



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-0-22-001

Issuance Date: July 22, 2022

Effective Date: January 23, 2023

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

of the Environmental Conservation Law

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## **Introduction**

On July 22, 2022, the New York State Department of Environmental Conservation (“the Department”) issued the Environmental Conservation Law (ECL) State Pollutant Discharge Elimination System (SPDES) General Permit for Concentrated Animal Feeding Operations (CAFOs) (GP-0-22-001). GP-0-22-001 will be effective January 23, 2023. GP-0-22-001 replaces the previous general permit, GP-0-16-001, which expires July 23, 2022. Through January 22, 2023, GP-0-16-001 is administratively continued under the State Administrative Procedure Act Section 401, 6 NYCRR 750-1.16(a) and 6 NYCRR 621.11(l).

On January 19, 2022, the Department publicly noticed a draft of GP-0-22-001 for public review and comment in statewide newspapers and the Environmental Notice Bulletin (ENB). The Department provided a 30-day comment period that ended on February 18, 2022.

This responsiveness summary generally addresses all comments timely received. Unless noted as paraphrased, the comments in the responsiveness summary are direct quotations. The comments are organized to follow the format of GP-0-22-001 with general comments addressed at the end of the responsiveness summary.

## PERMIT TERM

*Cayuga County Board of Health, Cayuga County Health Department; New York Farm Bureau (NYFB); Northeast Dairy Producers Association (NEDPA)*

**Comment 1:** [Paraphrased] The Department received comments supporting a 5 year term for GP-0-22-001 due to anticipated future uncertainties related to scientific advances in agriculture, but also received comments supporting a 10 year term to provide greater regulatory certainty and increase administrative efficiencies.

Response: No changes have been made in response to this comment. As cited in the fact sheet for GP-0-22-001, the New York State Environmental Conservation Law (ECL) §17-0817(1) and 6 NYCRR 750-1.15 allow SPDES permits for groundwater discharges to be valid for up to 10 years. The 10-year term alleviates administrative burdens for the Department (i.e. allowing for more time to focus on program implementation) and provides stability for CAFO owner/operators to plan for, and invest in, appropriate environmental enhancements at the CAFO. Also, pursuant to 6 NYCRR 750-1.18, the Department has the ability to propose a modification to GP-0-22-001 during the permit term. A modification may be necessary to account for changes/advances in the industry.

## I. PERMIT COVERAGE AND LIMITATIONS

### I.A.1.

*NYFB, Riverkeeper*

**Comment 2:** [Paraphrased] The Department received comments in favor of the eligibility and substantive conditions in the draft GP-0-22-001, but also received comments supporting individual public notice of NOIs and CNMPs to ensure that the conditions in GP-0-22-001 protect water quality.

Response: As explained in the Introduction to the Responsiveness Summary, the Department publicly noticed a draft of GP-0-22-001. That notice afforded the public the opportunity to comment on the technical conditions that must be met for each CAFO. The requirement to publicly notice NOIs and CNMPs for CAFO permits issued pursuant to the Clean Water Act do not apply to GP-0-22-001, which is issued pursuant to the ECL. Therefore, public notice of the NOIs and CNMPs for GP-0-22-001 is not required.

### I.B.2.

*Riverkeeper*

**Comment 3:** Pursuant to the Supreme Court of Albany County’s 2018 judgment in *Riverkeeper, Inc., v. Seggos* and other cases, CAFO permits are invalid under federal and state law unless they provide for the requisite agency oversight and public disclosure of each CAFO’s CNMP. Moreover, permits for facilities which discharge pollutants to waters of the United States, including facilities with “agricultural stormwater” discharges, may be issued for a maximum term of five years. Without such oversight and public participation on a routine recurring basis, the Draft ECL Permits will not meet the requirements to establish an “agricultural stormwater exemption” compliant with federal CAFO regulation 40 CFR part 122.23(e) and other federal and state laws.

The lack of DEC review and public participation in developing comprehensive nutrient management plans invalidates the “agricultural stormwater” exemption provisions of the permits under federal and state laws.

DEC review and public participation in developing CNMPs for facilities permitted under the ECL Permit would be crucial to helping CAFO operators preempt legal challenges, including CWA citizen suits, after a precipitation-related discharge occurs. If the permit is approved as drafted, such “agricultural stormwater discharges,” though purportedly authorized by DEC under the state permit, nevertheless would be unlawful. Operators of CAFOs could be held liable in CWA citizen suits by any member of the public for unlawful discharges. Such penalties could reach up to \$59,973 per day of violation.

Response: Agricultural stormwater discharges are specifically excluded from the definition of a “point source” in ECL §17-0105(16) and, therefore, are not required to obtain coverage under the ECL CAFO General Permit. The case cited in the comment is therefore irrelevant. See also Response to Comment 2 regarding public participation.

I.B.4

*Northeast Dairy Producers Association (NEDPA)*

**Comment 4:** The current ECL permit authorizes a limited set of construction activities under the permit, without requiring the permittee to obtain coverage under a separate Construction Stormwater General Permit. The permittee is still required to implement erosion and sediment control practices, designed in conformance with the New York Standards and Specifications for Erosion and

Sediment Control, during construction. The draft ECL permit would no longer authorize these activities in lieu of a Construction Stormwater General Permit. This will increase the cost of compliance for regulated CAFOs that complete construction projects of (1) or more acres of land, but less than five (5) acres during the permit term. We understand this change was made to accommodate the permit term change from five years to ten years. We would ask that DEC consider an alternative process whereby the Department includes the current construction stormwater permit coverage in the ECL permit for a limited five-year term and then re-authorizes the construction stormwater permit coverage included in the ECL permit after five years to complete the ten-year permit term. This would maintain the same general framework while reducing administrative burdens on both the permittees and DEC. We think such an approach is reasonable, in part, because we understand the driver for this change was due to the change in the permit term length, not a compliance related concern. If this re-authorization approach is not feasible, then, in the alternative, we would seek the Department's assistance in simplifying the permit application and implementation process to clarify the requirements that are applicable to agricultural landowners so both permittees and Soil and Water Conservation District offices have a clear understanding. A simplified SWPPP should be permissible so that landowners can prepare the SWPPPs or Soil and Water Conservation District offices can assist without unnecessary complications. In addition, templates and other implementation tools would be helpful.

Response: In response to the comment, the Department revised Part I.B.4., as well as Appendix B, in the final GP-0-22-001 to include continued authorization for existing construction projects for a period of 12 months following the effective date of GP-0-22-001. As explained in the fact sheet, any new construction activities, or existing construction activities extending beyond the 12-month transition period, are required to obtain separate coverage under the SPDES Construction Stormwater General Permit. The Department cannot re-authorize a discharge subject to the Clean Water Act for a second permit term without re-noticing the permit for public comment which would minimize the administrative benefits of having a 10-year permit term. The transition period added to the final general permit provides adequate time for existing construction activities to be completed, as well as provides time for the Department to develop implementation tools, as suggested, to assist the agricultural industry in navigating the Construction Stormwater permitting process. This does not represent a change in the substantive requirements that apply to such construction activities.

