

**RESPONSE SUMMARY FOR  
AUTHORIZATION TO DISCHARGE UNDER  
GENERAL PERMIT 3-9100**

**June 21, 2013**

The above referenced General Permit 3-9100 authorizes owners and operators of Medium Concentrated Animal Feeding Operations (CAFO) to discharge in accordance with the effluent limitations, monitoring requirements, and all other terms and conditions of the permit.

The Notice of Intent (NOI) was placed on notice for public comment from February 28, 2013 until April 29, 2013. The Stormwater Program received four sets of comments on the proposed permit. The following is a summary of the comments relevant to this permit and the Department of Environmental Conservation's (Department) responses to those comments. Some of the comments are paraphrased and edited for clarity and combined where appropriate.

**Comments received from Lake Champlain International**

- 1. Comment:** The draft permit should be broadened to address all agricultural operations of all sizes and types.

**Response:** The Department, as the delegated National Pollutant Discharge Elimination System (NPDES) authority, retains the right to issue individual permits to any farm, regardless of size, at the discretion of the Secretary pursuant to 10 VSA § 1263 (authority to permit and regulate CAFOs).

- 2. Comment:** I encourage you to review the 25-year, 24-hour storm event design standard for effluents from the production area.

**Response:** The 25-year, 24-hour storm event criteria is consistent with the Environmental Protection Agency (EPA) NPDES permit writer's technical manual and is the industry recognized standard for agricultural facility containment construction as indicated by the U.S. Department of Agriculture Natural Resources Conservation Service Field Office Technical Guidance.

- 3. Comment:** I expect with this new authority to influence winter spreading ban exemptions that the Secretary of the Agency of Natural Resources (ANR) will focus on reducing these spreading ban exemptions and implement the solutions that help farmers reduce winter and year-round pollution runoff. Furthermore, granting authority to the Secretary of ANR to influence winter spreading ban exemptions should be inclusive of not only CAFO permitted farms, but all types of commercial agricultural operations.

**Response:** The Secretary of Natural Resources retains the right to deny a permitted CAFO the ability to spread manure within the time period of the regulatory spreading ban, regardless of exemptions given by the Vermont Agency of Agriculture, Food and Markets (VAAFAM). The Secretary of ANR does not have the authority to deny these exemptions to farms that are not regulated under a general or individual CAFO permit, but continues to work with VAAFAM collaboratively on agricultural water quality improvements.

**Comments received from James Maroney** (Note: several comments were received regarding a draft “plan.” For purposes of this response summary, the Department interprets “plan” as “draft permit”).

1. **Comment:** The draft plan only invites Vermont owners and operators of medium-size CAFOs to apply for a permit to discharge; it does not mandate that they apply.

**Response:** Owners and operators of Medium CAFOs that discharge to waters of the State must apply for coverage under the general permit. Additionally, the Secretary of Natural Resources has the authority to require any farm that discharges in violation of the Clean Water Act to either obtain coverage under this draft permit or an individual permit.

2. **Comment:** The draft plan parses nutrient runoff into two classes: barnyard discharges ... subject to NPDES permits, and nonpoint pollution source runoff, which is not regulated under NPDES permits.

**Response:** The Secretary only has the authority to regulate point source discharges under NPDES permits. However, the permit requires a site-specific Nutrient Management Plan (NMP), approved by the Secretary, which includes site-specific, field-based conservation practices.

3. **Comment:** The draft plan proposes that NPDES permits would be issued without limits on stocking rates and without Best Available Technology controls.

**Response:** The permit, which shall incorporate the site-specific NMP, will address stocking rates and any other appropriate available technologies and requirements that are necessary for elimination of discharges from the CAFO.

4. **Comment:** (summarized) - concerns about the value of an approved and implemented NMP.

**Response:** A CAFO NMP will only be approved by the Secretary if it meets the criteria required by federal regulations (40 CFR § 122.42(e)(1)) and the additional regulations

required in the draft permit (Part IV(A)(1)(a-1)). A CAFO's approved NMP will be incorporated into its permit, and the CAFO will be required to implement all parts of its NMP as a part of its permit. Certain agricultural practices specifically mentioned in the comments such as application of nitrogen fertilizer, the use of petroleum products and herbicides, and the site-specific application of manure or fertilizer are allowed as appropriate agricultural activities provided they are conducted in accordance with the terms and conditions of the permit.

