

S.124

An act relating to miscellaneous agricultural subjects

It is hereby enacted by the General Assembly of the State of Vermont:

* * * 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

1 source pollutants, and watershed planning activities to comply with Pub. L.
2 No. 92-500. ~~The memorandum of understanding shall describe how the~~
3 ~~agencies will implement the antidegradation implementation policy, including~~
4 ~~how the agencies will apply the antidegradation implementation policy to new~~
5 ~~sources of agricultural nonpoint source pollutants. The Secretary of~~
6 ~~Agriculture, Food and Markets and the Secretary of Natural Resources shall~~
7 ~~also develop a memorandum of understanding according to the public notice~~
8 ~~and comment process of 10 V.S.A. § 1259(i) regarding the implementation of~~
9 ~~the federal Concentrated Animal Feeding Operation Program and the~~
10 ~~relationship between the requirements of the federal Program and the State~~
11 ~~agricultural water quality requirements for large, medium, and small farms~~
12 ~~under this chapter. The memorandum of understanding shall describe Program~~
13 ~~administration, permit issuance, an appellate process, and enforcement~~
14 ~~authority and implementation. In accordance with 10 V.S.A. § 1259(i), the~~
15 ~~Secretary of Natural Resources, in consultation with the U.S. Environmental~~
16 ~~Protection Agency and the Secretary of Agriculture, Food and Markets, shall~~
17 ~~issue a document that sets forth the respective roles and responsibilities of the~~
18 ~~Agency of Natural Resources in implementing the federal Clean Water Act on~~
19 ~~farms and the Agency of Agriculture, Food and Markets' roles and~~
20 ~~responsibilities in implementing the State's complementary nonpoint source~~
21 ~~program on farms. The memorandum of understanding document shall be~~

1 consistent with and equivalent with the federal National Pollutant Discharge
2 Elimination System permit regulations for discharges from ~~concentrated~~
3 ~~animal feeding operations~~ CAFOs. The document will replace the
4 memorandum of understanding between the agencies. The allocation of duties
5 under this chapter between the Secretary of Agriculture, Food and Markets and
6 the Secretary of Natural Resources shall be consistent with the Secretary's
7 duties, established under the provisions of 10 V.S.A. § 1258(b), to comply
8 with Pub. L. No. 92-500. The Secretary of Natural Resources shall be the
9 State lead person in applying for federal funds under Pub. L. No. 92-500 but
10 shall consult with the Secretary of Agriculture, Food and Markets during the
11 process. The agricultural nonpoint source program may compete with other
12 programs for competitive watershed projects funded from federal funds. The
13 Secretary of Agriculture, Food and Markets shall be represented in reviewing
14 these projects for funding. Actions by the Secretary of Agriculture, Food and
15 Markets under this chapter concerning agricultural nonpoint source pollution
16 shall be consistent with the water quality standards and water pollution control
17 requirements of 10 V.S.A. chapter 47 and the federal Clean Water Act as
18 amended. In addition, the Secretary of Agriculture, Food and Markets shall
19 coordinate with the Secretary of Natural Resources in implementing and
20 enforcing programs, plans, and practices developed for the proper management
21 of composting facilities when those facilities are located on a farm. ~~On or~~

1 ~~before January 15, 2016, the~~ The Secretary of Agriculture, Food and Markets
2 and the Secretary of Natural Resources shall each develop three separate
3 measures of the performance of the agencies under the ~~memorandum of~~
4 ~~understanding required by this subsection. Beginning on January 15, 2017~~
5 federal Clean Water Act and State nonpoint source regulatory authority, and
6 annually ~~thereafter~~ on or before January 15, the Secretary of Agriculture, Food
7 and Markets and the Secretary of Natural Resources shall submit separate
8 reports to the Senate Committee on Agriculture, the House Committee on
9 Agriculture, Food Resiliency, and Forestry, the Senate Committee on Natural
10 Resources and Energy, and the House Committee on Environment ~~and Energy~~
11 regarding the success of each agency in meeting the selected performance
12 measures for the memorandum of understanding.