*Western New York Crop Management Association (WNYCMA)*

**Comment 5:** The current permit does not require the owner or operator to obtain coverage under the SPDES Construction Permit for certain structural agricultural BMPs that involve soil disturbances greater than one acre of land, but less than five (5) acres. The lack of such provision in the new permit will cause unnecessary expense and financial hardship on the owner or operator. It is suggested that the Department include such allowance for the term of the current stormwater permit (five years) in the new permit and then re-authorize the stormwater permit coverage after five (5) years to complete the ten-year permit term. It is noted that the Draft Fact Sheet (page 6) lists certain construction activities that do not require SPDES Construction Permit coverage but there is no mention of this in the actual Draft Permit. It is suggested that the Permit and Fact Sheet be consistent with each other. In the event that stormwater permit coverage is not provided in the new permit, we are concerned about the timing aspect of the stormwater permit coverage. We would propose that any project with a disturbance area under five (5) acres) that is started prior to the effective date of the permit be granted a waiver of the stormwater permit coverage.

Response: See Response to Comment 7. Additionally, there is no legal authority for the Department to grant a waiver of stormwater coverage. As stated in the SPDES Construction Stormwater General Permit, “[a]ctivities that fit the definition of ‘construction activity’, as defined under 40 CFR 122.26(b)(14)(x), (15)(i), and (15)(ii), constitute construction of a point source and therefore, pursuant to ECL §17-0505 and 17-0701, the owner or operator must have coverage under a SPDES permit prior to commencing construction activity.” There is no need to list in GP-0-22-001 the construction activities that do not need SPDES Construction Stormwater General Permit coverage.

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

II.A., II.B.1 and 2.

*NYFB; Brad Schwab:*

**Comment 6:** [Paraphrased] The Department received comments supporting the clear and detailed timeframes and procedures for new coverage, change in ownership and change in AEM Certified Planner. The approaches minimize paperwork and recordkeeping where there is no additional environmental benefit to be gained. Additionally, the Department also received comments opposing the submission of the Request to Continue Coverage and CNMP Certification forms. Once a CAFO has opted-in by filing a NOI and regular

Annual Compliance Reports it should be clear to the Department that they need continued coverage. Related comments also identified that the timeline for these submissions is also troublesome since many consultants who assist CAFO owner/operators with permitting are also agronomists who help the CAFOs with cropping programs and spring is the busiest time of the year.

Response: Changes have been made in response to this comment. The effective date of the final GP-0-22-001 is January 23, 2023. An issuance date of six months prior to the effective date allows CAFO owner/operators sufficient time to adjust CNMPs, as necessary to comply with the conditions in the final GP-0-22-001. Owner/operators seeking continued coverage under the revised permit, must recommit to the revised terms and conditions through the certification included in the Request to Continue Coverage form.

#### II.B.3.a(2)

*NEDPA; HAY Consulting; NYFB*

**Comment 7:** [Paraphrased] The Department received comments questioning the need to have different notification requirements for structural and earthen storage, since both are required to be designed and constructed according to NRCS 313 (waste storage facility) and approved by a qualified individual. Requiring CAFOs provide notice at least 30 calendar days before constructing or expanding ANY earthen liquid waste storage facility treats earthen structures differently. Earthen storage structures should be treated as others indicated in the permit and notification should only be required when they meet the one-million-gallon threshold. Another comment requested that “HDPE-lined” be added in the parenthetical with “(e.g., concrete, steel) storage”.

Response: Changes have been made in response to these comments. Part II.B.3.a(2) in the final GP-0-22-001 requires notification prior to constructing or expanding any liquid waste storage facility, no longer differentiating between structural and earthen. Additionally, the specific requested change to add “HDPE-lined” is no longer necessary.

#### II.B.3.a(3)

*Hay Consulting*

**Comment 8:** Is an existing permitted CAFO allowed to acquire an AFO and continue to manage that facility as an AFO if the facilities are not combined or meet any of the conditions of Common Ownership?

Response: No changes have been made in response to this comment. If the facilities do not meet the definition of Common Ownership/Common Facility in Appendix A of GP-0-22-001, then the acquired AFO is not required to meet the terms and conditions of the CAFO general permit and the current CAFO's Comprehensive Nutrient Management Plan (CNMP) would not need to be revised to include the AFO operation.

Where the facilities meet the definition of Common Ownership/Common Facility, the acquired AFO would need to meet the terms and conditions of GP-0-22-001. Additionally, the current CNMP would need to be revised to include the AFO operation.

#### II.C.1.

*HAY Consulting*

**Comment 9:** This item makes no provisions for the sale of facilities or circumstances beyond the owner's control. An example is a CAFO that chooses to sell its facilities to an AFO that will operate below CAFO threshold.

Response: No changes have been made in response to the comment. If the CAFO owner/operator sells its CAFO operation to another entity, the new entity is responsible to obtain any permits that are necessary to operate and to comply with the terms and conditions of those permits. In the example, the AFO would not need to obtain coverage under GP-0-22-001 if the operation is below the regulatory CAFO threshold (see 6 NYCRR 750-1.2(a)(23)).

#### II.C.2.

*HAY Consulting*

**Comment 10:** Provide a list of applicable agricultural BMPs that are considered disposal systems?

Response: No changes have been made in response to the comment as "Disposal System" is defined in Appendix A of GP-0-22-001 as "a system for disposing sewage, stormwater, industrial wastes, or other wastes including sewer systems and treatment works." On a CAFO, these systems would include waste transfers, waste storages, and leachate control systems.



**Comment 11:** The requirement to close all disposal systems will severely limit the facilities resale value and potentially its ability to be redeveloped.

Response: No changes have been made in response to the comment. If the CAFO intends on selling the operation with active disposal systems, then the owner/operator should maintain permit coverage until the sale is complete and future use of disposal systems is known. If disposal systems will not be used in the future use, owner/operator should then close all disposal systems in accordance with this provision and terminate coverage. If disposal systems will continue to be used into the future, owner/operator can transfer coverage to the new owner/operator by filing a Change of Operation form.

### III. COMPREHENSIVE NUTRIENT MANAGEMENT PLANS

#### III.A.3.a)(1)

*Brad Schwab; NYFB; NEDPA*

**Comment 12:** [Paraphrased] The Department received comments that an effective date of July 23, 2022, for GP-0-22-001 would create hardship. Commenters requested that any amendments to the CNMP, required by GP-0-22-001, apply to the 2023 planning cycle (2023 plans are written between October 2022 and March 2023). Specifically, commenters requested that implementation of the new guidance document Groundwater Protection Guidelines for Agriculture be given a similar deadline as implementation of P Index 2.0. This will allow farms and AEM Planners to adequately incorporate the changes in the CNMP.

Response: Changes have been made in response to this comment. The effective date of GP-0-22-001 is January 23, 2023, to allow owners/operators time to make adjustment to existing CNMPs to account for changes to the conditions in the issued GP-0-22-001.

