

*Katie*

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
VERMONT AGENCY OF NATURAL RESOURCES,  
VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
AND  
VERMONT DEPARTMENT OF AGRICULTURE, FOOD AND MARKETS  
CONCERNING  
CAFO AND LFO REGULATION**

**Whereas**, the Vermont Agency of Natural Resources (ANR) is the designated lead State water quality agency, responsible for the management and enforcement of the water pollution control statutes of the State [Title 10 V.S.A. Chapters 37 and 47], the protection of ground water through Agency permit programs [Title 10 V.S.A. Chapter 48] and is authorized to apply administrative penalties [Title 10 V.S.A. Chapter 201];

**Whereas**, the Vermont Department of Agriculture, Food and Markets (DAFM) is the State agency responsible for implementing the Large Farm Operations (LFOs) permitting program pursuant to 6 V.S.A Chapter 215, and is responsible for assuring that farms are operated in compliance with Vermont's Accepted Agricultural Practice Rules (AAPs) such as controlling direct discharges;

**Whereas**, the two Departments and the Agency are committed to eliminating or reducing as much as possible agricultural pollutant loadings; and

**Whereas**, the two Departments and the Agency recognize the need for improved coordination and cooperation in achieving compliance by agricultural operators with the State's water pollution control laws and AAPs while preserving the profitability and productivity of Vermont's agricultural economy.

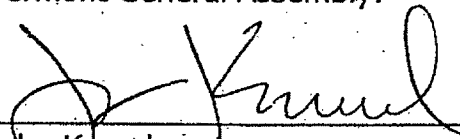
Now therefore, the Secretary of the Agency and the Commissioners of the two Departments agree to the following terms:

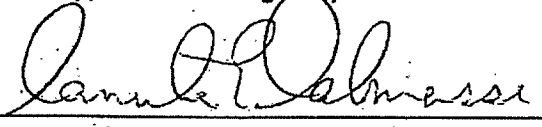
1. All LFO applications for permits must pro-actively demonstrate that the AAPs are met. Farms not meeting the LFO definition are still required by law to operate in accordance with the AAPs. While the small farm operations are not required to obtain permits, the DAFM does have the authority to pursue enforcement against violations of the AAPs.
2. The rationale and procedures contained in the following pages are hereby endorsed and shall be adhered to in an objective, professional and timely fashion by the staff of each Department and Agency.




3. Any proposed significant changes to the procedures contained in the MOU will be presented by the proponent for discussion prior to the formal adoption by the two Departments and Agency. Any amendments to this Memorandum of Understanding must be by the written and mutual consent of both Departments and the Agency.
4. The Commissioner of the Department of Agriculture, Food and Markets, the Commissioner of the Department of Environmental Conservation, and the Secretary of the Agency, or their respective designees, shall meet as necessary to review and, if necessary, to revise this memorandum to ensure compliance with the Clean Water Act and with the provisions of 10 V.S.A. §1258 and 6 V.S.A. Chapter 215.
5. The staff of both Departments and the Agency shall meet quarterly to discuss annual reports, MOUs, compliance, enforcement, CAFO and LFO permitting, and overall program coordination.
6. The LFO/CAFO program accomplishments shall be available to the public.
7. This memorandum may be amended at any time by mutual consent of the parties and after providing opportunity for public comment.

So signed this 14<sup>th</sup> day of October, 1999 and in effect until formally amended by the Agency of Natural Resources and the Departments of Environmental Conservation and Agriculture, Food and Markets or terminated by the Vermont General Assembly.

 10/22/99  
 John Kassel Date  
 Secretary, Vermont Agency of Natural Resources

 October 20, 1999  
 Canute Dalmasse Date  
 Commissioner, Vermont Department of Environmental Conservation

 October 14, 1999  
 Leon C. Graves Date  
 Commissioner, Vermont Department of Agriculture, Food and Markets

