

Date: Oct. 15, 2014

To: Environmental Quality Commission

From: Dick Pedersen, Director

Subject: Agenda item O, Action item: Request for a one-year extension of the memorandum of understanding between the Environmental Quality Commission and Oregon Department of Agriculture relating to the Confined Animal Feeding Operations program
Nov. 5-7, 2014, EQC meeting

Purpose of item The purpose of this agenda item is to seek approval of the Environmental Quality Commission to extend the term of the existing memorandum of understanding between EQC and Oregon Department of Agriculture relating to the Confined Animal Feeding Operations program. Without a written agreement to extend the term of the existing MOU, it will expire Dec. 31, 2014.

Background The memorandum of understanding authorizes ODA to perform the CAFO-related functions of DEQ and EQC. ORS 468B.217 requires that the commission and ODA enter into an MOU that provides for ODA to operate a program for the prevention and control of water pollution from CAFOs. Subject to the terms of the MOU, ODA may exercise all functions of EQC and DEQ related to control and prevention of water pollution from CAFOs, including enforcement.

The agreement to extend the existing MOU will continue the current level of environmental protection and continue permit requirements and permit program database reporting requirements under the current permit program. A one-year extension is necessary to allow for renewal of the NPDES CAFO general permit and issuance of a new water pollution control facility CAFO general permit. An extension will allow ODA and DEQ to incorporate into an updated MOU any new activities associated with these permits. Time is needed to respond to extensive comments received during the public notice and participation period, including the potential for a second public notice period. ODA and DEQ anticipate that renewal of the NPDES CAFO general permit and issuance of a new WPCF CAFO general permit should be completed by the end of 2014.

DEQ recommendation DEQ recommends that EQC authorize Director Dick Pedersen to execute an agreement to extend the term of the current memorandum of

and EQC motion understanding between DEQ and ODA related to the CAFO program
for one year, until Dec. 31, 2015.

Attachments A. Current memorandum of understanding between EQC and ODA
relating to the CAFO program
B. Proposed agreement to extend the term of the current
memorandum of understanding until Dec. 31, 2015.

**Available upon
request** 1. Oregon Department of Agriculture Natural Resources Division
Confined Animal Feeding Operations Program 2013 Annual
Report.
2. CAFO NPDES General Permit #01-2009 and permit documents.

Approved:

Division: _____
Lydia Emer, Operations Division administrator

Section: _____
Jennifer Wigal, Water Quality manager

Report prepared by Beth Moore and Jane Hickman

**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

EQC and ODA MOU for CAFO Permit Program
December 2009
Page 3 of 7

- 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.

EQC and ODA MOU for CAFO Permit Program
December 2009
Page 5 of 7

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.

EQC and ODA MOU for CAFO Permit Program
December 2009
Page 7 of 7

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.

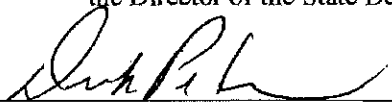
- A. In the case of ODA, the director or her designee has authority to resolve disputes.
- B. In the case of DEQ, the director or his designee has authority to resolve disputes.

XII. Modification of the MOU

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

XIII. Termination of the MOU

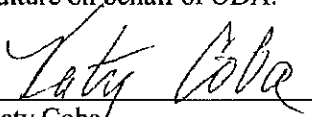
This MOU may be terminated at any time and by either party after 60 days advance notice of intent to terminate and/or within 180 days after formal delegation has been achieved. The notice must be provided in writing and served on the director of DEQ on behalf of the EQC or the Director of the State Department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

Date

Date