

Water Front- Peter Mantius

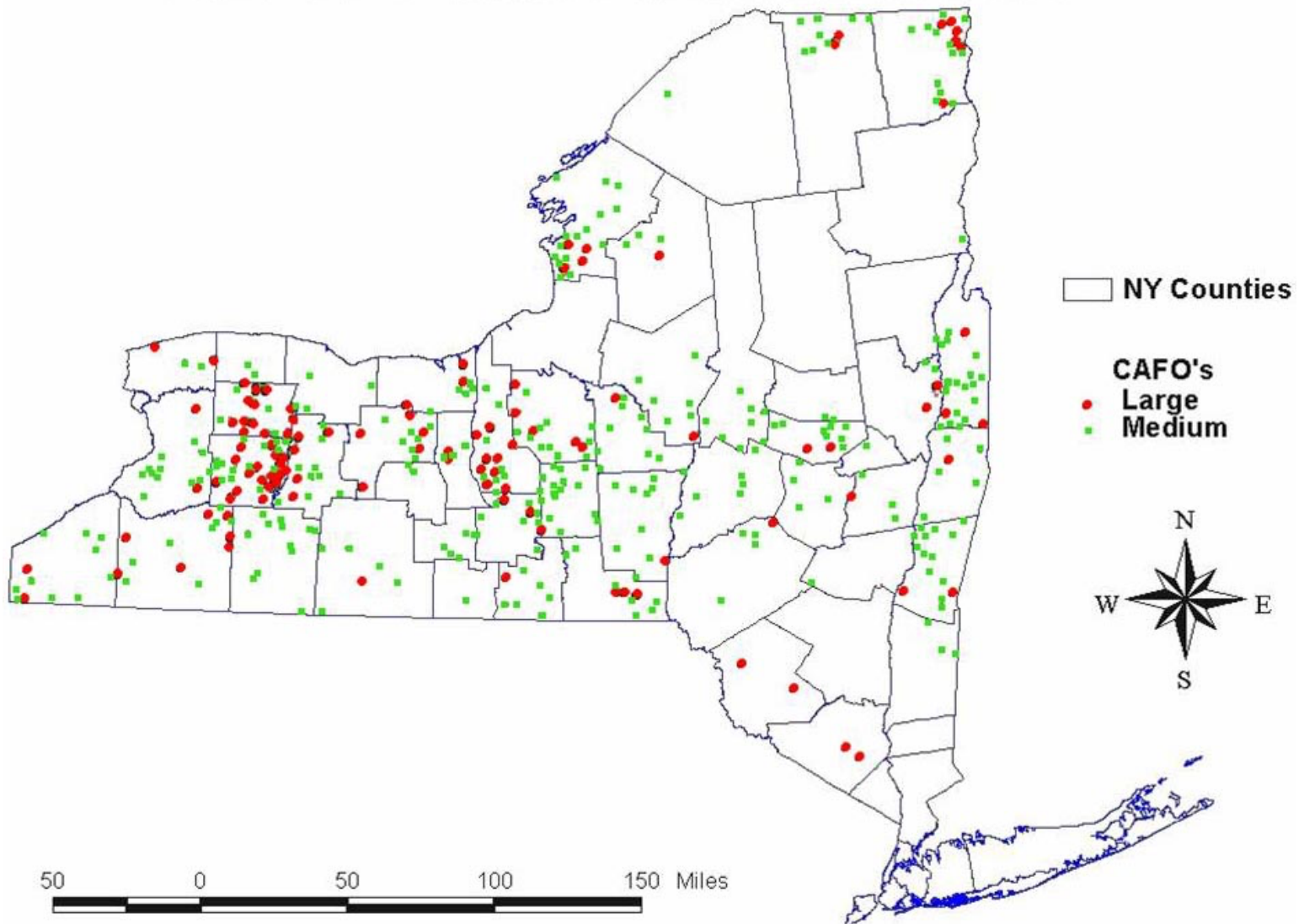
*Environmental politics in New York's Finger Lakes*

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# It's Unanimous! Mega-Dairies Shun New State Permit Requiring Disclosure of Manure Management Plans

