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December 9, 2024

David W. Cash, Administrator
EPA Region 1
5 Post Office Square - Suite 100
Boston, MA 02109-3912

Sent via email to cash.david@epa.gov.

Dear Administrator Cash:

Please find attached the Agency of Natural Resources' draft Corrective Action Plan. The Agency of Natural Resources (VTANR) recognizes that the United States Environmental Protection Agency (EPA) has made definitive findings that indicate that the Vermont Concentrated Animal Feeding Operation (CAFO) program is not currently in compliance with the federal Clean Water Act (CWA). We acknowledge that the findings were based on a thorough review of records and inspections conducted by EPA staff. We take these findings seriously.

ANR is committed to implementing changes to the Vermont CAFO program to address the concerns articulated in your September 6, 2024 letter. The enclosed draft Corrective Action Plan sets forth a four-year timeline with specific action steps for achieving compliance with the CWA and the enabling federal regulations. We believe that this Corrective Action Plan, if approved by EPA, and fully implemented with the oversight and assistance of EPA, will bring the Vermont CAFO program into compliance with the federal CWA.

Please feel free to reach out to our team to discuss any of the details in the Corrective Action Plan.

Sincerely,



Julia Moore, P.E., Secretary
Vermont Agency of Natural Resources

cc: Thelma Murphy, Deputy Director, EPA Region 1 Water Division
Elena Mihaly, Vice President and Director, CLF
Lauren Hierl, Executive Director, VNRC
Lori Fisher, Executive Director, LCC
Anson Tebbetts, Secretary, AAFM
Steven Collier, General Counsel, AAFM
Pete LaFlamme, Director, DEC Watershed Management Division
Catherine Gjessing, General Counsel, ANR
Jason Batchelder, Commissioner, DEC



ANR DRAFT CORRECTIVE ACTION PLAN
December 9, 2024

EPA's corrective action plan requires:

- 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.*
- 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.*
- 7) *ANR must include a reasonable but expeditious timeline, including a date certain for a completion of the corrective action plan.*

High Level Summary

This Corrective Action Plan (CAP) outlines the steps necessary for ANR to expand the CAFO permit program over the next four years. The plan includes the development of internal administrative processes and legal framework to support an increase in inspections, NMP reviews, enforcement tracking, and issuance of CAFO Permits. The CAFO Program is currently staffed with 1 Program Manager (PM), and a Full-Time Equivalent (FTE). The expansion of the CAFO permit program requires additional personnel to effectively manage the increased workload and ensure compliance with regulatory standards and each action item depends on additional staff being fully hired and adequately trained. Minimum personnel required are outlined in the Staff Requirements section below. The CAP was developed to fulfill the following commitments:

- A) ANR will clearly define roles, responsibilities, and authority of the two agencies, which will be submitted to EPA for approval and will be subject to public notice and comment.
 1. ANR will determine if the farm needs a NPDES CAFO permit.
 - a. Point source discharge requires CAFO permit.

- b. Non-point discharges where the farm has failed to follow an NMP requires a CAFO permit.
- 2. ANR will regulate discharging farms that require a federal NPDES CAFO permit.
- 3. ANR will enforce against farms that are discharging without a permit.
- 4. AAFM will continue to regulate all farms that don't need a CAFO permit.
- B) AAFM and ANR will share data management systems and resources to increase and improve information sharing on inspection, permitting, monitoring, and enforcement activities.
- C) ANR and AAFM will jointly inspect medium and large farms. ANR will review all NMPs prior to inspections and determine if the NMPs are sufficient and being followed. ANR will review all NMPs for CAFOs and provide notice and public review of the NMPs in accordance with 10 VSA Chapter 170.
- D) ANR will develop and adopt an updated Vermont CAFO Rule.
- E) ANR will update the Medium Farm General CAFO Permit and Notice of Intent forms for General Permits and develop and adopt Individual CAFO Permits.
- F) ANR will commit to annual reporting and tracking of Key Performance Indicators.

Staffing and Database

Staff Requirements:

Year 1 (+1 additional FTE and a contract for at least 2 inspectors and if feasible, CAFO program development):

- ANR will begin the process of reassigning a vacant position for compliance and enforcement support to the CAFO Program. Commence hiring a person with regulatory farm experience upon receiving EPA approval.
- ANR will request funding for a contract to support at least two regulatory inspectors. ANR will work to execute the contract by September 1, 2025, however timing will depend on EPA approval, funding, and timely contract approval.
- ANR will also request 2 additional staff members and the funding to support them in a CAFO legislative initiative.