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

14 (6)(A) Require a farm to comply with standards established by the
15 Secretary for maintaining a vegetative buffer zone of perennial vegetation
16 between annual croplands and the top of the bank of an adjoining water of the
17 State. At a minimum the vegetative buffer standards established by the
18 Secretary shall prohibit the application of manure on the farm within 25 feet of
19 the top of the bank of an adjoining water of the State or within 10 feet of a
20 ditch that is not a surface water under State law and that is not a water of the
21 United States under federal law. The minimum vegetated buffer requirement

1 required under this subdivision (A) shall not apply to a farm that is determined
2 by the Secretary of Natural Resources to be a Concentrated Animal Feeding
3 Operation and is required to obtain a CAFO permit as required under 10
4 V.S.A. § 1353. A farm determined to be a Concentrated Animal Feeding
5 Operation that requires a CAFO permit shall instead comply with the setback
6 and buffer requirements established in the federal CAFO regulations.

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

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

11 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

12 (a) No person shall, without a permit from the Secretary, construct a new
13 barn, or expand an existing barn, designed to house more than 700 mature
14 dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine
15 weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500
16 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers
17 with a liquid manure handling system, 82,000 laying hens without a liquid
18 manure handling system, 125,000 chickens other than laying hens without a
19 liquid manure handling system, 5,000 ducks with a liquid manure handling
20 system, or 30,000 ducks without a liquid manure handling system. No permit
21 shall be required to replace an existing barn in use for livestock or domestic

1 fowl production at its existing capacity. The Secretary of Agriculture, Food
2 and Markets, in consultation with the Secretary of Natural Resources, shall
3 review any application for a permit under this section with regard to water
4 quality impacts ~~and~~, prior to approval of a permit under this subsection, ~~shall~~
5 ~~issue a written determination regarding whether the applicant has established~~
6 ~~that there will be no unpermitted discharge to waters of the State pursuant to~~
7 ~~the federal regulations for concentrated animal feeding operations.~~ If, upon
8 review of ~~an~~ a large farm application for a permit under this subsection, the
9 Secretary of Agriculture, Food and Markets determines that the ~~permit~~
10 ~~applicant~~ farm may be discharging to waters of the State, the Secretary of
11 Agriculture, Food and Markets ~~and the Secretary of Natural Resources~~ shall
12 ~~respond to~~ promptly refer the potential discharge to the Secretary of Natural
13 Resources for response in accordance with ~~the memorandum of understanding~~
14 the federal Clean Water Act regarding concentrated animal feeding operations
15 ~~under section 4810 of this title.~~ The Secretary of Natural Resources ~~may~~
16 ~~require~~ shall direct a large farm to obtain a permit under 10 V.S.A. § 1263
17 ~~pursuant to~~ if required by federal regulations for concentrated animal feeding
18 operations. If the farm is not required to obtain a CAFO permit and is not in
19 violation of federal regulations for Concentrated Animal Feeding Operations,
20 the Secretary of Natural Resources shall promptly notify the Secretary of
21 Agriculture, Food and Markets.

1 (b) A person shall apply for a permit in order to operate a farm that exceeds
2 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves,
3 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55
4 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens
5 or broilers with a liquid manure handling system, 82,000 laying hens without a
6 liquid manure handling system, 125,000 chickens other than laying hens
7 without a liquid manure handling system, 5,000 ducks with a liquid manure
8 handling system, or 30,000 ducks ~~if the livestock or domestic fowl are in a~~
9 ~~barn or adjacent barns owned by the same person or if the barns share a~~
10 ~~common border or have a common waste disposal system~~ without a liquid
11 manure handling system. Two or more individual farms that are under
12 common ownership and that adjoin each other or use a common area or system
13 for the disposal of wastes shall be considered a single animal feeding operation
14 or "farm" when determining whether the combined number of livestock or
15 domestic fowl qualifies the farm as a Large Farm Operation under this section.
16 In order to receive this permit, the person shall demonstrate to the Secretary
17 that the farm has an adequately sized manure management system to
18 accommodate the wastes generated and a nutrient management plan to dispose
19 of wastes in accordance with Required Agricultural Practices adopted under
20 this chapter and current U.S. Department of Agriculture nutrient management
21 standards.

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

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

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

14 (f) Before granting a permit under this section, the Secretary shall make an
15 affirmative finding that the animal wastes generated by the construction or
16 expansion will be stored so as not to generate runoff from a 25-year, 24-hour
17 storm event and shall be disposed of in accordance with the Required
18 Agricultural Practices adopted under this chapter and current U.S. Department
19 of Agriculture nutrient management standards.

