

Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to Confined Animal Feeding Operations
(October 2002)

I. Parties

The Environmental Quality Commission (EQC) and the Oregon Department of Agriculture (ODA).

II. Purpose

This Memorandum of Understanding (MOU) replaces the prior MOU dated May 1995 between ODA and EQC. The prior MOU needed to be amended to address the roles and responsibilities of the agencies prior to, during and after the transfer of the NPDES program.

III. Effective Date

The MOU is effective on the date it is signed by both parties and it will remain effective until June 30, 2007 unless terminated or modified as provided in paragraphs XII and XIII.

IV. Authority

The MOU is authorized by Oregon Revised Statutes (ORS) 468B.217 and 2001 Oregon Laws Chapter 248.

V. Definition of Terms

Unless indicated otherwise by context, terms used in this MOU will be defined consistently with the Clean Water Act (33 USC §§1251), 40 Code of Federal Regulation (CFR) §122, ORS 468B.005; Oregon Administrative Rule (OAR) 340, Divisions 40, 41, 44 and 45; and OAR 603, Division 74.

A. *Confined Animal Feeding Operation (CAFO)* as defined in OAR 603-074-0010(3) means

1. The concentrated confined feeding or holding of animals or poultry, including but not limited to horse, cattle, sheep, or swine feeding areas, dairy confinement areas, slaughterhouse or shipping terminal holding pens, poultry and egg production facilities and fur farms
 - (i) In buildings or in pens or lots where the surface has been prepared with concrete, rock or fibrous material to support animals in wet weather; or
 - (ii) That have wastewater treatment works; or
 - (iii) That discharge any wastes into waters of the state; or
2. An animal feeding operation that is subject to regulation as a concentrated animal feeding operation pursuant to 40 CFR §122.23.

B. *Injection System or Underground Injection System* as defined in OAR 340-044-0005(24) means a well, improved sinkhole, sewage drain hole, subsurface fluid distribution system or other system or groundwater point source used for the subsurface emplacement or discharge of fluids.

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- C. *General Permit* as defined in OAR 340-045-0010(7) means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033 in lieu of individual permits being issued to each source.
- D. *National Pollutant Discharge Elimination System (NPDES) Permit* means a waste discharge permit issued in accordance with Section 402 of the federal Clean Water Act, 33 USC §1251-1387. The federal Environmental Protection Agency (EPA) has delegated NPDES authority to the Department of Environmental Quality (DEQ). NPDES permits are issued pursuant to ORS 468B.035 and 050 and in accordance with procedures set forth in OAR 340-045.
- E. *Water Pollution Control Facilities (WPCF) permit* means a permit to construct and operate a disposal system with no discharge to navigable waters. A WPCF permit is issued pursuant to ORS 468B.050 by the Director of DEQ or ODA in accordance with the procedures of OAR Chapter 340, Division 45 or OAR 340-071-0162.
- F. *WPCF General Permit #800* means the WPCF general permit issued in accordance with the procedures of OAR 340-045-0033 for confined animal feeding operations.

VI. Background

- A. The Oregon Legislature established a special regulatory program for CAFOs in 1989, with an effective date of January 1, 1990. 1989 Oregon Laws Chapter 847. The legislation required DEQ to develop and issue CAFO permits pursuant to its WPCF permit program and it directed ODA to inspect CAFOs to ensure permit compliance.
- B. From the outset, ODA and DEQ worked cooperatively on water quality issues associated with CAFOs. This cooperation was encouraged by the governor and legislature and in 1993 the CAFO statutes were amended to direct the EQC and ODA to enter into a formal memorandum of understanding providing for ODA to run the CAFO program. The legislature authorized ODA to perform any function of the EQC or DEQ so long as the delegation is consistent with the MOU.
- C. In 2001, the legislature again amended the CAFO statutes. 2001 Oregon Laws Chapter 248. The purpose of the amendments was to authorize and direct the transfer of the federally delegated NPDES permit program for CAFOs from DEQ to ODA at such time as the transfer is approved by the EPA.

