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DEPT OF AGRICULTURE

DATE: September 17, 2007
TO: George Crombie, Secretary, Agency of Natural Resources
FROM: Roger Allbee, Secretary, Agency of Agriculture, Food and Markets
RE: Act 78 Memorandum of Understanding

Enclosed are two originals of the memorandum of understanding developed between our two agencies under Act 78 of 2005. Kindly return one original to me for my files after you have executed both originals. This MOU incorporates the prior Large Farm Operations MOU that the agencies developed in 1999, and now also addresses the EPA CAFO NPDES permit program and our Vermont state large, medium and small farm programs for water quality.

This new MOU should now accompany the ANR portion of the annual report that is due each January 1st until 2010 from our agencies under Act 78.

Our mutual agricultural non-point source pollution control MOU continues to be a separate expression of our cooperation under those aspects of chapter 47 of title 10.

As always, I continue to look forward to our close cooperation in improving water quality with Vermont state programs which are more comprehensive than under federal law, and that are designed to assist Vermont farmers in a meeting water quality goals.

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

WHEREAS, it is the policy of the State of Vermont to protect and enhance the quality, character and usefulness of its surface waters and to assure the public health, while managing the waters of the state to promote a healthy and prosperous agricultural community (10 VSA § 1250);

WHEREAS, it is the policy of the State of Vermont that farms meet certain standards in the handling and disposal of animal wastes in order to ensure that agricultural animal wastes do not enter the waters of the state (6 VSA § 4801).

WHEREAS, the Vermont Agency of Natural Resources (ANR) Department of Environmental Conservation 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 VSA Chapters 37 and 47), the protection of ground water through Agency regulatory programs (Title 10 VSA Chapter 48), is authorized to apply administrative penalties (Title 10 VSA Chapter 201), and is the delegated Clean Water Act National Pollutant Discharge Elimination System (NPDES) permitting authority pursuant to Section 402[b] of the federal Clean Water Act, 33 USC § 1342[b];

WHEREAS, the Vermont Agency of Agriculture, Food and Markets (AAF&M) is the State agency responsible for implementing the Large Farm Operation (LFO) and Medium Farm Operation (MFO) permitting programs pursuant to 6 VSA Chapter 215, and is also responsible for implementing and enforcing Vermont's Accepted Agricultural Practice Rules (AAPs) in order to reduce the amount of agricultural pollutants entering waters of the state and groundwater;

WHEREAS, the Legislature has directed AAF&M and ANR to coordinate and consult with each other with respect to LFO and MFO permitting in order to protect water quality by reducing and eliminating agricultural non-point source pollutants and point source discharges from MFOs and LFOs;

WHEREAS, the two Agencies are committed to reducing as much as possible agricultural pollutant loadings to waters of the state;

WHEREAS, the two Agencies recognize the need for continued and efficient coordination and cooperation in achieving compliance by agricultural operators with Vermont's water pollution control laws and agricultural water quality laws while preserving the profitability and productivity of Vermont's agricultural economy;

WHEREAS, Sections 301 and 502[14] of the federal Clean Water Act (33 USC §§ 1311 and 1362[14]) mandate the regulation of point source discharges from Concentrated Animal Feeding Operations (CAFOs) by requiring that such CAFOs obtain and comply with Clean Water Act NPDES permits;

WHEREAS, the Legislature has directed ANR, on or before July 1, 2007 to adopt rules implementing the NPDES regulations for discharges from CAFOs that require a NPDES permit, and, until that time, to evaluate applications to issue or deny CAFO NPDES permits based upon the substantive permitting standards and criteria specified by federal CAFO regulations (10 VSA § 1263[g]);

WHEREAS, on or about February 12, 2003, the United States Environmental Protection Agency (EPA) issued NPDES Permit Regulations and Effluent Limitation Guidelines for CAFOs (the EPA CAFO Rules);

WHEREAS, in Act 78 of the 2005-2006 Legislative Session, the Legislature has directed ANR and AAF&M to develop a Memorandum of Understanding regarding the implementation of the federal CAFO program and the relationship between the federal CAFO program and the State agricultural water quality requirements for large, medium and small farms under Chapter 215 of Title 6;

WHEREAS, the LFO, MFO and AAP programs are State agricultural water quality programs, which are each separate and distinct from the federal CAFO NPDES program;

