

## **Medium Farm Operation General Permit: Response to Comments**

### **Medium Farm Operation General Permit**

#### **Section 1. Definitions General**

No comments received

##### **1.1 Animal Feeding Operation (AFO)**

No comments received

##### **1.2 Agency**

No comments received.

##### **1.3 Animal Type**

No comments received.

##### **1.4 Barnyard and Feedlot**

###### **Comment:**

Comments identified a redundancy in definitions between definition 1.4 (Barnyard and Feedlot) and definition 1.14 (Feedlot and Barnyard).

###### **Response:**

The Agency of Agriculture, Food & Markets (the Agency) has removed definition 1.14 (Feedlot and Barnyard), yet retained 1.4 Barnyard and Feedlot

##### **1.5 Certified Nutrient Management Planner**

###### **Comment:**

Comments suggest insertion of a reference for an existing United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) certification for Nutrient Management Plan (NMP) planning.

###### **Response:**

The Agency has chosen to change this definition to align with recent statutory changes that has the Agency creating a certification program for nutrient management planner technical service providers. The new definition is 1.5 Certified Nutrient Management Planner means an individual certified by the Agency of Agriculture, Food & Markets who creates, reviews, and modifies Nutrient Management Plans (NMPs).

**1.6 Certified Small Farm Operation (CSFO)**

No comments received

**1.7 Compost**

No comments received

**1.8 Conservation Practice**

No comments received.

**1.9 Cropland**

No comments received.

**1.10 Discharge**

**Comment:**

Comments received suggested confusion and excess ambiguity surrounding the term ‘injection well’, would like a more narrow and clear definition.

**Response:**

The definition used for injection well is taken from 10 V.S.A. § 1251(14); it means any opening in the ground used as a means of discharging waste except for a dry hole not exceeding seven feet in depth which is constructed as, and used solely for the disposal of domestic wastes. Additionally, the definition for ‘Discharge,’ remains consistent with the definition used with the Required Agricultural Practices (RAPs) Rule (Section 2.12).

**Comment:**

Comments receive suggest confusion with the use of ‘waters’, instead of ‘surface water’, which was the language in the 2012 Medium Farm Operation General Permit (MFO GP).

**Response:**

The use of ‘waters’ aligns with the definition of ‘Discharge’ used in the RAP Rule (Section 2.12). ‘Waters’ encompasses both surface and ground water. This change has been made to more accurately address both surface and ground water, in addition to promoting consistency in terminology in Agency language. ‘Waters’, had been used as a synonym with ‘waters of the State’, as a shortened version, very much the same way the ‘State of Vermont’, is often shortened to ‘the State’. The Agency will attempt to use the full ‘waters of the State,’ instead of ‘waters’ to avoid confusion.

**Comment:**

Comment suggests combining Definitions 1.10 Discharge, 1.37 Surface Water or Waters, and 1.42 Waters of the State into one definition or two definitions explaining “Discharge” and “waters of the State,” to avoid confusion between these terms.

**Response:**

The Agency has amended the definitions in the MFO GP to be:

- 1.10 Discharge means the placing, depositing, or emission of any wastes, directly or indirectly, into an injection well or into waters of the State.
- 1.14. Groundwater means water below the land surface in a zone of saturation, but does not include surface waters.
- 1.34 Surface Water or Waters means all rivers, streams, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border the State or any portion of it.
- 1.38 Waters of the State include, for the purposes of this permit, surface water and groundwater as applied.

**Comment:**

Comment recommends adopting language that would include a definition for surface water discharge, being “placing, depositing, or emissions of any wastes, directly or indirectly, into an injection well or surface water conveyances.”

**Response:**

Discharge has been used in many different regulatory programs across Title 6 and Title 10. The Agency does not agree that a new term should be created and will continue to rely on the Title 10 definition for consistency.

**1.11 Domestic Fowl**

No comments received.

**1.12 Facility**

No comments received.

**Feedlot and Barnyard (Previously 1.14)**

**Comment:**

This is a redundant definition, duplicating definition 1.4 (Barnyard and Feedlot).

**Response:**

This definition has been removed.

**1.14 Groundwater**

No comments received.

**1.16 Large Farm Operation (LFO)**

**Comment:**

Comments requests clarity on the requirement for farms to obtain a permit for a size of operation that is not currently in use – i.e. the requirement to submit a Notice of Intent to Comply (NOIC) for a Large Farm Operation (LFO) when animal thresholds for a LFO haven't yet been met.

**Response:**

The Agency's intent with this language is not for farmers who *might* expand, it is for farmers that *are going to* expand. If a farm was to reach the threshold of a LFO without having a LFO permit, the farm is in violation. Farmers that plan to construct a barn or expand a facility that would be designed to house (per industry standard), 700 or more cows, must have previously applied for coverage under a LFO permit **before** constructing. This language is to encourage farmers to be proactive in applying and getting permitted prior to constructing or operating, and meeting those thresholds, thereby avoiding a violation.

**1.17 Land Application Area**

No comments received.

**1.18 Livestock**

No comments received.

**1.19 Medium Farm Operation (MFO)**

No comments received.

**1.20 Non-Sewage Waste**

No comments received.

**1.21 Nutrient Management**

No comments received.

**1.22 Nutrient Management Plan (NMP)**

No comments received.

