

Vermont Agency of Agriculture, Food and Markets
Administrative Division
Enforcement Section

Agricultural Non-Point Source Water Quality Enforcement Program
State Fiscal Year 2022 Annual Report

August 22, 2023

Dear Reader,

The Vermont Agency of Agriculture, Food and Markets' (VAAFMM) Administration Division's Enforcement Section (Enforcement Section) works cooperatively with the VAAFMM Water Quality Division (WQ Division) to implement a comprehensive approach to the regulation of farms in the State to best protect water resources. The development of a three-tiered approach to the regulation of Vermont farms allows for a logical progression in regulatory oversight as a farm grows in size from a Small Farm Operation (SFO)/Certified Small Farm Operation (CSFO) subject to regulation under the Required Agricultural Practices (RAP) Rule, to a Medium Farm Operation (MFO) regulated under both the Medium and Small Farm Operation Rules for Issuance of General and Individual Permits (MFO Rule) and the State's General Permit for Medium Farm Operations (MFO GP), to a Large Farm Operation (LFO) regulated under the Large Farm Operations Rules (LFO Rules) and an LFO individual permit (LFO IP). This report provides a summary of the enforcement actions taken by VAAFMM during State Fiscal Year 2022 (FY22) for alleged violations of Vermont's agricultural water quality regulations.

Title 6 of the Vermont Statutes Annotated (6 V.S.A.), Chapter 215: Agricultural Water Quality, Subchapter 10: Enforcement, provides the Secretary of VAAFMM with the necessary authority to enforce the agricultural water quality requirements of 6 V.S.A Chapter 215. Pursuant to 6 V.S.A. § 4991, when the Secretary of VAAFMM determines that a person subject to the requirements of Chapter 215 is violating a requirement of the Chapter, the Secretary shall respond to and require discontinuance of the violation. The Secretary may respond to a violation of the requirements of Chapter 215 by:

- (1) issuing a corrective action letter (CAL) under 6 V.S.A. § 4992;
- (2) issuing a cease and desist order (CDO), an emergency administrative order (EAO), a mandatory corrective action order (MCAO), or a Notice of Violation (NOV) with proposed administrative penalties, or entering into an Assurance of Discontinuance (AOD), under 6 V.S.A. § 4993;
- (3) revoking or conditioning coverage under a permit or certification under 6 V.S.A. § 4994;
- (4) bringing a civil enforcement action under 6 V.S.A. § 4995;
- (6) referring the violation to the Secretary of Natural Resources for enforcement under 10 V.S.A. Chapter 201; or
- (7) pursuing other action, such as consulting with a farmer, within the authority of the Secretary to assure discontinuance of the violation and remediation of any harm caused by the violation (§ 4991(7) letter).

Please refer to the Glossary at the end of this report for definitions of enforcement actions typically issued by VAAFMM.

In FY22, the Enforcement Section continued to:

- Work cooperatively with the WQ Division to effectively and equitably regulate farms of all sizes.
- Hold weekly Enforcement Committee Meetings with WQ Division leadership and staff and the Vermont Attorney General's Office (AGO) legal counsel to discuss cases with alleged violations and reach agreement on how to move forward with enforcement, if appropriate.