## **MEMORANDUM OF UNDERSTANDING CAFO AND LFO REGULATION IN VERMONT**

### **1. Introduction**

- A. For the first time in the history of farming, Vermont's large farms<sup>1</sup> are required to show that their farming practices meet standards, and are required to have a permit for operating, expanding, or constructing. A major aspect of the evaluation conducted as part of the permit process will be the farm's capability to manage nutrients (manure) generated on the farm, which is of concern to both the DAFM and the ANR. Improper or inadequate means of manure management can lead to a loss of nutrients from the farm, and hence, water quality impacts. It is this common area of interest that unites the Departments and Agency in developing this MOU.
- B. The Secretary of the Vermont Agency of Natural Resources (Secretary) is authorized under 10 V.S.A. §1250 to manage discharges to waters of the state by administering a permit program consistent with the National Pollutant Discharge Elimination System (NPDES) program established by §402 of Public Law 92-500 and with regulations promulgated in accordance with §§304(h)(2) of Public Law 92-500. The Secretary is also charged, under 10 V.S.A. §1258, with managing waters to obtain and maintain the classifications established.
- C. The Commissioner of the Vermont Department of Agriculture, Food and Markets (DAFM) is required under 6 V.S.A. Chap. 215 to assure that farms comply with agricultural non-point source reduction activities, which include: Accepted Agricultural Practice Rules (AAPs), Best Management Practices Cost Share Program, and the Large Farm Operations Program. Consequently, farms in compliance with these programs will not create direct discharges to the waters of the State.
- D. Section 301(a) of the Clean Water Act (CWA) establishes statutory requirements for the discharge of pollutants to waters of the United States. The CWA defines "concentrated animal feeding operations" (CAFOs) as point sources subject to the NPDES permit program. All CAFOs must be managed to ensure discharges to waters of the United States are prohibited. The DAFM intends to administer the regulatory aspects of the LFO program in accordance with state and federal technical criteria which, when complied with, will result in farms not causing direct discharges to waters of the state. The goal is that the farms will not be causing a direct discharge, and hence a CAFO permit would not be required.

## 2. Purpose

- A. The Commissioner of DAFM is required by the LFO law, to regulate the construction, operation, and the expansion of farms designed to house more than 950 animal units (AUs), or domestic fowl in numbers exceeding the limits in the state LFO law. These farms must pro-actively demonstrate that they can meet the following criteria:
- i. the operation will not result in a direct discharge;
  - ii. the operation will not generate noise, odor, or traffic that will adversely affect the public health, safety and welfare;
  - iii. the animal wastes generated by the construction or operation will be stored in an adequately sized facility;
  - iv. animal wastes, nutrients, pesticides, and agricultural wastes will be stored, applied, and disposed in compliance with the AAPs;
  - v. cropland will be managed in a manner that minimizes soil loss in conformance with the AAPs, and in accordance with a permitted nutrient management plan; and
  - vi. buffer zones of perennial vegetation between row crop land and the top of the bank of adjoining waters shall be maintained in accordance with AAPs .
- B. All farms, regardless of size, must meet the requirements of the AAPs (the AAPs are adopted rules); DAFM enforces violations by non-LFO farms as they are noted.
- C. The DAFM recognizes that some farms may have to upgrade facilities in order to meet some standards, which may require a financial expenditure. The DAFM will provide technical guidance and assistance to the farmer in developing permit applications, so that the cost of preparing the application for a LFO permit is minimal; and so that the effort required by the applicant in application preparation is minimal. The DAFM and the ANR will coordinate any additional information requests of the farmer that may be necessary for the ANR to make a CAFO permit determination.

### 3. Information Sharing

- A. The DAFM will share with ANR information DAFM obtains or becomes aware of regarding LFO and non-LFO direct discharges to waters. ANR will share such information it has available with DAFM. DAFM will also share with ANR information regarding DAFM investigations, results of complaints, draft permits, permit applications, and reports. Where direct discharges are concerned, the sharing of information will be automatic, and will be shared as soon as is reasonably possible.
- B. Requests for non-regulatory program information will be screened by the DAFM, according to the limitations of Title 6, Chapter 3, Section 61. Entitled "**Information collection and confidentiality,**" this section states that "The commissioner may collect information on subjects within the jurisdiction of the department, including data obtained from questionnaires, surveys, physical samples and laboratory analyses conducted by the department. Such information, shall be available upon request to the public, provided that it is presented in a form which does not disclose the identity of individual persons, households, or businesses from whom the information was obtained, or whose characteristics, activities, or products the information is about."
- C. Therefore, information regarding non-regulatory programs can be reported out by DAFM as aggregate information, not identifying individuals or businesses, or in some other fashion which does not reveal the source or location of the information.

### 4. Permits

- A. DAFM will submit a copy of all preliminary draft LFO permits to ANR for comment. DAFM will request that ANR provide written comments within 5 business days; comments will be accepted until permit issuance.
- B. ANR will submit copies of preliminary draft CAFO permits to DAFM for comment prior to placing the draft CAFO permit on 30 day public notice. ANR will request that DAFM provide written comments on the preliminary draft CAFO permit within 15 business days; in addition, ANR will accept comments from DAFM during the public comment period.

