

House Proposal of Amendment

S. 124

An act relating to miscellaneous agricultural subjects

The House proposes to the Senate to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Agency of Agriculture, Food and Markets Regulation of Agricultural
Water Quality * * *

Sec. 1. 6 V.S.A. § 4810(d) is amended to read:

(d) Cooperation and coordination. The Secretary of Agriculture, Food and Markets shall coordinate with the Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for reducing and eliminating agricultural nonpoint source pollutants and discharges from concentrated animal feeding operations. On or before July 1, 2016, the farms. The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall revise the memorandum of understanding for cooperate with the Secretary of Natural Resources in the implementation of the federal Clean Water Act for Concentrated Animal Feeding Operations (CAFOs). The Secretary of Agriculture, Food and Markets shall implement the State's comprehensive, complimentary nonpoint source program describing. The Secretary of Agriculture, Food, and Markets and the Secretary of Natural Resources shall coordinate regarding program administration; grant negotiation; grant sharing, and how they will coordinate; implementation of the antidegradation policy including to new sources of agricultural nonpoint source pollutants, and watershed planning activities to comply with Pub. L. No. 92-500. The memorandum of understanding shall describe how the agencies will implement the antidegradation implementation policy, including how the agencies will apply the antidegradation implementation policy to new sources of agricultural nonpoint source pollutants. The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall also develop a memorandum of understanding according to the public notice and comment process of 10 V.S.A. § 1259(i) regarding the implementation of the federal Concentrated Animal Feeding Operation Program and the relationship between the requirements of the federal Program and the State agricultural water quality requirements for large, medium, and small farms under this chapter. The memorandum of understanding shall describe Program administration, permit issuance, an appellate process, and enforcement authority and implementation. In accordance with 10 V.S.A. § 1259(i), the Secretary of Natural Resources, in consultation with the U.S. Environmental Protection Agency and the Secretary of Agriculture, Food and Markets, shall issue a document that sets forth the respective roles and responsibilities of the Agency of Natural Resources in implementing the federal Clean Water Act on

farms and the Agency of Agriculture, Food and Markets' roles and responsibilities in implementing the State's complementary nonpoint source program on farms. The ~~memorandum of understanding document~~ shall be consistent with and equivalent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from ~~concentrated animal feeding operations~~ CAFOs. The document will replace the memorandum of understanding between the agencies. The allocation of duties under this chapter between the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall be consistent with the Secretary's duties, established under the provisions of 10 V.S.A. § 1258(b), to comply with Pub. L. No. 92-500. The Secretary of Natural Resources shall be the State lead person in applying for federal funds under Pub. L. No. 92-500 but shall consult with the Secretary of Agriculture, Food and Markets during the process. The agricultural nonpoint source program may compete with other programs for competitive watershed projects funded from federal funds. The Secretary of Agriculture, Food and Markets shall be represented in reviewing these projects for funding. Actions by the Secretary of Agriculture, Food and Markets under this chapter concerning agricultural nonpoint source pollution shall be consistent with the water quality standards and water pollution control requirements of 10 V.S.A. chapter 47 and the federal Clean Water Act as amended. In addition, the Secretary of Agriculture, Food and Markets shall coordinate with the Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for the proper management of composting facilities when those facilities are located on a farm. ~~On or before January 15, 2016, the~~ The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall each develop three separate measures of the performance of the agencies under the ~~memorandum of understanding required by this subsection. Beginning on January 15, 2017~~ federal Clean Water Act and State nonpoint source regulatory authority, and annually thereafter on or before January 15, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall submit separate reports to the Senate Committee on Agriculture, the House Committee on Agriculture, Food Resiliency, and Forestry, the Senate Committee on Natural Resources and Energy, and the House Committee on Environment ~~and Energy~~ regarding the success of each agency in meeting the its selected performance measures ~~for the memorandum of understanding~~.

Sec. 2. 6 V.S.A. § 4810a(a)(6) is amended to read:

(6)(A) Require a farm to comply with standards established by the Secretary for maintaining a vegetative buffer zone of perennial vegetation between annual croplands and the top of the bank of an adjoining water of the State. At a minimum the vegetative buffer standards established by the Secretary shall prohibit the application of manure on the farm within 25 feet of the top of the bank of an adjoining water of the State or within 10 feet of a

ditch that is not a surface water under State law and that is not a water of the United States under federal law. The minimum vegetated buffer requirement required under this subdivision (A) shall not apply to a farm that is determined by the Secretary of Natural Resources to be a Concentrated Animal Feeding Operation and is required to obtain a CAFO permit as required under 10 V.S.A. § 1353. A farm determined to be a Concentrated Animal Feeding Operation that requires a CAFO permit shall instead comply with the setback and buffer requirements established in the federal CAFO regulations.

(B) Establish standards for site-specific vegetative buffers that adequately address water quality needs based on consideration of soil type, slope, crop type, proximity to water, and other relevant factors.

