultural operators followed the requirements of the respective Plan in at least two of those circumstances. This highlights the limitations of CNMPs as a water quality protection mechanism.

The overall approach appears to be more reactive than proactive since modifications to CNMPs (i.e., strip cropping, or no spreading on a particular field) are made after a runoff event has taken place. This raises a legitimate concern as to why these added stipulations were not included in the original CNMP.

Response: These general permits incorporate by reference the use of several evaluation tools and technical documents to be used in the development of the farm specific CNMP. Further, the permit requires the permittee to evaluate the identified risks factors in the “Revised winter and wet weather manure spreading guidelines to reduce water contamination risk” when determining whether the conditions are appropriate for the land spreading of nutrients at a particular rate, on a particular field on a particular day. The evaluation of the risk factors is mandatory during winter weather conditions.

*Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Board of Health, OWLA, Town of Fleming, City of Auburn, Cayuga County Health Department, Ann M. Robson NYS Property Owner, etc. The Department received several comments regarding this issue:*

**Comment 55:** The CAFO permits should clearly specify the field conditions which must exist and the management practices which must be followed in order to spread manure. The draft permit does not define terms such as saturated, fluid-saturated, and frozen-saturated, conditions under which manure applications cannot be made, and does not even mention weather

conditions, such as precipitation and snowmelt conditions. The Advisory Committee to the Cayuga County Manure Management Working Group, which was comprised of farmers as well as non-farmers, expressed concern last year that the lack of specificity within the Nutrient Management (Code 590) Standard allows the Standard to be interpreted in ways that do not support the reduction of manure runoff to the extent possible. The draft permits fail to address this need for specificity.

Response: The permits have been modified to include a definition for “Saturated” and “Frozen-Saturated”. Additionally, Part III.A.8. of the ECL general permit and Part III.A.7. of the CWA general permit have been modified for clarity.

*Sierra Club Niagara Group, Erin Riddle NYS Resident, Michael Decatur NYS Resident. The Department received several comments regarding this issue:*

**Comment 56:** Specify when CAFO waste spreading may not occur, in particular forbid spreading when the ground is frozen, or saturated and when there is a forecast of an inch or more of rain.

Response: Part III.A.8 of the ECL general permit and Part III.A.7. of the CWA general permit requires the permittee to manage application of nutrients to prevent runoff and prohibits spreading on saturated soils.

*NYFB*

**Comment 57:** NYFB agrees that a farm’s CNMP should be developed according to the NRCS NY590 Standard with a focus on preventing runoff during any and all applications. NYFB is strongly supportive of the ability for farmers to spread manure at all times of year provided it is done in an environmentally responsible manner that supports nutrient distribution at agronomic rates which prevents run-off to surface and ground water. Again, as stated previously in these comments, our members never want to lose nutrients to the environment and are always improving their nutrient use efficiencies.

NYFB does not believe that a spreading ban based on a season or calendar date is an environmentally responsible strategy. This type of spreading ban is a one-size-fits-all, oversimplistic regulatory approach that defies proper nutrient management and does not guarantee water quality protection. Water quality gains come from science-based, research-tested best practices being used in precise applications at an appropriate rate at opportune times throughout the year under the guidance of the farm’s CNMP rather than force

all farmers at all management levels to apply during an exact time frame. For this reason, NYFB strongly supports well-planned applications of nutrients at agronomic rates under the guidance of the farm's CNMP under appropriate weather conditions throughout the year.

Response: Comment noted.

*Cayuga County Health Department*

**Comment 58:** The draft permits appear to make a distinction between frozen-unsaturated and frozen saturated soil. Frozen soil that is unsaturated may remain in that state for a while, but the frozen surface layers will "wick" deeper up to the surface so if the freezing state is prolonged, eventually concrete frost will be almost inevitable. A distinction to allow spreading on frozen-unsaturated soil is misguided and should be removed.

Response: The identified risk factors in the "Revised winter and wet weather manure spreading guidelines to reduce water contamination risk" December 2015 published by Cornell University, was added to the permit to ensure that the permittee evaluates the identified risks (in consultation with an AEM certified planner) when determining whether the conditions are appropriate for the land spreading of nutrients at a particular rate, on a particular field on a particular day. The evaluation of the risk factors is mandatory during winter weather conditions. The ability of the soil to absorb nutrients is one of the risk factors identified in the guidelines.

*Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Board of Health, Town of Fleming, City of Auburn, etc. The Department received several comments regarding this issue:*

**Comment 59:** The draft general permits specify that applications of manure, litter, food processing waste, digestate, and process wastewater may not be made on either fluid-saturated or frozen-saturated soils. They also state, however, that in addition, all waste applications must be made in accordance with requirements specified in subsequent paragraphs. Subsequent paragraphs include those addressing application during adverse spreading conditions. Adverse spreading conditions is defined as soil that is " ... frozen (4"+), snow covered (4"+), or encumbered by significant surface icing." If application on frozen soil is allowed, it is more than likely that applications will occur on frozen-saturated soil at times when it is difficult or practically impossible to determine (especially after the fact) that the soil was not saturated before it froze. The provisions of the permits should be revised since in their present form they would create confusion with respect to winter

spreading and might provide a potential loophole in winter spreading restrictions.

Response: See response to Comment 58.

*Yates County SWCD*

**Comment 60:** I understand the reasoning behind no applications on saturated soils and frozen - saturated soils. In regards to the frozen-saturated - I think it will be difficult for farmers to determine when manure spreading in the winter to determine which areas of their fields are frozen vs. frozen - saturated. Low areas of fields adjacent to streams and/or wetlands would be easy to determine but other areas would be almost impossible to know what's frozen vs. saturated frozen. There could be many small pockets that are saturated frozen in fields that from the tractor seat would be very difficult to determine.

Response: See response to comment 58. In addition, if a farmer is uncertain than spreading should be avoided.

*Crossbrook Farm LLC*

**Comment 61:** The adverse weather applications may provide severe challenges for many of our New York State Farms, where long-term storage is not available, and due to financial and topographical constraints cannot be included in a future strategy. We believe that there should be a "special circumstance" applied to those who have upgraded their livestock enterprises to adhere to all regulations, spent enormous sums of money to complete plans and remain in compliance, but in these special cases cannot provide long-term manure storage, as such a change would put that farm at financial risk and if enforced would put them out of business.

Response: These general permits provide some flexibility to the CAFO owner/operator to develop, in consultation with their AEM certified planner, the best method for the handling of nutrients to meet permit conditions. However, all applicable laws, regulations, and permit terms and conditions must be followed.

*Cayuga County Health Department, Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Board of Health, Town of Fleming, City of Auburn, OWLA, FLRWA, etc. The Department received several comments regarding this issue:*

**Comment 62:** The need for adequate manure storage capacity should be specified in the CAFO permits. Cornell University, in their 2015 publication,

"Revised Winter and Wet Weather Manure Spreading Guidelines to Reduce Water Contamination Risk", states that it is most important that managers ensure the farm has adequate storage for all types of manure to minimize the risk that manure needs to be applied when runoff risk is high. The draft permits say that the CNMP must describe the current waste storage capacity of the farm and how it shall be managed to prevent applications on saturated soils." "Managed to prevent" is too vague. Instead the permit should require enough storage capacity to get farm operations through the winter (5 or 6 months) so they will not need to spread during high risk conditions.

Response: These general permits require the management of nutrients in an environmentally sound manor using facility specific best management practices (BMPs) designed and operated according to NRCS standards.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 63:** As the Adverse Weather Spreading Guidelines state: "Operations that use last resort fields in emergency conditions every year need more storage." We urge DEC to alert dairy operators that they must develop and implement plans to install sufficient storage for liquid and solid manure within 5 years because the next version of the ECL permit will be more restrictive in terms of when winter spreading is permitted.

Response: Comment noted.

III.A.8.a) (ECL) & III.A.7.a) (CWA)

*Consulagr, Inc.*

**Comment 64:** The limitation of 20,000 gallons for manure is not cumbersome. However I have farms that need to irrigate out "waste" water from storage lagoons used to collect runoff from bunk silage storage areas, feed handling areas, and other farmstead runoff situations. It is at the best rainfall runoff, and the worst it is "gray water". Most cases it is less than 1% solids, largely debris from the collection areas. Typically it has been applied by irrigation equipment to hydrologic loading limits, usually less than 2 inches of water on established hay fields during the summer. It has worked very well. My suggestion is to limit the application at 20,000 gallons for liquids in excess of 1% solids. Otherwise limit applications to the hydrologic loading limits for the field's conditions.

Response: The permits have been modified to limit the single application of manure, litter, food processing waste, and digestate to 20,000 gallons per acre and to limit the single application of process wastewater to 27,000 gallons per acre.

*Agricultural Consulting Services, Inc.*

**Comment 65:** This section of the permit is contrary to the guidance provided by the NY NRCS 590 standard. Multiple applications/sources cannot be added together to create an annual rate. Each application is a stand-alone event that provides a different amount of nitrogen based on source, timing, and method. Furthermore, an arbitrary cap on all manure products, on all soil types, in all areas of the State, under all conditions diminishes the value of the science and suggests that the maximum allowable rate is open to opinion. Please update this section as follows: “The CNMP must identify allowable spreading rates for all fields and these rates must not be exceeded. During emergency situations, where applying above the recommended rate is necessary to prevent an overflow or discharge from a manure storage structure, the owner/operator must orally notify the Department Regional Office (Appendix C) within 24 hours and submit a written CAFO Incident Report within 5 business days from the date of application.”

Response: Comment noted.

*McClelland Agronomics*

**Comment 66:** What is the difference between over-application of a field for emergency purposes and that of over-application for lack of paying attention to details about the recommended application rates? Why is it the emergency spread situation requires notification and submittal of an Incident Report for over application due to an emergency? Couldn't it go on the ACR along with any other field that had been applied above CNMP recommended rates?

Response: During normal operations the CAFO should not have an over-application of nutrients to a field. Over-application is a violation of the permit. The emergency situation that is referred to in the above comment is identified in the permit as being necessary to prevent an overflow from a waste storage facility and is considered an upset condition. Notification is necessary to document due diligence on behalf of the owner/operator as the action potentially prevented a more serious incident from occurring.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and*

*Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 67:** To qualify for a necessity based exception, a CAFO should be required to demonstrate that it has sufficient capacity available as of December 1 to store all manure and waste water generated by the CAFO for 180 days (as Maine requires) without resorting to land application as a means of disposal.

Response: This general permit requires the management of nutrients in an environmentally sound manor using facility specific best management practices (BMPs) designed and operated according to NRCS standards.

*Cayuga County Health Department*

**Comment 68:** A mass balance of phosphorus should be included in the CNMP. This would let the farmer and NYSDEC know how much phosphorus is leaving the field.

Response: Farms are required to follow the NY 590 Standard.

*Pine tree farms Inc*

**Comment 69:** Over-application of manure should NEVER be allowed. Stricter compliance needed here.

Response: Comment noted. See Response to Comment 66.

*Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Health Department, Cayuga County Board of Health, Town of Fleming, City of Auburn, OWLA, FLRWA, etc. The Department received several comments regarding this issue:*

**Comment 70:** The Advisory Committee to the Cayuga County Manure Management Working Group, which was comprised of farmers as well as non-farmers, expressed concern last year that the lack of specificity within the Nutrient Management (Code 590) Standard allows misinterpretation that does not clearly require the reduction of manure runoff to the maximum extent possible. The draft permits fail to address this need for specificity. The ambiguity in the proposed permits is a disservice to all parties, especially the agricultural community.

Response: Comment noted. See Response to Comment 71.

III.A.8.b) (ECL) & III.A.7.b) (CWA)

*Jefferson Co. SWCD*

**Comment 71:** I feel that is best to continue to use the 590 standard to determine spreading timing, and that the 2015 Revised Cornell Guide should be used in complement, as a consideration, rather than making it a regulatory requirement.

Response: The identified risk factors in the “Revised winter and wet weather manure spreading guidelines to reduce water contamination risk” December 2015 published by Cornell University, was added to the permit to ensure that the permittee evaluates the identified risks (in consultation with an AEM certified planner) when determining whether the conditions are appropriate for the land spreading of nutrients at a particular rate, on a particular field on a particular day. The Department feels this was a necessary addition in order to protect water quality.

*NYFB*

**Comment 72:** NYFB believes the 2015 Revised Cornell Guide “Supplemental Manure Spreading Guidelines to Reduce Water Contamination Risk During Adverse Weather Conditions” cited in this section to be a great asset as farmers adapt their daily operations to accommodate the “new normal” for northeast weather. It will be very effective in broadening farmers’ understanding and response to nutrient movement onto, within and away from the farm that would be practically reflected in the farm’s CNMP.

