

Frequently Asked Questions  
Pertaining to Permit Requirements of the  
SPDES General Permits (GP-0-16-001 & GP-0-19-001) for  
Concentrated Animal Feeding Operations

(last updated: 5/31/17)

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**PERMIT ELIGIBILITY / COVERAGE**

- 1) Is an existing medium CAFO eligible for the Environmental Conservation Law (ECL) permit (GP-0-16-001) if it has an improperly functioning Best Management Practice (BMP)?
  - A. Yes, as long as the permittee provides equivalent protection to the environment until such time as the BMP is functioning properly.
  
- 2) If a farm expands to over 300 cows after July 24, 2017, what does the farm need to do and how long does it have to comply with ECL permit requirements?
  - A. In order to be fully compliant with the permit terms and CAFO rules and regulations, the expanded Medium CAFO (AFO to Medium CAFO) must not have a discharge and would need to implement all required BMPs prior to the expansion. Once fully implemented, the owner/operator can then submit a Notice of Intent and Comprehensive Nutrient Management Plan (CNMP) Certification to New York State Department of Environmental Conservation (DEC or Department) seeking coverage under the permit. Permit coverage would be granted 30 days after the receipt of the completed Notice of Intent (NOI) and CNMP Certification, at which time the farm can take on the additional animals. If the farm expands prior to becoming fully implemented, the owner/operator would be in violation of the ECL permit.
  
- 3) Is coverage under one of the CAFO general permits required if a racetrack that has no landbase, properly exports all manure and discharges all of its manure/process wastewater to a publicly owned wastewater treatment system?
  - A. No. In accordance with Section I.A.3.c). of the general permit, facilities that discharge all of their process wastewater to a treatment system that discharges in accordance with a State Pollutant Discharge Elimination System (SPDES) permit are excluded from needing coverage under the CAFO general permit. Note that the stormwater associated with the racetrack itself is "process wastewater" and would therefore also need to be discharged to a permitted treatment facility in order to be excluded from needing coverage under the CAFO general permits.
  
- 4) The NOI for the CWA Permit requires the owner/operator and planner to sign the Annual Nutrient Management Plan (ANMP). How should that be done? Should we copy the signature block language for the owner/operator and planner from Appendix C in the Clean Water Act (CWA) permit (GP-0-16-002) and include that in the ANMP?
  - A. Yes.
  
- 5) I am planning on opening a new dairy farm in New York and in order to get my business loan approved at the bank, the bank is requiring all necessary operating permits be obtained. How do I get permit authorization under a SPDES CAFO general permit if the practices identified in my CNMP have not yet been implemented?
  - A. New facilities, with no animals on premises, may submit a NOI and ANMP (if seeking coverage under GP-0-16-002) or CNMP Certification (if seeking coverage under GP-0-16-001) to obtain coverage under a SPDES CAFO general permit at any time. However, at least 30 days prior to

becoming operational (i.e. accepting animals into your operation), you must also submit a separate, written certification that all required practices identified in your CNMP have been fully implemented.

- 6) I am reading Part II.B.2. regarding the 20% expansion clause. It says the CNMP needs to be updated at least 15 days prior to the expansion and that all BMPs must be implemented prior to the expansion. However there is additional time allowed in the implementation section of the permit (Part III.A.3.c) if a CAFO “acquires” another AFO/CAFO. If the acquisition of the AFO/CAFO involves an increase of animals above 20%, which section of the permit applies?

A. If a compliant CAFO acquires an AFO or CAFO, the permitted CAFO would follow the implementation schedule provided in Part III.A.3.c of the general permits describing acquired operations. However, if the permitted CAFO purchases additional animals and no associated operation, then the CAFO would need to follow the Change of Operation procedures outlined in Part II.B.2 of the general permits.

- 7) If I discharge or propose to discharge process wastewater do I need CWA permit coverage?

A. Yes. Discharges of process wastewater must be covered by a SPDES permit prior to discharging. The owner/operator must seek coverage under the CWA general permit (GP-0-16-002) or an individual SPDES permit prior to discharging any process wastewater from their facility to Waters of the State.

- 8) Can one permittee have both an ECL permit and a Part 360 permit at the same time?

A. Yes. For example, if a CAFO facility is accepting and storing non-recognizable food processing waste with manure in a waste storage structure for a total annual volume of 50% or greater in the structure then the facility must have both a CAFO permit and a Part 360 permit.

- 9) If a farm imports whey or other non-recognizable food wastes for livestock feed, do Part 360 regulations apply?

A. No, the Part 360 regulations do not apply.

- 10) Does the addition of whey to the manure storage require a revision or update to the CNMP and is new sampling of the waste in the storage required?

A. Yes and Yes.

- 11) Can I directly land apply non-recognizable food waste without routing it through a storage?

A. Yes. Non-recognizable food waste can be directly land applied on a CAFO field. However, the CNMP must be updated and the nutrient composition must be determined prior to the activity and included in planner recommendations.

- 12) Who will inspect/enforce farms under the CWA permit?

A. The CWA permit will continue to be enforced (including inspections) by both DEC and the United States Environmental Protection Agency (USEPA).

- 13) How does the ECL permit comply with the EPA CWA requirements?

A. The USEPA CWA rules apply to CAFOs that “discharge” to waters of the United States. Pursuant to USEPA’s approval of DEC’s SPDES program, DEC has issued GP-0-16-002 which allows CAFOs to seek coverage to discharge to waters of the State, which encompass waters of the United States. The ECL permit is promulgated by State Law and covers farms that meet the CAFO

thresholds but do not discharge to surface water and are therefore not subject to EPA's CWA requirements.

14) Can DEC require a farm to get a CWA permit?

A. Yes.

15) Is a CAFO currently under a consent order eligible for the ECL permit?

A. Maybe. It depends on the circumstances of the particular situation. Please discuss with your regional DEC office.

16) How much time does an existing, unpermitted Medium CAFO have to complete structural and non-structural practices?