Year 2 (+ 2 additional FTE for inspection, NMP and Permitting Support):

- All above-described positions will be placed within the CAFO Program.
- In December of 2026, ANR will assess staff needs, make recommendations regarding staff and resources and submit a report to EPA that details the steps and timelines necessary to secure any recommended staff and resources.

Year 3-4 (TBD):

- Seek approval of the report submitted to EPA and implement recommendations.

Database Requirements:

Year 1: Database access and report template development: Immediate access for mapping and inspection purposes, including training from AAFM.

- ANR and the administration are building a budget request that includes funding for updating and sharing the existing AAFM databases so that ANR has access.

Year 2-4: Continued access to database and development of shared tracking system for enforcement and referrals.

- New server space, Development of CAFO related templates for inspections as well as enforcement and permit tracking specific to the CAFO program will need to be developed.

Timeline and Action Steps – Timeline is dependent on EPA approval

Year 1 (2025)

Action Item	Details
CAFO Program Development	<ul style="list-style-type: none">• Identify and begin to develop internal processes to support program priorities and expansion.
	<ul style="list-style-type: none">• ANR to clearly define revised roles, responsibilities and authority for CAFO program and clarify AAFM roles, etc. Publicly notice draft and finalize – document will be subject to EPA approval and will be submitted within 180 days of EPA CAP approval or September 1, 2025, whichever comes first.<ul style="list-style-type: none">a. Establish working group with representatives from both AAFM and ANR to facilitate improved communication.
	<ul style="list-style-type: none">• Identify administrative processes and financial resources needed to support the CAFO Program.

	<ul style="list-style-type: none"> • Identify new technologies or upgrades needed to support CAFO Program Expansion and facilitate joint data sharing. <ul style="list-style-type: none"> a. Develop CAFO specific templates for use with AAFM WQ Database for inspections and enforcement visits b. Invest in necessary hard and software to conduct inspections c. Gain access to AAFM Inspection Reports as needed • Provide Necessary Training, onboarding for new staff on regulatory requirements, and joint training sessions for ANR and AAFM staff on their roles prior to inspections. • Begin to set up program support services scope with BOSS as needed, including technology and database support, permitting and compliance Administration. <ul style="list-style-type: none"> a. Existing databases for enforcement tracking and compliance directives will need to be integrated with WQ database and new systems will need to be developed to accommodate CAFO permitting and enhanced compliance and enforcement tracking. • Ensure proper filing and reporting systems in place. <ul style="list-style-type: none"> a. Partner with AAFM for technical support to utilize a similar SharePoint site, allowing for better coordination and transparency.
Legal Framework	<ul style="list-style-type: none"> • Pursue initial statutory and legal requirements to incorporate CAFO definitions and authorities for ANR. To be initiated during the 2025 legislative session. See Attachment A. • Revise Medium Farm General Permit and Notice of Intent forms for General Permits; development procedure for public notice; conduct outreach and notice in accordance with 10 V.S.A. Chapter 170.
Outreach	<ul style="list-style-type: none"> • Develop an effective communications plan to reach out to agricultural stakeholders to inform them on the CAFO Program. • Begin to build relationships with stakeholders and local partners.
Additional Staff Needs	<ul style="list-style-type: none"> • A contract for at least inspectors to support additional inspections (and if feasible CAFO program development), plus 1 FTE to support compliance and enforcement activities. Seek to finalize contract by 9/1/25.
Inspections and Complaint Investigations	<ul style="list-style-type: none"> • Compile an inspection priority farm list based on recent AAFM referrals, EPA data and feedback, and other information available. • Develop a CAFO inspection checklist and criteria for determining whether a CAFO permit is necessary.