*HAY Consulting*

**Comment 13:** Clarification on why Phosphorus Index version 2.0 (PI2) can only be used after all fields are fully implemented.

Response: Changes have been made in response to this comment. Part III.A.3.a)(1) in the final GP-0-22-001 clarifies that fields that have not yet been planned for using PI2 must continue to be managed in accordance with Phosphorus Index version 1.0.

*NYFB; Western New York Crop Management Association (WNYCMA):*

**Comment 14:** [Paraphrased] The Department received comments on an inconsistency between the condition in GP-0-22-001 and the associated Fact Sheet with respect to the Phosphorus Index version 2.0 (PI2). The language on Page 8 of the draft Fact Sheet states “provide an implementation schedule for existing CAFOs to allow for phasing in the new 2.0 Phosphorus Index (Part III.A.3.a and d).” However, GP-0-22-001 requires full implementation by September 30, 2025.

Response: Changes have been made in response to this comment. The final Fact Sheet language reflects the final implementation date of September 30, 2025 in GP-0-22-001. Although not required, owners/operators are encouraged to phase in the implementation of PI2 over the course of the allotted time, which could be reflected in the CAFO’s CNMP implementation schedule.

III.A.3.b)

*Cayuga County Board of Health, Cayuga County Health Department*

**Comment 15:** The Comprehensive Nutrient Management Plan (CNMP) should be required to be amended if the CAFO expands its animals by 10%, not 20% as stated in the draft permit to ensure that the farm can manage the increased amount of waste generated without impacting water quality.

Response: No changes have been made in response to this comment. Part III.A.3.b) of GP-0-22-001 requires all non-structural and structural BMPs to be fully implemented prior to any expansion not just a 10% or 20% increase in animals. Also, Part III.E. of GP-0-22-001 requires the CNMP to be amended prior to expanding operations beyond the contingencies specified in the CNMP, which ensures any increase in the amount of waste generated on site can be adequately handled.

III.A.3.c)

*HAY Consulting:*

**Comment 16:** Why is the language included about medium and large CAFOs under the small CAFO section?

Response: No changes have been made in response to this comment. Part III.A.3.c)(3) of GP-0-22-001 requires a small CAFO to fully implement BMPs

prior to expanding their operation to medium or large CAFO thresholds. Part I.A.1. of GP-0-22-001 requires all medium and large CAFOs to fully implement BMPs in order to be eligible for coverage under GP-0-22-001. 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.

### III.A.3.e)

*NYFB:*

**Comment 17:** 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 change has been made in response to this comment. Enhancement practices are those that are not necessary to protect resources but rather provide opportunities for farms to more easily manage their operations. They are not subject to specific timeframes otherwise required.

### III.A.4.a)

*Brad Schwab; NEDPA; NYFB; WNYCMA:*

**Comment 18:** [Paraphrased] The Department received comments requesting clarification that certain BMPs do not need to be re-evaluated and/or re-certified (e.g. previously installed BMPs equivalent to NRCS standards, anaerobic digesters, heavy use areas, and composting facilities). Is it the intention of the Department to require an additional re-evaluation? If not, please clarify the language in the final version of the permit.

Response: Changes have been made in response to this comment. It is not the Department's intention to require re-evaluation of existing certified structural practices, except as specified in Part III.A.4.b)-d). Part III.A.4.a) in the final GP-0-22-001 clarifies that existing certifications for existing practices, which meet the previous versions of the Standards identified (including those versions specifically required by Part III.A.4.b)-d)), are valid unless re-certification is deemed necessary by the AEM certified planner. Additionally, Part III.A.4.e) allows for an AEM certified planner and/or qualified professional to deem an existing BMP to be functioning as designed to substantially meet

the intent of the applicable NRCS standard in place at the effective date of this general permit.

III.A.4.a)(2)

*Cayuga County Board of Health, Cayuga County Department of Health*

**Comment 19:** The draft permit should require that manure waste storage structures have covers to reduce odors and the release of gases connected to climate change.

Response: No changes have been made in response to this comment. GP-0-22-001 is issued pursuant to Article 17 of the Environmental Conservation Law: Water Pollution Control and, therefore, it is intended to protect water quality. However, the Department encourages cover and flare practices on storages to help mitigate climate impacts and these systems are not prohibited in any way by GP-0-22-001.

*Cayuga County Board of Health, Cayuga County Department of Health*

**Comment 20:** Waste storage facilities should have high level alarms to notify the operator of an imminent overflow.

Response: No changes have been made in response to this comment. Part IV.F.4. of GP-0-22-001 requires the owner/operator to “perform and record weekly inspections of the depth marker reading for manure and process wastewater in any open liquid storage structures to ensure adequate volume exists to maintain the capacity necessary to contain the 25-year, 24-hour rainfall event plus the minimum freeboard...” This requirement provides adequate protections against a waste storage overflow.

III.A.4.b)

*HAY Consulting*

**Comment 21:** III.A.3.e.4 - remove the "soil sample test results" as a requirement or provide meaningful details for requirements and definitions for the described documents. Or simply state the minimum requirement as a certification statement by a qualified individual that the storage meets or is equivalent to the referenced standard.

Response: The comment appears to be referencing the wrong section of GP-0-22-001. The Department believes the comment was in reference to Part III.A.4.b). No changes have been made in response to this comment if that is the correct reference. Critical to water quality protection, GP-0-22-001 requires certification of existing open waste storage structure practices as meeting the 08/2006 standard or provide the soil sampling test results to ensure equivalence to this provision.

### III.A.8.a)(1)(b)

Cayuga County Board of health, Cayuga County Health Department

**Comment 23:** The draft permit specifies that waste applications may not be made at a rate that creates or causes the soil to become fully saturated. “Fully saturated” should be defined. Is manure that is ponded on fields after application an indication of fully saturated?

Response: Changes have been made in response to this comment. The word “fully” was removed from Part III.A.8.a)(1)(b) as the permits definition of “Saturated” covers the condition the Department is targeting. “Saturated,” as defined in Appendix A of GP-0-22-001, “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.” Surface applied manure may take a short period of time to infiltrate into the soil and, during that time, is not an indication of soil saturation. Persistent surface ponding well after the application is an indication of soil saturation.

### III.A.8.c)

*Cayuga County Board of Health, Cayuga County Health Department, NYFB, Cayuga Lake Watershed Intermunicipal Organization (CWIO)*

**Comment 24:** [Paraphrased] The Department received comments regarding manure spreading and a variety of weather conditions. Specifically, the 2015 Revised Cornell University Guide “Supplemental Manure Spreading Guidelines to Reduce Water Contamination Risk During Adverse Weather Conditions” cited in this section is a great asset as farmers adapt their daily operations to accommodate the “new normal” for northeast weather. A spreading ban based on a season or calendar date is not an environmentally responsible strategy as it is a one-size-fits-all, oversimplistic regulatory approach that defies proper nutrient management and does not guarantee

water quality protection. Liquid manure should not be allowed to be spread on frozen or snow-covered ground. The permit should clearly specify which characteristics make a field unusable for emergency applications.

