

Vermont Agency of Agriculture, Food & Markets

Medium and Small Farm Operation Rules for Issuance of General and Individual Permits

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Subchapter I. AUTHORITY

These Rules are adopted under the express authority of 6 V.S.A. chapter 215 subchapter 5 section 4858 and under 6 V.S.A. subchapter 1(a)(10). The Secretary is authorized to adopt rules under 3 V.S.A. chapter 25, for the implementation of the provisions of 6 V.S.A. chapter 215 subchapter 5.

Related statutes include 6 V.S.A. chapter 215 subchapter 5 sections: 4856 regarding recycling animal waste nutrients; 4857 regarding definitions; 4858 regarding animal waste permits; 4859 regarding public notice and hearings; 4860 regarding revocation and enforcement; and, 4861 regarding appeals.

Subchapter II. DECLARATION OF PURPOSE

These Rules establish procedures for administration, public notice and hearing, comment, enforcement, transition, revocation and appeals, as well as standards for the issuance of a Medium Farm Operation (MFO) General Permit, including conditions, procedures, and standards for the issuance of Individual Permits for MFOs as may be required under certain circumstances.

The General Permit will be designed to ensure that medium farms generating animal waste comply with Vermont's water quality standards. Unless otherwise given notice by the Agency, all medium farms in Vermont are required to operate under the coverage and conditions of the General Permit.

The MFO general permitting program is designed to achieve the purpose of 6 V.S.A. chapter 215 subchapter 5. The Vermont Agency of Agriculture, Food and Markets intends that these Rules will establish a process for the issuance of a General Permit that will cause a Vermont MFO operator to manage a medium farm in a manner which achieves at least an equivalent technical standard as required by federal regulations.

Subchapter III. DEFINITIONS

25-year 24-hour Rainfall Event: means the maximum 24-hour precipitation event with a probable recurrence interval of once every 25 years, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961 and subsequent amendments, or equivalent regional or state rainfall probability information developed therefrom.

AAPs: means the Vermont Accepted Agricultural Practice Regulations adopted pursuant to 6 V.S.A. Chapter 215.

AFO: means an animal feeding operation.

Animal Feeding Operation: means a lot or facility which has animals (other than aquatic animals) that have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility where animals are confined.

Two or more individual farms qualifying as an AFO which are under common ownership and which adjoin each other or use a common area or system for the disposal of animal waste, shall be considered to be a single AFO if the combined number of livestock or domestic fowl resulting qualifies as a medium farm as defined herein.

Agency: means the Vermont Agency of Agriculture, Food and Markets.

Animal Type: means livestock or domestic fowl type.

Certified Nutrient Management Planner: means an individual certified through the completion of the USDA/NRCS nutrient management certification process who creates, reviews, and modifies NMPs.

Conservation Practice: means a specific treatment used to address specific natural resources needs and can be structural, vegetative, or land management.

Cropland: means land devoted to row crop, perennial production, or pasture production.

Dirty Water: means precipitation or other water which has moved in, over or through a barnyard, manure, or other nutrient or pathogen laden matter, so that they have become co-mingled.

Discharge: means the placing, depositing, or emission of waste directly into surface water.

Domestic Fowl: means laying-hens, broilers, ducks, and turkeys.

Existing MFO: means an AFO meeting the definition of a MFO at the time the General Permit is issued.

Groundwater: means water below the land surface in a zone of saturation, but does not include surface waters.

Land Application Area: means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which wastes from the production area is or may be applied.

Livestock: means cattle, swine, sheep, horses, or other animal types as deemed by the Secretary.

MFO: means a Medium Farm Operation.

Medium Farm Operation: means an AFO which houses:

- (i) 200 to 699 mature dairy cows, whether milked or dry;
- (ii) 300 to 999 youngstock or heifers;
- (iii) 300 to 999 veal calves;
- (iv) 300 to 999 cattle or cow/calf pairs;
- (v) 750 to 2,499 swine weighing over 55 pounds;
- (vi) 3000 to 9,999 swine weighing less than 55 pounds;
- (vii) 150 to 499 horses;
- (viii) 3,000 to 9,999 sheep or lambs;
- (ix) 16,500 to 54,999 turkeys;
- (x) 9,000 to 29,999 laying hens or broilers with a liquid manure system;
- (xi) 25,000 to 81,999 laying hens without a liquid manure handling system;
- (xii) 1,500 to 4,999 ducks with a liquid manure handling system;
- (xiii) 10,000 to 29,999 ducks without a liquid manure handling system;
or,
- (xiv) any other animal type and number that the Secretary may deem

New MFO: means an AFO meeting the definition of a MFO after the General Permit is issued.

NRCS: means United States Department of Agriculture (USDA) Natural Resources Conservation Service.