However, we would like to note the authors of the Cornell Guide did not draft this document as a regulatory tool, but as educational guidance for farmers and the planner community. As drafted, this permit proposal gives the full weight and authority of a permit requirement to the content of the Cornell guidance. Because of this distinction, we respectfully request that the NRCS NY 590 Standard be used as the required technical standard to be complemented by the Cornell Guide as a consideration, rather than as a document to make decisions in accordance with since it necessarily requires farmers to take a number of factors into consideration before spreading. If this recommendation is not adopted in the final permit draft, our members and their planners will be putting their best efforts forward to comply with the details of this guidance, but they will need DEC’s direct assistance to educate them outside of the inspection process as to whether or not compliance has actually been met.

Because the science is constantly emerging, NYFB encourages continued periodic review of the recommendations that constitute the Cornell guidelines

for spreading during Adverse Weather Conditions and also DEC and Environmental Protection Fund support for ongoing research through Cornell University, including PRO-DAIRY and Cooperative Extension, to ensure that farmers have the most relevant information to protect the environment while not unnecessary hampering sound nutrient delivery practices.

NYFB also supports the reasonable provisions for emergency manure application, such as holding specific fields in reserve for adverse weather applications.

Response: See response to Comment 71.

*Oakwood Dairy LLC. / O'Hara Farms Inc.*

**Comment 73:** Two years ago we had similar weather conditions and were able to winter apply manure to this reed canary grass field. By following NRCS Standard 590 guidelines, we have proven we can apply manure to this established sod grass field with no evidence of material leaving applied areas- let alone entering setback buffers (observations made during CCSWCD employee John Fraser's visits to this field after concerns were raised at this same field/same weather circumstance of manure application). In fact, I believe that this particular application of manure showcases why there should NOT be an out-right ban on spreading of manure on frozen soil. This field presents a perfect example of how a highly managed application of manure can be performed with minimal risk of runoff or neighbor nuisance complaints, while effectively extending a farm's effective storage capacity and storage timeline. Management considerations of weather forecast, soil moisture level, soil type, soil nutrient level, manure nutrient level, frost depth, vegetative cover, established root system mass, slope length, slope percentage, application setbacks, application method, application rate, crop yields, crop nutrient removal rates, lack of snow cover, road transport safety conditions, neighboring resident activities, neighboring business activities, and many more attributes are scrutinized before deciding to make an application under winter conditions.

It is very obvious that the pathway for providing accurate information to resident's questions is severely short-circuited. When public officials take it upon themselves to discredit management decisions of my farm, the recommendations of my nutrient management planner, and the rules of NYSDEC then there is little hope to foster understanding between the concerned groups.

I hope my efforts to educate the uninformed that management of manure application is performed on a field-by-field, acre-by-acre, even foot-by-foot level have not been in vain. To have a person of public influence broadly declare that spreading manure on frozen ground is “understood to be a poor practice” when they have no specific knowledge of the exact circumstances is intolerable.

Please consider this situation as a real-life comment about proposed changes to environmental regulations with regard to manure application on frozen ground. Properly managed winter manure applications can help achieve the delicate balance between water quality concerns and rural (i.e. summer lakefront property owners’) quality-of-life conversations.

Response: Comment noted.

*Agricultural Consulting Services, Inc.*

**Comment 74:** Change this section to read “...must be made in accordance with NY NRCS 590 and consider the Cornell University Animal Science Publication Series No. 245-Revised winter and wet weather manure spreading guidelines to reduce water contamination risk...”

Response: See response to Comment 71.

*Madison County SWCD*

**Comment 75:** The Revised Cornell Guide was developed as a risk reduction tool and not as a regulatory rule and is not a part of the 590 standard.

Response: See response to Comment 71.

*WNYCMA*

**Comment 76:** The 2015 Revised Cornell Guide, “Supplemental Manure Spreading Guidelines to Reduce Water Contamination Risk During Adverse Weather Conditions” was written as a guidance tool and not as a regulatory document. It is recommended that “must be made in accordance with” be replaced with “must be made under considerations of”.

By definition, a guideline is a “piece of information that suggests how something should be done”; it is not a hard and fast rule. Our interpretation is that after consideration of the guidelines, a farmer proceeds to land apply waste under adverse weather conditions, he is not in violation of the permit. However, any subsequent precipitation related discharge of manure, litter or

process waste water would no longer be considered an agricultural stormwater discharge, but a discharge in violation of the permit.

While spreading during adverse weather conditions has been an issue in the past, the Draft Permit and Guideline fail to properly weigh in certain practices such as increased setbacks, manure type >15% solids, and applications on cover crop and corn stubble that would reduce the risk.

If a farm does not have adequate storage based on the spreading restrictions in the Draft Permit, how long does a farm have to gain storage?

Response: A farmer who land applies in accordance with their CNMP and subsequently experiences a precipitation-related discharge, would not be in violation of either CAFO general permit unless that discharge caused a water quality violation as per Part I.B.2. of the ECL general permit and Part I.B.3. of the CWA general permit.

Farms are expected to be fully implemented and in compliance with the terms of the permit when the Notice of Intent is submitted to the Department. A farmer without adequate storage to comply with the Permit would need to contact the Department to determine an appropriate pathway to compliance.

#### *Madison County SWCD*

**Comment 77:** These requirements along with the following from III.A.8 of the ECL general permit “Applications may not be made on saturated soils (either fluid-saturated or frozen-saturated soil conditions) or at a rate that meets or exceeds the saturation capacity of that field at the time of or as a result of that application”, effectively results in a calendar based ban on land application of manure. Who will be deemed qualified to determine when it is acceptable to spread and not spread how will farms document these decisions?

Response: AEM Certified Planners are responsible for developing CNMPs in accordance with the general permits. The owner/operator is responsible for implementing those plans and for overall compliance with the permit terms. It is ultimately the responsibility of the permit holder (owner/operator) to determine if their applications will meet the terms of the permit.

#### *Cayuga County Health Department*

**Comment 78:** Spreading manure when precipitation is anticipated should be prohibited. The draft permits are silent in regards to spreading manure during a rain storm or immediately preceding a rain event. According to Whatcom Conservation District in Washington State in their sophisticated Manure

Spreading Advisory program, the manure runoff risk is considered extreme when precipitation exceeds .5 inches. The draft permits should specify rain events under which manure spreading is prohibited.

Response: Part III.A.8 of the ECL general permit and Part III.A.7 of the CWA general permit require the permittee to manage application of nutrients to prevent runoff.

*Pine tree farms Inc.*

**Comment 79:** Plowing in the manure before rain fall. NEVER in snow.

Response: Comment noted.

*Conference of Environmental Health Directors, NYSACHO*

**Comment 80:** Our collective experience has shown that manure runoff events typically are a result of manure being applied on frozen and/or snow covered ground followed by precipitation and/or thaw conditions. The Waste Application Requirements in the draft permits acknowledge that applications should not be made on saturated (both fluid-saturated or frozen-saturated) soils, but do not acknowledge frozen unsaturated or snow covered soil as a limitation.

Response: Use of the December 2015 “Revised winter and wet weather manure spreading guidelines to reduce water contamination risk” published by Cornell University, was added to the permit to ensure that the permittee evaluates the identified risks (in consultation with an AEM certified planner) when determining whether the conditions are appropriate for land spreading. The evaluation of risk factors is mandatory during adverse weather conditions, including frozen unsaturated and snow covered conditions.

*Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Health Department, Cayuga County Board of Health, Town of Fleming, City of Auburn, etc. The Department received several comments regarding this issue:*

**Comment 81:** Acceptable spreading conditions on tile drained fields should be specified. Cornell University in their 2015 publication, "Revised Winter and Wet Weather Manure Spreading Guidelines to Reduce Water Contamination Risk" states that manure should not be applied during high risk conditions which includes when tile drains are flowing from field drainage. This important consideration is lacking in the draft permits.

Response: Part III.A.8 of the ECL general permit and Part III.A.7 of the CWA general permit requires the permittee to manage application rates and timing so as to prevent runoff during any given application event. Additionally, during winter weather applications, the Cornell guidance referred to in the above comment is required to be followed.

*Cayuga County Health Department, Cayuga County Environmental Health Director, C-OFOKLA, Riverkeeper, Inc., Earthjustice, Jonathan Robson NYS Property Owner, Allan B. Rubin, M.D., Conference of Environmental Health Directors, NYSACHO. The Department received several comments regarding this issue:*

**Comment 82:** NYSDEC should incorporate a prohibition similar to Maine, Vermont, Wisconsin, and Iowa regarding the spreading of manure on frozen (both frozen-saturated, frozen-unsaturated) and/or snow covered ground into the CAFO general permits.

Response: Comment noted. See Response to Comments 77, 78, 80, and 81.

*Cayuga County Health Department, Cayuga County Environmental Health Director, C-OFOKLA, Riverkeeper, Inc., Earthjustice, Jonathan Robson NYS Property Owner, Allan B. Rubin, M.D., Conference of Environmental Health Directors, NYSACHO. The Department received several comments regarding this issue:*

**Comment 83:** NYSDEC should add a requirement to the CAFO general permit that requires CAFOs to seek formal approval by the Department, to apply manure to frozen and / or snow covered soil to avoid a potential overflow of a manure lagoon. Any approvals given by the Department to allow spreading manure on frozen and / or snow covered ground should be made public.

Response: Comment noted.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 84:** Even if DEC does not adopt a date-based winter-spreading ban as other states have done, it must take additional steps to limit winter spreading of manure in New York. At a minimum, it must adopt measures recommended elsewhere in these comments, such as prohibiting practices

identified as “high-risk,” “very risky,” “higher risk,” “risky” and “should-be-avoided” in the Spreading Guidelines. DEC should also communicate winter spreading’s inherent risks on the face of the final ECL and CWA permits.

Response: These general permits do limit winter spreading of manure in New York by requiring the use of Cornell guidelines during “winter spreading conditions” as well as when applying in areas with at-risk groundwater, as identified in the permits.

#### *NEDPA*

**Comment 85:** The Revised Cornell winter and wet weather manure spreading guidelines to reduce water contamination risk guide is an excellent tool that will aid permittees and certified planners in identifying high risk manure application conditions. However, requiring that manure and/or process wastewater applications must be made in accordance with the guide will likely present challenges for permittees when attempting to document compliance. Therefore, it is recommended that the language be amended as follows:

Applications of manure of manure, litter, food processing waste, digestate, and process wastewater during periods which meet adverse weather conditions as defied in Appendix A, must be made under the considerations of the 2015 Revised Cornell Guide.

Response: Comment noted.

*Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Board of Health, OWLA, Town of Fleming, FLRWA, City of Auburn. The Department received several comments regarding this issue:*

**Comment 86:** The draft permits refer to a 2015 Revised Cornell Guide titled "Supplemental Manure Spreading Guidelines to Reduce Water Contamination Risk During Adverse Weather Conditions." A 2015 publication with that title does not exist. Cornell University's 2015 publication on this topic is titled "Revised Winter and Wet Weather Manure Spreading Guidelines to Reduce Water Contamination Risk."

Response: The permits have been modified to reference the updated document.

III.A.8.b)(2) (ECL) & III.A.7.b)(2) CWA

*Agricultural Consulting Services, Inc.*

**Comment 87:** Reserving fields for adverse weather applications is impractical for all farms and impossible for some farms. Reserving an allowable nutrient application rate for a field or several fields means that the crops grown in those fields will not be adequately fertilized. Low risk fields should be identified for adverse weather application but should not be precluded from non-emergency use.

Response: The permits have been modified to remove the requirement to “reserve” fields for winter weather applications.

### III.A.8.c) (ECL) & III.A.7.c) (CWA)

#### *Kreher Enterprises*

**Comment 88:** Identify and apply manure application restrictions in the vicinity of any soils with rapid drainage -What exactly is determined to be a “soil with rapid drainage”, and how is it to be identified by the planner/producer?

Response: The section of the permit referenced refers to Karst features. The “Manure Management Guidelines for Limestone Bedrock/Karst Areas of Genesee County, New York: Practices for Risk Reduction” and the “Manure and Groundwater: The Case for Protective Measures and Supporting Guidelines” define the soil types that are a concern.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 89:** All of the suggested best practices identified in the At Risk Spreading Guidelines and Genesee Spreading Guidelines should be explicitly listed and made mandatory in the CAFO General Permits. These practices include prohibitions on:

- application of manure to soils 40 inches or less in thickness directly over karst, sandy soils, or fractured bedrock;
- application of liquid manure (<12% solids) in karst areas;
- application of manure outside the normal growing season to wet, frozen, and/or bare soils;
- application of manure on snowpack with high moisture content or snowpack that is about to melt;

- application of manure when significant rainfall is anticipated.

Response: Part III.A.8 of the ECL general permit and Part III.A.7 of the CWA general permit require applications to be made in accordance with the 2011 Cornell recommendations in “Manure Management Guidelines for Limestone Bedrock/Karst Areas of Genesee County, New York: Practices for Risk Reduction” if application is within the delineated Genesee County karst boundary. The rest of New York must follow the recommendations in the 2004 Cornell Guide “Manure and Groundwater: The Case for Protective Measures and Supporting Guidelines”. Further, the permit requires manure application restrictions when applying in the vicinity of specific listed conditions.