Response: No changes have been made in response to these comments. Part III.A.8. of GP-0-22-001 requires spreading restrictions, as well as enhanced BMPs, necessary when there is increased risk of nutrient loss due to inclement weather. These restrictions and enhanced requirements are linked to field specific conditions versus calendar-based dates to account for variable weather patterns and provide full year protection against losses. These restrictions include prohibitions against spreading during frozen-saturated conditions; requirement to spread in accordance with NRCS NY 590; requirement to spread in accordance with site-specific winter weather application procedures developed utilizing Cornell guidelines; etc. These conditions in GP-0-22-001 provide the necessary protection against water quality violations.

III.A.8.e)(2)

*Cayuga County Board of Health, Cayuga County Health Department; CWIO*

**Comment 25:** The draft permit specifies field setback requirements of nutrient application from down-gradient surface waters of the State. These setback requirements should also be applicable to down-gradient storm water ditches.

Response: No changes have been made in response to this comment. GP-0-22-001 requires CAFOs to work with certified planners to develop CNMPs that follow NRCS Standards, which incorporate Cornell guidelines, such as the Phosphorus Index (P-Index), the Nitrate Leaching Index, and RUSLE2 for soil conservation/health, which ensure nutrients are applied at agronomic rates and in accordance with BMPs to reduce nutrient runoff and leaching. Specifically, the P-Index requires planners to evaluate fields to determine dominant runoff flow paths and distances, including ditches, and apply BMPs to reduce runoff potential, especially where there is high transport risk. This framework incentivizes those BMPs that have proven most effective at reducing transport risk, such as cover crops, application timing, injection/incorporation and vegetative buffers, and provides for protection against nutrient losses from fields.

*NEDPA, NYFB*

**Comment 26:** Please amend Part III.A.8.e.2, pg. 13, to better align with the flow path requirements as outlined in the NRCS 590 practice standard and

Phosphorus Index V2. Specifically, the 100 ft setback requirement should be based on the predominant flow paths from the field boundary rather than top of the bank of any down-gradient surface waters of the State as currently specified in the draft ECL permit.

Response: Changes have been made in response to this comment. The Department revised Part III.A.8.e)(2) in the final GP-0-22-001 to ensure consistent language between GP-0-22-001, NRCS NY 590, and the PI2.

*Cayuga County Board of Health, Cayuga County Health Department*

**Comment 27:** The scientific literature has shown that riparian buffers, especially those with tree cover, protect water quality, help manage runoff, and improve hydrologic resilience. The NYSDEC HABS action plans for Owasco, Cayuga, and Skaneateles Lake recommend the installation of vegetated buffers along watercourses. NYSDEC should take this opportunity to follow through on this recommendation and specify a minimum of a 35 foot vegetated or forested buffers along streams and downstream ditches in the CAFO permit.

Response: No changes have been made in response to this comment. The Department supports the implementation of buffers along streams and incentivizes their use by allowing a reduction from the 100 foot application setback to surface waters of the state to a 35 foot setback when a vegetated buffers are utilized, see Part III.A.8.e)(2) of GP-0-22-001.

### III.B.1

*NYFB*

**Comment 28:** NYFB believes that the changes to Non-Contact Cooling Water (NCCW) Systems seems justified, however, changing systems to discharge from non-trout waters of the state to groundwaters of the state may require additional permitting through EPA's Underwater Injection Control Program. As such, time to construct and update facilities to meet these new requirements as well as financial resources through the State's Environmental Protection Fund or other resources may be needed.

Response: Changes have been made in response to these comments. The effective date of GP-0-22-001 is January 23, 2023 to allow owners/operators time to make adjustment to existing CNMPs to account for changes to the conditions in the issued GP-0-22-001. See response to comment 6.

### III.B.3

*HAY Consulting*

**Comment 29:** Page 16 - waste storage structures. Be consistent on terms used fabricated vs structural or provide definitions of terms used. Consult the NRCS state engineer before using terms such as freeboard inappropriately and misconstruing the engineering purpose.

Response: Changes have been made in response to these comments. Part II.B.3.a(2) in the final GP-0-22-001 requires notification prior to constructing or expanding any liquid waste storage facility, no longer differentiating between structural and earthen. This change has reconciled the inconsistent use of the terms “fabricated” and “structural”. The freeboard language provided in Part III.B.3 of the general permit, and which was included in the previous CAFO general permit GP-0-16-001, was written in consultation with the NRCS state engineer in title at the time GP-0-16-001 was being drafted.

III.B.3.c)(2)

*Ag-Grid Energy, The American Biogas Council*

**Comment 30:** Section III.B.3.(2) (page 17) of the Draft General CAFO Permit reads, “...The non-manure waste may not exceed 50% of the annual volume of waste placed in the digester. If multiple digesters are located on the same farm, the 50% limit applies to each individual digester...”

Ag-Grid Energy’s recommendation is to amend the provision on page 17 to read: “...The non-manure waste may not exceed 50% of the combined annual volume of waste processed at a digestion facility, regardless of the number of digesters located on the farm.”

Limiting the food waste capacity to each digester rather than the total volume received on site limits the operational flexibility of a digestion facility and will be detrimental to the DEC’s NYS Food Donation and Food Scraps Recycling law and its implementation. Managing digesters comes down to managing feedstock, and food waste can be quite an inconsistent one. One waste stream may be high strength, another low strength, which requires very specific dosing throughout the day. Since anaerobic digesters require constant pH balance and maintenance of microorganisms, they have the potential to turn “sour,” meaning the digester needs to be emptied and restarted with new microorganisms. At a facility with two digesters, if one digester goes down, the food waste can simply be diverted to the second digester. However, complying with a 50% waste stream per digester creates an operational hurdle that doesn’t align with scenarios when something goes



wrong on site. Implementing a 50% rule per digester reduces the operational flexibility at a facility and can ultimately lead to more odor and methane emissions should food waste have to sit in a pit because it cannot be fed into a digester.

Response: Changes have been made in response to this comment. The Department revised Part III.B.3.c)(2) in the final GP-0-22-001 to allow the 50% threshold to apply to the total annual volume of waste digested at the CAFO regardless of the number of digesters located onsite. Additionally, the Department revised this section of the final GP-0-22-001 to clarify that only digesters operated by the CAFO owner/operator are exempt from needing permitting or registration under 6 NYCRR Part 361.

#### *NEDPA*

**Comment 31:** We would recommend a streamlined permitting process in 6 NYCRR Part 360 for any on-farm anaerobic digesters that may contain more than 50% of non-manure waste. Part 360 permitting should not be a barrier to increased on-farm sustainability opportunities and a streamlined permit process with reduced administrative burdens would be a beneficial tool to farms in the ECL CAFO permit.