## 5. Permit Issuance

- A. A LFO is required to apply for a permit to operate, to have obtained a permit in order to expand a large farm or to construct new animal housing on a large farm. The permit application requires the LFO to demonstrate it will be able to operate all aspects of farming in compliance with the AAPs (e.g., has adequate land base and crop rotation to apply wastes in accordance with a permitted nutrient management plan); it has adequate manure storage capacity; and the waste storage system(s) are designed to prevent runoff from a 25-year, 24-hour storm event.
- B. All LFOs must obtain a permit to operate if the farm will house a specified number of livestock or domestic fowl, if the animals or fowl are kept on a tract or tracts of land not growing vegetation for 45 days during 365 days, and those tracts of land share a common border and share a common waste disposal system.
- C. Roles of DAFM and ANR in LFO and CAFO permit process
  - i. Nothing in this MOU is intended to alter the relationship/obligation between EPA and ANR with respect to Vermont's implementation of the 402 (NPDES) program. The relationship between ANR and EPA with respect to the NPDES program is defined in a separate MOA approved March 11, 1974.
  - ii. Issuance of a LFO permit by DAFM will not preclude the need for a NPDES permit from ANR. Any farm that meets the definition of CAFO and causes a discharge at less than the 25-year, 24-hour storm event requires an NPDES permit. The DAFM intends to administer the regulatory aspects of the LFO program in accordance with state and federal criteria which, when complied with, will result in farms not causing discharges to waters of the state, and the goal is that the farms will be meeting equivalent technical standards, and hence a CAFO permit would not be required.
  - iii. The automatic approval provision in the LFO law applying to a permit application not acted on within 45 business days does not apply to applications for NPDES permits. Similarly, the absence of a specific permit term for LFO permits does not alter the maximum five year term for NPDES permits.

- iv. This MOU and the LFO permit program do not affect the ANRs responsibility to make CAFO determinations for non-LFO farms pursuant to CAFO regulations (those housing between 301 and 1,000 AUs; or has been designated by the permitting authority on a case-by-case basis).
- D. Process for issuing LFO permits: Absent adopted regulations which elaborate on administrative requirements regarding the permit process, the process described in the LFO law prevails. That process requires the DAFM to make a permit determination within 45 business days of submitting a complete application (when the applicant has met its burden of proof with regard to the LFO permit criteria), and after holding an informational meeting (when construction or an expansion is proposed).
- E. Processes for issuing LFO and CAFO permits simultaneously and associated public review process: Should a CAFO permit be required for a facility which is under Vermont's LFO jurisdiction, then the same data set will be used by both departments to the extent consistent with applicable state and federal statutes and regulations. If additional information that was not included in the LFO application is required by ANR to make a CAFO permit determination, ANR and DAFM will coordinate requests for further information with the farmer.

## **6. Permit Administration**

- A. When it has been determined that both a CAFO permit and a LFO permit are required for the same facility, record keeping and reporting conditions shall, to the extent possible, be the same or substantially the same.
- B. Where both a CAFO permit and a LFO permit have been issued for the same facility, both departments are responsible for sharing information that each has received or becomes aware of through inspections, compliance efforts, discussions, meetings, or receipt of records or other documents. Each department is responsible for initiating an interdepartmental consultation for the purpose of sharing that information.

## **7. Permit Compliance and Inspections**

- A. The LFO inspection priority process will be based on several factors, including: compliance requirements within issued permits; whether or not reporting requirements have been met by the permittee; the general compliance status of the permitted project; and complaints.



B. LFO inspection process, annual monitoring:

- i. DAFM may annually inspect LFOs to ensure compliance with permit conditions. If compliance is noted, DAFM shall issue report to operator noting same.
- ii. If a permit violation is present, DAFM shall document and discuss its findings with the facility owner/operator within 30 business days of the site inspection, and make a determination regarding whether or not the DAFM will pursue enforcement. An infraction deemed to be major may require the issuance of an Administrative Order, a Restraining Order, or other enforcement document. Many minor infractions (such as incomplete reporting) can be resolved with voluntary compliance efforts. DAFM shall be responsible for documentation coordination and for contacting the complainant regarding inspection findings and corrective action schedule, if correction is required.
- iii. Within forty-five (45) business days after presenting findings and recommendations of the site inspection to the owner/operator, the DAFM will conduct a second site visit to determine if corrective measures have been implemented. If corrective actions have been implemented, DAFM shall issue a report to owner/operator noting satisfactory compliance. If this second site visit reveals the owner/operator has not installed recommended corrective measure or has failed to complete a plan for corrective measures, DAFM shall issue a notice of legal enforcement consistent with the provisions of 6 V.S.A. §4854.
- iv. DAFM shall notify ANR of any direct discharges noted during LFO inspections.
- v. ANR shall notify DAFM of any direct discharges noted during CAFO inspections.

