

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Agriculture, Food Resiliency, and Forestry to which was
3 referred Senate Bill No. 124 entitled “An act relating to miscellaneous
4 agricultural subjects” respectfully reports that it has considered the same and
5 recommends that the House propose to the Senate that the bill be amended by
6 striking out all after the enacting clause and inserting in lieu thereof the
7 following:

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

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

11 (d) Cooperation and coordination. The Secretary of Agriculture, Food and
12 Markets shall coordinate with the Secretary of Natural Resources in
13 implementing and enforcing programs, plans, and practices developed for
14 reducing and eliminating agricultural nonpoint source pollutants and
15 discharges from ~~concentrated animal feeding operations. On or before July 1,~~
16 ~~2016, the~~ farms. The Secretary of Agriculture, Food and Markets ~~and the~~
17 ~~Secretary of Natural Resources shall revise the memorandum of understanding~~
18 ~~for~~ cooperate with the Secretary of Natural Resources in the implementation of
19 the federal Clean Water Act for Concentrated Animal Feeding Operations
20 (CAFOs). The Secretary of Agriculture, Food and Markets shall implement
21 the State’s comprehensive, complimentary nonpoint source program

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

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

1 amended. In addition, the Secretary of Agriculture, Food and Markets shall
2 coordinate with the Secretary of Natural Resources in implementing and
3 enforcing programs, plans, and practices developed for the proper management
4 of composting facilities when those facilities are located on a farm. ~~On or~~
5 ~~before January 15, 2016, the~~ The Secretary of Agriculture, Food and Markets
6 and the Secretary of Natural Resources shall each develop three separate
7 measures of the performance of the agencies under the ~~memorandum of~~
8 ~~understanding required by this subsection. Beginning on January 15, 2017~~
9 federal Clean Water Act and State nonpoint source regulatory authority, and
10 ~~annually thereafter~~ on or before January 15, the Secretary of Agriculture, Food
11 and Markets and the Secretary of Natural Resources shall submit separate
12 reports to the Senate Committee on Agriculture, the House Committee on
13 Agriculture, Food Resiliency, and Forestry, the Senate Committee on Natural
14 Resources and Energy, and the House Committee on Environment ~~and Energy~~
15 regarding the success of each agency in meeting ~~the~~ its selected performance
16 measures ~~for the memorandum of understanding.~~

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

18 (6)(A) Require a farm to comply with standards established by the
19 Secretary for maintaining a vegetative buffer zone of perennial vegetation
20 between annual croplands and the top of the bank of an adjoining water of the
21 State. At a minimum the vegetative buffer standards established by the

1 Secretary shall prohibit the application of manure on the farm within 25 feet of
2 the top of the bank of an adjoining water of the State or within 10 feet of a
3 ditch that is not a surface water under State law and that is not a water of the
4 United States under federal law. The minimum vegetated buffer requirement
5 required under this subdivision (A) shall not apply to a farm that is determined
6 by the Secretary of Natural Resources to be a Concentrated Animal Feeding
7 Operation and is required to obtain a CAFO permit as required under 10
8 V.S.A. § 1353. A farm determined to be a Concentrated Animal Feeding
9 Operation that requires a CAFO permit shall instead comply with the setback
10 and buffer requirements established in the federal CAFO regulations.

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

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

15 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

16 (a) No person shall, without a permit from the Secretary, construct a new
17 barn, or expand an existing barn, designed to house more than 700 mature
18 dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine
19 weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500
20 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers
21 with a liquid manure handling system, 82,000 laying hens without a liquid

1 manure handling system, 125,000 chickens other than laying hens without a
2 liquid manure handling system, 5,000 ducks with a liquid manure handling
3 system, or 30,000 ducks without a liquid manure handling system. No permit
4 shall be required to replace an existing barn in use for livestock or domestic
5 fowl production at its existing capacity. The Secretary of Agriculture, Food
6 and Markets, in consultation with the Secretary of Natural Resources, shall
7 review any application for a permit under this section with regard to water
8 quality impacts ~~and, prior to approval of a permit under this subsection, shall~~
9 ~~issue a written determination regarding whether the applicant has established~~
10 ~~that there will be no unpermitted discharge to waters of the State pursuant to~~
11 ~~the federal regulations for concentrated animal feeding operations.~~ If, upon
12 review of ~~an~~ a large farm application for a permit under this subsection, the
13 Secretary of Agriculture, Food and Markets determines that the ~~permit~~
14 ~~applicant~~ farm may be discharging to waters of the State, the Secretary of
15 Agriculture, Food and Markets ~~and the Secretary of Natural Resources~~ shall
16 ~~respond to~~ promptly refer the potential discharge to the Secretary of Natural
17 Resources for response in accordance with ~~the memorandum of understanding~~
18 the federal Clean Water Act regarding concentrated animal feeding operations
19 ~~under section 4810 of this title.~~ The Secretary of Natural Resources ~~may~~
20 ~~require~~ shall direct a large farm to obtain a permit under 10 V.S.A. § 1263
21 ~~pursuant to~~ if required by federal regulations for concentrated animal feeding