Sec. 3. 6 V.S.A. § 4851 is amended to read:

§ 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

(a) No person shall, without a permit from the Secretary, construct a new barn, or expand an existing barn, designed to house more than 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers with a liquid manure handling system, 82,000 laying hens without a liquid manure handling system, 125,000 chickens other than laying hens without a liquid manure handling system, 5,000 ducks with a liquid manure handling system, or 30,000 ducks without a liquid manure handling system. No permit shall be required to replace an existing barn in use for livestock or domestic fowl production at its existing capacity. The Secretary of Agriculture, Food and Markets, in consultation with the Secretary of Natural Resources, shall review any application for a permit under this section with regard to water quality impacts ~~and, prior to approval of a permit under this subsection, shall issue a written determination regarding whether the applicant has established that there will be no unpermitted discharge to waters of the State pursuant to the federal regulations for concentrated animal feeding operations.~~ If, upon review of an a large farm application for a permit under this subsection, the Secretary of Agriculture, Food and Markets determines that the ~~permit applicant~~ farm may be discharging to waters of the State, the Secretary of Agriculture, Food and Markets ~~and the Secretary of Natural Resources shall respond to~~ promptly refer the potential discharge to the Secretary of Natural Resources for response in accordance with the memorandum of understanding the federal Clean Water Act regarding concentrated animal feeding operations under section 4810 of this title. The Secretary of Natural Resources ~~may require~~ shall direct a large farm to obtain a permit under 10 V.S.A. § 1263 ~~pursuant to if required by federal regulations for concentrated animal feeding operations or by the VPDES CAFO Rules.~~ If the farm is not required to obtain a CAFO permit and is not in violation of federal regulations for

Concentrated Animal Feeding Operations, the Secretary of Natural Resources shall promptly notify the Secretary of Agriculture, Food and Markets.

(b) A person shall apply for a permit in order to operate a farm that exceeds 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers with a liquid manure handling system, 82,000 laying hens without a liquid manure handling system, 125,000 chickens other than laying hens without a liquid manure handling system, 5,000 ducks with a liquid manure handling system, or 30,000 ducks ~~if the livestock or domestic fowl are in a barn or adjacent barns owned by the same person or if the barns share a common border or have a common waste disposal system without a liquid manure handling system.~~ Two or more individual farms that are under common ownership and that adjoin each other or use a common area or system for the disposal of wastes shall be considered a single animal feeding operation or "farm" when determining whether the combined number of livestock or domestic fowl qualifies the farm as a Large Farm Operation under this section. In order to receive this permit, the person shall demonstrate to the Secretary that the farm has an adequately sized manure management system to accommodate the wastes generated and a nutrient management plan to dispose of wastes in accordance with Required Agricultural Practices adopted under this chapter and current U.S. Department of Agriculture nutrient management standards.

(c) The Secretary shall approve, condition, or disapprove the application within 45 business days ~~of~~ following the date of receipt of a complete application for a permit under this section. Failure to act within the 45 business days shall be deemed approval.

(d) A person seeking a permit under this section shall apply in writing to the Secretary. The application shall include a description of the proposed barn or expansion of livestock or domestic fowl; a proposed nutrient management plan to accommodate the number of livestock or domestic fowl the barn is designed to house or the farm is intending to expand to; and a description of the manure management system to be used to accommodate agricultural wastes.

(e) The Secretary may condition or deny a permit on the basis of odor, noise, traffic, insects, flies, or other pests.

(f) Before granting a permit under this section, the Secretary shall make an affirmative finding that the animal wastes generated by the construction or expansion will be stored so as not to generate runoff from a 25-year, 24-hour storm event and shall be disposed of in accordance with the Required

Agricultural Practices adopted under this chapter and current U.S. Department of Agriculture nutrient management standards.

(g) A farm that is permitted under this section and that withdraws more than 57,600 gallons of groundwater per day averaged over any 30 consecutive-day period shall annually report estimated water use to the Secretary of Agriculture, Food and Markets. The Secretary of Agriculture, Food and Markets shall share information reported under this subsection with the Agency of Natural Resources.

(h) The Secretary may inspect a farm permitted under this section at any time, but ~~no~~ not less frequently than once per year.

(i) A person required to obtain a permit under this section shall submit an annual operating fee of \$2,500.00 to the Secretary. During any calendar year in which a person has an active Large Concentrated Animal Feeding Operation permit issued by the Agency of Natural Resources pursuant to the federal Clean Water Act and pays the required associated fee, that person shall not be required to pay the \$2,500.00 annual operating fee described in this section. The fees collected under this section shall be deposited in the Agricultural Water Quality Special Fund under section 4803 of this title.

