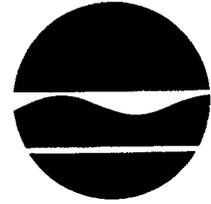


New York State Department of Environmental Conservation

50 Wolf Road, Albany, New York 12233



Michael D. Zagata
Commissioner

NOTICE

This document has been developed to provide Department staff with guidance on how to ensure compliance with statutory and regulatory requirements, including case law interpretations, and to provide consistent treatment of similar situations. This document may also be used by the public to gain technical guidance and insight regarding how department staff may analyze an issue and factors in their consideration of particular facts and circumstances. This guidance document is not a fixed rule under the State Administrative Procedure Act section 102(2)(a)(i) and has no legal effect, but is merely explanatory. Furthermore, nothing set forth herein prevents staff from varying from this guidance as the specific facts and circumstances may dictate, provided staff's actions comply with applicable statutory and regulatory requirements. This document does not create any enforceable rights for the benefit of any party.

Effective Date: April 1, 1987

Reissue Date: JUL 22 1996

MEMORANDUM

TO: Regional Water Engineers, Bureau Directors and Section Chiefs

SUBJECT: Division of Water Technical and Operation Guidance Series (5.1.3)
INVESTIGATION OF AGRICULTURAL SOURCES OF WATER POLLUTION
(Originator: Mr. Philip M. DeGaetano)

PURPOSE

The purpose of this memorandum is to establish objectives and procedures for the investigation of agricultural sources of water pollution.

DISCUSSION

Agricultural sources include activities related to the cultivation, harvest and storage of crops and the husbandry of livestock and poultry. **Farmers** are those responsible for the agricultural operation; they are frequently the owners of the lands and other resources devoted to agricultural operations.

Point sources (of pollution) are defined by ECL Article 17 as any discernible and discrete conveyance, such as a pipe or ditch, from which pollutants are or may be discharged. Point sources of pollution are subject to regulation under the provisions of the State Pollutant Discharge Elimination System (SPDES).

Nonpoint sources represent pollution sources that are not defined as a point source. They are dealt with in the New York State Nonpoint Source Management Program (January, 1990). The Management Program provides a brief description of programs available for the control of agricultural nonpoint sources and makes recommendations regarding additional program needs.

Agricultural activities, when conducted in a manner that reflects reasonable current management measures, as identified in the New York State Agricultural Management Practices Catalogue, are not expected to result in water quality problems. Water quality problems can arise when improper management and/or inappropriate land uses are part of an agricultural operation.

GUIDANCE

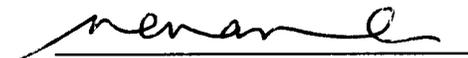
The Department has the following objectives for dealing with water quality problems that are related to agricultural activities and that are causing or contributing water quality problems. Discharges may originate from point or nonpoint sources.

- a. To the greatest extent possible, solicit a voluntary response from the farmer(s) involved to abate a condition causing or contributing to water quality problems.
- b. Not to issue SPDES permits for unplanned or temporary agricultural point source discharges. SPDES permits may be used for planned, ongoing point source discharges or concentrated animal feeding operations, consistent with Division priorities. A SPDES permit process should never be initiated in a case where Department staff are of the opinion that the farm cannot support the design, construction, operation and maintenance of a treatment system or management system capable of achieving SPDES compliance. Refer to 40 CFR, Part 412 for definitions of affected feeding operations.
- c. To utilize the expertise and recommendations of established local agricultural support agencies such as the County Soil and Water Conservation District (SWCD), the USDA Natural Resources Conservation Service (NRCS) and the Cornell Cooperative Extension (CCE), in preparing remedial action plans.
- d. To obtain the implementation of current management measures whenever possible.
- e. To apply regulatory sanctions, such as a Department Order, only if reasonable efforts to have a problem resolved on a voluntary basis have failed.

The following procedure is to be used when investigating and attempting to resolve a farm-related source of pollution that may be causing or contributing to a water quality problem:

1. All complaints and referrals involving water pollution from agricultural sources will be handled by the Regional Water Engineer, who will work with the SWCD/NRCS based on procedures agreed to regionally.
2. The farmer/landowner associated with the complaint or referral will be notified that a potential water quality problem has been reported. He or she may choose to call on the SWCD/NRCS and immediately propose remedial action.
3. If the water quality problem occurs within a public water supply watershed, the appropriate watershed control authority will be notified.

4. If an on-site investigation is considered necessary, the SWCD/NRCS will be invited to participate directly in the investigation, if the farmer does not object. It should be recognized that the SWCD may choose not to be involved unless requested by the farmer.
5. To the extent necessary, the inspection will establish the existence, nature and severity of the discharge. The Department will consult with the SWCD/NRCS regarding the agricultural contribution to the problem, as appropriate. Cost-share assistance from the USDA Farm Services Agency may not be available to the farmer if corrective measures are part of an enforcement action.
6. If it is determined that the discharge is a point source, recommendations for corrective measures will be developed using, as appropriate, the advice and expertise of agricultural support agencies and others. A time frame for implementation of corrective measures may be established.
7. If it is determined that the water quality problem is not caused by a point source, an evaluation should be made of the severity of the problem and the contribution of the source to that problem. These factors should be used to determine the appropriate degree of follow-up. The use of management practices listed in the New York State Agricultural Management Practices Catalogue should be considered in mitigating the problem, in consultation with the SWCD/NRCS.
8. If a compliance inspection is required, the SWCD/NRCS will be invited to participate; if it is found that the water quality problem continues, a compliance conference may be held to resolve the violation.
9. For compliance and enforcement, instances of point source and nonpoint source pollution are to have integrated corrective action responses developed and implemented to remedy these problems. Formal enforcement actions require consultation with the Regional Attorney and usually involve the use of consent orders that address corrective action schedules and penalty considerations.



N.G. Kaul, P.E.
Director
Division of Water

cc: TOGS Distribution (Attached)

TOGS Distribution List

7/96

David Sterman, Deputy Commissioner for Environmental Quality and Pollution Prevention
Director, Division of Air Resources (Art Fossa)
Director, Division of Environmental Remediation (Mike O'Toole)
Director, Division of Solid and Hazardous Materials (Norm Nosenchuck)
Director, Pollution Prevention Unit (John Iannotti)
Librarian, Office of General Counsel
Sandi Allen, Program Attorney, Division of Legal Affairs
Dave Persson, PEF Division Leader, Region 8 - Avon
Adele Roth, PEF L/M Chair
Don Johnson, PEF Chief Steward
Maria Mesiti, CSEA Local President
Norman Channing, President, Local 1873, Council 82, Region 4 - Schenectady
Clyde Black, President, Local 1872, Council 82, Region 5 - Ray Brook
Tom Rinaldi, President, Local 1872S, Council 82
William Powell, President, Local 1873S, Council 82, Region 8 - Avon
Ron Tramantano, NYSDOH
Kathy Callahan, USEPA
Robert Davis, EFC
Mary Von Wagers, Env. Enforcement