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February 18, 2022

Sara Latessa  
Division of Water  
NYS Department of Environmental Conservation  
625 Broadway, 4<sup>th</sup> Floor  
Albany, NY 12233-3505

**RE: Concentrated Animal Feeding Operation Permit GP-0-22-001**

Dear Ms. Latessa:

**GENERAL COMMENTS**

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 NYS Department of Environmental Conservation's (DEC or the Department) draft permits referenced above for farms classified as concentrated animal feeding operations (CAFO). 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.

Continually improving water quality and environmental health is a paramount priority of New York farmers. To that end, NYFB greatly appreciates the proposed longer permit-term for this latest draft permit. A longer-term permit allows a farm to plan for additional "enhancements" and structural investments to improve the unique characteristics of their farm, improving water quality and environmental health. This could not be truer now as our farmers begin to work to adapt to and mitigate climate impacts on their farms.

NYFB gratefully acknowledges the valuable contributions made by each of these partners including DEC, NYS Department of Agriculture & Markets (NYS DAM) and NYS Soil & Water Conservation Committee (NYS SWCC), USDA-Natural Resource Conservation Service (NRCS) and Cornell University/PRO-DAIRY.

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. NYFB believes that this work makes the New York State Environmental Conservation Law General Permit not only an implementable permit, but one that protects New York's lands and waters.

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

## **SPECIFIC COMMENTS REGARDING DRAFT GP-0-16-001 - ECL PERMIT**

### **I. PERMIT COVERAGE AND LIMITATIONS**

#### **Part I.A. Permit Coverage**

NYFB is generally supportive of DEC's proposed qualifications for eligibility under this ECL permit draft. We believe farms that have implemented nutrient management plans and associated BMPs as proposed by DEC and under the guidance of pertinent agricultural environmental standards do not discharge and do not propose to discharge. As written, the ECL permit draft continues the CAFO program's strong focus on science-based analysis of environmental risk, which NYFB heartily supports.

### **II. OBTAINING/TERMINATING/CHANGING PERMIT COVERAGE**

#### **Part II.A.1 Duty to File Notice of Intent or Request to Continue Coverage form, and Comprehensive Nutrient Management Plan (CNMP) Certification**

NYFB appreciates the clear and detailed timeframes and procedures through which farmers will be alerted that ECL coverage has been granted or receive automatic coverage as dictated in this permit section. These clear timeframes and protocols provide regulatory certainty and establish good communication between DEC and the farm community, which is highly valued. NYFB also appreciates the newly proposed Request to Continue Coverage form and CNMP certification process that current CAFO farms are only required to file to obtain permit coverage. This is a good example of minimizing paperwork and recordkeeping where there is no additional environmental benefit to be gained.

Further, planners and farms are currently in the process of planning for the undercoming planting season, set to begin shortly, prior to the effective date of the new permit. NYFB respectfully requests that the changes required to the CNMPs under this new permit go into effect in the 2023 growing season.

**Part II.B. Duty to File Change of Operation Forms**—NYFB again appreciates the clear and detailed timeframes and procedures under Part II.B.1.a change in ownership, and Part II.B.1.b Change in AEM Certified Planner. NYFB contends that the 30 calendar-day time frame is reasonable for farms to notify DEC.

NYFB is concerned with the proposal in Part II.B.3 subparagraph 2 requiring CAFOs provide notice at least 30 calendar days before constructing or expanding ANY earthen liquid waste storage facility. NYFB believes that this does treat earthen structures differently, casting a shadow on a structural practice that if constructed properly, is a safe and effective way to construct storages. Earthen storage structures should be treated as others indicated in the permit and notification should only be required when they meet the one-million-gallon threshold.

### **III. COMPREHENSIVE NUTRIENT MANAGEMENT PLANS**

#### **Part III.A.3 Implementation Schedule**

Subparagraph 1 requires full implementation of the Phosphorus Index version 2.0 (PI2) as required by NRCS NY 590 (9/2020) no later than September 30, 2025, and until such time that it is fully implemented on all fields, the owner/operator must continue management according to Phosphorus Index version 1.0 per NRCS NY 590 (1/2013). While NYFB does not disagree with the implementation of updating to the latest PI2, discrepancies exist between the permit and the associated Fact Sheet provided by DEC. On

Page 8 of the draft, it references “provide an implementation schedule for existing CAFOs to allow in for phasing in of the new 2.0 Phosphorus Index (Part III.A.3.a and d).” NYFB recommends that the Fact Sheet be updated to better reflect the language in the permit as to the full implementation date of September 30, 2025.

### **Part III.A.3e 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.4 Compliance with NRCS Standards**

NYFB strongly supports this section which allows all existing BMPs, that meet the water quality protection intent of the current NRCS standards or that can be updated to meet their water quality protection intent through either structural or non-structural changes, remain in place. 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.