*Bill Hecht NYS Property Owner*

**Comment 90:** DRAIN TILES. The past thirty years have seen a huge increase in new and more densely spaced drain tiles. This results in a change in stream flows. Stream hydrographs peak sooner and higher. Our road ditches and streams cannot handle these massive flows and coupled with bigger and more frequent storms there is a need for vastly updated farming practices, farm plans and manure management plans. Will this be reflected in the new plans?

The increase in drain tiles is causing our base flow of streams to decrease. This results in lower oxygen levels and warmer waters. Both detrimental to trout and other vertebrate and invertebrate life.

Response: The general permits incorporate, by reference, the use of several evaluation tools and technical documents to be used in the development of the farm specific CNMP. The scope of information that has to be evaluated in developing a CNMP is significantly greater than what was required in previous CAFO permits and we believe adequately addresses this concern.

*Riverkeeper, Inc.*

**Comment 91:** Rampant groundwater pollution from CAFOs is of particular concern for New Yorkers. In the absence of routine groundwater monitoring at animal feeding operations, there is a genuine risk that drinking water wells will be contaminated by animal waste, further jeopardizing the health of the approximately 10% of the New York population that self-supplies their drinking water. DEC found in 2013 that "numerous private and public drinking water wells around the state . . . have been impacted by nutrients [from animal feeding operations] that are not properly managed." To ensure these

drinking water sources are protected, DEC must require CAFOs in environmentally sensitive areas, and those with histories of groundwater pollution, to monitor downgradient groundwater.

Response: The Department believes the heightened restrictions and newly required procedures identified in Part III.A.8 of the ECL general permit and Part III.A.7 of the CWA general permit, will protect our drinking water sources and protect against groundwater pollution.

#### *NEDPA*

**Comment 92:** To provide better clarity as to what the department deems as “At-Risk groundwater”, please consider rephrasing the first paragraph in this part to read:

Applications of manure, litter, food processing waste, digestate, and process wastewater in areas where groundwater may be at-risk, as defined in (1) below, must be made in accordance with the 2011 Cornell recommendations “Manure Management Guidelines for Limestone Bedrock/Karst Areas of Genesee County, New York: Practices for Risk Reduction” if application is within Genesee County boundaries or in accordance with the 2004 Cornell recommendations in the “Manure and Groundwater: The case for Protective Measures and Supporting Guidelines” for the remainder of locations in NY.

Response: Comment noted.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 93:** DEC should adopt a more protective wellhead setback for manure applications made in geologically sensitive areas such as karst. Because of the higher potential to contaminate groundwater as compared to other hydrogeologic areas, DEC should prohibit manure applications within 300 feet of a private wellhead in geologically sensitive areas such as karst.

Response: See response to Comment 91.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 94:** CAFOs should be prohibited from applying manure on frozen ground or snowcovered fields where soils are 60 inches thick or less over fractured bedrock.

Response: Comment noted.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 95:** In accord with “known available and reasonable” best practices from other states, the CAFO Permits should:

- prohibit manure application at greater than 50% of the agronomic nitrogen rate when there is either less than 60 inches of unconsolidated material over bedrock, sand, or gravel;
- prohibit manure application at greater than 50% of the agronomic nitrogen rate when the minimum soil depth to seasonal high water table is less than or equal to two feet.

Response: Comment noted.

III.A.8.d) (ECL) & III.A.7.d) (CWA)

*Conference of Environmental Health Directors, NYSACHO, Cayuga County Health Department. The Department received several comments regarding this issue:*

**Comment 96:** Often during a runoff event, the manure does not drain directly from the field into a stream, but is conveyed to downstream water bodies or groundwater recharge areas via roadside ditches. The Field Setback Requirements outlined in the draft permits currently do not apply to roadside ditches. Additionally, roadside ditches, by their nature of construction are often cut into existing grade. The excavation and removal of surface soils may leave insufficient cover over fissured bedrock to effectively provide treatment of the manure laden runoff. This can lead to short circuiting of contaminants into the groundwater aquifer creating a public health hazard when surrounding development relies on individual wells for a domestic water supply. Shallow gravel aquifers can be particularly vulnerable to contamination from manure runoff events.

Response: Part I.B.4 of the ECL general permit and Part I.B.3 of the CWA general permit prohibit discharges which cause or contribute to a violation of

water quality standards, regardless of whether the discharge is direct or indirect.

*Jonathan Robson NYS Property Owner*

**Comment 97:** Field setback requirements are a joke. Most of the farms in our area plow right up to edges of streams and roadside drainage ditches. The result is that every time there are a heavy rains or a snow melt these ditches fill with soil and manure runoff. If the two conditions combine you have a environmental tragedy, you can see visible plumes of mud and soil filled water at every stream along the 6 miles of the north-east side. I travel this route every day and I am very sensitive to the changes of the lake. Some of the plumes can be seen for as much a mile from the stream of origin.

Response: The situation described appears to be a water quality violation and should be immediately reported to the Department when observed.

*Pine tree farms Inc.*

**Comment 98:** Setbacks should be in place for manure spreading, especially when sloping is evident towards a private residential property or adjacent stream.

Response: Part III.A.8.d) of the ECL general permit and Part III.A.7.d) of the CWA general permit require a 100 foot setback from any wellhead as well as from the top of the bank of any down-gradient surface waters of the State, including both perennial and intermittent streams unless there is a vegetative buffer ( then a 35 foot setback) or the manure is incorporated within 24 hours ( then a 15 foot setback).

*Margaret Manring NYS Resident*

**Comment 99:** As a hiker and a rambler, a birder and an artist I have noticed over the years that our hedgerows are disappearing. The farmers I know are adamant about turning them into farmland to increase yield. For the same reason they are also adamant about tilling and fertilizing right up to the edges of ravines that feed Skaneateles Lake.

I know from being a member of the Skaneateles Lake Association that the lack of hedgerows and wetlands and stream buffers are three of several factors contributing to more agricultural run-off into our lakes and streams. We see more turbulence, mysterious lake foams, and a kind of run-away algae and water weed growth that threatens to fill the shores. None of this is good for quality of water and of course, our fish.

Is there not some way to inspire farmers to keep intact the hedgerows and buffers? I have heard concerned people suggesting a tax incentive for their preservation. I am hoping to learn that some measures are being taken to address agricultural run-off. The storm size seems to be increasing and our management of land around bodies of water needs to be updated.

Response: The Department supports the implementation of buffers along streams. There are many voluntary programs available for landowners to participate in buffer initiatives. Additionally, see response to Comment 98.

*Onondaga County Council on Environmental Health*

**Comment 100:** Specific Requirements - The Council agrees that sensitive land areas should be identified and manure spreading restrictions developed and implemented to avoid adverse impacts. We also concur that more stringent requirements for winter manure spreading are warranted. Distance setbacks have frequently been used in watershed rules and regulations and for other types of prohibitions. However, the 100-foot setback for spreading from surface water and private wells seems highly inadequate; especially with respect to private well protection. Furthermore, why would a 100-foot setback be used when New York State Sanitary Code regulations require newly drilled water wells to be 200 feet from potential manure land application sites? The same can be said for allowing even narrower setbacks if a vegetative buffer is used or if manure is incorporated into the soil. There is not sufficient technical and scientific justification for the very limited setbacks now used.

A blanket distance or “one size fits all” setback does not adequately consider the quantities of manure spread under modern day CAFO operations nor field slope, soil drainage characteristics, depth to bedrock, possible “short circuiting” to the groundwater table and/or other hydrological and geological characteristics that can significantly impact the path and velocity of runoff flow.

Response: See response to Comment 98. Additionally, Part III.A.8.c) of the ECL general permit and Part III.A.7.c) of the CWA general permit require that the permittee follow the recommendations provided in either the “Manure Management Guidelines for Limestone Bedrock/Karst Areas of Genesee County, New York: Practices for Risk Reduction” or the “Manure and Groundwater: The Case for Protective Measures and Supporting Guidelines”, whichever applies. Both of these documents provide for greater setbacks from wells with a history of problems or in areas known to be sensitive.

*The New York State Federation of Lake Associations, Inc., FLRWA*

**Comment 101:** Protection of Groundwater and Artificial Drainage Flows - We concur that sensitive areas should be identified and manure application restrictions developed. This has not been done. Again, we point to the fact that the CNMPs have been inadequate. WHAT restrictions would DEC implement? The "standard" 100' setbacks from private wells and surface water are woefully outdated and inadequate. What standard has been used to determine that a 100' setback is adequate when 20,000 gallons of manure/acre is being spread? Contamination of private wells has already occurred based on these setbacks which have been around since the early 1900s and need to be redeveloped based on modern hydrological research.

Response: The USDA NRCS NY-590 Standard was updated in 2013. The setback requirements for manure application in these permits are based on that update.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc., Cayuga County Health Department, Ann M. Robson NYS Property Owner, Jonathan Robson NYS Property Owner, C-OFOKLA. The Department received several comments regarding this issue:*

**Comment 102:** DEC should adopt wellhead setback requirements that are protective of public health, recognize that private wells are the only source of water for many rural residents, and reflect the empirical observations of DEC that nutrients and pathogens can migrate further than 100 feet when they enter groundwater. Specifically, DEC should prohibit manure applications within 200 feet of a private wellhead." Appendix 5-D of Subpart 5-1 of the New York State Sanitary Code.

Response: Comment noted. The section of the State Sanitary code referenced is for wells that are used for public water supplies, not private wells.

WNYCMA

**Comment 103:** It is recommended that "cover crop greater than 4" in height" be considered adequate vegetation for a buffer.

Response: Comment noted.

III.A.9. (ECL) & III.A.8. (CWA)

*NYFB, NEDPA, McClelland Agronomics, WNYCMA, Agricultural Consulting Services, Inc. The Department received several comments regarding this issue:*

**Comment 104:** NYFB recommends amending this section to specify that signed contractor certification statements should only be required from each contracted professional once annually, unless land is added to the CNMP or there is a change to the CNMP which must be communicated to the service provider, with signatories being limited to the “managerial representative” or an equivalent. As drafted, the parameters for acquiring contractor certification statements need to be more fully developed in order to make compliance requirements clear to permittees, particularly as it pertains to permissible signatories and frequency of acquiring signed statements.

Response: The Department believes open and clear communication between the contracted professional and the owner/operator on the date of service is a reasonable and responsible requirement given the dynamic nature of the conditions associated with application.

### III.B.

*Cayuga County Health Department, Ann M. Robson NYS Property Owner*

**Comment 105:** Farm operations should be required to use low phosphate detergents if wastewater containing these detergents is discharged to the manure storage facility.

Response: Comment noted.

### III.B.1.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 106:** DEC must remove the provisions that authorize non-contact cooling water discharges from the Draft Permits. Such thermal discharges may be authorized under a separate general permit issued pursuant to the procedures set forth in ECL § 70-0117(6)(b).

Response: Comment noted. The permits have both been amended to remove the authorization to discharge to trout waters.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 107:** DEC must revise the terms for thermal discharges to incorporate the minimum effluent limitations and water quality standards set forth in 6 NYCRR parts 701.1, 701.3, 701.8, 703.2 t.1, 704.1, 704.2, 704.3, and 704.4.

Response: The Department believes that the conditions outlined in the permit for the discharge of non-contact cooling water will reasonably protect the classified water use and assure compliance with the water quality standard for thermal discharges.

III.B.1.a)(3)

*Agricultural Consulting Services, Inc.*

**Comment 108:** The temperature of typical non-contact cooling water from a dairy farm plate cooler is not an environmental concern. Requiring that the discharge remain below 70 degrees sounds innocent, but raises the following questions:

1. Do temperatures of releases need to be continually monitored? Once per day? Once at the start of the permit cycle?
2. Are there requirements for monitoring protocols that need to be followed (calibration of monitoring equipment, sampling location, etc.)?
3. Is a record keeping system required to show compliance with this requirement?

The simple solution is to remove the entire bullet point dictating the required temperature from the permits, and to require that released non-contact cooling water cannot negatively impact streams.

Response: The Department intentionally did not dictate monitoring requirements as they may be site-specific. It is up the permittee to determine the appropriate monitoring strategy to ensure the requirements are met.

III.B.1.a)(4)

*McClelland Agronomics*

**Comment 109:** Does a sheen necessarily indicate water pollution? Sheens can be a natural phenomenon that occurs without any outside human influence. Inspectors need to be able to distinguish the difference from naturally occurring or at least be able to conclude there is not a causal connection to the CAFO entity in some cases.

Response: The general permits require you to report sheens observed from the discharge of non-contact cooling water. The requirement to report is not necessarily indicative of a permit violation.

III.B.3.a)

*Agricultural Consulting Services, Inc.*

**Comment 110:** The Department's definition of an "open" waste storage structure is unclear. Please verify that "open" waste storage structures are those structures where the storage period is impacted by rainfall.

Response: An open waste storage is a *Waste Storage Structure* as defined in Appendix A of both general permits that is exposed to precipitation.