A. The permit(s) do not allow additional time for unpermitted medium CAFOs to implement required practices. The permit(s) require all farms meeting the definition of a CAFO to be fully implemented prior to operating. If an existing unpermitted farm is operating as a Medium or Large CAFO and is not fully implemented, the owner/operator should contact DEC to discuss the potential to enter into a Consent Order with the Department providing a path to compliance. The unpermitted CAFO should be prepared to propose a reasonable schedule to achieve compliance which will be considered by DEC in the enforcement process.

17) The NOI certification statement says that the CNMP is compliant with the CAFO Permit – is this the new permit or current permit?

A. The new permits, GP-0-16-001 or GP-0-16-002.

18) If a CAFO is granted ECL coverage, does the farm need to terminate their CWA permit?

A. No, coverage under the CWA permit will automatically be terminated by the Department when ECL coverage commences. The Department will provide written acknowledgment of the receipt of the NOI, CNMP Certification and authorization under the ECL permit.

19) Will the Department provide a written response to comments received on CWA Permit ANMP/NOIs?

A. Maybe. The Department may provide a written response to comments received but will determine if that is warranted based on the substance of the comments received.

20) What constitutes the need for a public hearing when seeking coverage under the Clean Water Act (CWA) permit?

A. The determination to hold an adjudicatory or legislative public hearing is governed by 6 NYCRR §621.8.

21) A CAFO purchases a non-adjointing heifer facility (<300 heifers) with its own landbase and manages the heifer facility and landbase separately from the CAFO. If the heifer farm exports silage to the CAFO, would the heifer farm need to be covered by the CAFO's permit?

A. The permit defines Common Ownership/Common Facility as two or more AFOs that, among other things, (1) adjoin each other, (2) use a common manure and waste storage and handling system, (3) use a common land application area, or (4) share a feed storage area that is under control of a CAFO. In this example, the feed storage area appears to be under control of the heifer facility so would not qualify as a Common Facility as per the definition above and therefore would not need to be covered under the CAFO's permit. Note: If there is a transfer of manure between

facilities, further analysis using the definition of export as defined in the general permits, may be necessary.

22) 40 C.F.R. §122.42(e)(1)(v) states that the nutrient management plans must “[e]nsure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants[.]” Is this restriction covered somewhere in the general permits?

A. Yes. Part I.B.7 of the general permits includes a prohibition on unauthorized substances. Specifically, it states that any material that cannot be properly handled at the CAFO is prohibited from being stored, transferred, or land applied. This prohibition would include the “chemicals and other contaminants” specifically referenced in the above federal regulations.

23) Can a farm send DEC a forward-dated Notice of Intent (ex: 1/1/19)?

A. No.

24) When filing a NOT, the permit requires “proper management and/or removal of all residual materials...in accordance with ... 750”. What areas of the farm is this referring to? Silage, storages, barns, barnyards, etc?

A. All areas of the farm where nutrients are stored, transferred or treated.

25) If an existing CAFO acquires a new facility that has a bunk silo that doesn't have any type of collection/treatment system in place – can the bunk silo still be used until the implementation of the BMP is complete (within 24 months)?

A. Yes. However, its use must be minimized by incorporating its contents into the existing permitted operations to the extent that the current CNMP allows (See Part III.A.3.c)(1) of the general permits).

## **NRCS STANDARDS**

26) What NRCS standards are currently required by the new permits?  
What if an NRCS standard changes between the date that the permit is issued and the date the permit expires?

A. The CAFO general permit requires compliance with the NRCS standards in place at the time the permit is issued. If an NRCS standard changes during the permit term a facility may choose to upgrade or implement a new practice to meet this new standard but this is not required for compliance with the CAFO general permit. Note, it is likely that the next permit will incorporate the new, updated standard. Part III.A.4. of the general permits provides specifics on the required use of NRCS standards.

27) Standards falling within one of the Minimum Standards listed in the Permit. Are all of the Standards included in the Parent Standard required as well?

A. Only if a component standard is required in order for the overarching standard to be met.  
Example: If a Cover Crop is needed in order to be in compliance with the Nutrient Management Standard (590), then the Cover Crop standard (340) must be followed. Your CNMP should specify which Standards are required (including any component standards), as determined the AEM certified planner.

28) Are Calf Hutch areas required to follow any NRCS Standard?

A. Calf Hutches should be evaluated by the planner on a case-by-case basis for risk. If resource risk exists, relocation and/or BMP systems comprised of one or more NRCS standards applicable to

the site should be employed to manage manure and process wastewaters and provide clean water exclusion from upslope areas in accordance with the Permit requirements.

### **VEGETATED TREATMENT AREAS / SILAGE LEACHATE / HEAVY USE AREAS**

29) The design work to date for the installation of a new treatment system / expansion of our existing system as part of our bunk silo expansion project has proceeded with the assumption that the high/low flow separation devices presently used in the existing silos can continue to be used for that purpose (as per the evaluation procedure) and the appropriate outflow from these units piped to the expanded VTA, as well as the high/low flow structure for the expanded storage area, would come under Section III.A.4.c) of the permits. Would this be the proper interpretation?

A. The existing low flow collection system qualifies as an expanded BMP and needs to meet the 10/2015 NRCS 634 standard for waste transfer structures if it is indeed being expanded to accommodate the additional flows from the bunk expansion. If it is not being expanded, then you are correct, it needs to be evaluated as per Section III.A.4.c) if it was not previously designed by a PE or qualified NRCS employee with proper job approval authority to meet the NRCS standard in place at the time of installation. To reiterate, if you are not expanding the low flow separator, its design indicates that the system can properly function with increased flow, and it was already built by a PE or qualified NRCS employee to meet the NRCS standard then you don't have to do anything with the low flow collection system unless, of course, it isn't working as per the judgment of your Certified Planner. For the VTA, if a Certified Planner and/or PE determines that the existing VTA needs to be structurally modified to treat the expanded bunk silo, then the VTA expansion must meet the 10/2016 NRCS 635 standard associated with the Permits.

30) According to the new permits, an existing VTA (treatment system) has to meet the 4/2009 through 10/2016 635 Standard and not the 10/2016 Standard specifically, correct?