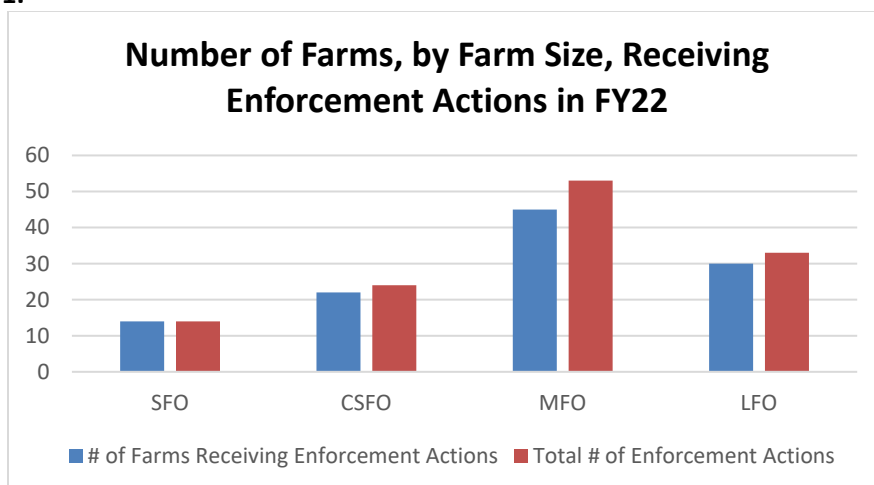
- Remain in close communication with WQ Division leadership and staff throughout the enforcement process to ensure timely follow-up inspections to monitor a farm’s progress in achieving compliance with the agricultural water quality regulations.
- Accompany WQ Division staff on field visits to better understand the issues requiring enforcement and to explain the enforcement process to the regulated community.
- Communicate regularly with the Vermont Agency of Natural Resources (ANR) to refer cases that involve suspected point source discharges of agricultural waste to waters of the State as required by Paragraph 6 of the Memorandum of Understanding between VAAF and ANR (https://agriculture.vermont.gov/sites/agriculture/files/documents/Water_Quality/MOU_AAFM-ANR_AgriculturalWaterQualityPrograms_2017.pdf).
- Communicate regularly with the AGO on cases that VAAF has referred to the AGO for review and potential enforcement in order to monitor case progress and provide subject matter expertise and in-field follow-up when needed to support AGO enforcement efforts.

Information about the WQ Division Enforcement Program, the RAPs, the MFO Program, and the LFO Program can be found at the following links:

- WQ Division Enforcement - agriculture.vermont.gov/water-quality/enforcement-compliance
- RAPs - agriculture.vermont.gov/rap
- MFO Permitting Program - agriculture.vermont.gov/mfo
- LFO Permitting Program - agriculture.vermont.gov/lfo

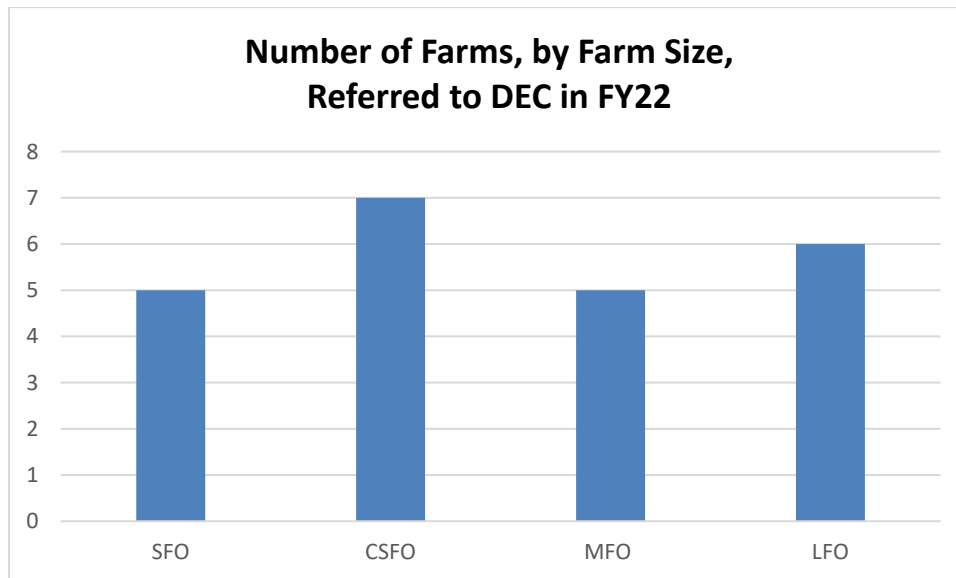
In FY22, 111 farms received a total of 124 enforcement actions for alleged violations of Vermont’s water quality regulations. 23 farms were referred to the Vermont Agency of Natural Resources, Department of Environmental Conservation (DEC)¹ for suspected direct discharges of agricultural waste to surface water.

Figure 1.



¹ Under a MOU with ANR, cases involving suspected point source discharges of waste to water are referred to DEC for investigation.

Figure 2.



SFO COMPLIANCE REPORT

Pursuant to the RAPs, a SFO is an operation that has between five and 49 mature dairy cows.² SFOs are subject to regulation under the RAPs but are not required to self-certify compliance with the RAPs.