*Agricultural Consulting Services, Inc.*

**Comment 111:** The permits clearly state that open waste storage structures are required to be outfitted with a feature that marks the maximum level of manure or process wastewater that the structure can contain (total capacity minus required freeboard). They are also clear in stating that the weekly inspection of these structures are meant to ensure that the waste has and will not exceed that level. The term "depth marker" could be interpreted as a graduated structure designed to measure the amount of manure in the storage, and has been understood this way in the past by some Department personnel. To avoid this confusion, please replace the term "depth marker" with the term "maximum fill marker" or "minimum freeboard marker" in the permits.

Response: The Department defines what constitutes a depth marker in Appendix A of the general permits.

III.B.3.b)

*TeamAg, Inc.*

**Comment 112:** Structures that have overtopped do not need a complete re-evaluation, only an inspection for structural damage and review of the operating and maintenance plan. This could be provided with a site visit and a signed letter from a qualified professional. The 30 day requirement should be extended to 90 days to allow time for thorough investigation and documentation.

Response: Comment noted. The requirement to have a complete PE evaluation of a structure that has overtopped is consistent with requirements

of other DEC programs that regulate impoundment structures. Due to concerns with safety and water quality impacts, the 30 day requirement will remain in the general permits.

III.B.3.c)

*Cayuga County Health Department, Ann M. Robson NYS Property Owner*

**Comment 113:** Non-farm generated organics should not be allowed to be added to a manure lagoon unless it can be shown that the farm needs additional nutrients to grow their crops.

Response: Comment noted. CAFOs are required, with the help of their AEM Certified Planner, to assess their nutrient balance at least annually. Non-farm generated organics could not be accepted in the situation described in this comment.

III.B.4.

*Cayuga County Health Department*

**Comment 114:** Pressurized manure transfer systems should have pressure sensors and alarm systems installed to notify the farm operation if there is a breach in the system.

Response: Part III.B.4 of the ECL and the CWA general permits, requires that transfer systems be monitored by farm staff during the active transfer of nutrients. Additionally, all valves/shut offs must be checked annually or in accordance with the qualified professionals recommendation.

*Consulagr, Inc.*

**Comment 115:** There are several farms with permanently installed pressurized system that operate with low volumes and are set up to operated unattended. They usually are well protected with automated systems to shut down in the case of malfunction. In some cases they are set up to operate during off peak periods. To require someone to be in attention during operation is a bit cumbersome. My suggestion is to require safety shut down equipment on all systems, and that for systems transferring in excess of 100 gallons per minute, must be attended by trained personal.

Response: Comment noted. However, safety shutdowns have failed historically leading to significant water quality impacts. The Department believes the additional requirement to have a system manned while actively

transferring material is necessary to provide adequate protection of the environment.

*Agricultural Consulting Services, Inc.*

**Comment 116:** Records of annual valve inspections give no environmental benefit, and create a more burdensome record keeping program for farms. Strike this new record keeping requirement from the permits and simply require that all valves function as designed and that repairs and/or replacements are completed immediately upon discovery of a problem.

Response: The record keeping requirement is necessary for the Department to ensure proper operation and maintenance on pressurized transfer systems is being completed.

### III.B.5.

*NYFB*

**Comment 117:** NYFB strongly supports the flexibility provided to certified planners in this section. This provision recognizes that truly effective environmental planning can only be accomplished when it is farm-site specific and based on geographic-specific risk conditions. When farmer and planner work together to figure out what site-specific practices work best at the most economical cost, it's a sustainable win-win for the farm and environmental protection.

NYFB does respectfully recommend amending the first sentence of this section as follows: "Leachate collection and control facilities must be implemented operated and maintained in accordance with all applicable NRCS standards Part III.A.4 of this permit to prevent overflow or discharge of the concentrated, low-flow leachate products."

We feel the reference to NRCS standards alone narrows the tools available to farmers to develop the best environmental strategy for their farm. As drafted, this provision does not promote voluntary adoption of any new guidelines that may enhance water quality protection as it pertains to leachate.

Response: Comment noted.

*Agricultural Consulting Services, Inc.*

**Comment 118:** The permits require that bunk silo high flow runoff be treated by a VTA or a system which provides equivalent protection to a VTA. Please

verify that a naturally vegetated area could provide this equivalent protection and is acceptable if documented appropriately in the CNMP.

Response: A naturally vegetated area *could* provide equivalent protection if it meets the objectives of the VTA and is operated and maintained in accordance with the VTA standard. Any system used that is not a VTA must have its equivalence to the VTA standard documented in the CNMP by a certified planner.

### III.B.7.

*McClelland Agronomics*

**Comment 119:** Many times it is very difficult for a farm to be able to install practices as needed prior to expansion. For the business to remain viable and to maintain cash flow, installation of new practices, if fully compliant prior to expansion, should be completed within a year of expanding the herd.

Response: Comment noted. However, the objective of these general permits is to prevent water quality impacts.

### III.B.8.

*WNYCMA, NEDPA, Jefferson Co. SWCD, TeamAg, Inc. The Department received several comments regarding this issue:*

**Comment 120:** The current NRCS standard allows a VTA to be placed such that “the lower edge is a minimum of 25 feet from surface water bodies and the entire filter area is 100 feet or more from a well.” The proposed language could significantly impede the installation of a VTA on existing feed storage sites. It is recommended that the word “treatment” be omitted to be consistent with NRCS standard 635.

Response: The permits state “New *structures* on existing facilities...In addition, any newly constructed waste storage facility or feed storage/treatment *structures*...” The permits will remain as written as the prohibition is limited to the structure associated with treatment.

*WNYCMA, NEDPA, Jefferson Co. SWCD, TeamAg, Inc. The Department received several comments regarding this issue:*

**Comment 121:** The NYS Environmental Resource Mapper is not always an accurate source for the location of streams; many streams have either been moved or no longer exist. It is suggested that language be added to permit to

allow certified planner or engineer to document such change. It is recommended that “natural” be changed to “documented”.

Response: Comment noted. There is an established process for these situations. Owners/operators along with their certified planners can document the change on the field maps included in the CNMP. Any required setbacks shall also be documented on these maps from the actual location of the surface water as observed in the field. This documentation may be required to be submitted to the Department at some future time.

*WNYCMA, NEDPA, Jefferson Co. SWCD, TeamAg, Inc.*

**Comment 122:** Clarification is needed on “within 100-feet of the natural flow path of a NYS classified stream...” Does this mean the flow path from the storage structure to a classified stream? If so, it is recommended that “of a NYS classified stream” be changed to “to a NYS classified stream”.

Response: The language included in the general permits was intentional. However, the permits have been modified for clarity as follows: “In addition, any newly constructed waste storage facilities or feed storage/treatment structures, with the exception of hoppers and small tanks used to transport waste from an existing facility to a permanent waste storage structure, must maintain a minimum natural flow path of at least 100 feet from any NYS classified stream or protected waterbody...”.

*JESS Engineering PLLC.*

**Comment 123:** While I appreciate the intent of limiting development within 100 feet of the natural flow path of a stream or waterbody we have many facilities in New York that abut streams or waterbodies. Prohibiting new construction of complete systems is very clear; however clarification on existing bunk systems is needed. If a permitted CAFO purchases an AFO that it must bring into compliance I am concerned about precluding a filter area within 100 feet of the stream or waterbody. Even if an existing bunk is 200 feet from a stream or waterbody a portion of a new filter area would most likely encroach on the 100 foot limit. Is the intent of this item to preclude treatment systems on existing bunks? If so could this be clarified so that we can better help farms understand the implications when purchasing existing facilities?

Response: See response to Comment 120.

*Agricultural Consulting Services, Inc.*

**Comment 124:** A properly designed and constructed waste storage facility is the solution to a problem, not a problem itself. Setback requirements eliminate possible solutions where problems already exist. In theory, siting waste storage facilities far from streams is a good idea. However, this is not possible in all circumstances and exemptions from this rule should be considered. A variance request process is appropriate to handle these situations for farms covered under either of the permits.

Response: A farm wishing to install a waste storage facility in accordance with the situation described must first apply for and be granted an individual SPDES CAFO permit. However, language associated with this comment has been modified as discussed in the response to Comment 122 and may also address this comment.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 125:** In non-karst areas, DEC should mandate that all new waste storage lagoons be constructed with a liner.

Response: The permit requires that waste storages be built in accordance with the NRCS Conservation Practice Standard, NY 313. This standard contains soil and foundation criteria for storage liners.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 126:** For CAFOs in karst areas, DEC should lay out steps CAFOs should take to find “reasonable alternatives” to construction of waste lagoons in sensitive areas. If there is no reasonable alternative, DEC should mandate that all waste storage lagoons (existing or new construction) must be constructed with a synthetic liner OR the facility should install a groundwater monitoring well downgradient of the lagoon to confirm that excess agricultural waste is not seeping into groundwater.

Response: See response to Comment 125.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 127:** DEC should retain existing restrictions on the construction of new facilities in the 100-year flood plain to ensure no backsliding. The recommended new 100-year floodplain provision should read as follows:

New facilities shall not be built in a surface water of the State, including wetlands, and must be built outside of the 100-year floodplain (excluding agricultural fields). New or expanded structures on existing facilities shall not be built in a surface water of the State, including wetlands, and must be built outside the 100- year floodplain unless protected from inundation by the 100-year flood as documented by a Professional Engineer currently licensed to practice in New York State.

Response: “New facilities” was added to the permits to prevent their construction within the 100-year floodplain.

### III.B.9.

*Cayuga County Health Department, Ann M. Robson NYS Property Owner, Jonathan Robson NYS Property Owner, Jeffrey Carlson NYS Resident. The Department received several comments regarding this issue:*

**Comment 128:** The draft permits state that animals must be prevented from coming in contact with surface waters while in the confinement area. What is the definition of confinement area? Is this language allowing farm animals outside of the confinement area to have access to surface waters? The permits should explicitly prohibit farm animals from have access to surface water.

Response: A confinement area is an area that does not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season, where animals are confined for 45 days or more in any 12-month period. The requirement for exclusion of animals from waters of the State pertains to those animals confined in the animal feeding operation which, by definition, excludes pasture areas.

### III.B.10.

*Madison County SWCD, NYFB. The Department received several comments regarding this issue:*

**Comment 129:** Our concern here is that all responsibility is placed on the farm even when wells are installed on non-farm controlled land that do not meet current state health department regulations. There are significant regulations on the books designed to minimize well contaminations but they are not being

enforced across the state and in the end the farms are the only one held responsible if there is a problem. We would request that this issue be reviewed at the state level and a plan be developed to solve this problem.

Response: Comment noted. This comment seeks actions outside the authority of these general permits.

### III.B.11.

*NYFB*

**Comment 130:** NYFB believes this section to be superfluous as the provisions of this section are duplicative of existing statute and regulatory oversight, particularly 6 NYCRR Part 326. NYFB respectfully requests this paragraph be removed from the permit draft.

This section also states “Certification of pesticide applicators may be required.” NYFB respectfully requests clarification on specific parameters when this provision is applicable and when it is not for purposes of CAFO compliance. Again, we feel that this language is duplicative and should be removed from the permit since it provides no meaningful contribution to permit compliance or environmental planning.

NYFB supports the last sentence of this section and does not believe items like footbaths will be restricted by this provision, provided they are handled in a way to prevent pollutants from entering the waters of the State.

Response: “Certification of pesticide applicators may be required” is a statement meant to put permittees on notice that there may be additional requirements beyond the scope of the CAFO general permits.

*Cayuga County Health Department, Ann M. Robson NYS Property Owner*

**Comment 131:** The draft permits should explicitly prohibit the discharge of pesticides, herbicides and fungicide products from being discharged into a manure storage facility.

Response: Part I.B.6. of the ECL general permit and Part I.B.7. of the CWA general permit prohibits unused pesticides, herbicides and fungicide products from being stored in waste storage areas or conveyed through the waste storage transfer structures, or land applied.

### III.B.12.

*WNYCMA, Jeffrey Carlson NYS Resident*

**Comment 132:** It is recommended that “2014 Cornell Waste Management Institute – Composting Animal Mortalities” be added.

Response: Comment noted. The permits will be amended to reference the updated document.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 133:** In non-karst areas, DEC should mandate that all new animal mortality burial pits be constructed with a liner.

Response: The permit requires that mortality composting sites be constructed in accordance with the Cornell guidance document or NRCS conservation practice standard NY316.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 134:** For CAFOs in karst areas, where there is no reasonable alternative method of carcass disposal, DEC should mandate that all animal mortality burial pits (existing or new construction) must be constructed with a synthetic liner OR the facility should install a groundwater monitoring well downgradient of the pit to confirm that excess contaminants are not seeping into groundwater.

Response: See response to Comment 133.

### III.C.1.

*Agricultural Consulting Services, Inc.*

**Comment 135:** Please change “...must conduct an annual on-site review of the CNMP with the CAFO manure applicator staff.” to “...must conduct an on-site review of the CNMP with the CAFO manure applicator staff once per permit term.” Please change “...concentrated flow paths...” to “...known concentrated flow paths...” In most cases, documenting all subsurface drainage systems and water wells in the CNMP is not feasible.