	<ul style="list-style-type: none"> • Conduct 3 Large and 7 Medium Farm Inspections, as previously agreed upon with EPA, from the priority list (unless already undergoing DEC or AGO enforcement). • Continue complaint driven investigations by EEOs for Small Farms. • Write up inspection report findings for any items that would fall under CAFO jurisdiction. • Work with agricultural partners to develop a list of BMPs that inspected farms would need to implement to achieve compliance with a CAFO permit.
NMP Review	<ul style="list-style-type: none"> • Review and assess existing NMP requirements for compliance with a CAFO Permit including reporting. Identify necessary updates and develop procedures for review. • Establish Vermont procedures and data systems for making Permitted CAFO NMPs publicly accessible. • Expand necessary training and expertise to conduct NMP reviews. • Develop NMP guidance and checklists for ANR-led inspections. • Review NMP implementation at inspections, flag risks, and monitor for compliance. • ANR will have access to any NMPS on file at AAFM, and AAFM will coordinate with ANR for NMP review and technical assistance prior to inspections.
CAFO Permitting	<ul style="list-style-type: none"> • Compile a baseline assessment of CAFO operations in Vermont, using recent AAFM referrals, EPA data and feedback, and other information available to identify potential unpermitted CAFOs. • Develop Individual Permit application and CAFO Permit templates. Provide permit drafts to EPA for review and feedback. Conduct outreach and notice in accordance with 10 V.S.A. Chapter 170. • Develop the CAFO permit application system. • Establish CAFO Permit Criteria (eligibility and requirements)
Compliance and Enforcement	<ul style="list-style-type: none"> • Continue to initiate enforcement on a case-by-case basis and advance active enforcement cases. • Continued use of EEOs to investigate complaints from the public and unpermitted discharges on Small Farms. • Increase coordination between ECD and CAFO Program prior to investigations and provide training to EEOs investigating agricultural complaints.
Annual Reporting	<ul style="list-style-type: none"> • Develop outline for annual reporting and Key Performance Indicators related to CAFO Inspections, permitting and enforcement.

Year 2 (2026)

Action Item	Details
CAFO Program Development	<ul style="list-style-type: none"> • Continue to develop internal policies and guidelines and implement policies to support program priorities and expansion.
	<ul style="list-style-type: none"> • Continue to execute the finalized document related to ANR and AAFM, implementing roles, responsibilities and processes outlined. <ul style="list-style-type: none"> a. The AAFM and ANR working group meets at least biannually
	<ul style="list-style-type: none"> • Provide Necessary Training and onboarding for new staff and designated EEO(s). <ul style="list-style-type: none"> a. Collaborate with AAFM to and jointly conduct training for staff on inspection protocols, database entry. b. Utilize EPA to provide training for inspectors and staff on CWA. c. Develop internal training materials for CAFO as well as pursue training opportunities for CAFO Program staff.
	<ul style="list-style-type: none"> • Continue the development of databases for inspections and enforcement tracking. <ul style="list-style-type: none"> a. Implement a pilot data-sharing system that allows both agencies to access farm inspection and permit data b. Develop processes for ongoing data sharing on compliance, monitoring and enforcement actions.
	<ul style="list-style-type: none"> • Continue to expand administrative processes and identify financial and other resources needed to support the CAFO Program.
Legal Framework	<ul style="list-style-type: none"> • Complete a draft CAFO Rule and share the draft with EPA, Petitioners and AAFM for feedback. Conduct outreach on CAFO Rule with farmers and other stakeholders, to include at least 3 public informational meetings.
	<ul style="list-style-type: none"> • Commence rulemaking for CAFO Rule by filing with ICAR.
	<ul style="list-style-type: none"> • Assess whether additional statutory changes are necessary for proposal in Jan of 2027.
Outreach	<ul style="list-style-type: none"> • Employ communications plan to reach out to agricultural stakeholders to inform them on the CAFO Program and provide support for permit compliance.
Additional Staff Needs	<ul style="list-style-type: none"> • Hire 2 FTEs to support additional inspections, NMP review, permitting and enforcement activities.
	<ul style="list-style-type: none"> • Review and Assess staffing needs at ANR and draft a proposal for additional staff/ create new budget positions if deemed necessary.

