ATTACHMENT I

Summary of EPA Comments on GP-0-16-002,

the NYSDEC Draft CWA SPDES General Permit for CAFOs

Fact Sheet

Regarding the "Wet Weather Standard Operating Procedures" (WWSOPs), in order for a new swine, poultry, or veal calf CAFO to qualify for a no discharge certification and the corresponding upset affirmative defense, it must conduct, and submit as part of its publicly noticed permit application, and DEC must review and approve, the site-specific evaluation of the CAFO's open surface manure storage structure required by 40 C.F.R. 412.46(a)(1), and, as required by 40 C.F.R. 412.46(a)(2) the production area must be operated in accordance with the "additional measures" in 40 CFR 412.37(a). While the DEC may substitute the site-specific evaluation of the adequacy of the designed manure storage structure required in 40 C.F.R. 412.46(a)(1)(vi) with a technical evaluation developed for a class of specific facilities within a specified geographical area, under 40 C.F.R. 412.46(a)(1)(vii), it may not waive the other site-specific requirements of 40 C.F.R. 412.46(a)(1). (1st paragraph Page 5 of 8) (See related comment on page 2 of the draft permit).

The Fact Sheet mentions 2003 regulations pertaining to zero discharge which no longer apply. This reference should be deleted since it is irrelevant. (2nd paragraph Page 5 of 8).

The determination, which applies the bypass and upset affirmative defenses to a class of facilities, is inappropriate. Those defenses only apply to new source swine, poultry and veal calf CAFOs. The showings under those provisions (40 C.F.R. 122.41(m) and (n), respectively) are to be made by the permittee, evaluated on a case-by-case basis (see 40 C.F.R. 412.46(a)(3)) and must be accompanied by the "additional measures" in 40 C.F.R. 412.37(a) and (b). See 40 C.F.R. 412.46(a)(2) (last paragraph Page 5 of 8).

Major Comments

1. The permit does not completely address the nine minimum measures for implementing a Nutrient Management Plan (NMP). See Attachment III for further details. Also, at times, the permit employs the terms ANMP and CNMP interchangeably, which is confusing. Since all of the currently permitted farms already have a CNMP, the CNMP should be the document used, not the ANMP. (See related EPA comment in the Preface section of the permit).

2. The permit should clarify that the CNMP is required to be subject to public notice, comment and DEC review and approval before coverage becomes effective. It must remain publicly available throughout the term of the permit. (See related comments on Page 4 of the permit).

3. The mixing of food processing waste and digestate into CAFO wastewater storage structures is prohibited. Discharges from land application to land under the control of a CAFO only qualify as exempt agricultural stormwater discharge where "manure, litter or process wastewater" is land applied in accordance with a complete NMP and food processing waste and digestate are not within the definitions of manure, litter or process wastewater. (See related comments on Pages 12 and 19 of the permit).

4. Noncontact cooling water discharges must be monitored for compliance with water quality based effluent limitations in all potentially impacted waters, and for compliance with specific limits for pH and dissolved oxygen for trout waters (in addition to temperature). (See related comments on Page 15 of the permit).

5. Winter spreading of manure, litter or process wastewater may be allowed only on a case-by-case basis, and only after DEC review and approval of a specific proposal from the CAFO. (See related comments on Page 12 of the permit).

Summary of EPA Comments* on GP-0-16-001,

the NYSDEC Draft ECL SPDES General Permit for CAFOs

<u>Agricultural Stormwater Discharge Exemption</u>

1. If a large ECL facility (as defined by EPA animal numbers in 40 C.F.R. 122.23(b)(4)) commingles and land applies food processing waste or digestate to land under its control, it would not be entitled to invoke the agricultural stormwater discharge exemption for any discharge of those pollutants to waters, and would, therefore, be considered "discharging" and be required to obtain a CWA permit.

2. If a medium or small ECL AFO applies food processing waste or digestate to land under the AFO's control, and those pollutants are discharged into waters in quantities that contribute to the impairment of a downstream or adjacent state or Indian Country water, those discharges could trigger a designation under 40 C.F.R. 122.23(c), and the consequent requirement to obtain a CWA permit.

*Please note that EPA has not conducted a comprehensive review of the ECL Permit.