

State of Oregon

Department of Environmental Quality

Memorandum

Date: Nov. 23, 2015

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item O, Action item: Memorandum of understanding between the Environmental Quality Commission and Oregon Department of Agriculture for the Confined Animal Feeding Operation Permit Program Dec. 9-10, 2015, EQC meeting

Why this is important The current memorandum of understanding between the Environmental Quality Commission and Oregon Department of Agriculture for the Confined Animal Feeding Operations will expire Dec. 31, 2015. There is a need for a new memorandum to maintain program operations.

DEQ recommendation and EQC motion DEQ recommends that the commission approve a new memorandum of understanding between DEQ and ODA to be in effect until Dec. 31, 2020.

Key information DEQ received the commission's approval for a one-year extension of the current MOU in November 2014. The roles and responsibilities ODA and DEQ have in working on water quality issues associated with the CAFOs are still appropriate.

The MOU authorizes ODA to perform the CAFO-related functions of DEQ and the EQC. The term of the MOU is typically five years and, if approved, this agreement will be in place until Dec. 31, 2020. This agreement will continue the current level of environmental protection and includes new EPA electronic reporting requirements and EPA inspection frequency goals under the National Pollution Discharge Elimination System permit program. Some revisions were made for clarification, as noted in the Background section below.

Brief overview of the agreement The MOU establishes the roles and responsibilities of ODA and DEQ for managing the statewide Confined Animal Feeding Operations permit program. Through the agreement, ODA is authorized to perform any function of the DEQ in managing the CAFO program.

ODA is the state department responsible for the oversight of the program in terms of its development and implementation and permit compliance activities including inspections, complaint response and enforcement. Inspections of CAFOs with NPDES permits will be

conducted at a frequency that meets EPA inspection goals.

DEQ and ODA will continue to jointly issue permits until such time as EPA authorizes ODA alone to administer a NPDES program for CAFOs. DEQ's role is to provide assistance and guidance to ODA. DEQ will continue to assist on surface and groundwater issues associated with CAFOs, review plans when requested by ODA and conduct inspection and enforcement activities in cooperation with ODA. ODA and DEQ will work together to provide EPA required data elements that satisfy EPA's Electronic Reporting Rule.

Background information

What is a CAFO?

CAFOs are generally defined as 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 apply their wastewater and manure to different crops at agronomic rates. The types of wastes that are generated include manure, silage pit drainage, washdown waters, contaminated runoff and milk wastewater.

Summary of the CAFO permit program

The first Water Pollution Control Facilities CAFO General Permit #800 was issued July 28, 1987. Initially, DEQ issued all general and individual permits to CAFOs statewide. The first NPDES permit jointly issued by ODA and DEQ was the 2003 CAFO NPDES General Permit #01. DEQ and ODA issued the renewal for this general permit June 29, 2009. This 2009 CAFO NPDES General Permit #01 included new public notice requirements under EPA's 2008 final rules for concentrated animal feeding operations animal waste management plans.

ODA and DEQ are currently working on renewal of the 2009 NPDES CAFO general permit #01. In response to significant public comment, DEQ and ODA provided an additional public comment period. The second public comment period ended Nov. 2, 2015 and permit renewal is expected to be complete in early 2016. The renewed NPDES permit will be required for a discharge to surface water from a CAFO.

A new WPCF general permit was issued Oct. 1, 2015. This new WPCF general permit is for CAFOs that do not discharge to surface water.

Of the 510 CAFOs currently registered to NPDES general permit #01, approximately 400 applied for renewal under this permit and

110 requested registration under the new WPCF general permit. Four CAFOs in the state have permit coverage under an individual permit.

Memorandum of understanding overview

ODA 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, new regulations and responsibilities assigned by the Oregon Legislature.

- In 1993, the Oregon Legislature directed EQC and ODA to transition the state CAFO permit program for CAFOs from DEQ to ODA.
- In 2001, the Oregon Legislature authorized and directed the transfer of the federal Clean Water Act NPDES permit program for CAFOs from DEQ to ODA.

The proposed agreement continues to recognize the directive of the 2001 legislature which allows ODA to implement the federal Clean Water Act NPDES program for concentrated animal feeding operations. Following EPA approval, ODA may on its own, and separate from DEQ, implement the federal Clean Water Act NPDES program. Currently, however, ODA administers and enforces the CAFO program only under state authorities and the MOU. This administration is not expected to change over the term of this five-year agreement.

This version of the MOU has been in effect since December 2009. Its extension in November 2014 by EQC allowed time for the agencies to finalize two general permits. The extension also allowed time for ODA and DEQ to develop this updated agreement which covers new federal electronic reporting requirements and inspection frequency goals, as well as minor clarifying revisions.