Inspections and Complaint Investigations	<ul style="list-style-type: none"> Continue and expand joint inspections with ANR and AAFM: Inspect all scheduled MFO's and any farms identified as a priority farm in year 1 jointly with AAFM. Develop a procedure to determine which farms are priority – based on factors such as: WQ history, citizen complaints, EPA recommendations, mapping tools which indicate risks of discharging such as proximity to waters and slope. <ul style="list-style-type: none"> Inspect LFOs and any scheduled MFOs from the priority list as staffing allows.
	<ul style="list-style-type: none"> Continue complaint driven investigations by EEOs for Small Farms.
	<ul style="list-style-type: none"> Write up inspection report findings for any items that would fall under CAFO jurisdiction.
NMP Review	<ul style="list-style-type: none"> Review NMPs alongside CAFO Permit applications and in cases of complaints or referrals ensure they are sufficient and being followed.
	<ul style="list-style-type: none"> Dependent on the readiness of internal systems, make NMPs for permitted CAFOs available to the public.
CAFO Permitting	<ul style="list-style-type: none"> Initiate process to require CAFO Permit applications for discharging Large Farms and provide farms with application materials.
	<ul style="list-style-type: none"> Work with agricultural partners to refine and improve list of BMPs that inspected farms would need to implement to achieve compliance with a CAFO permit.
	<ul style="list-style-type: none"> Issue Individual CAFO Permits on Large and priority farms with compliance schedules. Timing depends on internal systems being ready for applications and staff resources.
Compliance and Enforcement	<ul style="list-style-type: none"> Continue to initiate enforcement on a case-by-case basis and advance active enforcement cases.
	<ul style="list-style-type: none"> Develop a clear, documented enforcement process for farms discharging without a CAFO permit.
	<ul style="list-style-type: none"> Draft a compliance and enforcement strategy to identify and find solutions for repeat offenders or permit non-compliance.
Annual Reporting	<ul style="list-style-type: none"> Begin to input and track data for annual reporting and Key Performance Indicators related to CAFO Inspections, permitting and enforcement

Year 3 (2027)

Action Item	Details
CAFO Program Development	<ul style="list-style-type: none"> Continue to develop internal policies to support program priorities and expansion.
	<ul style="list-style-type: none"> Adjust from Program Development to Continuous Improvement and Maintenance.
	<ul style="list-style-type: none"> Complete compliance and enforcement tracking database.
Legal Framework	<ul style="list-style-type: none"> ANR staff will adopt a Vermont CAFO Rule on or before December 31, 2027.
Outreach	<ul style="list-style-type: none"> Begin to develop outreach materials and/or develop training for CAFO operators on best practices and regulatory compliance.
Additional Staff Needs	<ul style="list-style-type: none"> Submit staffing report to EPA and implement recommendations to develop a long-term, sustainable plan for staffing.
Inspections and Complaint Investigations	<ul style="list-style-type: none"> Continue Joint inspections with ANR and AAFM: <ol style="list-style-type: none"> ANR will determine and commit to a regular inspection schedule as staffing allows to inspect all potentially jurisdictional farms.
	<ul style="list-style-type: none"> Continue complaint driven investigations by EEOs for Small Farms.
	<ul style="list-style-type: none"> Write up inspection report findings for any items that would fall under CAFO jurisdiction.
	<ul style="list-style-type: none"> Work with agricultural partners to refine and improve list of BMPs that inspected farms would need to implement on their farms to achieve compliance with a CAFO permit.
NMP Review	<ul style="list-style-type: none"> Review NMPs alongside CAFO Permit applications and in cases of complaints or referrals from AAFM to ensure that they are sufficient and being followed.
	<ul style="list-style-type: none"> Make NMPs for permitted CAFOs available to the public as required.
CAFO Permitting	<ul style="list-style-type: none"> Expand CAFO Permit applications to discharging Large and Medium Farms, and designated Small CAFOs; and provide farms with application materials.
	<ul style="list-style-type: none"> Expand issuance of Individual CAFO Permits with compliance schedules.
Compliance and Enforcement	<ul style="list-style-type: none"> Route non-compliant or non-corrected enforcement cases toward a CAFO permit if applicable.
Annual Reporting	<ul style="list-style-type: none"> Continue to input and track data for annual reporting and Key Performance Indicators related to CAFO Inspections, permitting and enforcement. <ol style="list-style-type: none"> Focus on public facing reporting being readily available for program transparency

Year 4 (2028)

