

**Work Plan Agreement  
Between**

**The Iowa Department of Natural Resources and the Environmental Protection Agency Region 7**

The Iowa Department of Natural Resources (DNR) and the U.S. Environmental Protection Agency (EPA) Region 7 currently work together to implement the federally authorized, National Pollutant Discharge Elimination System (NPDES) Program within Iowa in a timely, appropriate and effective manner. We establish priorities, negotiate program commitments and work sharing, and evaluate program performance.

DNR and Region 7 are executing this Work Plan as a means to strengthen Iowa's implementation of the federally authorized NPDES program. This Work Plan contains activities and commitments by DNR and Region 7 that generally span federal fiscal years (FFY) 2013 – 2019.

DNR and Region 7 will monitor progress under this Work Plan via existing program to program communications, new reporting pursuant to this Agreement, as well as during our annual joint senior management planning meeting. Work Plan elements may be adjusted by mutual agreement. As part of our joint Performance Partnership Grant (PPG) planning process, DNR and Region 7 will formally assess the need to negotiate any revisions to this Work Plan.

The execution of this Agreement demonstrates our continuing commitment to environmental improvement through a strong partnership and shared responsibility for meeting our regulatory obligations.

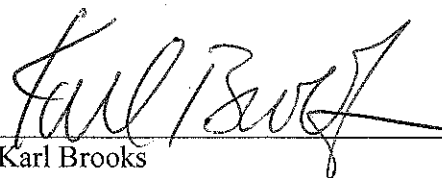
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For DNR:

For U.S. EPA Region 7



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Chuck Gipp  
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## **The DNR Work Plan for Administration of the NPDES Concentrated Animal Feeding Operation (CAFO) program.**

### **I. Background: Petition for Withdrawal**

A Petition for Withdrawal of the NPDES Program Authorization from the State of Iowa was submitted to EPA on September 20, 2007, by the Iowa Citizens for Community Improvement, the Sierra Club, and the Environmental Integrity Project (Petitioners). The Petitioners allege that Iowa's NPDES concentrated animal feeding operations (CAFO)<sup>1</sup> program does not meet the requirements of the Clean Water Act (CWA).

EPA conducted an informal investigation of the Petitioners' allegations and issued a report (referred to herein as the "report") in July 2012. The report discusses EPA's preliminary findings and the actions that the DNR must take for its program to comply with CWA requirements for authorized state NPDES programs. The report did indicate that DNR had resolved 26 of the 31 alleged deficiencies noted by Petitioners in its Petition for Withdrawal.

### **II. Work Plan Action Items for DNR to address Region 7's Required Actions**

The following expands upon DNR's September 2012 Response to EPA's report and outlines the specific actions that DNR agrees to take to address the remaining five deficiencies included in the preliminary findings in EPA's report.

Execution of this Work Plan in and of itself does not constitute resolution of the 2007 Petition for Withdrawal.

#### **Objective 1: Recommend promulgation of NPDES permitting regulations for confinement CAFOs that discharge to waters of the U.S.**

1. DNR intends to recommend to the Environmental Protection Commission (Commission) that the Commission incorporate by reference the federal regulations necessary to fully implement the NPDES permitting program for confinement CAFOs that discharge to waters of the U.S. Within 180 days of execution of this Work Plan or within 180 days of notification from Region 7 that the previously submitted list of regulations to be incorporated is correct, whichever occurs last, DNR will recommend action to promulgate the proposed rules in the Iowa Administrative Bulletin pursuant to Iowa Code Chapter 17A.
2. DNR will recommend that the Commission adopt by reference the revised rules within one year of execution of this Work Plan.

**Indicia of Progress:** Within 180 days of receipt of written acknowledgment from Region 7 that the federal regulations to be adopted by reference is correct or within 180 days of execution of this

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<sup>1</sup> When used in this document, animal feeding operation (AFO) and concentrated animal feeding operation (CAFO) mean as defined in 40 CFR 122.23.

Work Plan, whichever occurs last, DNR recommends that the Commission publish Notice of Intended Action. DNR recommends that the Commission adopt the revised rules within one year of execution of this Work Plan.

**Objective 2: Recommend promulgation of Iowa regulations related to setback and separation distances so that they are equivalent to federal requirements.**

1. DNR intends to recommend to the Commission that the Commission adopt by reference federal regulations that fully implement the NPDES permitting program with respect to land application setback and separation distances for open feedlot CAFOs. Within one year of execution of this Work Plan, DNR agrees to recommend adoption by reference of applicable regulations related to setback and separation distances for open feedlot CAFOs. DNR will recommend rulemaking as set forth in Paragraph 1 of Objective 1 above.