**1.23 Pasture**

No comments received.

**1.24 Permit Decision**

No comments received.

**1.25 Permittee**

No comments received.

**1.26 Person**

No comments received.

**1.27 Production Area**

No comments received.

**1.28 Realistic Yield Goals**

**Comment:**

Comment indicates that use of field-by-field yields instead of soil fact sheets to determine realistic yield goals is too restrictive for farms, especially since there is not a State mechanism in place to assist farms with the cost of obtaining this information. Comment also indicates concern with the cost associated with obtaining field-by-field yields. Comment recommends Agency require *either* actual field values or soil factsheet yield values for calculating realistic yield goals.

**Response:**

Soil factsheets have not been updated using current scientific data, and they are not always an accurate representation of soil type and yield numbers. The Agency is requiring the use of field-by-field yields to accurately represent the current state of the farm. Farmers already are required to record actual crop yields as part of the USDA NRCS 590 Standard, this is a requirement to utilize them to determine realistic yield goals. Cost share has been made available for farms for implementation and adoption of this method of determination.

**1.29 Required Agricultural Practices Rule (RAPs)**

No comments received.

**1.30 Rule**

No comments received.

**1.31 Ruling**

No comments received.

**1.32 Secretary**

No comments received.

**1.33 Solid Waste**

No comments received.

**1.34 Surface Water or Waters**

**Comment:**

Comments note confusion discussed under Section 1.10, regarding the use of the term ‘waters’.

**Response:**

The differentiation of these terms was discussed in this MFO GP Response to Comments, falling under Section 1.10, the definition of ‘Discharge’.

**1.35 Waste or Agricultural Waste**

**Comment:**

Comments question why the terms “pathogenic bacteria and viruses” are included in this definition and feels it is an overreach of government regulation. Believes that pathogenic bacteria or viruses falls under the Department of Health authority.

**Response:**

The terms “pathogenic bacteria and viruses” are included in the Waste or Agricultural Waste definition of the RAPs Rule (Section 2.38) and is also covered under 6 V.S.A. § 4802(7). Both pathogenic bacteria and viruses have been covered under this definition previously, there is no change associated with the updating of the MFO GP.

**1.36 Waste Management System**

**Comment:**

Comments indicate a need for greater explanation regarding the meaning of ‘an adequately sized waste storage facility’.

**Response:**

This term requires that farm operations have a waste management system that is capable of 180 days of storage with appropriate free board, and matches the definition used in the RAPs (Section 2.39).

**1.37 Waste Storage Facility**

No comments received.

### **1.38 Waters of the State**

**Comment:**

Comments received seeks to understand the phrase ‘as applied’, as it is used within this definition.

**Response:**

‘As applied,’ when used under ‘Waters of the State’, means as used in this General Permit. Meaning that the focus could be surface water or ground water depending upon the issue or focus at hand. This definition for ‘Waters of the State’ is the same definition used in the RAP Rule (Section 2.41).

### **Section 2. General Permit Coverage and Application**

#### **2(a) Coverage**

No comments received.

#### **2(b) Application for Coverage**

**Comment:**

Comments asks for clarity regarding the timeline for submitting a NOIC.

**Response:**

Once farmers are covered by the MFO GP (either as a new Medium Farm Operation (MFO), or with a new MFO GP), they are required to submit their NOIC within 180 days of being covered by the MFO GP. For existing MFOs in situations with a revised MFO GP, Section 3(j) of the MFO GP states that coverage under the old MFO GP will remain effective until the new MFO GP is final and effective, and a new NOIC is received within 180 days.

**Comment:**

Comment states that MFO inspection taking place every three years is a decrease from annual inspections and is unreasonable considering the addition of MFO fees and Agency staff. Comment states that the Agency has five staff members exclusively designated for MFOs, and recommends MFO inspections every two years, although annual inspection of all permitted facilities would be ideal.

**Response:**

Prior to the installment of the RAPs on December 5, 2016, MFOs were inspected once every five years. The change for MFO inspections taking place every three years is an increase in overall inspections for MFOs. The increase in staff capabilities and the addition of the MFO annual fee has allowed for this increase. The Agency employs five staff members that are part of the Large and

Medium Farm Team. They are responsible not only for inspecting all MFOs, but also all LFOs located in the State.

**2(c) Limitations on Coverage**

No comments received.

**2(d) Termination of Coverage Under the MFO GP**

No comments received.

**2(e) Requiring a MFO to Obtain an Individual Permit (IP)**

No comments received.

**2(f) Transitioning from a MFO to a LFO**

No comments received.

**Section 3. General Standards Applicable to MFOs**

**3(a)**

No comments received.

**3(b)**

No comments received.

**3(c)**

**Comment:**

Comment recommends that the Agency begin to enforce the requirement that MFOs submit their NMP annually to the USDA NRCS 590 Standard, and that the Agency take further steps in the enforcement process for MFOs that lack an adequate NMP.