Action Item	Details
CAFO Program Development	<ul style="list-style-type: none"> • Review and Update CAFO Program Procedures. Analyze data and feedback available from inspections and permits to identify areas for improvement <ul style="list-style-type: none"> a. Review the effectiveness of the new CAFO Rule, Permits and inspection and enforcement processes b. Assess efficacy of shared jurisdiction, success in preventing discharges, and assess if further expansion of CAFO Program is needed. c. Adjust strategies and practices as necessary based on feedback • Assess and amend the compliance and enforcement tracking database as necessary.
Legal Framework	<ul style="list-style-type: none"> • Review effectiveness of Legal Framework, gather input and make plan to adjust or expand as necessary.
Outreach	<ul style="list-style-type: none"> • Evaluate and expand outreach to CAFO operators.
Additional Staff Needs	<ul style="list-style-type: none"> • Continue to implement recommendations and make adjustments for long-term, sustainability of program.
Inspections and Complaint Investigations	<ul style="list-style-type: none"> • Continue joint inspections with ANR and AAFM: <ul style="list-style-type: none"> a. ANR will determine and commit to a regular inspection schedule as staffing allows. b. ANR will review inspection frequency for permitted CAFOs and prioritization to evaluate any changes that need to be made. c. Continue complaint driven investigations by EEOs for Small Farms to be supported by CAFO program staff if resources allow.
NMP Review	<ul style="list-style-type: none"> • Review NMP and public notice process and identify areas to improve efficiency and regulatory compliance.
CAFO Permitting	<ul style="list-style-type: none"> • ANR will review the success of the permit program for CAFOs in terms of compliance to evaluate any changes that need to be made.
Compliance and Enforcement	<ul style="list-style-type: none"> • Reevaluate enforcement strategy to determine if enforcement is sufficient for non-compliant farms.
Annual Reporting	<ul style="list-style-type: none"> • Evaluate and adjust where needed, continue to input and track data for annual reporting and Key Performance Indicators related to CAFO Inspections, permitting and enforcement.

ATTACHMENT A

1. Develop and propose a comprehensive package of statutory changes, including 2 additional positions, contracting authority for program support, including inspection and NMP review, and funding to support staffing, contract, and database development.
2. Revise Title 10
 - a. § 1251. Include/amend definitions to conform with CWA – Add continuous and daily discharge, add pollutant definition and include in waste and discharge definitions, amend waters to include wetlands with a significant nexus to waters consistent with federal rules and caselaw.
 - b. Create a new definition section for CAFOs – define the following; AFO, CAFO, concentrated aquatic production facility, land application, LFO, manure, MFO, point source, process waste water, production area, Secretary, SAFO, small CAFO.
 - c. Create new CAFO powers of Secretary section – rulemaking, designation of CAFOS, same access to property and records as AAFM, receive funding, cooperation with federal and state agencies, appointment and contracting powers.
 - d. New CAFO section: Secretary must inspect on site before requiring a permit, Ag sw for CAFO not subject to NPDES permit unless not in compliance with NMP; LFO Ag sw not subject to NPDES permit unless not in compliance with NMP, AFOs must retain records. Include specifics on types and thresholds of evidence needed to prove a farm is discharging/configured to discharge and meets threshold for a CAFO permit and enforcement. Clarify that presumption of compliance of RAPS is not applicable to CAFOs.
 - e. § 1259. a) Pollutant added to discharge prohibition. f) Exemptions for discharges of ag sw and silviculture activities – language amended to clarify that such discharges must also comply/be consistent with federal CWA and CAFO requirements. i) amended to direct establishment of new document to replace MOU by 9/1/24, subject to EPA approval and public input, 5-year review cycle.
 - f. § 1263. a) Add “or is required to apply for a CAFO permit” g) delete rule deadline and insert new deadlines for CAFO permits. Add authority to require individual permits, amendments, and revocation in accordance with 3 VSA 814. Require farms to retain coverage of CAFO for the term of the 5 year permit. If farmer chooses to not to renew, the farmer can demonstrate that there is no reasonable potential for a discharge to occur. Secretary determines whether farmer has made a sufficient demonstration.

- g. § 1264. Amend d) 1) A) and C) to clarify that ag stormwater and silvicultural source activities must be in compliance with the CWA as determined by the Secretary.
- h. § 1266b. Add language that states: Notwithstanding any other language in this section, the Secretary retains the authority to require compliance with any CAFO permits and regulations.
- i. Create 2 new positions, request \$ for contractors and database work.

Note that in the context of Title 10 amendments – “Secretary” refers to the Secretary of ANR.