

Response to Public Comments Regarding DEEP’s Notice of Tentative Decision of Intent to Issue the *General Permit for Concentrated Animal Feeding Operations (CAFO)*

On February 22, 2022, The Department of Energy and Environmental Protection (“DEEP”) published notice of its tentative decision that issuance of the proposed CAFO General Permit will protect water quality in the state by controlling point-source discharges associated with areas of animal confinement, feeding, and maintenance at CAFOs. The proposed CAFO General Permit, if issued, will require registration for eligible discharges, treatment of wastewater as may be required, and compliance with effluent limitations, permit conditions and best management practices.

DEEP’s Notice of Tentative Decision provided an opportunity for public comment of the proposed CAFO General Permit. This document is a compilation of comments received during the thirty (30) day comment period following publication of DEEP’s Notice of Tentative Decision.

Each comment submitted was reviewed by DEEP staff. DEEP’s response to comments are as follows. Responses that are italicized and underlined indicate a revision to the language in the proposed general permit.

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- 1. Page 3 Definitions. Adequate storage – The last sentence reads such that Large CAFOs shall have an impermeable liner. Change to “Earthen storages used on large CAFOS to hold liquid wastes shall have an impermeable liner.”**

Response: Earthen waste storage facilities are used for manure, litter, and agricultural wastewater and as such, are not limited to holding liquid wastes only. Large CAFOs with earthen waste storage facilities are required to have an impermeable liner in all scenarios, irrespective of the phase of the waste (e.g., solid, liquid).

- 2. Agricultural wastewater – The last sentence should be changed to something like “Agricultural wastewater includes any water which comes into contact with; any raw materials, products or byproducts such as manure, litter, feed, milk, eggs, or bedding, areas used for collecting, processing or storing agricultural products such as milking parlors, outside lots used for animals, egg washing facilities and equipment, washing bulk milk tanks, and any areas used for collecting or storing animals wastes or storm water runoff including runoff from an anaerobic digester facility.” The way it reads in the draft does not read correctly in my opinion.**

Response: The last sentence of this definition has been re-organized and modified as follows to more clearly identify the areas where agricultural wastewater is generated:

“Agricultural wastewater also includes any water which comes into contact with agricultural wastes, the production area, an anaerobic digester facility, any raw materials, products or byproducts, including manure, litter, feed, milk, eggs or bedding.”

The commenter suggested that the definition include the language “milking parlors, outside lots used for animals, egg washing facilities and equipment, washing bulk milk tanks.” The definition includes “milking parlors” and “washing bulk milk tanks” as it refers to water that comes in contact with milk. The definition includes “outside lots used for animals” as it refers to water that comes in contact with the production area. Lastly, the definition includes “egg washing facilities” as it refers to water that comes in contact with eggs.

- 3. Page 4. Catastrophic rainfall event – I suggest you list the source of the 25-year, 24 hour storm event volume in the permit.**

Response: The source is provided in the definition of “25-year, 24-hour rainfall event”.

- 4. Comprehensive Nutrient Management Plan. The way the definition is written seems to contradict the earlier definition of Agricultural stormwater discharge which defines precipitation related discharges from land application areas. For that reason I would suggest changing the definition of a CNMP to: “means a site specific plan to properly manage fertilizers, agricultural wastes, agricultural wastewaters and digestate, in order to minimize the impacts of animal feeding operations on water quality. This document outlines the terms and conditions farms must follow when applying these materials to cropland. Cropland that creates an agricultural stormwater discharge according to an approved plan will have those discharges exempt from charges of violating the CT Clean Water Act. Cropland having an agricultural stormwater discharge after having fertilizers, manure or other agricultural wastes applied in a manner not in compliance with the CNMP can, and will be, considered a source of pollution. Note to reviewers I know this is a long definition and maybe the text I added doesn’t really belong in the definition – but I feel the text needs to be in the document somewhere. I added fertilizer here also because that needs to be spelled out. This is the only justification for the CNMP being included in this Permit. I think it is important that somewhere in the document it is explicitly spelled out what this permit can protect farmers from IF THEY FOLLOW THE PLAN, and that is a BIG IF, given the lack of alternatives on some farms due to legacy P.**

Response: *The definition of “Comprehensive Nutrient Management Plan” has been modified to include fertilizers.*

Information pertaining to agricultural stormwater exemptions can be found in Section 3(a) “Eligible Activities”.

- 5. Department – I suggest capitalizing the name of the department and adding the State of CT in the definition for clarity sake.**

Response: *The definition of “Department” has been changed to capitalize the name of the agency and to add “Connecticut”.*

- 6. Page 5. Digestate means the solid and liquid materials remaining after anaerobic digestion and any products created in supplemental processing to segment the wastes, such as cake from a dissolved air flotation (DAF) separator, solids from a screw press separator, or effluent liquids from a DAF separator.**

Response: The definition of digestate is inclusive of the requested language.

- 7. Discharges associated with a CAFO – Change the last sentence to read “discharges to ground water and surface water, from the crop fields, operated and maintained in accordance with the approved CNMP.”**

Response: The eligible activities of the proposed general permit are for discharges associated with a CAFO. In accordance with 40 CFR 122.23(e), agricultural stormwater discharges are exempt from this proposed general permit and therefore are not included as part of the definition of “discharges associated with a CAFO”.

- 8. Large CAFO & medium CAFO on page 6 all of the laying hen bird limits mention “if other than a liquid manure handling system.” Where are the bird numbers if there is a liquid system used? EPA’s Manual lists 9,000-29,999 laying hens or broilers if the AFO uses a liquid manure system and 1,500-4,999 ducks if there is a liquid system. We probably don’t have any in the state but like the person wanting to have a 1,000 rabbit slaughter operation – someone might want to start one in the future.**

Response: Facilities with laying hens that have liquid manure handling systems are not eligible for the proposed general permit and would require an individual permit.