Nutrient Management: means managing the amount, form, placement, and timing of plant nutrient applications to obtain optimum forage and crop yields, minimize the entry of nutrients into waters of the state and groundwater, and optimize economic use of nutrients generated on and off the farm.

Nutrient Management Plan: means the system by which animal waste generation, storage, and use is handled for the purpose of obtaining optimum forage and crop yields including the relating management aspects of fertilizer nutrients, conservation practices, animal mortalities, clean water, chemical handling, waste and soil testing, and record keeping.

NMP: means nutrient management plan.

Pasture: means a confined area of perennial vegetation used for the grazing and confinement of animals.

Permit Decision: means a decision by the Secretary to issue a General Permit or permits, to issue a subsequent General Permit or permits, or to require a small farm to obtain an Individual Animal Waste Permit in order to continue in operation.

Permittee: means a person or business that has received a MFO General or Individual Permit.

Person: means:

- (a) an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership; or
- (b) a municipality or state agency; or
- (c) individuals and entities affiliated with each other for profit, consideration or any other beneficial interest derived from agricultural land management.

Person Aggrieved: means a person who alleges an injury to a particularized interest where the injury is attributable to an act or decision by the Secretary under subchapter 5 of chapter 215 of title 6 and the injury can be redressed by the environmental court or the Supreme Court.

Production Area: means those parts of a MFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

Ruling: means a determination by the Secretary, after notice and an opportunity to be heard by a medium farm, that a medium farm is required to apply for and to obtain an Individual Animal Waste Permit in order to continue in operation, or a determination by the Secretary to deny an application by a medium farm for coverage under an Individual Animal Waste Permit.

Secretary: means the Secretary of the Agency of Agriculture, Food & Markets.

Small Farm Operation: means an AFO which houses no more than 199 mature dairy animals, 299 youngstock or heifers, 299 cattle or cow/calf pairs, 749 swine weighing over 55 pounds, 2,999 swine weighing less than 55 pounds, 149 horses, 2,999 sheep or lambs, 16,499 turkeys, 8,999 laying hens or broilers with a liquid manure handling system, 24,999 laying hens without a liquid manure handling system, 37,499 chickens other than laying hens without a liquid manure handling system, or 9,999 ducks without a liquid manure handling system.

Vermont Water Quality Standards: means the standards and criteria adopted by the Vermont Water Resources Board, pursuant to 10 V.S.A. Chapter 47 section 1252 (e).

Waste: means, for the purposes of these Rules, spoiled feed, manure, milkhouse waste, washwater, leachate, used bedding, carcasses, barnyard runoff, or other dirty water.

Waste Management System: means an on-farm waste management program and conservation practices which include, but are not limited to, a combination of:

1. an adequately sized waste storage facility, field stacking, composting, leachate control system, and milkhouse waste system;
2. contracts which transfer the ownership of wastes generated at a production area to another party for management in a manner determined by the Secretary; and/or,
3. a nutrient management plan (NMP) for all wastes to be applied in compliance with these Rules.

Waste Storage Facility: means an impoundment made for the purpose of storing agricultural waste by constructing an embankment, excavating a pit or dugout, fabricating an in-ground or above-ground structure, or any combination thereof.

Waters of the State: means, for the purpose of these Rules, all rivers, streams, creeks, 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.

Subchapter IV. COVERAGE UNDER THE MFO GENERAL ANIMAL WASTE PERMIT

- A. After the conclusion of the MFO General Permit adoption process and final issuance of the MFO General Permit, no person shall operate a medium farm without authorization from the Secretary pursuant to 6 V.S.A. chapter 215 subchapter 5.
- B. The following animal feeding operations shall seek coverage under the Medium Farm General Permit:
 1. An existing animal feeding operation (AFO) meeting the definition of a Medium Farm Operation (MFO); or,
 2. A new animal feeding operation (AFO) meeting the definition of a Medium Farm Operation (MFO).

- C. A Medium Farm Operation seeking coverage under this General Permit is required to submit a Notice of Intent to Comply (NOIC) with the conditions as set forth within the General Permit. The NOIC must be received by the Agency no later than 180 days from issuance of the General Permit.
- D. Prior to increasing the animal numbers to more than those defined by the MFO definition, a farm operation shall submit a NOIC in compliance with the conditions of the MFO General Permit.
- E. The owner or operator of a small farm may seek coverage under the Medium Farm General Permit adopted pursuant to this section by certifying to the Secretary, in a manner specified by the Secretary, that the small farm complies with the requirements and conditions of the Medium Farm General Permit.
- F. All farm operations seeking coverage under the Medium Farm General Permit shall receive written notification of permit coverage or denial.
- G. The following situations may be exempt from the MFO General Permit requirements:
 - 1. A farming operation that already operates under a MFO Individual Permit; or,
 - 2. An operation that already operates under a LFO permit.
- F. The following activities are prohibited under the coverage of this MFO General Permit:
 - 1. Operation of a production area in a manner to cause a discharge to waters of the state, or to violate state groundwater standards.