Peter Mantius / August 14, 2019 / Uncategorized

# New York State Permitted CAFOs



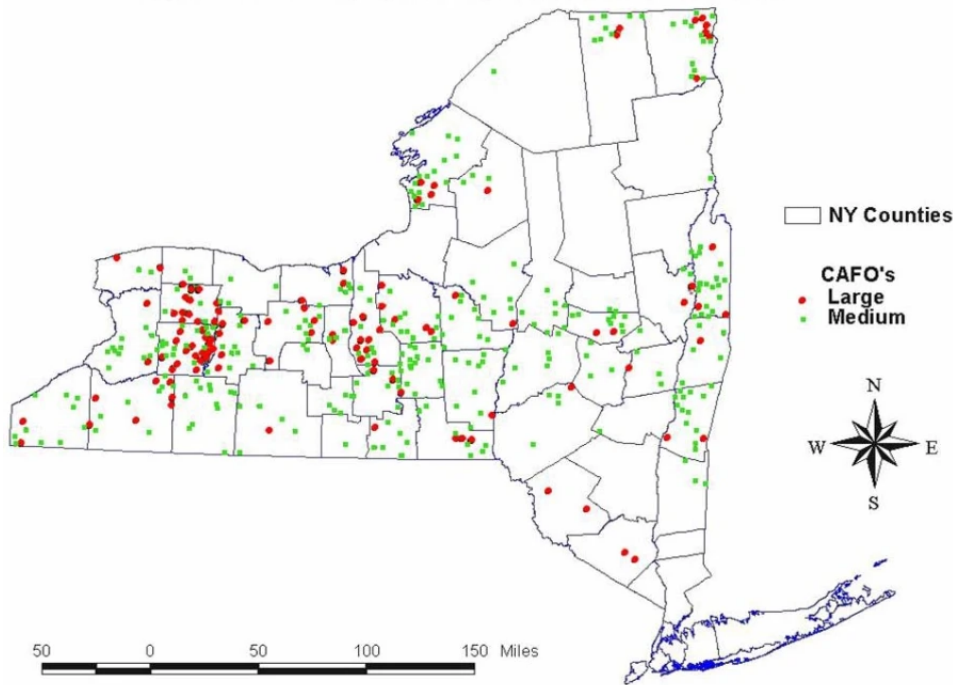
ALBANY, Aug. 14, 2019 — Not a single large dairy in New York State has applied for a newly rewritten state permit that includes court-ordered reforms, including public disclosure of farm manure management plans.

An Albany judge ordered the rewrite last year after environmental groups sued the state for failing to follow federal Clean Water Act rules when regulating dairies that discharge pollutants.

In a recent letter (<https://waterfrontonline.files.wordpress.com/2019/08/declletterjuly2019.pdf>) to Acting Supreme Court Justice David Weinstein, an attorney for the state Department of Environmental Conservation said the agency had redrafted the permit as instructed, but he also acknowledged that not one dairy had applied to use it. The agency asked Weinstein to close the case.

Preventing farm manure from running into lakes that supply public drinking water is an urgent priority because the phosphorus and nitrogen in the animal wastes fuel blooms of toxic algae, a growing menace in the Finger Lakes.

## New York State Permitted CAFOs



In 2016, cyanotoxins were discovered in the town of Auburn's drinking water drawn from Owasco Lake. The next year cyanotoxins reached Skaneateles Lake, which supplies raw water for Syracuse. Last year, after harmful algal blooms (HABs) hit Canandaigua Lake, cyanotoxins from the lake reached the Town of Rushville's treated drinking water. That triggered a temporary ban on drinking Rushville's public tap water.

The causes of algal toxins are not precisely understood. But nutrients from farm manure are wildly

acknowledged to be at or near the top of any list of culprits.

New York, the nation's third largest milk producer, is home to more than 5,000 dairies and 620,000 cows. But only about 10 percent of the largest ones — known as CAFOs, or concentrated animal feeding operations — are even required to obtain permits.

The DEC has long allowed roughly 550 CAFOs to choose between two permits — one for operations "designed, constructed, operated or maintained" to discharge pollutants and another for farms that do not discharge.



**A manure spreader sprays fertilizer on a field.**

The discharge permit is based on the federal Clean Water Act. The non-discharge permit is based on the state Environmental Conservation Law and is not subject to the CWA.

Before Riverkeeper and others filed suit in 2017, both permits severely restricted public review of manure management plans, and both allowed CAFOs to hire consultants to draw up the plans and vouch for their operation's regulatory compliance.



**Acting Supreme Court Justice David Weinstein**

The lawsuit challenged the CWA permit, alleging that both the confidentiality of manure plans and the prescribed use of consultants as regulatory middle men violated federal law. Weinstein agreed, citing the consultants' "conflict of interest," and he ordered the CWA permit rewrite.

Before the environmental coalition filed suit, roughly 270 CAFOs held CWA permits as operations designed and operated to discharge pollution. Another 290 CAFOs held ECL permits, which did not allow discharges.

As of July, every one of the dozens of CAFOs that once held a CWA permit has applied to the DEC for the more lenient ECL permit (<https://waterfrontonline.files.wordpress.com/2019/08/eclpermitfactsheet.pdf>), which continues to allow for manure plan confidentiality and the "conflicted" regulatory middle-men.

As of this week, the DEC said, the agency had allowed all but two operations to make the switch.

"It's really troubling," said Alexis Andiman, an attorney for Earthjustice



**Alexis Andiman of Earthjustice**

(<https://waterfrontonline.files.wordpress.com/2019/08/earthjusticecommentsoct11.pdf>), which represented Riverkeeper in the suit against the DEC.