- 9. Manure - change to read: “means urine and feces excreted from livestock and any material commingled with the manure for the purposes of animals comfort or to change the handling characteristics of the manure for the purpose of removal or storage such as sand, leaves, woodchips or compost.”**

Response: The definition of “manure” in the proposed general permit is inclusive of the language that is requested. The purpose of this definition is to define what manure and is not to explain the purpose of why material that is commingled with manure is used.

- 10. Note to reviewers In my opinion this permit needs to be amended to include fertilizer. Currently fertilizer is only mentioned one time on page 18. Farms, especially the large CAFOs are increasingly looking to separate nutrients from manure and turn them into fertilizer. These larger farms purchase huge quantities of solid and liquid fertilizers and pay little attention to where, how and what quantity of material is stored, and for how long. Having several large tanks of liquid fertilizer parked on a farm road next to a stream is an accident waiting to happen, that is not being addressed in a current CNMP.**

Response: The definition of “Nutrient Management Plan” includes soil amendments, which is inclusive of fertilizer, however, “fertilizer” has been added to this definition as well as to definitions for “Comprehensive Nutrient Management Plan”, “land application”, “land application area” and other applicable sections of the proposed general permit.

- 11. Page 6. (2)(B) Change to “Pollutants, or waters containing agricultural wastes as defined in this permit, are discharged into waters of the state”, or C) Animals belonging to the AFO come into direct contact with waters of the state; or D) The facility has been designated as a CAFO**

Response: The definition of medium CAFO in the proposed general permit is consistent with the federal definition in 40 CFR 122.23(b)(6).

- 12. Page 7. Runoff – I would suggest using the definition from the EPA manual. “That part of precipitation, snow melt, or irrigation water that runs off the land into streams or other surface-water.”**

Response: The requested modification to the definition of “runoff” is restrictive to surface water only. The definition in the proposed general permit is broader and includes protection of groundwater.

- 13. Setback – means “the minimum specified distance, in a defined measurement unit, that must be maintained between a physical object or objects, and another physical object or some activity.” Note to reviewers I think having the setback definition not include the activity allows the term to be used in multiple contexts in this permit and the CNMP. For example there may be a setback between a well and a new barn. Or there may be a setback between a flare and a digester.**

Response: The definition of “setback” in the proposed general permit is consistent with the federal definition in 40 CFR 412.4(b)(1).

- 14. Vegetated buffer – I would suggest removing the word permanent. Permanent would prevent the farm from being able to plow up and reseed a worn out vegetated buffer to restore crop yield and or the desired infiltration and filtering ability of the vegetation.**

Response: The definition of “vegetated buffer” in the proposed general permit is consistent with the federal definition in 40 CFR 412.4(b)(2).

- 15. Section 3 Eligible activities. This terminology is misleading. I suspect farmers will have a lot of confusion because they are used to thinking about the “activities” of farming. This permit basically redefines “activities” to mean “discharges”. I would suggest that you make the permit easier to read and understand by referring to discharges in this section rather than “activities”?**

Response: “Eligible Activities” is standard general permit language and is used to define the eligible discharges that are authorized by the proposed general permit. *The definition of “discharge associated with a CAFO” has been added to the Eligible Activities section for ease of reading.*

- 16. Paragraph 2. This paragraph would seem to imply that a farm that has a barnyard or a silage leachate type of discharge at the time this permit gets approved would need to apply for an individual permit BEFORE applying for protection under the General Permit. If that is the case – they apply for and get approval for the discharge what incentive do they have to comply with the General Permit which would prohibit said discharge?**

Response: This paragraph is standard language for general permits. The proposed general permit requires registrants to develop a CNMP to address discharges associated with their CAFO and to address

areas of concern with a timely schedule. Please note that the eligible activities include discharges to groundwater and surface water in accordance with an approved CNMP.

17. Section 3(a) Change first sentence to read Provided the requirement of Section 3(b) of this general permit are satisfied, this general permit authorizes a farm to have 2 discharges:

- 1. Discharges Associated with a CAFO as Defined on page 5 of this permit.**
- 2. Agricultural Stormwater Discharge as defined on page 3 of this permit.**

Since the definition on page 3 defines the term “agricultural stormwater discharge” I would include the word “Discharge” and I would take out the word “Exemption” in this section. I would suggest that these discharges are not exempt from the requirements of this general permit, but rather that these discharges are exempt from being considered a source of pollution to the Waters of the State in violation of the Clean Water Act, by the Commissioner of DEEP, or a ‘whistle blower’ in the case of a civil complaint or lawsuit.

Response: For ease of reading, the definition of “Discharge Associated with a CAFO” has been added to Section 3(a).

“Agricultural Stormwater Exception” has been changed to “Agricultural Stormwater Discharge Exemption”.

“Discharge” was added to match the term “Agricultural Stormwater Discharge” found in the definitions section.

In accordance with 40 CFR 122.23(e), agricultural stormwater discharges are exempt from the proposed general permit.

18. Page 8. (b)(3) in the last sentence replace the word “of” with the word “or”.

Response: This typographical error in Section 3(b)(3) “Endangered Species” has been changed.

19. Page 9. (6) Water Quality Standards. This section says that the discharges during a greater than 25 year, 24 hour storm event and the agricultural stormwater discharge must be “consistent with state water quality standards, the waste load allocation and load allocation of any applicable, EPA approved total maximum daily loads”. How can these exempt discharges be held in compliance with some water quality standard when in fact they are exempt for the reason that no one can control them and no one can control what is in them?