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

5 (b) A person shall apply for a permit in order to operate a farm that exceeds
6 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves,
7 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55
8 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens
9 or broilers with a liquid manure handling system, 82,000 laying hens without a
10 liquid manure handling system, 125,000 chickens other than laying hens
11 without a liquid manure handling system, 5,000 ducks with a liquid manure
12 handling system, or 30,000 ducks ~~if the livestock or domestic fowl are in a~~
13 ~~barn or adjacent barns owned by the same person or if the barns share a~~
14 ~~common border or have a common waste disposal system~~ without a liquid
15 manure handling system. Two or more individual farms that are under
16 common ownership and that adjoin each other or use a common area or system
17 for the disposal of wastes shall be considered a single animal feeding operation
18 or “farm” when determining whether the combined number of livestock or
19 domestic fowl qualifies the farm as a Large Farm Operation under this section.

20 In order to receive this permit, the person shall demonstrate to the Secretary
21 that the farm has an adequately sized manure management system to

1 accommodate the wastes generated and a nutrient management plan to dispose
2 of wastes in accordance with Required Agricultural Practices adopted under
3 this chapter and current U.S. Department of Agriculture nutrient management
4 standards.

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

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

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

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

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

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

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

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

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

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

2 § 4858. MEDIUM FARM OPERATION PERMITS

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

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

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

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

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

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

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

20 (1) The owner or operator of a medium farm seeking coverage under a
21 general permit adopted pursuant to this section shall certify to the Secretary

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

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

11 (2) The owner or operator of a small farm may seek coverage under the
12 medium farm general permit adopted pursuant to this section by certifying to
13 the Secretary, in a manner specified by the Secretary, that the small farm
14 complies with the requirements and conditions of the medium farm general
15 permit.

16 (d) Medium and small farms; individual permit. The Secretary may require
17 the owner or operator of a small or medium farm to obtain an individual permit
18 to operate after review of the farm's history of compliance, application of
19 Required Agricultural Practices, the use of an experimental or alternative
20 technology or method to meet a State performance standard, or other factors
21 set forth by rule. The owner or operator of a small farm may apply to the

1 Secretary for an individual permit to operate under this section. To receive an
2 individual permit, an applicant shall in a manner prescribed by rule
3 demonstrate that the farm has an adequately sized and designed manure
4 management system to accommodate the wastes generated and a nutrient
5 management plan to dispose of wastes in accordance with Required
6 Agricultural Practices adopted under this chapter and current U.S. Department
7 of Agriculture nutrient management standards, including setback requirements
8 for waste application. An individual permit shall be valid for ~~no~~ not more than
9 five years. Any application for an individual permit filed under this subsection
10 shall be kept on file at the Agency of Agriculture, Food and Markets. The
11 Secretary of Agriculture, Food and Markets, in consultation with the Agency
12 of Natural Resources, shall review any application for a permit under this
13 subsection ~~and, prior to issuance of an individual permit under this subsection,~~
14 ~~shall issue a written determination regarding whether the permit applicant has~~
15 ~~established that there will be no unpermitted discharge to waters of the State~~
16 ~~pursuant to federal regulations for concentrated animal feeding operations.~~ If,
17 upon review of ~~an application for a permit under this subsection~~ a permit
18 application, the Secretary of Agriculture, Food and Markets determines that the
19 permit applicant may be discharging to waters of the State, the Secretary of
20 Agriculture, Food and Markets ~~and~~ shall promptly refer the farm to the
21 Secretary of Natural Resources ~~shall respond to the discharge~~ for response in

1 accordance with ~~the memorandum of understanding regarding concentrated~~
2 ~~animal feeding operations under subsection 4810(b) of this title~~ the federal
3 Clean Water Act. The Secretary of Natural Resources ~~may require~~ shall direct
4 a medium or small farm to obtain a permit under 10 V.S.A. § 1263 ~~pursuant to~~
5 if required by federal regulations for concentrated animal feeding operations.
6 Coverage of a medium farm under a general permit adopted pursuant to this
7 section or an individual permit issued to a medium or small farm under this
8 section is rendered void by the issuance of a permit to a farm under 10 V.S.A.
9 § 1263. If the farm is not required to obtain a CAFO permit and is not in
10 violation of federal regulations for concentrated animal feeding operations, the
11 Secretary of the Agency of Natural Resources shall promptly refer the matter
12 to the Secretary of Agriculture, Food and Markets.

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

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

18 § 4816. SEASONAL APPLICATION OF MANURE

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

1 granted by the Secretary according to criteria set forth under the Required
2 Agricultural Practices.