**Response:**

The Agency intends to more strictly require the submittal of a NMP in a format that meets the USDA NRCS 590 Standard or an equivalent standard approved by the Secretary, as well as the accuracy of the components that make up the NMP. The Nutrient Management Report Form (formerly Appendix F), that is submitted by the MFO annually with their NMP, includes a signature that certifies the accuracy and correctness of the NMP under penalty of criminal sanctions of 13 V.S.A. § 3016, for the submittal of false, misleading, or untrue representations on this Form. Additionally, the Agency has recently been tasked with certifying nutrient management plan technical service providers (TSPs), which is another method to ensure increased NMP compliance.

**3(d)**

No comments received.



**3(e)**  
No comments received.

**3(f)**  
No comments received.

**3(g)**  
No comments received.

**3(h)**  
No comments received.

**3(i)**  
No comments received.

**3(j)**  
No comments received.

**Section 4. Effluent Limitations and Standards**

No comments received.

**Section 5. Groundwater Protection Criteria**

**5(a)**  
No comments received.

**5(b)**

**Comment:**

Comment requests clarity regarding how “vulnerable site characteristics” are defined and by whom are they defined?

**Response:**

The Secretary determines what vulnerable site characteristics might be, as agricultural contamination of wells is regulated by the Secretary. The Secretary will determine if a well is to be tested based upon geologic characteristics, soils, and farm management practices. Testing a new well generally can be determined by the Secretary when there has been a measurable exceedance of the drinking water standards on nearby wells, and the vulnerable site characteristics suggest that sampling other nearby wells would be prudent. This is covered in the RAPs Rule (Section 8(c)(3)).

**5(c)**  
No comments received

**5(d)**  
No comments received

**Section 6. Waste Management System Conditions****6(a) Structural Design and Performance Standards****Comment:**

Comment questions why the MFO GP does not reference the USDA NRCS 313 Standard as the requirement for on farm waste storage facilities.

**Response:**

The Agency has chosen to not limit the options for waste storage facilities to the narrow scope of the USDA NRCS 313 Standard, and has provided flexibility for other potential instances, where the best design for a waste storage facility may fall outside of the USDA NRCS 313 Standard. At this point in time that flexible option has not yet been used, but the Agency is preserving this option for unknown circumstances that may call for an innovative solution where regulatory flexibility would be necessary.

**Comment:**

Comment states that the MFO GP should not extend the Agency's authority to require a review of waste storage facilities that were previously certified as an acceptable structure for the intended use.

**Response:**

Although waste storage facilities that were previously certified as an acceptable structure for the intended use are in compliance, these structures require maintenance and will degrade and wear over time. The Agency retains flexibility in having the authority to require a review of all waste storage facilities should a water quality concern develop at any time for any waste storage structure.

**Comment:**

Comment asks for clarity regarding storage requirements for MFOs, specifically if MFOs must have 180 consecutive days of available storage regardless of season or the current status of facility.

**Response:**

MFOs must have a waste storage facility that is capable of 180 days of storage as designed, not necessarily as used.

**Comment:**

Comment asks why a professional engineer is required to certify the determination relating to manure production for a farm operation. Comment asks when the Agency would implement this requirement for farms, as it is understood that the TSP is responsible for these calculations in conjunction with the farm and engineers.

**Response:**

The Agency would require this determination to be made by a professional engineer when manure production numbers have been previously improperly calculated.

**Comment:**

Comment questions the reasoning behind the Agency potentially requiring total waste calculations.

**Response:**

The Agency is requiring total waste calculations to be included so that it can be assured there is adequate waste storage on the farm for the number of animals present and additional wastes generated, and that the calculations used to make these determinations are accurate.

**Comment:**

Comment requests that the Agency include Certified TSPs as approved parties to calculate total waste generation calculations.

**Response:**

The Agency has not included Certified TSPs as approved parties to calculate total waste generation calculations in the revised MFO GP as the Agency now has a statutory responsibility to certify TSPs. This requires the Agency to amend the RAPs to include regulations for TSPs, including calculating manure and agricultural waste generation.

Sec. 5a. 6 V.S.A. § 4989 is added to read:

§ 4989. CERTIFICATION OF NUTRIENT MANAGEMENT PLAN TECHNICAL SERVICE PROVIDERS

(a) On or before July 1, 2019, the Secretary of Agriculture, Food and Markets shall adopt by rule a process by which a nutrient management technical service provider shall be certified to operate within the State. The certification process shall require a nutrient management technical service provider to complete eight hours of training over each five-year period regarding:

- (1) calculating manure and agricultural waste generation;
- (2) taking soil and manure samples;
- (3) identifying and creating maps of all natural resource features;
- (4) use of erosion calculation tools;
- (5) reconciling plans using records;
- (6) use of nutrient index tools; and
- (7) requirements within the Required Agricultural Practices, Medium Farm Operation rules and general permit, and Large Farm Operation rules.

(b) Beginning on July 1, 2019, a nutrient management technical service provider shall not create a nutrient management plan for a farm unless certified by the Secretary of Agriculture, Food and Markets.

### **6(b) Nutrient Management**

#### **Comment:**

Comment recommends removing the sentence, “The current NMP shall meet the format as prescribed by the Agency.” Comment states that the Agency should be focused on implementation only and not of the format in which the NMP is compiled.