Sec. 4. 6 V.S.A. § 4858 is amended to read:

§ 4858. MEDIUM FARM OPERATION PERMITS

(a) Authorization to operation. No person shall operate a medium farm without authorization from the Secretary pursuant to this section. Under exceptional conditions, specified in subsection (d) of this section, authorization from the Secretary may be required to operate a small farm.

(b) Rules; general and individual permits. The Secretary shall establish by rule, pursuant to 3 V.S.A. chapter 25, requirements for a general permit and individual permit to assure that medium and small farms generating animal waste comply with the water quality standards of the State.

(1) General and individual permits issued under this section shall be consistent with rules adopted under this section, shall include terms and conditions appropriate to each farm size category and each farm animal type as defined by section 4857 of this title, and shall meet standards at least as stringent as those established by federal regulations for concentrated animal feeding operations. Such standards shall address waste management, waste storage, development of nutrient management plans, carcass disposal, and surface water and groundwater contamination, plus recordkeeping, reporting, and monitoring provisions regarding such matters to ensure that the terms and conditions of the permit are being met. The groundwater contamination rules adopted by the Secretary under this section shall include a process under which

the Agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner.

(2) The rules adopted under this section shall also address permit administration, public notice and hearing, permit enforcement, permit transition, revocation, and appeals consistent with provisions of sections 4859 and 4861 of this title and subchapter 10 of this chapter.

(3) Each general permit issued pursuant to this section shall have a term of ~~no~~ not more than five years. Prior to the expiration of each general permit, the Secretary shall review the terms and conditions of the general permit and may issue subsequent general permits with the same or different conditions as necessary to carry out the purposes of this subchapter. Each general permit shall include provisions that require public notice of the fact that a medium farm has sought coverage under a general permit adopted pursuant to this section. Each general permit shall provide a process by which interested persons can obtain detailed information about the nature and extent of the activity proposed to receive coverage under the general permit. The Secretary may inspect each farm seeking coverage under the general permit at any time but ~~no~~ not less frequently than once every three years.

(c)(1) Medium farm general permit.

(1) The owner or operator of a medium farm seeking coverage under a general permit adopted pursuant to this section shall certify to the Secretary within a period specified in the permit, and in a manner specified by the Secretary, that the medium farm does comply with permit requirements regarding an adequately sized and designed manure management system to accommodate the wastes generated and a nutrient management plan to dispose of wastes in accordance with Required Agricultural Practices adopted under this chapter and current U.S. Department of Agriculture nutrient management standards. Any certification or notice of intent to comply submitted under this subdivision shall be kept on file at the Agency of Agriculture, Food and Markets. The Secretary of Agriculture, Food and Markets, in consultation with the Secretary of Natural Resources, shall review any certification or notice of intent to comply submitted under this subdivision with regard to the water quality impacts of the medium farm for which the owner or operator is seeking coverage, and, for farms that have never been permitted under the prior permit term, within 18 months ~~of~~ after receiving the certification or notice of intent to comply, the Secretary of Natural Resources shall verify whether the owner or operator of the medium farm has established that there will be no unpermitted discharge to waters of the State pursuant to the federal regulations for concentrated animal feeding operations. If upon review ~~of a medium farm granted coverage under the general permit adopted pursuant to this subsection~~ the Secretary of Agriculture, Food and Markets determines that the permit applicant medium farm may be discharging to waters of the State,

the Secretary of Agriculture, Food and Markets and shall promptly notify the Secretary of Natural Resources shall respond to the discharge in accordance with the memorandum of understanding the federal Clean Water Act regarding concentrated animal feeding operations under section 4810 of this title. The Secretary of Natural Resources shall direct a medium farm to obtain a permit under 10 V.S.A. § 1263 if required by federal regulations for concentrated animal feeding operations or by the VPDES CAFO Rules. If the farm is not required to obtain a CAFO permit and is not in violation of federal regulations for concentrated animal feeding operations, the Secretary of the Agency of Natural Resources shall promptly notify the Secretary of Agriculture, Food and Markets.

(2) 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.

(d) Medium and small farms; individual permit. The Secretary may require the owner or operator of a small or medium farm to obtain an individual permit to operate after review of the farm's history of compliance, application of Required Agricultural Practices, the use of an experimental or alternative technology or method to meet a State performance standard, or other factors set forth by rule. The owner or operator of a small farm may apply to the Secretary for an individual permit to operate under this section. To receive an individual permit, an applicant shall in a manner prescribed by rule demonstrate that the farm has an adequately sized and designed manure management system to accommodate the wastes generated and a nutrient management plan to dispose of wastes in accordance with Required Agricultural Practices adopted under this chapter and current U.S. Department of Agriculture nutrient management standards, including setback requirements for waste application. An individual permit shall be valid for ~~no~~ not more than five years. Any application for an individual permit filed under this subsection shall be kept on file at the Agency of Agriculture, Food and Markets. The Secretary of Agriculture, Food and Markets, in consultation with the Agency of Natural Resources, shall review any application for a permit under this subsection and, ~~prior to issuance of an individual permit under this subsection, shall issue a written determination regarding whether the permit applicant has established that there will be no unpermitted discharge to waters of the State pursuant to federal regulations for concentrated animal feeding operations. If, upon review of an application for a permit under this subsection a permit application,~~ the Secretary of Agriculture, Food and Markets determines that the permit applicant may be discharging to waters of the State, the Secretary of Agriculture, Food and Markets and shall promptly refer the farm to the Secretary of Natural Resources shall respond to the discharge for response in

