

CAFO Update, October 2010

Since the new Environmental Conservation Law (ECL) Permit for New York CAFO's was released in June 2009, the CAFO front has been rather quiet. That still seems to be the case today while the states and federal government work out how to implement the 2008 CAFO rule. NY producers should not be lulled into complacency by the apparent calm.

While we await the release of a new Clean Water Act (CWA) Permit for New York that will replace the administratively extended GP-04-02 Permit that many of you have been operating under, below are some scenarios and action items to consider, but **the Bottom Line is:**

All CAFOs in NY, whether covered by the ECL Permit or not, should be undertaking the engineer and planner evaluations required in the ECL Permit (March 31, 2011 deadline) and moving to implement any needed upgrades based on these evaluations (March 31, 2012 deadline). If you haven't already, review the requirements with your planner and make a plan for moving forward. If you are not covered under the ECL Permit, you are not currently bound by the deadlines, but it is reasonably likely that the CWA Permit when released will have similar requirements for practice evaluation and upgrades.

Medium CAFOs: Medium CAFOs operating under the old CWA Permit (GP-04-02) are supposed to be fully implemented, and if not, are out of compliance. I understand that this has been an issue in at least one EPA inspection of a medium CAFO in New York. Medium CAFOs that are fully implemented can continue to operate under the old GP-04-02 Permit or can elect to shift over to the ECL Permit. **Action item:** if you are not fully implemented, strongly consider seeking coverage under the ECL Permit and get going with its deadlines accordingly.

Many medium CAFOs have been authorized under the new ECL Permit. This allows them additional time (March 31, 2012) to implement remaining structural practices in their CNMP, so they can be in compliance though not fully implemented. A hardship extension may be granted in some circumstances, and the best case for this will be made with evaluations in hand, related cost estimates, and efforts to secure funds to implement remaining practices.

Large CAFOs: A few Large CAFOs are covered under the ECL Permit and should be moving toward compliance in accordance with the deadlines above. Others are still operating under the GP-04-02 Permit, or have filed a notice of intent (NOI) to comply with the ECL Permit, but have not received a notice of coverage from DEC. If you are having second thoughts about being covered under the ECL Permit at this time, it should be possible to recall your NOI by sending a letter to Jackie Lendrum at DEC requesting return of your NOI and to remain under the GP-04-02 Permit until you are able to evaluate the CWA Permit once it is released. DEC is dealing with many issues relating to budget, staffing, the 2008 CAFO Rule and the Chesapeake Bay, so it is unclear when the new CWA Permit will be out. In this circumstance, it may be prudent to remain covered under the GP-04-02 CWA Permit if you still have it.

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PRO-DAIRY