WHEREAS, the Legislature has directed that the aforesaid Memorandum of Understanding must be consistent with the EPA CAFO Rules for discharges from CAFOs that require a NPDES permit;

WHEREAS, the Legislature has required all permits issued under the MFO program to meet standards (addressing waste management, waste storage, the development of nutrient management plans, carcass disposal, surface water and groundwater contamination, recordkeeping, reporting and monitoring provisions) which are at least as stringent as those established by the EPA CAFO Rules;

WHEREAS, AAF&M requires, as a matter of policy, that all permits issued under the LFO program shall meet standards (addressing waste management, waste storage, the development of nutrient management plans, carcass disposal, surface water and groundwater contamination, recordkeeping, reporting and monitoring provisions) which are at least as stringent as those established by the EPA CAFO Rules;

WHEREAS, on or about February 28, 2005, in the case of *Waterkeeper Alliance et al. v. EPA* (399 F.3d 486), the United States Court of Appeals for the Second Circuit invalidated numerous pertinent provisions of the EPA CAFO Rules;

WHEREAS, on or about December 21, 2005, EPA proposed to extend the compliance deadlines for CAFOs to obtain NPDES permits and develop an implement nutrient management plans from February and April of 2006 to July 31, 2007 in order for EPA to revise the federal CAFO Rules in response to the *Waterkeeper* decision;

WHEREAS, on or about July 18, 2007, EPA again proposed to extend the compliance deadlines for CAFOs to obtain NPDES permits and develop an implement nutrient management plans to February 27, 2009 in order for EPA to revise the federal CAFO Rules in response to the *Waterkeeper* decision;

WHEREAS, on or about June 30, 2006, EPA issued proposed revisions to the NPDES permitting requirements for CAFOs in response to the order issued by the Second Circuit Court of Appeals in the *Waterkeeper* case (71 Fed. Reg. 37744 [June 30, 2006]), and while the comment period on such proposed revisions to EPA's CAFO Rules has closed, EPA has yet to issue its final revisions to EPA's CAFO Rule;

WHEREAS, the relationship between the requirements of the federal CAFO program and Vermont's agricultural water quality requirements for large, medium and small farms is and will remain indeterminate until EPA's revisions to its CAFO Rules are final and any legal challenges thereto have been resolved;

WHEREAS, CAFO Rules will not be adopted by ANR until EPA's revisions to its CAFO Rules are final and any legal challenges thereto have been resolved;

WHEREAS, on or about October 22, 1999, ANR and AAF&M entered into a Memorandum of Understanding concerning the regulation of CAFOs and LFOs (hereinafter the 1999 LFO MOU), and;

WHEREAS, amendments to Vermont's Agricultural Water Quality Law in Act 78 of the 2005-2006 Legislative Session require the development of a Memorandum of Understanding between AAF&M and ANR with respect to MFO regulation, and also require modifications to the existing 1999 LFO MOU;

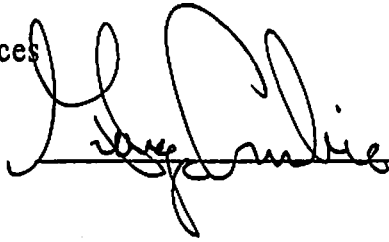
NOW THEREFORE, the Secretary of ANR and the Secretary of AAF&M (hereinafter the Respective Secretaries) agree to supersede the existing 1999 LFO MOU and to establish a Memorandum of Understanding with respect to MFO regulation on an interim basis pending the issuance of the revised and finalized

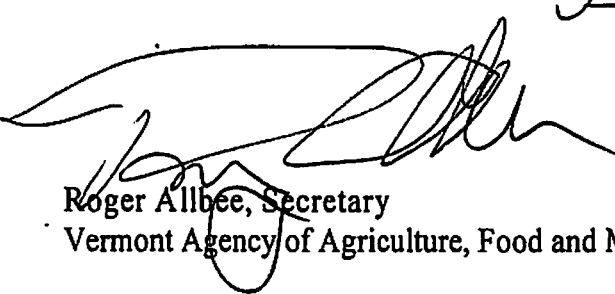
EPA CAFO Rule as follows:

1. All LFO and MFO applications for permits and LFO and MFO permits issued by AAF&M must demonstrate, among other things, that the AAPs are met. Farms not meeting the LFO or MFO definition are still required by law to operate in accordance with the AAPs. While the small farm operations are not generally required to obtain permits, the AAF&M has the authority to pursue enforcement against violations of the AAPs, and require a permit under Subchapter 5 of Chapter 215 Title 6.
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 ANR and AAF&M.
3. Any proposed changes to the procedures contained in this Memorandum of Understanding will be presented by the proponent Agency for discussion, in accordance with 6 VSA § 4810(b) prior to the public notice and comment process, for ultimate concurrence by ANR and AAF&M. Any amendments to this Memorandum of Understanding must be by the written and mutual consent of ANR and AAF&M.
4. This Memorandum of Understanding may be amended at any time by mutual consent of the parties and after providing opportunity for public comment, pursuant to 10 VSA § 1259(i), and shall be amended as necessary following the issuance of the revised and finalized EPA CAFO Rule. As required by 10 VSA § 1259(i), if this MOU is substantially revised, it first shall be subject to public notice and comment. The Secretary of ANR and the Secretary of AAF&M, or their respective duly authorized representatives, shall meet as necessary to review and, if necessary, to revise this memorandum to ensure compliance with the Clean Water Act, with the provisions of 10 VSA Chapter 47 as it relates to CAFOs, and with 6 VSA Chapter 215.
5. The staff of ANR and AAF&M shall meet with each other semi-annually to discuss compliance, enforcement, CAFO, LFO and MFO permitting, overall program coordination, and annual reports and MOUs, as necessary.
6. The MFO, LFO and CAFO program accomplishments shall be available to the public.
7. This Memorandum of Understanding amends and supersedes the 1999 LFO MOU as set forth herein.

So signed this day of _____, 2007, and in effect until superseded as set forth herein or terminated by the Vermont General Assembly.

George Crombie, Secretary,
Vermont Agency of Natural Resources


Date: 9/17/07


Roger Allbee, Secretary
Vermont Agency of Agriculture, Food and Markets

9/17/07 Date: _____

MEMORANDUM OF UNDERSTANDING REGARDING CAFO, LFO and MFO REGULATION IN VERMONT

1. Introduction

- A. Vermont's large farms are required to show that their farming practices meet standards particular to large farms, and are required to have an individual permit for operating. Vermont's medium-sized farms are required to show that their farming practices meet standards particular to medium-sized farms, and are required to be either covered under a general permit or have an individual permit for operating. The farm's capability to store and manage nutrients (manure and other agricultural wastes) generated on the farm, is of concern to both, the Agency of Agriculture, Food and Markets (AAF&M) and the Agency of Natural Resources (ANR), and is a major aspect of the evaluation conducted as part of the permit process. Improper or inadequate means of nutrient management can lead to a loss of nutrients from the farm and resultant water quality impacts or could lead to a discharge from a point source that could require a Concentrated Animal Feeding Operation (CAFO) permit. It is this common area of interest that unites AAF&M and ANR in developing this MOU.
- B. The Secretary of ANR is authorized under 10 VSA §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 Section 402 of the Clean Water Act, 33 USC § 1342, and with regulations promulgated in accordance with Section 304 of the Clean Water Act, 33 USC § 1314. The Secretary of ANR is also charged with the permitting and regulation of CAFOs under 10 VSA §1263, and with managing waters to obtain and maintain the classifications established (10 VSA § 1258).
- C. The Secretary of AAF&M is required under 6 VSA Chap. 215 to regulate agricultural water quality activities, which include: Accepted Agricultural Practice Rules (AAPs), the Large Farm Operations (LFO) Program and the Medium Farm Operations (MFO) Program. Consequently, farms in compliance with these programs should not create point source discharges that could require a CAFO permit.
- 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 that discharges are controlled. AAF&M intends to administer the regulatory aspects of the AAP, MFO and LFO program in

accordance with state and federal technical criteria which, when complied with, will result in the goal of farms not causing discharges from a point source that could otherwise require a CAFO permit.

