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October 11, 2018

Mr. Douglas Ashline
Division of Water
NYS Department of Environmental Conservation
625 Broadway, 4th Floor
Albany, NY 12233-3505

RE: Clean Water Act (CWA) Concentrated Animal Feeding Operation SPDES General Permit GP-0-19-001

Dear Mr. Ashline,

On behalf of our member families, New York Farm Bureau (NYFB), the state's largest general farm organization, appreciates the opportunity to provide comments on the New York State Department of Environmental Conservation's (DEC or the Department) draft permit referenced above for farms classified as covered operations under the Clean Water Act (CWA) concentrated animal feeding operation (CAFO) regulations. Our organization has been involved in New York's CAFO program since its inception, a commitment that mirrors our members' dedication to on-farm environmental sustainability. Since the first version of the CAFO general permit was issued in 1999, New York farms have spent countless resources on bettering their environmental management and continue to live out that commitment every day on the farmstead and in the field. Indeed, no other group of farms in the nation has done more to protect our water quality.

Continually improving water quality and environmental health is a paramount priority of New York farmers. This priority could not be achieved without the collaborative effort of numerous partners. NYFB gratefully acknowledges the valuable contributions made by each of these partners including DEC, New York State Department of Agriculture & Markets (NYSDAM) and New York State Soil & Water Conservation Committee (NYS SWCC), USDA-Natural Resource Conservation Service (NRCS) and Cornell University/PRO-DAIRY. We also work in conjunction with several environmental groups, who have the same objective as NYFB, to ensure environmental quality. We are appreciative of the DEC staff that contributed significant time and energy to the CAFO permit development process, involving all stakeholders and several agencies.

The unique biological system that is a farm business, as well as the integrity of the agricultural community, calls for and continues to require a different approach to water quality regulation enforcement than previously utilized. We acknowledge and commend the shift in compliance and enforcement posture that DEC has made over the years to account for the distinctive characteristics of agriculture and look forward to working further with DEC in this ever-improving understanding. We further appreciate the work of DEC in drafting the proposed

permit, particularly given the difficult circumstances of federal rules and strict court mandated timeline.

It is clear that New York's CAFO program has been a success in protecting water quality. When finalized, the proposed permit will establish the direction for New York's CAFO program. We continue to believe that the New York CAFO program should, in all ways possible, focus on practical, science-based approaches that do not place undue burden on farm families. The Certified Planner process New York has constructed is the foundation of our program. These professionals are dedicated to finding farm-site specific solutions and farms depend on planner judgment every day. This new CAFO permit should continue to place confidence in the Certified Planners.

Farmers want to do the best possible job in protecting the environment and endeavor to implement the best protection practices possible. With this goal in mind, we respectfully offer the following comments to improve the draft CWA permit.

CWA General Comments

In October 2008, the U.S. Environmental Protection Agency (EPA) promulgated new final regulations impacting CAFO permit programs. These new regulations were issued in response to the decision rendered in *Waterkeeper Alliance et al. v. EPA* in February 2005. Despite numerous attempts since the decision to provide better perspective to the EPA about New York's CAFO program and the realities of agriculture in the Northeast, the final regulations create permit requirements that are completely unworkable for New York farms and needlessly burden DEC resources with administrative protocols. As a response to the 2008 regulations, DEC developed its current dual permit structure. NYFB is commenting on the draft CWA permit as a result of a lawsuit filed by several environmental groups challenging the CWA permit's validity under federal law and regulations. The CWA permit is available for those farms that discharge or propose to discharge.

These comments focus on the CWA permit and not the Environmental Conservation Law (ECL) CAFO permit. NYFB believes the ECL CAFO permit to be a robust permit, which requires those farms covered by the permit to not discharge. NYFB has confidence in both permits to uphold protection of the environment but feels that some of the language, as required under federal law, may make the CWA permit more difficult to implement, thereby making it less likely to protect the resources it seeks to protect. As written, the ECL permit continues the CAFO program's strong focus on science-based analysis of environmental risk, which NYFB heartily supports.

Permit Number

Several places throughout the draft permit, the draft permit is numbered as GP-0-19-001. The current CWA permit is GP-0-16-002 and the current ECL permit is GP-0-16-001. NYFB requests that in order to avoid confusion, the new CWA permit be numbered GP-0-19-002.

I. PERMIT COVERAGE AND LIMITATIONS

Part I.A. Permit Coverage - NYFB is generally supportive of DEC’s proposed qualifications for eligibility under this CWA permit draft. We believe farms that have implemented nutrient management plans and associated best management practices (BMPs) as proposed by DEC and under the guidance of pertinent agricultural environmental standards and discharge are fully eligible for this permit. NYFB also requests that those farms who are in the process of implementing BMPs for permit compliance also be eligible for application for permit coverage.