5. **Comment:** Comments expressed concern related to VAAFMs oversight of the CAFO's record-keeping.

**Response:** The Department will be responsible for oversight and inspections of all permitted CAFOs.

### **Comments received from the U.S. Environmental Protection Agency**

1. **Comment:** Does VT have a specific reason for including the term "stormwater" in this heading?

**Response:** The Department inadvertently included the term "stormwater" in the heading. The permit has been modified to remove the term "stormwater" from the heading.

2. **Comment:** EPA states that inclusion of language regarding the Regional Administrator's ability to designate medium CAFOs is required for purposes of consistency with federal regulations.

**Response:** The Department concurs with this addition to the permit and has made the changes in the appropriate sections of the permit.

3. **Comment:** The permit references both "waters of the state" and "waters of the US". EPA recommends consistency.

**Response:** The Department has incorporated the term "waters of the State" consistently throughout the document.

4. **Comment:** EPA expressed concerns that the draft permit, as written, did not incorporate the NMP, either in whole or in part, into the permit. EPA also expressed concerns about the consistency of the language throughout the permit regarding the NMP.

**Response:** The Department has changed the language in the permit to be consistent with the following language: “The entire site-specific NMP is incorporated by reference into this permit.”

5. **Comment:** EPA reminds the Department that based on the July 30, 2012 changes to EPA regulations a CAFO is not required to obtain a NPDES permit unless there is a discharge. Therefore, the language in the permit that requires an operation to apply for coverage no later than 90 days after being defined as a CAFO would not be enforceable as a matter of federal law and would not be a part of Vermont’s federally approved NPDES program. However, EPA notes that this provision could be enforceable as a matter of state law pursuant to 40 C.F.R. § 123.1(i).

**Response:** The Department acknowledges this change in federal law and will regulate CAFOs using the guidance in the Hanlon memo (EPA, December 8, 2011) and pursuant to the Clean Water Act, 10 V.S.A. Chapter 47, and Vermont’s Water Pollution Control Regulations.

6. **Comment:** EPA reiterates its comment that certain waters may be impaired but may not yet appear on Vermont’s Section 303(d) list, and strongly recommends that Vermont remove the language related to the 303(d) list.

**Response:** The Department concurs with EPA’s suggestion and has changed the permit accordingly.

7. **Comment:** EPA believes that Part I, Section F (where the permit requires reapplication prior to an expiration date) exceeds the authority in 40 C.F.R. § 122.23, based on the July 30, 2012 changes to EPA regulations.

**Response:** Re-application requirements are applicable only to CAFOs requiring permit coverage.

8. **Comment:** EPA notes that as written, Part II, Section E does not indicate that the Secretary will provide notice to the public of the terms of the NMP proposed to be incorporated into the permit. EPA also notes that the federal regulations require notice when the Secretary “makes a preliminary determination that the NOI meets the requirements of 40 C.F.R. §§ 122.21(i)(1) and 122.42(e)”, not upon a determination that an application is complete.

**Response:** The Department concurs. The permit has been modified to provide for public notice of the draft NMP to be incorporated into the permit. Additionally, the Department reviews applications for completeness against all applicable federal and state regulations.

9. **Comment:** Does Vermont believe that Section 13.3(g-i) of Vermont’s Water Pollution Control Regulations meets the criteria required in federal regulation 40 CFR § 122.23(h) regarding procedures for public comments and hearings?

**Response:** Vermont’s Water Pollution Control regulations are equal to or no less stringent than the federal regulations, however the permit has been modified to reference 40 CFR §§ 124.10-124.13.

10. **Comment:** EPA notes that Part II, Section H requires a permittee to reapply for coverage under the permit at least 180 days prior to the expiration date of the “authorization” rather than the expiration of the “permit” itself. EPA’s regulations are worded in terms of a “permit” and not an “authorization” (40 CFR §§ 122.21(d), 122.42(b), 122.23(h)).

**Response:** The authorization given to the CAFO operator is separate from the permit itself, and therefore, the Department prefers to keep the wording “authorization” for clarity.

11. **Comment:** EPA questions what happens when the 5 year authorization continues beyond the date when the general permit itself may have been revised and reissued. EPA requests the opportunity to discuss Sections H and I (p. 8) with the Department for clarification.