20 (g) A farm that is permitted under this section and that withdraws more
21 than 57,600 gallons of groundwater per day averaged over any 30 consecutive-

1 day period shall annually report estimated water use to the Secretary of
2 Agriculture, Food and Markets. The Secretary of Agriculture, Food and
3 Markets shall share information reported under this subsection with the
4 Agency of Natural Resources.

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

7 (i) A person required to obtain a permit under this section shall submit an
8 annual operating fee of \$2,500.00 to the Secretary. During any calendar year
9 in which a person has an active Large Concentrated Animal Feeding Operation
10 permit issued by the Agency of Natural Resources pursuant to the federal
11 Clean Water Act and pays the required associated fee, that person shall not be
12 required to pay the \$2,500.00 annual operating fee described in this section.

13 The fees collected under this section shall be deposited in the Agricultural
14 Water Quality Special Fund under section 4803 of this title.

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

16 § 4858. MEDIUM FARM OPERATION PERMITS

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

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

5 (1) General and individual permits issued under this section shall be
6 consistent with rules adopted under this section, shall include terms and
7 conditions appropriate to each farm size category and each farm animal type as
8 defined by section 4857 of this title, and shall meet standards at least as
9 stringent as those established by federal regulations for concentrated animal
10 feeding operations. Such standards shall address waste management, waste
11 storage, development of nutrient management plans, carcass disposal, and
12 surface water and groundwater contamination, plus recordkeeping, reporting,
13 and monitoring provisions regarding such matters to ensure that the terms and
14 conditions of the permit are being met. The groundwater contamination rules
15 adopted by the Secretary under this section shall include a process under which
16 the Agency shall receive, investigate, and respond to a complaint that a farm
17 has contaminated the drinking water or groundwater of a property owner.

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

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

13 (c)(4) Medium farm general permit.

14 (1) The owner or operator of a medium farm seeking coverage under a
15 general permit adopted pursuant to this section shall certify to the Secretary
16 within a period specified in the permit, and in a manner specified by the
17 Secretary, that the medium farm does comply with permit requirements
18 regarding an adequately sized and designed manure management system to
19 accommodate the wastes generated and a nutrient management plan to dispose
20 of wastes in accordance with Required Agricultural Practices adopted under
21 this chapter and current U.S. Department of Agriculture nutrient management

1 standards. Any certification or notice of intent to comply submitted under this
2 subdivision shall be kept on file at the Agency of Agriculture, Food and
3 Markets. The Secretary of Agriculture, Food and Markets, in consultation with
4 the Secretary of Natural Resources, shall review any certification or notice of
5 intent to comply submitted under this subdivision with regard to the water
6 quality impacts of the medium farm for which the owner or operator is seeking
7 coverage, and, for farms that have never been permitted under the prior permit
8 term, within 18 months ~~of~~ after receiving the certification or notice of intent to
9 comply, the Secretary of Natural Resources shall verify whether the owner or
10 operator of the medium farm has established that there will be no unpermitted
11 discharge to waters of the State pursuant to the federal regulations for
12 concentrated animal feeding operations. If upon review ~~of a medium farm~~
13 ~~granted coverage under the general permit adopted pursuant to this subsection~~
14 the Secretary of Agriculture, Food and Markets determines that the ~~permit~~
15 ~~applicant~~ medium farm may be discharging to waters of the State, the
16 Secretary of Agriculture, Food and Markets ~~and~~ shall promptly notify the
17 Secretary of Natural Resources ~~shall respond to the discharge~~ in accordance
18 with ~~the memorandum of understanding~~ the federal Clean Water Act regarding
19 concentrated animal feeding operations ~~under section 4810 of this title~~. The
20 Secretary of Natural Resources shall direct a medium farm to obtain a permit
21 under 10 V.S.A. § 1263 if required by federal regulations for concentrated

1 animal feeding operations. If the farm is not required to obtain a CAFO permit
2 and is not in violation of federal regulations for concentrated animal feeding
3 operations, the Secretary of the Agency of Natural Resources shall promptly
4 notify the Secretary of Agriculture, Food and Markets.

5 (2) The owner or operator of a small farm may seek coverage under the
6 medium farm general permit adopted pursuant to this section by certifying to
7 the Secretary, in a manner specified by the Secretary, that the small farm
8 complies with the requirements and conditions of the medium farm general
9 permit.