C. CAFO inspection process options include:

- i. ANR may substitute the annual LFO inspection for a CAFO inspection to the extent allowable under applicable state and federal statute and regulations.

- ii ANR and DAFM may choose to conduct a joint CAFO and LFO inspection in which case a joint inspection report will be issued to the farmer.
- D. ANR shall retain primary responsibility for inspection, investigations and enforcement of CAFO program violations.
- E. ANR shall notify DAFM prior to initiating any follow-up investigations or enforcement actions in response to CAFO program and direct discharge violations.
- F. If deemed appropriate by both ANR and DAFM, ANR may defer enforcement of direct discharge violations to DAFM.
- G. In the event ANR defers enforcement action to DAFM, ANR agrees to provide assistance to DAFM as requested, consistent with ANR's expertise and available resources.
- H. Once enforcement action is taken by either ANR or DAFM, nothing in this MOU precludes the other department or agency from also taking enforcement action pursuant to applicable rules, regulations or laws. Enforcement and compliance information will be shared and discussed frequently between departments, however, with the goal of proceeding in an informed manner and enforcing jointly where appropriate.

## **8. Investigation of Complaints**

- A. Any information that DAFM or ANR receives regarding potential direct discharges will be conveyed by phone to the other department or agency as soon as practical. After a joint conference, a decision will be made as to which department or the agency will take the lead in investigating the activity. It is possible that both departments may take coordinated investigative actions simultaneously. Throughout the investigative process, both departments and the agency are responsible for keeping the other informed. This information exchange will be initiated by phone by whichever department or agency receives the first inquiry or complaint regarding a potential direct discharge. The information exchange (including identification of which watersheds the facilities are located within) will be accomplished continuously, either by phone, electronic transfer, or by the use of the postal system.

- B. The LFO complaint screening process is as described below:
- i. All complaints regarding LFOs will be investigated by DAFM after receipt of complaint. Upon receiving a complaint or notice of an alleged permit violation, DAFM may obtain background information concerning the farm operation and operator/owner in question and shall arrange a site visit within five (5) business days of complaint receipt. DAFM may request assistance from ANR to assess biological impacts to waters of the state or impacts to other water uses.
  - ii. If the nature of the described problem is a LFO problem and not a direct discharge, and the described problem is determined to be minor, DAFM may choose to "close the file" on the complaint. The DAFM shall reply, in a timely fashion, to the person making the complaint regarding what actions were taken in response to the complaint.
  - iii. If the nature of the described problem is indeterminate, DAFM shall contact ANR for a joint consultation, to determine whether a joint field investigation is necessary, or whether ANR prefers to investigate independently.
  - iv. If a direct discharge is or has occurred, but not originating from the facility, DAFM shall refer the matter to ANR.
  - v. DAFM shall notify ANR of any direct discharge noted during inspections.
  - vi. If a direct discharge is present, DAFM shall document and discuss its findings with the facility owner/operator within 30 business days of the site inspection, and make a determination regarding whether or not the DAFM will pursue enforcement. An infraction deemed to be major may require the issuance of an Administrative Order, a Restraining Order, or other enforcement document. Many minor infractions (such as incomplete reporting) can be resolved with voluntary compliance efforts. The DAFM shall be responsible for documentation coordination with the complainant regarding inspection findings and corrective action schedule.
  - vii. ANR may undertake an independent investigation and enforcement action of a direct discharge.

- C. If it is determined by the interdepartmental consultations that an enforcement activity involves only DAFM, the results of those enforcement actions will be summarized in writing and shared on an annual basis, as is currently accomplished as part of the Agricultural Nonpoint Source MOA (4.16.93). This written summary will be sent annually by mail, by January 31 of each year.
- D. If it is determined by the interdepartmental consultations that an enforcement activity involves only ANR, the results of those enforcement actions will be summarized in writing and shared with DAFM on an annual basis; this written summary will be sent annually by mail, by January 31 of each year.
- E. If it is determined by the interdepartmental consultations that one department or the other or the agency will take the lead in initiating an enforcement activity, that department or agency shall be responsible for coordinating communications with the other department and/or agency.