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

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

- 1 (1) prohibit application of manure:
 - 2 (A) in areas with established channels of concentrated stormwater
 - 3 runoff to surface waters, including ditches and ravines;
 - 4 (B) in nonharvested permanent vegetative buffers;
 - 5 (C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.
 - 6 § 902(5);
 - 7 (D) within 50 feet of a potable water supply, as that term is defined in
 - 8 10 V.S.A. § 1972(6);
 - 9 (E) to fields exceeding tolerable soil loss; and
 - 10 (F) to saturated soils;
- 11 (2) establish requirements for the application of manure when frozen or
- 12 snow-covered soils prevent effective incorporation at the time of application;
- 13 (3) require manure to be applied according to a nutrient management
- 14 plan; and
- 15 (4) establish the maximum tons of manure that may be applied per acre
- 16 during any one application.

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

- 18 (b) Required small farm certification. Beginning on July 1, 2017, a person
- 19 who owns or operates a small farm, as designated by the Secretary consistent
- 20 with subdivision 4810a(a)(1) of this title, shall, on a form provided by the
- 21 Secretary, certify compliance with the Required Agricultural Practices. The

1 Secretary of Agriculture, Food and Markets shall establish the requirements
2 and manner of certification of compliance with the Required Agricultural
3 Practices, provided that the Secretary shall require an owner or operator of a
4 any newly eligible or identified small farm to submit ~~an annual~~ a certification
5 of compliance with the Required Agricultural Practices and may require any
6 small farm to regularly certify ongoing compliance with the Required
7 Agricultural Practices.

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

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

11 § 1251. DEFINITIONS

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

14 * * *

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

18 * * *

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

(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.

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

§ 1351. DEFINITIONS

1 As used in this subchapter:

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

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

12 (i) animals, other than aquatic animals, have been, are, or will be
13 stabled or confined and fed or maintained for a total of 45 days or more in any
14 12-month period; and

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

17 (B) Two or more individual farms qualifying as an AFO that are
18 under common ownership and that adjoin each other or use a common area or
19 system for the disposal of waste shall be considered to be a single AFO if the
20 combined number of livestock or domestic fowl on the combined farm

1 qualifies the combined farm as a large CAFO as defined in subdivision (5) of
2 this section or as a medium CAFO as defined in subdivision (8) of this section.

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

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

8 (5) “Large concentrated animal feeding operation” or “Large CAFO”
9 means an AFO that houses 700 or more mature dairy animals, 1,000 or more
10 cattle or cow or calf pairs, 1,000 or more veal calves, 2,500 or more swine
11 weighing over 55 pounds, 10,000 or more swine weighing 55 pounds or less,
12 500 or more horses, 10,000 or more sheep or lambs, 55,000 or more turkeys,
13 30,000 or more laying hens or broilers with a liquid manure handling system,
14 82,000 or more laying hens without a liquid manure handling system, 125,000
15 or more chickens other than laying hens without a liquid manure handling
16 system, 5,000 or more ducks with a liquid manure handling system, or 30,000
17 or more ducks without a liquid manure handling system.

18 (6) “Large farm operation” or “LFO” has the same meaning as in
19 6 V.S.A. chapter 215.

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

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

6 (A) houses 200 to 699 mature dairy animals, 300 to 999 cattle or cow
7 or calf pairs, 300 to 999 veal calves, 750 to 2,499 swine weighing over 55
8 pounds, 3,000 to 9,999 swine weighing 55 pounds or less, 150 to 499 horses,
9 3,000 to 9,999 sheep or lambs, 16,500 to 54,999 turkeys, 9,000 to 29,999
10 laying hens or broilers with a liquid manure handling system, 25,000 to 81,999
11 laying hens without a liquid manure handling system, 37,500 to 124,999
12 chickens other than laying hens without a liquid manure handling system,
13 1,500 to 4,999 ducks with a liquid manure handling system, or 10,000 to
14 29,999 ducks without a liquid manure handling system; and

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

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

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

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

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

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

18 (12) “Production area” means that part of an AFO or CAFO that
19 includes the animal confinement area, the manure storage area, the raw
20 materials storage area, and the waste containment areas. The animal
21 confinement area includes open lots, housed lots, feedlots, confinement houses,

1 stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards,
2 medication pens, walkers, animal walkways, and stables. The manure storage
3 area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or
4 pit storages, liquid impoundments, static piles, and composting piles. The raw
5 materials storage area includes feed silos, silage bunkers, and bedding
6 materials. The waste containment area includes settling basins, and areas
7 within berms and diversions that separate uncontaminated storm water. Also
8 included in the definition of production area is any egg washing or egg
9 processing facility and any area used in the storage, handling, treatment, or
10 disposal of mortalities.