~~accordance with the memorandum of understanding regarding concentrated animal feeding operations under subsection 4810(b) of this title~~ the federal Clean Water Act. The Secretary of Natural Resources ~~may require~~ shall direct a medium or small farm to obtain a permit under 10 V.S.A. § 1263 ~~pursuant to~~ if required by federal regulations for concentrated animal feeding operations ~~or by the VPDES CAFO Rules.~~ Coverage of a medium farm under a general permit adopted pursuant to this section or an individual permit issued to a medium or small farm under this section is rendered void by the issuance of a permit to a farm under 10 V.S.A. § 1263. If the farm is not required to obtain a CAFO permit and is not in violation of federal regulations for concentrated animal feeding operations, the Secretary of the Agency of Natural Resources shall promptly refer the matter to the Secretary of Agriculture, Food and Markets.

(e) Operating fee. A person required to obtain a permit or coverage under this section shall submit an annual operating fee of \$1,500.00 to the Secretary. The fees collected under this section shall be deposited in the Agricultural Water Quality Special Fund under section 4803 of this title.

Sec. 5. 6 V.S.A. § 4816 is amended to read:

§ 4816. SEASONAL APPLICATION OF MANURE

(a) Prohibition on application. A person shall not apply manure to land in the State between December 15 and April 1 of any calendar year unless authorized by this section or as authorized under an emergency exemption granted by the Secretary according to criteria set forth under the Required Agricultural Practices.

(b) Extension of prohibition. The Secretary of Agriculture, Food and Markets shall amend the Required Agricultural Practices by rule in order to establish a process under which the Secretary may prohibit the application of manure to land in the State between December 1 and December 15 and between April 1 and April 30 of any calendar year when the Secretary determines that due to weather conditions, soil conditions, or other limitations, application of manure to land would pose a significant potential of discharge or runoff to State waters.

(c) Seasonal exemption. The Secretary of Agriculture, Food and Markets shall amend the Required Agricultural Practices by rule in order to establish a process under which the Secretary may authorize an exemption to the prohibition on the application of manure to land in the State between December 15 and April 1 of any calendar year or during any period established under subsection (b) of this section when manure is prohibited from application. Any process established for the issuance of an exemption under the Required Agricultural Practices may authorize land application of manure

on a weekly, monthly, or seasonal basis or in authorized regions, areas, or fields in the State, provided that any exemption shall:

(1) prohibit application of manure:

(A) in areas with established channels of concentrated stormwater runoff to surface waters, including ditches and ravines;

(B) in nonharvested permanent vegetative buffers;

(C) in a nonfarmed wetland, as that term is defined in 10 V.S.A. § 902(5);

(D) within 50 feet of a potable water supply, as that term is defined in 10 V.S.A. § 1972(6);

(E) to fields exceeding tolerable soil loss; and

(F) to saturated soils;

(2) establish requirements for the application of manure when frozen or snow-covered soils prevent effective incorporation at the time of application;

(3) require manure to be applied according to a nutrient management plan; and

(4) establish the maximum tons of manure that may be applied per acre during any one application.

Sec. 6. 6 V.S.A. § 4871(b) is amended to read:

(b) Required small farm certification. Beginning on July 1, 2017, a person who owns or operates a small farm, as designated by the Secretary consistent with subdivision 4810a(a)(1) of this title, shall, on a form provided by the Secretary, certify compliance with the Required Agricultural Practices. The Secretary of Agriculture, Food and Markets shall establish the requirements and manner of certification of compliance with the Required Agricultural Practices, provided that the Secretary shall require an owner or operator of a any newly eligible or identified small farm to submit an annual a certification of compliance with the Required Agricultural Practices and may require any small farm to regularly certify ongoing compliance with the Required Agricultural Practices.

* * * Agency of Natural Resources Regulation of Concentrated Animal
Feeding Operations * * *

Sec. 7. 10 V.S.A. § 1251 is amended to read:

§ 1251. DEFINITIONS

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

* * *

(3) “Discharge” means the placing, depositing, or emission of any wastes or pollutants, directly or indirectly, into an injection well or into the waters of the State.

* * *

(11) “Secretary” means the Secretary of Natural Resources or ~~his or her~~ authorized representative.

(12) “Waste” means effluent, sewage, or any substance or material, liquid, gaseous, solid, or radioactive, including heated liquids, whether or not harmful or deleterious to waters; provided, however, the term “sewage” as used in this chapter shall not include the rinse or process water from a cheese manufacturing process.