2. Program Administration: Baseline LFO and MFO Requirements

- A. AAF&M is required by law to regulate the construction, operation, and the expansion of MFOs and LFOs. Both LFOs and MFOs must pro-actively demonstrate that they can meet the following criteria:
- i. the operation will not result in a point source discharge that could require a CAFO permit;
 - ii. the animal wastes generated by the operation will be stored in an adequately sized facility;
 - iii. MFOs and LFOs shall be operated in compliance with all AAPs;
 - iv. animal wastes, nutrients, and agricultural wastes will be managed consistent with permit requirements;
 - v. cropland will be managed in a manner that minimizes soil loss in accordance with an approved nutrient management plan;
 - vi. buffer zones of perennial vegetation between row crop land and the top of the bank of adjoining waters shall be maintained in accordance an approved nutrient management plan, and;
 - vii. no waste storage facility will be constructed, nor will a waste storage facility in existence on July 1, 2006 be expanded or modified, unless the facility meets the standard established for such facilities by the Natural Resources Conservation Service of the U.S. Department of Agriculture or an equivalent standard.
- B. In addition to all the foregoing, LFOs must also pro-actively demonstrate that the operation will not generate odor, noise, traffic, insects, flies or other pests that will adversely affect the public health, safety and welfare.

3. Program Administration: Information Sharing

- A. AAF&M will share with ANR information which AAF&M obtains or becomes aware of regarding point source discharges that could require a CAFO permit. ANR will share such information which it has or which becomes available with AAF&M. AAF&M will also share with ANR information regarding AAF&M investigations, results of complaints, draft permits, permit applications, and reports. ANR will also share with AAF&M information regarding ANR investigations, results of complaints, draft permits, permit applications, and reports. Where point source discharges that could require a CAFO permit are concerned, the sharing of information will be automatic, and will be shared as soon as is reasonably possible.
- B. By reason of the Legislature's directive that both ANR and AAF&M shall respond to discharges from agricultural operations (6 VSA §§ 4851 and 4858), ANR and AAF&M shall both be parties of record in any litigation with respect to any such discharges. Information obtained in any investigation of any such discharge by either AAF&M or ANR shall be considered and treated as confidential enforcement records which shall be available to the public after ruled discoverable by the court before which any litigation is pending, or upon final termination of any litigation or administrative enforcement action.

4. CAFO, LFO and MFO Permit Issuance

- A. Initial Facility Evaluation: AAF&M will conduct an initial inspection of each facility which applies for an LFO or MFO permit. AAF&M will consult with ANR with respect to any actual or potential discharges noted during the initial facility inspection. If AAF&M determines that the permit applicant may be discharging to waters of the state, ANR will conduct an additional facility inspection of any facility in order to determine if an NDPES permit is required for such facility.
- B. ANR will submit copies of preliminary draft CAFO permits to AAF&M for comment prior to placing the draft CAFO permit on 30 day public notice. ANR will request that AAF&M provide written comments on the preliminary draft CAFO permit within 15 business days; in addition, ANR will accept comments from AAF&M during the public comment period.

- C. LFO permits, and General and individual MFO permits shall meet standards at least as stringent as those established by federal CAFO regulations. Such standards shall address waste management, waste storage, development of nutrient management plans, carcass disposal, and surface water and groundwater contamination, plus recordkeeping, reporting, and monitoring provisions regarding such matters to ensure that the terms and conditions of the permit are being met

5. LFO Permit Issuance

- A. An LFO is required to apply for an AAF&M permit to operate, to expand, or to construct 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 and additional requirements prescribed by rule or permit; has adequate manure storage capacity; and the waste storage system(s) are designed to prevent point source discharges that require a CAFO permit.
- B. ANR may require a large farm to obtain an NPDES permit under 10 VSA §1263 in accordance with federal CAFO regulations.
- C. Roles of AAF&M and ANR in LFO and CAFO permit processes:
 - i. Nothing in this MOU is intended to alter the relationship/obligation between EPA and ANR with respect to Vermont's implementation of the Clean Water Act Section 402 (NPDES) permit program. The relationship between ANR and EPA with respect to the NPDES program is defined in a separate MOA approved March 11, 1974, and as may be amended.
 - ii. Consistent with Article VII[4] of the EPA/ANR MOA approved March 11, 1974, nothing in this MOU is intended to restrict the Clean Water Act enforcement powers of EPA under Section 309 of the Clean Water Act, 33 USC § 1319.
 - iii. Issuance of an LFO permit by AAF&M will not preclude the need for a NPDES permit from ANR for any farm with a point source discharge which meets the definition of CAFO or is designated as a CAFO, consistent with any revisions EPA may make to its CAFO Rule, and which requires an NPDES permit. AAF&M intends to administer the regulatory aspects of the MFO and LFO programs in accordance with state and federal criteria which, when complied with, will result in farms not causing point source discharges that

could require a CAFO permit. The goal is that the farms will be meeting equivalent technical standards, and hence a CAFO permit would not be required. This MOU and the MFO and LFO permit programs do not affect ANR's responsibility to make CAFO determinations for farms pursuant to CAFO regulations.