A. Correct.

31) Part III.A.3 of the general permits states: "The CNMP must also prescribe a management system to provide equivalent water quality protection during BMP construction, repair and transition periods" (pg. 6). Does our Certified Planner and/or PE have the authority to determine that the BMPs in place are providing adequate treatment for CAFO wastes during construction?

A. Yes and the equivalence should be documented in the CNMP.

32) If it were possible to keep the present "functionally equivalent" system intact during the construction phase, would that suffice?

A. A functionally equivalent practice is required during construction of permanent BMPs.

33) How can you be in full compliance with the permit and therefore eligible for the permit while a new VTA is being given time to establish.

A. Part III.A.3 of the general permits provides that "[t]he CNMP must also prescribe a management system to provide equivalent water quality protection during BMP construction, repair and transition periods."

Therefore, in the case of your new VTA, you must make sure that during the establishment period you have directed the high flows away from the new VTA so that it has time to establish. Some options might be an adjacent corn field or other cropland, so long as the adjacent corn field and other cropland is providing equivalent protection. This equivalence must be documented in the CNMP.

34) I am reading Part III.A.4.c of the general permits – does this mean that all VTAs need P.E. evaluation even if they were just installed and working fine?

A. It depends. If the installed VTA was built in accordance with the April 2009 or newer version of NRCS 635 VTA standard and the farm has as-built documentation from a P.E. or qualified NRCS employee then they do not need a P.E. evaluation. If not, then it must be evaluated by a P.E.

35) I am reading Part III.A.4 of the general permits – it says that VTAs and waste transfer structures need P.E. evaluation but then says other existing BMPs that are improperly functioning can be evaluated by a P.E. or a planner?

A. Correct. Improperly functioning BMPs can initially be evaluated by a planner and then may need a P.E. depending on what the BMP is and what isn't working.

36) For an “undesigned” high flow silage leachate treatment system, i.e. cropfields, what is needed in the CNMP for the planner to justify that “high- flow leachate treatment is unnecessary”?

A. It depends on the site-specific characteristics of the situation. Some minimum requirements would include low flow collection or justification that low flow collection is unnecessary and consideration of the following criteria from the NRCS-NY 635 VTA Standard: distance and slope to nearest water of the state, soil phosphorus tests for the cropland receiving the high flow, crop rotations, soil type(s) and hydrologic class (A, B, C or D), Nitrate Leaching Index, depth to groundwater and bedrock based on soil survey and field observation, etc. The CNMP must document that installation of an NRCS compliant VTA adds no additional protection for water quality.

37) Does an “undesigned” high flow silage leachate treatment system need a level-lip spreader to evenly distribute flows?

A. It may in some instances. A level-lip spreader or another type of distribution device may be needed to avoid concentrated flows through the crop field as per the judgment of a Certified Planner/P.E.

38) Does a P.E. need to evaluate an undesigned filter area?

A. The term “filter area” can mean many different things. If you mean it to be a buffer strip to protect a watercourse on the edge of a cropland, then a P.E. does not have to evaluate that type of filter area. If meaning a Waste Water Treatment Strip or what is now known as a Vegetated Treatment Area (NRCS-NY 635) used to treat process wastewater from production areas, then the existing, undesigned filter area would need to be evaluated by a P.E.

39) If I build a new low flow silage leachate collection tank with a roof over it do I need to have a P.E. design?

A. Yes. All new structures must meet the NRCS standards in place on the date that the permit is issued. The new, covered low flow collection tank would need to be designed in accordance with NRCS engineering standards, such as: the Manure Transfer Standard (NRCS- NY 634) or the Waste Storage Facility Standard (NRCS-NY 313).

40) If a planner deems high flow silage leachate treatment unnecessary as per Part III.B.5 of the ECL permit, then is the flow to the adjacent crop field considered an overflow? Is it a permit violation?

A. High flow leachate must be treated by a VTA or a system which provides equivalent protection to a VTA per Part III.B.5 of the ECL permit. If the planner can document equivalent protection to a VTA using the adjacent crop field, then the high flow treatment provided by the crop field would meet this permit condition. This would not be considered a permit violation.

41) If a medium CAFO needs to install a VTA to mitigate a discharge to waters of the State, what are their options?

A. This facility must either obtain a consent order from the Department or the Certified Planner and owner/operator could address the discharge with a practice that can be immediately implemented to provide adequate protection of the environment until such time as the structural practice is implemented.

42) For high flow runoff from barnyards, what is needed to demonstrate equivalency to a VTA?

A. It depends on the site-specific characteristics of the situation. The field or land receiving the high flow runoff would be evaluated by the Certified Planner relative to the following criteria from the NRCS-NY 635 VTA Standard: distance and slope to nearest water of the state, soil phosphorus tests for the cropland receiving the high flow, crop rotations, soil type(s) and hydrologic class (A, B, C or D), Nitrate Leaching Index, depth to groundwater and bedrock based on soil survey and field observation, annual nitrogen loading, etc. The CNMP must document that the installation of an NRCS compliant VTA adds no additional protection for water quality.

43) For low flow runoff from barnyard or silage leachate, how would a planner demonstrate collection is not needed?

A. If the low-flow can be contained within the practice and there is an ongoing monitoring strategy documented in the CNMP to ensure this remains the case. The monitoring strategy would be sufficient demonstration that collection is not needed. Additionally, there are instances where feed storage may not produce leachate. If this is the case, a monitoring strategy and monitoring records must be kept to ensure no leachate is produced.

44) Does my concrete barnyard need to contain the 25 year/24 hour storm event?

A. No. However it does need to be isolated from outside surface drainage through the 25-year, 24-hour storm event (See Part III.B.6 of the general permits).

45) Does the heavy use area within my pasture need to have low-flow collection and high-flow treatment?

A. No. Unless the heavy use area is a barnyard or the planner deems it necessary to prevent a discharge of process wastewater to waters of the State.

## **MANURE STORAGE AND TRANSFER**

46) Do farms that “daily spread” bedded pack need to get coverage under a consent order?