Response: An agricultural stormwater discharge, which is defined as a precipitation-related discharge from a land application area, where agricultural wastes and/or agricultural wastewater have been applied in accordance with a site-specific nutrient management plan, are exempt from the proposed general permit.

The proposed general permit is for discharges associated with a CAFO, which is defined as a discharge under catastrophic or chronic rainfall conditions from a facility designed, constructed and operated to

hold all agricultural wastes, agricultural wastewater, and runoff from at least a 25-year, 24-hour rainfall event and all other discharges to groundwater and surface water in accordance with an approved CNMP..

- 20. Page 9. (7) This permit defines the permitted activities to be discharges. This Flood Management section is now inferring that this discharge be considered equivalent to some human activity such as building a structure, or a road which would contribute to additional flooding by obstructing the flow of stormwater. In effect this section is saying that stormwater flow is obstructing stormwater flow.**

Response: Section (7) is standard general permit language.

- 21. Page 9. (c) Geographic Area This statement reads: "This general permit applies throughout the state of Connecticut". Does this mean that a farm operating on fields in an adjoining state could be fined as a source of pollution to the "Waters of State XYZ"? Many CT farms operate on fields outside of CT, and there are probably farms in other states using land in CT. Please consider this and let famers know the answer to this and the possible ramifications of this on their liability. If in fact this exemption does not provide protection under the CWA on fields in other states would it be possible to negotiate reciprocity agreements with other states to recognize each state's permit to grant the exemption automatically? How have other states dealt with this?**

Response: DEEP can only regulate activities in the state of Connecticut.

- 22. Section 4(a). Change to read "Any person or business entity seeking..."**

Response: The definition of "person", which can be found in Section 22a-423 of the Regulations of the Connecticut State Agencies and below, is inclusive of business entities.

"Person means any individual, partnership, association, firm, limited liability company, corporation or other entity, except a municipality, and includes the federal government, the state or any instrumentality of the state, and any officer or governing or managing body of any partnership, association, firm or corporation or any member or manager of a limited liability company."

- 23. Further change the same section to read "registration form which meets requirements of this section and pays the applicable fee according to the size of the operation as outlined in the list of fees in subsection (c) of this section, and an approved CNMP..."**

Response: Section 4(a) has been modified consistent with the requested language.

- 24. Page 10 (b). This section allows registration of multiple CAFOs by a single owner as separate entities. The Definition of CAFO on page 4 states "two or more AFOs under common ownership are considered to be a single AFO." So for an individual entity to register multiple AFOs the sum of the animal numbers must be lower than the CAFO threshold for the species. Is there any advantage or disadvantages inherent in registering as individuals or separate? Seems like a waste of money to pay for 2 permits.**

Response: The definition of a CAFO specifies that two or more AFOS under common ownership are considered to be a single AFO for the purposes of determining whether such AFO is a CAFO based on the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. Section 4(b) is identifying the requirement that two or more AFOS under common ownership must register separately if they are not on the same site.

25. Page 11. (H) This section says “available for land application of manure”. So does this mean crop land that landowners do not allow manure or other waste applications to, are not included in the Permit protections or required to be in the CNMP? Does the CNMP need to account for fertilizer nutrients?

Response: This requirement is consistent with 40 CFR 122.21(i)(1)(vii). Please note that this section specifies acres available for land application and does not specify acres with active land application. All acreage, whether actively used for land application or not, must be included.

Addition of new land application areas not previously included in the CNMP constitutes a substantial change as defined in 40 CFR 122.42(e)(6)(iii) and would trigger requirements for public notice and permit modification. The regulations allow an exception for substantial changes of land application areas added to a CNMP when this land is already included in the CNMP, therefore making it not a substantial change.

Fertilizer has been added to Section 4(c)(2)(H).

26. Page 11. (M) This section seems overly restrictive and dated in this day and age when anyone can get a high resolution aerial image from Google, Bing, or Map Quest that will locate a farmstead much more precisely than could ever hope to be interpolated onto a topo quad – if one could even find a topo quad to use! Seems like sticking a pin with the Long/Lat coordinates on the driveway entrance to the CAFO on an aerial image would be adequate.

Response: Section 4(c)(2)(M) has been modified as follows to be more consistent with 40 CFR 122.21(i)(1)(iv) and 122.21(f)(7).

“A topographic map (or other map if a topographic map is unavailable) of the geographic area in which the CAFO is located showing the specific location of the production area and one mile beyond the property boundaries of the CAFO depicting the facility, each discharge location, wells, springs, surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.”

27. Page 11. (N) This section requires “the signature of the registrant and of the individual or individuals responsible for actually preparing the registration” to certify that they are familiar with the contents of the registration in the last paragraph on page 11. Then on page 12 further requires that the signatories agree to “and that I will comply with...”. A person only involved in the planning process and not employed by the farm in any way cannot be held liable for the compliance of another individual or business entity over which he or she has no control. These certifications, by owner vs planners need to be separate certification statements.

Response: The sections pertaining to signatures and certification statements (Sections 4(c)(2)(N) and 4(c)(2)(O) (new)) have been revised to clarify which statements require signature by the registrant and preparer.

28. Page 14. 5(a)(1)(b) change to “from crop land farmed in compliance with the provisions of an approved CNMP.

Response: Section 5(a)(1)(B) is inclusive of the requested language.

29. Page 15. (b)(1) This section references the general manual as amended. However, this manual also references the 590 standard which in Section (H) below requires compliance with a specifically dated version of the 590 and 633 standards. This contradicts itself. You would need to either take out the “as amended” at the top and reference the old standard, but then access to an ever aging version of the 590 standard will likely be lost as websites and older materials are replaced by newer versions. I would suggest either using the up to date as amended everything or including the actual text of the older 590 and 633 standards directly into this permit so there is no question as to what needs to be complied with over time.

