

# 2004 CAFO Permit Renewal: Stay the Course

by Angus Eaton

**O**n July 1, 2004, the New York State Department of Environmental Conservation (NYSDEC) renewed the State Pollutant Discharge Elimination System (SPDES) general permit for concentrated animal feeding operations (CAFOs). Aside from using a lot of acronyms in the renewal, the main thrust of the renewal permit was to keep the basic structure and direction of the first CAFO permit and incorporate requirements from EPA rules promulgated in 2002.

Issued in 1999, the first CAFO general permit in New York supplemented the EPA rules in place at that time in three important areas: the Natural Resource Conservation Service conservation practice standard (NRCS NY 312), development and implementation of Agricultural Waste Management Plans (AWMPs) that meet NRCS NY 312, and certified Agricultural Environmental Management (AEM) planners to develop and revise AWMPs.

To draft the renewal permit, DEC once again consulted with the CAFO work group that had represented the same parties for the first CAFO permit. While some adjustments were necessary to reflect the current status of EPA rules and CAFOs in New York, the renewal permit preserves the three pillars of the CAFO permitting strategy that were established in the first permit.

The department's major adjustments associated with the renewal permit included the following:

- Extension of compliance deadlines
- Adjustment of requirements to comply with EPA's newly promulgated CAFO rules
- Revision of guidance for medium CAFO designations

Although it is a simple change in terminology, it is difficult to discuss the renewal permit without noting that Agricultural Waste Management Plans (AWMPs) have been renamed Certified Nutrient Management Plans (CNMPs) under the EPA rules and New York's renewal permit.

## Extending Compliance Deadlines

Under the first CAFO permit, the deadline for full AWMP (now called CNMP) implementation was within five years of a facility obtaining coverage under the permit. In discussions with the CAFO work group and DEC inspectors, several reasons were offered why facilities would not be able to meet the first permit compliance deadline.

First, the original schedule assumed that adequate certified planner resources would be in place sooner than they were. Without enough certified planners, not all of the plans were certified when expected. Because the plans were delayed, implementation of the plans has also been delayed. Although the number of certified planners is now much closer to that which is needed, the compliance deadlines have been extended because of the historical shortage of planners.

Second, there were not enough design resources available to complete all farm practices to meet the first permit deadline. Traditionally, much of the design work for CNMP practices is under-

taken by the Natural Resource Conservation Service (NRCS), and the rest of the engineering community is not as engaged as NRCS in designs for farm projects. NRCS does not have the staff to complete all of the designs by the original deadline. The extended deadline will make it more practical for the limited NRCS resources to be utilized and also allow for the engineering community to develop the capabilities to provide CNMP designs.

Third, the number of construction contractors that are capable of building CNMP practices was also not considered adequate to meet the deadline in the existing permit. The extended deadlines would allow for use of existing construction resources as well as development of additional construction resources to meet CNMP implementation needs.

Finally, the full costs of implementing the CAFO permit requirements have been estimated to be in the 100 to 150 million dollar range, and may well exceed that range. Traditionally, the state and federal governments provide opportunities to share costs to farms for compliance with regulatory requirements. The longer compliance schedules are expected to allow more opportunities for cost sharing and for CAFOs to plan for costs as part of long-term business planning.

In the renewal permit, the deadline for large CAFOs to fully implement CNMPs was extended to December 31, 2006, as set forth by the EPA rules. For medium CAFOs, the deadlines for completion of schedule items in the CNMP are phased as follows:

- Standalone nonstructural practices must be fully operational by October 1, 2007.
- Practices in response to high-risk conditions must be fully operational by October 1, 2008.
- All practices must be fully operational by June 30, 2009.

For both large and medium CAFOs, CNMP schedules must assure consistent annual progress toward practices being fully operational.

## EPA Rules

EPA promulgated revised CAFO rules on February 12, 2003 (40 CFR Part 122 and 412). In a reflection of how well it was written, New York's first CAFO permit was already consistent with most of the EPA rule requirements. There were, however, some changes to EPA rules that were addressed in the renewal permit.

One such change affected the size thresholds used to determine if an animal feeding operation would be considered a concentrated animal feeding operation. Under the first permit, there was a combined animal unit threshold for all facilities regardless of the types of animals (dairy cows, veal calves, cattle, swine, horses, sheep or lambs, turkeys, laying hens or broilers, chickens and ducks, etc.) that the feeding operation confines. That threshold was set in terms of total animal units, where an animal unit was roughly 1,000 pounds of animal weight. Facilities that met all the other CAFO criteria with 300 to 1,000 animal units in confinement were considered medium CAFOs, and those that exceeded 1,000 animal units were considered large CAFOs.