Subchapter V. PUBLIC NOTIFICATION AND HEARING PROCESS FOR THE ADOPTION OF A DRAFT GENERAL ANIMAL WASTE PERMIT

- A. Whenever the Secretary proposes to issue a General Permit for the regulation of animal wastes for medium or small farms he or she shall first prepare a draft permit for the purpose of receiving and considering public comment.
- B. The following elements of the Draft MFO General Permit shall include, but not be limited to:
 - 1. A Cover Page;

2. Effluent Limitations and Standards;
3. Monitoring and Reporting Requirements;
4. Record Keeping Requirements;
5. Special Conditions;
6. Standard Conditions;
7. Signatory Requirements;
8. Certification;
9. Availability of Reports;
10. Penalties for Violations of Permit Conditions; and,
11. Definitions.

C. The Draft General Permit shall contain at least the following information:

1. Conditions for required compliance with animal waste management standards and standards for waste management systems;
2. Standards for nutrient management planning;
3. Conditions for required compliance with record keeping;
4. Conditions for required compliance with inspection and monitoring; and,
5. Conditions for required compliance with implementation schedules.

D. Notification of the Preparation of the Draft General Permit

1. The Agency shall provide public notice of the preparation of a Draft MFO General Permit allowing at least 30 days for public comment.
2. The Agency shall provide notice of the preparation of a Draft MFO General Permit to the following:
 - a) State Office of the U.S. Corps of Engineers;
 - b) State Office of the U.S. Fish and Wildlife Service;

- c) State Office of the U.S. Department of Agriculture Natural Resource Conservation Service;
 - d) Vermont Agency of Natural Resources;
 - e) Vermont Agency of Commerce and Community Affairs;
 - f) Persons on a mailing list developed by the Agency; and,
 - g) All town clerks in the State of Vermont.
3. Notice of the preparation of the Draft MFO General Permit will be placed in two (2) prominent Vermont newspapers. Included in the text of the public notice shall be the availability for viewing of the Draft MFO General Permit on the Agency homepage.
 4. Additionally, the Agency may use any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
 5. Public notice of the preparation of the Draft MFO General Permit may be combined with public notification of the initial 30 day comment period and the date and location of a public hearing.
 6. A fact sheet for the Draft General Permit shall be prepared by the Agency and made available to the public accompanying the draft permit. The fact sheet shall include:
 - a) A brief description of the facilities and activities subject to the Draft General Permit;
 - b) A description of the waste, including manure, milkhouse waste, washwater, leachate, used bedding, carcasses, barnyard runoff, and dirty water, which is subject to regulation under these Rules;
 - c) A list of the significant conditions of the Draft General Permit;
 - d) A brief summary of the basis of the Draft General Permit;
 - e) A description of the procedures for reaching a final decision on the Draft General Permit;
 - f) The beginning and ending dates of the comment period;

- g) Procedures by which the public may participate; and,
- h) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the Draft General Permit and a fact sheet.

E. Public Comments and Hearing Requests

1. During the initial 30 day public comment period, any person may submit written comments on the Draft MFO General Permit.
2. All persons who believe any condition of the Draft MFO General Permit is inappropriate must raise all reasonable ascertainable issues and submit all reasonable arguments supporting their position by the close of the public comment period.
3. The Secretary may extend the public comment period at his or her discretion whenever, for instance, such comments might clarify one or more issues involved in the permit discussion or expedite the issuance process. Notice of an extended comment period shall be posted on the Agency homepage.
4. At the time of issuance of the MFO General Permit, the Agency shall issue a response to comments raised during the comment period, or hearing(s), specifying which provisions, if any, have been changed and the reasons for the changes, and a brief description and response to all significant comments.

F. Public Hearings

1. The Secretary shall hold a public hearing for the adoption of the Draft General Permit.
2. Public Hearing Procedures
 - a) The purpose of the hearing shall be to provide an opportunity for the public to learn about the conditions of the General Permit and provide comments to the Agency.
 - b) The Agency shall find locations for the public hearing and schedule the public hearing meeting.
 - c) The Agency shall provide public notice of the hearing date and location at least 30 days prior.