A. Not necessarily. It depends on the farm. Are they able to stockpile it or stack it when conditions are saturated or frozen saturated? If so, they may be able to manage manure so as to prevent applications to saturated or frozen saturated soils.

47) Do farms that “daily spread” liquid dairy manure need to get coverage under a consent order?

A. Yes. If the farm is truly spreading liquid dairy manure every single day that means that they have zero capacity to store it during saturated conditions and therefore are in violation of the permit. However, every farmer has a different definition for what is “daily spread” – some mean every day – some mean every month, etc.

48) Do farms that have a few weeks of storage need to get coverage under a consent order?

A. It depends on the farm. It is up to the CAFO owner/operator to decide if they have enough storage to make a reasonable effort to comply with the new permits.

49) Will daily spreading operations that are under a Consent Order be able to continue daily spreading until the required practice/practices are completed, even during those wet/winter weather conditions? If yes, will they be subject to additional fines possibly?

A. If the farm is in compliance with the terms and conditions of the consent order, then the farm can continue with nutrient spreading in conformance with their CNMP until the required BMP system(s) is complete. If there is a discharge to the waters of the State, a water quality violation or other permit or Order violation then they are subject to (further) enforcement which may include appropriate penalties and corrective actions.

50) Do gravity transfer systems need to be certified by an engineer?

A. Under the new permits, existing gravity systems (open or closed) carrying waste within 100 feet of a surface waterbody that lack proper certification/as-built documentation must be evaluated by an engineer. All new transfer systems must be built in accordance with the NY 634 NRCS Waste Transfer System Standard which requires a Professional Engineer design and certified as-builts.

51) What is meant by “mechanical parts” of a transfer system that need to be monitored while actively transferring material?

A. This refers to the permit requirement that waste transfer systems (temporary and pressurized permanent) extending beyond the production area (i.e., to a satellite storage, to fields for application, etc.) and that have a mechanical component, must not be left unattended while actively transferring material. This is meant to exclude gravity systems which transfer waste at a slow rate. “Mechanical would include pumps, re-coiling systems, etc., where large amounts of waste is transferred quickly..

52) Will an older manure storage that was evaluated and certified by a PE under GP-04-02 need to be evaluated by the PE again under the new CAFO general permits?

A. No, if the evaluation documented equivalence to the 08/2006 or newer version of NY 313 NRCS Standard. However, if the evaluation was done based on an older version of the Standard, than a re-evaluation is required.

53) Does a manure storage with as-built documentation from a PE before 1994 need to be evaluated by a PE? If it has soil suitability tests, does it need to be evaluated by a PE?

A. A manure storage with as-built documentation that includes soil suitability tests does not need to be re-evaluated by a PE, unless the re-evaluation is required due to an upset or overflow from the structure.

54) If I have as-builts for a manure storage signed and dated after 8/2006, do I need to provide the soil sample test results?

A. No. It's the Departments expectation that as-builts with stamps dated after 8/2006 were designed to the 8/2006 or newer standard.

55) If I have a fabricated manure storage (i.e., a concrete tank or glass-infused steel tank with a concrete base) that has signed as-builts (either by a PE or an NRCS employee with job approval authority) that was built prior to 2006 and does not have soil sample test results, do I need to have the practice re-evaluated by a PE in order to be in compliance with the permit?

A. No. Fabricated manure storages with signed as-builts do not need to have soil sample test results. The certification by the qualified professional documents conformity with the 313 standard, including considerations of groundwater contamination potential through soil and site assessments.



56) Do slurrystore manure storage structures need to be evaluated by a Professional Engineer?

A. Yes, if there is no documentation from a PE or NRCS employee with job approval authority certifying the design and installation of the concrete pad and the structure itself. Further, if a slurrystore structure has not had any required regular maintenance to its cathodic protection system, it will also need to be (re-)evaluated and certified by a PE. In addition, the CNMP must include a schedule of routine maintenance of the cathodic protection system, regardless of if re-evaluation by a PE is necessary, per the Operation and Maintenance requirements of the general permits. Records of the maintenance and any periodic testing shall be kept by the farm.

57) If I have design drawings from NRCS for a waste storage structure, but do not have signed as-builts, do I need to have my storage re-evaluated? And if so, can an NRCS employee with job approval authority do the evaluation?

A. Yes, the structure needs to be re-evaluated. That evaluation cannot be done by an NRCS employee with job approval authority, it must be done by a Professional Engineer.

58) Is the depth marker requirement a graded marker for the entire depth of the storage or a maximum fill marker?

A. A maximum fill marker.

59) Are anaerobic digesters considered manure storages or manure transfers?

A. Anaerobic digesters are manure storages.

60) If building a new barn, what portions of the facility are required to follow NRCS standards and have a P.E. design and as-built documentation?

A. New practices used to manage manure and process wastewater must be built, installed, and operated according to applicable NRCS standards. When the new practice is an engineered practice (Waste Storage/Transfer), it shall have PE design and as-built documentation.

61) Is an existing compost or separated solid storage facility covered by a roof considered a storage that needs evaluation by a P.E.?

A. No, because these facilities are covered by a roof, they are considered "underbarn" and are therefore exempt from the P.E. evaluation requirement.

## **MORTALITIES**

62) Can I use spoiled silage as the base for my mortality compost pile?

A. Mortality composting operations are most likely to be successful when a dry, bulky, absorbent organic material is used as the base. However, if you are using spoiled silage for the base you have to manage the leachate that the spoiled silage will produce according to the NRCS Animal Mortality Facility Standard (NRCS-NY 316) and associated standards under the direction of a Professional Engineer licensed to practice in NYS. This can be done by placing the mortality compost pile on a pad and treating the leachate through a VTA, or by grading the pad to allow leachate to flow to a storage.

63) Can I use silage refusals as the base for my mortality compost pile?

A. Yes. Refusals are coarser, have some absorptive capacity and produce minimal leachate; therefore they may be used as a base for the mortality compost pile. However, if the mortality

compost pile produces leachate, the leachate must be managed in accordance with NRCS 316. Chopped cornstalks may also be used but the same requirements apply.