The proposed MOU update addresses electronic data reporting requirements that are in EPA's new NPDES electronic reporting rule.

- ODA will continue to maintain an electronic inventory of permitted CAFOs and modify its database, as necessary, to include the data elements in EPA's new rule.
- DEQ and ODA will work together to satisfy EPA's new rule.
- Reference to EPA's 1985 database policy statement is removed because it is replaced by the new rule.

The MOU update includes an inspection frequency that meets EPA inspection goals for CAFOs with an NPDES permit.

- ODA will continue to maintain a database on activities

associated with permits that includes inspections.

- ODA's inspection frequency for CAFOs with an NPDES permit will meet targets in EPA's Clean Water Act NPDES Compliance Monitoring Strategy.

Revisions made for clarification include:

- Aligning more closely with statutory language in the statement of purpose,
- Keeping definitions consistent with rule citation by removing six definitions,
- Providing descriptions for ODA and DEQ program authority, and
- Making clarifying edits and minor typographical corrections throughout.


Attachments


- A. Proposed memorandum of understanding
- B. Redline version of the memorandum of understanding
- C. December 2009 memorandum of understanding
- D. Extension of the 2009 memorandum of understanding

Available upon request

1. Oregon Department of Agriculture Natural Resources Division Confined Animal Feeding Operations Program 2014 Annual Report.
2. CAFO General Permits and related permit documents.

Approved:

Division: 
Lydia Emer
Operations Division administrator

Section: 
Ron Doughten
Water Quality Permit Program manager

Report prepared by Beth Moore
Surface Water General Permits coordinator

**Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to the Confined Animal Feeding Operations Program
(December 2015)**

I. Parties

The Environmental Quality Commission (EQC) and the Oregon Department of Agriculture (ODA) are the parties to this Memorandum of Understanding.

II. Purpose

This Memorandum of Understanding (MOU) replaces the MOU dated December 2009 between ODA and EQC. The purpose of this MOU is to specify those functions of the EQC that ODA may perform to operate a program for the prevention and control of water pollution from a confined animal feeding operation (CAFO) and to specify the parties' respective duties with regard to regulating water quality related to CAFOs.

III. Effective Date

The MOU is effective on the date it is signed by both parties and it will remain effective until December 31, 2020 unless terminated or modified as provided in paragraphs XII and XIII.

IV. Authority

The MOU is authorized by Oregon Revised Statutes (ORS) 468B.217.

V. Definition of Terms

Unless indicated otherwise by context, terms used in this MOU will be defined consistently with the Clean Water Act (33USC §§1251), 40 Code of Federal Regulation (CFR) §122, and CFR §412, ORS 468B.005; Oregon Administrative Rule (OAR) Chapter 340, Divisions 40, 41, 44, 45 and; 51; and OAR Chapter 603, Division 74.

VI. Background

- A. The Oregon Legislature established a special regulatory program for CAFOs in 1989 Oregon Laws Chapter 847, with an effective date of January 1, 1990. 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 administer the CAFO program. The legislature authorized ODA to perform any function of the EQC or DEQ consistent with the MOU. See ORS 468B.217.
- C. In 2001, the legislature amended the CAFO statutes to add a provision authorizing the ODA to perform any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act. See ORS 468B.035. The purpose of the amendments was to authorize and direct the administration of the federal NPDES permit program for CAFOs from DEQ to ODA at such time as the ODA may obtain approval from the EPA to solely administer the program as to concentrated animal feeding operations. Absent EPA approval, however, ODA is authorized to administer and enforce the CAFO program pursuant to its state law authorities and pursuant to its MOU with DEQ.

- D. The first NPDES permit jointly issued by ODA and DEQ was the 2003 CAFO general permit #01. In 2005, the legislature provided DEQ and ODA the authority to issue general permits by department order, ORS 468B.050(2). In 2009, DEQ and ODA renewed NPDES CAFO general permit #01 and updated the MOU to include additional requirements for public notice contained in EPA's November 20, 2008 Concentrated Animal Feeding Operations final rule.
- E. EPA has issued regulations that will require electronic data reporting to EPA for the NPDES program. Preparation for electronic data reporting for CAFO permits is addressed in this MOU.

VII. Authorities Delegated to ODA

To the maximum extent allowed by the memorandum of agreement between the state and EPA regarding administration of the NPDES permit program, ODA is authorized to perform the following functions of the EQC and DEQ with respect to CAFOs:

- A. All functions authorized by ORS 468.035 Functions of department (1)(j) and (k); 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; 468.100 Enforcement procedures; powers of regional authorities; status of procedure 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; Rules; 468B.053 Alternatives to Obtaining Water Quality Permit; Rules; 468B.055 Plans and Specifications for Disposal, Treatment, And Sewage Systems; 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, Division 45 Regulations pertaining to NPDES and WPCF Permits and Division 51 Confined Animal Feeding or Holding Operations of Chapter 340.