(13) “Waters” or “waters of the State” includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, ~~and all artificial or natural~~ bodies of surface waters, ~~artificial or natural~~, and waters of the United States, as that term is defined under the federal Clean Water Act, that are contained within, flow through, or border upon the State or any portion of it.

* * *

(20) “Direct discharge” means the placing, depositing, or emission of any waste or pollutant directly into waters.

(21) “Pollutant” means dredged spoil; solid waste; incinerator residue; sewage; garbage; sewage sludge; munitions; chemical wastes; biological materials; radioactive materials; heat; wrecked or discarded equipment; rock; sand; cellar dirt; and industrial, municipal, and agricultural waste discharged into water.

Sec. 8. 10 V.S.A. chapter 47, subchapter 3A is added to read:

Subchapter 3A. Concentrated Animal Feeding Operations

§ 1351. DEFINITIONS

As used in this subchapter:

(1) “Agricultural waste” means material originating or emanating from a farm or imported onto a farm that contains sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste; animal mortalities; compost; feed, litter, and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; process wastewater, untreated milk house waste; and any other farm waste as the term “waste” is defined in subdivision 1251(12) of this chapter.

(2)(A) “Animal feeding operation” or “AFO” means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

(i) animals, other than aquatic animals, 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

(ii) crops, vegetation, or forage growth are not sustained in the normal growing season over any portion of the lot or facility.

(B) Two or more individual farms qualifying as an AFO that are under common ownership and that adjoin each other or use a common area or system for the disposal of waste shall be considered to be a single AFO if the combined number of livestock or domestic fowl on the combined farm qualifies the combined farm as a large CAFO as defined in subdivision (5) of this section or as a medium CAFO as defined in subdivision (8) of this section.

(3) “Concentrated animal feeding operation” or “CAFO” means an AFO that is defined as a large CAFO, a medium CAFO, or a small CAFO.

(4) “Land application area” means the area under the control of an AFO or CAFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater may be applied.

(5) “Large concentrated animal feeding operation” or “Large CAFO” means an AFO that houses 700 or more mature dairy animals, 1,000 or more cattle or cow or calf pairs, 1,000 or more veal calves, 2,500 or more swine weighing over 55 pounds, 10,000 or more swine weighing 55 pounds or less, 500 or more horses, 10,000 or more sheep or lambs, 55,000 or more turkeys, 30,000 or more laying hens or broilers with a liquid manure handling system, 82,000 or more laying hens without a liquid manure handling system, 125,000 or more chickens other than laying hens without a liquid manure handling system, 5,000 or more ducks with a liquid manure handling system, or 30,000 or more ducks without a liquid manure handling system.

(6) “Large farm operation” or “LFO” has the same meaning as in 6 V.S.A. chapter 215.

(7) “Manure” means livestock waste in solid or liquid form that may also contain bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(8) “Medium concentrated animal feeding operation” or “medium CAFO” means an AFO that is defined as an AFO by the VPDES CAFO Rules adopted by the Secretary, including an AFO that:

(A) houses 200 to 699 mature dairy animals, 300 to 999 cattle or cow or calf pairs, 300 to 999 veal calves, 750 to 2,499 swine weighing over 55

pounds, 3,000 to 9,999 swine weighing 55 pounds or less, 150 to 499 horses, 3,000 to 9,999 sheep or lambs, 16,500 to 54,999 turkeys, 9,000 to 29,999 laying hens or broilers with a liquid manure handling system, 25,000 to 81,999 laying hens without a liquid manure handling system, 37,500 to 124,999 chickens other than laying hens without a liquid manure handling system, 1,500 to 4,999 ducks with a liquid manure handling system, or 10,000 to 29,999 ducks without a liquid manure handling system; and

(B) either of the following conditions are met:

(i) wastes are discharged into waters through a man-made ditch, flushing system, or other similar man-made device; or

(ii) wastes are discharged directly into waters that originate outside of or pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(9) “Medium farm operation” or “MFO” has the same meaning as medium farm operation in 6 V.S.A chapter 215 and rules adopted under the chapter.

(10) “Point source” means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(11) “Process wastewater” means water directly or indirectly used in the operation of an AFO or CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO or CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water that comes into contact with any raw materials, products, or byproducts, including manure, litter, feed, milk, eggs, or bedding.

(12) “Production area” means that part of an AFO or CAFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins, and

areas within berms and diversions that separate uncontaminated storm water. 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.

(13) “Secretary” means the Secretary of Natural Resources.

(14) “Small animal feeding operation” or “SFO” means an AFO that is not a large CAFO or a medium CAFO.

(15) “Small concentrated animal feeding operation” or “small CAFO” means a small AFO designated as a small CAFO by the Secretary upon determining that the AFO is a significant contributor of pollutants to waters of the State and is defined as a CAFO by the regulations adopted under the federal Clean Water Act.