Response: Comments on 6 NYCRR Part 360 are outside the scope of GP-0-22-001. However, 6 NYCRR 361- 2.2(d) states manure storage facilities located on a CAFO are exempt from 6 NYCRR Part 361 regulations if “the amount of non-manure waste placed in the storage facility [does] not exceed 50 percent of the total volume of waste placed in the storage facility on an annual basis.”

#### III.B.4

##### *Cayuga County Board of Health, Cayuga County Health Department*

**Comment 32:** Pressurized waste transfer systems should have pressure monitors and automatic shutoff valves that can alert the operator to a loss in pressure caused by a rupture or leak in the transfer system.

Response: No changes have been made in response to this comment. Pressure monitoring and shutoff controls are essential components for the function of pressurized waste transfer systems. Part III.B.4 of the GP-0-22-001 requires the owners/operators check these shutoff valves at least annually and any deficiencies corrected within 7 days. Additionally, this section of GP-0-22-001 requires all transfer systems with mechanical

components, that extend beyond the production area, to be staffed and monitored while actively transferring material.

### III.B.8

*Cayuga County Board of Health, Cayuga County Health Department, CWIO*

**Comment 33:** New structures such as waste storage lagoons should be required to maintain a minimum natural flow path of at least of 500 feet from surface waters of the state and storm water ditches.

Response: No changes have been made in response to this comment. Part III.B.8. of GP-0-22-001 already requires new structures to maintain a 100-foot natural flow path to surface waters of the state. This permit requirement is more stringent than the NRCS 313 Standard, which only requires 100-foot setback for a waste storage structure *from any well*. In addition, Part III.B.3 of GP-0-22-001 requires any storage which overtops to be re-evaluated by a Professional Engineer, providing additional financial incentive to ensure no overflow. Moreover, Part IV.B of GP-0-22-001 requires 24 hour and 5-day reporting of any incident which involves an overflow from a waste storage structure.

*HAY Consulting*

**Comment 34:** Define natural flowpath as it relates to paragraph 8 on page 19.

Response: Changes have been made in response to this comment. A footnote was added to Part III.B.8 to define the term “natural flow path” used in this context as “the path waste would be expected to take if the storage were to overtop and in the absence of any additional best management practices employed to deter or redirect the flow”.

*NEDPA*

**Comment 35:** The draft ECL permit includes additional measures to implement the provisions of the state’s Community Risk and Resiliency Act (CRRA) for new facilities and/or new structures on existing facilities in Part III.B.8., pg. 19. As an initial matter, NEDPA would request that the CRRA office provide additional guidance and resources regarding these requirements and implementation of these requirements on agricultural lands. Additional guidance and support from the CRRA office will be essential to better understand the Act’s requirements. In addition, NEDPA has a significant concern about the timing aspect related to the CRRA requirements. Design planning and engineering for “critical or non-critical structures” often begins

months and years in advance of construction, particularly if the project is included in state or federal funding cycles. The permit must recognize the pre-work that goes into such structures by excluding any structures already designed/engineered in advance of the applicability of the new ECL permit requirements related to the CRRA. As such, please modify Part III.B.8. to clearly exclude any new facilities or new structures planned before the effectiveness of the new ECL permit from any CRRA-related requirements. We would propose that any design plans or engineering documents that are stamped by a Professional Engineer before the beginning of the draft permit term are excluded from any CRRA-related requirements. In addition, as justified in a CNMP, projects that can demonstrate substantial engineering progress in the form of site plans, structural design drafts, geotechnical analyses, etc., prior to the effective date of the ECL permit, should be excluded from these requirements.

Response: Changes have been made in response to this comment. The Department revised Part III.B.8 in the final GP-0-22-001 to specify that *new* design plans must demonstrate consideration of the future physical climate risks due to flooding, sea-level rise, and storm surge pursuant to the CRRA. The Department also added a definition for “new design plans” to Appendix A of the final GP-0-22-001 “New design plans” means those plans dated and stamped by a Professional Engineer (where applicable) after the effective date of the final GP-0-22-001.

### III.B.13

*Cayuga County Board of Health, Cayuga County Health Department, CWIO*

**Comment 36:** Under the draft permit, if nutrients produced by a CAFO are exported to a user unaffiliated with the CAFO, there are no regulations controlling the application of the nutrients. The unaffiliated applicator should be required to develop a CNMP for the application of any nutrients generated by a CAFO and should be bound by the same regulations in applying the nutrients as the CAFO that generated the nutrients.

Response: No changes have been made in response to this comment. Operations that fit the definition of a “CAFO” as defined in 6 NYCRR 750-1.2(a)(23), which is reiterated in Appendix A of GP-0-22-001, constitute construction of a point source (see ECL §17-0701(1)(a)). A point source, which is defined in ECL §17-0105(16), is regulated by New York State statutes and regulations.

### III.C.1

*NYFB*

**Comment 37:** NYFB - NYFB strongly supports the alternative option to conduct the annual CNMP review through an internet-based meeting with manure applicator staff if the platform allows for sharing and open discussion of current field maps and high-risk features. This technology has been proven to be an effective communication tool and may provide planners with more active training time with farms by reducing travel time.

Response: No changes have been made in response to this comment. The Department observed the effectiveness of this option through the COVID-19 pandemic supporting its inclusion as an acceptable option in GP-0-22-001.

### III.E

*HAY Consulting*

**Comment 38:** Owner/operators do not have the technical training, certification or professional qualifications to update CNMPs. DEC should not be instructing farms to make changes to the CNMP.

Response: No changes have been made in response to this comment. Part III.E. of GP-0-22-001 specifically instructs the owner/operator to amend the CNMP “under the direction of an AEM certified planner...”.

### III.F.2

*Brad Schwab*

**Comment 39:** Please clarify that electronic copies of all CNMP and CAFO Permit related documents satisfy this requirement.

Response: No changes have been made in response to this comment. Part IV.I of GP-0-22-001 specifies that electronic records may be kept when done in accordance with 6 NYCRR 750-2.5(c)(3). As long as the Department can access all parts of the CNMP and associated records, electronic copies are generally acceptable.

## IV. MONITORING, REPORTING & RETENTION of RECORDS

### IV.B

*NEDPA*

**Comment 40:** There appears to be some discrepancy between the discussion related to overflow and discharge reporting in the permit fact sheet compared to the permit text itself. Given the timing-related reporting requirements in Part IV.B., we think it is necessary to add some additional language to clarify that manure applications in excess of the application rate provided in the CNMP only require incident reporting pursuant to Part IV.B. if the over-application causes a discharge to the waters of the State (consistent with Part IV.B.1. related to process wastewater). This edit could be made by adding “liquid manure, liquid food processing waste, liquid digestate” to the beginning of Part IV.B. so that they are treated in the same way as process wastewater. The revised IV.B. would be: “If, for any reason, the owner/operator knows or has reason to believe: 1) there is a discharge of process wastewater, liquid manure, liquid food processing waste, liquid digestate to the waters of the State that cause an impact...”