64) Can I use spoiled silage or refusals for the top of my mortality compost pile?

A. Yes. However, if the mortality compost pile produces leachate, the leachate must be managed in accordance with NRCS 316 and associated standards.

#### **ADVERSE WEATHER CONDITIONS**

65) Do flowing tiles mean the soils are saturated?

A. Not necessarily. Flowing tiles could be groundwater or surface water flows. Per Cornell guidance, "when applying manure to fields with flowing tiles, tile outlets should be monitored for evidence of contamination. Should contamination occur, immediately discontinue application and incorporate the field if possible."

66) If I am applying manure to my field during a rain event in accordance with the rates provided by my CNMP and the manure begins to run off, is that runoff considered exempt per the Ag stormwater exemption?

A. No. The manure running off the field would indicate that the soils receiving the application have reached their saturation capacity and therefore, at that time, you are not applying in accordance with 590 or the permit and the Ag stormwater exemption would not apply. Manure applied before a rain to unsaturated soils in accordance with an approved ANMP (for the CWA permit) and CNMP that runs off due to a subsequent rainstorm would not be subject to SPDES/NPDES permitting requirements per the Ag stormwater exemption. However, it should be understood that nothing in either general permit allows for CAFOs to contravene state water quality standards. See Part V.Q of the general permits.

67) In the fact sheet for the CWA general permit, the Department discusses a technical evaluation that the Department performed to gauge what "reasonable control" by the CAFO during an upset/bypass, as defined by 40 CFR 122.41(n) in the federal regulations, would mean. If an upset/bypass were to occur at a CAFO, would the permittee be responsible for performing this technical evaluation?

A. Yes. If an upset/bypass were to occur, the owner/operator of the CAFO would need to perform a site-specific evaluation in order to demonstrate that they qualified for this exemption at the time the upset/bypass occurred.

#### **WET WEATHER STANDARD OPERATING PROCEDURES (WWSOPs)**

68) Do WWSOP structures need to meet NRCS standards?

A. WWSOPs are strategies above and beyond the required Standards. The required standards address the first 25-year, 24-hour storm event. Additional practices, such as berms/swales, that would help ensure no discharge to surface waters through the 100-year, 24-hour event are not required to meet any specific standard.

69) Regarding earthen storage, there is already a foot of freeboard above and beyond the 25-year, 24-hour storm event, can this be counted towards the "available capacity" needed for the 100-year, 24-hour no discharge requirement in the ECL permit?

A. No. The foot of freeboard is required to protect the structural integrity of the practice and should not be counted towards "available capacity" needed for the 100-year, 24-hour no discharge requirement in the ECL permit.

70) Is it the intent of the WWSOPs to prevent discharges from the crop land AND the production area up to and including the 100-year, 24 hours storm event?

A. The WWSOPs only apply to production areas (see the production area definition in the CAFO permits).

71) Can an AEM Certified Planner develop WWSOPs for a farm?

A. AEM Certified Planners may develop all aspects of WWSOPs related to the management of BMPs, including calculating volumes collected by manure storages from the 100-year, 24-hour storm, maximum fill marker elevations to store the 100-year, 24-hour storm, and management procedures for the farm to use to prevent discharges from production areas up to and including the 100-year, 24-hour storm. Of course, a farmer and planner may always partner with a PE on these management-related aspects of the WWSOPs at their choice. If it is determined that structural changes are needed to prevent such a discharge from existing or future engineering BMPs on the farm, then those changes would be made by using the appropriate NRCS standard(s) and a P.E. as applicable.

72) Do the WWSOPs need to be completed before the submission of the NOI to gain permit coverage?

A. WWSOPs need to be completed before the submission of the NOI. However, like all components in a CNMP, the WWSOPs are meant to be working documents and adjustments to the procedures overtime are anticipated and expected.

73) What if a farm is not be able to complete WWSOPs prior to the required NOI submission deadline?

A. Then the farm will need to apply for the CWA permit.

#### **PLANNER ON-SITE CNMP REVIEW**

74) The new CAFO permits are effective as of 7/24/2017 and the annual compliance report (ACR) are based on the calendar year. By what date must the first onsite review by the planner occur under the new permits?

A. The planner onsite review must be completed during the first full crop year of the permit cycle (Fall 2017-Summer 2018). Therefore, the first onsite planner review will need to be reported in the Annual Compliance Report due March 2019.

#### **PASTURES**

75) If a CAFO regulated farm pastures heifers and the pasture has a stream flowing through it and the pasture is well vegetated, do those animals need to be fenced out of the stream?

A. The CAFO permit only requires animals to be kept out of waterways when within confinement areas, such as barnyards. Therefore, if the area is a pasture (i.e. grass under the animals' feet), then animals are not required to be kept out of the stream according the permit. However, it is a good practice to fence and further protect streams and to provide an alternative water supply or limited access for animals.

76) What's required if a pasture has a heavy use area devoid of vegetation that's in contact with a stream?

A. This area is considered a heavy use area. All manure collected on the surface and any runoff generated during precipitation must be addressed with an appropriate collection / treatment system based on NRCS standards. Alternatively, you may implement better management of the pasture so that vegetation is restored and maintained throughout the year. Fencing the stream to limit access

solely to watering points and/or crossing points in the newly managed pasture may be necessary per the judgment of your Certified Planner. Another alternative would be to permanently remove animals from this area.

77) What if a heavy use area in a pasture, such as around a feeding cart, is limited in size and buffered from watercourses?

A. The Certified Planner may determine and document that additional NRCS practices would not provide further protection to the watercourse and recommend management and further monitoring of the situation.

78) Do farms that exceed the CAFO animal number, but keep all animals on pasture (meaning animals aren't confined for more than 45 days in a non- vegetated area), need to obtain an ECL permit?

A. No. However, it takes a high level of management in the climate of the Northeast to pasture animals in vegetated areas for the winter.