In FY22, 14 SFOs received a total of 14 enforcement actions for alleged violations of the RAPs. Five SFOs were referred to DEC for suspected point source discharges of agricultural waste to surface water. This information is reported in Table 1 below.

CSFO COMPLIANCE REPORT

Pursuant to the RAPs, a CSFO is an operation that has between 50 and 199 mature dairy cows.³ CSFOs are required to self-certify compliance with the RAPs annually and must be inspected by the Agency at least once every seven years for compliance with the RAPs.

In FY22, 22 CSFOs received a total of 24 enforcement actions for alleged violations of the RAPs. Seven CSFOs were referred to DEC for suspected point source discharges of agricultural waste to surface water. This information is reported in Table 1 below.

MFO COMPLIANCE REPORT

Pursuant to the RAPs, a MFO is an operation that has between 200 and 699 mature dairy cows.⁴ MFOs are subject to regulation under the RAPs, the MFO Rule, and a MFO GP, and must be inspected by the Agency at least once every three years for compliance with the Rule and Permit.

In FY22, 45 MFOs received a total of 53 enforcement actions for alleged violations of the MFO GP, the MFO Rule,

² There are numeric thresholds to define other animal and agricultural types such as vegetable crops and diversified farms in the SFO category. For more information, please refer to RAP Section 3.

³ There are numeric thresholds to define other animal and agricultural types such as vegetable crops and diversified farms in the CSFO category. For more information, please refer to RAP Section 4.

⁴ There are numeric thresholds to define other animal and agricultural types and diversified farms in the MFO category. For more information, please refer to 6 V.S.A. § 4858. The defined numeric thresholds are all aligned with federal definitions for Concentrated Animal Feeding Operations (CAFO) pursuant to the MOU with DEC.

and/or the RAPs. Of these, 25 farms received a total of 31 enforcement actions for either failing to submit their MFO Operating Fee or failing to submit required annual reporting information. Five MFOs were referred to DEC for suspected point source discharges of agricultural waste to surface water. This information is reported in Table 1 below.

LFO COMPLIANCE REPORT

Pursuant to the RAPs, a LFO is an operation that has at least 700 mature dairy cows.⁵ LFOs are subject to regulation under the RAPs, the LFO Rule, and a LFO IP, and must be inspected by the Agency at least once every year for compliance with the Rule and the Farm’s LFO Permit.

In FY22, 30 LFOs received a total of 33 enforcement actions for violations of their LFO IP, the LFO Rules, and/or the RAPs. Six LFOs were referred to DEC for suspected point source discharges of waste to surface water. These are reported in Table 1 below.

Table 1 – Enforcement Actions Issued in FY22 to SFOs, CSFOs, MFOs, and LFOs

Enforcement Actions	SFOs	CSFOs	MFOs	LFOs
§ 4991(7) Letter	0	2	4	1
Letter of Warning (LOW)	5	0	0	2
Corrective Action Letter (CAL)	8	19	21	23
Cease and Desist Order (CDO)	0	1	0	0
Emergency Administrative Order (EAO)	0	0	0	0
Notice of Violation with Administrative Penalty (NOV)	1	1	22	5
▪ Assurance of Discontinuance (AOD)	0	1	2	1
▪ Final Order (FO)	0	0	4	1
Referrals				
Department of Environmental Conservation (DEC) ⁶	5	7	5	6
Attorney General’s Office (AGO)	0	0	0	0

⁵ There are numeric thresholds to define other animal and agricultural types and diversified farms in the LFO category. For more information, please refer to 6 V.S.A. § 4851. The defined numeric thresholds are all aligned with federal definitions for Concentrated Animal Feeding Operations (CAFO) pursuant to the MOU with DEC.

⁶ Under a MOU with ANR, cases involving suspected point source discharges of waste to water are referred to DEC for investigation.

Table 2. Number of FY22 Enforcement Actions and Referrals Summarized by Tactical Basin. This data is represented in graphic form in Figure 3 below.