Response: Changes have been made in response to this comment. The Department revised Part IV.B of the final GP-0-22-001 to include the need to report if the owner/operator knows or has reason to believe “there is a discharge of *manure, litter, food processing waste, digestate, or process wastewater* to the waters of the State that causes an impact...”. Additionally, this part was revised to clarify that incident reporting, related to excess applications, is only required when applying in excess of the *maximum annual application rate* provided in the CNMP or applying in excess of the *single application rates described in Part III.A.8.b)(1) and (2)*. It should be noted, however, that each of the five conditions outlined in this part that require reporting are independent of each other and if any one of them occur, reporting is required. Finally, the Department revised Part III.A.8.b) to align better with the reporting requirements in Part IV.B. Therefore, incident reporting is required where the owner/operator knows, or has reason to believe, that manure was applied in excess of the maximum annual application rate provided in the CNMP or in excess of the single application rates described in Part III.A.8.b)(1) and (2), regardless of whether or not the over-application causes a discharge to the waters of the State. The final fact sheet was also revised to be consistent with the final revisions to GP-0-22-001.

NEDPA

**Comment 41:** During emergency situations, applications in excess of the application rate in the CNMP are already required to comply with the overflow and discharge reporting requirements in Part IV.B, as required by Part III.8.b. All other over-applications are already addressed and reported in the Annual

Compliance Report, as per Part IV.D. As such, we request that the additional language in Part IV.B.3. be removed to reduce any confusion regarding when applications above the recommended CNMP rate must meet the Part IV.B requirements (i.e., during emergency situations and when such over-application causes a discharge to a water of the State). The language to be removed is: “it is necessary to apply above the recommended single application rate provided in the CNMP;...”

Response: Changes have been made in response to this comment. The Department revised Part IV.C of the final GP-0-22-001 to clarify that the Annual Compliance Report must contain only instances of non-compliance which are still “on-going”. This is consistent with 6 NYCRR 750-2.7(e).

#### *WNYCMA*

**Comment 42:** 3) there is a liquid manure, liquid food processing waste, liquid digestate, or process wastewater reported to the DEC Spill Hotline; it is necessary to apply above recommended single application rate provided in the CNMP; or 4) ... It appears that there is a run-on in the language in this section and it is suggested that the numbering be modified to clarify the intent.

Response: Changes have been made in response to this comment. The Department revised the final GP-0-22-001 to correct this typo.

#### *NYFB*

**Comment 43:** NYFB is concerned with the change in language around notification of the DEC Spill Hotline for liquid manure, liquid food processing waste, liquid digestate, or process wastewater spills. It is not clear when a farm would be required to provide notification to the Department Regional Office or the DEC Spill hotline within 24 hours of when the owner/operator is made aware of the spill. We believe clarification should be provided in the permit and/or fact sheet and inclusion of the Regional Office in all instances to better manage these instances. It is imperative that training of staff of the DEC Spill Hotline to insure proper handling of situations and continuity across different regions.

Response: Changes have been made in response to this comment. Part IV.B.1 of GP-0-22-001 was revised to clarify that spills related to liquid manure, liquid food processing waste, liquid digestate, or process wastewater which are reported through the DEC Spill hotline, do not also need to be reported within 24-hours to the Regional Water Office. Those spills would,

however, need to be reported through a written incident report within 5-days of the incident. See Fact Sheet for discussion on when a spill is expected to be reported to the DEC Spill Hotline as well as the response to comment 65 below.

#### IV.D

*Cayuga County Board of Health, Cayuga County Health Department*

**Comment 44:** The information required in the Annual Compliance report should be specified in the draft permit. The Annual Compliance report should be available to the public.

Response: No changes have been made in response to this comment. The Annual Compliance Report collects a summary of information required throughout the CAFO general permit and is available to the public through the Freedom of Information Law (FOIL).

*HAY Consulting*

**Comment 45:** Why can ACRs only be submitted electronically?

Response: Electronic submissions greatly reduces the administrative burden of processing paper and reduces human errors in transferring data from paper to Department databases.

#### IV.F

*Cayuga County Board of Health, Cayuga County Health Department*

**Comment 46:** The draft permit specifies that forecasted weather conditions must be recorded prior to nutrient application. To be consistent, the permit should specify that the weather forecast be from the National Oceanic and Atmospheric Administration (NOAA).

Response: No changes were made in response to this comment. Commenters did not provide rationale to support specifying NOAA as the only acceptable weather forecast source.

#### IV.I

*NYFB*

**Comment 47:** 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. We hope that the earlier requirement of electronic submission will alleviate past concerns with specific regional offices who did not recognize electronic records.

Response: See response to Comment 39 above.

## V. STANDARD PERMIT CONDITIONS

### V.G

*Cayuga Count Board of Health, Cayuga County Health Department*

**Comment 48:** CAFOs who have had discharges resulting in water quality violations over the past 5 years should not be eligible for coverage under this permit, but should be required to file for an individual SPDES permit where more oversight by DEC can be provided.

Response: No changes have been made in response to this comment. Part V.G. contains situations where the Department may require a CAFO, authorized to operate in accordance with GP-0-22-001, to apply for and obtain an individual SPDES permit or apply for authorization to operate in accordance with another general permit. This condition is based on the requirements of 6 NYCRR 750-1.21(e).

*NEDPA*

**Comment 49:** Although we understand this language is part of the general SPDES permit terms, the term “outfalls” is out of context in this permit. Consider revising to add clarity.

Response: Changes have been made in response to this comment. The Department revised the final GP-0-22-001 to remove the term “outfalls” and replace it with “the activity”.

### V.I

*WNYCMA*

**Comment 50:** Electronic reporting. If documents described in (a) or (b) are submitted electronically by or on behalf of the activity with coverage under this SPDES general permit, any person providing the electronic signature for such documents shall meet all relevant requirements of this section, and shall ensure that all of the relevant requirements of 40 CFR Part 3 (including, in all



cases, subpart D to Part 3) (Cross-Media Electronic Reporting) and 40 CFR Part 127 (NPDES Electronic Reporting Requirements) are met for that submission.

Due to the fact that there are several permit holders without internet access, we have strong concerns about the sole requirement of an "electronic signature". We would request that there be the option of submitting a hand-signed document through an electronic portal. Also, as it is unclear as to what the electronic submission process will look like, we do want to ensure that the planners will be able to submit documents on behalf of the permit holders.

Response: No changes have been made in response to this comment. The Department believes this comment is related to Part V.J of GP-0-22-001. As stated in the fact sheet, "... 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." Supported by 40 CFR 127.15, the Department may issue temporary or permanent waivers if the permittee meets the applicable criteria to do so.

V.K

*NYFB*

**Comment 51:** 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 to allow inspectors to perform their duties while submitting to reasonable farm biosecurity procedures. We strongly feel that minimal advance notice of one would in no way preclude or diminish the findings of the CAFO inspection.

Response: No changes have been made in response to this comment. This condition is based on the requirements of ECL §17-0829 and 6 NYCRR 750-2.3.