VIII. ODA Roles and Responsibilities

- A. Prior to EPA's approval of the modification of the state's NPDES program to authorize ODA to administer the federal concentrated animal feeding operation program on its own, 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 to facilitate EPA approval of modifications to the state NPDES permitting program to authorize ODA alone to administer the federal concentrated animal feeding operation.
- 4. Work with DEQ to develop and issue NPDES individual and general permits for qualifying CAFO facilities until such time as EPA authorizes ODA alone to operate a NPDES program for CAFOs.

NPDES and WPCF Permit Program Implementation

5. Consult with DEQ on significant determinations regarding the interpretation of the permit, related rules, and the Clean Water Act.
6. Receive and review permit applications for existing or proposed CAFOs.
7. Provide public notice of permit applications and their animal waste management plans and the opportunity for public hearings.
 - (i) Review and respond to public comments.
 - (ii) Notify the applicant if further changes are required before being assigned permit coverage.
8. Assign coverage to those applicant CAFO facilities that qualify for coverage under general permits, or issue an individual WPCF or NPDES permit if necessary.
 - (i) Permits will comply with OAR Chapter 340, Divisions 40 *Groundwater Quality Protection*, Division 41 *Water Pollution State-Wide Water Quality Management Plan; Beneficial Uses, Policies, Standards, and Treatment Criteria for Oregon* and wasteload allocations assigned to point sources under Division 42 *Total Maximum Daily Loads* (TMDLs).
 - (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 340-040-0030(4)] and other exceptions or approvals as detailed in OAR 340-041-0004 [e.g., approval to lower water quality in high quality waters, OAR 340-041-0004(6)].
9. Review for approval or rejection animal waste management 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, including but not limited to mechanical treatment systems or experimental treatment systems.
10. Review for approval or rejection proposed substantial changes to animal waste management plans. Prior to approval, ODA will provide public notice of the proposed substantial changes and an opportunity for public hearing.

Compliance Activities

11. Conduct periodic inspections of all permitted CAFOs. Inspections of CAFOs with NPDES permits will be conducted at a frequency that meets the targets set forth in EPA's Clean Water Act NPDES Compliance Monitoring Strategy. 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.
12. 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. ODA will ensure that

persons calling with complaints during regular business hours will be able to speak to or leave a message with an appropriate ODA staff person.

13. Take prompt enforcement action when CAFOs violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures.
14. 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).
15. Notify DEQ when a discharge violation threatens public health or safety.

Permit Program Data

16. Maintain a program database on all permit activities and produce periodic reports on the status of CAFO permits, inspections, complaint investigations, corrective orders, enforcement actions, and civil penalties imposed.
 17. ODA will associate an EPA system common key identifier ("OR Number") and an Oregon (DEQ) system compatible permit number key with each CAFO covered under a permit in the CAFO program database.
 18. ODA will maintain the capability to provide an electronic inventory of CAFOs covered under a permit. The inventory will include the common key identifier above and at least these data elements: facility names, facility location, facility contact information, type of permit and NAIC code.
 19. ODA will work with DEQ to develop database extracts or similar mechanisms to provide input into DEQ and EPA database systems of record for CAFOs.
 20. ODA will modify and maintain its system of record and reporting to DEQ to include all EPA required data elements as determined by the Electronic Reporting Rule.
- B. At such a time as EPA approves modification of the state NPDES permit program to authorized ODA alone to administer the concentrated animal feeding operation program, ODA will:
1. Work with DEQ to draft an amended MOU to address the changes resulting from such approval.
 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 EPA's approval of the State of Oregon's authority to enforce the CWA.

IX. DEQ/EQC Roles and Responsibilities

- A. Prior to EPA approval of modification of the state's NPDES Program to authorize ODA alone to administer the concentrated animal feeding operation program, 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 issue NPDES permits for qualifying CAFO facilities until such time as ODA has received the necessary approvals from EPA to operate, on its own, the concentrated animal feeding operation program.

3. Assist ODA in developing administrative rules to facilitate EPA's approval of changes to the state's NPDES permit program to authorize ODA alone to administer the concentrated animal feeding operation program.
4. Review plans as requested by ODA.
5. Provide public access to the ODA CAFO public notice website from the DEQ public notice website.
6. Assist ODA with responses to comments received during public comment.

