

Date: November 23, 2009

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item E, action item: Memorandum of understanding between the Environmental Quality Commission and Oregon Department of Agriculture for the confined animal feeding operation permit program December 10011, 2009 EQC meeting

Why this is important In order to continue the Oregon Department of Agriculture's authority for the confined animal feeding operations permit program, a new memorandum of understanding must be in place before the current agreement expires on February 28, 2010.

DEQ recommendation And EQC motion The Department of Environmental Quality recommends that EQC approve a new memorandum of understanding between DEQ and the Oregon Department of Agriculture, as proposed in attachment A of this item, to take effect December 2009.

Key information The EQC granted an extension of the agreement on June 19, 2009 so DEQ could update it to include the roles and responsibilities associated with new permit program requirements. The extension expires February 28, 2010. The agreement authorizes the Oregon Department of Agriculture to perform the CAFO-related functions of DEQ and the EQC. It replaces the October 2002 agreement, and will remain in place for five years (e.g. December 2014) unless delegation authority from EPA to DEQ is modified. If delegation authority from EPA to DEQ is modified, the responsibilities in the agreement would be changed to reflect the modification.

The roles and responsibilities established for both agencies in the prior agreement are still appropriate, and it will continue the current level of environmental protection offered under the program. The new agreement includes new public notice requirements and permit program database reporting requirements. The agreement has minor revisions for clarification, and to reference new definitions, statutes and regulations.

Brief overview of the agreement The Oregon Department of Agriculture is responsible for the oversight of the program, development and implementation of the program, and permit compliance activities including inspections,

complaint response and enforcement. DEQ and the Oregon Department of Agriculture will continue to jointly issue national pollutant discharge elimination system permits until EPA delegates that authority to the Oregon Department of Agriculture.

The Oregon Department of Agriculture is responsible for actions associated with providing new public notice requirements, and will determine when a change requires a public notice and then conduct the public notice process. EPA's November 2008 final rule for CAFOs includes additional public notice requirements of animal waste management plans. Public notice is also required with permit registration. DEQ maintains a web link from DEQ's water quality public notice web site to the Oregon Department of Agriculture's CAFO public notice web site.

DEQ's role is to provide assistance and guidance to the Oregon Department of Agriculture. DEQ will continue to assist on surface and groundwater issues associated with CAFOs, review plans when requested and conduct inspection and enforcement activities in cooperation with the Oregon Department of Agriculture. DEQ is responsible for the statewide permit program database. The Oregon Department of Agriculture will continue to develop and maintain a program database on all permit activities and will provide permit program data to DEQ and EPA. DEQ will provide technical assistance to the Oregon Department of Agriculture for the purpose of creating methods of providing data to DEQ and EPA.

Background information

What is a CAFO? CAFOs are the confined feeding or holding of animals in buildings, pens or lots where the surface is prepared to support animals in wet weather or where there are wastewater treatment facilities. Typical CAFOs in Oregon include dairies, beef feedlots, poultry, swine, horse and other animal farms that land apply their wastewater and manure at rates to meet crop needs while avoiding over applications that could lead to water quality impairment. CAFOs generate manure, silage pit drainage, wash down waters, contaminated runoff and milk wastewater.

Summary of the CAFO permit program. DEQ issued the first water pollution control facilities CAFO general permit #800 July 28, 1987. Initially, DEQ issued all general and individual permits to CAFOs statewide. The first national pollutant discharge elimination system permit jointly issued by the Oregon Department of Agriculture and DEQ was the 2003 CAFO NPDES general permit #01, which expired July 31, 2008. DEQ and the Oregon Department of Agriculture issued the renewal for this general permit on June 29, 2009. The 2009 CAFO NPDES General Permit #01 includes the new

public notice requirements under EPA's 2008 final rules for concentrated animal feeding operations animal waste management plans. The Oregon Department of Agriculture is providing public notice for those applicants requesting renewal or new coverage under the 2009 CAFO NPDES general permit.

Memorandum of understanding overview. The Oregon Department of Agriculture and DEQ have had agreements to address CAFO regulation since the late 1980s. The agreements have changed over time to reflect the type of permitting program in place, and new regulations and responsibilities assigned by the Oregon Legislature. In 1993, the Legislature directed EQC and Oregon Department of Agriculture to transition the CAFO permit program from DEQ to the Oregon Department of Agriculture. In 2001, the Oregon Legislature authorized and directed the transfer of the federal Clean Water Act NPDES permit program for CAFOs from DEQ to the Oregon Department of Agriculture, subject to approval from EPA.

The proposed agreement recognizes the directive of the 2001 Legislature that allows for the transfer of the federal clean water act permit program. The Oregon Department of Agriculture is discussing the merits of seeking this authorization with its stakeholders and partner agencies. DEQ does not anticipate the delegation to change over the term of this proposed five-year agreement.

EQC action alternatives

The October 2002 memorandum of understanding will remain in effect until February 28, 2010. DEQ recommends EQC approve proposed attached memorandum of understanding to take effect December 2009.

Attachments

- A. Proposed memorandum of understanding
- B. Redline version of the proposed memorandum of understanding
- C. June 2009 extension of the memorandum of understanding
- D. June 2007 extension of the memorandum of understanding
- E. October 2002 memorandum of understanding

Available upon request

- 1. CAFO program update memo, May 2009
- 2. Oregon Department of Agriculture Natural Resources Division Confined Animal Feeding Operations (CAFO) Program 2007 Annual Report.
- 3. CAFO NPDES General Permit #01-2009 and related permit documents.

Approved:

Section: _____

Division: _____

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