(16) “Waters of the United States” has the same meaning as defined by the federal Clean Water Act.

§ 1352. POWERS OF THE SECRETARY

The Secretary has the authority to exercise all of the following:

(1) Implement the federal Clean Water Act to administer a Vermont pollutant discharge elimination system (VPDES) CAFO program that is at least as stringent as the federal Clean Water Act and enabling rules.

(2) Make, adopt, revise, and amend rules as necessary to administer a VPDES CAFO program that is at least as stringent as the federal Clean Water Act and enabling rules.

(3) Make, adopt, revise, and amend procedures, guidelines, inspection checklists, and other documents as necessary for the administration of the VPDES CAFO program.

(4) Designate any AFO that meets the definition of a CAFO under the federal Clean Water Act regulations or under the VPDES CAFO Rule as a CAFO, in the Secretary’s sole discretion.

(5) Require any AFO to obtain a CAFO permit under this chapter upon a determination that the AFO is discharging to waters of the State.

(6) Designate any small AFO as a CAFO if after an on-site inspection, the Secretary determines that the small AFO is discharging into water and is a significant contributor of pollutants to waters of the State. The Secretary shall consider the following factors:

(A) the size of the AFO and the amount of wastes reaching waters;

(B) the location of the AFO relative to waters;

(C) the means of conveyance of animal wastes and process waste waters into waters;

(D) the slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters; and

(E) other relevant factors.

(7) Access private or public property to inspect AFOs and CAFOs, take photos and samples, and review and copy AFO and CAFO land management records, including nutrient management plans, as may be necessary to carry out the provisions of this subchapter.

(8) Solicit and receive federal funds to implement the CAFO program.

(9) Cooperate fully with the federal government or other agencies in the operation of any joint federal-state programs concerning the regulation of agricultural pollution.

(10) Appoint assistants or contract with persons with applicable expertise, subject to applicable laws and State policies, to perform or assist in the performance of the duties and functions of the Secretary under this chapter.

§ 1353. CAFO PERMIT REQUIREMENTS AND EXEMPTIONS

(a) The discharge of manure, litter, or process wastewater to waters of the State from a permitted CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to VPDES permit requirements, except where it is an agricultural stormwater discharge as provided under the federal Clean Water Act. For purposes of this subsection, where the manure, litter, or process wastewater has been applied in accordance with the federal regulations under the Clean Water Act, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of the CAFO shall be considered an exempt agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as determined by the Secretary.

(b) All MFOs and LFOs shall maintain documentation of a nutrient management plan and practices on site or at a nearby office and make the documentation readily available to the Secretary upon request.

(c) The presumption in 6 V.S.A. § 4810(b) that farms in compliance with the Agency of Agriculture, Food and Markets' Required Agricultural Practices Rule are not discharging is not applicable to any AFO determined by the Secretary's decision to be a CAFO.

Sec. 9. COMMUNITY STAKEHOLDER GROUP ON AGRICULTURAL WATER QUALITY

(a) On or before December 1, 2025, the Secretary of Natural Resources, in coordination with the Secretary of Agriculture, Food and Markets, shall engage key stakeholder regarding the implementation and transition to a Concentrated Animal Feeding Operation (CAFO) program that conforms with the Clean Water Act. The process also shall include public notice and informational hearings to provide updates on the CAFO program and gather broad public input. The stakeholder engagement process shall include opportunities for the following stakeholders to provide input: the agricultural community, including livestock farmers; farm groups; agricultural consultants; and the environmental community, including watershed groups and water quality experts. The Secretary shall solicit input from stakeholders on:

(1) the establishment of a CAFO permitting program administered by the Secretary of Natural Resources that ensures compliance with the Clean Water Act's requirement that no farm discharges in violation of the Clean Water Act's CAFO permit requirements;

(2) how to align the CAFO program most effectively with water quality programs administered by the Secretary of Agriculture, Food and Markets;

(3) how to best create regulatory clarity for agricultural producers for the long term that is consistent with the Clean Water Act, whether within a two-agency regulatory system or through a full transfer of regulatory authority to the Agency of Natural Resources;

(4) the resources, technical assistance, and regulatory structure necessary to create a path to compliance for agricultural producers that maintain CAFOs, AFOs, and other farms; and

(5) feedback on implementing regulatory structures similar to other states, including the New York State Department of Environmental Protection CAFO Program.

(b) On or before February 15, 2026, the Secretary of Natural Resources shall file a report with the House Committees on Agriculture, Food Resiliency, and Forestry and on Environment and the Senate Committees on Agriculture and on Natural Resources and Energy. The report shall:

(1) summarize the stakeholder process, including public comments received;

(2) summarize public input received during rulemaking;

(3) assess whether the regulatory structure for administering agricultural water quality requirements in the State is sufficient to ensure that water pollution is controlled consistent with the Clean Water Act or whether sole regulation by the Agency of Natural Resources over water quality on farms, should be implemented; and

(4) recommend any statutory amendment or other changes related to implementation of the CAFO program and agricultural water quality regulation more generally.