#### **Response:**

The Secretary has been granted authority in law to create requirements for MFO permitting, including determining the mode of record keeping, reporting, and monitoring under 6 V.S.A. § 4858(b)(1). The powers of the Secretary are granted under 6 V.S.A. § 4811, and require the Secretary to make, adopt, revise, and amend reasonable rules deemed necessary. NMPs are to be submitted in a manner specified by the Secretary 6 V.S.A. § 4858(c)(2). The Agency requires that NMPs be submitted in a format consistent with the USDA NRCS 590 Standard or an equivalent standard as approved by the Secretary, and include the components prescribed by the Agency. Consistency between these plans is crucial for the Agency to be able to review documents in an equal and efficient manner. The components are:

1. Background and site information
  - a. Name of owner/operator;
  - b. Farm location, mailing address and operator phone;
  - c. TSP name, address and phone;
  - d. Crop year of the plan;
  - e. Type of operation;
  - f. Current crop grown on each field;
  - g. Field names and FSA tract and field numbers including acres and whether they are rented or owned;
  - h. Animal units (types, number, and weight animal and period of confinement);
  - i. Watershed, watershed codes and watershed concerns
  - j. Signature blocks for all required signatures.

2. Maps and Land Treatment Conservation Plan or Practice List
  - a. Planned Practices maps including locations of required buffers and nutrient application setbacks, required gully stabilization or other erosion control measures;
  - b. Soils maps and soil descriptions;
  - c. Topo maps;
  - d. Identification of sensitive areas such as sinkholes, streams, wells, water sources, etc.;
  - e. Nitrate Leaching Index maps;
  - f. Conservation plan or detailed practice list cross referencing required practices shown on maps. At a minimum a practice list must show all required practices or management, by field, which are needed to fulfill the land treatment portion of the NMP and must provide enough detail for the customer to be able to understand the requirements.
    - i. (Example: Field 2-West side along stream-Vegetated buffer 350' long X 25' wide. See Map.)
3. Nutrient Management: Must meet technical criteria for NM Practice Standard (590)
  - a. NMP must meet the technical criteria for the Nutrient Management conservation practice (code 590) standard, and address the use and management of all nutrients applied on cropland, hayland, or pastureland (animal manure, wastewater, commercial fertilizers, crop residues, legume credits, irrigation water, organic by-products). Planners must document the rationale when using custom recommendations in the nutrient plan.
    - i. Including:
      1. Rotation & Annual RUSLE2 Calculations for each field
      2. P-Index completed for each field

**Comment:**

Comment requested the removal of the language “or the MFO” from the provision: “be developed or approved by a certified nutrient management planner or the MFO in accordance with the VT NRCS 590 Conservation Practice Standard and Specifications unless an alternative standard has been approved by the Secretary; ...” from Section 6(b)(1)(C) of the MFO GP.

**Response:**

While many farm operations do utilize a Certified Nutrient Management Planner to compile their NMP, farm operations do have the option of compiling their own NMP; the NMP must be in accordance with the VT NRCS 590 Conservation Practice Standard and Specifications unless an alternative has been approved by the Secretary. For this reason, the Agency will keep this language in the revised MFO GP.

**Comment:**

Comment recommends requiring that all fields used to develop a NMP for a farm operation must use a soil test that has been collected within the past three years. Comment states that this timeframe is a standard, industry practice, and allowing older soil tests to be used would be permitting the use of standards that do not meet national standards.

**Response:**

The Agency agrees with this recommendation and has changed the language within the MFO GP regarding soil tests used to develop NMPs, to require that all soil tests used may be no older than three years.

**Comment:**

Comment states that the Agency accepting records for yield and manure samples that are no older than 5 years is unreasonable. Comment states concerns that nutrient recommendations are being made for all nutrients within the NMP and would like to retain flexibility in calculation of yields, as calculation methods of actual yields can vary across farm operations.

**Response:**

The Agency understands that all farm operations vary field to field regarding yields. Realistic yield goals must be established using field-by-field yields collected by the MFO instead of soil factsheet yields. The actual field-by-field yields must have been collected by the MFO within the most recent five years, older actual field-by-field yields cannot be used. The Agency included a new definition within the MFO GP for Realistic Yield Goals.

'Realistic Yield Goals means yield goals established using actual field-by-field yields collected by the MFO instead of soil factsheet yield values. The actual field-by-field yields must be collected by the MFO during the most recent five years. Actual field-by-field yields older than five years cannot be used.'

The Agency understands operations can vary in the way they are measuring actual yields. The largest concerns for the Agency are that USDA NRCS Standards are met, yield determinations are made on a field-by-field basis and not using an average across the farm - to provide clarity and consistency across farms, and calculations are a science-based result. Using accurate and timely actual yields, such as the most recent 5 years of manure samples and actual field-by-field yields, will result in accurate nutrient recommendations for MFOs.

**6(c) Maintenance and Record Keeping for NMPs****Comment:**

Comment requests a definition or further clarification for the term 'significant.'

**Response:**

A NMP should be updated annually to accurately reflect the current status of a MFO. A NMP should be updated annually when changes occur and when the MFO has deviated from the plan laid out in the NMP. The Agency has removed the word ‘significant’ from the MFO GP as used in referring to NMPs.

**Comment:**

Comment requests more clarity surrounding definition of ‘NMP update’.

