

ANNUAL REPORT REGARDING PERFORMANCE MEASURES FOR THE
MEMORANDUM OF UNDERSTANDING BETWEEN THE AGENCY OF NATURAL
RESOURCES AND AGENCY OF AGRICULTURE, FOOD AND MARKETS

2015 Act No. 64, codified at 6 V.S.A. § 4810(d)

Submitted to the:

Senate Committee on Agriculture

House Committee on Agriculture and Forestry

Senate Committee on Natural Resources and Energy

House Committee on Natural Resources, Fish, and Wildlife

By the:

Vermont Agency of Agriculture, Food and Markets

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6 V.S.A. § 4810 (d) Cooperation and coordination.

“The Secretary of Agriculture, Food and Markets shall coordinate with the Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for reducing and eliminating agricultural non-point source pollutants and discharges from concentrated animal feeding operations. On or before July 1, 2016, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall revise the memorandum of understanding for the non-point program describing program administration, grant negotiation, grant sharing, and how they will coordinate watershed planning activities to comply with Public Law 92-500. The memorandum of understanding shall describe how the agencies will implement the antidegradation implementation policy, including how the agencies will apply the antidegradation implementation policy to new sources of agricultural non-point source pollutants. The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall also develop a memorandum of understanding according to the public notice and comment process of 10 V.S.A. § 1259(i) regarding the implementation of the federal concentrated animal feeding operation program and the relationship between the requirements of the federal program and the State agricultural water quality requirements for large, medium, and small farms under this chapter. The memorandum of understanding shall describe program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations.

“.... On or before January 15, 2016, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall each develop three separate measures of the performance of the agencies under the memorandum of understanding required by this subsection. Beginning on January 15, 2017, and annually thereafter, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall submit separate reports to the Senate Committee on Agriculture, the House Committee on Agriculture and Forestry, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources regarding the success of each agency in meeting the performance measures for the memorandum of understanding.”
(Emphasis added.)

Introduction

This report is submitted to the Vermont Legislature to highlight measures of success in the implementation of a Memorandum of Understanding (MOU) between the Agency of Natural Resources (ANR) and the Agency of Agriculture, Food and Markets (AAFM).

The Secretaries of ANR and AAFM are required to adopt the MOU for the non-point program describing program administration, grant negotiation, grant sharing, and coordination on watershed planning activities. This MOU, attached, was revised March 17, 2017.

The two agencies have chosen several measures to indicate various aspects of our coordination. In this document, AAFM identifies which agency addresses which type of water quality violations, introduces the performance measures chosen, discusses the limitations of these measures, and presents the performance measures.

Division of Duties

Pursuant to 6 V.S.A. § 4810, AAFM has primacy on non-point source pollution and ANR has authority over point source pollution. Because 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. AAFM has the technical on-farm expertise that helps to remedy pollution sources and an expanded enforcement capability to address non-compliance, while ANR has been delegated the authority of the Environmental Protection Agency to administer the Clean Water Act. Each agency serves an important role in protecting water quality.

Performance Measures Chosen

The MOU covers many facets of interactions between the two agencies including program administration, grant negotiation, grant sharing, how we will coordinate watershed planning activities, and how the agencies will implement the antidegradation implementation policy, including how the agencies will apply the antidegradation implementation policy to new sources of agricultural non-point source pollutants. This report is focusing only on enforcement metrics because they represent both the measures that are the most easily tracked and the largest volume of interactions between the two agencies.

In addition to the enforcement work discussed in this report, there are numerous other areas where our two agencies work together, as indicated in the MOU.

For example, in addressing watershed planning activities, AAFM works with each of the watershed coordinators at ANR to ensure that the tactical basin plans for each major watershed adequately include agricultural sources of pollution and remedies with implementation timeframes to address those sources. For grant sharing, the agencies are cooperators on various funding initiatives including but not limited to Section 319 funding for agricultural nonpoint source programming, Lake Champlain Basin Program (LCBP) Total Maximum Daily Load (TMDL) implementation funding, and Regional Conservation Partnership Program (RCPP) funding to support the implementation of conservation practices on farms. In implementing anti-degradation policies, AAFM shares any newly proposed large farm operation change that would trigger a permit with ANR as part of the permit review process.