(c) The Secretary of Natural Resources shall, as part of the report required under this section, propose a plan for inspection of animal feeding operations (AFOs) potentially subject to the requirements for a CAFO permit under 10 V.S.A. chapter 47, subchapter 3A. The plan shall include:

(1) a proposal of which AFOs should be subject to inspection, including whether all large farm operations and medium farm operations must be inspected to determine if a CAFO permit is required;

(2) a proposed schedule of inspection of those AFOs subject to inspection, including the frequency of inspection or events or thresholds that would require inspection; and

(3) an estimate of the staffing or other resources that would be required to implement the proposed inspection plan.

Sec. 10. 10 V.S.A. § 1259 is amended to read:

§ 1259. PROHIBITIONS

(a) No person shall discharge any waste, substance, or material into waters of the State, nor shall any person discharge any waste, substance, or material into an injection well or discharge into a publicly owned treatment works any waste that interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the Secretary. This subsection shall not prohibit the proper application of fertilizer to fields and crops, nor reduce or affect the authority or policy declared in Joint House Resolution 7 of the 1971 Session of the General Assembly.

* * *

(f) ~~The provisions of subsections (c), (d), and (e) of this section shall not regulate~~ Provided that the introduction of wastes are from sources that do not discharge pollutants from a point source into waters of the State, and comply with the federal Clean Water Act and federal CAFO regulation, the following activities shall not require a VPDES permit under section 1263 of this title:

(1) required agricultural practices, as adopted by rule by the Secretary of Agriculture, Food and Markets; or

(2) accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices ~~which~~ that are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; ~~nor shall these provisions regulate discharges from concentrated animal feeding operations that require a permit under section 1263 of this title; nor shall those provisions prohibit stormwater runoff or the discharge of nonpolluting wastes, as defined by the Secretary.~~

* * *

(i) ~~The Secretary of Natural Resources, to the extent compatible shall regulate AFOs in accordance with federal requirements, shall delegate to and the VPDES CAFO Rules, and the Secretary of Agriculture, Food and Markets shall implement the State agricultural non-point nonpoint source pollution control program planning, implementation, and regulation. A memorandum of understanding shall be adopted for this purpose, which shall address implementation grants, the distribution of federal program assistance, and the development of land use performance standards. Prior to executing the memorandum, the Secretary of State shall arrange for two formal publications of information relating to the proposed memorandum. The information shall consist of a summary of the proposal; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. Publication shall be subject to the provisions of 3 V.S.A. § 839(d), (e), and (g), relating to the publication of administrative rules. This concurrent authority ensures comprehensive water quality protection and implements equivalent State nonpoint source pollution controls on farms not covered by the Clean Water Act. The Agencies shall cooperate and share information to enable effective and consistent regulation and enforcement. Not later than September 1, 2025, the Agency of Natural Resources in consultation with the U.S. Environmental Protection Agency and the Agency of Agriculture, Food and Markets, shall issue a document that sets forth the respective roles and responsibilities of the Agency of Natural Resources in implementing the Clean Water Act on farms and responsibilities of the Agency of Agriculture, Food and Markets in implementing the State's complementary nonpoint source program on farms. The document shall replace the existing memorandum of understanding between the agencies. The Secretary shall post the draft document and information regarding the document on the Agency's website, shall issue public notice by press release and social media, shall submit the draft documents to the Senate Committees on Agriculture and on Natural Resources and Energy and the House Committees on Agriculture, Food Resiliency, and~~

Forestry and on Environment, and shall allow for public comment. The proposed ~~memorandum of understanding document~~ shall be available for 30 days after the final date of publication for public review and comment ~~prior to being executed by the Secretary of Natural Resources and the Secretary of Agriculture, Food and Markets.~~ The Secretary of Natural Resources and in consultation with the Secretary of Agriculture, Food and Markets ~~annually shall review the memorandum of understanding the document every five years~~ to ensure compliance with the requirements of the Clean Water Act ~~and the provisions of section 1258 of this title.~~ If the ~~memorandum document~~ is substantially revised, it first shall be noticed in the same manner that applies to the initial memorandum. Actions by the Secretary of Agriculture, Food and Markets under this section shall be consistent with the water quality standards and water pollution control requirements of chapter 47 of this title and the federal Clean Water Act as amended.