Response: Section 5(b)(1) remains “as amended” and Section 5(b)(2)(H) has been changed to include “as amended”.

30. Page 15. (2)(B) states “not specifically designed to treat animal mortalities;” - This would by regulation then eliminate the possibility of having a windrow of mortality on a field out back somewhere, since said field would not meet this design criteria.

Response: Section 5(b)(2)(B) refers to liquid systems and does not exclude windrows of mortality compost.

31. Page 15. (F) Buffers is not defined in the glossary section. I would suggest changing this word to setbacks which is a defined term.

Response: Section 5(b)(2)(F) is consistent with 40 CFR 122.42(e)(1)(vi).

32. Page 15. (G) Other states reference land grant university expertise to develop the protocols, listed here. Please reference University of CT as the source of these protocols.

Response: Section 5(b)(2)(G) has been modified to include land-grant university guidance.

33. Page 15. (H) Section The NRCS standards listed are old and out of date. Are we really sticking with the old versions or are we updating to the new versions? Is it allowable under NRCS rules to create 2 different CNMPs – one for CAFO permitting and one for USDA program Compliance?

Response: Section 5(b)(2)(H) has been modified to refer to the NRCS Practice Standards as amended and no longer includes the version dates for these standards.

- 34. Page 16. (J) This requirement is outside the purview of an NRCS CNMP. How can it be included here in the General Permit under the CNMP section? If it is indeed necessary I would submit it should be in its own section, and would require some person besides a TSP or an NRCS employee to create it.**

Response: Section 5(b)(2)(J) has been modified to require records of animal inputs and nutrient balance in animal diets, but does not require a feed management plan.

- 35. Page 16. Sections (5) & (7) on page 16 & section (7)(A)ii on page 17 seem to contradict each other. Section (5) says the CNMP needs to be amended whenever a change that could have “an effect on the potential to pollute” is made, a failure happens or the commissioner requests a change. Section (7) requires submission annually ...and goes on to say that changes to the maximum amounts of manure, litter etc to be land applied each year does not constitute a change. Then in section (7)(A)(ii) it reads “Any changes to the maximum field-specific annual rates of application or...” does in fact constitute a change requiring submission. Section (7)(A)iv then says that “changes to field specific components of the CAFO’s CNMP. Where changes are likely to increase the risk of nitrogen and phosphorus transport “constitute a change. All of these need to be condensed into one, or at least be made consistent with each other.**

Response: Section 5(b)(7) titled “Changes to the CNMP”, which defines what constitutes a substantial change to the nutrient management plan, is consistent with 40 CFR 122.42(e)(6), however, for additional clarity, this section has been revised to more clearly define the regulatory requirements for CNMP changes. Additionally, Section 5(b)(5) titled “Keeping the CNMP Current” has been removed.

- 36. Page 17. iii Should read CNMP – not just NMP.**

Response: This error has been corrected.

- 37. Page 17. (B) This section really adds to the confusion. The sections above are unclear what constitute a substantial change, then this section comes along and says that “If the commissioner determines that the changes to the terms of the CNMP are substantial” then the CNMP needs to go out for another public review and comment. How is this substantial different than the 3 other sections describing substantial changes discussed earlier? Does DEEP really intend to have every CAFO CNMP out for review every year? Land changes hands rapidly. Crops and cover crops change yearly. Changes to land application rates change (or should likely change) each year on approximately 1/3 of the fields as new soil test results come in and rates are adjusted accordingly. This seems like a lot of effort annually for little or no real return. How is making all of these changes public and wasting a lot of time and effort to have public comment periods actually doing anything to protect water quality?**

Response: This section has been revised to define the regulatory requirements for CNMP changes found in 40 CFR 122.42(e)(6) more clearly.

To minimize the need for revision, CNMPs should account for and accommodate routine variations inherent in agricultural operations such as anticipated changes in crop rotation, and changes in numbers of animals and volume of manure resulting from normal fluctuations or a facility’s planned expansion. Typically, a CNMP is developed to reflect the maximum number of animals confined at the CAFO facility, the maximum capacity for manure storage, the total number of fields available for land application and

their maximum capacity for nutrient applications. Fluctuations under those maximum amounts would not necessitate changes to the CNMPs. DEEP encourages CAFO operators to develop a CNMP that includes reasonably predictable alternatives that a CAFO may implement during the period of permit coverage. However, unanticipated changes to a CNMP and in some cases, permit terms, might nevertheless be necessary.

- 38. Page 17. (8) This section would also seem to be excessive. Military planners have a saying “even the best laid plans never survive contact with the enemy”. CNMPs are no different than military plans. They are planning documents that outline a series of prescribed steps and actions with reasonable dates to accomplish said actions. I suspect the intent here is to have the Commissioner notified when hardscape type items like constructing manure storages, or waste water containment structures are delayed. Unfortunately, the way it reads now in combination with the sections in question above, that the Commissioner needs to be notified if corn isn’t planted by a certain date because of spring rains. Do you really need to be notified that cover crops couldn’t be planted on some fields because XYZ hurricane came through and fields were so wet for weeks that nothing could be planted, or harvested, or manure couldn’t be spread? It seems to me this section should require notification of events that have true consequences – the storage broke, rather than crop field 53 didn’t get a cover crop by the due date because corn didn’t come off for 2 weeks due to rain!**

Response: This requirement comes from Section 22a-430-3(j) of the Regulations of the Connecticut State Agencies which describes reporting requirements. To more clearly identify the type of noncompliance to be reported, the language in the proposed general permit has been modified from notification of “any requirement of the CNMP” to notification with “required scheduled practices and/or interim measures of the CNMP”.

