



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
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Secretary

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MEMORANDUM OF AGREEMENT BETWEEN
THE DELAWARE DEPARTMENT OF AGRICULTURE
AND
THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL

December 16, 2010

WHEREAS, the Department of Agriculture (DDA) and the Department of Natural Resources and Environmental Control (DNREC) have enjoyed a successful and mutually-beneficial relationship in carrying out the National Discharge Elimination System (NPDES) program for Concentrated Animal Feeding Operations (CAFO) in Delaware, in cooperation with the Nutrient Management Commission; and

WHEREAS, the purposes of Title 3, Delaware Code, Chapter 22, include to formulate a systematic and economically viable nutrient management program that will both maintain agricultural profitability and improve water quality in Delaware and to regulate those activities involving the generation and application of nutrients in order to help improve and maintain the quality of Delaware's ground and surface waters and to meet or exceed federally mandated water quality standards, in the interest of the overall public welfare; and

WHEREAS, the DDA has the experience and expertise to effectively operate and manage certain aspects of the CAFO Permit Program as the DNREC's agent, with the DNREC's approval and oversight, and to advise and assist the DNREC; and

WHEREAS, CAFOs require NPDES permits; and

WHEREAS, the DNREC has been delegated the NPDES program from the Environmental Protection Agency (EPA) as outlined in a 1983 Memorandum of Agreement (MOA) between the two agencies, and

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WHEREAS, the parties desire to have the DDA interact with the regulated community as an integral part of the CAFO permitting process, as a point of initial contact, and as a facilitator for the DNREC, among other functions; and

WHEREAS, this MOA is not intended to transfer any part of the delegated CAFO Permit Program to the DDA; and

WHEREAS, the DDA and its Secretary have the power and authority to, among other things, devise and execute measures necessary for the development of the agricultural interests of the State, carry out duties related to the Nutrient Management Program, and make necessary and desirable agreements in the performance of such functions, pursuant to 3 Del. C. § 101, 3 Del. C. Ch. 22, and 29 Del. C. Ch. 81; and

WHEREAS, the DNREC and its Secretary have the power and authority to, among other things, require a permit from any person who undertakes any activity in a way which may cause or contribute to discharge of a pollutant into any surface or groundwater, and make necessary and desirable agreements in the performance of such functions, pursuant to 7 Del. C. Ch. 60 and 29 Del. C. Ch 80; and

WHEREAS, the DNREC and the DDA have promulgated Regulations Governing the Control of Water Pollution, § 9.5 Concentrated Animal Feeding Operation.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

SECTION ONE: DEFINITIONS

- A. CAFO: Concentrated Animal Feeding Operation as defined in the CAFO Regulations.
- B. CAFO Permit Program: a program delegated by the EPA to the DNREC on October 23, 1992, which includes the issuance of individual and general NPDES permits to CAFOs. The permit program for CAFOs will be administered by the DNREC with the assistance of the DDA.
- C. CAFO Permit: an NPDES permit written for one CAFO facility by the DDA in conjunction with the DNREC and issued by the DNREC in accordance with the CAFO Regulations.
- D. Notice of Intent (NOI): filed by a CAFO facility to obtain coverage through the CAFO Permit Program.
- E. CAFO Regulations: Regulations Governing the Control of Water Pollution, § 9.5 Concentrated Animal Feeding Operation (CAFO), *7 Del. Admin. C. § 7201-9.5, 14 Del. Reg. 482* (November 2010).

SECTION TWO: OVERVIEW OF CAFO PERMIT PROGRAM

- A. The DNREC will serve as the lead agency for coordination with the EPA consistent with the 1983 MOA between the two agencies.
- B. The DDA (under Title 3) and the DNREC (under Title 7) have and will jointly promulgate regulations over CAFOs as desirable and necessary to carry out this MOA and the statutory responsibilities of the agencies.
- C. The DDA will ordinarily be the initial point of contact with the regulated community.
- D. The DDA with the assistance and concurrence of the DNREC will develop all individual permits.
- E. The DNREC with the assistance of the DDA will issue all final individual permits.
- F. The DNREC will ensure that Total Maximum Daily Load (TMDL) concerns are coordinated during permit issuance.

SECTION THREE: NOTICE OF INTENT PROCESS

- A. The DDA will receive the NOIs for CAFO Permits from facilities and maintain files for all applicants. The DDA will provide a list of all NOIs to the DNREC and make all NOIs and accompanying documents available to the DNREC for review.
- B. The DDA will review the NOI and its accompanying documentation to determine if the NOI application package is complete (including a Nutrient Management Plan [NMP] that meets applicable state requirements). If it is determined that the application package is incomplete, the DDA will notify the applicant of the deficiencies.
- C. The DDA will determine the sufficiency of nutrient management plans required under the CAFO regulations in accordance with criteria in the CAFO Regulations, 3 Del. C. Chapter 22, and the State Technical Standards, as part of DDA's review of the NOI.
- D. The DDA will determine whether it will recommend that CAFO Permit coverage should be issued, and what the terms of the permit should be for each applicant, and will notify the DNREC of its recommendation for the DNREC's concurrence.
- E. The DDA will conduct the public notice and participation process.
- F. The DDA will draft any response to public comments on the application. The DNREC will be provided with an opportunity to consult and concur in the DDA's proposed response to public comments.
- G. The DDA will develop a notice of permit coverage including a concise statement of the terms of the CAFO Permit and provide the DNREC an opportunity to approve.

- H. Following the DNREC's approval, the DDA will notify the applicant and the public of the granting of permit coverage and the terms of the CAFO Permit.

SECTION FOUR: ENFORCEMENT

- A. The DDA will perform inspections and monitoring as necessary to ensure compliance with the applicable regulations and provide the DNREC access to the inspection reports and monitoring results. The DNREC shall retain its inspection authority.
- B. The DDA will take the lead in developing and implementing voluntary compliance strategies to bring Animal Feeding Operations (AFOs) and CAFOs into compliance with the Clean Water Act (CWA), the CAFO Regulations, and other applicable law. Such actions may include issuing notifications to facilities that they must seek CAFO Permit coverage. Additionally, the DDA may work with AFOs and CAFOs to improve their use of best management practices to improve facility practices.
- C. The DNREC shall take the lead in developing and implementing compulsory compliance strategies to bring AFOs and CAFOs into compliance with the CWA, the CAFO Regulations, and other applicable law. The DDA will assist the DNREC in its enforcement activities and may act as the DNREC's agent to, among other things, collect information, evaluate best management practices, evaluate land application rates, and evaluate NMPs and NMP implementation.
- D. The DNREC will initiate an enforcement action relating to CAFOs should the DDA unsuccessfully resolve an enforcement issue.
- E. The DNREC will report information through the NPDES Permit Compliance System to the EPA.

SECTION FIVE: COORDINATION

- A. The DDA and the DNREC will meet as often as necessary, but not less than semi-annually, to discuss the efficacy of the CAFO Permit Program.
- B. This MOA can be modified or terminated at any time by mutual consent of both parties in writing or can be terminated by either party alone by giving 90 days notice in writing to the other.
- C. This MOA shall not be construed to confer or create any rights in third parties.

IN WITNESS THEREOF, the parties have duly executed this Agreement as of the day, month, and year first above written.

DELAWARE DEPARTMENT OF AGRICULTURE



Ed Kee
Secretary

12/16/10

Date

DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL



Collin P. O'Mara
Secretary

12/16/10

Date