10 (d) Medium and small farms; individual permit. The Secretary may require
11 the owner or operator of a small or medium farm to obtain an individual permit
12 to operate after review of the farm's history of compliance, application of
13 Required Agricultural Practices, the use of an experimental or alternative
14 technology or method to meet a State performance standard, or other factors
15 set forth by rule. The owner or operator of a small farm may apply to the
16 Secretary for an individual permit to operate under this section. To receive an
17 individual permit, an applicant shall in a manner prescribed by rule
18 demonstrate that the farm has an adequately sized and designed manure
19 management system to accommodate the wastes generated and a nutrient
20 management plan to dispose of wastes in accordance with Required
21 Agricultural Practices adopted under this chapter and current U.S. Department

1 of Agriculture nutrient management standards, including setback requirements
2 for waste application. An individual permit shall be valid for ~~no~~ not more than
3 five years. Any application for an individual permit filed under this subsection
4 shall be kept on file at the Agency of Agriculture, Food and Markets. The
5 Secretary of Agriculture, Food and Markets, in consultation with the Agency
6 of Natural Resources, shall review any application for a permit under this
7 subsection ~~and, prior to issuance of an individual permit under this subsection,~~
8 ~~shall issue a written determination regarding whether the permit applicant has~~
9 ~~established that there will be no unpermitted discharge to waters of the State~~
10 ~~pursuant to federal regulations for concentrated animal feeding operations. If,~~
11 ~~upon review of an application for a permit under this subsection~~ a permit
12 application, the Secretary of Agriculture, Food and Markets determines that the
13 permit applicant may be discharging to waters of the State, the Secretary of
14 Agriculture, Food and Markets ~~and~~ shall promptly refer the farm to the
15 Secretary of Natural Resources ~~shall respond to the discharge~~ for response in
16 accordance with ~~the memorandum of understanding regarding concentrated~~
17 ~~animal feeding operations under subsection 4810(b) of this title~~ the federal
18 Clean Water Act. The Secretary of Natural Resources ~~may require~~ shall direct
19 a medium or small farm to obtain a permit under 10 V.S.A. § 1263 ~~pursuant to~~
20 if required by federal regulations for concentrated animal feeding operations.
21 Coverage of a medium farm under a general permit adopted pursuant to this

1 section or an individual permit issued to a medium or small farm under this
2 section is rendered void by the issuance of a permit to a farm under 10 V.S.A.
3 § 1263. If the farm is not required to obtain a CAFO permit and is not in
4 violation of federal regulations for concentrated animal feeding operations, the
5 Secretary of the Agency of Natural Resources shall promptly refer the matter
6 to the Secretary of Agriculture, Food and Markets.

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

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

12 § 4816. SEASONAL APPLICATION OF MANURE

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

17 (b) Extension of prohibition. The Secretary of Agriculture, Food and
18 Markets shall amend the Required Agricultural Practices by rule in order to
19 establish a process under which the Secretary may prohibit the application of
20 manure to land in the State between December 1 and December 15 and
21 between April 1 and April 30 of any calendar year when the Secretary

1 determines that due to weather conditions, soil conditions, or other limitations,
2 application of manure to land would pose a significant potential of discharge or
3 runoff to State waters.

4 (c) Seasonal exemption. The Secretary of Agriculture, Food and Markets
5 shall amend the Required Agricultural Practices by rule in order to establish a
6 process under which the Secretary may authorize an exemption to the
7 prohibition on the application of manure to land in the State between
8 December 15 and April 1 of any calendar year or during any period established
9 under subsection (b) of this section when manure is prohibited from
10 application. Any process established for the issuance of an exemption under
11 the Required Agricultural Practices may authorize land application of manure
12 on a weekly, monthly, or seasonal basis or in authorized regions, areas, or
13 fields in the State, provided that any exemption shall:

14 (1) prohibit application of manure:

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

17 (B) in nonharvested permanent vegetative buffers;

18 (C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.