Part I.B. Effluent Limitations for the Production Area- We recommend Part I.B.2 in the CWA permit specify “ongoing” discharges of process wastewater to surface waters of the State, so that a one-time violation that has been corrected and practices are now in place to prevent a recurrence does not disqualify a farm from the permit.

Part I.C. Effluent Limitations for the Land Application Area

In Part I.C.1.b., we recommend that the language be amended to read, “b) Form, source, amount, timing, and method of application. The form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals in accordance with NY NRCS 590.” NYFB believes that removing the reference to “*minimizing nitrogen and phosphorus movement to surface waters*” is necessary because a farmer is required to meet the NRCS 590 standard for nutrient management which defines how to set the application rates to minimize phosphorus and nitrogen transport from fields to surface water. We also recommend modifying language in Part I.C.1.c. which also references NY NRCS 590 for the determination of manure, litter, and process wastewater application rates.

Under Part I.C.1e. and f., we recommend that the *protocols* for the land application of manure, litter, process wastewater be interpreted by DEC in a manner so as to allow for the farmer to follow site-specific nutrient management practices developed in conjunction with their certified planner, as defined in Appendix A, Definitions. In reviewing the nutrient management plan, DEC will be given the opportunity to review these site-specific protocols. In subsection f, we believe the language should be amended as follows, “*f) Manure and soil sampling protocols for appropriate testing of manure, litter, process wastewater, and soil. Manure must be analyzed at least once annually in accordance with NY NRCS 590 for nitrogen and phosphorus content. Soil must be analyzed at least once every 3 years for nitrogen and phosphorus content as further described in Part III.A.2.g.*” Part III.A.2.g references NRCS 590 as being the standard to use for soil testing, which NYFB believes to be a fair standard for farmers and certified planners to use. Further we believe that the current language reference to specific nutrients conflicts with the later reference of 590.

NRCS 590 states the following for soil and manure tests,

“Soil tests must be taken at least every 3 years, not to extend beyond the spring of the fourth crop year. Any nutrient recommendations made in the spring of the fourth crop year must be based on new soil tests.

The soil and tissue tests must include analyses pertinent to monitoring or amending the

annual nutrient budget, e.g., pH, soil organic matter, phosphorus, potassium, or other nutrients and tests for nitrogen where applicable. Follow Cornell University guidelines regarding required analytical methods and analyses. Soil samples will be analyzed with the Cornell Morgan test or other tests that can be converted to Cornell Morgan equivalents.

Soil tests must be performed by laboratories successfully meeting the requirements and performance standards of the North American Proficiency Testing Program (NAPT) or Agricultural Laboratory Proficiency Program (ALP).

“Nutrient values of manure, organic by-products, and biosolids must be determined prior to land application. Such analyses must include, at minimum, total nitrogen (N), ammonium N, total phosphorus (P) or P₂O₅, total potassium (K) or K₂O, and percent solids, or follow Cornell University guidance regarding required analyses.

Manure, organic by-products, and biosolid samples must be collected and analyzed at least once per calendar year, or more frequently if needed to account for operational changes (feed management, animal type, manure handling strategy, imported organic by-products, etc.) impacting manure nutrient concentrations. Less frequent manure testing is allowable where operations can document a predictable level of nutrient concentrations from past tests, unless operational changes occur or Federal, State, or local laws require more frequent testing.”

II. OBTAINING/TERMINATING/CHANGING PERMIT COVERAGE

Part II.A. Duty to File Notice of Intent for CWA Permitted CAFO – The owner/operator wishing to gain coverage under the CWA permit must submit a completed NOI and NMP to DEC. While NYFB does not object to the submittal of this information, NYFB requests that information that may be sensitive to the farm be allowed to be redacted so as to keep location of water sources, location of houses, and other biosecurity related areas be kept confidential.

After a farm submits a NMP and NOI for approval by DEC, it must undergo a 30-day public comment period. NYFB does not dispute the 30-day comment period and requests that DEC only consider “significant comments” that pertain to the farm’s application for coverage under the CWA permit. For those farms that are requesting CWA permit coverage, there is no specified timeframe in which DEC will respond to these operations regarding approval or denial of their requested CWA permit coverage once the 30-day comment period has expired. While NYFB realizes that coverage can be contingent upon public comments, it is also important that a farm not be left in limbo and receive notification from DEC within a reasonable time frame. NYFB respectfully requests DEC amend this section to include a specified timeframe for agency response to the farmer after receipt and approval of their NOI and NMP. NYFB recommends that DEC provide a response as to whether coverage is granted no later than 60 days following submission of their NOI and NMP.

NYFB remains concerned about the submission of the full NMP to DEC. While the NMP would provide the necessary information needed to DEC and public citizens to enforce the terms of the

permit, it is not the best document to facilitate ease of understanding about a farm operation. Indeed, NMPs often create a sense of overload for requesters of farm information. We believe much of the apparent public concern about larger farms is due to a lack of understanding about modern agriculture. A large technically complex book does not help promote understanding by the general public. Further, it slows DEC's review if the NMP contains information not relevant to a specific situation being investigated.

