



Sorting out the NY CAFO Permit options for 2010

With the New Year, it is time to review New York CAFO options and consider steps for getting covered under the new permit structure. We are still waiting for the second CAFO permit option expected to be offered by DEC: the Clean Water Act (CWA) permit for farms that discharge or Large CAFOs that have not implemented their CNMP. Remember that farms with a fully implemented and properly maintained CNMP are deemed to be designed, implemented and operated to not discharge and so are eligible for New York's Environmental Conservation Law (ECL) CAFO permit released in June 2009.

DEC recently announced that they will not be processing any Notice of Intent forms for the ECL permit sent in by farms in 2009 until after January 1, 2010. This is a good thing as it will allow these farms to make their annual report in March 2010 the same way they did in 2009. Similarly, all previously permitted farms that file their Notice of Intent (NOI) for the new ECL Permit after January 1, 2010, will be able to make their 2009 annual report in the same format as the 2008 annual report.

All farms of CAFO size need to talk with a Certified Planner to help sort out the permit decisions and properly file paperwork with DEC. Existing CAFOs have a couple of choices depending on whether the farm is Medium or Large CAFO size:

Medium CAFO farms that have been operating under a permit (GP 04-02) were supposed to fully implement their CNMP by June 30, 2009. The new ECL permit gives Medium CAFOs until 2012 (or 2014 under certain circumstances) to implement the CNMP. There is strong incentive for Medium CAFOs to file for the new ECL permit after January 1, 2010 so long as they have had manure storage structures evaluated by an engineer and meet the other requirements set out by DEC.

Large CAFOs have two potential courses of action: 1) they may go ahead and file for the new ECL permit after January 1, 2010 so long as they have fully implemented their CNMP and practices are being properly operated and maintained; or 2) even if the CNMP is fully implemented, a farm may elect to maintain permit coverage under the GP 04-02 CWA permit and decide whether to file for the ECL permit once the new CWA permit is released. At the present time, neither option appears to offer any significant strategic advantage. Under option 2, based on the DRAFT CWA Permit released in December 2008, farms remaining under GP 04-02 until the new CWA permit is released will have 6 months from the permit's issuance to decide which permit to use and to file the appropriate paperwork. If you are not sure which direction is right for your farm, or if you think you may need to continue Clean Water Act permit coverage under the new permit structure, you should consult with an attorney.

Under new DEC requirements, farms that are Medium CAFO size (200 or more cows of milking age or 300 or more heifers of any age) but have not been operating under a CAFO permit will need to get an ECL or CWA Permit by March 31, 2010. If you have not contacted a Certified CAFO planner, it would be wise to do so as soon as possible. A list of Certified CAFO planners can be found at www.agmkt.state.ny.us/SoilWater/aem/cnmp.html by clicking on "AEM Certified Planner Directory".

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