



Department of
Environmental
Conservation

FACT SHEET

For

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

Permit No. GP-0-22-001

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

Issuance Date: July 22, 2022
Effective Date: January 23, 2023

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INTRODUCTION

The New York State Department of Environmental Conservation (Department) is renewing and modifying the Environmental Conservation Law (ECL) State Pollutant Discharge Elimination System (SPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) as GP-0-22-001. The GP-0-22-001 was issued on July 22, 2022 and will be effective January 23, 2023. GP-0-16-001 is administratively continued, through January 22, 2023, under the State Administrative Procedure Act Section 401, 6 NYCRR 750-1.16(a) and 6 NYCRR 621.11(l).

A CAFO is defined in 6 NYCRR 750-1.2(a)(23). Under federal law, only CAFOs that discharge to surface water must obtain SPDES permit coverage. However, state law is more protective of the environment and, therefore, non-discharging CAFOs must also obtain a SPDES permit. CAFOs, meeting the state regulatory definition, are point sources, as defined in ECL §17-0105(16) and 6 NYCRR 750-1.2(a)(67). Pursuant to ECL §17-0701(1)(a), an owner or operator must have a SPDES permit prior to operation of a CAFO. As authorized by ECL §70-0117(6) and 6 NYCRR 750-1.21(b)(4), the Department may utilize a SPDES general permit for CAFOs.

GP-0-22-001: 1) provides SPDES permit coverage for CAFOs that do not discharge from their production areas to surface waters of the State, and 2) authorizes discharges of non-contact cooling water (NCCW) to groundwater of the State in cases where the NCCW discharge meets the characteristics outlined in GP-0-22-001.

Pursuant to ECL §17-0817(1) and 6 NYCRR 750-1.15, the Department may issue a SPDES permit for discharges to groundwater for a term not to exceed 10 years. GP-0-22-001 has a 10-year permit term (January 23, 2023, through January 22, 2033).

Permit transition:

Continuing Coverage under ECL General Permit

In order to maintain uninterrupted ECL general permit coverage, a completed Request to Continue Coverage form and Comprehensive Nutrient Management Plan (CNMP) Certification, must be received by the Department 30 calendar days prior to the effective date of GP-0-22-001. Both the Request to Continue Coverage form and CNMP Certification must be signed by both the CAFO owner/operator and Agricultural Environmental Management (AEM) certified planner. Within that 30-day time period, the Department will review the Request to Continue Coverage form and the CNMP Certification and notify the CAFO owner/operator if those are not complete. This approach is supported by 6 NYCRR 750-1.21(d)(1) and (2).

As stated above, GP-0-16-001 will remain in effect for CAFOs with existing coverage under GP-0-16-001 until GP-0-22-001 becomes effective. Coverage under GP-0-22-001 will begin 30 calendar days after the Department receives both the completed Request to Continue Coverage form and signed CNMP Certification, but not prior to the effective date of GP-0-22-001.

CHANGES

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

SIGNIFICANT CHANGES

Electronic Submission: All forms required to be submitted under GP-0-22-001 must be submitted electronically in a format acceptable to the Department per 6 NYCRR 750-2.5(e). This change helps Department staff access and process forms remotely, allowing for faster entry into state and federal databases. Although the federal E-Reporting Rule (40 CFR 127.16) does not apply to GP-0-22-001, which is issued pursuant to state law, requiring electronic reporting in GP-0-22-001 is consistent with the Department's administration of other SPDES general permits. Additionally, 40 CFR 127.16(a) allows the permitting authority, here the Department, to require electronic reporting if the requirement is specified in a particular permit or if required by state law.

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

Notification: GP-0-22-001 includes several additional notification requirements. These additional notification requirements include: 1) changes to the AEM Certified Planner of Record (Part II.B.); 2) plans to construct or expand any liquid waste storage (Part II.B.); 3) any application over the maximum annual application rate in the CNMP or the single application rates described in Part III.A.8.b)(1)(Part IV.B.); and 4) any instance where there is a liquid manure, liquid food processing waste, liquid digestate, or process wastewater spill that is reported by the owner/operator or delegated CAFO staff to the DEC Spills Hotline (Part IV.B.). The 24-hour reporting requirement contained in GP-0-22-001 related to liquid manure, liquid food processing waste, liquid digestate, or process wastewater spills is satisfied through reporting of the incident through the DEC Spills Hotline (Part IV.B.1.). Five-day incident reports

must be submitted following a report to the DEC Spills Hotline (Part IV.B.2.). The five-day incident reports allow an opportunity for the CAFO, planner, and the Department to assess the effectiveness of a CAFO's Emergency Action Plan (GP-0-22-001 Part III.A.7). In order to comply with ECL §17-1743, the Department expects that the CAFO reports through the DEC Spills Hotline any: 1) unintended, non-agricultural releases of liquid manure, liquid food processing waste, liquid digestate, or process wastewater, in excess of de minimus amounts, and/or 2) release of liquid manure, liquid food processing waste, liquid digestate, or process wastewater reaching drinking or surface waters. The completed forms required to be submitted through these new notification requirements are available to the public upon request and represent an important additional step towards transparency and oversight.