**Indicia of Progress:** Within 180 days of receipt of written acknowledgment from Region 7 that the federal regulations to be adopted by reference are correct or execution of this Work Plan, whichever occurs last, DNR recommends that the Commission publish a Notice of Intended Action. DNR recommends that the Commission adopt the revised rules within one year of execution of this Work Plan.

**Objective 3: To revise DNR application forms and templates to meet the minimum federal requirements.**

1. Within 60 days of execution of this Work Plan, DNR agrees to revise its construction permit application to include the predictive modeling requirement associated with alternative technologies and to require the additional information needed to determine whether the CAFO discharges. The revised application will include a provision stating that alternative technologies require extensive monitoring and reporting conditions in any permit; in addition, an application for a permit does not guarantee that a permit will be granted or that any permit granted will be renewed.
2. Within 60 days of execution of this Work Plan, DNR agrees to revise its nutrient management plan template to include manure application setback requirements.

**Indicia of Progress:** Revisions to DNR's construction permit application and nutrient management plan templates are completed within 60 days of execution of this Work Plan.

**Objective 4: Compliance Evaluation and Inspections**

**A. To implement a comprehensive survey to identify AFOs that are CAFOs that discharge to waters of the U.S. and have failed to apply for NPDES permits.**

1. Within 30 days of execution of this Work Plan, DNR will establish a baseline inventory of all known large CAFOs and medium-sized AFOs in Iowa based upon up-to-date information contained in DNR's AFO database and provide this number to Region 7. Within 90 days of execution of this Work Plan, DNR will provide Region 7 a written plan to systematically locate

and/or identify any unknown large CAFOs and medium-sized AFOs to supplement the baseline inventory. Private or personally identifiable information will not be included as part of these submittals.

2. Within 5 years of the execution of this Work Plan, DNR shall perform a Comprehensive Survey of all large CAFOs and medium-sized AFOs that currently do not have NPDES permits to identify, independent of information supplied by regulated persons, CAFOs that discharge to a water of the U.S. and have failed to comply with NPDES permit application or other program requirements. The Comprehensive Survey shall be performed pursuant to and consistent with the CWA CAFO portions of the IDNR Comprehensive Survey Standard Operating Procedure (SOP) which is attached to this Work Plan.
3. DNR shall document for each facility the basis for its decision regarding the type of evaluation to be conducted.
4. DNR agrees to perform approximately 20% of these evaluations annually.

**Indicia of Progress:** Within 30 days of execution of this Work Plan, DNR establishes a baseline inventory of all known large CAFOs and medium-sized AFOs. Within 90 days of execution of this Work Plan, DNR submits a written plan to systematically inventory any unknown large CAFOs and medium-sized AFOs. All large CAFOs and medium-sized AFOs without NPDES permits shall be evaluated pursuant to the CWA CAFO portions of the IDNR Comprehensive Survey SOP within 5 years of the execution of this Work Plan, in accordance with Subsection A of this Objective.

**B. To perform appropriate CWA NPDES compliance evaluation inspections at NPDES permitted CAFOs.**

1. DNR agrees to perform CWA/NPDES inspections at all NPDES permitted CAFOs in Iowa within 5 years of the execution of this Work Plan, and to complete approximately 20% of these inspections annually, in accordance with the prioritization established in Paragraph 2 below. The CWA/NPDES inspections shall be conducted pursuant to and consistent with the CWA CAFO portions of the IDNR Concentrated Animal Feeding Operation NPDES On-Site Inspection SOP attached to this Work Plan.
2. DNR and Region 7 agree that it is appropriate to prioritize inspections of NPDES permitted facilities with spills or legally sufficient complaints as set forth in Iowa Code §459.601 or 567 IAC 65.113 (459A) that involve a water of the U.S.

**Indicia of Progress:** All NPDES permitted CAFOs shall be inspected pursuant to the CWA CAFO portions of the IDNR Concentrated Animal Feeding Operation NPDES On-Site Inspection SOP within 5 years of the execution of this Work Plan. DNR inspects approximately 20% of permitted facilities annually.

### **C. Resources and Training**

1. Pursuant to Senate File 435 (2013), DNR received an increase of \$700,000 for its animal feeding operation program. This will result in approximately 7 additional full-time staff from the previous fiscal year in order to conduct the evaluation and inspections required by this Work Plan. In the annual reports required pursuant to Section 7.2 of this Work Plan, DNR will provide an assessment as to whether it has sufficient resources to meet the requirements of this Work Plan, and if not, what additional resources are needed.
2. Within 180 days of execution of this Work Plan, DNR will develop a CAFO NPDES training curriculum for all staff conducting NPDES evaluations and inspections at AFO/CAFOs. The curriculum will be completed by all existing AFO/CAFO inspectors and their field office supervisors within 270 days of execution of this Work Plan. New AFO/CAFO staff/inspectors will complete the curriculum within three months of their start date. The curriculum will cover state and federal CWA-related matters, including CAFO inspector training requirements for DNR inspectors. DNR shall develop and provide the training curriculum to Region 7 for review and comment within 180 days of execution of this Work Plan.