Compliance Activities

7. 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. DEQ will refer to ODA website for an accurate list of area contacts.
8. Conduct inspections only when requested by ODA, except when DEQ reasonably suspects that operations related to a CAFO may present an imminent and substantial danger to human health or the environment, DEQ may exercise agency discretion and conduct the inspection after notifying ODA.
9. Initiate enforcement actions, within agency discretion, resulting from inspections described in the preceding paragraph.
10. 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 CAFOs across the state by a team representing ODA and DEQ.

Permit Program Data

11. Provide technical assistance to ODA to develop method(s) of providing data to DEQ and EPA database systems.
 12. DEQ will consult with ODA in the preparation and planning for DEQ and EPA's system of record for CAFOs.
- B. After EPA approval of changes to the state's NPDES Permit Program to authorize ODA alone to administer the concentrated animal feeding operation program, DEQ/EQC will:
1. Work with ODA to draft an amended MOU to address the changes resulting from such EPA approval.
 2. Work with ODA to address CAFO permitting issues in groundwater management areas and water quality limited streams.
 3. Work with ODA to maintain EPA's approval of the State of Oregon's authority to enforce the CWA.

X. No Third Party Rights

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

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

In the event of a 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 her designee has authority to resolve disputes.
- B. In the case of DEQ, the director or his 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 or within 180 days after EPA approval has been achieved by ODA. 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.

Dick Pedersen
Director of DEQ on Behalf of the
Environmental Quality Commission

Katy Coba
Director of ODA

Date

Date

**Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to the Confined Animal Feeding Operations Program
(December ~~2009~~2015)**

I. Parties

The Environmental Quality Commission (EQC) and the Oregon Department of Agriculture (ODA) are the parties to this Memorandum of Understanding.

II. Purpose

This Memorandum of Understanding (MOU) replaces the MOU dated ~~October 2002~~December 2009 between ODA and EQC. -The purpose of this MOU is to specify those functions of the EQC that authorizes ODA to may perform to operate a program for the prevention and control of water pollution from a confined animal feeding operation (-the CAFO) related functions of DEQ and the EQC and to specify the parties' respective duties with regard to regulating water quality related to CAFOs. It replaces the October 2002 MOU and DEQ and ODA expect that it will be in place until December 2014, unless the delegation agreement with federal Environmental Protection Agency (EPA) is modified in the interim, in which case, it is likely that the MOU will need to be modified to recognize the change in responsibilities.

III. Effective Date

The MOU is effective on the date it is signed by both parties and it will remain effective until December 31, ~~2014~~2020 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 (33USC §§1251), 40 Code of Federal Regulation (CFR) §122, and CFR §412, ORS 468B.005; Oregon Administrative Rule (OAR) Chapter 340, Divisions 40, 41, 44, 45 and; 51; and OAR Chapter 603, Division 74.

~~A. "Confined Animal Feeding Operation (CAFO)" as defined in OAR 603-074-0010(3) and 340-051-0010(2) 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.~~

~~C. General Permit as defined in OAR 340-045-0010(8) means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033 in lieu of individual permits for every 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 §1251-1287. The 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. Substantial Change is defined as the following types of changes to an animal waste management plan (AWMP):~~

~~1. For small or medium confined animal feeding operations:~~

- ~~(i) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.~~
- ~~(ii) An increase in maximum allowed animal numbers such that the operation becomes defined as a large concentrated animal feeding operation.~~

~~2. For small, medium or large concentrated animal feeding operations:~~

- ~~(i) Addition of new land application areas not previously included in the AWMP, unless the land application area is covered by an existing AWMP that has already been incorporated into an existing NPDES permit and the application of manure, litter, or process waste water on the newly added land application area is in accordance with that existing NPDES permit.~~
- ~~(ii) Any changes to the field specific maximum annual rates for land application.~~
- ~~(iii) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop.~~
- ~~(iv) Addition of any crop or other uses not included in the AWMP and corresponding field specific rates of application.~~
- ~~(v) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.~~
- ~~(vi) Any changes that are likely to increase the risk of nitrogen and phosphorus transport to surface waters or groundwaters.~~

~~F. 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 procedures of OAR Chapter 340, Division 45 or OAR 340-071-0162.~~