**Response:**

MFOs must update their NMP when any changes occur on their farm from the previous crop year. An update encompasses any changes that occur, which must be documented in the NMP to accurately reflect the actual management practices that were implemented. The four areas that would need to remain unchanged to avoid a NMP update are: existence of up-to-date soil tests, consistency of manure samples, no changes occurring to owned or rented lands that would impact land base, and all fields in permanent grass or corn rotations. See Section 6(c)(1)(C) of the MFO GP below:

- (C) Any changes made to a NMP shall:
- (i) be maintained on the farm as part of a NMP showing what was planned and the actual management practices that were implemented; and
  - (ii) prior to the next growing season, the changes that were implemented need to be included in the NMP to ensure the planned practices can meet the 590 standards.

**Comment:**

Comments asks for clarity regarding what would be considered a substantial change requiring updating of a NMP, now that the 10% change threshold has been removed from the MFO GP.

**Response:**

A NMP should be updated when any changes occur on the farm from the previous crop year to accurately reflect the current status of a MFO.

**Comment:**

Comment recommends that RUSLE2, and other soil erosion calculation standards, should be calculated annually, instead of the current timeline of every ten years. Comment explains that ten-year rotation is a non-data approach, and not used in other states. Comment states that this method is not contributing to any limitation or reduction of erosion on a farm or on field, nor is a ten-year rotation industry practice.

**Response:**

The Agency agrees that using a ten-year rotation to calculate soil erosion from cropfields may not be the most effective method for improving water quality. The ten-year rotation calculation cannot exceed ten years, which aligns with USDA NRCS 590 Standard. The calculation must be the average. When USDA NRCS updates the Standard, the Agency will then implement these changes.

**Comment:**

Comment inquires whether continuous corn or permanent grass hay would be acceptable rotations if they were unable to exceed ten years in length. Comment indicates that there are fields present in the State that are in these rotations and are still able to meet acceptable soil loss reductions.

**Response:**

Rotations of continuous corn or permanent grass hay are assessed as a one-year rotation.

**Comment:**

Comments indicate concern with the required submittal of electronic records, spatial information including GIS shapefiles, VT NLI, VT PI, soil erosion calculations as required in the USDA NRCS 590 standard, aerial photography maps - which may include farm identification, tract and field identification, and acres and land use determinations used in developing the farm's NMP, to the Agency.

**Response:**

The Secretary has been granted authority in law to create requirements for MFO permitting, including determining the mode of record keeping, reporting, and monitoring under 6 V.S.A. § 4858(b)(1). The powers of the Secretary are granted under 6 V.S.A. § 4811, and require the Secretary to make, adopt, revise, and amend reasonable rules deemed necessary. This includes requiring the submittal of information from farmers to be appropriately regulated, and allowing the Agency to know what tools were used to generate the numbers used in NMPs to be sure they were calculated correctly and to industry standards.



6 V.S.A. § 4811(3) grants that the Secretary may, “enter any lands, public or private, and review and copy any land management records as may be necessary to carry out the provisions of this chapter.”

**Comment:**

Comment states that the revised MFO GP still does not provide enough public record protections for permittees. Concern exists regarding the electronic submittal of records without adequate privacy protections. Comment recommends removal of the language from the MFO GP requiring the submittal of *electronic* information under the MFO GP.

**Response:**

The electronic submittal of information under the MFO GP **may** be requested. The Agency does not intend to regularly collect information in this manner but retains the flexibility to ask for records to be submitted in this manner in appropriate situations.

**Comment:**

Comments ask for a definition of ‘datalogger’.

**Response:**

Data logger

A data logger (also datalogger or data recorder) is an electronic device that records data over time or in relation to location either with a built-in instrument or sensor or via external instruments and sensors. Increasingly, but not entirely, they are based on a digital processor (or computer).

**Comment:**

Comments indicate that requiring a flowmeter and data logger for all farm utilizing injection equipment is excessive and should not be required by farmers.

**Response:**

The Agency understands the concern surrounding the use of flowmeters and dataloggers, and has thus changed the language in the MFO GP to:

“A MFO shall keep records pertaining to the development, implementation, and maintenance of the NMP on the farm for a period of no less than five years and shall include:

...

(D) for MFOs utilizing manure injection equipment, nutrient application records using flow meters and data loggers, or other means determined comparable by the Secretary, so the Agency can confirm accurate application.” Section 6 (b)(3)(D).”

**Comment:**

Comments ask whether the use of an aerway manure application method is considered injection.

**Response:**

No, airway manure application is not considered manure injection.

**6(d) Requirements for the Import and Export of Manure, Compost, or Other Wastes**

No comments received.

**6(e) Requirements for Importation of Solid Waste and Non-Sewage Waste on MFOs**

**Comment:**

Comment asks for clarity of sewage and non-sewage wastes.

**Response:**

The Solid Waste and Non-Sewage Waste Importation Form is only required for the importation of non-sewage and solid wastes, this is to allow the Agency to determine if there is capacity for 180 days of storage on a farm. Sewage waste is permitted by the Agency of Natural Resources (ANR), however those items deemed to fall under non-sewage waste are not, such as milk dumping.

**1.20 Non-Sewage Waste** means any waste other than sewage which may contain organisms pathogenic to human beings but does not mean stormwater runoff.

