

DEPARTMENT OF ENVIRONMENTAL CONSERVATION LEGISLATIVE REPORT

Report Regarding MOU between Agency of Natural Resources and Agency of Agriculture, Food, and Markets

Year: 2021

Date reported: December 15, 2021

Authorizing statute: 6 VSA § 4810 (d)

Committees: Sen. Ag, House Ag/Forestry, Senate NRE, House NRFW

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Executive Summary

6 VSA 4810(d) requires that the Secretary of Agriculture, Food, and Markets (AAFM) and the Secretary of Natural Resources (ANR) enter into a memorandum of understanding (MOU) regarding agricultural non-point source pollution reduction, discharges from concentrated animal feeding operations, program administration, grant negotiation and sharing, and watershed planning. The statute also requires that the agencies submit separate reports annually to the Senate Committees on Agriculture, the House Committee on Agriculture and Forestry, the Senate Committee on Natural Resources and Energy, and the House Committee on Natural Resources, Fish, and Wildlife regarding the success of each agency in meeting performance measures for the memorandum of understanding. The performance measure results are shown in the table below and described in the subsequent table. This report focuses on enforcement metrics because they represent the largest volume of interactions between the two agencies. This report is submitted to the Vermont Legislature to highlight measures of success in the implementation of the MOU between ANR and AAFM.

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Vermont Department of Environmental Conservation

Performance Measure	2016	2017	2018	2019	2020	2021
Agricultural water quality complaints received	40	68	71	132	79	50
Agricultural water quality complaints closed ¹	49	50	55	126	78	61
Joint referrals to Attorney General's Office	Not tracked	4	2	4	2	0
Staff hours dedicated to process and communication improvement	No data	228	20	30	27	23.5

¹Because a complaint is closed when the investigation is resolved, complaints received during previous years may be closed in a current or future year.

Performance Measures Explained

Measure	Value	Limitations
The number of farm-related complaints received each year	Provides a general measure of how many citizen complaints are received each year. This also includes discharges documented by ANR staff. With improved communication from AAFM, this now also includes referrals from AAFM.	Represents only what the public knows to file a complaint on, or what can be seen by a regulator on a given day.
The number of farm-related complaints closed each year	Represents investigations of complaints and responsiveness. Represents resolution (mostly, compliance gained but often court orders or enforcement actions to do so) of violations.	Does not represent the actions taken by each agency to address violations identified by other measures, such as inspections, etc. Does not reflect if all required corrective actions have been implemented.
The number of joint farm related referrals to the Attorney General's Office	Represents the agreement between the two agencies that a violation required elevated enforcement and increased coordination.	Potential cases are driven by complaints and inspections, not by the agencies themselves; numbers may increase or decrease based on factors outside of the agencies control.

The number of staff hours specifically dedicated to process improvement and better communication	Demonstrates the commitment to increased cooperation required for successful implementation of the MOU.	Difficult to quantify the ancillary “relationship building” and knowledge building that occurs as informal coordination increases.
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Key Takeaways

- Time dedicated to formal and informal coordination between ANR and VAAFMM staff remains high
- Number of agricultural water quality complaints is generally increasing
- 2019 remains a peak year for complaints, largely due to increased precipitation and spreading on snow

Discussion

Pursuant to 10 VSA 1259(i) AAFM has primacy on non-point source pollution. ANR retains authority over point source pollution and is the authorized entity to administer the Clean Water Act on behalf of the Environmental Protection Agency in Vermont. Agricultural water quality complaints often do not include adequate information to determine whether a potential discharge is a point source or non-point source discharge without onsite follow up by the agencies. Because of this and since complaints are received by both agencies, intake of complaints may not initially be received by the agency responsible for the specific complaint. For these reasons, coordination and cooperation between the two agencies is critical. Further, AAFM has technical and financial resources that help to remedy violations that are corrected under ANRs enforcement authority and the two agencies often cooperate on enforcement matters. This report identifies several metrics that demonstrate ANRs involvement in agricultural water quality complaint investigation and cooperation between the agencies in seeking joint enforcement actions and conducting training to improve communication between the agencies. In addition to the enforcement related performance measures above, ANR and AAFM conducted 16 joint farm visits and three LFO permit consultation meetings.