~~G. NPDES General Permit#01-2009 means the NPDES general permit issued June 29, 2009 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 Oregon Laws Chapter 847, 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-administer~~ 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. See ORS 468B.217.
- C. In 2001, the legislature ~~again~~ amended the CAFO statutes to add a provision authorizing the ODA to perform any acts necessary to be performed by the state to implement the provisions of the Federal Water Pollution Control Act. See ORS 468B.035, 2001 Oregon Laws Chapter 248. The purpose of the amendments was to authorize and direct the ~~transfer-administration~~ of the federally ~~delegated~~ NPDES permit program for CAFOs from DEQ to ODA at such time as the ~~ODA transfer is~~ may obtain approved ~~by al from the EPA to solely administer the program as to concentrated animal feeding operations.~~ Absent EPA approval, however, ODA is authorized to administer and enforce the CAFO program pursuant to its state law authorities and pursuant to its MOU with DEQ.
- D. The first NPDES permit jointly issued by ODA and DEQ was the 2003 CAFO general permit #01, ~~which expired on July 31, 2008.~~ In 2005, the legislature provided DEQ and ODA the authority to issue general permits by department order, ORS 468B.050(2). In 2009, DEQ and ODA renewed NPDES CAFO general permit #01-2009 on June 29, 2009 and updated the MOU to include additional requirements for public notice contained in EPA's November 20, 2008 Concentrated Animal Feeding Operations final rule.

~~E. EPA has issued regulations that will require The CAFO general permit includes the additional requirements for public notice of animal waste management plans under EPA's November 20, 2008 Concentrated Animal Feeding Operation final rule and the public notice of permit applications with animal waste management plans.~~

~~F.E. Electronic data reporting to EPA for the DEQ statewide NPDES program and the EPA database for NPDES permits will be required in the future.~~ Preparation for electronic data reporting for CAFO permits is ~~included-addressed~~ in this MOU.

VII. Authorities Delegated to ODA

To the maximum extent allowed by the ~~delegation-memorandum of~~ agreement between the state and EPA regarding administration of the NPDES permit program, ODA is authorized to perform the following functions of the EQC and DEQ with respect to CAFOs:

- A. All functions authorized by ORS 468.035 Functions of department (1)(j) and (k); 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; 468.100 Enforcement procedures; powers of regional authorities; status of procedure 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; Rules; 468B.053 Alternatives to Obtaining Water Quality Permit; Rules; 468B.055 Plans and Specifications for Disposal, Treatment, And Sewage Systems; 468B.095 Use of Sludge on Agricultural, Horticultural or Silvicultural Land; Rules, and 468B.200 et seq Animal Waste Control.

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- C. All functions authorized by OAR Chapter 340, including, but not limited to, Divisions ~~45~~ Regulations pertaining to NPDES and WPCF Permits and Division 51 Confined Animal Feeding or Holding Operations of Chapter 340.

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VIII. ODA Roles and Responsibilities

- A. Prior to EPA's approval of the modification of the state's NPDES Program Delegation to ODA, authorize ODA to administer the federal concentrated animal feeding operation program on its own, 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 to facilitate EPA delegation of approval of modifications to the state~~ NPDES permitting program to authorize authority to ODA alone to administer the federal concentrated animal feeding operation.
4. Work with DEQ to develop and issue NPDES individual and general permits for qualifying CAFO facilities until such time as EPA authorizes ODA alone has received the necessary delegated authority to operate a NPDES program for CAFOs.

NPDES and WPCF Permit Program Implementation

5. Consult with DEQ on significant determinations regarding the interpretation of the permit, related rules, and the Clean Water Act.
6. Receive and review permit applications for existing or proposed CAFOs.
7. Provide public notice of permit applications and their animal waste management plans and the opportunity for public hearings.
 - (i) Review and respond to public comments.
 - (ii) ~~Let the~~ Notify the applicant ~~know~~ if further changes are required before being assigned permit coverage.
8. Assign coverage to those applicant CAFO facilities that qualify for coverage under ~~the existing NPDES General Permit #01-2009 or future~~ general permits, or issue an individual WPCF or NPDES permit if necessary.
 - (i) Permits will comply with OAR Chapter 340, Divisions 40 *Groundwater Quality Protection*, Division 41 *Water Pollution State-Wide Water Quality Management Plan; Beneficial Uses, Policies, Standards, and Treatment Criteria for Oregon* and wasteload allocations assigned to point sources under Division 42 *Total Maximum Daily Loads (TMDLs)*.
 - (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 340-040-0030(4)] and other exceptions or approvals as detailed in OAR 340-041-0004 [e.g., approval to lower water quality in high quality waters, OAR 340-041-0004(6)].

9. 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, including but not limited to mechanical treatment systems or experimental treatment systems.
10. Review for approval or rejection proposed substantial changes to ~~an~~ animal waste management plans. Prior to approval, ODA will provide public notice of the proposed substantial changes and an opportunity for public hearing.

Compliance Activities

11. Conduct periodic inspections of all permitted CAFOs. Inspections of CAFOs with NPDES permits will be conducted at a frequency that meets the targets set forth in EPA's Clean Water Act NPDES Compliance Monitoring Strategy. 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.
12. 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. ODA will ensure that persons calling with complaints during regular business hours will be able to speak to or leave a message with an appropriate ~~person on~~ ODA staff person.
13. Take prompt enforcement action when CAFOs violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures.
14. 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).
15. Notify DEQ when a discharge violation threatens public health or safety.