Part II.B. Duty to File Change of Operation Form— NYFB believes that submitting Change of Operation form, within 30 calendar days of transferring a covered CWA farm from one owner to another provides adequate notification to DEC as gives the new owner time after acquiring the facility to look over the current operation and review whether or not the CWA permit is the current permit for them.

III. NUTRIENT MANAGEMENT PLANS

Opening Statement – NYFB supports the NMP plan being developed by an AEM certified planner in accordance with the 9-Step Planning Process. Certified planners in New York go through a three-year minimum certification process to be certified. This rigorous process requires the completion of several NMPs and submittal to the New York State Department of Agriculture and Markets for approval. The federal regulations do not require that farmers use a certified professional to write a NMP and allow a farmer to write their own plan as long as it conforms to NRCS 590. DEC's requirement that a farm's NMP be written by a state-certified planner speaks to the agricultural industry's commitment to environmental quality.

Part III.A.1. Production Areas and Land Application Areas— DEC requires that all areas under control of the CAFO where nutrient sources are produced, land applied or stored on or for use by the CAFO shall be addressed in the NMP. NYFB does not object to this language, but would like DEC to clarify in an FAQ or Factsheet that the definition of nutrient sources only includes manure, process wastewater, and litter and does not apply to commercial fertilizer. The purpose of the CAFO permit is to address how farms are dispersing farm-derived nutrients in a manner that protects water quality. Since the situation proposed does not pertain to farm generated nutrients, we do not believe its management should be included as a requirement of the permit.

Often times, land that is owned by the same individuals that own the CAFO, is used to produce feed for the farm's cattle or sold as a commodity, and receives only applications of commercial fertilizers and no manure, wastewater, or litter. It is NYFB's understanding that since this land never receives applications from those nutrient sources, it does not need to be included in the NMP. Providing this clarification in writing would assist farmers and planners in what areas should and should not be included in their NMP and not waste valuable resources.

Part III.A.2. NMP Best Management Practices – NYFB supports the use of site-specific best management practices (BMPs) for farms to implement as part of their NMP. Site-specific BMPs allow a farmer, in consultation with their certified planner, to select practices that both protect the environment but also are manageable for the farmer.

As referenced in comments above, NYFB supports the use of NY NRCS 590 for soil and manure tests, protocols, and application procedures. In Part III.A.2.h., it references the need to establish protocols for land applying manure, litter, or process wastewater, and we would like to allow the farmer and certified planner to develop those protocols consulting NRCS 590 as well as Cornell University guidelines. This flexibility should be outlined in a CWA FAQ or Factsheet. Language in letter (h), second paragraph, should also be amended to remove “~~while minimizing nitrogen and phosphorus movement to surface waters~~” and insert “in consultation with NRCS 590.”

Part III.A.2.(e). Chemical Handling and Disposal- NYFB believes that the permit clarifies that farm waste storage systems can be utilized to treat certain non-pesticide chemicals related to animal health, along with manure. We suggest that the word “specifically” be deleted from the first sentence of this provision. This is an appropriate practice that a farm should be able to continue in accordance with appropriate guidance from the Department and/or Cornell University.

Part III.A.2.j(1) and (2). Linear Approach and Narrative Approach— There are two possible land application rates for permittees to use- the “Linear Approach” or the “Narrative Approach.” NYFB believes that DEC will need to work with Cornell University’s PRO-DAIRY Program and the Department of Agriculture and Markets to further develop these approaches, since they are both new terms and techniques.

The Linear Approach seems unworkable for many New York farms and appears to be more appropriate for western farms that have large fields, acreage-wise, and a few number of fields. The Linear Approach requires for that each field and crop be analyzed for potential nitrogen and phosphorus transport from the field, the realistic annual yield goal for each crop and field, the credits for nitrogen and phosphorus allocated to each crop and field, just to name some of the requirements. In New York, it is not uncommon for a medium sized farm to have fifty fields and a large farm to have upwards of 100 fields, not to mention plant two crops in the field (cover crop used for feed or bedding, followed by corn or soybeans). This leads to an exponential amount of calculations and paperwork for each field. While NYFB fully supports the management of nutrient applications and acknowledges the requirement by EPA to have these approaches in the CWA permit, the approaches must also meet practical farm standards.

The Narrative Approach also seems impracticable from the farm perspective as again calculations must be done for each field and crop and described in-depth. Again, this can be cumbersome for farms with many fields.

Again, NYFB requests that DEC work with experts in agencies and university roles to help describe how these approaches will be implemented at the farm-level.