- iv. Prior to the issuance of an LFO permit, AAF&M, in consultation with ANR, shall issue a written determination regarding whether the permit applicant has established that there are no point source discharges that require a CAFO permit, pursuant to the federal CAFO regulations.
 - v. If AAF&M determines, in consultation with ANR upon review of an application for an LFO permit, that the permit applicant may be discharging to waters of the state, AAF&M and ANR shall respond to the discharge in accordance with this MOU.
- D. AAF&M shall conduct an informational meeting in a municipality when there is a proposal to construct a new barn, within the municipality, that would require a LFO permit.
 - E. AAF&M may conduct an informational meeting in a municipality in which a barn expansion is sought, if the barn is already subject to LFO permitting requirements.
 - F.. AAF&M shall upon request prepare in writing the response of AAF&M to matters raised during an informational meeting held on an LFO, or submitted to the secretary in writing.

6. MFO Permit Issuance

- A. An MFO is required to be covered under a State General Permit to operate a medium farm, or to obtain an individual permit. The permit application requires the MFO to demonstrate it will be able to operate all aspects of farming in compliance with the AAPs (has adequate land base and crop rotation to apply wastes in accordance with a permitted nutrient management plan); has adequate manure storage capacity; and the waste storage system(s) are designed to prevent discharges from point sources that could require a CAFO permit, according to AAF&M's Rules for the Issuance of General and Individual Medium and Small Farm Operation Permits.

- B. AAF&M may require a small farm or medium farm operation to apply for and obtain an individual MFO permit, or an operator of a farm may petition the AAF&M to request coverage for that farm under an individual permit.
- C. ANR may require a medium or a small farm to obtain an NPDES permit under 10 VSA §1263 pursuant to federal CAFO regulations. Coverage of a medium farm under the MFO General Permit or a medium or small farm under an individual MFO permit is rendered void by the issuance of an NPDES CAFO permit.
- D. AAF&M shall issue public notices and conduct public hearings regarding the issuance of general or individual MFO permits consistent with the requirements set forth in 40 C.F.R. Part 124.
- E. Processes for issuing CAFO permits which supersede and invalidate MFO permits:

Should a CAFO permit be required for a facility which is under Vermont's MFO jurisdiction, then the same data set will be used by both AAF&M and ANR to the extent consistent with applicable state and federal statutes and regulations. If additional information that was not included in the MFO application is required by ANR to make a CAFO permit determination, ANR and AAF&M will coordinate requests for further information with the farmer.

- F. Roles of AAF&M and ANR in MFO permit processes:
 - i. Issuance of coverage under an MFO General Permit or an Individual MFO Permit by AAF&M will not preclude the need for a NPDES permit from ANR for any farm with a point source discharge which meets the definition of CAFO or is designated as a CAFO, consistent with any revisions EPA may make to its CAFO Rule and which requires an NPDES permit. AAF&M intends to administer the regulatory aspects of the MFO program in accordance with state and federal criteria which, when complied with, will result in farms not causing discharges from point sources that could require a CAFO permit. The goal is that the farms will be meeting equivalent technical standards, and hence a CAFO permit would not be required. This MOU and the MFO permit program do not affect the ANR's responsibility to make CAFO determinations for farms pursuant to CAFO regulations.