**Indicia of Progress:** Within 180 days of execution of this Work Plan, DNR will develop and submit to Region 7 a CAFO NPDES training curriculum. Within 270 days of execution of this Work Plan, DNR implements a satisfactory training program for AFO/CAFO inspectors.

**Objective 5: Timely issue NPDES permits that meet federal requirements to all CAFOs that DNR determines discharge to waters of the U.S. and take timely and appropriate enforcement action if necessary.**

1. In accordance with Objective 4, DNR agrees that upon completion of an evaluation of a CAFO operating without an NPDES permit, where DNR determines the CAFO is required to obtain an NPDES permit because it discharges to a water of the U.S., DNR will notify the CAFO within 60 days after completion of its evaluation and require the CAFO to either: submit an application for an NPDES permit to DNR within 90 days from the date of DNR's notification or longer if additional time is necessary; or immediately put in place interim remedial measures that eliminate the discharge to waters of the U.S. followed by permanent measures that eliminate the cause of the discharge to waters of the U.S. DNR may provide these notifications through commencement of an informal or formal action, depending on DNR's best judgment about what will bring the CAFO into compliance with the CWA. DNR agrees to track the CAFO's response and ensure that a permit application is submitted or discharge cause is clearly eliminated, relying on enforcement (or further enforcement) if necessary.
2. Within 180 days after receipt of each application for an NPDES permit submitted according to this Objective, DNR will complete a draft permit that contains facility-appropriate provisions designed to control all discharges from the CAFO in a manner consistent with federal effluent limitations for CAFOs. At the termination of the public comment period for each draft permit, and after consideration of all public comments received, DNR agrees to expeditiously issue a final permit for each such CAFO.

3. Unpermitted discharges are subject to enforcement at any time but DNR recognizes that in some cases, depending on the nature and severity of the discharge, it may be appropriate to require a CAFO to implement interim controls while the CAFO's permit application and permit are under development.

**Indicia of progress:** As DNR implements the IDNR Comprehensive Survey SOP pursuant to Objective 4 for evaluating CWA compliance at AFOs and CAFOs operating without an NPDES permit, DNR will notify facilities that discharge to a water of the U.S. of the need for a permit or the immediate need to put in place remedial measures that clearly eliminate the cause of the discharge to waters of the U.S., commencing informal or formal action as appropriate, and issuing permits in accordance with the timelines set forth in this Objective.

**Objective 6: To implement enforcement program that ensures penalties are sought in accordance with DNR's EMS and creates a stronger deterrent to noncompliance.**

1. DNR agrees to carry out enforcement against CAFOs with illegal discharges to waters of the U.S. or NPDES permit violations in accord with its Enforcement Management System (EMS) manual. DNR will document the basis for enforcement response decisions. When seeking administrative penalties, DNR agrees to assess the actual or reasonably estimated economic benefit in accordance with 567 IAC 10.3(2) and the EMS manual, including both delayed and avoided cost of compliance. In specific cases where DNR does not seek or recover full economic benefit, DNR will document the case-specific rationale and/or mitigating factors supporting DNR's decision to not seek full economic benefit. DNR will also document mitigating factors used for the non-economic benefit component of assessed penalties.
2. DNR agrees to develop checklists necessary to ensure consistent and appropriate enforcement responses by enforcement staff within 60 days of execution of this Work Plan.
3. DNR agrees to complete any required staff training on its revised EMS and penalty calculations within 120 days of execution of this Work Plan.

**Indicia of Progress:** DNR develops enforcement checklists within 60 days of execution of this Work Plan. DNR completes any required training within 120 days of execution of this Work Plan. DNR assesses appropriate economic benefit when seeking administrative penalties.

**Objective 7: To keep the EPA and the public up-to-date on DNR's progress towards implementation of this Work Plan.**

1. DNR agrees to provide progress reports on its progress with implementing Objectives 1-6 of this Work Plan within 90 days, 210 days and one year from the date of execution of this Work Plan. Progress reports will be posted on DNR's website.
2. Beginning in 2014 and ending in FFY 2019, DNR agrees to submit an annual report by August 1 of each year that summarizes all relevant results associated with DNR's implementation of this Work Plan. In the annual report, if DNR has not met the 20% annual evaluation

requirement discussed above, DNR agrees to reassess available resources and progress towards meeting the Work Plan's requirements. The annual report will be posted on DNR's website.

**Indicia of Progress:** DNR's progress with implementing Objectives 1-6 of the Work Plan are posted on DNR's website. DNR provides annual reports to Region 7.