*NEDPA, WNYCMA*

**Comment 52:** Again, we understand this is standard SPDES permit terms but consider replacing "contributor" with "permitted CAFO" to add clarity.

Response: No changes have been made in response to this comment. "Contributor" in this instance is an entity contributing to the permitted CAFO activities, so "contributor" is appropriate in this instance.

V.L

*NYFB, CWIO, Michael DeBramo*

**Comment 53:** The Department received comments both in support of and opposing the public availability of permitting and compliance information related to GP-0-22-001.

Response: No changes have been made in response to this comment. Permitting and compliance records 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 §§ 84-90 of the New York State Public Officers Law and 6 NYCRR Part 616, as well as ECL §17-0805(2-4) and 6 NYCRR 750-1.23 for SPDES permits.

## **Appendix A. - DEFINITIONS**

V. Equivalent (Equivalence)

*Brad Schwab*

**Comment 54:** There is some confusion amongst Department staff about whether “Equivalent” means equivalent criteria as compared to the Standard, or if “Equivalent” means equivalent protection of the environment. For example, a Qualified Professional may determine that a VTA offers equivalent protection of the environment even though its soil test is above the allowable phosphorous threshold. However, it couldn’t be said that the same site is equivalent to the criteria that are outlined in the Standard. When we talk about “Equivalence” are we talking about equivalent criteria as compared to the Standard or equivalent protection of the environment based on qualified individual’s assessments?

Response: No changes have been made in response to this comment. As described in the definition of “equivalent/equivalence” in GP-0-22-001, this term is meant to capture both the critical criteria of the referenced standard, as well as a degree of water quality protection.

AA. Food Processing Waste

*NEDPA*

**Comment 55:** Appendix A, AA., pg. 42, defines food processing waste to expressly exclude materials, “that involve the addition of a hazardous chemical to the manufacturing process.” We ask for the Department to

provide clarification and guidance on this definition as it relates to the acceptance of unmerchantable wine, beer, and other alcohol containing beverages. It is our current understanding that these food grade products are permissible to accept into an on farm Anaerobic Digester in accordance with the requirements defined in Part III.B.3.C. and would advocate for the allowance of this practice to continue.

Response: No changes have been made in response to this comment. In determining if a waste is “hazardous,” the Department’s Division of Materials Management relies on the characteristics of ignitability described in 6 NYCRR 371.3(b). Generally, beverages with an alcohol content <24 percent (<48 proof) (e.g. most beer and wine) do not meet that criteria. However, the Department’s Division of Materials Management should be consulted to make a waste specific determination, particularly for beverages with a higher alcohol content.

#### DD. Groundwater(s)

*HAY Consulting*

**Comment 56:** Define “groundwaters of the state”.

Response: Changes have been made in response to this comment. The Department revised Part III.B.1.a) in the final GP-0-22-001 to remove “of the state” and just rely on the term “groundwaters” for clarity. Appendix A defines groundwater(s). That definition is unchanged in the final GP-0-22-001.

#### TT. Retention Facility or Retention Structures

*HAY Consulting*

**Comment 57:** Retention Facilities, justify the creation and use of this term.

Response: No changes have been made in response to this comment. “Retention facilities and structures,” as used in Part III.B.2. is meant to cover smaller “storage structures,” such as hoppers, etc. that do not meet the definition of a manure storage or manure transfer, but are still required to be designed/constructed and operated to prevent discharge of all manure, litter, process wastewater and contaminated runoff from the production area to surface waters of the state.

## GENERAL COMMENTS

CWIO

**Comment 58:** [Paraphrasing] Cayuga Lake Watershed Intermunicipal Organization (CWIO) supports the recommendations of Cayuga Lake Restoration and Protection Plan, and also the DEC's Harmful Algal Bloom Action Plan for Cayuga Lake, and expects the DEC to adhere to the specifics of these plans when the DEC reviews the SPDES CAFO general permit.

Response: No changes have been made in response to this comment. The Department incorporated relevant recommendations from those documents in the draft ECL CAFO General Permit. The draft ECL CAFO General Permit also included updates to National Standards, State Guidelines, and other statewide guidance (informed by industry experts and the most current science) available for agricultural operations.

*Cayuga County Board of Health, Cayuga County Health Department*

**Comment 59:** The draft permit states that it is a violation to discharge from a production area to surface waters of the State. Discharges to roadside ditches should also be a violation unless the ditch has been disconnected from any downstream surface water. (See work by Rebecca Schneider, College of Agriculture and Life Sciences, Cornell University).

Response: No changes have been made in response to this comment. This condition is based on the definition of "waters of the state" in ECL §17-0105(2) and 6 NYCRR 750-1.2(a)(101).

*Cayuga County Board of Health, Cayuga County Health Department*

**Comment 60:** The CNMPs should include the location of all drain tile outlets. The CAFOs should be required to monitor the outlets when manure is applied on the fields in which the tiles are located.

Response: No changes have been made in response to this comment. In accordance with Part III.A.4 of GP-0-22-001, all CAFOs with coverage under GP-0-22-001 are required to implement the NRCS Conservation Standard NY-590, which requires the assessment of field characteristics, including subsurface drainage, and the use of risk indices to develop application rates, methods, and timings to reduce the risk of losses.

*Cayuga County Board of Health, Cayuga County Health Department*

**Comment 61:** The draft permit should require CAFOs to develop a phosphorus mass balance and should not allow nutrients to be applied at levels above

what is needed. The proposed permit allows excess phosphorus to be applied on fields that do not agronomically need the phosphorus.

Response: No changes have been made in response to this comment. In accordance with Part III.A.4, all CAFOs with coverage under GP-0-22-001 are required to implement the Natural Resources Conservation Service (NRCS) Conservation Standard NY-590, which requires adherence to NY's Phosphorus Runoff Index (P-Index). The P-Index ranks fields by actual soil test phosphorus levels and the probability of phosphorus loss to surface waters utilizing a combination of transport risk assessment, which includes an erosion assessment, as well as accounting for implementation of best management practices. This provides for a more realistic and effective approach to implementation of fertilizer and manure management than a straight field mass balance approach. The application rates, timing and methods, with this approach enables the CAFO to optimize use of manure nutrients on the CAFO, prevents application without implementation of best management practices to high-risk fields or fields with elevated soil test P, reducing the need for additional imported nutrients (i.e. commercial fertilizers).

*Michael DeBramo*

**Comment 62:** ...introduce whatever operational improvements that can be made (or mandated) to reduce the amount of manure components that do not end up in the fields they are intended to fertilize.

Response: No changes have been made in response to this comment. Part III.A.4 of GP-0-22-001 requires adherence to national nutrient management standards (i.e. NRCS NY 590), as well as nutrient guidelines (e.g. nitrate leaching index, phosphorus index, etc.), developed specifically to reduce the risk of nutrient loss from fields.

*Cayuga County Board of Health, Cayuga County Health Department*

**Comment 63:** Manure discharges into the surface waters of the State, seasonal or perennial streams, or storm ditches should be required to be reported by the ag operator via NYAlert as the public has a right to know of potential public health impacts. This is similar to the requirement that municipalities must report wastewater discharges.