* * *

Sec. 11. 10 V.S.A. § 1263 is amended to read:

§ 1263. DISCHARGE PERMITS

(a) Any person who intends to discharge waste into the waters of the State or who intends to discharge into an injection well or who intends to discharge into any publicly owned treatment works any waste that interferes with, passes through without treatment, or is otherwise incompatible with that works or would have a substantial adverse effect on that works or on water quality, or is required to apply for a CAFO permit, shall make application to the Secretary for a discharge permit. Application shall be made on a form prescribed by the Secretary. An applicant shall pay an application fee in accordance with 3 V.S.A. § 2822.

(b) When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title. The Secretary may require any applicant to submit any additional information that the Secretary considers necessary and, before issuing a permit application completeness determination. The Secretary may take appropriate steps to secure compliance, refuse to grant a permit, or permission to discharge under the terms of a general permit, until the information is furnished and evaluated.

* * *

(g) ~~Notwithstanding any other provision of law, any~~ Any person who owns or operates a concentrated animal feeding operation that requires a permit under the federal National Pollutant Discharge Elimination System permit regulations or the VPDES CAFO Rules shall submit an application to the Secretary for a discharge permit and pay the required fees specified in 3 V.S.A. § 2822. ~~On or before July 1, 2007, the Secretary of Natural Resources shall~~

~~adopt rules implementing the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. Until such regulations are adopted, the substantive permitting standards and criteria used by the Secretary to evaluate applications and issue or deny discharge permits for concentrated animal feeding operations shall be those specified by federal regulations. The Secretary may issue an individual or general permit for these types of discharges in accordance with the procedural requirements of subsection (b) of this section and other State law. For the purposes of this subsection, “concentrated animal feeding operation” means a farm that meets the definition contained in the federal regulations~~ Not later than December 15, 2025, the Secretary shall amend and issue the CAFO General Permit and Notice of Intent. Not later than July 1, 2026, the Secretary shall issue a CAFO application and an individual CAFO permit. The Secretary may request any additional information from a farm as necessary to process a permit and administer the CAFO program. The Secretary may direct a farm to apply for an individual or general permit in accordance with the procedural requirements of subsection (b) of this section.

(h) A large CAFO shall not be required to have a CAFO permit unless one of the following conditions are met:

(1) wastes are discharged into waters via a point source;

(2) wastes are discharged directly into waters that originate outside or pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; or

(3) a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a LFO has occurred that was not in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as determined by the Secretary.

(i) The Secretary shall require nutrient management plans for all CAFOs and shall include the plans in the permits for public comment in accordance with the process set forth in chapter 170 of this title. The Secretary may amend a permit in accordance with chapter 170 of this title or revoke a permit in accordance with 3 V.S.A. § 814.

(j) Once a CAFO is covered under a CAFO permit, the farm shall be covered for the five year duration of the permit. A farm covered by a CAFO permit shall renew the permit in accordance with its terms, unless the farm wants to opt out and can demonstrate it is not discharging and shall accordingly comply with the federal CWA and the Vermont CAFO rules.

Sec. 12. 10 V.S.A. § 1264(d) is amended to read:

(d) Exemptions.

(1) No permit is required under this section for:

(A) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, ~~provided that this~~ and not subject to the federal Clean Water Act, its enabling regulations, or the VPDES CAFO Rules as determined by the Secretary of Natural Resources. This exemption shall not apply to construction stormwater permits required by subdivision (c)(4) of this section.

(B) Stormwater runoff from concentrated animal feeding operations permitted under subsection 1263(g) of this chapter.

(C) Stormwater runoff from accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices that are in compliance with the federal Clean Water Act as determined by the Secretary of Natural Resources and the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

(D) Stormwater runoff permitted under section 1263 of this title.

(2) No permit is required under subdivision (c)(1), (5), or (7) of this section and for which a municipality has assumed full legal responsibility as part of a permit issued to the municipality by the Secretary. As used in this subdivision, “full legal responsibility” means legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

* * * Reference to Federal Clean Water Act * * *

Sec. 13. REFERENCE TO FEDERAL CLEAN WATER ACT

(a) Notwithstanding statements to the contrary in 6 V.S.A. chapter 215 or 10 V.S.A. chapter 47, when the following are referenced in 6 V.S.A. chapter 215 or in 10 V.S.A. chapter 47, the text of each shall be applied and interpreted as each public law, statute, or regulation existed on January 1, 2025, regardless of any subsequent amendment, repeal, or other substantive change:

(1) Pub. L. No. 92-500;

(2) the federal Clean Water Act;

(3) federal laws or regulations related to the federal Clean Water Act;

(4) the enabling regulations of the federal Clean Water Act, including citations to the Code of Federal Regulations for regulations adopted under the federal Clean Water Act;

(5) the federal regulations for concentrated animal feeding operations (CAFO) or the federal CAFO regulations; and

(6) the federal national pollutant discharge elimination system (NPDES) regulations or federal NPDES regulations.

(b) Subsection (a) of this section shall be repealed on April 1, 2029.

* * * Effective Date * * *

Sec. 14. EFFECTIVE DATE

This act shall take effect on July 1, 2025.