- d) Notice of the preparation of the hearing date and location will be placed in two (2) prominent Vermont newspapers and will indicate the presence of the Draft General Permit on the Agency homepage. Additionally, the Agency may use any other method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to elicit public participation.
- e) The published advertisement shall be at least two (2) columns wide by three (3) inches high.
- f) Public notice of the hearing may be combined with public notification of the prepared Draft MFO General Permit and initial comment period.
- g) Any person may submit oral or written statements and data concerning the Draft MFO General Permit.
- h) Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required.
- i) The Secretary may designate a Presiding Officer who shall be responsible for facilitating the hearing to ensure, to the extent possible, full participation by attendees.
- j) The public hearings shall be recorded and transcripts made available at cost to the public upon written request to the Secretary.
- k) The Agency will receive public comments for at least 30 days following the hearing.
- l) All persons who believe any condition of the Draft MFO General Permit is inappropriate should raise all reasonable ascertainable issues and submit all reasonable arguments supporting their position by the close of the public comment period.
- m) Following the 30 day comment period, the revised Draft MFO General Permit will be placed on the Agency's homepage.
- n) Public hearings shall be held in handicapped accessible locations.

Subchapter VI. ISSUANCE AND DURATION OF THE MFO GENERAL ANIMAL WASTE PERMIT

- A. After the close of the public comment period, the Secretary shall issue the MFO General Permit. The MFO General Permit shall be in affect immediately after the Secretary's signature and dating.
- B. The MFO General Permit will remain in affect for a period of five (5) years from the date of issuance.
- C. Transfer of an MFO permit
 - 1. A MFO may transfer General Permit coverage with the sale or lease of a farm. Written notification shall be made by the original permittee to the Agency within 10 days of that transaction. Written notification shall include a statement signed by the new owner or lessee which indicates that the new owner or lessee understands and agrees to comply with the conditions of the transferred MFO permit.
 - 2. The new owner or lessee shall notify the Secretary in writing within 30 days of that transaction, describing any proposed changes in operation or facilities, or the lack thereof. No change in animal type is allowed to occur without a full review of the operation by the Agency.

Subchapter VII. ISSUANCE OF AN INDIVIDUAL ANIMAL WASTE PERMIT FOR MEDIUM FARM OPERATIONS

- A. Upon determination of any of the following circumstances, the Secretary may require a Medium Farm Operation to apply for and obtain an Individual Medium Farm Operation Permit:
 - 1. A determination by the Secretary that a MFO is not in compliance with the conditions of the General Permit;
 - 2. A determination by the Secretary that a MFO has had a history of non-compliance and continues not to be in compliance with AAPs;
 - 3. A determination by the Secretary that a MFO owner or operator is using unproven experimental technology;
 - 4. A determination by the Secretary that a field is no longer acceptable for spreading or spray irrigation of wastes, thereby requiring site specific conditions;
 - 5. A determination by the Secretary that the nutrient application rates need to be adjusted, thereby requiring site specific conditions; and,
 - 6. A determination by the Secretary that implementation of a NMP may result in an unpermitted discharge to waters of the state.

B. Process for Secretary's Determination for Issuance of a Ruling Concerning Requirements for an Individual Permit for a Medium Farm Operation

1. Upon determination by the Secretary that an Individual Permit for a MFO is warranted, the Agency will notify the owner or operator in writing by certified mail, or in person, that an application for an Individual Permit is required.
2. The letter from the Agency to the MFO owner or operator requesting submittal of an Individual Permit application shall state the reasons for the determination by the Secretary, an outline of proposed conditions, a proposed schedule of compliance, and the process for requesting a hearing before the Secretary in the event that the owner or operator wishes to appeal the determination.
3. The owner or operator of the MFO may appeal the Secretary's ruling within 30 days of the receipt of the Secretary's ruling. An appeal is made by submitting a request for a hearing in writing to the Secretary, which must be received by the Secretary within 30 days of the receipt of the written ruling and stating therein the reasons for the appeal.
4. The Secretary shall conduct the hearing in accordance with 6 V.S.A. section 11.

C. If an owner or operator fails to submit an Individual Permit application as required by the Agency and does not request a hearing in a timely manner, then coverage under the General Permit is automatically terminated at the end of the day for specified submittal of the Individual Permit application.

D. When an Individual Permit is issued to an owner or operator otherwise subject to the General Permit, coverage under the General Permit is automatically terminated on the effective date of the Individual Permit.

E. Application Process for an Individual Permit for a Medium Farm Operation

1. An operator of a farm may petition the Secretary to request issuance of an Individual Permit.
2. All requests for issuance or coverage under an Individual Permit shall be in writing to the Secretary and shall contain any facts or reasons supporting the request including why coverage under a General Permit is inadequate to meet the purposes of the MFO Law or Rules.
3. If the Secretary rules the request is not justified, he or she shall send the petitioner a written response giving a reason for the ruling.