Basin	Number of Enforcement Action	Referrals
Battenkill-Walloomsac-Hoosic	2	0
Southern Lake Champlain	8	DEC - 2
Otter Creek-Little Otter Creek-Lewis Creek	30	DEC - 4
Northern Lake Champlain	5	DEC - 1
Missisquoi	40	DEC - 9
Lamoille	3	DEC - 1
Winooski	2	0
White	5	DEC - 2
Ottauquechee-Black-CT Direct	1	DEC - 1
West-Williams-Saxtons-CT Direct	2	0
Deerfield-CT Direct	1	DEC - 1
Stevens-Wells-Waits-Ompompanoosuc-CT Direct	5	0
Passumpsic	0	0
Upper Connecticut	2	0
Lake Memphremagog	18	DEC - 2

Figure 3.

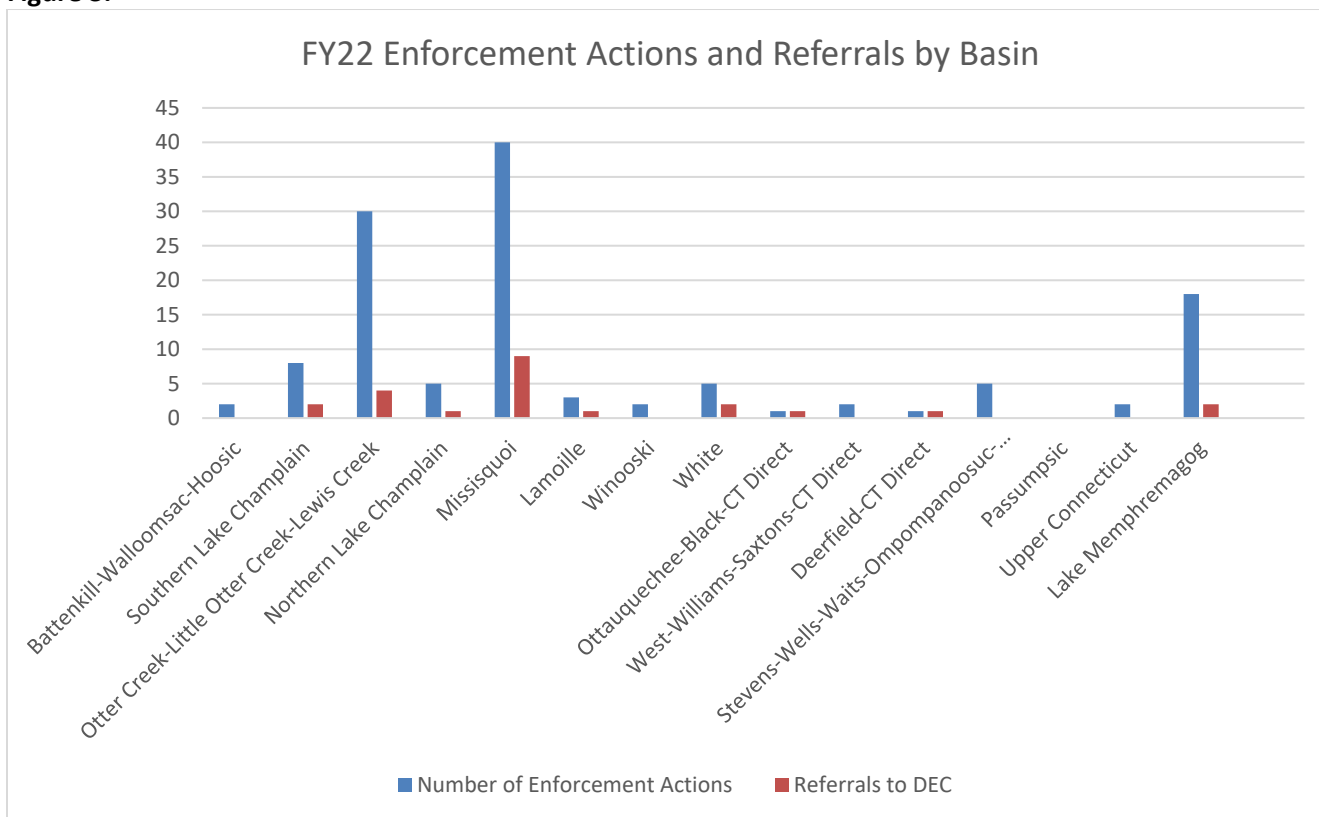


Table 3. Enforcement Actions Issued in FY22 by General Nature of Violation of RAP Regulations, MFO GP, MFO Rule, LFO IP, and LFO Rules.⁷ The data is represented in graphic form in Figures 4.a, 4.b., 4.c., and 4.d. below.