Response: The Department believes an annual review is necessary to provide the most up-to-date information to the manure applicator staff. It is

the permittees responsibility to maintain the permit required setbacks from wells and other critical field elements.

### III.C.2.

*NYFB, NEDPA, WNYCMA, Agricultural Consulting Services, Inc. The Department received several comments regarding this issue:*

**Comment 136:** As regulations, standards and best management practices continue to expand and evolve, NYFB believes it is important to keep farm staff and owners apprised and focused on what efficient, effective and environmentally sound nutrient management means for their farm. For this reason, NYFB supports manure applicator training and on-site review of the CNMP and its focus on agronomic application of manure under the right field and weather conditions. We support the requirement for large CAFOs and encourage medium CAFOs and any other farms that make land applications to attend manure applicator training.

Furthermore, we support development of the ability for planners and others to deliver Department-endorsed manure applicator training. While we certainly support the use of webinars to deliver this training, one does not currently exist and for that reason we recommend that the reference in the permit to “Cornell’s Manure Applicator webinar” be changed to “DEC-endorsed manure applicator training” in order to more accurately and broadly reflect a variety of training tools and delivery methods that could be developed during this permit cycle and endorsed by the Department to meet these training requirements. NYFB stands ready to assist our partners at DEC, NYS Department of Agriculture and Markets, NYS Soil and Water Committee, NRCS, PRO DAIRY/Cornell University and NEDPA to assist in delivering training.

Response: Comment noted.

### III.C.3.

*Agricultural Consulting Services, Inc.*

**Comment 137:** Please remove requirement to obtain “Department-endorsed manure applicator training certifications” as these certifications do not exist.

Response: These certifications do exist and are available from the trainers at the conclusion of the training.

### III.E.2.

*NYFB*

**Comment 138:** The vague language in Part III.E.2(a) is overbroad and unduly burdensome. DEC should be specific about the operational changes it wants submitted so farm owners, planners and inspectors have clear compliance expectations. This vague language should be omitted or revised to reflect the same level of specificity provided in Part III.E.2(b and c).

Response: Comment noted. However, it would impossible for the Department to list every scenario that may apply. Any change in design, construction, operation, or maintenance related to compliance with this general permit should be discussed with the farms certified planner prior to initiation of the change, and if necessary, the CNMP updated to reflect that change.

III.E.2.b)

*Kreher Enterprises*

**Comment 139:** Filing an amendment to the CNMP prior to constructing or expanding a liquid or semisolid waste storage facility by greater than one million gallons.

- Does this filing of an amendment to the CNMP apply to solid storages, and if so, what determination of size is used as a trigger for filing?

Response: This requirement does not apply to solid storages.

III.E.2.c)

*OWLA, FLRWA, Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Health Department, Cayuga County Board of Health, Town of Fleming, City of Auburn. The Department received several comments regarding this issue:*

**Comment 140:** CAFOs should be required to notify NYSDEC if they increase their heard size by 5%. The draft permit states that farms only need to notify DEC if they increase their heard by 20%. For a farm with 1000 cows, which is a medium sized operation in Cayuga County, an operator would not need to notify NYSDEC if they added 199 cows, which is equivalent to 24,000 pounds of manure a day. This large increased quantity of manure generated certainly needs to be accounted for.

Response: Comment noted. DEC has determined expansion of herd size by more than 20% annually and use of a 1,000,000 gallon lagoon or greater to constitute a major change that requires notification.

III.E.5.

*Agricultural Consulting Services, Inc.*

**Comment 141:** It is not the role of the Department to determine if a CNMP meets NRCS Standards. NYS Ag and Markets validates the CNMP and provides AEM Planner QA/QC. Change this section to read “The Department may provide written notice to the owner/operator that implementation of the CNMP does not meet one or more of the minimum NRCS Standards...”

Response: Comment noted. It is the role of the Department to determine compliance with the terms of the general permits. The Department may utilize partner agencies to assist in this role.

## IV. MONITORING, REPORTING & RETENTION OF RECORDS

IV.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 142:** DEC should require annual soil sampling on each land application field since the costs are minor and there are significant advantages for nutrient management planning.

Response: The Department requires the use of NRCS conservation practice standard NY590 in the development of a CNMP. The NRCS 590 standard has requirements for the frequency for the collection of field soil samples that are protective of the environment.

IV.B.

*Cayuga County Health Department, Ann M. Robson NYS Property Owner. The Department received several comments regarding this issue:*

**Comment 143:** Due to the public health implications, any runoff, discharge, or overflow of manure or process wastewater should be reported to the local health department or State Health Department.

Response: Comment noted.

*Jonathan Robson NYS Property Owner*

**Comment 144:** Make the farmers responsible for reporting the spills immediately. This should not be up for argument. We all screw up. But these spills are not a minor problem like dropping a glass but rather are significant issues where timely response is essential. A late report often leaves the situation as uncontainable. This should be a matter with severe fines for noncompliance. Large farms should have monitored alarm systems to report a breach.

Response: Part IV.B. of both general permits provides the procedures and time frames for permittees to follow for reporting incidents to the department. Failure to report can result in a maximum penalty of \$37,500 per day for each reporting violation and/or imprisonment for up to 15 years.

#### IV.D.

*Consulagr, Inc.*

**Comment 145:** Reporting on the calendar year is workable for everything except for the crop and manure application programs. The option of being able to report manure applications and crop programs for the crop year is much more workable for the farm and the planner; and in understanding the reported information. Otherwise the reported information will span parts of two crop seasons and lead to confusion on rates, fields and application periods. Understandably, there is some gray area as to what date the crop year changes, but farms usually know when the last crop is over and the applications for the new crop start.

Response: Annual reporting can be based on the crop year. However, all required reporting must remain constant throughout all documents submitted to the Department.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 146:** DEC must continue to require all ECL-permitted CAFOs to complete ANMPs.

Response: In developing the new ECL general permit, the Department looked at the current ECL 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 regulation given the “no discharge” nature of this ECL general permit. As such, the condition has been removed from the ECL general permit. However, all permitted CAFOs in NY are still required to complete a CNMP.

#### IV.E.

*Agricultural Consulting Services, Inc.*

**Comment 147:** The 2013 NY NRCS 590 standard gives very clear definition about soil and manure sampling frequency requirements. The terms “annually” and “once per calendar year” and “no more than 12 months apart” mean different things. The sampling frequency requirements in all sections of the permits should be updated to mirror the requirements in the 2013 NY NRCS 590 standard.

Response: Comment noted. However, the Department believes the sampling frequency requirements in the permit do accurately reflect the language in the Standard. The Department also believes the other language describing “annual” requirements, used in the permits, does best reflect the Departments intent.

#### IV.F.2. (ECL) & IV.G.2. (CWA)

*Jeffrey Carlson NYS Resident*

**Comment 148:** A rain gauge is removed during cold months because it will freeze. Can you clarify and perhaps provide an alternate means for precipitation records during cold months?

Response: Records of frozen precipitation are not necessary to maintain as the precipitation event itself will not produce runoff.

*Jeffrey Carlson NYS Resident*

**Comment 149:** Do farms need to keep snow levels?

Response: See response to Comment 148.

#### IV.F.3. (ECL) & IV.G.3. (CWA)

*NYFB*

**Comment 150:** We recognize that farmers need to be cognizant of weather conditions during and around the time manure is spread. However, we feel

that certain aspects of this record keeping requirement are needlessly burdensome and should be streamlined to the extent possible.

We acknowledge that weather conditions at the time of land application is an appropriate and relevant record to keep. We do not believe a record of the forecasted weather conditions before spreading begins is needed since such information is outdated the next day when the farmer is making manure spreading decisions based on current field and weather conditions.

Response: Comment noted. Forecasted weather conditions are critical to the manure application decision making process. Keeping records of these conditions ensures facilities are utilizing all available information prior to manure applications to prevent and minimize environmental impact. A CAFO's recordkeeping, specifically recorded weather information, is necessary for the Department to assess a facilities' compliance with these general permits and to investigate allegations of water quality violations.

*Jeffrey Carlson NYS Resident*

**Comment 151:** Clarify the weather records. Do they only need to do this during land application? What benefit does keeping weather records bring to the table, especially forecasted weather that is likely to change?

Response: The ECL general permit specifies in Part IV.F.3 and the CWA general permit specifies Part IV.G.3 that "Weather conditions at the time of application, the day prior to and the day following application." Forecasted weather conditions are critical to the manure application decision making process. Keeping records of these conditions ensures facilities are utilizing all available information prior to manure applications to prevent and minimize environmental impact. A CAFO's recordkeeping, specifically recorded weather information, is necessary for the Department to assess a facilities' compliance with these general permit and to investigate allegations of water quality violations.

IV.F.4. (ECL) & IV.G.5. (CWA)

*NYFB*

**Comment 152:** It is our understanding that this section's intent is not to measure manure in an open storage but to determine the amount of available freeboard or remaining capacity until maximum fill. Storage depth does not accurately reflect maximum storage capacity. To make prudent nutrient management decisions, a farmer should be focused on his/her last 18 inches

of freeboard rather than concern themselves with the day's manure depth. For this reason, "depth marker" should be replaced with the term "freeboard marker" to be consistent with the actual intent of this provision. The same change should be made in Appendix AR for the definition of depth marker, and in Part III.B.3.a regarding Waste Storage Structures.

Response: The Department clarified the recordkeeping requirements for depth markers in Appendix A of both general permits by further defining what constitutes a depth marker.

#### IV.F.7. (ECL) & IV.G.8. (CWA)

*Jeffrey Carlson NYS Resident*

**Comment 153:** Rendering Receipts -Are these required to be maintained? Please point out where in the permit.

Response: Part IV.F.7 of the ECL general permit and Part IV.G.8. of the CWA general permit states "Records of method used to dispose of animal mortalities, including annual capacity of method, and total annual number of animal mortalities." Rendering receipts would be records of the method used to dispose of animal mortalities.

#### IV.F.8.a) (ECL) & IV.G.9.a) (CWA)

*Agricultural Consulting Services, Inc.*

**Comment 154:** Manure rates recommended in the CNMP vary based on field, product, timing, and method of application. Totaling all applications on a given field by rate (volume), without taking into account these factors cannot be related to the planned nitrogen rate. Department inspectors should be trained to understand this process and to evaluate manure applications on a case-by-case basis while they are inspecting for compliance. The up to- date summary requirement is impractical, has limited value, and should be removed from the permits.

Response: The Department feels an up to date summary of field applications is necessary to aid in compliance monitoring to ensure environmental protection.

#### IV.G. (ECL) & IV.H. (CWA)

*NEDPA, JESS Engineering PLLC, NYFB, Agricultural Consulting Services, Inc., McClelland Agronomics, Consulagr, Inc., WNYCMA. The Department received several comments regarding this issue:*

**Comment 155:** The proposed permits require CAFO's using Anaerobic Digesters to keep records of all material (inflow/outflow) into the system, including manure. This requirement is redundant as a properly prepared CNMP characterizes the expected quantity of manure, bedding, and process wastewater to be generated at a facility. Additionally, the CNMP should track and quantify waste stream flows from point of origin, through treatment and storage facilities, to the final step of land application. These existing planning elements, plus the record keeping responsibility outlined in (IV, F, 8) substantially meet the traceability intent of this record keeping requirement. We recommend amending this part to only affect operations that import substrates and limit written records to the type, source, and quantity of any imported materials. As such, please consider the following revision:

IV. (G.) Recordkeeping requirements for Anaerobic Digester Importing Substrates (G., 1) The CAFO must keep written records of all imported materials, (i.e. manure, food processing waste, etc.) entering the digester including the type of material, source of the material, and the amount accepted. (Material introduced into the system will be of similar quantity as material exiting.)

Response: Permits have been modified to state: "The CAFO must keep written records of all materials (ie. manure, food processing waste, etc.) entering the digester including the type of material, source of the material and the amount accepted."

#### IV.I. (ECL) & IV.J. (CWA)

*NYFB*

**Comment 156:** NYFB appreciates the option to keep and maintain records electronically for those farmers who would like to do so. We believe electronic copies carry the same weight and legal effect as paper copies and handwritten signatures, as is done in real estate and other industries, and is supported by the federal Uniform Electronics Transactions Act of 1999. NYFB respectfully asks DEC to acknowledge or respond to this in its comment response as some members have received conflicting feedback from different DEC offices.

Response: Comment noted. The section of State regulations referenced in the permit 6NYCRR-Part 750-2.5(c)(3), gives the permittee the ability to store records electronically. For the permittee to be compliant with 750-2.5(c)(3) "the records must be preserved in a manner that reasonably assures their

integrity and are acceptable to the department. Such records must also be in a format which is accessible to the department.

*NYFB*

**Comment 157:** NYFB strongly supports electronic reporting by CAFO permittees if the farmer chooses to do so and has the technology to utilize this tool. Our members still have serious concerns and reservations about any initiative that effectively requires permittees to file electronically without any other recourse. They also remain increasingly concerned over the security and confidentiality of their information as well as the cost associated with the practical aspects of compliance if the Department effectively compels electronic reporting. While computers and the Internet have become staples of modern working life, there is no broadband or reliable Internet service available to many of the rural and isolated communities that our farms call home. NYFB respectfully asks that the Department keep these comments in mind as it moves forward with its electronic reporting policies.