F. Upon issuance of an Individual Permit to a medium farm, the permittee shall comply with all the requirements of these Rules, including but not limited to:

1. Management and design standards;
2. Nutrient management plan requirements and components;
3. Plan maintenance and record keeping;
4. Annual reporting requirements; and,
5. Other site-specific conditions required by the Secretary in order to comply with these Rules and protect water quality.

G. Revisions and Modifications to MFO Individual Permits

1. Prior to making a substantial change in the operation that would lead to a violation of a condition of the Individual Permit, a permittee shall submit a letter of intent to the Secretary describing the proposed change or changes. The Secretary will determine whether the change remains within the conditions of the permit. The Secretary's written determination will be sent to the Permittee within 30 days of the receipt of the letter of intent.
2. Where Agency-initiated modifications to the MFO Individual Permit require actions by the permittee, such actions shall be completed by the Permittee within the time frame established by the Agency. Prior to any modifications to a MFO Individual Permit, the Secretary shall notify the permittee in writing of the proposed modification. The permittee shall have 30 business days to request to be heard regarding the proposed modification. This 30-day period may be extended by good cause shown by the permittee. If no such request is made, the Secretary may modify the permit accordingly.
3. No public notice is required when a request for permit modification, revocation and reissuance, or termination is denied.

H. Transfer of a MFO Individual Permit

1. A permittee may transfer ownership of a MFO Individual Permit with the sale or lease of a MFO if the livestock or fowl types and numbers will not be changed. Written notification shall be made by the original permittee to the Agency within 10 days of that transaction. Written notification shall include a statement signed by the new owner or lessee which indicates that the new owner or lessee understands and

agrees to comply with the conditions of the transferred MFO Individual Permit.

2. The new owner or lessee shall notify the Secretary in writing within 30 days of that transaction, describing any proposed changes in the operation or facilities, or the lack thereof.
3. The Secretary may, within 30 days after the receipt of the notification, determine whether an Individual Permit amendment is required.

Subchapter VIII. ISSUANCE OF AN INDIVIDUAL ANIMAL WASTE PERMIT FOR SMALL FARM OPERATIONS

- A. Upon a determination by the Secretary that a Small Farm Operation has had a history of non-compliance with the AAPs and is and will continue to be not in compliance with the AAPs, the Secretary may require a Small Farm Operation to apply for and obtain an Individual Small Farm Operation Permit.
- B. Process for the Secretary's Determination for Issuance of a Ruling Concerning Requirements for an Individual Permit for a Small Farm Operation
 1. Upon determination by the Secretary that an Individual Permit for a small farm is warranted, the Agency will notify the farm in writing by certified mail, or in person, that an application for an Individual Permit is required.
 2. The letter from the Agency to the small farm requesting submittal of an Individual Permit application shall state the reasons for the determination by the Secretary, an outline of proposed conditions, a proposed schedule of compliance, and the process for requesting a hearing before the Secretary in the event that the owner or operator wishes to appeal the determination.
 3. The small farm may appeal the Secretary's ruling within 30 days of the receipt of the Secretary's ruling. An appeal is made by submitting a request for a hearing in writing to the Secretary, which must be received by the Secretary within 30 days of the receipt of the written ruling and stating therein the reasons for the appeal.
 4. The Secretary shall conduct the hearing in accordance with 6 V.S.A. section 11.
- C. Upon issuance of an Individual Permit to a small farm, the permittee shall comply with all the requirements of these Rules applicable to MFOs, including but not limited to:

1. Management and design standards;
2. Nutrient management plan requirements and components;
3. Plan maintenance and record keeping;
4. Annual reporting requirements; and,
5. Other site-specific conditions required by the Secretary in order to comply with these Rules and protect water quality.

Subchapter IX. REVOCATION OF GENERAL OR INDIVIDUAL PERMIT COVERAGE

- A. The Secretary may, after due notice and an opportunity for hearing with the permittee, revoke coverage under the General Permit or an Individual Permit issued to a medium or small farm, if after investigation, the Secretary deems the permittee to be in violation of any of the terms or conditions of the MFO General and Individual Permit, provisions of the MFO Law, or provisions of these Rules.

Subchapter X. COMPLIANCE AND ENFORCEMENT DETERMINATIONS

- A. The Secretary may seek enforcement remedies, including reduction of herd size and administrative penalties, under sections 1, 12, 13, 15, 16, and 17 of 6 V.S.A. with regard to any person who violates the terms or conditions of the MFO General and Individual Permits, provisions of the MFO Law, or these MFO Rules.