Additionally, the referenced section of the proposed general permit (Section 5(b)(8)) has been removed and incorporated into Section 5(q) “Recording and Reporting Violations.”

- 39. Page 18. Reporting and Recordkeeping General comment. This sections asks farmers to make a number of good faith estimates for things that could and should be measured. This regulation is the stick and other states that have had these regulations for years have had to provide some carrots to get producers to comply. Maybe one of the carrots CT could provide to farms is cost share funding for improvements needed to actually implement these plans in a systematic way. NRCS cost share supports creation of the plans, and will support significant portions of the funds needed for hardscape items such as manure storages, and roofed barnyards. CT DEEP could encourage adoption of, and compliance with, this General Permit by cost sharing on equipment such as truck scales, or new manure spreaders with injectors and/or GPS systems and load cells or flow meters to record where and when applications were made in a manner that could provide confidence that the records are a real and relatively accurate account of what occurred. Counting loads of manure applied per field, or measuring a silage pile and determining yield by cubic feet is not enough. Accurate weights, and records of materials being applied, and harvested are possible, but the cost of equipment puts the technology out of reach of even the largest farms in CT. The investment can’t be justified on our small number of acres. Conversely CT’s costs to haul manure are higher on a per cow basis than much larger farms in other states, because CT crop fields are further from the animals than fields in other states.**

Better manure handling equipment and practices also reduce greenhouse gas (GHG) emissions that could be quantified to help CT meets its GHG reduction targets.

Response: DEEP appreciates the commenter's feedback, however, this comment is outside the scope of the requirements of the federal CAFO regulations, which are incorporated into the Reporting and Recordkeeping section referenced in this comment.

40. Page 18. Reporting and Recordkeeping. (D) (E) These 2 sections are asking for the same information.

Response: Section 5(d)(1)(A)(iv), formerly Section 5(d)(1)(D), has been modified to specify acres available for land application, whereas Section 5(d)(1)(A)(v), formerly Section 5(d)(1)(E), refers to acres actually used for land application.

41. Page 18. Reporting and Recordkeeping. (F) Under the terms of this General Permit there are no discharges from a production are permitted except under extreme weather conditions. Is this section asking the farm to document, essentially by guessing, how much extra water flowed off the farmstead during each and every rainfall event that by itself or in a chronic rainfall situation overtopped the storage or other impoundment during the year? If that is the true intent why not just require that all storages or impoundments that would, or could, discharge under the permitted conditions have a designed discharge point through a weir or other contrivance equipped with a recording mechanism to measure the volume of flow over time? What would you use the information for?

Response: This requirement is consistent with 40 CFR 122.42(e)(4)(vi). The information required in the annual report is important for DEEP to ensure that the CAFO has been operating in compliance with the terms of its permit and will inform DEEP and the public how the CAFO has operated.

The proposed general permit authorizes only discharges associated with a CAFO during catastrophic or chronic rainfall conditions and discharges identified in an approved CNMP. In the event, however, of an unintended discharge from the production area, notification is required to protect the watershed and the waters of the state.

42. Page 18. Reporting and Recordkeeping. (G) Since all versions of a CNMP must be created by an approved TSP this section seems to be unneeded.

Response: This requirement is consistent with 40 CFR 122.42(e)(4)(vii).

43. Page 18. Reporting and Recordkeeping. (H) Actual crop yields are impossible without scales. The amounts of manure and other wastewaters are guesstimates at best unless farms have scales and record loads by field for materials applied or harvested. The amount of nutrients applied to a field or removed by a crop are also guesstimates at best since not all of the millions of gallons applied, nor all of the millions of pounds of material removed will ever be analyzed 100%. If you want better more accurate records and quantity estimates please see the comment above about possible cost share opportunities.

Response: This requirement is consistent with 40 CFR 122.42(e)(4)(viii) and is intended for CAFO operators to provide the best information that they have to improve the nutrient management component of their CNMP. There is no requirement for scales in the proposed general permit.

- 44. Page 19. (e) (1) (C) If a farm is only required to sample manure annually does this satisfy the requirement under this section to supply a “current nutrient analysis”? Fertilizer manufacturers and sellers of other waste materials that wish to market their materials as fertilizers are required to take a series of representative samples from their material and have them analyzed in order to generate a confidence interval around the analysis results such that they can guarantee a “minimum analysis” to the consumer. If the intent under this permit is to have the wastes considered as a fertilizer source by the receiving entity, should the farms selling, or giving, the material to another farm follow the same guaranteed analysis process as the CT Department of Agriculture requires for a commercial company selling other fertilizer materials?**

Response: If a CAFO plans to sell or market fertilizer, they should contact the Connecticut Department of Agriculture to determine the requirements for testing.

- 45. Page 19. (f)(C) This regulation is going to require that at the bottom of the slope in every row crop field used by the operation will either lose a 35 foot strip, or will have a 100 foot strip at the bottom that needs to have commercial fertilizer applied in order to stay compliant with this permit. Current CNMPs use 75 foot setbacks from wells, and 35 foot setbacks from watercourses. This is a significant change and will cause increased fertilizer use on farms while reducing the amount of manure and other wastes that the farm can make use of. CT Department of Public Health uses 35 foot grassed setbacks from wells < 10 gallons per minute (gpm) and 100 feet if no grass. For wells 10-50 gpm the setback is 100 feet, and for wells > 50 gpm the setback is 200 ft. Should these be listed here or at least DPH regs be mentioned as something to be considered? Is there a list somewhere that planners could go consult to find the gpm for wells near farms? If not would the farmers need to assume worst case and use 200 foot setbacks even from home wells?**

Response: This requirement applies to Large CAFOs and is consistent with 40 CFR 412.4(c)(5).