NYFB seeks clarification on existing practice equivalent protection to the standards as referenced in paragraph (e) as it is unclear on how this would apply to standards Anaerobic Digester—NY 366, Heavy Use Area Protection—NY 561 or Composting Facility—NY 317. NYFB contends that structures built in accordance with these previous NRCS Standards should be offered the same recertification under paragraph (e) of this section.

### **Part III.A.8 Waste Application Requirements**

NYFB agrees that a farm’s CNMP should be developed according to the NRCS NY590 Standard with a focus on preventing runoff during 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. 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, oversimplistic 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 CNMP 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 CNMP under appropriate weather conditions throughout the year.

### **Part III.A.8c Winter/Wet Weather Applications**

NYFB believes the 2015 Revised Cornell University 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 CNMP.

However, we would like to note as we did in the previous permit, that the authors of the Cornell Guide did not draft this document as a regulatory tool, but as educational guidance for farmers and the planner community. As drafted, this permit proposal gives the full weight and authority of a permit requirement to the content of the Cornell guidance.

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 as well as 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.A.8(e)2 Field Setback Requirements**

Want to draw attention to this section as it does not align with the flow path requirements as out lined in NRCS-NY 590 practice standard and Phosphorus Index V2. Specifically, the one-hundred-foot setback requirement should be based on the predominant flow paths from the field boundary rather than top of the bank of any down-gradient surface waters of the state as currently specified in the Draft Permit.

#### **Part III.B.1a Non-contact Cooling Water (NCCW) Systems**

NYFB believes that the changes to Non-Contact Cooling Water (NCCW) Systems seem justified, however, changing systems to discharge from non-trout waters of the state to groundwaters of the state may require additional permitting through EPA's Underwater Injection Control Program. As such, time to construct and update facilities to meet these new requirements as well as financial resources through the State's Environmental Protection Fund or other resources may be needed.

#### **Part III.C.1 Planner On-Site CNMP Review**

NYFB strongly supports the alternative option to conduct the annual CNMP review through an internet-based meeting with manure applicator staff if the platform allows for sharing and open discussion of current field maps and high-risk features. This technology has been proven to be an effective communication tool and may provide planners with more active training time with farms by reducing travel time.

### **IV. MONITORING, REPORTING & RETENTION OF RECORDS**

#### **IV.B.1 Twenty-four Hour Reporting**

NYFB is concerned with the change in language around notification of the DEC Spill Hotline for liquid manure, liquid food processing waste, liquid digestate, or process wastewater spills. It is not clear when a farm would be required to provide notification to the Department Regional Office or the DEC Spill hotline within 24 hours of when the owner/operator is made aware of the spill. We believe clarification should be provided in the permit and/or fact sheet and inclusion of the Regional Office in all instances to better manage these instances. It is imperative that training of staff of the DEC Spill Hotline to insure proper handling of situations and continuity across different regions.

#### **Part IV.I. 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. We hope that the earlier requirement of electronic submission will alleviate past concerns with specific regional offices who did not recognize electronic records.

### **V. STANDARD PERMIT CONDITIONS**

#### **Part V.K. 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 to allow inspectors to perform their duties while submitting to reasonable farm biosecurity procedures. We strongly feel that minimal advance notice of one would in no way preclude or diminish the findings of the CAFO inspection.

#### **Part V.L. Confidentiality of Information**

NYFB's members take confidentiality seriously particularly as outlined in the previous paragraph regarding the complexity of farm businesses, biosecurity concerns and increased attention by advocates. NYFB appreciates the ability to protect specific details of the operation when not otherwise prohibited.

### **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. Of particular importance, changes surrounding the need for a General Construction Stormwater Permit, changes made in accordance with the Community Risk and Resiliency Act (CRRA) and how those changes could impact previously engineered structural BMPs, and the implementation of the new P-Index 2.0, to name a few.

NYFB respectfully requests specific training by DEC for these new permit elements for farmers to become the expert managers of high consequence weather events that the Department would like to see demonstrated on the farm and documented in permit recordkeeping and reporting. On-farm trainings like “the CAFO roadshow” are excellent opportunities for farmers to learn how to adapt their CNMPs to meet the changing landscape.

We are confident that this type of DEC-sponsored training will give farmers and planners the direction they need and elevate smart farm management so all CAFOs will enter this new permit cycle prepared for whatever Mother Nature may bring.

## **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 became 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 cycle. 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 updated CAFO permit elements like the changes made in response to the Community Risk and Resiliency Act and associated guidance structural and non-structural BMPs may need to be updated, farms need state funding for cost-sharing and related state-funded programs.

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 Environmental Management, 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 \$18 million in last year's State Budget and is currently slated to receive \$20 million in the 2022-23 Executive Budget proposal. 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 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 CAFO, AEM and stream bank restoration projects. 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.

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 "D Fisher". The signature is written in a cursive style with a large initial "D" and a stylized "F".

David Fisher  
President