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VII. Authorities Delegated to ODA

To the maximum extent allowed by the delegation agreement between the state and EPA, ODA is authorized to perform the following functions of the EQC and DEQ with respect to CAFOs:

- A. All functions authorized by ORS 468.065 *Issuance of Permits; Content; Fees; Use*, 468.073 *Expedited or Enhanced Regulatory Process; Payment; Disposition of Payments*, 468.095 *Investigatory Authority; Entry on Premises; Status of Records*, and 468.120 *Public Hearings; Subpoenas, Oaths, Depositions*.
- B. All functions authorized by ORS 468B.020 *Prevention of Pollution*, 468B.032 *Alternative Enforcement Proceedings; Request; Public Notice; Fees*, 468B.035 *Implementation of Federal Water Pollution Control Act*, 468B.053 *Alternatives to Obtaining Water Quality Permit*, 468B.055 *Plan Approval Required; Exemptions; Rules*, 468B.095 *Use of Sludge on Agricultural, Horticultural or Silvicultural Land; Rules*, and 468B.200 et seq *Animal Waste Control*.
- C. All functions authorized by OAR Chapter 340, including, but not limited to, Divisions 45 *Regulations pertaining to NPDES and WPCF Permit* and 51 *Confined Animal Feeding or Holding Operations of Chapter 340*.

VIII. ODA Roles and Responsibilities

- A. Prior to EPA Approval of NPDES Program Delegation to ODA, ODA will:

Technical Assistance

1. To the extent possible, conduct an education program for CAFO operators in cooperation with the OSU Cooperative Extension Service to impart Best Management Practices (BMPs) for animal waste management systems.
2. Advise CAFO owner/operators about available state, federal, and private sources of technical and financial assistance for planning, designing, and implementing appropriate BMPs for animal waste management systems.

NPDES Program Development

3. Develop and implement administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Work with DEQ to develop and implement a method of issuing NPDES individual and general permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate a NPDES program for CAFOs.
5. Promulgate a new CAFO NPDES general permit through joint rulemaking with DEQ for use by new and existing operators.

NPDES and WPCF Permit Program Implementation

6. Receive and review permit applications for existing or proposed CAFOs.
7. Assign coverage to those applicant CAFO facilities that qualify for coverage under the existing WPCF General Permit #800 or future WPCF or NPDES general permits, or issue an individual permit if necessary.

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- (i) Permits will comply with OAR Chapter 340, Divisions 40 *Groundwater Quality Protection* and 41 *State-Wide Water Quality Management Plan; Beneficial Uses, Policies, Standards, and Treatment Criteria for Oregon*.
 - (ii) ODA will refer CAFOs discharging to injection systems regulated by OAR 340-044 *Construction and use of Waste Disposal Wells or Other Underground Injection Activities* to DEQ for registration and permitting.
 - (iii) ODA will continue to rely on EQC or DEQ to grant groundwater concentration limit variances [OAR 340-041-0030(4)] and other exceptions or approvals as detailed in OAR 340-041 [e.g., approval to lower water quality in high quality waters, OAR 340-041-0026(1)(A)].
8. Review for approval or rejection animal waste management system plans and specifications for animal waste control facilities to verify the plans and specifications have been prepared pursuant to OAR 340-051 design criteria. ODA may develop its own method for accepting certification from outside professional engineers as to the sufficiency and quality of the plans and specifications. Prior to plan approval and when appropriate:
 - (i) ODA may request that DEQ review plans and specifications for construction, modification, or expansion of CAFOs to determine whether the proposed construction conforms to groundwater protection requirements.
 - (ii) ODA may request that DEQ review plans and specifications for CAFO systems not covered by Division 51, such as mechanical treatment systems or subsurface disposal systems.

Compliance Activities

9. Conduct periodic inspections of all permitted CAFOs. Inspections will include an evaluation of animal waste collection, treatment, handling, disposal and management procedures for compliance with the Clean Water Act, Oregon water quality law, and permit conditions.
10. Respond promptly to citizen complaints pertaining to the operation of CAFOs. ODA has primary responsibility for response to complaints received from the public, and for investigation of known or suspected violations of laws, rules, orders, permits, or water quality standards associated with CAFO facilities.
11. Take prompt enforcement action when CAFOs violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures.
12. Impose civil penalties, when appropriate, on the owner or operator of a CAFO for failure to comply with the provisions of ORS 468 or 468B, or any rules adopted thereunder, or for violations of a permit issued pursuant to ORS 468B, relating to the prevention and control of water pollution from a CAFO, subject to the provisions for civil penalties contained in ORS 183.415 and ORS 468B.230 and in 2001 Oregon Laws Chapter 248 (HB 2156).