Permit Program Data

16. ~~Develop and m~~ Maintain a program database on all permit activities and produce periodic reports on the status of CAFO permits, inspections, complaint investigations, corrective orders, enforcement actions, and civil penalties imposed.
17. ODA will associate an EPA system common key identifier ("OR Number") and an Oregon (DEQ) system compatible permit number key with each CAFO covered under a permit in the CAFO program database.
18. ODA will develop-maintain the capability to ~~maintain and~~ provide an electronic inventory of CAFOs covered under a permit. The inventory will include the common key identifier above and at least these data elements: facility names, facility location, facility contact information, type of permit and SIC-NAIC code.

19. ODA will work with DEQ to develop database extracts or similar mechanisms to provide input into ~~DEQ/DEQ permit system~~ the Oregon (DEQ) statewide permits databases and the Permit Compliance System (PCS)—EPA's current permit database systems of record for CAFOs.
20. ODA will modify and maintain its system of record and reporting to DEQ to include all EPA required data elements as determined by the Electronic Reporting Rule.
18. ODA and DEQ will work to accomplish this by the March 31, 2014.
- (i) An inventory of applicable data elements currently reported to and stored in DEQ's Water Quality Source Information System (WQ-SIS), the Oregon administrative water quality permit data system, is included as Attachment I. This applies to all Oregon permits.
19. Required elements for federal data reporting (Water Enforcement National Data Base elements, or WENDB elements) are defined in EPA's 1985 PCS policy statement. EPA's 1985 PCS Policy statement is included as Attachment II. This applies to NPDES permits only, and is for use with PCS, the current EPA system of record. Required data elements will also include any future modifications to EPA's 1985 PCS policy statement.
20. Appendix A. Reporting to ICIS (Integrated Compliance Information System, the successor system to PCS, and EPA's future system of record) will begin when Oregon converts to statewide ICIS use. Changes in both required data elements and handling mechanisms may be necessary at that time.
- B. After ~~At such a time as~~ EPA approves ~~a~~ modification of the state NPDES permit program ~~delegation to~~ authorized ODA ~~alone to administer the concentrated animal feeding operation program~~, ODA will:
1. Work with DEQ to draft an amended MOU to address the changes resulting from such ~~delegation approval~~.
 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 ~~EPA's approval of the~~ State of Oregon's ~~delegated~~ authority to enforce the CWA.

IX. DEQ/EQC Roles and Responsibilities

- A. Prior to EPA approval of ~~modification of the state's~~ NPDES Program ~~Delegation to~~ ~~authorize~~ ODA ~~alone to administer the concentrated animal feeding operation program~~, 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 issue NPDES permits for qualifying CAFO facilities until such time as ODA has received the necessary ~~delegated authority approvals from~~ EPA to operate, ~~on its own, the concentrated animal feeding operation program~~ ~~an NPDES program for CAFOs~~.
3. Assist ODA in developing administrative rules ~~that are appropriate for the anticipated to facilitate EPA's delegation approval of changes to the state's~~ NPDES permit ~~programming authority to~~ ~~authorize~~ ODA ~~alone to administer the concentrated animal feeding operation program~~.
4. Review plans as requested by ODA.

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5. Provide public access to the ODA CAFO public notice website from the DEQ public notice website.
6. Assist ODA with responses to comments received during public comment.

Compliance Activities

7. 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. DEQ will refer to ODA website for an accurate list of area contacts.
8. Conduct inspections only when requested by ODA; ~~however, in situations where, except when~~ DEQ reasonably suspects that operations related to a CAFO may present an imminent and substantial danger to human health or the environment, DEQ may exercise agency discretion and conduct the inspection after notifying ODA.
9. Initiate enforcement actions, within agency discretion, ~~only as a direct result of the investigative actions outlined herein or upon request of ODA resulting from inspections described in the preceding paragraph.~~
10. 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~~ CAFOs not under ODA jurisdiction across the state by a team representing ODA and DEQ.

Permit Program Data

11. Provide technical assistance to ODA to develop method(s) of providing data to DEQ and EPA database systems.
- ~~12. DEQ's Operations and Information Services will work with ODA to identify a DEQ compatible system permit number key.~~
- ~~13.~~ 12. DEQ will consult with ODA in the preparation and planning for the Oregon state wide switch from PCS to ICIS-DEQ and EPA's system of record for CAFOs.

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

X. No Third Party Rights

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

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

In the event of a 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 her designee has authority to resolve disputes.
- B. In the case of DEQ, the director or his 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~~ EPA approval has been achieved by ODA. 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.

