



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

## **Nutrient Management Plans Statutes & Regulations**

**New York**

[www.NationalAgLawCenter.org](http://www.NationalAgLawCenter.org)



## Nutrient Management Plans

### STATE OF NEW YORK

**1) NY CLS ECL §§ 17-0801, 0803, 0804, 70-0107 (1)–(3)(e); 6 NYCRR §§ 750-1.1, 750-1.2 (a)(5), (23), (28), (67), 750-1.4; State CAFO Permits**

*The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the New York Consolidated Laws Service.*

**1) NY CLS ECL §§ 17-0801, 0803, 0804, 70-0107 (1)–(3)(e); 6 NYCRR §§ 750-1.1, 750-1.2 (a)(5), (23), (28), (67), 750-1.4; State CAFO Permits**

#### **NY CLS ECL § 17-0801. Purpose**

To create a state pollutant discharge elimination system (SPDES) to insure that the State of New York shall possess adequate authority to issue permits regulating the discharge of pollutants from new or existing outlets or point sources into the waters of the state, upon condition that such discharges will conform to and meet all applicable requirements of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.) hereinafter referred to as the “Act”, and rules, regulations, guidelines, criteria, standards and limitations adopted pursuant thereto relating to effluent limitations, water quality related effluent limitations, new source performance standards, toxic and pretreatment effluent limitations, ocean discharge criteria, and monitoring, and to participate in the national pollutant discharge elimination system (NPDES) created by the Act.

#### **§ 17-0803. SPDES permits; application**

Except as provided by subdivision five of section 17-0701 of this article, it shall be unlawful to discharge pollutants to the waters of the state from any outlet or point source without a SPDES permit issued pursuant hereto or in a manner other than as prescribed by such permit. The department shall, by rule and regulation, require that every applicant for a permit to discharge pollutants into the waters of the state shall file such information at such times and in such form as the department may reasonably require to execute the provisions of this article. Rules and regulations adopted hereunder may provide that in lieu of issuance of such permit the department may accept as compliance herewith a permit duly issued by the federal government or an agency thereof pursuant to the provisions of the Act.

#### **§ 17-0804. Rules and regulations**

The rules and regulations adopted by the department to implement this title and the provisions of article 70 of this chapter and rules and regulations thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this title.

**§ 70-0107. Rules and regulations; applicability**

1. The department, after public hearing, shall adopt rules and regulations to assure the efficient and expeditious administration of this article. Such rules and regulations shall include but not be limited to provisions regarding notice, review, public participation and public hearings.

2. Notwithstanding any inconsistent provisions of this chapter or any rule or regulation of the department, the procedures provided in this article and in rules and regulations adopted by the department pursuant to subdivision one of this section shall govern the review by the department of applications for permits for proposed projects and modifications, suspensions, revocations, renewals, reissuances and recertifications of permits under the regulatory programs of the department specified in subdivision three of this section. Such procedures shall also apply to any government entity to which the commissioner has delegated powers to administer such programs pursuant to section 3-0301 of this chapter, to the extent specified in such delegation.

3. The following regulatory programs of this chapter shall be subject to the procedures provided in this article:

[ . . . ]

(e) state pollutant discharge elimination system (title eight of article seventeen);

[ . . . ]

**6 NYCRR § 750-1.1 Scope and purpose**

(a) New York State has a state program that has been approved by the United States Environmental Protection Agency for the control of wastewater and stormwater discharges in accordance with the act. Under New York State law the program is known as the State Pollutant Discharge Elimination System (SPDES) and is broader in scope than that required by the act in that it controls point source discharges to groundwaters as well as surface waters.

(b) The regulations in this Part prescribe procedures and substantive rules concerning the SPDES Program as set forth in the statutory authority for this Part. The SPDES Program does not apply to:

(1) Indian activities on Indian lands under the jurisdiction of the United States; or

(2) those discharges that are deemed prohibited by section 17-0807 of the ECL or section 750-1.4 of this Subpart.

(c) Much of the procedures and administrative rules concerning SPDES permits in connection with departmental action on applications, emergency authorizations, modification, suspension and revocation provisions and other provisions, are set forth in Part 621 of this Title.

(d) Permit hearing procedures are set forth in Part 624 of this Title.

(e) Enforcement hearing procedures are set forth in Part 622 of this Title.

(f) Provisions applicable to issued SPDES permits and POSS registrations are set forth in Subpart 750-2 of this Part.

### **§ 750-1.2 Definitions**

[ . . . ]

(5) Animal feeding operation (AFO) means a lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they physically adjoin each other, or if they use a common area or system for the disposal of wastes.

[ . . . ]

(23) Concentrated animal feeding operation (CAFO) means an AFO that meets the criteria of either a large, medium or small CAFO. A large CAFO means an AFO that stables or confines as many as or more than the numbers of animals in any of the following categories:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves;

(c) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;

(d) 2,500 swine each weighing 55 pounds or more;

(e) 10,000 swine each weighing less than 55 pounds;

(f) 500 horses;

- (g) 10,000 sheep or lambs;
- (h) 55,000 turkeys;
- (i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (j) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (k) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
- (l) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
- (m) 5,000 ducks (if the AFO uses a liquid manure handling system).

(ii) A medium CAFO means an AFO that stables or confines as many as or more than the numbers of animals in any of the following categories:

- (a) 200 to 699 mature dairy cows, whether milked or dry, except that an AFO that stables or confines 200-299 mature dairy cows, whether milked or dry that does not cause a discharge would not be considered a medium CAFO;
- (b) 300 to 999 veal calves;
- (c) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls and cow/calf pairs;
- (d) 750 to 2,499 swine each weighing 55 pounds or more;
- (e) 3,000 to 9,999 swine each weighing less than 55 pounds;
- (f) 150 to 499 horses;
- (g) 3,000 to 9,999 sheep or lambs;
- (h) 16,500 to 54,999 turkeys;
- (i) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(k) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or

(m) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system). A Small CAFO means an AFO that is designated by the department as a CAFO or requests CAFO SPDES permit coverage and is not a medium or large CAFO.

While not required, an AFO with 200-299 mature dairy cows may request CAFO SPDES permit coverage and, if permit coverage is granted, the AFO would be considered a Small CAFO throughout permit coverage. Notwithstanding any provision of this subdivision, the Department retains its existing authority to enter and inspect any property or premises and access records for the purpose of ascertaining compliance or noncompliance with provisions of the ECL article 17, or the act or any regulations adopted pursuant thereto.

[ . . . ]

(28) Discharge means any addition of any pollutant to waters of the State through an outlet or point source.

[ . . . ]

(67) Point source means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, or landfill leachate collection system from which pollutants are or may be discharged.

[ . . . ]

#### **§ 750-1.4 Requirement to obtain a permit**

(a) Except as provided in subdivision (a) of section 750-1.5 of this Part, no person shall discharge or cause a discharge of any pollutant without a SPDES permit having been issued to such person pursuant to this Part and ECL Article 17, titles 7 or 8, with respect to such discharge; and no person shall discharge or cause a discharge of any pollutant in a manner other than as prescribed by such permit.

(b) For discharges of stormwater that are not to groundwater, permits shall be required in accordance with 40 CFR 122.26 except as provided in Section 1069 of the federal intermodal transportation efficiency Act of 1991.

(c) All permits for discharges into navigable waters issued by the federal government pursuant to the Act shall be deemed to be permits issued under this Article, and shall continue in force and effect for their term unless revoked, modified or suspended in accordance with the provisions of this Title.

## **Concentrated Animal Feeding Operations**

### [CAFO Permits](#)