**Response:** If the authorization continues past the permit expiration date, the permittee is granted permit coverage until reissuance or replacement of this general permit, issuance of an individual permit, or, if the Secretary decides not to reissue this general permit, until the permittee receives coverage under an alternative general permit or an individual permit.

If the new general permit contains changes, the permittee must comply with the reissued permit.

12. **Comment:** EPA suggests clarifying language in Part III(A)(3) to include requirements regarding changes to the NMP. EPA believes that this added language would clarify exactly how the requirements of this section of the permit would be implemented, and without the language it is not clear what specific procedures would apply. The new language would read: “In addition to the requirement to meet the terms and conditions of Subparts III.A.1 and A.2, the CAFO must also comply with the following *as may be determined by the Secretary in accordance with the provisions below. Any changes to a CAFO’s NMP necessitated by the requirements of this section of the permit*

*shall be processed in accordance with the procedures contained in Subpart IV.A.5 of this general permit and as indicated in Subpart III.A.3.e below.*

**Response:** The Department does not support including the proposed change in the introductory paragraph because it is redundant. The language is already included in the new subpart III(A)(3)(e).

13. **Comment:** EPA notes that the Department has chosen to not include a number of BPJ (Best Professional Judgment)-related provisions recommended by the EPA in earlier comments. These recommended additions were to Part III(A)(5).

**Response:** The Department acknowledges that there are other requirements and prohibitions applicable to the production areas that are considered BPJ-related provisions. However, the excluded provisions are only required of Large CAFOs; this general permit is applicable to Medium CAFOs.

14. **Comment:** EPA added the term “process wastewater” to several sections of the draft permit for consistency with federal regulations.

**Response:** The Department concurs with this addition and has made changes to the permit in the recommended areas.

15. **Comment:** EPA would like to discuss the winter spreading ban exemption.

**Response:** In Vermont, the Secretary of Agriculture has the ability to grant exemptions to the winter spreading ban on a case-by-case basis in emergencies or on a general basis due to appropriate weather conditions. This general permit requires a permittee that has been granted an exemption by the Secretary of Agriculture to also get approval of the exemption from the Secretary of Natural Resources. The Secretary of Natural Resources may only approve an exemption if the exemption will not result in a discharge to surface waters and will comply with the site-specific NMP.

16. **Comment:** EPA wishes to know why the Department excluded prohibitions on spreading manure and other wastes to ground that is saturated with water or during rainfall events.

**Response:** The Department believes that it is infeasible to administer the prohibition based on “saturation” given the lack of specificity of the term. “Saturation” is not a uniform condition; it varies depending on soil depth and varies in duration. As to the prohibition “during rainfall events,” we believe it is unnecessary. The Department will

include such condition-specific prohibitions in the NMP on a field-specific basis as necessary.

17. **Comment:** EPA believes that the Department should use the term “manure, litter, or process wastewater” consistently throughout the permit and not the term “waste”.

**Response:** The Department concurs with this change and has incorporated it throughout the permit.

18. **Comment:** EPA questions if the terms of the NMP would be incorporated into the permit or into the authorization. Part IV(A) says the NMP terms will be incorporated into the general permit, however in other sections, terms are incorporated into the authorization.

**Response:** The site-specific NMP will be incorporated into the permit. The permit has been modified for consistency where necessary.

19. **Comment:** EPA requests that Part IV(A)(1)(l) be reworded to be consistent with EPA regulations. To do so, the section would now read:

*l) The NMP shall identify specific records that will be maintained to document the implementation and management of the minimum elements described in part IV.A.1.a through k.*

**Response:** The Department generally concurs with this and has modified the permit accordingly.

20. **Comment:** EPA recommends the addition of a procedure to those currently required of the NMP content in Part IV(A)(1) that reads, “Equipment used for land application of manure, litter, or process wastewater must be inspected periodically for leaks.”

**Response:** The Department concurs with this and has modified the permit accordingly.

21. **Comment:** EPA recommends that the permit include a provision indicating that the requirements of Table IV Recordkeeping and Monitoring Requirements are enforceable terms and conditions of the permit.