Part III.A.3. NMP Standards – NYFB supports the use of NRCS standards for the installation and maintenance of best management practices (BMPs). NRCS standards are recognized across the state and country as high caliber practices. NYFB supports language which allows all existing BMPs that meet the water quality protection intent of the current NRCS standards or BMPs that can be updated to meet their water quality protection intent (through either structural or non-structural changes) to remain in place, through certification of the BMP. Our farmers

know that newer is not necessarily better and effectiveness takes precedent over trending practices. This important CAFO program policy reflects this practical environmental planning strategy by allowing farms to implement environmental protection in a cost-effective manner and enable scarce financial resources to be used on other required BMPs in furtherance of actual water quality protection.

Part III.A.4.c.1. Implementation Schedule – NYFB recommends making the following change to the wording in *c (1)* “*an AEM certified planner must visit and evaluate the site of the acquired operation; work with the owner/operator of the permitted CAFO to identify any discharges; create an implementation schedule for completion of structural BMPs (if necessary) in accordance with (2) below; and submit a revised/ updated NMP to the Department for approval and obtain such approval in accordance with Part III. ~~prior to the CAFO becoming operational;~~*”

It is not uncommon for a CAFO operation to purchase an existing AFO or CAFO, with animals already on site and the purchased farm continue to be “operational.” Under this section any CAFO that acquires an AFO or a CAFO must have an updated NMP and receive approval of the updated NMP “prior to becoming operational.” NYFB believes this would create a logistical hardship and potential financial burden for a farm who may need to sell quickly. Depending on the length of the notice and comment period, it could be an unworkable situation for a current CWA permitted farm to take ownership of an additional farm with animals on site. It would not be logical to remove those animals from the current facility and overcrowd another facility, for both environmental and animal welfare concerns, and have the farmer wait for the public notice period to expire and for DEC approval. Due to the long-term nature of agricultural operations, the ability to purchase neighboring or new farmland is often only available once in a generation. If a farm is not ready to make a commitment at that point, the opportunity to enhance farm sustainability could be lost, as land instead goes either to neighboring farms or to non-agricultural uses.

Instead, the CWA permitted farm should simply have to notify DEC within 10-day business days that it acquired an AFO or CAFO and will be incorporating it into the farm’s NMP. The farmer would then have 60 days to have their certified planner on site and develop a modified NMP, which would be submitted to DEC for public comment and DEC review. As subsection (2) states, the farmer would then have 24 months to implement structural BMPs on the acquired site.

Part III.A.4.e. BMP Enhancements – 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.

Part III.A.7. Waste Application Requirements – NYFB agrees that a farm’s NMP should be developed according to the NRCS NY590 Standard with a focus on preventing runoff during any and all applications. NYFB is strongly supportive of the ability for farmers to spread manure at all times of year, provided it is done in an environmentally responsible manner that supports nutrient distribution at agronomic rates which prevents run-off to surface and ground water. Again, as stated previously in these comments, our members never want to lose nutrients to the environment and are always improving their nutrient use efficiencies.

NYFB does not believe that a spreading ban based on a season or calendar date is an environmentally responsible strategy. This type of spreading ban is a one-size-fits-all, over simplistic regulatory approach that defies proper nutrient management and does not guarantee water quality protection. Water quality gains come from science-based, research-tested best practices being used in precise applications at an appropriate rate at opportune times throughout the year under the guidance of the farm's NMP rather than force all farmers at all management levels to apply during an exact time frame. For this reason, NYFB strongly supports well-planned applications of nutrients at agronomic rates under the guidance of the farm's NMP under appropriate weather conditions throughout the year.

Part III.A.7.c&d. Winter Weather Applications & Wet Weather Applications – Our members have a strong commitment to environmental sustainability and protection under the new weather “norm” that has established itself over the last few years. Our farmers are focused on eliminating run-off risk in this protracted pattern of wetter winters, more extreme storm events and capricious weather variability. NYFB believes the winter weather applications and wet weather applications in this permit draft may provide deeper insight and oversight by farmers into the more intensive weather-related farm impacts that are now anticipated, such as steeper changes in rain erosion in production areas.

NYFB believes the 2015 Revised Cornell Guide “Supplemental Manure Spreading Guidelines to Reduce Water Contamination Risk During Adverse Weather Conditions” cited in this section to be a great asset as farmers adapt their daily operations to accommodate the “new normal” for northeast weather. It will be very effective in broadening farmers’ understanding and response to nutrient movement onto, within and away from the farm that would be practically reflected in the farm’s NMP.

NYFB supports references to both the Cornell Guide as well as the NRCS NY 590, given the Cornell Guide is not a regulatory tool but an education guidance for farmers and the planner community. This spreads the weight and authority of the permit requirement. Because the science is constantly emerging, NYFB encourages continued periodic review of the recommendations that constitute the Cornell guidelines for spreading during Adverse Weather Conditions and also DEC and Environmental Protection Fund support for ongoing research through Cornell University, including PRO-DAIRY and Cooperative Extension, to ensure that farmers have the most relevant information to protect the environment while not unnecessary hampering sound nutrient delivery practices.

