



Agency of Agriculture, Food & Markets  
Water Quality Division  
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Sean J. McVeigh, Chief Environmental Enforcement Officer  
Environmental Compliance Division  
1 National Life Drive, Davis 2  
Montpelier, VT 05620

November 15, 2019

Re: 19EC00129 Allendale Farm LLC

Dear Mr. McVeigh,

This letter is in response to your November 8, 2019 letter regarding the above-referenced matter. In your letter, you stated that the Agency of Natural Resources (ANR) will not invoke penalty authority in this matter and, at the same time, acknowledged that there was an unpermitted discharge to waters of the State. You also conveyed your strong suggestion that the Agency of Agriculture, Food & Markets (AAFM) refrain from issuing exemptions to the winter manure spreading ban.

AAFM considers your letter a return of the matter back to AAFM. AAFM will now handle this matter as it would any other matter, and make a determination as to whether AAFM should pursue continued enforcement of this matter under Title 6 and/or to bring this matter to the attention of the Attorney General's Office (AGO) under the Memorandum of Understanding between AAFM, ANR, and the AGO concerning agricultural water quality enforcement referrals.

Under subsection (a) of Section 6.06 of the Required Agricultural Practice Rule (RAPs), AAFM can grant an emergency exemption. There is no requirement that this exemption be in writing<sup>1</sup>. In granting an emergency exemption, AAFM must establish requirements so that manure will be applied on fields in a manner with the least likelihood of generating runoff to surface waters. In this matter, AAFM granted a verbal emergency exemption, established requirements for the application of the manure, and communicated the requirements to the farm. These requirements included the fact that the farm is not authorized to allow manure to runoff to surface water, which was a message consistently stated prior to the ban during the snowy November and has always been the requirement during the winter ban. AAFM also requested that the farm confirm that it understood the requirements and the farm did so on March 11, 2019 with Ryan Patch, Assistant Director of the Water Quality Division, as witness.

In the 2018-2019 winter season, the Agency issued 67 verbal exemptions to the pre-winter ban snow restriction along with 19 written exemptions during the ban. This matter began with the Agency granting a verbal exemption to prevent the manure storage from overtopping and reaching water and then resulted in the Agency issuing a written exemption. In all of these situations in which the Agency issued exemptions in 2018-2019, and in the more than 20 years (since 1996) the Agency has been issuing either verbal or written exemptions, the Agency has not had runoff events like those which were encountered this past season. There were two events this past season, both verbal exemptions, that resulted in manure runoff to water. One is this matter, and the other is a farm that has been referred and accepted to the AGO for enforcement.

<sup>1</sup> AAFM has historically provided exemptions in writing except in rare cases such as this where a pit is actively overtopping but is not yet reaching water.



This matter is by far the worst violation of an exemption to date and it is unfortunate that ANR has not interviewed or requested any additional information from AAFM regarding it. From the information available to it, AAFM's understanding is that ANR stopped investigating and gathering evidence on this matter once it learned that AAFM provided a verbal exemption. It is noteworthy that there were several factors in this case that could have avoided the need for an exemption to be issued at all upon further investigation, specifically including that the farm withheld information from the Agency and that there was a regulated manure custom applicator involved in this matter that could have further prevented this situation from occurring. AAFM took action on both the farm and custom operator upon referring this matter to ANR. However, AAFM did not issue a penalty for the discharge at the time of referral per our mutual agreement to allow ANR to first determine if it would be issuing a penalty under Title 10 for a discharge. Therefore, to date AAFM has issued only a Corrective Action Letter to the farm and one to the custom manure applicator for failure to follow the RAPs.

AAFM believes that the facts of this matter are clear. While AAFM by granting the exemption authorized the farm to apply manure with specific requirements for its application, it did not authorize the farm to apply the volume of manure that it did. The farm's misapplication consequently caused a discharge to waters of the State.

Thank you for your attention to this matter. AAFM is committed to working together with ANR to address agricultural water quality issues such as this one.

Sincerely,



Laura DiPietro  
Water Quality Division Director

