

Community Organizing for Environmental Protection  
and Democracy on Agricultural Issues in New York

Byrncliff Resort and Conference Center, Varysburg, New York  
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**How CAFOs and other agricultural operations are regulated in New York**

1. by General Permit (currently GP-04-02)

a. terms of the permit

(i) incorporation by reference of NRCS standards (VII.A.; VIII.C.xi.; VIII.N.); *cf.* NRCS NY312, further *requiring* NRCS 590, NY748, 633, with additional standards *as applicable*

(ii) zero discharge rule applies to “process wastewater” (I.AE.; VI.A.) *unless* there has been a “25-year, 24-hour rainfall event”, i.e., 4 inches of precipitation in 24 hours (VI.C.) (*cf.* VIII.K., requirement to maintain rain gauge records)

(iii) farmstead-specific Comprehensive Nutrient Management Plan = “effluent limits” enforceable under the federal Clean Water Act’s citizen suit provision (*Waterkeeper Alliance Inc. et al. v. EPA et al.*, 2nd Cir. 2005)

b. obtaining a permit

(i) obtained merely by submitting a two-page Notice of Intent to be Covered under the permit, upon DEC letter of acknowledgment that NOI has been received (II.A.)

(ii) subject to compliance schedule for completion of CNMP (VII.B., C.)

c. *Coon v. Willet Dairy*, federal and state lawsuits in NY

d. *Sierra Club Mackinac Chapter v. [Michigan] DEQ* (Mich. App. January 15, 2008)

1. state may not delegate to CAFOs the authority to determine land application rates for animal waste

2. state may not deny public an opportunity to comment on farms’ waste management plans until after they are filed with state

2. NY Right-to-Farm Law (Ag&Mkts. L. §§ 305-a, 308)

- a. restriction on nuisance lawsuit where Ag&Mkts has issued a “Sound Agricultural Practice Opinion” (§ 308[3])
  - 1. burden is on farm to show practices are sound (*Southview Farms*, WDNY1993)
  - 2. there is *no* restriction on an action for damages for personal injury or death
- b. local government may not by regulation “unreasonably interfere” with farm operations; Ag&Mkts may bring suit to enforce this restriction (§ 305-a)
- c. nothing in the statute precludes an action to enforce violations of state or federal laws by citizens, including by municipalities
- d. legal context for a., b., and c. is the strong “home rule” powers of towns and villages in NY; *see* Chapter IV of the State of New York Local Government Handbook (2008), first page; GAA memo, “Authority of a Village to Prohibit Landfilling” (2005)