19 § 902(5);

20 (D) within 50 feet of a potable water supply, as that term is defined in
21 10 V.S.A. § 1972(6);

1 (E) to fields exceeding tolerable soil loss; and

2 (F) to saturated soils;

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

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

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

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

10 (b) Required small farm certification. Beginning on July 1, 2017, a person
11 who owns or operates a small farm, as designated by the Secretary consistent
12 with subdivision 4810a(a)(1) of this title, shall, on a form provided by the
13 Secretary, certify compliance with the Required Agricultural Practices. The
14 Secretary of Agriculture, Food and Markets shall establish the requirements
15 and manner of certification of compliance with the Required Agricultural
16 Practices, provided that the Secretary shall require an owner or operator of a
17 any newly eligible or identified small farm to submit ~~an annual~~ a certification
18 of compliance with the Required Agricultural Practices and may require any
19 small farm to regularly certify ongoing compliance with the Required
20 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,

1 as that term is defined under the federal Clean Water Act, that are contained
2 within, flow through, or border upon the State or any portion of it.

3 * * *

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

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

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

12 Subchapter 3A. Concentrated Animal Feeding Operations

13 § 1351. DEFINITIONS

14 As used in this subchapter:

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

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

4 (i) animals, other than aquatic animals, have been, are, or will be
5 stabled or confined and fed or maintained for a total of 45 days or more in any
6 12-month period; and

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

9 (B) Two or more individual farms qualifying as an AFO that are
10 under common ownership and that adjoin each other or use a common area or
11 system for the disposal of waste shall be considered to be a single AFO if the
12 combined number of livestock or domestic fowl on the combined farm
13 qualifies the combined farm as a large CAFO as defined in subdivision (11) of
14 this section or as a medium CAFO as defined in subdivision (14) of this
15 section.

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

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

1 (5) “Large concentrated animal feeding operation” or “Large CAFO”
2 means an AFO that houses 700 or more mature dairy animals, 1,000 or more
3 cattle or cow or calf pairs, 1,000 or more veal calves, 2,500 or more swine
4 weighing over 55 pounds, 10,000 or more swine weighing 55 pounds or less,
5 500 or more horses, 10,000 or more sheep or lambs, 55,000 or more turkeys,
6 30,000 or more laying hens or broilers with a liquid manure handling system,
7 82,000 or more laying hens without a liquid manure handling system, 125,000
8 or more chickens other than laying hens without a liquid manure handling
9 system, 5,000 or more ducks with a liquid manure handling system, or 30,000
10 or more ducks without a liquid manure handling system.

11 (6) “Large farm operation” or “LFO” has the same meaning as in
12 6 V.S.A. chapter 215.

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

16 (8) “Medium concentrated animal feeding operation” or “Medium
17 CAFO” means an AFO that:

18 (A) houses 200 to 699 mature dairy animals, 300 to 999 cattle or cow
19 or calf pairs, 300 to 999 veal calves, 750 to 2,499 swine weighing over 55
20 pounds, 3,000 to 9,999 swine weighing 55 pounds or less, 150 to 499 horses,
21 3,000 to 9,999 sheep or lambs, 16,500 to 54,999 turkeys, 9,000 to 29,999

1 laying hens or broilers with a liquid manure handling system, 25,000 to 81,999
2 laying hens without a liquid manure handling system, 37,500 to 124,999
3 chickens other than laying hens without a liquid manure handling system,
4 1,500 to 4,999 ducks with a liquid manure handling system, or 10,000 to
5 29,999 ducks without a liquid manure handling system; and

6 (B) either of the following conditions are met:

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

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

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

15 (10) “Point source” means any discernible, confined, and discrete
16 conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete
17 fissure, container, rolling stock, concentrated animal feeding operation, or
18 vessel or other floating craft from which pollutants are or may be discharged.

19 This term does not include agricultural stormwater discharges and return flows
20 from irrigated agriculture.

1 (11) “Process wastewater” means water directly or indirectly used in the
2 operation of an AFO or CAFO for any or all of the following: spillage or
3 overflow from animal or poultry watering systems; washing, cleaning, or
4 flushing pens, barns, manure pits, or other AFO or CAFO facilities; direct
5 contact swimming, washing, or spray cooling of animals; or dust control.

6 Process wastewater also includes any water that comes into contact with any
7 raw materials, products, or byproducts, including manure, litter, feed, milk,
8 eggs, or bedding.