Subchapter XI. MANAGEMENT AND DESIGN STANDARDS

- A. Completion Schedule for all Technical Standards Applicable to MFOs
 1. Existing MFOs shall have a field-by-field Nutrient Management Plan by March 31, 2008.
 2. New MFOs shall have conservation practices to prohibit discharges from the production area and a nutrient management plan to manage wastes, prior to commencing operation.
 3. MFOs shall not have a discharge of waste from the production area to waters of the state.
- B. General Standards Applicable to all MFOs

1. Conservation practices shall be in place to assure that there are no discharges of wastes from the production area to waters of the state.
2. The production area will be managed in compliance with all applicable AAPs.
3. All land-applied wastes shall be applied at rates according to a NMP developed or approved by a certified nutrient management planner. The NMP shall balance nutrient loading of soils with crop yield goals for the cropland.
4. All wastes generated are stored so as not to generate runoff from a 25-year, 24-hour rainfall event.

C. Groundwater Protection Criteria

1. Farm operations shall be conducted so that wastes, as that term is defined in the AAP Rules, do not reach or exceed the primary or secondary groundwater standards as established by the Secretary of the Agency of Natural Resources in the Groundwater Protection Rule and Strategy. Where monitoring indicates that wastes, as that term is defined in the AAP Rules, have reached or exceeded an enforcement standard in groundwater, the Secretary may require corrective modifications to the NMP, the waste management system, or other corrective actions as needed.
2. The Secretary may conduct groundwater quality monitoring to assess the impact of agricultural practices and farm operations on the quality of drinking water and groundwater.
3. The Secretary may conduct groundwater sampling:
 - a) At sites selected by the Secretary where well owners have volunteered or agreed to participate in the sampling program;
 - b) At sites upon the request of a well owner;
 - c) At sites selected by the Secretary based on the results of other sampling data or the existence of vulnerable site characteristics;
 - d) At sites with activities or operations permitted or regulated by the Secretary; and,
 - e) At sites where the Secretary has received a complaint from a well owner in the vicinity of an agricultural operation that the operation has contaminated the drinking water or groundwater of the well owner.

4. Groundwater Investigation

- a) The Secretary shall conduct a groundwater investigation where the Secretary has received a complaint from a well owner in the vicinity of an agricultural operation that the operation or its agricultural practices has contaminated the drinking water or groundwater of the well owner.
- b) The Secretary shall investigate the occurrence of contamination where sampling indicates that drinking water or groundwater contains detectable concentrations of agricultural contaminants.
- c) The approaches the Secretary may utilize to identify and remediate sources of drinking water and groundwater contamination include, but are not limited to:
 - i) Conduct site visits to interview property owners and farm operators, gain an understanding of the physical characteristics of the landscape, and locate additional sites for water quality sampling;
 - ii) Communicate with farm operators and adjacent property owners to identify practices and activities that are potential sources of contamination;
 - iii) Conduct additional sampling to confirm the detection of contaminants and to determine the extent and scope of contamination at the site;
 - iv) Make recommendations for changes in activities, management practices, cropping patterns, or structural revisions designed to reduce the contamination from current activities and prevent contamination from future activities;
 - v) Conduct follow up water quality sampling to determine the effectiveness of changes made or corrective actions taken;
 - vi) Seek additional investigative or consultation resources to evaluate and characterize the site to determine vulnerability to drinking water and groundwater contamination; and,
 - vii) Review testing results and site evaluations to determine if changes in water quality data are the result of changes in activities or natural site conditions.

5. Where monitoring indicates a farm operation has caused the concentration of wastes in groundwater to reach or exceed the primary or secondary groundwater quality standards as defined by the Secretary of Natural Resources in the Groundwater Protection Rule and Strategy, the farm operation shall be managed to reduce the contamination from current activities and prevent contamination from future activities.
 - a) Changes in activities, management practices, cropping patterns, or structures to reduce concentration of wastes in groundwater may be implemented according to an Assurance of Discontinuance (AOD) and a compliance schedule issued to the farm operation by the Secretary.
6. The Secretary shall provide written notification of testing results to each individual well owner that participates in the sampling program.
 - a) Property owners in the vicinity of farm operations and agricultural lands shall receive the test results for each well owned by them that is sampled by the Secretary.
 - b) Farm operations shall receive the test results for wells owned by the farm operation and for wells adjacent to or impacted by the crop land or facilities managed by the farm operation.
7. The Secretary may require the owner or operator of a waste storage facility to modify the facility to meet the NRCS or an equivalent standard for the facility or to implement additional management measures if the facility poses a threat to human health or the environment as established by a violation of the Groundwater Quality Standards.
8. For the purpose of making a determination that a waste storage facility poses a threat to human health or the environment, the Secretary shall pay for the initial costs to conduct groundwater monitoring. When the Secretary has made a determination that a waste storage facility poses a threat to human health or the environment, the Secretary shall provide notification to the Department of Health and the Agency of Natural Resources. This notification shall occur within twenty-one (21) days and include the location of the facility and the name of the owner or operator. When the Secretary makes a determination that a waste storage facility no longer poses a threat to human health or the environment, the Secretary shall provide notification of the revised determination to the Department of Health and the Agency of Natural Resources.
9. When the Secretary has made a determination that a farm operation poses a threat to human health or the environment, the Secretary may require the cost of continued groundwater monitoring be paid for by the farm operation.