AAFM has chosen several measures for this report. They were selected for their ability to show progress over time and because they demonstrate the extent to which the two agencies are working together. AAFM recognizes that these performance measures are only a starting point and can be further refined for future reports.

Performance Measure	Value	Limitations
The number of agricultural water quality complaints received each year.	Provides a general measure of how many citizen complaints are received each year.	Represents only what the public knows to file a complaint on. Does not represent violations found via inspections, etc.
The number of agricultural water quality 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.
The number of joint referrals to the Attorney General’s Office.	Represents the agreement between the two agencies that a violation was identified. Represents agreement on next steps (i.e. prosecution).	Potential cases are driven by complaints and inspections, not by the agencies themselves; number 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 meeting regularity increases.

Additional Information

Each agency publishes an annual enforcement report. More information is contained in these reports.

ANR’s report can be found at: <http://dec.vermont.gov/enforcement/news>

AAFM’s reports, dating back to 2010, can be found at: <https://agriculture.vermont.gov/water-quality/enforcement-compliance/enforcement-reports>

Performance Measures

Performance Measure	AAFM 2016	AAFM 2017	AAFM 2018	AAFM 2019	AAFM 2020	AAFM 2021	AAFM 2022
The number of agricultural water quality complaints received each year.	107	122	164 ¹	157	132	42	68
The number of agricultural water quality complaints closed each year. ²	134	141	202 ³	137	145	56	58
The number of joint referrals to the Attorney General's Office.	Not tracked	4	2	4	2	0	0
The number of staff hours specifically dedicated to process improvement and better communication. ⁴	No data	Lean Event: 48 NEEP training: 360	AAFM/ANR Enforcement Meetings: 86	CLEAR Training: 32 NEEP training and planning: 77.5	NEEP training: 357 Quarterly AAFM/ANR/AGO Meetings: 24 ⁵	CLEAR Training: 90 NEEP Training: 174.5 AAFM/ANR/AGO Meetings: 24 AAFM/ANR Enforcement Meetings: 20	CLEAR Training: 75 NEEP Training & Planning: 116.5 AAFM/ANR/AGO Meetings: 22.5 AAFM/ANR Enforcement Meetings: 30.5

Summary

AAFM and ANR are committed to working together to ensure that each Agency upholds the MOU.

In Fiscal Year 2022 (FY22), AAFM performed 196 inspections and investigations on farms in implementing the requirements of 6 V.S.A. Chapter 215. In FY22, 111 farming operations received a total of 124 enforcement actions from AAFM for 262 unique violations of the Required Agricultural Practices (RAP) Rule and/or medium and large farm permitting requirements.

Per the MOU, in FY22, 23 farms were referred to ANR for suspected point source discharges of wastes to surface water. Since 2017, the year this MOU was revised, AAFM has made 161 referrals to DEC for suspected point source discharges of wastes to surface water.

¹ Starting in 2018, AAFM Enforcement changed its reporting cycle to a fiscal year instead of a calendar year.

² Because a complaint is closed when the investigation is resolved, complaints received during previous years may be closed in the current or a future year.

³ Starting in 2018, AAFM Enforcement changed its reporting cycle to a fiscal year instead of a calendar year.

⁴ These hours are driven by staffing levels dedicated to each activity and not necessarily a commitment from either Agency to participate in the process.

⁵ Quarterly AAFM/ANR/AGO Meetings have been occurring for several years but starting in FY20 the meeting hours are reported.

This high-volume of referrals can be attributed to the significant efforts expended by AAFM to inspect and investigate farms and reflects AAFM's commitment to water quality enforcement. Tracking and reporting on the performance measures outlined above will help ensure that AAFM and ANR are sharing information and coordinating in an effective manner.