- 46. Page 20. (ii) I can think of 2 possible alternatives that might fly here. One is to place a berm at the foot that would contain the stormwater runoff. The second might be a real injection system. Some Midwest research would support the decreased losses to surface waters from injected wastes – but at the expense of increased losses through tile drains. Since CT doesn’t have many tiled fields this might help. We do have a lot of streams bordering fields. Does DEEP have any data to show how closely streams are coupled to nearby ground water? In essence do stream banks release local ground water to the stream? I have walked a fair number of field edges along field boundaries and have noted very few springs and seeps. That would seem to suggest that not a lot of our ground water contributes to stream volume, but I don’t think my observations are enough to say that it doesn’t.**

Response: Section 5(f)(C)(ii) of the proposed general permit states that a Large CAFO may demonstrate compliance alternatives for the 100-foot setback requirement. The questions posed in this comment are outside the scope of this public notice.

- 47. Page 20. (2)(A) This section requires a number of visual inspections of various types of equipment or locations. However there is no mention of any recordkeeping requirement for these inspections. How can a farm document compliance if there are no records to provide the documentation? Note to reviewer I found the recording requirements in the next section. I would recommend that you merge the sections and put the records requirements in the inspection section.**

Response: The additional monitoring requirements for Large CAFOs in Section 5(f)(2)(A) and their respective recordkeeping requirements in Sections 5(f)(3) and 5(f)(4) of the proposed general permit are included together under the same section (Section 5(f) "Additional Requirements for Large CAFOs").

- 48. Page 21. (D) Can you give some examples of the types of records, other than just the number of dead animals? What details would you want recorded?**

Response: This requirement is consistent with 40 CFR 412.37(b)(4). Records must identify that mortalities were not disposed of in any liquid manure or process wastewater system and were handled in such a way as to prevent the discharge of pollutants to surface water, unless alternative technologies pursuant to 40 CFR 412.31(a)(2) and approved by DEEP are designed to handle mortalities. Additionally, records should include, but are not limited to method of disposal (e.g., composting, landfill, incineration), if composting, the temperature and carbon source being used, schedules for collecting, storing, and disposing of mortalities, if catastrophic mortality, documentation of the number, average weight, cause and date of animal deaths and method of disposal.

- 49. Page 21. (E) Records documenting the design of a manure storage or other structure are not ongoing records. They represent the capacity as designed. Is this section supposed to be requiring that some estimate of accumulated solids, or loss of capacity due to excessive rainfall needs to be measured, collected and, or calculated?**

Response: This requirement is consistent with 40 CFR 412.37(b)(5). The purpose of this requirement is to document storage structure design and that the structures were designed taking into consideration things such as solids accumulation and other items listed in this comment.

- 50. Page 21. (F) Without designed spillways and measuring devices this seems impossible for a farm to estimate so why require them to guess?**

Response: This requirement is consistent with 40 CFR 412.37(b)(6).

- 51. Page 21. Sentence 4 - Should be changed to read "records must be maintained that can prove or document that the development and implementation"....**

Response: The referenced sentence in Section 5(f)(4) of the proposed general permit has been changed to "In addition, records must be maintained to demonstrate that the development and implementation of the CNMP..."

52. Page 21. (4)(A) Expected crop yield is not a record of anything except a faint hope that the weather be adequate to produce a crop! These are a part of the CNMP why duplicate here?

Response: This requirement is consistent with 40 CFR 412.37(c)(1).

53. Page 21. (C) This seems excessive. Pesticide applications don't even require this level of recordkeeping, why do waste applications need this detail?

Response: This requirement is consistent with 40 CFR 412.37(c)(3).

54. Page 22. (DEFG) These sections all seem to be asking that sections of the CNMP be maintained on site for 5 years. Why not just say that "The CNMP as used in a specific year must remain on file for a minimum of 5 years after it has been made obsolete due to revisions for subsequent crop years."

Response: These requirements are consistent with 40 CFR 412.37(c)(4) through (7).

55. Page 22. (H) Not sure what "documentation of calculations" means.

Response: This requirement is consistent with 40 CFR 412.37(c)(8) and requires that records of the calculations performed to determine the actual amount of nitrogen and phosphorus applied to each field be maintained.

56. Page 22. (I) What is meant by "method used to apply"?

Response: This requirement is consistent with 40 CFR 412.37(c)(9) and refers to the type of equipment (e.g., box spreaders, flail spreaders, injectors, tank spreaders), type of application (e.g., surface application, injection, irrigation), state of manure (e.g., solid, slurry, liquid).

57. Page 22. (J) What is meant by "manure application equipment inspection"?

Response: This requirement is consistent with 40 CFR 412.37(c)(10) and requires the CAFO to document when the equipment used for manure application is inspected.

58. Page 22. (g) This section is drastically different than section (8) on page 17. It appears to be boiler plate grabbed from another document inadvertently, or it belongs in some other section of this document other than here. It reads more like it belongs in a section concerning catastrophic failures of a storage or containment structure, or a manure spill on a road rather than noncompliance with a CNMP. This section is also in conflict with section (c) on page 23.

Response: Sections 5(b)(8) "Notification of Noncompliance with the CNMP" has been combined with Section 5(g) "Recording and Reporting Violations" so that the requirements for reporting noncompliance and violations is located in one section. Additionally, Section 6(c) "Duty to Correct and Report Violations" has also been modified to explain the requirements of Section 22a-430-3(j)(11)(D) of the Regulations of the Connecticut State Agencies more clearly, which is the basis for all three of these sections in the proposed general permit.

59. Page 23. (d) This section states that “Such information shall be certified in accordance with section 6(d) of this general permit. This is section 6(d) so I believe this should read 6(e).