NYFB also supports the reasonable provisions for emergency manure application, such as holding specific fields in reserve for adverse weather applications.

Part III.B.1. Non-Contact Cooling Water (NCCW) Systems – NYFB supports the discharge of NCCW, of up to 100,000 gallons per day to nontrout waters with the conditions listed in the subsections 1-4. This provides a viable alternative for farmers to discharge water that is used to cool milk and cannot be utilized in other sources on the farm, like watering animals.

Part III.B.3. Waste Storage Structures – NYFB supports waste storage structures under the CWA permit being maintained to the 25-year, 24 hour storm event, with one foot of freeboard. NYFB continues to work with both DEC and the Department of Agriculture and Markets to install manure storages on CAFO operations across the state.

Part III.B.5. Leachate Collection and Control Facilities – NYFB strongly supports the flexibility provided to certified planners in this section. This provision recognizes that truly effective environmental planning can only be accomplished when it is farm-site specific and based on geographic-specific risk conditions. When farmer and planner work together to figure out what site-specific practices work best at the most economical cost, it is a sustainable win-win for the farm and environmental protection.

NYFB does respectfully recommend amending the first sentence of this section as follows:

*“Leachate collection and control facilities must be implemented operated and maintained in accordance with ~~all applicable NRCS standards~~ **Part III.A.3 of this permit** to prevent overflow or discharge of the concentrated, low-flow leachate products.”*

We feel the reference to NRCS standards alone narrows the tools available to farmers to develop the best environmental strategy for their farm. As drafted, this provision does not promote voluntary adoption of any new guidelines that may enhance water quality protection as it pertains to leachate.

Part III.B.10. Water Wells Protection – NYFB believes that farms must take responsibility for impairments to water quality if a discharge occurs to waters of the State. NYFB also believes that farms should be held accountable for water quality impairments of drinking wells, but only if such drinking wells are correctly designed, constructed and maintained. Our farms do the best job possible to protect water quality in the face of tremendous variables, make a point to know where neighbor’s wells are located, and follow the mandated manure spreading setbacks. We feel farms cannot be held responsible when owners of drinking wells do not assume personal responsibility for the protection of their drinking water source. NYFB recommends that this be reflected by amending the language as follows, *“There shall be no water quality impairment to **properly designed, constructed and maintained** public or neighboring private drinking water wells due to waste handling at the permitted CAFO.”*

Part III.B.11. Pesticides – NYFB believes this section to be superfluous as the provisions of this section are duplicative of existing statute and regulatory oversight, particularly 6 NYCRR Part 326. NYFB respectfully requests this paragraph be removed from the permit draft.

This section also states *“Certification of pesticide applicators may be required.”* NYFB respectfully requests clarification on specific parameters when this provision is applicable and when it is not for purposes of CAFO compliance. Again, we feel that this language is duplicative and should be removed from the permit since it provides no meaningful contribution to permit compliance or environmental planning.

Part III.C. Certification of the NMP – DEC is requiring that both the owner/operator and the AEM certified planner certify the NMP and its compliance with applicable NRCS standards.

While NYFB supports the certification and employment of certified planners in the NMP development process, as referenced in comments above, New York's standards for completing the NMP go above and beyond federal requirements, which highlights New York farmers' commitment to environmental responsibility.

Part III.D. Duty to Amend the CNMP – As part of the CWA permit, when a farmer wants or needs to make a modification to their NMP, they must submit any changes to DEC *“for review and approval prior to implementation”* and DEC will notify the farmer whether or not those changes necessitate revising the terms of the NMP. NYFB understands that this review process is part of the federal requirements, but NYFB cannot stress the importance of timely review and feedback to farmers on whether or not the changes are considered *“substantial.”* We strongly oppose the requirements presented by EPA that farms need to provide changes to planned cropping patterns, the addition of land or any other changes done in accordance with the allowed standards and with oversight of a AEM Certified Planner. The added public notice requirements by EPA actually serve to discourage better water quality protection by creating barriers for farms wishing to expand land base or make more environmentally conscious cropping decision based on farm-specific crop conditions.

DEC has outlined items it considers to be “substantial changes” for purposes of the CWA permit. In Part III.D.3.b.1, a farmer is required to notify DEC if land is added to the operation that is not covered under an existing CWA permit. NYFB supports the ability to use an existing NMP for an acquired CWA permitted farm as long as the new owner/operator follows the NMP parameters. NYFB requests that DEC put clarifying language that states, *“If the newly acquired land will not receive manure, process wastewater, or litter, this is not considered a substantial change under this permit.”* This reflects comments above that address only commercial fertilizers being applied to fields do not need to be included in the NMP.

In Part III.D.3.b.2-3, there are inconsistencies in the language for what would constitute a significant change under the Linear Approach and Narrative Approach. NYFB requests that DEC either directly reference the Linear Approach and Narrative Approach in Part III.A.2.j(1) and (2) or define what changes would constitute a significant change under either approach.