Under the renewal permit, the animal unit threshold has been removed. Thresholds are set only in terms of the number of animals of one type, without regard to the numbers of animals of another type that are in confinement at the facility. Under the revised definition, some facilities that would have been subject to CAFO rules because they confine several different types of animals are not, by rule, subject to CAFO permitting requirements.

As set forth in the EPA rule, the renewal permit also includes a requirement for CAFOs to provide five-page annual reports to DEC. In addition to the annual report requirements set forth by EPA, DEC added requirements for the annual report to contain a summary of the status of CNMP practice completion, a certification by the certified planner that the CNMP is up to date, and a certification by the owner/operator that annual report is accurate. In addition to tracking annual compliance, DEC believes the report will also provide valuable planning information on the costs of CAFO permit implementation.

Finally, the renewal permit includes some additional requirements from EPA rules for monitoring and record keeping for most large CAFOs.

### Guidance for Medium CAFO Designations for Animal Feeding Operations

Under EPA rules, facilities that exceed the thresholds for large CAFOs are generally considered to be CAFOs unless they demonstrate otherwise. Facilities that exceed the threshold for medium CAFOs must also have a discharge of process wastewater to be determined to be a point source and, because of that determination, required to have a CAFO permit.

In the preamble to the February 12, 2003, EPA rules, EPA encouraged states to work with nonregulatory agencies to abate discharges at medium-sized AFOs as a way to avoid permitting those facilities as CAFOs. In an action that made interpretation and implementation of the rule difficult, EPA actually made the express terms of the 2003 rule less flexible than the rule that was in place prior to that time.

Considering the EPA rules and preamble, DEC prepared guidance entitled "Medium CAFO Designations for Animal Feeding Operations (AFOs)." In accordance with the guidance, a medium-sized AFO that implements NRCS practices for all runoff that would otherwise be subject to permitting, that AFO may, at its own risk,

claim to have no discharge. Without a discharge, they are not required to have the permit. They are required to maintain the practices that enabled them to make the claim that they have no discharge. However, if the nonpermitted AFO subsequently discharges, they are not provided the shield that is available to a permitted CAFO.

### E-Farm

It is also worthwhile to note that a new funding source that has recently been made available to CAFOs for writing and updating CNMPs. The New York State Environmental Facilities Corporation (EFC) now has a program named E-Farm to reimburse CAFOs for the cost of preparing and updating CNMPs. Under E-Farm, facilities that have incurred costs for development of CNMPs to satisfy CAFO permitting requirements would be eligible to receive up to 90 percent (with a maximum of \$8,000) of the costs not covered by another reimbursement program. Such facilities would also be eligible for up to 90 percent (with a maximum of \$2,000) of the costs incurred to update annual reports.

### Conclusion

DEC considers CAFO permitting for both large and medium CAFOs to be an important component of the DEC wet weather control strategy. While not historically regulated by Clean Water Act permit programs, even the smallest facility that would be required to have a CAFO permit has the pollution potential of a small city. Staying the course with CAFO permitting makes sense for clean water in New York.

*Angus Eaton is the chief of the General Permits Section in NYSDEC's Division of Water. The General Permits Section administers general permits for discharges of industrial stormwater, construction stormwater, stormwater from municipal separate storm sewer systems, concentrated animal feeding operations, and small sanitary discharges to groundwater.*

On February 28, 2005, the United States Court of Appeals for the Second Circuit ruled on the CAFO lawsuit, *Waterkeeper Alliance, et al vs. EPA*. EPA has advised NYSDEC that this decision could have an impact on New York State's CAFO program. The NYSDEC is in the process of reviewing the decision and will be working with EPA and the Department of Agriculture and Markets to develop a response.

## CALL FOR ABSTRACTS—JOINT EDWIN C. TIFFT SYMPOSIUM

The New York Section American Water Works Association and New York Water Environment Association are seeking speakers for the Joint Edwin C. Tift Water Resources Symposium to be held November 16–17, 2005, in Liverpool, New York. The technical program will be developed from abstracts covering all areas of water resources management to attract water and wastewater professionals to the symposium. Topics of interest include

- Watershed Protection
- Water Reuse
- Advanced Water and Wastewater Treatment
- Regulatory Issues
- Security
- Energy Conservation Water and Wastewater Funding
- Collection System and Distribution System Management
- Residuals/Solids Treatment, Disposal, and Reuse
- UV Disinfection

NYSAWWA 315-455-2614 NYWEA 315-422-7811

The program will be developed to obtain maximum operator continuing education credit from NYSDOH and NYSDEC and professional development hours for professional engineers.

Forms for submission of abstracts can be downloaded at [www.nysawwa.org](http://www.nysawwa.org) and [www.nywea.org](http://www.nywea.org) or can be requested by contacting the NYSAWWA or NYWEA sections offices.

**Abstract submittals are due by May 15, 2005.**