- ii. AAF&M, in consultation with ANR, shall review any certification or notice of intent to comply (NOIC) under an MFO General Permit or application for an individual MFO permit with respect to the water quality impacts of the facility for which coverage is sought in order to verify whether the owner or operator of a medium farm has established that there will be no unpermitted discharge to waters of the state pursuant to the federal CAFO regulations that could require a CAFO Permit, consistent with any revisions EPA may make to its CAFO Rule. Within eighteen (18) months after receipt of the certification or NOIC, ANR and AAF&M shall verify that there will be no unpermitted discharge from the facility.
- iii. If AAF&M determines, in consultation with ANR upon review of an MFO which has been granted coverage under the MFO General Permit that the MFO may be discharging from a point source that could require a CAFO permit, AAF&M and ANR shall respond to the discharge in accordance with this MOU.
- iv. If AAF&M determines, in consultation with ANR upon review of an application for coverage under an individual MFO permit, that the permit applicant may be discharging from a point source that could require a CAFO permit, AAF&M and ANR shall respond to the discharge in accordance with this MOU.
- v. Prior to issuance of an individual MFO permit, AAF&M, in consultation with ANR, shall issue a written determination regarding whether the permit applicant has established that there will be no unpermitted discharge to waters of the state from a point source that could require a CAFO permit.

G. Process for issuing MFO General Permits:

- i. Owners and operators of an MFO seeking coverage under the MFO General Permit shall submit a Notice of Intent to Comply (NOIC) with the Conditions of the General Permit within 180 days of the effective date of the General Permit.
- ii. New farming operations and farming operations currently below the medium farm threshold, but prior to increasing the animal numbers to more than those defined by the MFO definition, shall submit a NOIC with the conditions of the MFO General Permit 90 days prior to meeting the defined limit.

H. Process for issuing MFO Individual Permits:

- i. Upon determination by AAF&M that an MFO individual permit is warranted, AAF&M will notify the owner or operator in writing by certified mail, or in person, that an application for an individual permit is required, and explain the process for requesting a hearing in the event that the owner or operator wishes to appeal AAF&M's determination. An appeal is made by submitting a request for a hearing in writing. AAF&M shall conduct the hearing in accordance with 6 VSA §11.
- ii. An owner or operator of a farm may also petition AAF&M to request issuance of an individual MFO permit.

7. Permit Administration

- A. Record keeping and reporting conditions for CAFO, LFO, and MFO permits shall, to the extent possible, be the same or substantially the same, except as otherwise required by law.
- B. Where a CAFO permit has been issued and supersedes and renders void an a MFO permit for a facility, ANR will be responsible for sharing with AAF&M information that it has received or becomes aware of through inspections, compliance efforts, discussions, meetings, or receipt of records or other documents.

8. MFO and LFO Permit Compliance and Inspections:

- A. The MFO and LFO inspection priority process will be based on several factors, including, without limitation: 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. MFO and LFO inspection process.
 - i. AAF&M may annually inspect MFOs and LFOs to ensure compliance with permit conditions, and shall inspect MFOs and LFOs at least once every five (5) years. If compliance is determined, AAF&M shall issue a report to the operator to that effect.

- ii. If a violation is present, AAF&M shall document and discuss its findings with the facility owner or operator within thirty (30) business days of the site inspection, and make a determination regarding whether or not AAF&M will pursue enforcement. If a discharge from a point source that could require a CAFO permit is noted, both ANR and AAF&M shall respond to the discharge from a point source that could require a CAFO permit consistent with this MOU. An infraction which does not involve a discharge from a point source that requires a CAFO permit and which is nonetheless 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 focused compliance efforts. AAF&M shall be responsible for documentation and coordination, if correction is required.
 - iii. After presenting findings and recommendations of the site inspection to the owner or operator, AAF&M will conduct a second site visit to determine if specified corrective measures have been implemented.
 - iv. AAF&M shall immediately notify ANR of any point source discharge that could require a CAFO permit that are noted during MFO or LFO inspections ANR shall notify AAF&M of any point source discharges that could require a CAFO permit which are noted during CAFO inspections.
- C. ANR and AAF&M may conduct a joint CAFO and LFO inspection, in which case, ANR will send a draft inspection report to AAF&M for comment prior to sending the report to the farmer. ANR will notify AAF&M if ANR intends to conduct an independent CAFO investigation of an LFO.
- D. ANR shall retain primary responsibility for inspection, investigations and enforcement of CAFO program violations, discharges from a point source that require a CAFO permit, and violations of Vermont water quality standards.
- E. ANR shall notify AAF&M prior to initiating any follow-up investigations or enforcement actions in response to CAFO program violations or point source discharges that could require a CAFO permit.
- F. If either AAF&M or ANR determine at any time that an LFO or MFO may be discharging from a point source that could require a CAFO permit, ANR and AAF&M shall respond cooperatively to the discharge in accordance

with this MOU. ANR shall coordinate with AAF&M with respect to enforcement of point source discharges that require a CAFO permit.