General Nature of Violation	Actual Number of Individual Counts/Violations ⁸	Enforcement Actions Issued
SFO Compliance		
Field Practices	0	0
Productions Area	18	CAL – 8; LOW – 3; NOV - 1
Recordkeeping / NMP	15	CAL – 3; LOW - 3
Permitting	0	0
CSFO Compliance		
Field Practices	5	CAL – 2; NOV - 1
Production Area	31	CAL – 13; CDO - 1; NOV - 1
Recordkeeping / NMP	16	CAL – 14; NOV - 1
Permitting	1	CAL - 1
MFO Permit Compliance		
Annual Fee Payment / Reporting	31	CAL – 7; NOV – 20; FO - 4
Field Practices	12	CAL – 9; NOV – 1
Production Area	28	CAL – 11; NOV - 1
Recordkeeping/NMP	6	CAL – 5; NOV - 1
Permitting	0	0
LFO Permit Compliance		
Annual Fee Payment / Reporting	2	NOV – 1; FO - 1
Field Practices	21	CAL - 15; NOV - 2
Production Area	64	CAL – 20; NOV – 2
Recordkeeping / NMP	9	CAL – 7; LOW – 2
Permitting	3	CAL - 3
Custom Manure Applicator		
Field Practices	0	0
Recordkeeping	0	0

⁷ Assurances of Discontinuance (AODs) and § 4991(7) letters are not included in this table. While they are enforcement actions, they are not charging documents with specific counts.

⁸ An enforcement action may include more than one count/violation of the RAPs or MFO/LFO permit requirements, so numbers of counts/violations may exceed the total number of enforcement actions issued. In addition, the total number of enforcement actions listed in Table 3 exceeds the 124 enforcement actions issued to farms in FY22. If an enforcement action contains counts for more than one “General Nature of Violation”, that action is listed multiple times for each different violation contained in the action.

Figure 4.a.

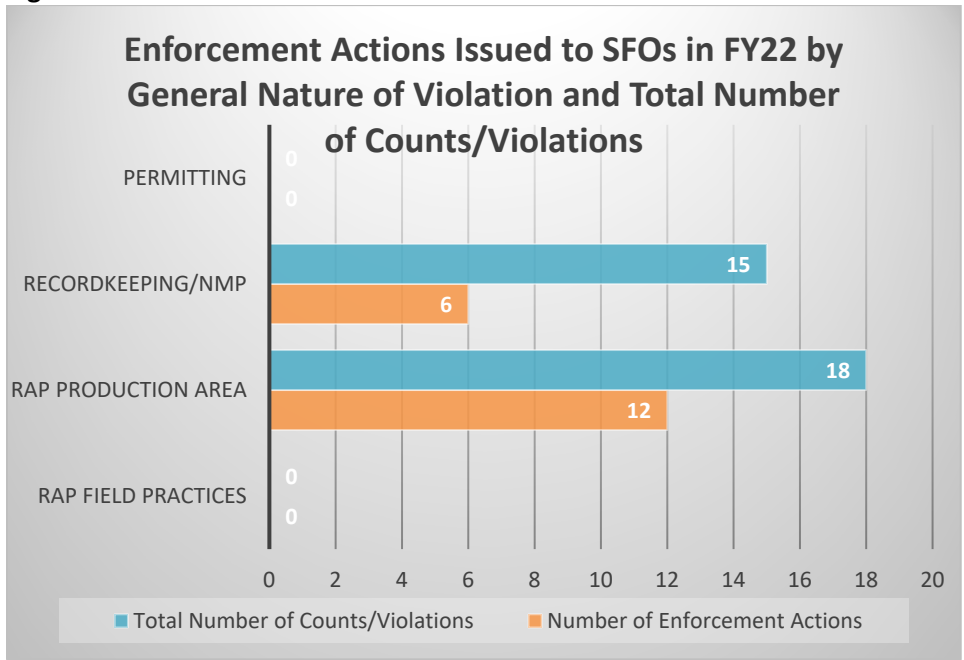


Figure 4.b.