Response: Comment noted. The Department is in the process of developing a system to comply with EPA's NPDES e-Reporting Rule. More information on the NPDES e-Reporting Rule can be found on the Departments website at: <http://www.dec.ny.gov/permits/105366.html>

## **V. STANDARD PERMIT CONDITIONS**

V.B.

*JESS Engineering PLLC.*

**Comment 158:** Engineers within New York State are already bound by their license to follow all applicable laws, codes, standards, and regulations. All designs must be to standard already, this seems redundant.

Response: Comment noted.

*TeamAg, Inc.*

**Comment 159:** The permit does not contain language delegating liability between the owner, planner, and engineer. Planners and engineers cannot be held responsible for lapses in operation and maintenance of BMP's. The current language in the permit will have a negative impact on the lines of communication between farms, planners, and engineers.

Response: The permittee is the legally responsible party for maintaining compliance with the terms of the permit.

*WNYCMA*

**Comment 160:** We strongly oppose including the “certified AEM Planner” as a party subject to enforcement of the permit. By definition, the AEM Planner is an individual certified by the American Society of Agronomy and deemed qualified by the Commissioner of the New York State Department of Agriculture and Markets, in consultation with the State Soil and Water Conservation Committee and the NRCS State Conservationist, to develop and review CNMPs for CAFOs in New York State. “In addition, to maintain certification, the AEM certified planner must remain a CCA by meeting continuing education requirements and successfully complete regular quality assurance reviews and recertification granted by the Commissioner of the New York State Department of Agriculture and Market, in consultation with the State Soil and Water Conservation Committee and the NRCS State Conservationist.” The AEM Planner is not the permitted entity or the enforcement agency overseeing the permit. Furthermore, the AEM Planner provides recommendations to the permittee and has no control over the day to day operations of permitted facility.

Response: The permittee is the legally responsible party for maintaining compliance with the terms of the permit.

*Pine tree farms Inc.*

**Comment 161:** The Certified Planner also needs to be held to stricter compliance.

Response: The permittee is the legally responsible party for maintaining compliance with the terms of the permit.

*Agricultural Consulting Services, Inc.*

**Comment 162:** Please clarify that the penalties in this section apply to the owners and/or operators of permitted operations and not certified AEM Planners and/or contracted professional engineers. AEM Planners and contracted professional engineers have no control over the implementation of plans and permit compliance. Remove the words “...certified AEM planner, contracted professional engineer,...” from this section of the permits.

Response: The permittee is the legally responsible party for maintaining compliance with the terms of the permit.

*Jonathan Robson NYS Property Owner*

**Comment 163:** There appears to be none or little enforcement to these comprehensive nutrient management plans. If there was how could such egregious spills like what occurred on my neighbor's property occur year after year. Imagine a stream of feces flowing just a few yards from your backdoor. Stop waiting months and years to pursue violators. Also when you find such egregious violators you can't simply empower the farmer by writing them a letter or giving them a token fine. This only encourages the same behavior. Remember these are not small hobby farms but very large businesses. As such they have the same corporate responsibility other large firms have to not make their profits at the expense of the environment.

Response: Comment noted.

V.G.3.

*McClelland Agronomics*

**Comment 164:** The certification statement has always referred to the owner/operator. Here it refers to "Any person signing". If this includes planners, the Department is placing the planner in a difficult position as they would essentially have to become a whistle blower or drop the client in order to avoid legal ramifications. If the planner holds accountable the farm they put themselves in position of the authorities as a pseudo-regulator and, the client may replace the planner with another. Need to clarify whether this refers to planners, in addition to the owner/operator.

Response: The permittee is the legally responsible party for maintaining compliance with the terms of the permit.

V.M.

*NYFB*

**Comment 165:** Our member farms are complex businesses with significant biosecurity concerns including foreign and emerging diseases. Our members rely on biosecurity protocols to protect their land, their natural resources, their animals and their livelihood. We believe, whenever possible, notice of farm inspection should be made in order to allow inspectors to perform their duties while submitting to reasonable farm biosecurity procedures. We strongly feel that minimal advance notice of a day(s) would in no way preclude or diminish the findings of the CAFO inspection.

Response: The Department's environmental protection efforts do not normally require entrance into sensitive biosecurity areas of the farm such as animal housing areas or feed storage areas. All Department Division of Water CAFO staff have received instructions for proper biosecurity measures. A CAFO may provide additional site-specific bio-security requirements to the Department's regional office for review prior to an unannounced site visit by DOW staff.

V.S.

*NYFB*

**Comment 166:** NYFB is extremely disappointed with the denial of all claims of confidentiality for NOIs, permits, effluent data, Annual NMP submittals and Annual Compliance Reports (ACR). From the perspective of the farm business owner, the NMP, ACR and its individual components are confidential business information and very clearly qualify for consideration for protection under the NYS Freedom of Information Law provided under the NYS Public Officers Law (Article 6-A). At a minimum, NYFB objects to such information being disclosed without prior notice to the farm/submitter when such information has been designated confidential business information (CBI) by the farm. NYFB respectfully requests that this specific provision be removed from the final permit draft.

Response: Pursuant to 6 NYCRR Parts 616 and 750-1.23, the Department has already determined that the summary information contained within the NOI, CNMP Certification, Annual Compliance Reports and Annual NMP do not meet the specific criteria to qualify as proprietary or confidential information. In order for information submitted to DEC to be considered confidential, and therefore exempt from disclosure under FOIL, the information must either be a "trade secret," "confidential commercial information," or "critical infrastructure." Please refer to 6 NYCRR Part 616, which is available in an unofficial form on the DEC website, for these specific definitions.

Appendix A

*Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Board of Health, Town of Fleming, City of Auburn. The Department received several comments regarding this issue:*

**Comment 167:** The term "appropriate agricultural utilization of the nutrients in manure" should be defined. The draft permits state that the discharge of

manure, defined as a release of manure into the surface waters of the State, that is precipitation-related, is exempt from regulation if the manure was applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in manure. Manure that is placed on the field in a manner that it runs off during a precipitation event is not an appropriate agricultural utilization of the nutrients in manure.

Response: The Department requires the use of NRCS Conservation Practice Standard NY 590 to ensure appropriate agricultural utilization of the nutrients in manure.

*Jefferson Co. SWCD*

**Comment 168:** Appendix A- Definitions - Adverse spreading conditions means soil is frozen - how is a farm/planner to determine if the soil is frozen and does this only pertain to "concrete frost" conditions or all frozen conditions? If it pertains to all frozen conditions, then it seems that it is contradictory to the 2015 Revised Cornell Guide.

Response: Concrete frost is a frozen saturated soil condition that creates an impermeable layer of frost. The frozen soil condition described in the adverse spreading condition, is meant to reflect conditions where injection and/or incorporation techniques are still plausible.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc., Jefferson Co. SWCD, Cayuga County Health Department, Jonathan Robson NYS Property Owner, WNYCMA. The Department received several comments regarding this issue:*

**Comment 169:** DEC should define "at-risk groundwater." DEC could follow the lead of Wisconsin which defined a "site that is susceptible to groundwater contamination" as including:

- an area within 250 feet of a private well;
- an area within 1,000 feet of a municipal well;
- an area within 300 feet upslope or 100 feet downslope of a karst feature;
- a channel with a cross-sectional area equal to or greater than 3 square feet that flows to a karst feature;

- an area where the soil depth to groundwater or bedrock is less than 2 feet;
- an area where none of the following separates the ground surface from groundwater and bedrock:
  1. a soil layer at least 2 feet deep that has at least 40% fine soil particles;
  2. a soil layer at least 3 feet deep that has at least 20% fine soil particles;
  3. a soil layer at least 5 feet deep that has at least 10% fine soil particles

Response: Part III.A.8.c) of the ECL general permit and Part III.A.7.c) of the CWA general permit require the use of Cornell guidelines which describe “at-risk groundwater”.

*WNYCMA, Jefferson Co. SWCD*

**Comment 170:** What is the definition of “soils with rapid drainage”? What are the soil types?

Response: Part III.A.8.c) of the ECL general permit and Part III.A.7.c) of the CWA general permit require the use of Cornell guidelines which describe “soils with rapid drainage”.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 171:** The ideal standard would define “saturated” as moisture content at or in excess of field capacity (i.e., moisture content after free drainage has ceased) to prevent nutrients loss to either surface water or groundwater. This is consistent with the Adverse Weather Spreading Guidelines’ finding that moisture above field capacity can lead to runoff, as noted above. However, DEC could also adopt a definition similar to the definitions adopted other states. For example, both Illinois and Wisconsin define “saturated” as “[s]oils in which pore spaces are occupied by liquid to the extent that additional inputs of water or liquid wastes cannot infiltrate into the soil.” While this represents saturation at 100% of soil pore volume, this is a definition that is less likely to lead to surface runoff than the NRCS NY590 Standard’s metric

for saturated soils, which represents saturation in excess of 100% soil pore volume.

Response: The permits have been modified to include a definition for Saturated. “*Saturated* means soils in which pore spaces are occupied by liquid to the extent that additional inputs of water or liquid wastes cannot infiltrate into the soil”.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 172:** The Draft Permits should also define “frozen-saturated soil.” DEC could adopt a definition similar to Illinois, which defines “frozen ground” as “[s]oil that is frozen anywhere between the first 1/2 inch to 8 inches of soil as measured from the ground surface.” This definition is consistent with the Adverse Weather Spreading Guidelines, which notes that concrete frost may exist at a shallow level below unfrozen topsoil, and manure applications on concrete frost should be avoided.

Response: The permits have been modified to include a definition for Frozen-saturated. “*Frozen-saturated* means a condition formed when saturated soil freezes, creating a solid, impermeable layer which is impenetrable by injection/incorporation techniques.”

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 173:** The ideal standard would define “significant surface icing” as any ice layer that is impervious and will prevent nutrient incorporation with the soil. This standard is consistent with New York’s recognition in other contexts that application of fertilizer upon impervious surfaces presents a high risk of nutrient runoff. A protective standard will preclude any manure application upon surface icing that is 0.5 inches or greater in thickness and largely unbroken. This is consistent with the Adverse Weather Spreading Guidelines, as discussed above.

Response: The permits have been modified to include a definition for “Frozen-saturated”. “Frozen-saturated means a condition formed when saturated soil freezes, creating a solid, impermeable layer which is

impenetrable by injection/incorporation techniques.” The permit prohibits spreading during conditions which meet the frozen-saturated condition. If winter spreading conditions exist, than Cornell’s guidelines must be followed as discussed in the general permits.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 174:** DEC should adopt a definition consistent with Illinois’ definition of “injection,” which is “[t]he placement of livestock waste 4 to 12 inches below the soil surface in the crop root zone using equipment specifically designed for that purpose, when the applied material is retained by the soil.”

Response: The permits allow either injection or incorporation and rely on the facility specific CNMP as written by the AEM certified planner to meet the applicable technical standards.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 175:** DEC should also adopt a definition consistent with Illinois’ definition of “incorporation,” which is “A method of land application of livestock waste in which the livestock waste is thoroughly mixed or completely covered with the soil within 24 hours. Any ponded liquid livestock waste remaining on the site after application is not considered to be thoroughly mixed or completely covered with the soil.”

Response: See response to Comment 174.

*NEDPA*

**Comment 176:** The term "Depth Marker" as used in the draft permits implies that there is an obligation to document compliance with part (IV., F., 4.) by recording a liner measurement rather than verifying that contents are below the designed maximum operating level (III., B., 3., a.). Please consider replacing “Depth Marker” with the term "Freeboard Marker".

Response: See response to Comment 152.

*Jeffrey Carlson NYS Resident*

**Comment 177:** The term "Litter" is mentioned a minimum of 31 times throughout the permit. Please define.

Response: The permit was modified to include a definition for Litter. "Litter means a combination of manure and bedding material placed in dry chicken production facilities. The bedding material alone may also be referred to as litter."

*Jeffrey Carlson NYS Resident*

**Comment 178:** Define "Cow/Calf pairs". What is the Department's definition of a calf? At what age / weight does the Department consider a calf to be a heifer? Are calf operations subject to CAFO regulations? And if so, at what animal count?

Response: See the definitions for Medium CAFO and Large CAFO in Appendix A of the general permits. For example, a cow/calf pair would be considered 1 animal for a beef cattle operation, once that calf is separated from the cow it then becomes a separate animal for inclusion in the herd count. Similarly, for veal calf operations, each calf is counted as 1 animal towards the defined threshold.

*Jeffrey Carlson NYS Resident*

**Comment 179:** Define "confinement area"

Response: Confinement area is described in part (a.) of the Production Area definition included in Appendix A of both general permits.

*Jeffrey Carlson NYS Resident*

**Comment 180:** Will Deer, Elk, Goats and Alpacas, Cats and Dogs be added to the definition of an AFO or CAFO with identified thresholds?