- G. If ANR discovers a violation while conducting an investigation, ANR shall notify AAF&M as soon as is reasonably possible, regarding the nature of the problem, the likelihood that the complaint involves a farm, and that the problem is not a point source discharge that could require a CAFO permit.
- H. Consistent with ANR's authority under 10 VSA § 1258(b) and the federal Clean Water Act, ANR retains primary enforcement jurisdiction and discretion with respect to any mutual ANR/AAF&M response to a discharge to waters of the state, pursuant but not limited to 10 VSA §§ 1275, 1272, 1258(b), 10 VSA Chapter 201, Section 402[b] of the federal Clean Water Act, 33 USC § 1342[b] and the March 11, 1974 Memorandum of Agreement between EPA and ANR regarding EPA's delegation of implementation of Section 402 of the Clean Water Act to ANR.
- I. Consistent with AAF&M's authority under 6 VSA §§ 1, 12, 13, 15, 16 and 17, AAF&M may also seek enforcement remedies, including reduction of herd size and administrative penalties, or take Corrective Actions pursuant to 6 VSA § 4812. The respective enforcement jurisdictions and authorities of AAF&M and ANR may, at the discretion of the respective agencies, be applied in conjunction in any mutual response to any violations which include a point source discharge that could require a CAFO permit.
- J. With regard to any such ANR/AAF&M mutual response, ANR agrees to provide assistance to AAF&M as requested, consistent with ANR's expertise and available resources.
- K. Once enforcement action is taken by either AAF&M and/or ANR, nothing in this MOU precludes the other 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.
- L. If deemed appropriate by both ANR and AAF&M, ANR may defer enforcement of point source discharges that could require a CAFO permit to the Office of the Attorney General.

9. Appellate Process

- A. Appeals of LFO Permit Decisions: An applicant aggrieved by any LFO permit decision of AAF&M may seek review by the environmental court within 30 days of the decision of the secretary as provided and limited by 6 VSA §4855.
- B. Appeals of MFO Permit Decisions: A person aggrieved by any MFO permit decision of AAF&M may seek review by the environmental court within 30 days of the decision of the secretary as provided and limited by 6 VSA §4861.
- C. Appeals of CAFO Permit Decisions: A person aggrieved by any CAFO permit decision of ANR may appeal ANR's decision to the environmental court within 30 days of the decision as provided and limited by 10 VSA Chapter 220.

10. Investigation of Complaints

The MFO and LFO complaint screening process is as described below:

- A. Upon receiving a complaint regarding an alleged discharge, the receiving agency, AAF&M or ANR, will obtain information concerning the nature of the complaint, the farm location, and operator/owner in question.
- B. If it can be determined from the information collected that the alleged discharge is, or may be, from a point source that could require a CAFO permit, ANR has the lead and shall conduct the investigation. If AAF&M is the receiving agency, AAF&M shall immediately transfer this information to the ANR Enforcement Division. If ANR is the receiving agency, ANR will advise AAF&M of the receipt of the information as soon as is practical. ANR may contact AAF&M to request a joint investigation if they deem that appropriate or desirable. If, through its investigation, ANR determines that the alleged discharge is not from a point source that could require a CAFO permit, ANR will immediately transfer the information to the AAF&M who will then conduct the investigation.
- C. If the nature of the problem is determined to be an MFO or LFO problem that does not involve a discharge from a point source that could require a CAFO permit, AAF&M has the lead and shall conduct the investigation. AAF&M shall arrange a site visit as soon as possible but in no event later than within five (5) business days of complaint receipt. AAF&M will respond according to Vermont's agricultural statutes, or AAF&M may choose to "close the file" on the complaint. AAF&M shall reply, in a

timely fashion, to the person making the complaint regarding what actions were taken in response to the complaint, and shall advise ANR accordingly. If ANR is the receiving agency, ANR shall transfer this information immediately to AAF&M. AAF&M may contact ANR to request a joint investigation if they deem that appropriate or desirable. If, through its investigation, AAF&M determines the alleged discharge is from a point source that could require a CAFO permit, AAF&M will immediately notify and transfer the information to ANR who will then conduct the investigation.