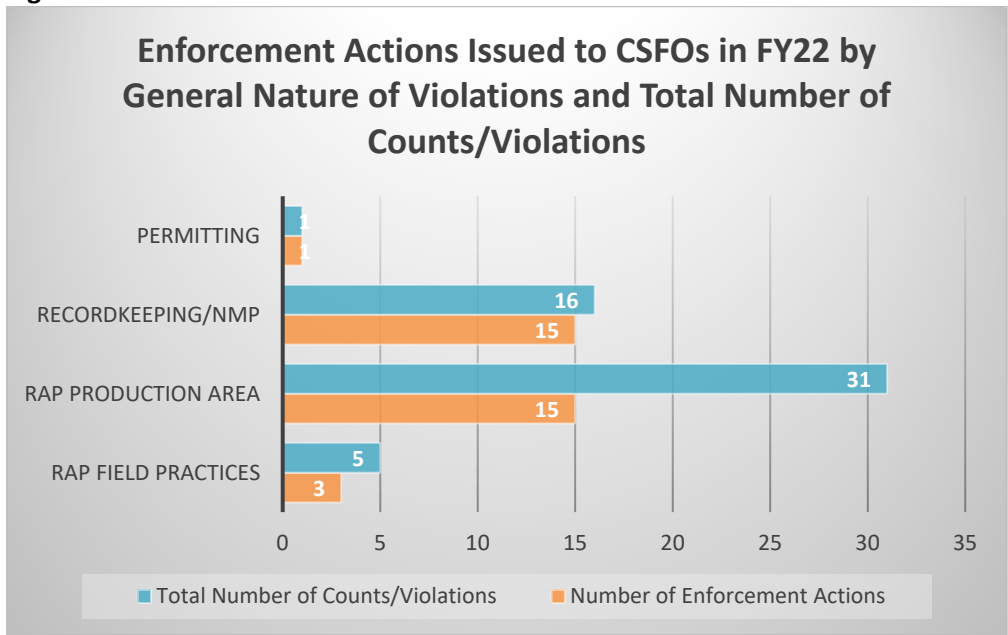


Figure 4.c.

