

## **Background and Timeline of the Vermont NPDES De-delegation Petition and Corrective Action Plan**

**March 16, 2022** – Conservation Law Foundation (CLF), Lake Champlain Committee (LCC), and Vermont Natural Resource Council (VNRC) filed a de-delegation petition (Petition) with the US Environmental Protection Agency (EPA).

The Petition asserted the following:

- Agency of Natural Resources (ANR) is the only authorized delegated Clean Water Act (CWA) entity but ANR and Agency of Agriculture Farms and Markets (AAFM) share implementation of water quality regulations on farms.
- ANR and AAFM collaboration is problematic. AAFM does not agree with ANR regarding what constitutes a point source, ignores ANR authority, fails to complete inspection reports and timely refer point source discharges to ANR.
- Joint regulation is confusing and harms farms.
- ANR fails to monitor and enforce Nutrient Management Plans (NMPs), issue permits, and enforce violations.
- Corrective action is necessary.

**2022 – 2024** – EPA reviews petition and conducts its own independent investigation, including farm inspections and review of complaints and records.

**2024** – CLF, LCC, VNRC, and ANR commence settlement discussions with EPA at the request of EPA.

**September 9, 2024** – On September 9, 2024 ANR received EPA letter dated September 6, 2024, asserting that, based on EPA's investigations, including farm inspections, Vermont law does not comply with the CWA and enabling federal regulations.

Specifically, the letter states the following:

- Shared delegation of authority to AAFM and ANR is impermissible under the CWA. Shared responsibility for CAFO regulation with AAFM was part of a prior de-delegation petition in 2008, has been in place for decades, and has not resulted in compliance with federal law.
- EPA advises that the only viable option for compliance is to consolidate the CAFO program within ANR and to fully staff and resource the program within ANR and directs ANR to promulgate a corrective work plan.

- EPA reviewed 113 ANR and AAFM complaints from February 2021 to January 2023. The results are as follows: 26 complaints or 23% were unresolved; despite evidence including photos, 51 complaints or 45% were concluded as no violation found and no NPDES permits were issued; 8 complaints or 7% were noted as violations of the CWA. Generally, the facility was allowed to correct the violation without additional enforcement actions or penalties. Some actions were forwarded to the state attorney general, but the status is unclear.
- In May 2023 and May 2024, EPA conducted ten farm inspections in Vermont. For Inspections, May 2023 and May 2024, EPA conducted 10 farm inspections in Vermont. Several farms had evidence of ongoing or recent unaddressed discharges and no CAFO permits.
- EPA requires a Corrective Action Plan (CAP) in 90 days. The CAP 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;
  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.

**December 9, 2024** – ANR submits a CAP drafted in collaboration with AAFM. The CAP focuses on aligning the Vermont water quality regulation of farms with the federal CWA.

The CAP sets forth a 4-year plan that includes:

- **Statutory Authority** – Seek statutory authority necessary to develop and implement a comprehensive CAFO permitting program.
- **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.
- **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.
- **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.

**January 17, 2025** – EPA responds to ANR's proposed CAP and directs ANR to submit additional information/commitments.

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);

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;
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.

**March 18, 2025** – ANR will submit to EPA an updated CAP to address the deficiencies described above.