**1.33 Solid Waste** means any discarded garbage, refuse, septage, sludge from a waste treatment plant, water supply plant, or pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include animal manure and absorbent bedding used for soil enrichment or solid or dissolved materials in industrial discharges which are point sources subject to permits under the Water Pollution Control Act, 10 V.S.A. Chapter 47. For the purposes of these rules, solid waste that is also hazardous waste is subject to further regulation under the Vermont Hazardous Waste Management Regulations.

**Comment:**

Comment requests clarity regarding importation of whey on a farm.

**Response:**

If the whey is fed to cows it is not considered to be an imported substrate. If the whey is put into a manure storage facility, such as a pit, it would be considered an imported substrate and would need to be reported under the MFO GP.

**Comment:**

Comment asks if manure taken from a different farm in the summer and applied to a MFOs fields is considered an import?

**Response:**

Yes, anything that is not generated on the farm (and is not fed to cows), is considered an import.

**Comment:**

Comment ask whether a substrate imported on the farm that is then fed to cows would need Agency approval?

**Response:**

If a substrate is fed to cows, there is no approval needed from the Agency.

**Section 7. Monitoring and Reporting**

**7(a) Notice of Non-Compliance**

No comments received.

**7(b) Notice of Accidental Discharge**

No comments received.

**7(c) Record Keeping and Record Requests**

**Comment:**

Comment questions the addition of a ten-day response time for a MFO to make a NMP available to the Agency, replacing the 'reasonable timeframe' response from prior MFO GPs. Comment indicates that the Agency's response time has been an ongoing issue and a desire exists for the Agency to have a more timely and predictable response.

**Response:**

The Agency has included a 10 business day response time for MFOs to make their NMP available to provide a consistent span of time that will be equal and realistic for all MFOs. The Agency is constantly improving upon their communication and response time, with the hiring of additional staff, the Agency has been able to facilitate better communication and more timely responses on many Agency matters.

**Comment:**

Comment shares concern with the initial timeline change from 'reasonable time frame' to a 10-day time line in the first revised MFO GP, and further concern with the second, most recently revised MFO GP, which changed the 10-day timeframe to a 3-day timeframe, with a possible extension to 10 days. Recommends reinserting the 10-day timeframe for submission of document for the MFO GP.

**Response:**

The Agency understands the concerns with this timeline and has changed the timeframe to a 10 business day period for the submission of requested documents under the MFO GP.

**Section 8. Annual Compliance Reporting Requirements**

No comments received.

**Miscellaneous Comments****Reasoning for Revising the MFO GP****Comment:**

Comment requests reasoning behind the Agency revising the MFO GP.

**Response:**

Pursuant to V.S.A. Title 6, Chapter 215, §4858, the Secretary of Agriculture is charged with developing, by rule, requirements for a General Permit to ensure medium and small farms generating animal wastes comply with State Water Quality Standards. The resulting Rule, Medium and Small Farm Operation Rules for Issuance of General and Individual Permits, became effective April 16, 2006. Subsequent to this Rule, all Animal Feeding Operations meeting the definition of a Medium Farm Operation are required to seek coverage under this General Permit. The MFO GP is revised every five years.

## **Purchasing a Farm: Compliance**

### **Comment:**

Comment asks if a farm is bought with known issues, is the new owner of the farm now responsible for the compliance issues? And what is the timeline for correcting the compliance issues?

### **Response:**

Yes, the new owner would be responsible for correcting these issues. The Agency is only responsible for nonpoint source discharges, any point source discharges would be handled by ANR. The Agency has several tools to manage compliance schedules when addressing nonpoint source matters, the timeline is dependent upon the present issue and would be a matter discussed between the farm operator and the Agency.

## **Removal of MFO GP Transfers**

### **Comment:**

Comment states that the removal of the ability to transfer coverage under the MFO GP from one operator to another is a hinderance. Comment suggests that removal of this process creates more work for the MFO and the Agency, while increasing the time it will take to close on a farm transfer. Comments suggest striking the proposed revisions regarding the removal of MFO GP transfers from the updated MFO GP.

### **Response:**

The Agency feels that the removal of transfers for farm coverage under the MFO GP will not create a hinderance for any parties involved. The removal of this provision in no way impacts transfers of farm ownership, it simply requires that a farm operator terminate their coverage under the MFO GP, using the Notice of Termination (NOT) Form, and the new owner simply fill out a new NOIC.

### **Comment:**

Comment states that the transfer of farms is a complicated and expensive endeavor. Comment questions what gains the Agency and the environment will experience by requiring a whole new permit from the new owner. Comment states that there should be an easy transfer allowance and removal of this provision will be expensive, time consuming, and complicated, while ceasing to benefit to anyone.

### **Response:**

The Agency feels that the removal of transfers for farm coverage under the MFO GP will not create a hinderance for any parties involved. The removal of this provision in no way impacts transfers of farm ownership, it simply requires that a farm operator terminate their coverage under the MFO GP, using the NOT Form, and the new owner simply fill out a new NOIC. By contacting the

Agency when a farm transfer is occurring, our staff can assist in completing the new NOIC and introduce the MFO Program to the new operator.

### **Timing of Public Hearing and Revision Process**

#### **Comment:**

Comment indicates that the scheduled time for the MFO GP Draft public hearing was inconvenient for farmers, as well as the timing of the initial public comment period. The comment states that there would have been greater MFO participation if the timing of the process had been different.