9 (12) “Production area” means that part of an AFO or CAFO that
10 includes the animal confinement area, the manure storage area, the raw
11 materials storage area, and the waste containment areas. The animal
12 confinement area includes open lots, housed lots, feedlots, confinement houses,
13 stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards,
14 medication pens, walkers, animal walkways, and stables. The manure storage
15 area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or
16 pit storages, liquid impoundments, static piles, and composting piles. The raw
17 materials storage area includes feed silos, silage bunkers, and bedding
18 materials. The waste containment area includes settling basins, and areas
19 within berms and diversions that separate uncontaminated storm water. Also
20 included in the definition of production area is any egg washing or egg

1 processing facility and any area used in the storage, handling, treatment, or
2 disposal of mortalities.

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

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

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

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

13 § 1352. POWERS OF THE SECRETARY

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

15 (1) Implement the federal Clean Water Act to administer a Vermont
16 pollutant discharge elimination system (VPDES) CAFO program that is
17 consistent with and equivalent to the federal Clean Water Act and enabling
18 rules.

19 (2) Make, adopt, revise, and amend rules as necessary to administer a
20 VPDES CAFO program that is consistent with and equivalent to the federal
21 Clean Water Act and enabling rules.

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

4 (4) Designate any AFO that meets the definition of a CAFO under the
5 federal Clean Water Act regulations as a CAFO, in the Secretary's sole
6 discretion.

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

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

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

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

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

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

20 (E) other relevant factors.

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

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

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

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

12 § 1353. CAFO PERMIT REQUIREMENTS AND EXEMPTIONS

13 (a) The discharge of manure, litter, or process wastewater to waters of the
14 State from a permitted CAFO as a result of the application of that manure,
15 litter, or process wastewater by the CAFO to land areas under its control is a
16 discharge from that CAFO subject to VPDES permit requirements, except
17 where it is an agricultural stormwater discharge as provided under the federal
18 Clean Water Act. For purposes of this subsection, where the manure, litter, or
19 process wastewater has been applied in accordance with the federal regulations
20 under the Clean Water Act, a precipitation-related discharge of manure, litter,
21 or process wastewater from land areas under the control of a CAFO is an

1 agricultural stormwater discharge. For unpermitted Large CAFOs, a
2 precipitation-related discharge of manure, litter, or process wastewater from
3 land areas under the control of the CAFO shall be considered an exempt
4 agricultural stormwater discharge only where the manure, litter, or process
5 wastewater has been land applied in accordance with site-specific nutrient
6 management practices that ensure appropriate agricultural utilization of the
7 nutrients in the manure, litter, or process wastewater, as determined by the
8 Secretary.

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

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

16 Sec. 9. COMMUNITY STAKEHOLDER GROUP ON AGRICULTURAL
17 WATER QUALITY

18 (a) On or before December 1, 2025, the Secretary of Natural Resources, in
19 coordination with the Secretary of Agriculture, Food and Markets, shall engage
20 key stakeholder regarding the implementation and transition to a Concentrated
21 Animal Feeding Operation (CAFO) program that conforms with the Clean

1 Water Act. The process also shall include public notice and informational
2 hearings to provide updates on the CAFO program and gather broad public
3 input. The stakeholder engagement process shall include opportunities for the
4 following stakeholders to provide input: the agricultural community, including
5 livestock farmers; farm groups; agricultural consultants; and the environmental
6 community, including watershed groups and water quality experts. The
7 Secretary shall solicit input from stakeholders on:

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

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

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

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

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

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

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

10 (2) summarize public input received during rulemaking;

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

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

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

2 § 1259. PROHIBITIONS

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

13 * * *

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

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

* * *

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1 ~~receiving comments. Publication shall be subject to the provisions of 3 V.S.A.~~
2 ~~§ 839(d), (e), and (g), relating to the publication of administrative rules. This~~
3 concurrent authority ensures comprehensive water quality protection and
4 implements equivalent State nonpoint source pollution controls on farms not
5 covered by the Clean Water Act. The Agencies shall cooperate and share
6 information to enable effective and consistent regulation and enforcement. Not
7 later than September 1, 2025, the Agency of Natural Resources in consultation
8 with the U.S. Environmental Protection Agency and the Agency of
9 Agriculture, Food and Markets, shall issue a document that sets forth the
10 respective roles and responsibilities of the Agency of Natural Resources in
11 implementing the Clean Water Act on farms and responsibilities of the Agency
12 of Agriculture, Food and Markets in implementing the State's complementary
13 nonpoint source program on farms. The document shall replace the existing
14 memorandum of understanding between the agencies. The Secretary shall post
15 the draft document and information regarding the document on the Agency's
16 website, shall issue public notice by press release and social media, shall
17 submit the draft documents to the Senate Committees on Agriculture and on
18 Natural Resources and Energy and the House Committees on Agriculture,
19 Food Resiliency, and Forestry and on Environment, and shall allow for public
20 comment. The proposed memorandum of understanding document shall be
21 available for 30 days after the final date of publication for public review and