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

Pursuant to Section 17-a of CRRRA, Chapter 355 of the Laws of 2014 (as amended by Section 9 of the Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019), the Department must identify "the most significant climate-related risks" and promote "measures that could mitigate significant climate-related risks." To implement those requirements, GP-0-22-001 requires Professional Engineers, developing new design plans for critical structures¹ and for non-critical facilities², to consider future physical climate risks according to CRRRA, 6 NYCRR Part 490, the criteria found in Table 4 of the "State Flood Risk Management Guidance" and "Estimating Guideline Elevations".

Pursuant to Section 17-b of CRRRA, Chapter 355 of the Laws of 2014 (as amended by Section 9 of the Climate Leadership and Community Protection Act, Chapter 106 of the Laws of 2019), activities covered by major permits for regulatory programs subject to the Uniform Procedures Act, including GP-0-22-001, are required to demonstrate that future physical climate risk has been considered. Moreover, the Department can require activities covered by a major permit to mitigate significant risks to natural resources in the vicinity of the activity. To implement those requirements, GP-0-22-001 requires

¹ "structures designed to be functional during flooding including waste storage facilities and waste transfer systems," as defined in Appendix A of GP-0-22-001.

² "structures designed to survive flooding and regain functionality within an acceptable period, including vegetated treatment areas, heavy use areas, and composting areas," as defined in Appendix A of GP-0-22-001.

Professional Engineers, designing both critical and non-critical structures to adjust designs to prevent or minimize inundation at these elevations, or provide justification for deviating from these elevations in the CNMP.

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

To eliminate the need to store NCCW (i.e. clean water) in manure storage areas, Part III.B.1. of GP-0-16-001 authorizes discharges of NCCW from CAFOs to non-trout surface waters of the State, if certain conditions are met. Given the changing climate in New York, and strain on existing water resources, GP-0-22-001, Part III.B.1. only authorizes discharges of NCCW to groundwater of the State, instead of surface waters. This approach continues to encourage re-use of this water to the maximum extent practicable while still allowing for incidental discharges to groundwater, which provides recharge to the groundwater resource in lieu of discharging off-site.

Although facilities who discharge NCCW to dry wells on site are likely subject to EPA's Underground Injection Control (UIC) Program, the conditions in GP-0-22-001 were developed with the UIC program requirements in mind and will likely result in compliance with that program. See https://www.epa.gov/sites/default/files/2015-08/documents/class5_state_imp_guid.pdf for further guidance on EPA's UIC program requirements.

CAFOs continue to have the option to apply for an individual SPDES permit if they wish to continue to discharge NCCW to surface waters. In addition, pursuant to 6 NYCRR 750-1.21(e)(1)(i), (vii), and (viii), the Department also has the authority to require an application for an individual SPDES permit.

Construction Stormwater General Permit: Tables 1 and 2 of the SPDES Construction Stormwater General Permit (CGP) include a list of construction activities related to CAFOs that may require coverage under the CGP. Instead of obtaining coverage under the CGP, GP-0-16-001 authorized a subset of construction activities, which were listed in Appendix B, section B. In Appendix B of GP-0-022-001, those existing construction activities will continue to be authorized under GP-0-22-001 for a period of 12 months following the effective date of GP-0-22-001. Any new construction activities, or existing construction activities extending beyond the 12-month transition period described above, are required to obtain separate coverage under the CGP. This does not represent a change in the substantive requirements that apply to such construction activities.

Continuing the approach under GP-0-16-001, constructing one of the following operational and vegetative agricultural BMPs, as identified in the New York State Department of Agriculture and Markets document, "Agricultural Management Practices Catalogue for Nonpoint Source Pollution in New York State," is **not required** to obtain coverage under the CGP:

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

OTHER CHANGES

GP-0-22-001 also:

- Clarifies language to require submission of a Change of Operation (COO) form 15 days before a CAFO expands its operation by 20% or more above the number of animals specified as in confinement in the last submitted an Annual

Compliance Report (Part II.B.3.a)(1);

- requires existing CAFOs to sign off on the COO form when being acquired. The COO form acts as the acquired CAFO's Notice of Termination (NOT) (Part II.B.3.a)(4));
- provides an implementation schedule for existing CAFOs (until September 30, 2025) to fully implement the new 2.0 Phosphorus Index (Part III.A.3.a) and d));
- in accordance with 6 NYCRR 750-1.14(b), requires interim progress reports every 6 months for the implementation of structural practices for a new Small CAFO or when an existing, compliant, permitted CAFO acquires an AFO or CAFO operation (Part III.A.3.c)(4) and Part III.A.3.d)(4));
- requires use of the current versions of the Natural Resource Conservation Service Standards in effect at the time of the public notice of the draft (Part III.A.4.);
- requires manure applications, made in areas of at-risk groundwater, to comply with new 2021 Cornell recommendations in "Groundwater Protection Guidelines for Agriculture" instead of the guidelines contained in two previous versions of Cornell recommendations, "Manure Management Guidelines for Limestone Bedrock/Karst Areas of Genesee County, New York: Practices for Risk Reduction" and "Manure and Groundwater: The Case for Protective Measures and Supporting Guidelines" (Part III.B.8.c));
- clarifies language regarding non-CAFO generated organics (Part III.B.3.c));
- allows for internet-based annual manure applicator training for an AEM certified planner (Part III.C.1.); and
- defines "Critical Structures", "Non-critical structures", "Existing Construction Activity", "New Design Plans", "Wet Weather Spreading Conditions", "Equivalent (Equivalence)" and "Fully Implemented."