## **SETBACKS**

79) Please explain the setback regulations surrounding concentrated flows in fields.

A. Per the NRCS 590 standard, surface applications of manure shall not be made within concentrated flows during frozen and/or snow covered conditions. Some additional measures may apply to a particular circumstance to reduce risk of contamination of receiving waters. The AEM Certified planner must make field-specific judgments with respect to setbacks and/or further treatment of concentrated flows in fields.

80) Does the 15 foot setback with 24 hour incorporation alternative require that the entire field be incorporated or, at a minimum, the zone between 15 and 100 feet?

A. At a minimum, the manure must be incorporated in the zone between 15 and 100 feet. Based on risk, the Certified Planner may use field-specific judgment to recommend incorporation for the entire field or some portion beyond the minimum 100 feet. Whole field incorporation may provide enhanced environmental protection. NRCS-NY590 must be applied to the entire field to control erosion, manage nutrients, etc.

81) What setback is required from wells?

A. As per the Part III.A.8.f of the general permits, CAFOs must respect a 100 foot setback from wellheads. Additionally, for areas with at-risk groundwater nutrient applications must comply with Part III.B.8.e of the general permit. Please note, there may be additional separation distances required by other State agencies or local governments.

## **OVERFLOWS**

82) A barn has a push off area to load manure into a spreader. It is a concrete "box" that the skid steer can fit into with 2 foot walls on three sides to buck the manure up against to load into the spreader. If whoever is cleaning the barn does a sloppy job and manure goes over the concrete wall and falls next to the spreader is this an overflow? The manure would be cleaned up and not allowed to build-up because the spreader couldn't be filled if it were. If this is considered an "overflow" does it need to be reported?

A. The permit does not allow for a "little bit" of spilled manure to be discharged to waters of the State or overflowed from the production area. The reasonable solution is to instruct the farm to regularly clean this up or to use better housekeeping if they are not already doing that. An "overflow" is defined as manure or process wastewater leaving the production area. In this case it seems that the manure

would leave the production area during a storm event so, again, the manure should be cleaned up when spilled. If it is not cleaned up and it does leave the production area then it is an overflow and must be reported in the Annual Compliance Report.

83) If a farm applies a manure rate that is greater than that in their CNMP to save manure from surpassing the freeboard mark on their storage, is the farm out of compliance? If so, how would it need to be reported to DEC?

A. Yes, the farm is out of compliance. The over-application should be reported in the Annual Compliance Report. If the waste storage overtops, or there is a discharge or overflow, then the facility must report the non-compliance to DEC verbally within 24 hours and in writing within 5 days using the incident report form.

84) Part II.B.9 of the ECL Permit says animals confined in the animal feeding operation must be prevented from coming in contact with surface waters of the state while in the confinement area. I don't see confinement area defined in the permit. –

A. Appendix A Part MM of the ECL general permits provides the following: "[t]he animal confinement area includes, but is not limited to, non-vegetated open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milking rooms, milking centers, cowyards, barnyards, calf-hutch areas, medication pens, walkers, animal walkways, and stables.

## **CONTRACTOR CERTIFICATION**

85) How often does the contractor certification need to be signed?

A. Everyday that the contractor is performing work.

86) Under the new CAFO permits, does a custom applicator have to sign a contractor certification if they are just transporting the manure from the farm to the field where it is unloaded to a tanker spreader operated by the farmer? The custom operator is only transporting it; the farmer (permittee) is applying it to the fields.

A. No. A contractor solely transporting manure from farmstead to field (and not applying) would not need to sign the contractor certification.

87) Who signs the contractor certification for the custom applicator, all personnel or the management person?

A. A manager, job supervisor, or most senior person who is responsible for the crew, may sign the contractor certification for the custom applicator. It would be the responsibility of the manager/supervisor to then pass the information provided by the farmer along to their crew.

## **RECORDKEEPING**

88) Part II.B.2 of the CWA general permit requires submission of a Change of Operation form if any of the listed items in that part occur. Will this form be public noticed?

A. Yes. If the Department receives a Change of Operation form because of one of the items listed in Part II.B.2 of the CWA general permit, the availability of that form will be posted to the Environmental Notice Bulletin.

89) Are the reports required to be submitted to DEC subject to any FOIL exemption(s)?

A. No. In accordance with Part V.S of the CWA general permit, any report/form that is required to be submitted to DEC (NOIs, ANMPs, Change of Operation forms, Annual Compliance Reports, etc.) are not subject to any FOIL exemptions.

90) Regarding Part III.B.4 of the general permits: Are the checks only required on transfer systems that extend beyond the production area and that have a mechanical component?

A. No. The requirement to check all valves/shut offs applies to ALL waste transfer systems.

91) Given the technology constraints with recording rainfall during the winter, when does rainfall need to be recorded in the winter?

A. Weather conditions at the time of application, the day prior to and the day following application including actual precipitation and forecasted conditions must be recorded. All rain events in excess of 0.3 inch shall be measured, recorded and kept as part of the normal CNMP recordkeeping. If it rains in excess of 0.3 inches and the farm is applying manure, litter or process wastewater, the farm shall record the rain event even during the winter.

## **EXPORT**

92) When my manure storage gets close to full, my neighbor allows me to transfer my manure to their storage. In the spring, I pick up the same amount of manure that I transferred and land apply on my lands. Does this meet the definition of an “export”?

A. No. Because the manure is not being land applied by your neighbor, the export definition doesn't apply. However, it is a transfer of materials, which requires recordkeeping according to the permit (Part III.B.13). When the manure is brought back to your facility, nutrient content records are required in accordance with the permit requirements (i.e., a manure sample test from your neighbors pit). In addition, because you and your neighbor use a “common manure and wastewater storage and handling system”, you meet the definition of “Common Ownership/Common Facility” as defined in the permits and therefore your neighbors' storage must have as-builts or be evaluated by a P.E.

93) I give away my manure to a facility which has no financial interest in the CAFO operation, where the manure is composted and sold on the retail market. Is this considered an “export”?