10. The owner or operator of a farm operation required by the Secretary to design, construct or modify a waste storage facility may apply for cost share assistance. If the Secretary lacks adequate cost share assistance funds, the requirements for the design, construction or modification of a waste storage facility shall be suspended until adequate funding is available.

Suspension of the requirements to design, construct or modify a waste storage facility does not relieve an owner or operator of a farm subject to the Medium Farm Operations Permitting Program from the remaining requirements of the MFO Program.

D. Structural Design Standards

1. Structural components of the following aspects of a MFO waste management system shall meet the following conditions:
 - a) Any agricultural waste storage facility (except concrete slabs) constructed, upgraded, modified, or expanded after July 1, 2006 shall meet or exceed the standards of all applicable NRCS conservation practice standards or equivalent standards certified by a professional engineer licensed in the State of Vermont.
 - b) Any agricultural waste storage facility or components of a waste management system including, but not limited to, barnyards, manure field stacking sites, leachate control systems, or runoff control systems existing as of July 1, 2006 shall not be required to meet applicable NRCS conservation practice standards or equivalent standards certified by a professional engineer licensed in the State of Vermont provided the facility or system is not causing groundwater to exceed state groundwater standards or is causing a discharge to waters of the state.
 - c) Medium Farm Operations shall have an agricultural waste storage facility capable of holding waste for 180 consecutive days. An alternative to providing 180 consecutive days worth of storage is developing a manure management program which may involve a combination of field stacking, composting, or contracts which transfer the ownership of manure to another party, for management in a manner to assure compliance with the these Rules.
 - d) Milkhouse waste systems and leachate runoff systems shall be accounted for in the design of the waste management system or in an approved structure. Milkhouse waste and leachate runoff must be

contained in such a way as to prevent a discharge to waters of the state.

- e) All storage of compost and the resulting leachate shall be conducted to prevent adverse impacts to waters of the state and groundwater. Compost and compost leachate shall be collected and spread on land without creating an adverse impact to waters of the state and groundwater.

E. Performance Standards and Conditions

1. A waste management system shall be designed, operated, and maintained to prevent groundwater to exceed state groundwater standards and discharges from the production area to waters of the state.
2. If a component of a waste management system, does not prevent discharges of agricultural wastes from the production area to waters of the state, or violates state groundwater standards, or has not been certified by NRCS or by a Vermont licensed professional engineer to meet or exceed NRCS conservation practice standards, or was incorrectly certified as an acceptable structure for the intended use, a MFO may be required to meet designed performance criteria through a schedule of compliance and/or apply for an Individual Permit.
3. The burden of proof that all structures meet design, construction, and operation performance standards lies with the permittee.

Subchapter XII. NUTRIENT MANAGEMENT PLAN REQUIREMENTS

A. Production of a Nutrient Management Plan

1. All MFO's shall have a field-by-field NMP developed or approved by a certified nutrient management planner as defined by these Rules.
2. The Agency may periodically inspect NMPs developed or approved by certified persons and required records for the purpose of review for compliance with MFO nutrient management requirements. The planner and the farmer shall keep a copy of the plan and plan records for a period no less than 5 years.

B. Requirements of the Planning Process

1. Development and implementation of a NMP shall meet or exceed the standards of Vermont AAPs and shall be in compliance with the following additional criteria to the extent applicable.

- a) The nutrient management plan shall:
- i) Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;
 - ii) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, stormwater, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;
 - iii) Ensure clean water is diverted, as appropriate, from the production area;
 - iv) Prevent direct contact of confined animals with waters of the state;
 - v) Ensure chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or stormwater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;
 - vi) Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the state;
 - vii) Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;
 - viii) Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as appropriate; and,
 - ix) Identify specific records that will be maintained to document the implementation of the NMP.
2. All applicable records identified pursuant to nutrient management requirements (i-ix) above, including test results for vii and viii, shall be kept on-farm for a period of no less than 5 years.