## **9. Enforcement**

- A. The VT ANR, as the designated lead water quality management agency, is responsible for the enforcement of the state's water pollution control laws. The Commissioners DAFM and DEC and the Secretary of the ANR agree to the division of enforcement responsibilities in the manner set forth below, until such time as alternative enforcement procedures are approved by both departments.
  - i. After a joint consultation, and a joint determination as to which department should be the lead department, that department may initiate enforcement action to correct any agricultural direct discharge or other violation. The Attorney General's Office also has authority to pursue enforcement under Title 10.
  - ii. In circumstances where the DAFM wishes to terminate an enforcement action, short of having achieved compliance, the DAFM shall provide notice to the ANR. The ANR may initiate a separate enforcement action upon receipt of such notice.
  - iii. The DAFM and ANR agree that the DAFM shall exercise complete authority in the execution and conduct of enforcement cases exclusively within its LFO jurisdiction and that any disagreement(s) related to the conduct or execution of enforcement action(s) shall be resolved on a program wide basis during an annual program review, not as an oversight

of a specific enforcement case. This provision shall not supersede the ANR's authority to initiate independent enforcement action. Notwithstanding DAFM's authority to execute LFO enforcement cases, this information may be communicated to ANR.

iv. The ANR and the DAFM agree that ANR may exercise complete authority in the execution and conduct of enforcement cases within the exclusive CAFO jurisdiction and that any disagreement(s) related to the conduct or execution of enforcement action(s) shall be resolved on a program wide basis during an annual program review, not as an oversight of a specific enforcement case. This provision shall not supersede the DAFM's authority to initiate independent enforcement action.

## **10. Reporting**

- A. DAFM will submit annual reports (by January 31 following each year that LFO permits are issued) to ANR and EPA which include: # of LFO permits issued, and the watersheds in which the facilities are located.
- B. ANR will submit annual reports (by January 31 following each year that CAFO permits are issued) to DAFM and EPA which include: # of CAFO permits issued, and the watersheds in which the facilities are located.
- C. The DAFM shall provide to ANR, and shall make available to the public, on or before January 31 of each year, an annual enforcement report which summarizes the nature of LFO violations identified, and the watersheds in which the violations occurred.
- D. The ANR shall provide to DAFM, and shall make available to the public, on or before January 31 of each year, an annual enforcement report which summarizes the nature of CAFO violations identified, and the watersheds in which the violations occurred.

## **11. Coordination with Basin Planning Activities**

- A. The Secretary shall retain state and federally mandated responsibilities related to basin planning, water quality management planning, the wasteload allocation process, and the TMDL process, except that the Secretary shall coordinate with the Commissioner DAFM about those aspects of basin planning and water quality management planning that relate to the agricultural nonpoint source and point source component of each plan.

- B. The Secretary shall be responsible for determining the extent to which designated water uses and water quality standards are supported or impaired and for determining the causes and sources of water quality problems. The Commissioner DAFM may assist the Secretary with these determinations.
  
- C. The Commissioner DAFM shall cooperate with the Secretary in basin and water quality management planning processes by preparing a draft of the appropriate sections of each plan that relate to the implementation of controls and programs affecting agricultural point source waste and runoff.

<sup>1</sup> Large Farm(s) or LFOs: barns, other structures, and the land devoted to a waste storage facility (designed to meet or exceed NRCS Practice Code #313) or other structures created as best management systems constructed to control direct discharges to waters, designed to:

1) house more than:

a) 950 animal units of livestock, calculated by adding:

<u>The # of</u> <u>Animal Type:</u>	<u>Multiply # by:</u>	<u>Equals AUs for this type</u>
Horses	2.0	
Sheep	0.1	
Swine > 55 #	0.4	
Dairy Cows	1.4	
Slaughter Cows	1.0	
Feeder Cows & Heifers	1.0	

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Total AUs on farm

or

- b) 2,377 swine weighing more than 25 kilograms (55 pounds); or
- c) 95,000 laying hens or broilers (if the facility has a continual flow water system); or
- d) 28,500 laying-hens or broilers (if the facility has a liquid manure system); or
- e) 4,750 ducks; or
- f) 52,250 turkeys; and

2) provided that the livestock or domestic fowl are:

- a) confined for more than 45 days; and
- b) vegetation doesn't grow in the confined area; and

3) provided that the livestock or domestic fowl are in a barn or adjacent barns owned by the same person; or

4) the barns share a common border and have a common waste storage facility.