A. Yes. It is also a transfer of materials which requires recordkeeping according to the permit (Part III.B.13).

94) If a CAFO is asked to spread his manure on a neighbor's farm (non-CAFO) which has no financial interest in the CAFO operation, and that neighbor dictates the spreading rate and time, is the transfer of manure to the neighbor considered an export? And if yes, what does that mean for the CAFO farmer?

A. The transfer of manure to the neighbor in this case would be considered an export as the “receiver” has no financial interest in the CAFO operation and is under direct control of the application rate and timing. The CAFO would need to keep records of the transferred nutrients in accordance with Section III.B.13.

95) If a CAFO takes in food processing waste, could this waste (whether co-mingled with manure or separate) be exported to a facility that is not covered by their CNMP, a non-permitted AFO?

A. If the receiving farm does not have a CAFO permit, then they would likely need a Part 360 permit / registration to accept the food processing waste.

## **ANNUAL REPORTING**

96) Which annual report do we send in by March of each year?

A. Both permits requires CAFOs to submit the Annual Compliance Report by March 31<sup>st</sup> of each year. Additionally, if the CAFO has coverage under the CWA general permit (GP-0-16-002), than the CAFO must also submit the farm's Annual Nutrient Management Plan by March 31<sup>st</sup> of each year.

97) What is the starting period for the Annual Compliance Report and the Annual Nutrient Management Plan?

A. The Annual Compliance Report and the Annual Nutrient Management Plan can either reflect the calendar year (January through December) or the crop year (Fall through Summer). However, all reports and documents submitted to the Department must reflect a consist reporting period. For example, if the Annual Nutrient Management Plan submitted in March 2018 reflects the Fall 2017 through Summer 2018 crop year, then the Annual Compliance Report submitted in March 2019 must also reflect the Fall 2017 through Summer 2018 crop year. If the Annual Nutrient Management Plan submitted in March 2018 reflects the January through December 2018 calendar year, then the Annual Compliance Report submitted March 2019 must also reflect the January through December 2018 calendar year.

98) Has the Annual Compliance Report changed?

A. Yes. The new form will be required to be submitted by March 31, 2018.

#### **ANNUAL NUTRIENT MANAGEMENT PLANS**

99) Do CAFOs need to wait for DEC approval of Annual Nutrient Management plan submittals before implementing the Plan?

A. No. However, coverage under the new CWA general permit will not begin until after the Department approves the initial ANMP. This timeframe is expected to be 60 days after the Department receives the completed ANMP and Notice of Intent.

100) For the ANMP submittal, do you need to send in field maps or can a narrative be used instead?

A. Field Plan Narratives may supplement the field maps as deemed appropriate by the Certified Planner (e.g., acres, practices, etc.). These narratives must accurately describe the field acreage, individual field-specific management practices, concentrated flows, watercourses, field locations and field boundaries with field specific references such that a field may be easily located on a map.

101) 40 C.F.R. §122.42(e)(6)(iii) includes the “[a]ddition of any crop or other uses not included in the terms of the CAFO’s nutrient management plan and corresponding field-specific rates of application expressed...” This appears to be missing from Part IV.F of the CWA general permit.

A. Part IV.F of the CWA general permit requires a revised ANMP to be submitted if there is a change to the field specific maximum annual application rates that do not comply with NRCS Standards or if implementation of any other required management practices that do not meet NRCS Standards. The requirements of the general permits are broader than the federal regulations referenced above and would include other potential significant changes to the ANMP.

102) Section IV of the ANMP template in Appendix C of the CWA general permit, requires information for “Planned Crops” as well as “Manure recommendations – with alternatives if clear, available, compliant with CAFO general permit and circumstances justified by the certified planner.” Am I required to list all potential variations which may take place in the planned year?

A. All non-significant variations that you have already considered in developing your ANMP, must be included in the ANMP submitted to the Department. These considerations, such as a change in

crops due to inclement weather, must be documented in the ANMP submission by either providing the specific alternatives or providing a statement which memorializes your considerations of the potential changes. For example, if a farm considers that a change in crop may become necessary due to extended periods of wet weather, etc., the ANMP must include the alternative crops and their associated manure application rates OR a farm-specific statement that considers this change. For example, "Changes in the planned crops and manure application rates for [Jane Smith Dairy] may become necessary if my farm experiences unusual circumstances, including extended periods of wet weather. These changes, if they become necessary, will all be done in consultation with my certified planner; be done in compliance with NRCS Standards; be accounted for in the updated ANMP; and be reported in the Annual Compliance Report."

103) What if I submit an ANMP that does not include prior considerations of potential non-significant changes because I didn't expect to encounter any - Do I have to re-submit my ANMP to the Department?

A. Yes. You must revise your ANMP with your planner in accordance with NRCS Standards and submit the revised ANMP to the Department for review, as soon as possible. The availability of the revised ANMP will be posted to the ENB.

104) Can a farmer change rates by switching to another manure source without contacting their planner first?

A. No, unless the change has been previously detailed in the CNMP (and ANMP if the CAFO is under the CWA general permit) for the facility.

105) Are CAFOs required to submit new field and farmstead maps or narratives with each year's ANMP submittal?

A. Yes. The workload associated with this can be substantially minimized with electronic submittals.

106) Is either the risk level (e.g., very high, high, medium, low) or the rating number for the P Index and N Leaching Index acceptable for the ANMP?

A. The rating number is required.

107) If a farmer wanted to state the maximum animal population allowable by the CNMP, would it be the number able to be housed at the CAFO or the number that can be supported by the landbase/nutrient management plan?

A. The maximum allowable animal population is based on the waste management capabilities of the CAFO. This includes landbase, manure storage capacity, feed storage waste handling, mortality management, land application capabilities, etc.

108) Must materials like agricultural limestone and calcium sulfate be included in the Annual Nutrient Management Plan submittals and Annual Compliance reports?

A. No, to the extent that these materials do not affect the nitrogen and phosphorus balance for a field(s), they do not need to be included. You can, however, include them if that makes the submittal process easier based on your current planning system.