- D. If either agency receives information, the nature of which is described as indeterminate, the agencies shall, as soon as is reasonably possible, engage in a joint consultation, to determine which agency should take responsibility and conduct the investigation. In the event that the involved AAF&M Field Agent or ANR Environmental Enforcement Officer cannot reach a mutual determination as to whether an alleged discharge from a point source that could require a CAFO permit has occurred or is occurring, that matter will be advanced for resolution successively to the next respective levels of authority in each Agency until a mutual determination is reached. Nothing herein shall affect or impair the authority of the DEC Wastewater Management Division to make determinations of whether a CAFO permit is required in a particular situation. The same protocols and information sharing as described in B & C above shall be followed:
- E. If a discharge from a point source that requires a CAFO permit is occurring or has occurred, but does/did not originate from the farm facility, AAF&M shall refer the matter to ANR.

11. Enforcement

A. Enforcement of MFO and LFO violations

ANR, as the designated lead water quality management agency, is responsible for the enforcement of the state's water pollution control laws. AAF&M and ANR agree to the apportionment of enforcement responsibilities in the manner set forth below:

- i. After a joint consultation, and a joint determination as to which agency should be the lead agency, that agency may initiate enforcement action regarding any violation(s). ANR and AAF&M shall cooperatively respond to an allegation of a point source discharge that could require a CAFO permit pursuant to and consistent with 6 VSA §§ 4851[a], 4858[c][1] and 4858[d]. The

Attorney General's Office also has authority to pursue enforcement under Title 10.

- ii. AAF&M and ANR agree that each Agency shall exercise complete authority in the execution and conduct of enforcement cases exclusively within its jurisdiction and that any disagreement(s) related to the conduct or execution of enforcement action(s) shall be resolved or that matter will be advanced for resolution successively to the next respective levels of authority in each Agency until a mutual determination is reached. This provision shall not supersede the ANR's authority to initiate independent enforcement action.
 - iii. In circumstances where AAF&M wishes to terminate an enforcement action under its MFO and LFO jurisdiction short of having achieved compliance, AAF&M shall notify ANR. ANR may then initiate a separate enforcement action, but only after it has been determined that the violation has or will result in a point source discharge that requires a CAFO permit and/or has or will violate Vermont's Water Quality Standards.
- B. AAF&M may take corrective action regarding agricultural water quality violations pursuant to any of the enforcement authority granted to AAF&M in accordance with Title 6.
 - C. ANR may enforce the requirements for CAFO permits (including, without limitation, requiring that a farm obtain a CAFO permit) and the prohibition against unlawful discharges and violations of water quality standards pursuant to 10 VSA §1275 and 10 VSA Chapter 201. ANR may also issue an order pursuant to 10 VSA §1272 establishing reasonable and proper methods and procedures for the control of activities and the management of substances which cause point source discharges that require a CAFO permit or violations of water quality standards.
 - D. Administrative Orders issued by ANR are subject to judicial review pursuant to the provisions of 10 VSA § 8012.
 - E. Enforcement actions undertaken by AAF&M are subject to judicial review pursuant to the provisions of 6 VSA §§ 15 and 4812.

12. Reporting

- A. AAF&M will submit annual reports (by January 31 following each year that LFO and MFO permits are issued) to ANR, which shall include the number of LFO and MFO individual permits and MFOs covered under the state general permit, and the watersheds and river basins in which the facilities are located.
- B. ANR will submit annual reports (by January 31 following each year that CAFO permits are issued) to AAF&M which shall include the number of CAFO permits issued, and the watersheds and river basins in which the facilities are located.
- C. AAF&M 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 and MFO violations identified, corrective measures specified, and the watersheds and river basins in which the violations occurred.
- D. ANR shall provide to AAF&M, 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, corrective measures specified, and the watersheds and river basins in which the violations occurred.

13. Coordination with Basin Planning Activities

- A. ANR 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 ANR shall coordinate with AAF&M about those aspects of basin planning, water quality management planning and TMDLs that relate to the agricultural nonpoint source and point source component of each plan.
- B. ANR 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. AAF&M may assist ANR with these determinations.
- C. AAF&M shall cooperate with the ANR 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.