Under the current language, if farmers make a change to a crop rotation, they are required to notify DEC before they make the change. NYFB believes this to be unreasonable given New York's climate and the need for a farmer to quickly make planting decisions on their farm. A farmer may have a small window in which to switch from planting corn to soybeans and may not have time to get approval from DEC to switch crops. While we are cognizant that this notification process is required under the federal regulations, we request that a farmer not be penalized for running their farm with a business mind and not a regulatory threshold.

NYFB requests that DEC provide feedback through an FAQ or Factsheet that further outlines what is and is not considered a substantial change under the CWA permit. NYFB also requests that DEC provide contact information for DEC staff that can help answer farmer questions in regards to substantial changes. NYFB further requests that DEC provide clarification on whether a certified planner is able to write crop rotation and farm management alternatives into the NMP to allow for practical, farm-based options under the permit. NYFB supports providing several

options to farmers because a farmer will not need to notify DEC if they need to change a crop planting, as long as it is accounted for in their NMP, which would already be submitted to DEC for prior approval. A farmer may have written in their NMP that they are to plant corn in the spring, but due to wet weather, the farmer may choose to plant soybeans or another shorter day crop. As it reads now, if the farmer changes a crop planting, due to conditions both in and beyond their control, they need to submit the change to DEC for approval prior to planting. If the farmer were able to provide alternatives in their NMP that accounted for variables such as, weather conditions, and took in consideration nutrient applications calculations, it would allow the farmer to conduct business as usual and not wait for DEC approval for a normal farming practice. Again, NYFB requests this be clarified either in the permit or through a FAQ or Factsheet.

In Part III.D.3.c., if DEC determines that the change is not substantial; it will notify the farm and the public of the change and incorporate the change as part of the NMP record. NYFB makes no objection to this procedure, but requests that DEC expedite the process as quickly as possible, given the change is not substantial in nature, and allow the farmer to know that they are in compliance with their permit.

In Part III.D.3.d, if DEC determines that the change is substantial, the public is notified and offered a 14-day comment period to comment on the change. NYFB supports a shorter public comment period but would agree to a 14-day comment period in the final permit. NYFB again stresses that farmers do not have 14 days to wait around to know if they can plant one crop or the other and again, NYFB requests leniency in these situations where time is of the essence. After the comment period closes, NYFB requests swift action by DEC to notify the farmer of approval or revisions needed to the NMP for compliance.

Subsection (d) does not outline the hearing process, if requested, and what a farmer's responsibilities would be in those circumstances. NYFB requests that DEC provide guidance on how this process would work either through a FAQ or Factsheet.

Part IV. A. Emergency Action Plan – NYFB supports a farm having an Emergency Action Plan to address any manure, process wastewater, and pesticide spillage as well as catastrophic emergency situations. NYFB supports a farm working with its local Soil and Water Conservation District (SWCD) and/or NRCS office to develop such a plan and have materials ready to address an emergency. NYFB requests that DEC work with the Department of Agriculture and Markets to help local SWCDs purchase materials that are needed in these emergency situations.

Part IV.B. Contractor Certification Statement – NYFB supports the requirement that contracted professional manure applicators only need to sign the statement prior to the initial application of nutrients (manure, process wastewater, or litter).

Part IV.C. Planner On-Site NMP Review - As regulations, standards and best management practices continue to expand and evolve, NYFB believes it is important to keep farm staff and owners apprised and focused on what efficient, effective and environmentally sound nutrient management means for their farm. For this reason, NYFB supports on-site review of the NMP and its focus on agronomic application of manure under the right field and weather conditions.

We support the requirement for large CAFOs and encourage medium CAFOs and any other farms that make land applications to attend manure applicator training.

Furthermore, we support development of the ability for planners and others to deliver Department-endorsed manure applicator training. While we certainly support the use of webinars to deliver this training, one does not currently exist and for that reason we recommend that the reference in the permit to “Cornell’s Manure Applicator webinar” be changed to “DEC-endorsed manure applicator training” in order to more accurately and broadly reflect a variety of training tools and delivery methods that could be developed during this permit cycle and endorsed by the Department to meet these training requirements. NYFB stands ready to assist our partners at DEC, NYS Department of Agriculture and Markets, NYS Soil and Water Committee, NRCS, PRO DAIRY/Cornell University and NEDPA to assist in delivering training.

V. MONITORING, REPORTING & RETENTION OF RECORDS

Part V. E. Additional Inspection and Recordkeeping for All CAFOs – We recognize that farmers need to be cognizant of weather conditions during and around the time manure is applied. However, we feel that certain aspects of these record keeping requirements are needlessly burdensome and should be streamlined to the extent possible.

We acknowledge that weather conditions at the time of land application is an appropriate and relevant record to keep. We do not believe a record of the forecasted weather conditions before spreading begins is needed since such information is outdated the next day when the farmer is making manure application decisions based on current field and weather conditions.