## **CONSTRUCTION STORMWATER**

109) Does a farm need a stormwater permit if the overall scope of the project is > 5 acres but the actual components are each < 5 acres?



A. If the overall project is shown on a plan, it would fit the definition of a “larger common plan of development or sale” and, therefore, would need to obtain permit coverage. If components of the project are conceptual and not shown on a plan (or have not received other approvals, etc.), the project would not need coverage if the total disturbance for the portions of the project shown on the plan is less than 5 acres. A CNMP is not considered a common plan of development.

## **CNMP/ANMP CERTIFICATIONS**

110) What is the intention of the dual certification by the planner and owner/operator for the CNMP/ANMP?

A. As required by Part III.D of the general permits, the owner/operator is required to retain a qualified planner to develop the CNMP in conformance with the conditions of the general permit, including the NRCS Standards. The owner/operator must certify that they have provided accurate information to the planner so that the planner can develop the CNMP. The owner/operator is responsible for implementation of the CNMP and compliance with the general permit.

The planner is certified to develop and review CNMPs for CAFOs in New York State. As required by Part III.D of the general permit, the planner must develop a CNMP based on information provided by the owner/operator, which is in conformance with the conditions of the general permit, including the NRCS Standards. The planner also must review the CNMP with the owner/operator. The planner must certify that the CNMP has been prepared under their direction with qualified personnel, and that to the best of the planner’s knowledge the CNMP is accurate based on information provided to the planner by the owner/operator. The planner is not responsible for the implementation of the CNMP or compliance with the general permit.

## **WATERS OF THE STATE**

111) Are there map coverages that exactly match the Part 800 to 941 list?

A. The waters listed in 6 NYCRR Parts 800 to 941 are represented by hardcopy DEC maps. These are most closely represented in a scanned, geo- referenced digital map image of the hardcopy maps that is available in CD format from DEC by contacting the Division of Water at (518) 402-8111.

112) Is a vector coverage that exactly matches the 800 to 941 list available?

A. No. The available digital vector maps are approximate representations of this list of classified waters, wetlands, lakes, ponds, etc. so should be used with the realization that errors may exist.

113) What GIS coverage should I use to approximate what is found in 800-941?

A. The NYS Environmental Resource Mapper ([www.dec.ny.gov/gis/erm/](http://www.dec.ny.gov/gis/erm/)) is an online mapping tool that approximates the locations of streams and lakes listed in 6 NYCRR Parts 800 to 941. The online mapping tool allows for map viewing, but not downloading. The same coverage is also available for download from the NYS GIS Clearinghouse (<https://gis.ny.gov/gisdata/inventories/details.cfm?DSID=1118>).

114) The manure and/or process wastewater setback requirements require setbacks from NYS Regulatory Freshwater Wetlands in addition to other resources such as the surface waters of the State. What is the best downloadable GIS map coverage for NYS Regulatory Freshwater Wetlands?

A. The Environmental Resource Mapper also provides an online approximation of NYS Regulatory Freshwater Wetland boundaries. That same coverage is also available for download on the following site (see the county coverages for “Freshwater Wetlands (DEC; NAD83)” at <http://cugir.mannlib.cornell.edu/datatheme.jsp?id=111>).

115) What should I do if the list (800 to 941) and/or the “Water Quality Classifications – NYS” GIS vector coverage and/or the “Freshwater Wetlands (DEC; NAD83)” GIS vector coverage indicate that a stream or water exists but groundtruthing demonstrates otherwise?

A. In this situation, a Certified Planner shall document the actual location of the surface water of the State relative to the water mapped on the “Water Quality Classifications – NYS” GIS vector map or the “Freshwater Wetlands (DEC; NAD83)” GIS vector map (or on a print-out from the NYS Environmental Resource Mapper if not using your own GIS). Any required setbacks shall also be documented on the map from the actual location of the surface water as observed in the field. This documentation must be included in the CNMP and may be required to be submitted to DEC at some future time.

116) What should I do if I find a continuously flowing surface water that is not on the list (800 to 941) and/or the “Water Quality Classifications – NYS” GIS vector coverage and/or the “Freshwater Wetlands (DEC; NAD83)” GIS vector coverage?

A. In this situation, a Certified Planner shall document the location of the continuously flowing surface water on the field map with the “Water Quality Classifications – NYS” GIS vector map and the “Freshwater Wetlands (DEC; NAD83)” GIS vector map layers present (or on a print-out from the NYS Environmental Resource Mapper if not using your own GIS). Any required setbacks shall also be documented on the map from the actual location of the surface water as observed in the field. This documentation must be included in the CNMP and may be required to be submitted to DEC at some future time. USGS Topographical map “Blue Line” streams are not always the same as Waters of NYS listed in Part 800-941.

For further mapping support in determining whether a watercourse is a surface water of the State (i.e., within 800-941 or continuously flowing), you may find the following maps to be helpful checks.

- The scanned, geo-referenced map image of the hardcopy 800-941 maps available on a CD from DEC.
- The hardcopy 800-941 map available from DEC.
- National Water Information System: Mapper made available by USGS (<http://maps.waterdata.usgs.gov/mapper/index.html?State=ny>).
- National Hydrography Dataset NHD made available by USGS, supplies medium resolution coverages (1:100,000) for streams and waterbodies, while the National Hydrography Dataset site serves both the medium as well as higher resolution (1:25,000) water coverages (<https://nhd.usgs.gov/data.html>).
- National Wetlands Inventory, produced by the US Fish and Wildlife Service (USFWS), includes many smaller wetlands. Downloadable data is available from USFWS (<https://www.fws.gov/wetlands/Data/Mapper.html>). This coverage does not replace field verification and is particularly weak in areas with coniferous cover. As with the coverage of NYS Regulatory Freshwater Wetlands, the boundaries in the coverage do not replace field verification. Hardcopies of NYS Regulatory Freshwater Wetland maps are available from DEC regional offices.
- Finally, orthoimagery is available at various resolutions from the NYS GIS Clearinghouse (<http://gis.ny.gov/gateway/mg/>).