

Concentrated Animal Feeding Operations (CAFO) Permitting in Vermont

- Background
 - Watershed Management Division
 - Clean Water Act
 - NPDES Delegation (1974)
 - NPDES CAFO
- De-delegation Petition
- EPA Findings
- CAFO Corrective Action Plan

De-delegation Petition

CLF, VNRC, LCC to EPA, March 16, 2022:

“Petitioners request that EPA either order Vermont to take necessary corrective actions to cure the serious deficiencies described below or withdraw program approval.”

- ANR is the only authorized delegated Clean Water Act (CWA) entity, but ANR and AAFM share implementation of water quality regulations on farms.
- Joint regulation is confusing and harms farms.
- ANR fails to monitor and enforce Nutrient Management Plans (NMPs), issue permits, and enforce violations.

EPA Findings

D. Cash (EPA) to J. Moore (ANR), September 6, 2024:

“Concentrated animal feeding operations (“CAFOs”) are point sources subject to the Federal NPDES permitting requirements in 40 C.F.R. §§ 122.23, 123.25.”

“No individual CAFO permit has been issued to a facility even though there are 37 large CAFOs within the state, 104 medium, and 1,000 small size farms that are potential CAFOs. CAFOs must not discharge unless the discharge is authorized by an NPDES permit, as per 40 C.F.R. § 122.23(d).”

“An NPDES permit is required at the time of discharge.”

EPA Findings

Cash (EPA) to J. Moore (ANR), September 6, 2024:

“Upon investigating the allegations contained in the petition, as supplemented by its independent inquiry, it is manifest that ANR is not managing, and currently does not have the staff capacity to manage, its authorized program in a manner that is consistent with the requirements of the CWA and 40 C.F.R. Part 123. Dual authority over the regulation of agricultural stormwater has existed in Vermont for decades now and has failed to ensure compliance with the CWA.”

EPA Findings

EPA reviewed information from ANR and AAFM concerning 113 complaints from February 2021 to January 2023.

- 26 complaints (23%) were unresolved.
- Despite information in the files including photos and written documentation of discharges, 51 complaints (45%) were concluded as no violation found and no NPDES permits were issued.
- 8 complaints (7%) were noted as violations of the CWA. Generally, when discharges were observed, the facility was allowed to correct the violation without additional enforcement actions or penalties.
- EPA conducted ten CAFO NPDES farm inspections between May 2023 and May 2024. Several of these farms had evidence of ongoing or recent discharges that appear unaddressed.

EPA Findings

D. Cash (EPA) to J. Moore (ANR), September 9, 2024:

“The corrective action plan must meet the following requirements:

1. ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO permit is required;
2. ANR personnel must review nutrient management plans and issue CAFO permits consistent with state and federal requirements;
3. ANR must comprehensively track permitting, monitoring and enforcement actions;
4. ANR must enforce against farms that are discharging without a permit;

EPA Findings

5. ANR must have sufficient personnel to fully implement the foregoing requirements in a timely manner;
6. ANR must seek the necessary statutory and regulatory authority to fully implement the CWA requirements; and
7. ANR must include a reasonable but expeditious timeline, including a date certain for the completion of a corrective action plan.”

CAFO Corrective Action Plan

- **Roles and Responsibilities** – ANR will clearly define roles, responsibilities, and authority of the two agencies, subject to public comment and EPA approval.
- **Permitting and Regulation** – ANR will determine if a farm needs a CAFO permit and will regulate farms, require permits and mandate compliance for point source discharges and non-point discharges where the farm has failed to follow an NMP requires a CAFO permit. AAFM will continue to regulate farms that don't need a CAFO permit.
- **Data Management** – AAFM and ANR will share data management systems and resources to increase and improve information sharing on inspection, permitting, monitoring, and enforcement activities.

CAFO Corrective Action Plan

- **Inspections and Nutrient Management Plans (NMPs)** – ANR and AAFM will jointly inspect medium and large farms. ANR will review all NMPs prior to inspections and determine if the NMPs are complying with the CWA and are being followed. NMPs will be subject to public notice and review.
- **Rules and Permits** – ANR will develop and adopt an updated Vermont CAFO Rule, will update the Medium Farm General CAFO Permit and Notice of Intent forms for General Permits and develop and adopt Individual CAFO Permits.
- **Reporting and Performance** – ANR will commit to annual reporting and tracking of Key Performance Indicators.

CAFO Corrective Action Plan

- **Staffing** – ANR currently has two staff focused on inspections and program development. The CAP proposes moving an existing position to the CAFO Program in addition to funding in the Governor’s proposed budget which requests \$850,000 for database and programmatic support, along with base funding for two additional positions. If approved, it may take until the end of 2025 or early 2026 to get these positions in place. In December 2026, ANR will further assess staff and resource needs, make recommendations, and outline steps and timelines necessary to secure such resources.

EPA Response to ANR Corrective Action Plan

K. Moraff (EPA) to J. Moore (ANR), January 17, 2025: The following summarizes EPA feedback:

1. Vermont must clearly identify ANR as the authority for regulating CAFOs – ANR cannot rely on AAFM to make determination regarding discharges/CAFO jurisdiction;
2. ANR must take steps to identify all farms that are discharging and need a CAFO permit (issuing a general permit that covers all farms, designate farms that need a permit by reviewing records of discharges, winter spreading, proximity to waters and conducting water quality sampling);

EPA Response to ANR Corrective Action Plan

3. EPA is concerned that the proposed staffing levels are not sufficient to complete the tasks required;
4. Explain in detail how ANR will inspect all potentially jurisdictional farms, determine what farms need a CAFO permit, review NMPs and issue CAFO permits consistent with federal CWA requirements;
5. Clarify that ANR will regulate all farms subject to the CWA (defined as Animal Feeding Operations);
6. Clarify that AAFM has no authority to regulate farms under the CWA;
7. Explain in detail how (while sharing the database) ANR will comprehensively track, monitor, and implement enforcement;

EPA Response to ANR Corrective Action Plan

8. Explain how ANR will regulate all farms, including small farms;
9. Clarify that NMPs must be at least as stringent as federal CAFO regulations;
10. Adopt a CAFO rule that complies with the CWA; and
11. Identify key interim milestones and deadlines for tracking progress.”

Next Steps

- Necessary statutory changes
- Permitting database development
- CAFO inspections
- Stakeholder process
- Rulemaking