Part V.F. Recordkeeping Requirements for CAFOS Using an Anaerobic Digester - Part 360 governs the safe and productive use of food grade by-products and food processing wastes in its permit process. If a CAFO does not add any of these by-products or sanitary waste to the anaerobic digester, Part 360 is not applicable and no record keeping is required. NYFB requests that the final CAFO permit draft reflect this same policy and not require recordkeeping for CAFOs that are only feeding on-farm manure and other on-farm material to its anaerobic digester. Volume reporting and traceability of on-farm materials feeding the anaerobic digester are already accomplished in the CAFO’s NMP. As drafted, this section is a duplicative requirement that would hinder growth of anaerobic digester facilities and their corresponding environmental and economic benefits.

Part V.H. Electronic Recordkeeping – 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. NYFB respectfully asks DEC to acknowledge or respond to this in its comment response as some members have received conflicting feedback from different DEC offices.

V. STANDARD PERMIT CONDITIONS

Part V.M. Inspection and Entry – 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 in order to allow inspectors to perform their duties while submitting to reasonable farm biosecurity procedures. We strongly feel that minimal advance notice of a day(s) would in no way preclude or diminish the findings of the CAFO inspection.

Part V.S. Availability of Reports – NYFB is extremely disappointed with the denial of all claims of confidentiality for NOIs, permits, effluent data, Annual NMP submittals and Annual Compliance Reports (ACR). From the perspective of the farm business owner, the NMP, ACR and its individual components are confidential business information and very clearly qualify for consideration for protection under the NYS Freedom of Information Law provided under the NYS Public Officers Law (Article 6-A). At a minimum, NYFB objects to such information being disclosed without prior notice to the farm/submitter when such information has been designated confidential business information (CBI) by the farm. NYFB respectfully requests that this specific provision be removed from the final permit draft.

APPENDIX A- DEFINITIONS

M. Medium Concentrated Animal Feeding Operation (Medium CAFO) – NYFB acknowledges the change in the definition of a Medium CAFO as it relates to mature dairy cows from “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;” to the definition of the current draft permit, “a.200 to 699 mature dairy cows.” Because the CWA permit is for farms that discharge, state regulations encompass a smaller herd size under the permit. While NYFB accepts this definition, as part of New York State law, smaller farms are further burdened by the CWA permit requirements, if they discharge.

P. Depth Marker – It is our understanding that this definition’s intent is not to measure manure in an open storage but to determine the amount of available freeboard or remaining capacity until maximum fill. Storage depth does not accurately reflect maximum storage capacity. To make prudent nutrient management decisions, a farmer should be focused on his/her last 18 inches of freeboard rather than concern themselves with the day’s manure depth. For this reason, “depth marker” should be replaced with the term “freeboard marker” to be consistent with the actual intent of this provision. The same change should be made in Appendix A (P) for the definition of depth marker, and in Part III.B.3.a regarding Waste Storage Structures.

APPENDIX C- NUTRIENT MANAGEMENT PLAN (NMP) CERTIFICATION STATEMENT

Owner/ Operator Certification – Language has been added to the certification that states, “All BMPs necessary to implement the NMP are completed and are functioning as designed.” NYFB

requests that this language be removed from the certification. In accordance with the permit, a farmer may be working towards completing BMPs so that their farm can be in compliance and by signing this statement, it forces them to sign a document that may not entirely truthful based on the compliance timeline outlined in the permit terms. This statement may make a farmer believe they are out of compliance or not eligible for the permit.

Planner Certification – The Planner Certification now requires the planner certify to full conformance with requirements of the NY NRCS standards as well as the General Permit, which NYFB believes to be a good thing, but again the issue of a farm that has not fully implemented all BMPs raises concerns on Permit coverage and certifying the NMP.

General Comments Regarding Issues Impacting the CAFO Permit Program

DEC-SPONSORED FARMER EDUCATION

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. NYFB respectfully requests specific outreach by DEC for these new permit elements in order for farmers to become fully aware of the requirements under the CWA permit.

CAFO INSPECTION AND ENFORCEMENT

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.

STATE BUDGET SUPPORT

For our family farm members, agricultural environmental funding must go hand in hand with the CAFO policy changes to be implemented in this new permit. The new permit elements that have been introduced require a wide range of time, staff and financial investment by the farm. Some elements require daily operational changes or a one-time major capital investment for structural changes – but they will all be costly. With new CAFO permit elements like a renewed focus on manure storages, farm need for state funding for cost-sharing and related state-funded programs has never been stronger.

NYFB strongly supports the Environmental Protection Fund that champions the partnership between agriculture and the environment by funding farm environmental programs. Programs such as Soil and Water Conservation District services, Agricultural Nonpoint Source Abatement Program, and Agricultural Waste Management Program are not just critically important to environmental protection but, in many cases, drive farm profitability.