Dick Pedersen
Director of DEQ on Behalf of the
Environmental Quality Commission

Katy Coba
Director of ODA

Date

Date

**Environmental Quality Commission and Oregon Department of Agriculture
Memorandum of Understanding
Relating to the Confined Animal Feeding Operations Program
(December 2009)**

I. Parties

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

II. Purpose

This Memorandum of Understanding (MOU) replaces the MOU dated October 2002 between ODA and EQC. The MOU authorizes ODA to perform the CAFO related functions of DEQ and the EQC. It replaces the October 2002 MOU and DEQ and ODA expect that it will be in place until December 2014, unless the delegation agreement with federal Environmental Protection Agency (EPA) is modified in the interim, in which case, it is likely that the MOU will need to be modified to recognize the change in responsibilities.

III. Effective Date

The MOU is effective on the date it is signed by both parties and it will remain effective until December 31, 2014 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 (33USC §§1251), 40 Code of Federal Regulation (CFR) §122, and 412, ORS 468B.005; Oregon Administrative Rule (OAR) 340, Divisions 40, 41, 44, 45 and; 51; OAR 603, Division 74.

A. *"Confined Animal Feeding Operation(CAFO)"* as defined in OAR 603-074-0010(3) and 340-051-0010(2) 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.

- C. *General Permit* as defined in OAR 340-045-0010(8) means a permit issued to a category of qualifying sources pursuant to OAR 340-045-0033 in lieu of individual permits for every 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 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. *Substantial Change* is defined as the following types of changes to an animal waste management plan (AWMP):
 - 1. For small or medium confined animal feeding operations:
 - (i) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
 - (ii) An increase in maximum allowed animal numbers such that the operation becomes defined as a large concentrated animal feeding operation.
 - 2. For small, medium or large concentrated animal feeding operations:
 - (i) Addition of new land application areas not previously included in the AWMP, unless the land application area is covered by an existing AWMP that has already been incorporated into an existing NPDES permit and the application of manure, litter, or process waste water on the newly added land application area is in accordance with that existing NPDES permit.
 - (ii) Any changes to the field-specific maximum annual rates for land application.
 - (iii) Any changes to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop.
 - (iv) Addition of any crop or other uses not included in the AWMP and corresponding field-specific rates of application.
 - (v) A change in the type of manure system including but not limited to switching from a dry to a liquid manure system, switching from a liquid to a dry manure system, or changing the manure system to accommodate an animal species or type of operation not included in the scope of the current AWMP.
 - (vi) Any changes that are likely to increase the risk of nitrogen and phosphorus transport to surface waters or groundwaters.
- F. *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 procedures of OAR Chapter 340, Division 45 or OAR 340-071-0162.
- G. *NPDES General Permit#01- 2009* means the NPDES general permit issued June 29, 2009 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 EPA.
- D. The first NPDES permit jointly issued by ODA and DEQ was the 2003 CAFO general permit #01, which expired on July 31, 2008. In 2005, the legislature provided DEQ and ODA the authority to issue general permits by department order, ORS 468B.050(2). DEQ and ODA renewed NPDES CAFO general permit #01-2009 on June 29, 2009. The CAFO general permit includes the additional requirements for public notice of animal waste management plans under EPA's November 20, 2008 Concentrated Animal Feeding Operation final rule and the public notice of permit applications with animal waste management plans.
- E. Electronic data reporting for the DEQ statewide program and the EPA database for NPDES permits will be required in the future. Preparation for electronic data reporting is included in this MOU.

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 468.035 *Functions of department (1)(j) and (k)*, 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*, 468.100 *Enforcement procedures; powers of regional authorities; status of procedure 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; Rules*, 468B.053 *Alternatives to Obtaining Water Quality Permit; Rules*, 468B.055 *Plans and Specifications for Disposal, Treatment, And Sewage Systems*, 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 issue 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.

NPDES and WPCF Permit Program Implementation

5. Consult with DEQ on significant determinations regarding the interpretation of the permit, related rules, and the Clean Water Act.
6. Receive and review permit applications for existing or proposed CAFOs.
7. Provide public notice of permit applications and their animal waste management plans and the opportunity for public hearings.
 - (i) Review and respond to public comments.
 - (ii) Let the applicant know if further changes are required before being assigned permit coverage.
8. Assign coverage to those applicant CAFO facilities that qualify for coverage under the existing NPDES General Permit #01-2009 or future general permits, or issue an individual WPCF or NPDES permit if necessary.
 - (i) Permits will comply with OAR Chapter 340, Divisions 40 *Groundwater Quality Protection*, Division 41 *Water Pollution State-Wide Water Quality Management Plan; Beneficial Uses, Policies, Standards, and Treatment Criteria for Oregon* and wasteload allocations assigned to point sources under Division 42 *Total Maximum Daily Loads* (TMDLs).
 - (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 340-040-0030(4)] and other exceptions or approvals as detailed in OAR 340-041-0004 [e.g., approval to lower water quality in high quality waters, OAR 340-041-0004(6)].
9. 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, including but not limited to mechanical treatment systems or experimental treatment systems.
10. Review for approval or rejection proposed substantial changes to an animal waste management plan. Prior to approval, ODA will provide public notice of the proposed changes and an opportunity for public hearing.