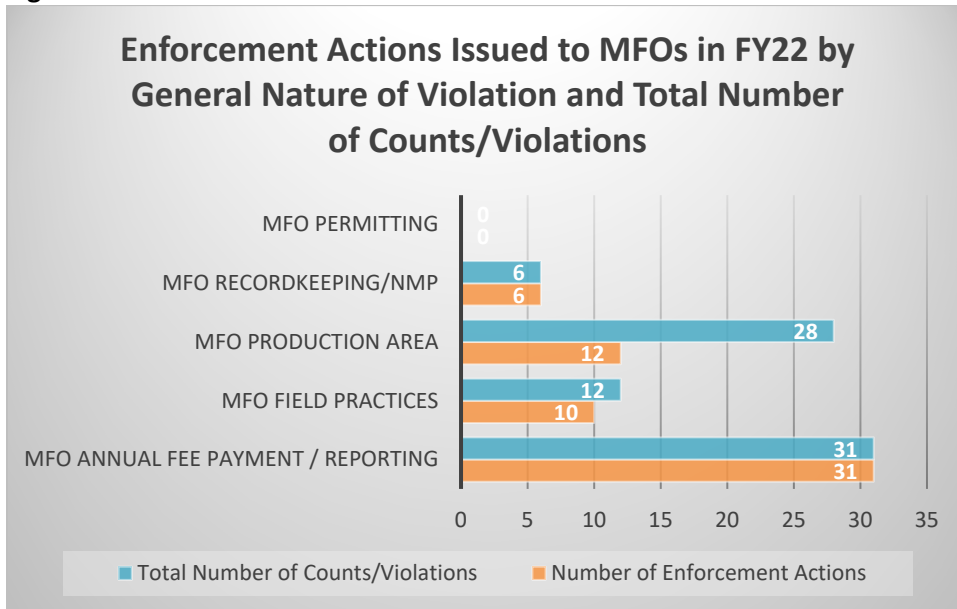
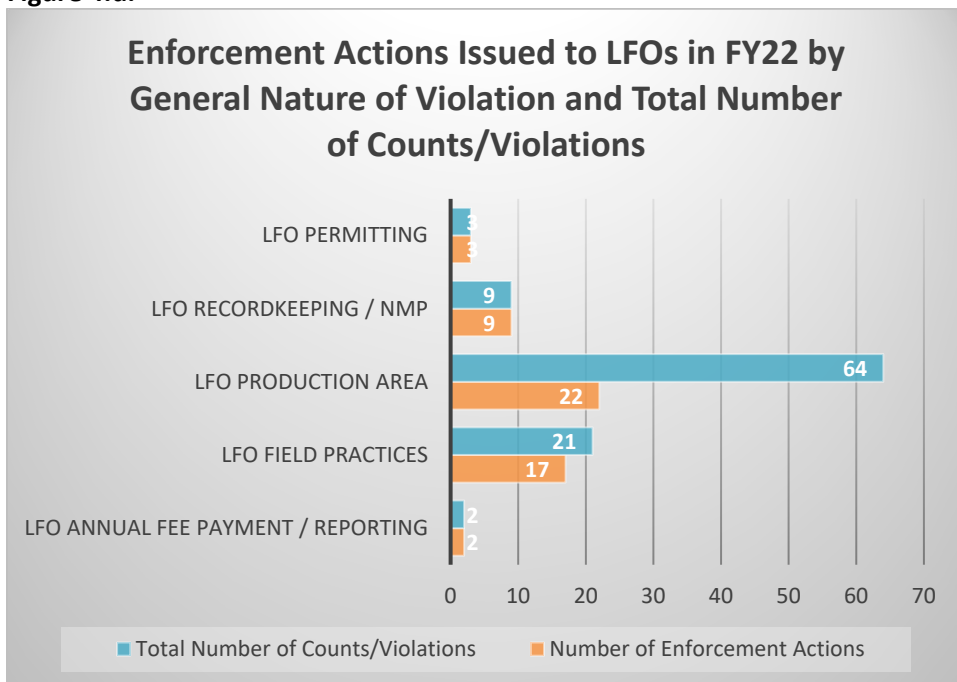
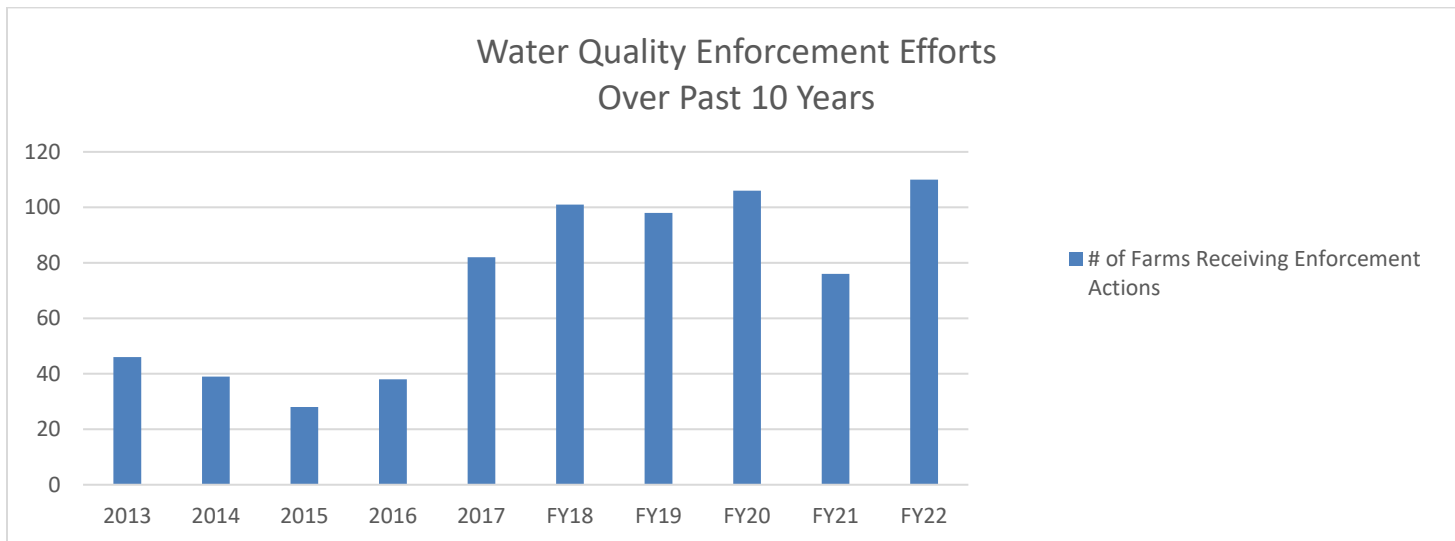


Figure 4.d.