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13. Develop and maintain a program database on all permit activities and produce periodic reports on the status of CAFO permits, complaint investigations, corrective orders, enforcement actions, and civil penalties imposed.
 14. Notify DEQ when a discharge violation threatens public health or safety.
- B. After EPA Approval of NPDES Permit Program Delegation to ODA, ODA will:
1. Work with DEQ to draft an amended MOU to address the changes resulting from such delegation.
 2. Work with DEQ to address CAFO permitting issues in groundwater management areas and water quality limited streams.
 3. Work with DEQ to maintain the State of Oregon's delegated authority to enforce the CWA.

IX. DEQ/EQC Roles and Responsibilities

- A. Prior to EPA Approval of NPDES Program Delegation to ODA, DEQ/EQC will:

Permit Program Assistance

1. Provide advice, assistance, training, and program guidance relative to surface and groundwater quality problems associated with animal waste, including but not limited to groundwater protection and monitoring requirements, permit writing, lagoon leakage testing, annual compliance inspections, data analysis, and sampling parameters and protocols.
2. Work with ODA to develop and implement a method of issuing NPDES permits for qualifying CAFO facilities until such time as ODA has received the necessary delegated authority to operate an NPDES program for CAFOs.
3. Assist ODA in developing administrative rules that are appropriate for the anticipated delegation of NPDES permitting authority to ODA.
4. Review plans as requested by ODA.

Compliance Activities

5. Refer all water pollution citizen complaints received on CAFOs and information regarding suspected violations of permits, rules, or water quality standards by CAFOs to ODA for investigation and follow-up.
6. Consistent with existing law, conduct inspections only when requested by ODA or, in situations that present an imminent and substantial danger to human health or the environment, after notifying ODA if the situation is known by DEQ to be related to a CAFO.
7. Initiate enforcement actions, within agency discretion, only as a direct result of the investigative actions outlined herein or upon request of ODA.
8. Participate in annual reviews with ODA and work cooperatively with ODA to achieve the objectives of this agreement. The annual review may include file reviews as well as inspection of a small, agreed-upon number of animal feeding operations not under ODA jurisdiction across the state by a team representing ODA and DEQ.

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- B. After EPA Approval of NPDES Permit Program Delegation to ODA, DEQ/EQC will:
1. Work with ODA to draft an amended MOU to address the changes resulting from such delegation.
 2. Work with ODA to address CAFO permitting issues in groundwater management areas and water quality limited streams.
 3. Work with ODA to maintain the State of Oregon's delegated authority to enforce the CWA.

X. No Third Party Rights

Nothing in this MOU constitutes or creates a defense on behalf of a regulated party.

XI. Resolution of Disagreements Regarding the Interpretation and Application of this MOU

In the event of disagreement regarding the interpretation and application of this MOU, agency staff will direct the disagreement to designated supervisors or other managers for resolution.

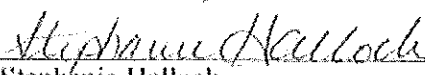
- A. In the case of ODA, the director or his designee has authority to resolve disputes.
- B. In the case of DEQ, the director or her designee has authority to resolve disputes.

XII. Modification of the MOU

This MOU may be modified at any time by written agreement of the parties.

XIII. Termination of the MOU

This MOU may be terminated at any time and by either party after 60 days advance notice of intent to terminate and/or within 180 days after formal delegation has been achieved. The notice must be provided in writing and served on the director of DEQ on behalf of the EQC or the director of the State Department of Agriculture on behalf of ODA.


Stephanie Hallock
Director of DEQ on behalf of the
Environmental Quality Commission

11-4-02
Date


Phil Ward
Director of ODA

10/15/02
Date