#### **Response:**

The Agency is aware of the average farm schedule and also that farmers are busy most all of the time. The required updating of the MFO GP fell in the summer and fall, which is why the Agency reached out multiple times directly to MFOs and farmer alliance groups. The Agency offered to travel and give additional informational talks to present the Draft MFO GP, answer questions, and ask for comments on the MFO GP. The comment period for the MFO GP ran from October 2, 2017 – December 1, 2017, spanning two months. A second comment period for a revised MFO GP spanned from April 23, 2018 – May 4, 2018.

### **Photographs on Inspections**

#### **Comment:**

Comment conveys concern with photographs taken on farm inspections with personal phones or phones with access to social media, and recommends limiting the photographs taken to projects underway at the time of the farm visit or to photographs that are necessary to carry out the inspection. Comment also states concern around the number of photographs taken and surrounding the protection of intellectual information, business competitive strategies, as well as safety and bio-security information.

#### **Response**

Agency employees use State issued phones as protocol when on inspections, and when on the clock in general. State issued phones used by Agency inspection staff are not connected to social media, and photographs taken and used are only what is necessary to adequately carry out the inspection and document findings. Photographs taken on inspections or investigations are never used outside the scope of authorized Agency work.

The Secretary has been granted authority in law to create requirements for MFO permitting, including determining the mode of record keeping, reporting, and monitoring under 6 V.S.A. § 4858(b)(1). The powers of the Secretary are granted under 6 V.S.A. § 4811, and require the Secretary to make, adopt, revise, and amend reasonable rules deemed necessary. 6 V.S.A. § 1(a)(3) states that the Secretary may: “Conduct routine inspections and investigate suspected violations of any law administered by the Secretary.” 6 V.S.A. § 4811(3) grants that the Secretary may, “enter

any lands, public or private, and review and copy any land management records as may be necessary to carry out the provisions of this chapter.”

**Comment:**

Comment requests clarity regarding authority of Agency during on farm visits. Concerns exist surrounding appropriate requests made of the farmers and photographs taken on the farm by Agency staff. Comment requests that Agency can indicate what photographs are necessary and the farmer can take and submit those photographs to the Agency.

**Response:**

The Secretary has been granted authority in law to create requirements for MFO permitting, including determining the mode of record keeping, reporting, and monitoring under 6 V.S.A. § 4858(b)(1). The powers of the Secretary are granted under 6 V.S.A. § 4811, and require the Secretary to make, adopt, revise, and amend reasonable rules deemed necessary. 6 V.S.A. § 1(a)(3) states that the Secretary may: “Conduct routine inspections and investigate suspected violations of any law administered by the Secretary.” Agency personnel must take photographs on inspections and investigations for record keeping purposes. 6 V.S.A. § 4811(3) grants that the Secretary may, “enter any lands, public or private, and review and copy any land management records as may be necessary to carry out the provisions of this chapter.”

**Comment:**

Comment requests that farmers be provided with, or the Agency make available upon request, the Agency’s inspection manual and /or inspection protocols. Comment states that this would be a benefit to both parties, as it would ensure that those on-site during an inspection understand the extent of the Agency’s authority and jurisdiction.

**Response:**

Blank copies of inspection forms and policy documents are available upon request. Policy documents and inspection forms are created in conjunction with the rules and regulations. 6 V.S.A. § 4811(3) grants that the Secretary may, “enter any lands, public or private, and review and copy any land management records as may be necessary to carry out the provisions of this chapter.

**Comment:**

Comment highlights the importance of the Agency complying with process laid out pursuant 6 V.S.A. § 4858 (b)(3) providing access to interested parties on the nature and extent of the activity covered under the MFO GP, but not providing any additional access beyond these requirements.

**Response:**

The Agency fulfills its requirements under 6 V.S.A. § 4858 (b)(3) and does not offer, nor permit, additional access for interested parties.

**Comment:**

Comment recommends fewer Agency staff to be present on a farm inspection; feels 2-3 staff is excessive unless each has a specific area of expertise.

**Response:**

It is Agency protocol that 2 staff members are present for any on farm visit; this is for safety and accountability for the Agency. The Agency will do its best to maintain no more than 2 Agency staff are present for on farm visits, unless a situation arises that requires additional parties to be present.

**Timeline for Submitting Information**

**Comment:**

Comment emphasizes the need for communication and consistency regarding timeline for submittal of materials and subsequent Agency response. Collaboration is impacted when a farm is given 24-48 hours to submit information to the Agency, but then has to wait an unreasonable amount of time to receive a response from the Agency. Comment asks that both farmers and the Agency adhere to a schedule of timeliness to promote respect between parties and increase effectiveness.

**Response:**

The Agency acknowledges the delay that can occur in corresponding with farmers. Delayed response times, while in some cases, unavoidable, are an area that hinders movement forward and inhibits communication. The Agency has been working on improving in this area through addition of staff to disperse workload and will continue to improve in this area. Farms are given 10 business days to submit information to the Agency unless alternative timelines have been agreed upon.

**Buffers**

**Comment:**

Comment recommends including large surface water spreading setback (100-200 ft.), as an alternative to a 25 ft vegetated buffer. Feels 25ft. vegetated buffers are not effective enough on their own to reach long-term water quality improvements.