Response: The Small CAFO definition contained in Appendix A of these general permits describes the Department's authority to designate an AFO as a small CAFO.

*Jeffrey Carlson NYS Resident*

**Comment 181:** Why aren't calf facilities included as an AFO or CAFO (I do not mean veal calves), but maybe veal calves should be defined.

Response: These facilities are included in the general permits. Medium CAFOs are defined as AFOs that stable or confine 300-999 veal calves as

well as 300-999 cattle. Large CAFOs are defined as AFOs that stable or confine 1,000 veal calves as well as 1,000 cattle. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs. For clarification, a calf is counted separately once it's weaned from its mother, therefore the calf is accounted for in these definitions throughout its life.

*Cayuga County Health Department, Ann M. Robson NYS Property Owner, etc.  
The Department received several comments regarding this issue:*

**Comment 182:** Farms that confine 200-299 mature dairy cows should not be exempt from the requirements of the permit GP-0-16-001. Operators of larger farms in Cayuga County have expressed concern that more pollution is caused by the smaller unregulated farm operations than the larger CAFOs.

Response: Comment noted. However, this comment was adequately addressed previously when GP-0-14-001 was issued on July 1<sup>st</sup>, 2014. Additionally, this comment raises the same issues that have been successfully litigated by the Department during the 2013 rule change and permit modifications.

*Jeffrey Carlson NYS Resident*

**Comment 183:** Who is going to be responsible for determining whether a facility with less than 300 mature dairy cows is discharging or not?

Why doesn't small farms, under 300 or less animals, need to follow regulation? Has the department ever witnessed or taken the time to monitor what it is these small farms are doing? You'd be surprised to see the environmental degradation they too can bring to the game.

Who will determine if farms just below the 300 threshold are discharging or not? I've heard comments about small farms and their neglect to follow common sense when land applying nutrients, location of barnyards, animals wading in waters of the US. What, if anything, does the Department intend to do to address this? Two small farms may reach the threshold of a CAFO requiring a permit and their practices should be addressed by someone and not through the voluntary AEM program....they don't volunteer.

Response: As described in the Environmental Impact Statement for the Revised Regulations Pertaining to Concentrated Animal Feeding Operations and Corresponding SPDES Permit Requirements, the potential risks to the environment posed by the rulemaking exist, however the Department is confident that sufficient mitigation measures exist to minimize these risks. In

this respect, the rulemaking did not rely solely on voluntary compliance. Rather the Department can bring enforcement actions if there is a water quality violation or a discharge. In addition, if there is a discharge, AFOs with 200-299 mature dairy cows would no longer be eligible for a permit exemption because they would necessarily be defined as a Medium CAFO, which would require a SPDES permit.

*Consulagr, Inc.*

**Comment 184:** -----, except that an AFO the stables or confines 200-299 mature dairy cows, whether milked or dry, that does not cause a discharge, would not be considered a Medium CAFO.

This is a difficult condition to deal with in the farming community. Who and how is the “no discharge” condition determined? It will be problematic for farms that expand from the 199 cow size and may have some existing marginal conditions.

I can understand the policy considerations that may or may not be involved, but some guidance would be useful. Perhaps, another guidance document.

Response: As defined in Appendix A of the general permits; **Discharge** means any release of any pollutant, including but not limited to manure, litter, process wastewater, food processing waste, digestate, or releases from feed storage areas to surface waters of the State. Agricultural stormwater discharges as defined herein are exempt and do not classify a facility as discharging.

If a CAFO that has 200 or more mature dairy cattle and has a condition that meets the above definition then that facility needs to file for coverage under the CWA general permit.

*Consulagr, Inc.*

**Comment 185:** In the cases I work with, the egg processing waste is covered under a separate SPDES permit. I think it would be useful to determine the proper permitting pathway for these facilities. As it stands, there is ongoing confusion on who is responsible for permitting of these situations and the permitting circumstances.

Response: Egg processing facilities may need separate coverage under an individual SPDES permit if they do not meet the CAFO threshold defined in Appendix A or if they have been notified by the Department that their operation needs separate individual SPDES permit for the discharge of

industrial wastewater associated with the industry. The Department is available to discuss individual circumstances whenever needed.

*Agricultural Consulting Services, Inc.*

**Comment 186:** If egg wash water is directed to a NRCS compliant and certified VTA for treatment and release is it or is it not considered a reportable Process Wastewater? This definition could be interpreted either way.

Response: Egg wash waster is considered process wastewater as defined in Appendix A.

*Agricultural Consulting Services, Inc.*

**Comment 187:** Please update this definition to include the NYS DEC Environmental Resource Mapper as an acceptable resource to identify Surface Waters of the State while developing CNMPs.

Response: The NYS DEC Environmental Resource Mapper is an acceptable resource to identify surface waters of the State. However, the Mapper may not contain all waterbodies that meet the definition of surface waters of the State. Surface waters of the State is defined in Appendix A of both permits.

## GENERAL COMMENTS

*Owasco Lake Watershed Management Council & Cayuga County Legislature, Cayuga County Board of Health, OWLA, Town of Fleming, FLRWA, City of Auburn. The Department received several comments regarding this issue:*

**Comment 188:** Additional time should be provided for review and comment of the draft permits. The draft CAFO permits were released on December 23, 2015 and made available for public review and comment only until February 7, 2016. Releasing the draft immediately before the holiday season made it difficult to review the draft permits in a detailed manner during the time constraints provided.

Response: Comment noted.

*Jonathan Robson NYS Property Owner*

**Comment 189:** Enforce the regulations of the books. Limit or eliminate the transfer of liquid manure from one farm to another. Since we moved in 12 years ago our well water has deteriorated badly. We now have 4 particle filters, and a UV filter to get our water clean and that's only for cleaning and washing. For cooking and drinking we now have to haul our water in big jerry

cans from town 8 miles away. Who is going to make our water drinkable again? My guess is nobody. That means that water that was drinkable for thousands of years is no longer drinkable. This means that my wife and I will have to haul water for the rest of our lives. Simply because we don't have the resolve to enforce the current regulations.

Response: Comment noted. It is the Department's responsibility to enforce the requirements of the CAFO permit. Suspected water quality violations should be immediately reported to the applicable DEC regional office.

*Onondaga County Council on Environmental Health*

**Comment 190:** Private Drinking Water Supply Protection - While the regulations are geared towards surface water protection Council members are concerned with the protection of residential drinking wells. Contamination can leave no alternative, but to install remediation and/or treatment systems since connection to a public water supply source is rarely feasible or even possible.

While not all County Health Departments have regulatory authority with respect to private wells, local departments become intricately involved if a contamination event occurs. This may include water quality testing as well as providing technical guidance and information on treatment options and voluntary monitoring the homeowner may wish to pursue.

Locally, a limited dataset indicates some rural private residential wells including those in the vicinity of manure spreading activities, have high nitrate levels. While manure spreading could be one of a number of possible contributing factors, attention needs to be paid to this issue for the protection of both the resident and agricultural operator.

Response: Part III.A.8.c) and d) of the ECL general permit and Part III.A.7.c) and d) of the CWA general permit provide for wellhead setback requirements as well as additional requirements which must be implemented within sensitive groundwater areas. The Department believes these requirements provide drinking water supply protection.

*Jeffrey Carlson NYS Resident*

**Comment 191:** How will the Department monitor water quality around small AFO's?

Response: AFOs that do not meet the animal number threshold defining a CAFO and are not designated a CAFO by the Department are not necessarily regulated by these general permits. Water quality throughout NYS is

monitored through our Rotating Integrated Basin Studies (RIBS) program, our Lake Classification and Inventory (LCI) program, and our Citizens Statewide Lake Assessment Program (CSLAP).

*Jeffrey Carlson NYS Resident*

**Comment 192:** Is water quality around small AFO's unimportant? Please explain the departments view.

Response: Please see response to Comment 183.

*Pine tree farms Inc.*

**Comment 193:** Water quality needs to be tested that affects every stream and possibly every water well that surrounds manure spreading or where a slope exists.

Response: Comment noted.

*Robert Duckett NYS Property Owner*

**Comment 194:** Todays field drainage practices provide rapid runoff of water which causes plumes of toxins, mud, and scum in our lakes, while simultaneously reducing aquifer recharge.

Response: Comment noted.

*Robert Duckett NYS Property Owner*

**Comment 195:** A permit should not make it permissible to pollute. It should require that standards of environmentally healthy practices are met, and protect the natural resources we all require.

Response: Comment noted.

*Robert Duckett NYS Property Owner*

**Comment 196:** A Cornell study revealed that 24 hour rainfall volumes have increased dramatically in the past 4 decades. That which we once thought of as a 25, 100, 500 year storm appears to be far more frequent. We must be prepared for these types of storm events, not surprised and overwhelmed by them. Immediately follow and during such storms high risk areas should be accessed by the DEC. Further, CAFO's with repeated violations, in a few years' time, should not be permitted.

Response: The Department has updated the definition of a 24 hour 25 year storm event in Appendix A of both permits to reflect the new weather patterns.

*Erin Riddle NYS Resident, Michael Decatur NYS Resident, Sierra Club Niagara Group*

**Comment 197:** The DEC, Ag & Markets, and other New York State regulatory agencies and leaders should overall rethink the means by which waste is stored and used, and encourage a composting model that helps to better break down nutrients (instead of the current "lagoon" and liquid storage model) that can truly lead to quality, nutrient-rich fertilizer for farmers themselves, and other potential consumers.

Response: Comment noted.

*NYFB*

**Comment 198:** NYFB respectfully recommends that inspections of CAFO farms, medium and large, be more evenly distributed among the regulated community and that farms not be inspected more than once during a five-year permit cycle, unless there is an accidental discharge or violation of the Clean Water Act.

Response: Comment noted. The CAFO inspection workplanning process is outside the scope of these general permits.

*NYFB*

**Comment 199:** NYFB would also like to see uniformity in compliance expectations during inspection within and between the nine DEC regions. Our members' inspection experiences have differed significantly throughout the State leading to confusion over what constitutes true compliance for permit requirements. This also contributes to hesitancy of adopting more costly operational improvements in response to permit changes when, in practice, there appears to be no clear statewide inspection standard to hold all farms accountable. NYFB respectfully recommends that a clear, reliable, uniform standard be communicated to and followed by all inspectors.

Response: All permitted CAFOs are required to comply with the general permits. CAFO inspections assess compliance with the general permits.

*NYFB*

**Comment 200:** Our members were appreciative of DEC's week-long inspection initiative in Region 8 during July 2015 which served as a training opportunity

for inspectors and elevated CAFO compliance and education within the producer community. It is our hope that inspectors left with a greater operational familiarity of our dairy farms from this hands-on training. It has been our experience that many inspectors are not familiar with the day-to-day operations of the farm or the necessary biosecurity protocols when visiting a farm with livestock. We feel this focused inspection effort was a positive way to improve interactions between inspector and farmer.

Response: Comment noted.

*McClelland Agronomics*

**Comment 201:** It appears as though there is going to be a lot more information to report on the ACR, anything from changes in crop rotation to changes in how O&M may be completed. This will become completely tedious and detract from the ability of farm planners to be able to accomplish the overall purpose of helping farms meet the general objectives of the permit –keeping clean water clean and treating dirty water. Reporting any more detail than necessary will become problematic and costly.

Response: Comment noted. The Department has attempted to streamline the recordkeeping requirements for CAFOs under these general permits.

*Debra Reid NYS Resident*

**Comment 202:** I would suggest that permitting be stringently monitored. Air, water and soil is being saturated, seemingly without care or concern. In fact, this slurry is "dumped" rather than spread. It appears that there is a need to get rid of excess. This farm has over 3000 cows. Health risks exist for both human and animals.

Response: Permitted CAFOs must comply with NRCS conservation practice standard NY 590 for the land application of manure nutrients.

*Earthjustice*

**Comment 203:** I urge you to issue a permit that affirms our right to clean water by banning winter spreading, increasing water monitoring, strengthening enforcement, and improving procedures for public participation.

Response: These general permits clearly define conditions in which the spreading of nutrients is prohibited. The general permits also mandate the evaluation of risk factors in the "Revised winter and wet weather manure

spreading guidelines to reduce water contamination risk” when determining whether conditions are appropriate for the land spreading of nutrients.

The public has a right to review non-privileged, final agency determinations through the FOIL process if the information requested is not first voluntarily provided by the administrative agency. Additionally, the public will be able to view all Notices of Intent, Annual Compliance Reports, and Annual Nutrient Management Plans that are required to be submitted to the Department.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 204:** Sections of the ECL and CWA Permits that contain protections that are specific to surface water should be modified to include groundwater as well. These include, but may not be limited to:

ECL Draft Permit sections sections I(A)(3)(d) (discharges of process wastewater); I(B)(1) (discharges from production areas); III(A)(6) (operation and maintenance of BMPs); III(B)(2) (design and construction of retention facilities); III(E)(2)(a) (significant changes in design, construction, operation, or maintenance); IV(B) (overflow and discharge reporting); Appendix A(T) (definition of discharge); and Appendix A(XX) (definition of waters of the state).

