

ANDREW M. CUOMO  
GOVERNOR



JOE MARTENS  
COMMISSIONER

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
ALBANY, NEW YORK 12233-1010

August 29, 2011

Honorable Darrel J. Aubertine  
New York State Department of Agriculture & Markets  
10B Airline Drive  
Albany, New York 12235

**RE: CAFO Compliance During Hurricane Irene Emergency**

Dear Commissioner Aubertine:

Due to the natural disaster resulting from Hurricane Irene, farms in New York may be faced with extreme circumstances beyond their control. Certain legal requirements may increase the burden on farms during this event. Therefore, a coordinated response from our Departments to assist farmers and provide technical assistance is a priority.

Due to these conditions, the New York State Department of Environmental Conservation (DEC) will not enforce certain provisions of the State Pollutant Discharge Elimination System (SPDES) General Permits for Concentrated Animal Feeding Operations, GP-04-02 and GP-0-09-001, (CAFO General Permits), for the period of August 27, 2011 through September 4, 2011, provided deviation from these requirements is necessary due to issues caused by Hurricane Irene. This time period may be extended by DEC as necessary to address the Hurricane Irene emergency situation.

Specifically, DEC will not seek penalties with respect to the requirements of the CAFO General Permits concerning notification of the DEC regional office within 24 hours from the time that the permittee becomes aware of a discharge of process wastewater or spill to the waters of the State. Similar relief to this notification requirement also applies to situations where there is an overflow of manure, litter or process wastewater from a waste storage structure. This includes incidents related to manure and process wastewater handling and disposal of milk. DEC requests that CAFO farms make best efforts to notify the Department as soon as possible and that they submit a written CAFO Incident Report within 5 days of the discharge or incident.



Additionally, DEC will not enforce the requirements of the CAFO General Permits which prohibit the retention and disposal of incidental food processing wastewater into the retention facilities or waste storage structure for the disposal of milk during this time period. If the disposal of milk is necessary, the farm should look first to their manure storage and handling structures to determine if the milk can be held until field conditions allow for land application. The minimum freeboard requirements of the CAFO General Permits of waste storage structures can be exceeded although a storage structure should not be allowed to overtop due to the risk for catastrophic failure. If a storage structure is at risk of overtopping, land application should be done carefully and in contact with the CAFO's Certified CAFO Planner. All CAFOs have a farm-specific Emergency Action Plan that should be enacted during this time to assist the farm in making the best possible decisions and to plan for the restoration of normal farm operations.

As New York farmers deal with extreme flooding and the effects of extended power outages, DEC stands ready to assist in every way possible. Enforcement discretion will be exercised for farm incidents throughout the area affected by Hurricane Irene with the site specific circumstances to be carefully considered. DEC staff will work with your staff to accommodate the needs of farms of all sizes faced with extreme circumstances during this difficult time. DEC also encourages farmers to contact local County Soil and Water Conservation Districts, Certified CAFO Planners, County Cornell Cooperative Extension Agents, and Natural Resources Conservation Service technical service providers for technical assistance during this difficult time. Please let me know if you have any questions or if my staff can be of assistance during this time.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Martens", with a large, stylized flourish at the end.

Joseph J. Martens

c: New York Farm Bureau  
Distribution