Response: This correction has been made to Sections 6(c), (d) and (h).

60. Page 24. (i) There is an extraneous left parentheses “)” at the end of the last sentence.

Response: This correction to Section 6(i) has been made.

61. Page 4: Definitions - Consider replacing the definition of a certified conservation planner with experienced conservation planner. Experienced conservation planner means someone with proven background and knowledge of agricultural systems appropriate for the agricultural waste plan. Examples of conservation planners may include USDA- NRCS certified conservation planners, or a USDA certified Technical Service Provider (TSP), or professional agricultural service providers with planners or experienced mentors with CAFO farm plans, ideally with certifications such as Certified Crop Advisor (CCA) from the American Society of Agronomy, or equivalent CAFO planning certification from other states.

Response: The terminology “Certified Conservation Planner” in the proposed general permit has been changed to “Certified Agricultural Planning Specialist” and the definition of a “Certified Agricultural Planning Specialist” has been expanded to include NRCS certified conservation planners, NRCS certified technical service providers (of which there are currently 35 certified in the state), certified crop advisors, certified professional agronomists, certified professional crop scientists, certified professional soil scientists, or someone certified through land grant university certification programs, the National Alliance of Independent Crop Consultants, or state certification programs.

The revised terminology and expanded list of professionals aims to alleviate concerns of NRCS playing a role in the development of each CNMP or being in a regulatory role.

62. Page 11: Registration Form (L) - Consider adding the name of the USGS Hydrologic Unit 12-digit Code (HUC- 12) of the watershed.

Response: Section 4(c)(2)(L) has been modified to also include HUC-12 codes.

63. Page 12: Availability of Registration and Plan (1) Submitting Public Comments - Delete public posting of operation's CNMP which may disclose the operation's personal or private information. The CNMP contains sensitive information and/or related personal identification of persons outside the purview of the CAFO permit (i.e., landowners who rent to the CAFO). Could the registration include enough information (such as an executive summary and diagrams of the CAFO (similar to S(d) Reporting Requirements)) sufficient for public display and understanding of the permit application or have the CNMP available for review by request.

Response: Public notification of a CAFO’s registration form, CNMP, and draft Approval of Registration is a requirement of 40 CFR 122.23(h)(1). Information provided in these documents is considered public information, however, if the registrant believes there is potentially confidential information within these

documents, the registrant can review Section 1-210 of the Connecticut General Statutes to substantiate such claims of confidentiality.

64. Page 15: (H) Implement a Nutrient Management Plan - Use the current NRCS conservation practice standards and specifications.

Response: Language pertaining to the use of NRCS Practice Standards in the proposed general permit has been modified to refer to the most current version, as amended.

65. Page 16: (7) Changes to the CNMP - For changes to the CNMP - rather than requiring the whole CNMP - it may be practical to consider requiring a summary document (such as (S(d) Reporting and Record Keeping Requirements) of the CNMP, and identifying changes from the previous version, and the CNMP be available for review as needed. The current proposed regulation specifies the use of the 590 and 633 practice standards dated 2013 and 2011, respectively. NRCS revises conservation practice standards periodically. NRCS develops or provides financial assistance for most of the CNMP's developed in the state, and we will not develop or sign a CNMP that does not meet our current conservation practice standards and specifications.

Response: This requirement is consistent with 40 CFR 122.42(e)(6)(i), which requires submission of the most current version of the CNMP. This regulation also requires public posting of the CNMP in response to changes made and because of this, a copy of the CNMP is needed.

Language pertaining to the use of NRCS Practice Standards in the proposed general permit has been modified to refer to the most current version, as amended.

66. Page 15 (b) (1): Development of the CNMP - Consider replacing Certified Conservation Planner with Experienced Conservation Planner. A certified conservation planner implies a USDA-NRCS certified planner. As written, the document could be interpreted as NRCS has a role in the development of each CNMP. The proposed regulation appears to put significant responsibility on NRCS for reviewing and signing off on all new CNMP's and any changes that may be required to an existing CNMP. NRCS has limited staff and cannot take on the roles of the state. NRCS works with producers on a voluntary basis, not a regulatory basis. If a producer chooses not to work with NRCS, NRCS will not review these CNMP's. The state should explore developing staff for this role, utilize third parties, or reimburse NRCS for this work.

Response: The terminology "Certified Conservation Planner" in the proposed general permit has been changed to "Certified Agricultural Planning Specialist" and the definition of a "Certified Agricultural Planning Specialist" has been expanded to include NRCS certified conservation planners, NRCS certified technical service providers (of which there are currently 35 certified in the state), certified crop advisors, certified professional agronomists, certified professional crop scientists, certified professional soil scientists, or someone certified through land grant university certification programs, the National Alliance of Independent Crop Consultants, or state certification programs.

The revised terminology and expanded list of professionals aims to alleviate concerns of NRCS playing a role in the development of each CNMP or being in a regulatory role.

- 67. Delete public posting of operation's CNMP which may disclose the operation's personal or private information. CNMPs include information related to the operation's business plan and location of fields, buildings, and the farm operator's home are currently considered personal and private. Our partners at the federal level motivate program participation and sustained implementation by preserving privacy. Alternative approaches to posting the full CNMP for public access might include posting a copy of the CNMP with information deemed sensitive by the operation removed and/or providing the CNMP to individual members of the public upon request.**

Response: Public notification of a CAFO's registration form, CNMP, and draft Approval of Registration is a requirement of 40 CFR 122.23(h)(1). Information provided in these documents is considered public information, however, if the registrant believes there is potentially confidential information within these documents, the registrant can review Section 1-210 of the Connecticut General Statutes to substantiate such claims of confidentiality.