Response: The Department believes groundwater is protected with the language proposed in the draft permits.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 205:** DEC should:

- publish each CAFO’s NOI in the ENB when it publishes the CNMP;
- specify the content of the NOI form in the Draft Permits;
- update the content in the NOI form to include information mandated by EPA in 40 C.F.R. § 122.21(i)(1), but omitted from the current NOI, as outlined in our comments;

- update the NOI form to require additional information about storage capacity required by other state CAFO programs, as outlined in our comments;
- amend the owner/operator certification at the end of the NOI form to include certification of compliance with the terms of the applicable general permit, including the site-specific CNMP.

Response: The availability of each NOI and Annual Nutrient Management Plan submitted by CAFOs seeking coverage under the CWA general permit will be posted to the ENB and be available for public review and comment for 30 days. The NOI form, as well as other forms associated with the permits, is being updated to require additional information, including information related to storage. The public has a right to review non-privileged, final agency determinations through the FOIL process if the information requested is not first voluntarily provided by the administrative agency.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc. The Department received several comments regarding this issue:*

**Comment 206:** Major CAFO infrastructure projects (<5 acres) should not be exempt from the Construction General Permit. At the very least, DEC must incorporate federal limitations on exemptions from the Construction General Permit into the ECL and CWA Permits. Rather than exempting CAFOs from the Construction General Permit, DEC should create a process to streamline approval for the construction of major CAFO infrastructure projects, and determine whether SWPPPs are necessary in each case.

Response: This general permit does not provide any additional exemptions than what is contained in the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002).

*Watertown Water Dept.*

**Comment 207:** The NY State Environmental Quality Review (SEQR) regulations at 6NYCRR Part 617.5 list "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" as Type II actions which do not require preparation of an environmental assessment form (the EAF) or other compliance with SEQR. The CRR further states that these are actions that have been

determined not to have a significant impact on the environment or are otherwise precluded from environmental review under the ECL, Article 8. This is at fault. There are actions with readily identifiable characteristics wherein this particular section of the CRR simply ought not to apply, particularly with respect to the CAFO, and it is incumbent, therefore, upon the General Permits to identify such actions and correct the deficiency that otherwise will continue to exist.

Response: These general permits do consist of “agricultural farm management practices” that satisfy the conditions in 6 NYCRR 617.5(c)(3) for a Type II classification.

*Jeffrey Carlson NYS Resident*

**Comment 208:** Can a concerned citizen, such as myself, call the DEC to advise of those who are allowing their animals to urinate and defecate in waters of the US? What is the department's protocol for this type of call?

Response: Citizens are encouraged to report incidences and/or concerns to the Department. It is suggested that citizens contact their Regional DEC Office when an incident is observed. The Regional Office contact information can be found in the Appendices of both permits. Although discouraged, pastured animals are not prohibited from being in contact with waters of NYS.

*Robert Duckett NYS Property Owner*

**Comment 209:** The exact size, operations, and locations of permitted CAFO's should be made public. It is the only way the public can intelligibly quantify the potential problems. Water use and effluent volumes should be made public. The maps you have fall short of important details.

Response: The Department is updating the map available on the DEC website. Also, a complete list of farm sizes, types, locations, etc. is readily available for every permitted facility upon request.

*Charles N. Greene NYS Resident*

**Comment 210:** CAFOs are industrial enterprises and should be regulated as industrial sources of point and non-point source pollution.

Response: CAFOs are regulated point sources.

*Jeffrey Carlson NYS Resident*

**Comment 211:** Recording the amount and dates and volume of effluent pumped out of bunk silo low-flow / milk-center waste storage tanks. I've learned that some DEC inspectors require this practice on farms they are inspecting and it is not a permit requirement.

Response: This is not required by the general permits.

**COMMENTS NOT PERMIT RELATED – therefore no responses are provided.**

*Jeffrey Carlson NYS Resident*

**Comment 212:** What is the Department's plan for enforcing these permit regulations, when the Department is so under-staffed as it is?

*Jeffrey Carlson NYS Resident*

**Comment 213:** What is the Department's plan for monitoring field operations? Or where is this mentioned in the permit? I've never seen a DEC inspector in a farm field or monitoring the land application of manure that the Department takes so much time, money and effort to regulate. Please advise how many DEC officers have monitored held operations during a DEC inspection in the year 2015?

*Bill Hecht NYS Property Owner*

**Comment 214:** In recent years I have seen all too many bits of wetlands, field buffers and marginal land removed and converted to farmland. I realize taxes are paid on all this land but can we not come up with a way to preserve these buffers and natural areas and give a tax incentive to do so? Computerized air photo interpretation should go a long way today of ensuring compliance.

*Bill Hecht NYS Property Owner*

**Comment 215:** I would like to see field inspections of the manure management plans and farm plans. And I especially would like to see field inspections done during storm events. It is documented that we are receiving bigger storms and more frequent storms. Logic would tell us that new farm plans and manure plans must account for these more frequent and bigger storms.

*Jeffrey Carlson NYS Resident*

**Comment 216:** What is the planned interval for a DEC inspection at a farm?

*Jeffrey Carlson NYS Resident*

**Comment 217:** Will the DEC provide grants/funding to help farms keep on top of the detailed records they are asking for? I believe it is referred to as "capacity building". Will funding be provided to assist with meeting the new winter spreading parameters.

*Jeffrey Carlson NYS Resident*

**Comment 218:** Volunteer programs are rarely successful when a cost to the owner/operator is involved to make changes.

*Jeffrey Carlson NYS Resident*

**Comment 219:** The permit seems to be more than the Department can feasibly handle and monitor.

*Robert Duckett NYS Property Owner*

**Comment 220:** For decades air pollution from CAFO's has been under recognized. There is proven science and a vast data base that shows the air pollution caused by CAFO's to be unhealthy. The nontherapeutic use of antibiotics creates an environment for "superbugs" to grow. Airborne contaminants are also a significant source of water pollution via rainfall.

*Pine tree farms Inc.*

**Comment 221:** More strict standards for air quality need to be adhered to.

*Robert Duckett NYS Property Owner*

**Comment 222:** The overuse of antibiotics must be addressed in CAFOs. Nutrient management plans should include greater setbacks from water courses.

*Robert Duckett NYS Property Owner*

**Comment 223:** Does anyone really know the carrying capacity of the ecosystems where CAFO's operate? Are we to believe the CAFO system is honestly sustainable? How long can we employ trial and error methodology? There are other, better ways.

*Charles N. Greene NYS Resident*

**Comment 224:** Agricultural exemptions from federal and state laws should not be afforded to CAFO operations.

*Charles N. Greene NYS Resident*

**Comment 225:** Authority to oversee and regulate CAFOs should reside with the New York State Department of Health and the US EPA.

*Charles N. Greene NYS Resident*

**Comment 226:** Local municipalities should be able to regulate CAFO operations by all rights accorded them by New York State Home Rule.

*NYFB*

**Comment 227:** For our family farm members, agricultural environmental funding must go hand in hand with the CAFO policy changes to be implemented in this new permit cycle. The new permit elements that have been introduced require a wide range of time, staff and financial investment by the farm. Some elements require daily operational changes or a one-time major capital investment for structural changes – but they will all be costly. With new CAFO permit elements like WWSOPs and a renewed focus on manure storages, farm need for state funding for cost-sharing and related state-funded programs has never been stronger.

NYFB strongly supports the Environmental Protection Fund that champions the partnership between agriculture and the environment by funding farm environmental programs. Programs such as Soil and Water Conservation District services, Agricultural Nonpoint Source Abatement Program, and Agricultural Waste Management Program are not just critically important to environmental protection but, in many cases, drive farm profitability.

In particular, Agricultural Nonpoint Source (AgNPS) funding has been an important source of state investment for CAFO improvements as demonstrated by farm need consistently outpacing Ag NPS funding levels. NYFB is grateful that the Agricultural Nonpoint Source Pollution Abatement Program received \$14.2 million in last year's State Budget and is currently slated to receive \$19 million in the 2016-17 Executive Budget proposal. Our members are very pleased the Governor recognizes that funding for this program is critical as our livestock industry is operating at a pivotal time, as we look to make dairy farmers even more environmentally sustainable.

NYFB also strongly supports continued reimbursement funding for County Soil and Water Conservation Districts. The Conservation Districts serve as the front line technicians for farm projects including CAFO, AEM and stream bank restoration projects. Their local technical assistance and engaging approach inevitably gains farmer support and long-term commitment to quality environmental protection.

Successful sustainable environmental agriculture cannot exist without the foundation provided by local Land Grant University research that is state and region-specific and can best define risk assessment tools, BMPs and other sustainable farm activities. For this reason, NYFB is grateful for the engagement of Cornell University and the PRO-DAIRY program in helping ensure the science-based foundations for New York's CAFO and AEM programs. We strongly support continued state support and funding for the PRO-DAIRY program.

*NYFB*

**Comment 228:** The success of this CAFO program is heavily weighted by the relationship between farmer and planner and hinges on the development of a farm-specific, environmentally meaningful and financially sustainable CNMP.

The value and importance of a properly designed and executed CNMP to the environment, farm health and public health was made evident with the multiple discharge incidents occurring in early 2014. To ensure that farm CNMPs are highly effective tools to prevent any type of discharge, it is critical that the limited pool of certified planners available to New York farmers all perform to the same high standard with consistency and uniformity in diagnostic methodology and compliance interpretation.

These holistic farm/livestock environmental plans are a critical assessment tool for farmers and have elevated environmental stewardship on the farm, but only with great farmer investment. The complexity of a CNMP and its demands on time and staff resources to properly execute and manage it leaves the farmer no choice but to employ the expertise of a planner and other agricultural consultants.

NYFB applauds the State Legislature for reinstating and funding the Quality Assurance/Quality Control Program for certified nutrient management planners conducted by NYS DAM with \$250,000 in program funding in the 2015-16 State Budget. NYFB is actively working to have this budget line restored in the final 2016-17 State Budget. This program deters water quality impacts and bolsters conservation and environmental health on the farm by giving farmers across the state the most effective, reliable and proactive conservation tool for their specific farm site.

While not a permit element, this program is an important contributor to achieving the CAFO program's statutory goal of improving and protecting the waters of the State. NYFB respectfully requests DEC and NYSDAM support and assist the Planner QA/QC Program through funding, staffing and other

resources to ensure its success and availability to the planner and farm community.

*NYFB*

**Comment 229:** The CAFO permit is not an educational tool but a tool for identification of conservation needs on the farm. Farmer education must go hand in hand with development of the CAFO permit to bring continual and lasting water quality protection – the end goal of the CAFO program.

This is particularly important for this permit cycle where several new CAFO program requirements have been introduced and with which implementation and compliance are expected immediately. Of particular importance, wet weather standard operating procedures require BMPs to be managed to accommodate a 100-year, 24-hour storm event. Despite the well-written language in the permit and 2015 Revised Cornell Guide, there is no specific standard to reference in preparing for a 100-year, 24-hour storm event and, therefore, no clear expectation on what proper compliance entails for farmer and inspector.

NYFB respectfully requests specific training by DEC for these new permit elements in order for farmers to become the expert managers of high consequence weather events that the Department would like to see demonstrated on the farm and documented in permit recordkeeping and reporting. On-farm trainings like “the CAFO roadshow” are excellent opportunities for farmers to learn how to adapt their CNMPs to meet the 100-year, 24-hour standard, especially when existing farm structures, infrastructure and practices have been designed to the 25-year, 24-hour standard.

We are confident that this type of DEC-sponsored training will give farmers and planners the direction they need and elevate smart farm management so all CAFOs will enter this new permit cycle prepared for whatever Mother Nature may bring.

*Debra Reid NYS Resident*

**Comment 230:** I would add that any agency working with CAFO's in any way, review processes and procedures so that human and animal life is considered as important as farming.

*Earthjustice, Citizens Campaign for the Environment, Environmental Advocates of New York, Sierra Club Atlantic Chapter, Theodore Gordon Flyfishers and Riverkeeper, Inc.*

**Comment 231:** DEC should establish a system to allow for electronic reporting and searches of soil sample results, as other states have done. See, for example: North Carolina's Public Access Laboratory-information System ("PALS") website, <http://www.ncagr.gov/agronomi/pals/>

*The New York State Federation of Lake Associations, Inc., FLRWA. The Department received several comments regarding this topic:*

**Comment 232:** Review by the New York State Department of Health - We believe that the NYS DOH should play a more integral role in the CAFO permitting process.....We suggest that the NYS DOH conduct a study to determine health impacts of large scale manure spreading. This should include air quality (notably ammonia) and water quality exposure pathways. We also feel strongly that Watershed Rules and Regulations need to be reviewed and updated in order to take into account industrial agricultural practices in public drinking water supply watersheds.

*C-OFOKLA*

**Comment 233:** We further feel that with all the public health issues surrounding CAFOs that a complete review by the NYS Department of Health is warranted, and that recommendations from that agency should be implemented.