Compliance Activities

11. 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.
12. 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. ODA will ensure that persons calling with complaints during regular business hours will be able to speak to or leave a message with an appropriate person on ODA staff.
13. Take prompt enforcement action when CAFOs violate permit conditions, water quality statutes, rules or orders in accordance with ODA enforcement procedures.
14. 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).
15. Notify DEQ when a discharge violation threatens public health or safety.

Permit Program Data

16. 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.
17. ODA will associate an EPA system common key identifier ("OR Number") and an Oregon (DEQ) system compatible permit number key with each CAFO covered under a permit in the CAFO program database.
18. ODA will develop the capability to maintain and provide an electronic inventory of CAFOs covered under a permit. The inventory will include the common key identifier above and at least these data elements: facility names, facility location, facility contact information, type of permit and SIC code.
19. ODA will work with DEQ to develop database extracts or similar mechanisms to provide input into the Oregon (DEQ) statewide permits database and the Permit Compliance System (PCS) EPA's current permit system of record. ODA and DEQ will work to accomplish this by the March 31, 2011.
 - (i) An inventory of applicable data elements currently reported to and stored in DEQ's Water Quality Source Information System (WQ-SIS), the Oregon administrative water quality permit data system, is included as Attachment I. This applies to all Oregon permits.
 - (ii) Required elements for federal data reporting (Water Enforcement National DataBase elements, or WENDB elements) are defined in EPA's 1985 PCS policy statement. EPA's 1985 PCS Policy statement is included as Attachment II. This applies to NPDES permits only, and is for use with PCS, the current EPA system of record. Required data elements will also include any future modifications to EPA's 1985 PCS policy statement.
20. Reporting to ICIS (Integrated Compliance Information System, the successor system to PCS, and EPA's future system of record) will begin when Oregon converts to

statewide ICIS use. Changes in both required data elements and handling mechanisms may be necessary at that time

- 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 issue 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.
5. Provide public access to the ODA CAFO public notice website from the DEQ public notice website.
6. Assist ODA with response to comments.

Compliance Activities

7. 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. DEQ will refer to ODA website for an accurate list of area contacts.
8. Conduct inspections only when requested by ODA; however, in situations where DEQ reasonably suspects that operations related to a CAFO may present an imminent and substantial danger to human health or the environment, DEQ may exercise agency discretion and conduct the inspection after notifying ODA.
9. Initiate enforcement actions, within agency discretion, only as a direct result of the investigative actions outlined herein or upon request of ODA.
10. 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.

Permit Program Data

11. Provide technical assistance to ODA to develop method(s) of providing data to DEQ and EPA database systems.

12. DEQ's Operations and Information Services will work with ODA to identify a DEQ compatible system permit number key.
13. DEQ will consult with ODA in the preparation and planning for the Oregon state-wide switch from PCS to ICIS.

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

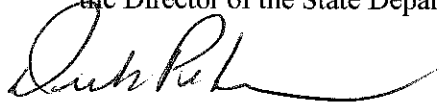
- A. In the case of ODA, the director or her designee has authority to resolve disputes.
- B. In the case of DEQ, the director or his designee has authority to resolve disputes.

XII. Modification of the MOU

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

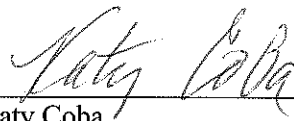
XIII. Termination of the MOU

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.



Dick Pedersen
Director of DEQ on Behalf of the
Environmental Quality Commission

12-16-09
Date



Katy Coba
Director of ODA

12-16-09
Date

**AMENDMENT TO Memorandum of Understanding between the
Environmental Quality Commission and Oregon Department of Agriculture
Relating to the Confined Animal Feeding Operations Program**

The Environmental Quality Commission and the Oregon Department of Agriculture hereby amend section III of the Memorandum of Understanding between the Environmental Quality Commission and the Oregon Department of Agriculture dated December 16, 2009 and extend the effective period of the Memorandum of Understanding from December 31, 2014 to December 31, 2015.



Dick Pedersen
Director of DEQ on behalf of the
Environmental Quality Commission



Katy Coba
Director of ODA

12-2-14
Date

12-2-14
Date