**Response:** The table is included to summarize the recordkeeping and monitoring requirements for the CAFO operator. The requirements, which are elaborated upon in other sections of the permit, are already clearly enforceable, but the Department concurs with this suggestion and has modified the permit to be consistent with this intent.

22. **Comment:** EPA recommends the inclusion of recordkeeping requirements in Table IV relating to inspections, land application activities, and design documentation for all manure, litter, and process wastewater storage structures.

**Response:** The recommendations EPA suggests are specific to Large CAFOs and therefore we do not choose to include them in this Medium CAFO general permit.

23. **Comment:** EPA recommends that the analysis of litter and process wastewater be added to the analysis of manure in Table IV.

**Response:** The Department requires that the contents of a waste handling system be analyzed annually as part of a CAFOs NMP. We believe that adding these terms may confuse what is a commonly understood term and practice. We concur with rewording the phrase to “manure containment system contents” to help clarify that this may include litter and process wastewater as normal contents of a CAFO manure handling system. This change has been made in the permit.

24. **Comment:** EPA recommends that soil analysis be conducted annually.

**Response:** The Department believes that the 590 standard and the state guidelines for soil analysis which require sampling of fields every three years are appropriate.

25. **Comment:** EPA recommends inclusion of helpful footnotes at the end of Table IV for explanation.

**Response:** The table simply summarizes requirements that are clearly outlined in other areas of the permit, and therefore, the Department does not feel any further explanations are necessary, but the Department included a brief note anyway.

26. **Comment:** EPA recommends removal of the following section of Part IV(A)(5)(b)(2) due to confusing language.

“The Secretary will respond to all significant comments received during the public comment period and require the CAFO owner or operator to further revise the NMP if necessary, ~~in order to approve the review to the terms of the NMP incorporated into the permit.~~”

**Response:** The Department believes the language is important to the sentence, but has reworded the sentence for clarity.



27. **Comment:** EPA requests an opportunity to discuss the provisions in Part V.C, Limitations on other discharges, before making any specific recommendations that Vermont include in the provisions.

**Response:** The Department believes that this section would extend to non-point source discharges that are not regulated under CAFO permits. Therefore, the Department has removed V(C)(2) and (3) and reworded the section to clarify that discharges not covered by the permit may still be subject to other permitting requirements.

28. **Comment:** EPA believes that Part VI does not contain all the required NPDES standard permit conditions and requests that missing provisions be added for consistency with federal regulations.

**Response:** The Department has added standard permit conditions concerning representative sampling and records content. The permit already contains sufficient provisions concerning noncompliance reporting. Subpart VI(G) outlines what a permittee is to do in the event the permittee does not comply with conditions of the permit. The permit need not include provisions regarding “change in discharge of toxic pollutant” because this is not a standard permit condition required of CAFOs. Additionally, the permit need not include provisions regarding “additional monitoring a CAFO owner/operator may conduct” because CAFO permittees are not required to submit discharge monitoring reports.

29. **Comment:** EPA strongly recommends that Vermont reword the definition of discharge as indicated in the Definitions section of the draft permit.

**Response:** The definition that the Department used in this section is consistent with the definition in I(B)(4), however we concur that this definition is not inclusive enough to be consistent with 40 CFR § 122.2 and we have reworded this definition accordingly in the permit.

30. **Comment:** EPA recommends the addition of a definition of “liquid manure handling system” to the list of definitions.

**Response:** The Department concurs with this recommendation and has modified the permit to include a definition of “liquid manure handling system”.

31. **Comment:** EPA recommends changes to the definitions for “waste” and “waste storage facility” to ensure the terms are not interpreted too narrowly.

**Response:** The Department concurs and has made appropriate changes in the permit.

**Comments received from the Middlebury Meeting, March 29, 2013, from Eric Clifford, Loren Wood, Brian Kemp, and Mark Lourie**

1. **Comment:** How will a copy of the NMP be made available to the public? Will the public be required to come to the Agency office to view the NMP or will a copy be sent to them directly?

**Response:** The Department will provide copies in electronic or written form. Alternatively, the public may request an opportunity to review these records in person at our offices.

2. **Comment:** Can a CAFO operator request to be notified when a member of the public requests to see the CAFO's NMP so that the CAFO operator can have the opportunity to be at the viewing of the NMP?

**Response:** The Department cannot agree to inform permittees when requests for information related to a permit file are received.