TREND ANALYSIS OF ENFORCEMENT EFFORTS

Figure 5. Water Quality Enforcement Efforts from 2013 through FY22. This figure depicts the total number of farms receiving enforcement actions over the past ten years.



The number of enforcement actions reported for 2017, FY18, FY19, and FY20 include actions issued to LFOs for failing to pay their Annual LFO Operating Fee and MFOs for either failing to pay their Annual MFO Operating Fee or failing to submit their Annual MFO Compliance Report, Notice of Intent to Comply (NOIC), P-index, and/or GIS shapefiles. In FY21, all LFOs and MFOs paid their Annual Operating Fees.. When these “Fee/Reporting” types of enforcement actions are subtracted from the total number of farms receiving enforcement actions in 2017, FY18, FY19, and FY20, and averaged with the 76 farms receiving enforcement actions in FY21, we find that, on average, 65 farms per year received enforcement actions that were issued specifically for water quality-related violations in those 5 reporting years. In FY22, 85 farms received water quality-related enforcement actions, demonstrating a continued increase in the number of water quality-related enforcement actions that have been issued over the past six reporting years.

Glossary of Enforcement Actions Pursuant to 6 V.S.A. Chapter 215

§ 4991(7) Letter – A § 4991(7) Letter is used to request a consultation meeting with a farm to discuss farm operations and identify issues that may need to be addressed through improved farming practices or installation of conservation practices.

Assurance of Discontinuance (AOD) – An AOD is an agreement, entered into between VAAFM and a farm, as an alternative to pursuing further administrative or judicial proceedings regarding an alleged violation(s). The AOD typically lays out a schedule of compliance, which may include the payment of penalties, that the farm must follow to regain compliance with VAAFM’s water quality regulations.

Corrective Action Letter (CAL) – A CAL serves as a written warning to put a Farm on notice that they have allegedly violated VAAFM’s water quality regulations. A CAL requires the Farm to respond, in writing, within 30 days with a plan and timeline for the implementation of actions to correct the alleged violations.

Cease and Desist Order (CDO) – A CDO requires the immediate cessation of an alleged violation. Recipients of a CDO have five days to request a hearing on the violations alleged in the CDO.

Emergency Administrative Order (EAO) – An EAO is issued when an alleged violation presents an immediate threat of substantial harm to the environment or immediate threat to public health or welfare. Recipients of an EAO have five days to request a hearing on the violations alleged in the EAO.

Final Order (FO) - If a Farm fails to request a hearing or respond to a NOV, a FO may be issued which imposes the proposed administrative penalty. Recipients of a FO may appeal within 30 days of the decision to the Superior Court.

Hearing / Pre-hearing Settlement Conference - When requested, hearings shall be conducted pursuant to 3 V.S.A. Chapter 25. VAAFV typically offers to hold a pre-hearing settlement conference (pre-hearing) to see if an agreement on the alleged violations and proposed penalties can be reached. If an agreement is reached at pre-hearing, it is memorialized in an AOD. If agreement is not reached at pre-hearing, then the case will progress to a formal hearing with a hearing officer.

Mandatory Corrective Action Order (MCAO) – A MCAO is issued to impose a specific date by which a corrective action needs to be implemented. Recipients of a MCAO have 15 days to request a hearing on the violations alleged in the MCAO.

Notice of Violation (NOV) – A NOV proposes an administrative penalty for an alleged violation of VAAFV's water quality regulations. Recipients of a NOV have 15 days to request a hearing on the violations alleged in the NOV.

Questions regarding the Vermont Agricultural Water Quality Enforcement or this report in general can be directed to VAAFV Water Quality Division Director Laura DiPietro at (802) 595-1990 or Laura.DiPietro@Vermont.gov.