"CAFOs should be getting a CWA permit (<https://waterfrontonline.files.wordpress.com/2019/08/deccleanwateractpermitfactsheet.pdf>) if they are designed, constructed, operated or maintained to discharge pollution. It's pretty hard to

believe that hundreds of CAFOs have somehow altered their design, construction, operation and methods of maintenance overnight.”

And yet the DEC (<https://waterfrontonline.files.wordpress.com/2019/08/caforules.pdf>) has endorsed those quick conversions by granting hundreds new ECL permits.



Cornell University

Animal Science Publication Series  
No. 245

**Revised winter and wet weather  
manure spreading guidelines to reduce  
water contamination risk**

December 2015

([http://www.dec.ny.gov/docs/water\\_pdf/winterspreadingguidelines.pdf](http://www.dec.ny.gov/docs/water_pdf/winterspreadingguidelines.pdf)) found.

**This plume of manure was photographed from the shore of Owasco Lake on Feb. 22, 2014, one day after a large CAFO in Scipio had applied manure to a frozen field. The NYSDEC later fined the farm \$10,000 for that and other manure runoff events that winter.**

**As toxic algae blooms tied manure pollution mount on Owasco, towns that draw their public drinking water from the lake are urging the DEC to adopt tougher permitting rules for manure spreading.**



In February 2014, a CAFO in Scipio that houses more than 1,000 cows was fined for manure spreading after photographs confirmed a large plume of liquid manure floating on Lake Owasco, which provides drinking water to more than 40,000 people.

That 2014 incident triggered alarm in the City of Auburn, which draws its raw water from that lake. Concerns grew last Fall after city officials realized that none of the CAFOs in the Lake Owasco watershed would be affected

by the court-ordered reforms to the CWA permit — they were all covered by the ECL permit, including the fined Scipio operation.

City officials passed a resolution

(<https://waterfrontonline.files.wordpress.com/2019/08/auburncaforesolutionoct2018-1.pdf>) last October urging the DEC to extend the CWA permit reforms to the ECL permit in order to “close this regulatory loophole.”

Meanwhile, the New York Farm Bureau was pushing the DEC in the other direction — toward lighter regulation of CAFOs. The NYFB not only defended manure plan confidentiality and CAFO-hired planners, it urged the DEC to inspect CAFOs no more than once each five-year permit cycle and to provide farms notice before inspections.

But a number of other voices



**Within the past two weeks, HABs have been reported at 20 sites on Owasco Lake, according to an interactive map posted by the DEC.**

(<https://waterfrontonline.files.wordpress.com/2019/08/cafocomments.pdf>) — community and environmental groups as well as public officials — took note of the “regulatory loophole” addressed in the Auburn resolution.

**Edward Wagner**

(<https://waterfrontonline.files.wordpress.com/2019/08/edwagnerlettersept2018.pdf>), chair of the Owasco Lake Watershed Management Council, wrote DEC Commissioner Basil Seggos last September:

“Deficiencies found by the state Supreme Court for the CWA permit were also integral to the ECL permit. Planners hired by the CAFOs certify that ECL-covered CAFOs are doing what they should be doing to protect our surface waters. These plans, however, are kept confidential and are not reviewed by the DEC or other objective third party prior to implementation.

“We respectfully request the DEC reopen the ECL permit to incorporate those changes (adopted in the rewritten CWA permit).”

State Sen. James L. Seward (R-Milford) followed up with a letter to Seggos

(<https://waterfrontonline.files.wordpress.com/2019/08/sewardletteroct2018-1.pdf>), urging the DEC to “take very seriously the request of local officials and citizens that the CWA permit conditions apply more broadly.”

This week, Seward said in a statement to WaterFront:

“While I would prefer to see all CAFO applicants comply with stringent Clean Water Act requirements, the experts at the DEC have decided to continue to offer more than one permit option. In light of this decision, I believe it is incumbent on the DEC to closely monitor the permitted CAFOs and study any effects they may have on Owasco Lake and the rest of the Finger Lakes.”

Wagner also gave the DEC the benefit of the doubt.

“I’ve seen a total change in the whole organization,” Wagner said this week. “I think the DEC is understanding the public outcry (over HABs). There’s more money, personnel, energy and it’s all science-based. I think they really get it. They have to. There are too many eyes and ears out there.”



**State Sen. James Seward (R-Milford)**

The DEC recently added to its website an interactive map (<https://nysdec.maps.arcgis.com/apps/webappviewer/index.html?id=ae91142c812a4ab997ba739ed9723e6e>) that allows members of the public to view the locations of the latest HABs reports. The website also allows individuals with smart phones to make their own HABs reports to the agency.

But Andiman of Earthjustice said there was far more work to be done.

“Even though we won the court case, there’s still a huge problem with lack of transparency,” Andiman said. “People don’t know what’s going on in facilities right near their homes.”

## Published by Peter Mantius

I am a journalist who lives in Watkins Glen, NY. I write about the environment and politics on my website, [Waterfrontonline.blog](https://waterfrontonline.blog). For more detail on my background, see the "Peter's Bio" section on that site. [View all posts by Peter Mantius](#)

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