- 68. Definition of Adequate Storage is not articulated and requires interpreting other references for understanding. The Draft GP defines "Adequate storage" as "the storage volume of manure, litter, and agricultural wastewater as required by the nutrient management plan and Connecticut NRCS Practice Standard Code 313, Waste Storage Facility, as amended. Large CAFOs with earthen waste storage facilities shall have an impermeable liner." A definition that provides some clarity without referencing other documents would be more helpful. Adequate storage is practically referred to by NRCS as the storage volume of waste materials accumulated over the duration of time that land application would be inappropriate considering local, seasonal environmental conditions. Typically, land application of wastes is ill-advised from October through March (or, depending on the year, November through April), and therefore waste storage facilities are typically sized to accommodate materials accumulated across these 6 months, with land application resuming during the 6 months of summer-through-fall conditions.**

Response: As noted in this comment, adequate storage is dependent on environmental and seasonal conditions as well as facility operations. A component of CNMP development is to determine an appropriate storage volume and storage time period for the CAFO operation that is sufficient to meet the minimum requirements for storage and land application needs using the methods identified in NRCS Practice Standard Code 313. Adequate storage volume at one CAFO may be different of that from another CAFO and as such, a specific volume is not incorporated into this definition.

- 69. Annual reporting requirements for the permittee are excessively burdensome and redundant for DEEP's review. As operations are required to annually resubmit their CNMPs with any changes identified and report any lapses of compliance with the general permit, requiring an annual report from the operation that reiterates information contained in the CNMP would likely be burdensome and redundant. Requirements could be reduced to item (F), the "Summary of all manure, litter, digestate and agricultural wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume," along with provision of the latest manure/digestate/wastewater nutrient test results, attached as an addendum to the resubmitted CNMP.**

Response: The annual report requirement and submission of changes to the CNMP are federal requirements of 40 CFR 122.42(e)(4) and (e)(6) and as such, must be a requirement of the proposed general permit. Because 40 CFR 122.42(e)(6)(i) requires public posting of the CNMP in response to changes, a copy of the CNMP is needed.

70. Reliance on the CNMP and other NRCS products may put pressure on NRCS-Producer relationships and disincentivize ambitious conservation goals. The proposed general permit appears to place the NRCS into a de facto regulatory role by relying on a number of different NRCS products to define the permit conditions. Our experience is that NRCS is explicitly and intentionally a non-regulatory agency which is crucial to facilitate trust and cooperation with the agricultural community. We strongly advise against using the NRCS documents to define the regulations, a process that would possibly shift or undermine this relationship and limit that agency's ability to disseminate financial and technical assistance effectively/equitably, which also encourages progressive implementation of best management practices in voluntary programs. We are also concerned that use of NRCS standards and conservation planning in this way will result in unintended pressure to weaken these plans, lengthen their timelines, and reduce or simplify the practices they propose. Ambitious or progressive plans which could make a profound positive impact could be disincentivized if the conservation plan (e.g. CNMP) is used to define the permit conditions. We feel that ambitious plans are essential to optimizing water quality and other environmental outcomes; plans should be encouraged to be ambitious without penalizing those farms by holding them to a higher standard such as regulations and potential for fines if the plan is not met. The DEEP should define their specific permit conditions or tie the regulations directly to the EPA's CAFO regulations rather than referencing NRCS products as regulatory benchmarks.

Response: It is common practice throughout the country for CNMPs for NPDES permit coverage to utilize or require the use of NRCS standards. For example, the states of New York and Vermont also require the use of NRCS standards.

DEEP is the NPDES permitting and regulatory authority, charged by EPA to implement the requirements of the CAFO program, therefore it is DEEP and EPA that serve in the regulatory role to enforce the requirements of the proposed general permit. As the regulatory authority, DEEP has the discretionary authority to rely on technical standards, guidance or framework documents prepared outside of the agency that the DEEP deems appropriate to assure compliance and meet the objectives of the CAFO rule as set forth in the federal regulations.

Furthermore, EPA and the USDA developed the Manure Management Planner (MMP) to serve as a tool that would generate a single document (e.g. CNMP) that meets the objective of both agencies. DEEP does not want to disadvantage CAFO owners from taking advantage of NRCS' EQIP funding by requiring different standards or allowing un-certified professionals to develop and sign their CNMPs. It is DEEP's intention to continue the efforts of EPA and USDA during the development of the MMP and provide CAFO owners with the same message from both agencies and allow them to develop one plan that satisfies both DEEP and NRCS, rather than having the general permit require a different plan with a different set of standards.

Lastly, a limited number of CAFOs will be subject to the requirements of the proposed general permit (e.g. Large and Medium CAFOs that meet animal thresholds and have a discharge, and animal feeding

operations that are designated as CAFOs based on pollution and water quality issues) and as such, not all farms in the state will be subject to the proposed general permit and DEEP does not believe there are many CAFOs subject to the proposed general permit.

71. This letter is in response to the General Permit for Concentrated Animal Feeding Operations that is being proposed. I understand that clean water is very important, but when formulating the rules and regulations and reporting requirements please keep in mind these all must be practical. There is no way to accurately know some of the items required to be reported. The people these rules and regulations affect are already overworked, struggling to make ends meet, and this added burden may put some of them out of business or worse. There are many small farms in our state that most likely do not make a significant impact to the water quality in our state, but enforcement of all these regulations would make a huge impact to them. Please take this into consideration when implementing your regulations, and do whatever is necessary to keep animal agriculture viable in our state so that we can provide local food.

Response: As previously noted, the proposed general permit will regulate predominantly Large and Medium CAFOs that meet animal thresholds and have a discharge, and animal feeding operations designated as CAFOs based on pollution and water quality issues. As such, all farms in the state will not be subject to the proposed general permit.