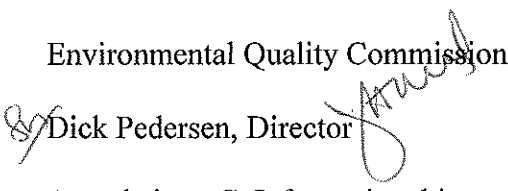


State of Oregon
Department of Environmental Quality

Memorandum

Date: Sept. 30, 2015

To: Environmental Quality Commission

From:  Dick Pedersen, Director

Subject: Agenda item C, Informational item: Memorandum of understanding between the Environmental Quality Commission and Oregon Department of Agriculture for the confined animal feeding operation permit program Oct. 14-15, 2015, EQC meeting

Why this is important The memorandum of understanding between the Environmental Quality Commission and Oregon Department of Agriculture governing implementation of the Confined Animal Feeding Operations program will expire Dec. 31, 2015. The commission will be asked to decide at its December 2015 meeting whether to approve proposed updates to the MOU. The purpose of this informational item is to provide EQC with background on the CAFO program and current permitting activities.

Key information Oregon statute requires that the commission and ODA have a MOU to operate a CAFO program. DEQ received EQC's approval for an extension of the current MOU in October 2014. The commission granted an extension of the MOU so that the MOU could be updated to include the roles and responsibilities associated with current and anticipated permit program requirements. The extension will expire Dec. 31, 2015.

DEQ and ODA staff will present an updated MOU for approval at the commission meeting in December. The agreement will continue DEQ and ODA roles and responsibilities for managing water quality permits related to CAFOs and address new federal requirements related to electronic data collection and reporting.

Background 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 crops at agronomic rates. The types of wastes that are generated include manure, silage pit drainage, washdown waters, contaminated runoff and milk wastewater.

Permit history

As of January 2014, 524 animal operations in Oregon are registered to CAFO NPDES General Permit #01-2009. They include 316 dairy, 38 poultry, 112 beef and dairy heifer and 58 other operations.

Initially, DEQ issued all general and individual permits to CAFOs. DEQ issued the first water pollution control facilities CAFO General Permit #800 in 1987. Prior to 2003, CAFOs operated under Water Pollution Control Facility permits.

In 2003, ODA and DEQ jointly issued the first CAFO NPDES General Permit #01. This general permit was renewed in 2009 and would have expired May 30, 2014, but was approved for extension by the commission until Dec. 31, 2015.

Currently a majority of Oregon's CAFOs have permit coverage under NPDES General Permit #01. NPDES General Permit #01 does not allow a discharge to surface water except in the event of a large storm.

DEQ and ODA are currently working on renewal of the NPDES CAFO General Permit #01, as well as issuance of a new WPCF General Permit #01. A WPCF general permit is for CAFOs that do not discharge to surface water. An initial public notice and comment period for both of these permits occurred in April through May of 2014.

As a result of comments received during the initial public comment period, the agencies made modifications to the proposed NPDES general permit and will provide a public comment period on those modifications starting at the end of September 2015. DEQ and ODA plan to issue the renewed NPDES general permit for CAFOs soon after EQC's consideration of the updated CAFO MOU in December 2015. DEQ and ODA issued, under state authorities, the new WPCF General Permit #01 in October 2015 following a public comment process.

Program history

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 the EQC and ODA to transition the 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, subject to approval from EPA. EPA has not yet

approved this transfer, so it remains a jointly-issued permit under the terms of the MOU. It is not anticipated that authorization will change over the term of this proposed five-year agreement.

At the commission meeting in December, DEQ and ODA will propose updates to the MOU that anticipate database needs and specifies inspection frequency.

New federal rules will require electronic data reporting for NPDES permittees. CAFOs with coverage under an NPDES permit are included in this proposed new rule. The updated MOU will require DEQ and ODA to work together to satisfy data reporting needs.

The updated MOU will require ODA to conduct CAFO inspections with the frequency indicated in EPA's Clean Water Act National Monitoring Compliance Goals for CAFOs.

**Next steps and
commission
involvement**

DEQ and ODA staff will request approval of an updated memorandum of understanding between the DEQ and ODA at the December 2015 commission meeting. If approved, the updated memorandum of understanding will take effect December 2015 and expire in 2020.

Attachments

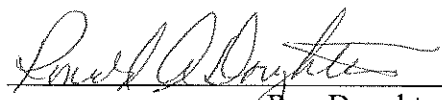
- A. December 2009 memorandum of understanding
- B. Extension of the 2009 memorandum of understanding

**Available upon
request**

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

Approved:

Division: 
Lydia Emer
Operations Division administrator

Section: 
Ron Doughten
Surface Water manager

Report prepared by Beth Moore
General permits coordinator

**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

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.

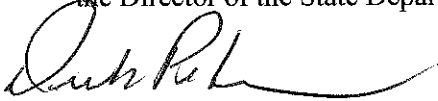
- A. In the case of ODA, the director or her designee has authority to resolve disputes.
- B. In the case of DEQ, the director or his designee has authority to resolve disputes.

XII. Modification of the MOU

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

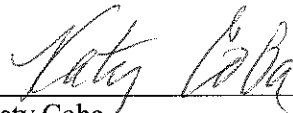
XIII. Termination of the MOU

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

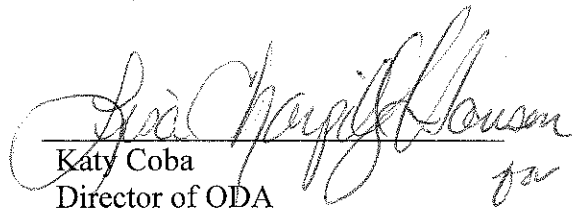
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**AMENDMENT TO Memorandum of Understanding between the
Environmental Quality Commission and Oregon Department of Agriculture
Relating to the Confined Animal Feeding Operations Program**

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