Subchapter XIII. ANNUAL COMPLIANCE REPORTING REQUIREMENTS

- A. The permittee shall submit an annual report to the Agency April 30 of each year. (see *Appendix D – Annual Compliance Report Form*).
- B. The annual compliance report must include, but is not limited to, the following information:
 - 1. The number and type of animals, whether in open confinement or housed under roof;
 - 2. An estimated amount of total manure, litter, and process wastewater generated by the MFO in the previous 12 months (tons/gallons);
 - 3. An estimated amount of total manure, litter, and process wastewater transferred to other persons by the MFO in the previous 12 months (tons/gallons);
 - 4. Number of acres for land application covered by the NMP;
 - 5. Total number of acres under control of the MFO that were used for land application of manure, litter, and process wastewater in the previous 12 months;
 - 6. Summary of all manure, litter, and process wastewater discharges from the production area that have occurred in the previous 12 months including the date, time, and approximate volume; and,
 - 7. A statement indicating whether the current version of the MFO's nutrient management plan was developed or approved by a certified nutrient management planner.
- C. The permittee shall submit a nutrient management report to the Agency April 30 of each year. (see *Appendix F – Nutrient Management Report Form*).
- D. The nutrient management report must include, but is not limited to, the following information:
 - 1. Tract number, field number, acreage, previous year's crop, and previous year's crop yield for each field;
 - 2. HEL determination, planned soil loss (as determined using RUSLE2), and previous soil loss (as determined using RUSLE2) for each field;
 - 3. Animal waste application rates by source per field;

4. Fertilizer application rates by formulation per field;
5. A copy of all animal waste test results; and,
6. A copy of all soil test results.

Subchapter XIV: APPEALS

- A. Permit Decisions to Issue and Re-Issue General Animal Waste Permits
 1. The decision to issue and re-issue General Permits is subject to the preparation of draft permits, public notice, public hearing, and public comments prior to the permit decision being made. Persons aggrieved, as defined in 6 VSA Section 4861, by the permit decision to issue or re-issue a General Permit may appeal the permit decision to the environmental court within 30 days of the date of the effective date of the General Permit.
 2. Appeals to the environmental court under this subsection are governed by Environmental Court Rules.
 3. Notices of appeal received by the Secretary shall have noted thereon by the Secretary the date on which it was received, and the Secretary shall transmit the notice of appeal to the clerk of the environmental court.
- B. Permit Decisions that a Small Farm Operation is Required to Apply for and Obtain an Individual Animal Waste Permit
 1. When the Secretary determines, after notice and opportunity by the farm operator to be heard, that a Small Farm Operation is required to obtain an Individual Animal Waste Permit, the operator shall be sent a written decision which shall include, among other things, a statement of the right of the operator to appeal the Secretary's decision to the environmental court.
 2. Appeals to the environmental court under this subsection are governed by Environmental Court Rules.
 3. Notices of appeal received by the Secretary shall have noted thereon by the Secretary the date on which it was received, and the Secretary shall transmit the notice of appeal to the clerk of the environmental court.
- C. Rulings that a Medium Farm Operation is Required to Apply for and Obtain an Individual Animal Waste Permit

1. When the Secretary determines, after notice and opportunity by the farm operator to be heard, that a Medium Farm Operation is required to obtain an Individual Animal Waste Permit, the operator shall be sent a written decision which shall include, among other things, a statement of the right of the operator to appeal the Secretary's decision to the environmental court.
2. Appeals to the environmental court under this subsection are governed by Environmental Court Rules.
3. Notices of appeal received by the Secretary shall have noted thereon by the Secretary the date on which it was received, and the Secretary shall transmit the notice of appeal to the clerk of the environmental court.

D. Rulings Denying an Application by a MFO to Obtain an Individual Animal Waste Permit

1. When the Secretary determines after hearing, that coverage of a MFO under a General Permit is adequate to meet the purposes of subchapter 5 of chapter 215 of 6 V.S.A., and that coverage of a MFO under an Individual Permit is inadequate to meet the purposes of subchapter 5 of chapter 215 of 6 V.S.A., the Secretary may deny the application of the MFO to be covered under an Individual Animal Waste Permit. The Secretary's decision shall be in writing and contain the reasons for the decision. The decision shall also contain, among other things, a statement of the right of the operator to appeal the Secretary's ruling to the environmental court.
2. Appeals to the environmental court under this subsection are governed by Environmental Court Rules.
3. Notices of appeal received by the Secretary shall have noted thereon by the Secretary the date on which it was received, and the Secretary shall transmit the notice of appeal to the clerk of the environmental court.

E. A person aggrieved by a final ruling of the Secretary on an application for coverage under a General Permit adopted pursuant to this section may appeal to the environmental court; provided, however, that the appeal shall be limited in scope to whether the medium farm complies with the terms and conditions of the General Permit.

APPENDICES:

Appendix A: Notice of Intent to Comply

Appendix B: Notice of Termination

Appendix C: *Incident Report*

Appendix D: *Annual Compliance Report*

Appendix E: *Notice of Transfer of Operation/Ownership*

Appendix F: *Nutrient Management Report Form*