1 comment ~~prior to being executed by the Secretary of Natural Resources and~~
2 ~~the Secretary of Agriculture, Food and Markets.~~ The Secretary of Natural
3 Resources ~~and~~ in consultation with the Secretary of Agriculture, Food and
4 Markets ~~annually~~ shall review ~~the memorandum of understanding the~~
5 document every five years to ensure compliance with the requirements of the
6 Clean Water Act ~~and the provisions of section 1258 of this title.~~ If the
7 ~~memorandum~~ document is substantially revised, it first shall be noticed in the
8 same manner that applies to the initial memorandum. Actions by the Secretary
9 of Agriculture, Food and Markets under this section shall be consistent with
10 the water quality standards and water pollution control requirements of chapter
11 47 of this title and the federal Clean Water Act as amended.

12 * * *

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

14 § 1263. DISCHARGE PERMITS

15 (a) Any person who intends to discharge waste into the waters of the State
16 or who intends to discharge into an injection well or who intends to discharge
17 into any publicly owned treatment works any waste that interferes with, passes
18 through without treatment, or is otherwise incompatible with that works or
19 would have a substantial adverse effect on that works or on water quality, or is
20 required to apply for a CAFO permit, shall make application to the Secretary
21 for a discharge permit. Application shall be made on a form prescribed by the

1 Secretary. An applicant shall pay an application fee in accordance with
2 3 V.S.A. § 2822.

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

10 * * *

11 (g) ~~Notwithstanding any other provision of law, any~~ Any person who owns
12 or operates a concentrated animal feeding operation that requires a permit
13 under the federal National Pollutant Discharge Elimination System permit
14 regulations shall submit an application to the Secretary for a discharge permit
15 and pay the required fees specified in 3 V.S.A. § 2822. ~~On or before July 1,~~
16 ~~2007, the Secretary of Natural Resources shall adopt rules implementing the~~
17 ~~federal National Pollutant Discharge Elimination System permit regulations for~~
18 ~~discharges from concentrated animal feeding operations. Until such regulations~~
19 ~~are adopted, the substantive permitting standards and criteria used by the~~
20 ~~Secretary to evaluate applications and issue or deny discharge permits for~~
21 ~~concentrated animal feeding operations shall be those specified by federal~~

1 ~~regulations. The Secretary may issue an individual or general permit for these~~
2 ~~types of discharges in accordance with the procedural requirements of~~
3 ~~subsection (b) of this section and other State law. For the purposes of this~~
4 ~~subsection, “concentrated animal feeding operation” means a farm that meets~~
5 ~~the definition contained in the federal regulations~~ Not later than December 15,
6 2025, the Secretary shall amend and issue the CAFO General Permit and
7 Notice of Intent. Not later than July 1, 2026, the Secretary shall issue a CAFO
8 application and an individual CAFO permit. The Secretary may request any
9 additional information from a farm as necessary to process a permit and
10 administer the CAFO program. The Secretary may direct a farm to apply for
11 an individual or general permit in accordance with the procedural requirements
12 of subsection (b) of this section.

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

- 15 (1) wastes are discharged into waters via a point source;
16 (2) wastes are discharged directly into waters that originate outside or
17 pass over, across, or through the facility or otherwise come into direct contact
18 with the animals confined in the operation; or
19 (3) a precipitation-related discharge of manure, litter, or process
20 wastewater from land areas under the control of a LFO has occurred that was
21 not in accordance with site-specific nutrient management practices that ensure

1 appropriate agricultural utilization of the nutrients in the manure, litter, or
2 process wastewater, as determined by the Secretary.

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

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

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

14 (d) Exemptions.

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

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

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

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

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

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

18 * * * Effective Date * * *

19 Sec. 13. EFFECTIVE DATE

20 This act shall take effect on July 1, 2025.