Response: This comment is beyond the scope of the draft ECL CAFO General Permit. ECL 17-0826-a and 6 NYCRR 750-1.22 apply to Publicly Owned Treatment Works and operators of Publicly Owned Sewer Systems. In

addition, Part IV.B of GP-0-22-001 requires that the CAFO owner/operator notify the Department, within 24 hours, of discharges to surface waters of the state where they know or have reason to believe there is an impact and submit incident reports summarizing the incident. Those incident reports may be requested through FOIL.

*Michael DeBramo*

**Comment 64:** Even if the operation I witnessed is observing the terms of the permit, I question how the parameters of the plan are determined. I understand that this group (<https://cals.cornell.edu/pro-dairy>) is instrumental in providing technical support in the agricultural arena. It's hard to assume that they are a neutral party when their actual name is "Pro-Dairy." I suspect their rubric for acres/frequency per size of animal herd is already public; but if not, it should be.

Response: A partnership of public agricultural conservation agencies is responsible for developing and maintaining, current, effective, science-based standards and guidelines for CNMP development. The partnership is comprised of staff from Cornell University's Nutrient Management Spear Program, USDA-NRCS, Cornell University/Cornell Cooperative Extension, NYS DEC, and NYS AGM. Pro-Dairy is a program at Cornell University tasked with supporting the dairy industry and is not responsible for development of the States nutrient guidelines.

*Brad Schwab, WNYCMA*

**Comment 65:** The third paragraph identifies events that are reportable to the DEC Spills Hotline as any: 1) unintended, non-agricultural releases of liquid manure, liquid food processing waste, liquid digestate, or process wastewater, in excess of di minimus amounts, and/or 2) release of liquid manure, liquid food processing waste, liquid digestate, or process wastewater reaching drinking or surface waters. Permit holders will need to make decisions about what is reportable to the hotline and what is not reportable, and this guidance is confusing. What is the definition of a release? In what situation would a release of manure be deemed "non-agricultural"? How are di minimus amounts quantified? When does a spreader that malfunctioned in a field stop being a land application and start being a release?

The guidance in the existing permit is clear and easy to implement. If contaminants do not reach a waterway, it is deemed an overflow and is required to be included on the annual report. If contaminants do reach a waterway, it is deemed a discharge and is reportable immediately. There is

no apparent environmental benefit to this change, and it confuses the message about what incidents the Department expects to be reported.

Response: No change has been made in response to this comment. The CAFO general permit does not modify or in any way revise the existing laws, rules and regulations related to the DEC Spills Hotline. The fact sheet language for GP-0-22-001 was developed in consultation with DEC Spills staff to help provide some guidance to CAFO owner/operators about when this existing reporting requirement may be necessary. New to GP-0-22-001, is the need to provide the Regional Water Engineer a written Incident Report within 5 days following an event that triggers the DEC Spills Hotline reporting.

As discussed with DEC Spill staff, nonagricultural releases would indicate that the spill was unable to be incorporated into the CAFO's spreading plan and is likely to result in some impact to the environment. Those instances should be reported through the DEC Spills Hotline. However, releases which are handled onsite using available best management practices, that are unlikely to result in any impact to the environment, are not expected to be reported through the DEC Spills Hotline. For example, a spreader malfunctioning in a field where the waste was contained within the field and could readily be incorporated and accounted for in that field's spreading plan, would not be expected to be reported.

*Michael DeBramo*

**Comment 66:** "On the bright side, adhering to the weather-related guidelines for manure spreading seems overall to be a great improvement."

Response: No change was made in response to this comment. CAFOs have been required by GP-0-16-001 to utilize Cornell's Revised Winter/Wet Weather Guidelines to develop winter spreading plans since 2017. In GP-0-22-001, the Department expanded the requirement to utilize this guidance during wet weather conditions in addition to winter weather conditions.

*Michael DeBramo*

**Comment 67:** Compliant manure lagoons are a good enhancement also. But hopefully there is more that can be done with improved best practices.

Response: No change was made in response to this comment. CAFOs have been required to design and construct Waste Storage Facilities in accordance with NRCS NY 313 since the first CAFO General Permit in 1999.

*NYFB*

**Comment 68:** NYFB believes fair enforcement is a key component to a robust CAFO program. DEC and its staff have always acted to protect the waters of the State with strong conviction, long before it become their statutory obligation through federal mandate. This commitment is seen in the administration of the CAFO program and the staff's willingness to collaborate with stakeholders, like NYFB, for the best possible outcome in agricultural environmental management and water quality protection. However, this commitment has not been met with sufficient state funding and staffing resources, which has led to inconsistent and sporadic CAFO inspections within and between the nine DEC regions. 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.

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: No change has been made in response to this comment. The Department strives to implement statewide programs consistently between our regional offices and has developed Division of Water Technical Operational Guidance Series (TOGS) documents to help in that effort (e.g., TOGS 1.4.2 Compliance and Enforcement of SPDES permits). In addition, the Department has developed standardized inspection forms and hosts regular inspector meetings to foster good communication between regional staff to aid in this effort.

*Michael DeBramo*

**Comment 69:** Record-keeping and oversight could be greatly enhanced.

Response: No change has been made in response to this comment. GP-0-22-001 does include some additional record-keeping and oversight provisions including a requirement to submit a Change of Operation form to the Department prior to constructing *any* liquid manure waste storage



structure and the requirement to submit incident reports following reportable spill events or when over-application occurs beyond the maximum allowable rate provided in the CNMP.

*NYFB*

**Comment 70:** 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, changes surrounding the need for a General Construction Stormwater Permit, changes made in accordance with the Community Risk and Resiliency Act (CRRRA) and how those changes could impact previously engineered structural BMPs, and the implementation of the new P-Index 2.0, to name a few.

NYFB respectfully requests specific training by DEC for these new permit elements 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 changing landscape.

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.

Response: No change has been made in response to this comment. The Department intends on providing permit updates/training at the upcoming annual Certified Crop Advisor (Fall 2022) and Water Quality Symposium (Spring 2023) meetings. In addition, the Department anticipates providing training, as requested, at other agriculture events held outside of the identified events above.

*NYFB, CWIO, Michael DeBramo, NEDPA*

**Comment 71:** [Paraphrased] The Department received comments requesting funding for compliance and implementation related to new conditions in the final GP-0-22-001. Related comments encouraged continued programmatic

and financial support for County Soil and Water Conservation Districts who provide essential local technical assistance.

Response: No changes have been made in response to these comments. Funding to support the agricultural industry continues to be available through several resources, including the Agricultural Nonpoint Source Abatement Program administered through New York State Department of Agriculture and Markets. Several of these agricultural funding programs did see increased funding levels in the 22-23 State Budget. In addition, the Department is in the process of revising and renewing the Dairy Acceleration Program (DAP) contract with Cornell University to include additional funding to support farms wishing to install water reclamation systems, encouraging water re-use on farms.