**Response:**

The Agency will consider these setbacks for future revisions of the RAPs; however, these changes are not appropriate for the MFO GP, which would only impact one subset of the farming community.

**MFO GP Form Comments**

The forms referenced in this MFO GP can be found on the Vermont Agency of Agriculture, Food & Market's (the Agency) website (<http://agriculture.vermont.gov/water-quality/regulations/mfo>) or by contacting the Agency Water Quality Division. These forms are subject to revision so the applicant, prior to use of a form referenced in this MFO GP, should always consult the website listed above or the Agency Water Quality Division to make sure that they are using the current version.

**Manure and Waste Generation, Importation, and Storage Capacity Reporting Form****Comment:**

Comment questions the purpose of this form, when it is to be used, if it is required, and if it is required how will farmers know when it is needed?

**Response:**

The Manure and Waste Generation, Importation, and Storage Capacity Reporting Form is required by all farms, to be submitted when the farm wants to import any new substance or increase any existing substance that is captured within an Indirect Discharge Permit (IDP), or non-sewage solid waste. This Form needs to be submitted with the Solid Waste and Non-Sewage Waste Importation Form. There is not a timeframe associated with this Form as the farm isn't able to accept the substance until ANR finalizes the IDP permit or solid waste permit.

**Comment:**

Comment requests clarity regarding what forms will be due annually from MFOs, and when each Form would be required.

**Response:**

The Agency has developed a description for each form associated with the MFO GP:

**Medium Farm Operation General Permit Applicable Forms:**

**Notice of Intent to Comply (NOIC):** A NOIC must be submitted pursuant to the criteria listed below:

An existing MFO must submit a Notice of Intent to Comply (NOIC) with the conditions set forth in this MFO GP to the Agency within 180 calendar days of the effective date of this MFO GP;

A new operation that meets the definition of a MFO must submit a NOIC Form to the Agency prior to operation; or

Any other AFO that plans on increasing animal numbers to meet the definition of a MFO must submit a NOIC Form to the Agency prior to increasing animal numbers that meet or exceed the minimum threshold set forth by the MFO definition.

Additionally, unless terminated, this MFO GP continues in effect for a period of five (5) years from the date of issuance or until the Agency issues a new MFO GP, at which point in time the MFO would submit a new NOIC Form to the Agency.

Notice of Termination (NOT): A MFO must submit a NOT within 90 calendar days of being below the MFO threshold, when the circumstances listed below exist:

A MFO that has submitted a NOIC Form that subsequently maintains animal numbers lower than those defined by 6 V.S.A. § 4857(2) may terminate coverage under this MFO GP by submitting a completed Notice of Termination Form (NOT Form) to the Agency for its review and approval. This could be when the MFO downsizes, or completely sells the herd to a farmer or to an auctioneer. The farm needs to submit the NOT to avoid payment of the MFO Operating Fee. If the MFO does not send in the NOT, then the MFO will be sent the MFO Operating Fee in the next round.

If the farm meets the definition of a Certified Small Farm Operation (CSFO), as defined in Section 1.6 of the MFO GP, the farm shall comply with CSFO requirements including annually certifying compliance with the RAPs.

If a farm submits a NOT Form but later decides to continue operating as a MFO, the farm shall submit a new NOIC Form.

A farm that has submitted a NOIC Form but has animal numbers below the MFO threshold, that does not submit a NOT Form must comply with this MFO GP.

Incident Report: The Incident Report only needs to be submitted when a direct discharge has occurred and must be submitted within 5 calendar days of the discharge. These instances are usually when accidents happen, for example: A dragline system breaks, and manure reached a surface water before it was fixed, or there was a manure tanker accident and manure ended up in a roadside ditch, which then went to a surface water.

Annual Compliance Report: The Annual Compliance Report needs to be submitted by April 30th of each year. The information captured in this Form depicts what has happened in the last 12 months on the farm.

Manure and Waste Generation, Importation, and Storage Capacity Reporting Form: The Manure and Waste Generation, Importation, and Storage Capacity Reporting Form is required by all farms, to be submitted when the farm wants to import any new substance or increase any existing substance including those captured within an Indirect Discharge Permit (IDP), or non-sewage and solid waste. This Form needs to be submitted with the Solid Waste and Non-Sewage Waste Importation Form. There is not a timeframe associated with this Form as the farm isn't able to accept the substance until ANR finalizes the IDP permit or solid waste permit.

Solid Waste and Non-Sewage Waste Importation Form: The Solid Waste and Non-Sewage Waste Importation Form needs to be submitted when the MFO wants to import any new substance or increase the amount of any existing substance imported that is within an IDP, or non-sewage solid waste. This Form needs to be submitted with the Manure, and Waste Generation, Importation and Storage Capacity Reporting Form. This Form needs to be submitted for each newly proposed imported waste other than other farm manure. There is not an associated timeline or deadline with this Form, as the timing when a MFO may accept these imports is farm operation specific.

## **Annual Reporting**

### **Comment:**

Comment asks what the value is of splitting crop acreage between rented and owned on the Annual Reporting Form?

### **Response:**

The Agency is interested in knowing the amount of acreage rented and owned as identified in NMPs in field-by-field records for corroboration of data and to help to understand data trends on farm operations.