

LFO Rule Revisions, 2007

The Large Farm Operations Rules have been revised and adopted.

The Legislative Committee on Administrative Rules held a hearing on the proposed rule changes on October 31, 2007 hearing. A couple of farmers attended the hearing, and spoke eloquently.

The committee requested one language change, to clear up an already existing paragraph in the rules.

The Agency's effort to propose rule changes had several considerations. The reasons for some modifications, and some explanations for why the modifications were necessary follow:

- With farms having been permitted for at least a couple of years, there needs to be an *emphasis on maintaining the structures and practices on the farm*. Although there has always been a requirement to operate and maintain facilities and practices in the rules, we've observed that this has not been universally understood or consistently implemented. All structures, whether designed by an engineer or by NRCS, have operational requirements that go hand in hand with the design of the system. For example, manure pits must maintain a freeboard (empty space) that is never used to store manure. This is intended to be reserved for a large storm event. Another example is the management of collection systems for feed bunk leachate and runoff. Some systems are designed to automatically divert low flow one direction and high flow another direction; some systems require a manual change. All leachate collection systems must be checked to affirm that runoff is not flowing into surface water, which happens when systems are clogged with solids. There are operational criteria for each system or practice that can be found on the NRCS website at:

http://www.vt.nrcs.usda.gov/technical/Conservation_Practices/Index.html

- In order to require a closer examination of the structures and practices, there is a section in the rule on Recordkeeping and Reporting (Subchapter 7. B. Record Observational Requirements within the Production Area), that requires daily and weekly notes of observations made on the production area. This requirement is actually a takeoff on what would be required if a farm were required to get a CAFO permit. We've learned that keeping these notes (just like keeping nutrient management records) are how a farmer can prove that there are no discharges, and that manure was not over applied.

- Another reason for the changes to the rules is to be consistent with and at least as strict as the MFO standards that were adopted in 2006.

* The way that LFOs are defined has been modified to be consistent with the way that MFOs are defined. The Agency no longer uses a road to separate farms, when counting animals to determine if a farm triggers the requirement for a LFO Permit.

* There is a section in the rule on groundwater protection, and groundwater investigations that mimics these sections in the AAPs and the MFO general permit.

* The Nutrient Management standards are now identical to the MFO NM standards, meaning all plans now must meet NRCS's newest nutrient management standard, which is known commonly as "590" (the NRCS practice code number).

- There are now siting and setback standards for new barns and structures on new farms and for expansions on existing farms. These are found in Subchapter 6, D. There are also setbacks for all farm structures at LFOs located in a town in Vermont that has **no zoning**.

- Additionally, the Secretary may require further setbacks, or may grant adjustments to setbacks, if it has been deemed necessary. There are a handful of criteria that can be considered when making a determination of whether further or lesser setbacks may be deemed necessary, and these are more narrative than they are hard and fast numerical standards. For example, some of these are:

- * A consideration of the potential impact of odor, noise, traffic, insects, flies, and other pests from the farm property will have on the abutting property;

- * A consideration of unique physical circumstances or conditions, including irregularity, narrowness, farm size or shape, or exceptional topographical or other physical conditions peculiar to the particular farm property, and that unnecessary hardship in meeting these setbacks is due to these conditions;

- * A consideration of the adjoining and neighboring land uses in the vicinity of the proposed barn and operation;

- * A consideration that an unnecessary hardship has not been created by the applicant or permittee; and

- * A consideration of the permittee's history of compliance with the rules.

- Process-wise, we are now formally coordinating with VT Agency of Natural Resources (ANR) when we receive an application for construction of a new large farm barn (brand new farmstead, not a new barn on an existing farm). The agencies will determine together whether the application is complete, in which case a full review of the application will commence.

- Also at this time, the Secretary will establish an Advisory Group to assist in reviewing an application. The Advisory Group includes: a representative from the ANR; a farmer that will be appointed by the governor; and a representative appointed by the town in which the proposed LFO facility would be located. The Advisory Group is invited to assist the Agency in reviewing the application. Some of the siting considerations before the Advisory Group include: the animal type; the number of animals proposed; the number of acres included in the farm property; the adjoining and neighboring land uses in the vicinity; the existence of waters of the state on or close to the proposal; etc.

You may call Katie Gehr, Large Farm Operations coordinator to discuss the changes, at 802-828-3476. You may download a copy of the adopted LFO Rule from the Agency's webpage:

<http://www.vermontagriculture.com/ARMES/awq/AWQ.html>