In particular, Agricultural Nonpoint Source (AgNPS) funding has been an important source of state investment for CAFO improvements as demonstrated by farm need consistently outpacing Ag NPS funding levels. NYFB is grateful that the Agricultural Nonpoint Source Pollution Abatement Program received \$17 million in last year's State Budget, and we hope to see the same commitment in this coming year's Executive Budget. Our members are very pleased the Governor recognizes that funding for this program is critical as our livestock industry is operating at a pivotal time, as we look to make dairy farmers even more environmentally sustainable.

NYFB also strongly supports continued reimbursement funding for County Soil and Water Conservation Districts. The Conservation Districts serve as the front line technicians for farm projects including manure storage, cover crops, leachate systems, just to name a few. Their local technical assistance and engaging approach inevitably gains farmer support and long-term commitment to quality environmental protection.

Successful sustainable environmental agriculture cannot exist without the foundation provided by local Land Grant University research that is state and region-specific and can best define risk assessment tools, BMPs and other sustainable farm activities. For this reason, NYFB is grateful for the engagement of Cornell University and the PRO-DAIRY program in helping ensure the science-based foundations for New York's CAFO and AEM programs. We strongly support continued state support and funding for the PRO-DAIRY program.

PLANNER QA/QC PROGRAM

The success of this CAFO program is heavily weighted by the relationship between farmer and planner and hinges on the development of a farm-specific, environmentally meaningful and financially sustainable NMP.

The value and importance of a properly designed and executed NMP to the environment, farm health and public health was made evident with the multiple discharge incidents occurring in early 2014. To ensure that farm NMPs are highly effective tools to prevent any type of discharge, it is critical that the limited pool of certified planners available to New York farmers all perform

to the same high standard with consistency and uniformity in diagnostic methodology and compliance interpretation.

These holistic farm/livestock environmental plans are a critical assessment tool for farmers and have elevated environmental stewardship on the farm, but only with great farmer investment. The complexity of a NMP and its demands on time and staff resources to properly execute and manage it leaves the farmer no choice but to employ the expertise of a planner and other agricultural consultants.

NYFB applauds the State Legislature for reinstating and funding the Quality Assurance/Quality Control Program for certified nutrient management planners conducted by NYS DAM with \$250,000 in program funding in the 2015-16 State Budget. NYFB is actively working to have this budget line restored in the final 2019-2020 State Budget. This program deters water quality impacts and bolsters conservation and environmental health on the farm by giving farmers across the state the most effective, reliable and proactive conservation tool for their specific farm site.

While not a permit element, this program is an important contributor to achieving the CAFO program's statutory goal of improving and protecting the waters of the State. NYFB respectfully requests DEC and NYSDAM support and assist the Planner QA/QC Program through funding, staffing and other resources to ensure its success and availability to the planner and farm community.

ELECTRONIC REPORTING BY PERMITEES

Electronic reporting has been raised in CAFO discussions with a focus on capturing statewide farm data electronically and improving data accuracy of submissions. NYFB understands DEC's interest in doing this to drive agency insights into changing best management practices, optimize compliance monitoring and accountability and, if possible, make predictive analysis on water quality outcomes based on on-farm activities. Our farmer-members recognize the value of using data to create this kind of clarity around decision-making. For example, our farmers are increasingly using precision agriculture tools to make farming more sustainable and efficient while yielding a better quality product. Intake records from computer feeders for group-housed calves aid in animal monitoring and facilitate disease detection. Farmers make meaningful use of their feed ration and milk productivity data to make better, more informed decisions for individual cow health and overall herd health.

NYFB strongly supports electronic reporting by CAFO permittees, if the farmer chooses to do so and has the technology to utilize this tool. Our members still have serious concerns and reservations about any initiative that effectively requires permittees to file electronically without any other recourse. They also remain increasingly concerned over the security and confidentiality of their information as well as the cost associated with the practical aspects of compliance if the Department effectively compels electronic reporting. While computers and the Internet have become staples of modern working life, there is no broadband or reliable Internet service available to many of the rural and isolated communities that our farms call home. NYFB respectfully asks that the Department keep these comments in mind as it moves forward with its electronic reporting policies.

FINANCIAL HARDSHIP

During a time of unprecedented low farm incomes, it is extremely important that CAFO operations be given time and consideration when applying for and complying with both CAFO permits. Farms are working hard towards compliance, but the financial means to achieve compliance may be out of reach. Not only does this financial hardship shine a light on the importance of state budget funding, but also understanding by regulatory agencies. NYFB requests that DEC work with farmers who are making strides to comply with their permit but may need additional time for financial reasons.

In closing, NYFB appreciates the opportunity to provide comments on the draft CAFO permits and for DEC's consideration of our recommendations. NYFB stands ready to work with DEC to help New York farms achieve financial and environmental sustainability. As always, please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Fisher', with a stylized flourish at the end.

David Fisher
President, New York Farm Bureau