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

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

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

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

21 § 1352. POWERS OF THE SECRETARY

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

2 (1) Implement the federal Clean Water Act to administer a Vermont
3 pollutant discharge elimination system (VPDES) CAFO program that is
4 consistent with and equivalent to the federal Clean Water Act and enabling
5 rules.

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

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

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

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

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

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

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

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

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

7 (E) other relevant factors.

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

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

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

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

19 § 1353. CAFO PERMIT REQUIREMENTS AND EXEMPTIONS

20 (a) The discharge of manure, litter, or process wastewater to waters of the
21 State from a permitted CAFO as a result of the application of that manure,

1 litter, or process wastewater by the CAFO to land areas under its control is a
2 discharge from that CAFO subject to VPDES permit requirements, except
3 where it is an agricultural stormwater discharge as provided under the federal
4 Clean Water Act. For purposes of this subsection, where the manure, litter, or
5 process wastewater has been applied in accordance with the federal regulations
6 under the Clean Water Act, a precipitation-related discharge of manure, litter,
7 or process wastewater from land areas under the control of a CAFO is an
8 agricultural stormwater discharge. For unpermitted Large CAFOs, a
9 precipitation-related discharge of manure, litter, or process wastewater from
10 land areas under the control of the CAFO shall be considered an exempt
11 agricultural stormwater discharge only where the manure, litter, or process
12 wastewater has been land applied in accordance with site-specific nutrient
13 management practices that ensure appropriate agricultural utilization of the
14 nutrients in the manure, litter, or process wastewater, as determined by the
15 Secretary.

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

19 (c) The presumption in 6 V.S.A. § 4810(b) that farms in compliance with
20 the Agency of Agriculture, Food and Markets' Required Agricultural Practices

1 Rule are not discharging is not applicable to any AFO determined by the
2 Secretary's decision to be a CAFO.

3 Sec. 9. COMMUNITY STAKEHOLDER GROUP ON AGRICULTURAL
4 WATER QUALITY

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

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

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

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

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

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

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

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

17 (2) summarize public input received during rulemaking;

18 (3) assess whether the regulatory structure for administering agricultural
19 water quality requirements in the State is sufficient to ensure that water
20 pollution is controlled consistent with the Clean Water Act or whether sole

1 regulation by the Agency of Natural Resources over water quality on farms,
2 should be implemented; and

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

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

7 § 1259. PROHIBITIONS

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

18 * * *

19 (f) ~~The provisions of subsections (c), (d), and (e) of this section shall not~~
20 ~~regulate~~ Provided that the introduction of wastes are from sources that do not
21 discharge pollutants from a point source into waters of the State, and comply

1 with the federal Clean Water Act and federal CAFO regulation, the following
2 activities shall not require a VPDES permit under section 1263 of this title:

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

5 (2) accepted silvicultural practices, as defined by the Commissioner of
6 Forests, Parks and Recreation, including practices ~~which~~ that are in compliance
7 with the Acceptable Management Practices for Maintaining Water Quality on
8 Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks
9 and Recreation; ~~nor shall these provisions regulate discharges from~~
10 ~~concentrated animal feeding operations that require a permit under section~~
11 ~~1263 of this title; nor shall those provisions prohibit stormwater runoff or the~~
12 ~~discharge of nonpolluting wastes, as defined by the Secretary.~~

13 * * *

14 (i) ~~The Secretary of Natural Resources, to the extent compatible~~ shall
15 regulate AFOs in accordance with federal requirements, ~~shall delegate to and~~
16 the Secretary of Agriculture, Food and Markets shall implement the State
17 ~~agricultural non-point~~ nonpoint source pollution control program planning,
18 implementation, and regulation. ~~A memorandum of understanding shall be~~
19 ~~adopted for this purpose, which shall address implementation grants, the~~
20 ~~distribution of federal program assistance, and the development of land use~~
21 ~~performance standards. Prior to executing the memorandum, the Secretary of~~

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

1 Natural Resources and Energy and the House Committees on Agriculture,
2 Food Resiliency, and Forestry and on Environment, and shall allow for public
3 comment. The proposed ~~memorandum of understanding~~ document shall be
4 available for 30 days after the final date of publication for public review and
5 comment ~~prior to being executed by the Secretary of Natural Resources and~~
6 ~~the Secretary of Agriculture, Food and Markets.~~ The Secretary of Natural
7 Resources ~~and~~ in consultation with the Secretary of Agriculture, Food and
8 Markets ~~annually~~ shall review ~~the memorandum of understanding~~ the
9 document every five years to ensure compliance with the requirements of the
10 Clean Water Act ~~and the provisions of section 1258 of this title.~~ If the
11 ~~memorandum~~ document is substantially revised, it first shall be noticed in the
12 same manner that applies to the initial memorandum. Actions by the Secretary
13 of Agriculture, Food and Markets under this section shall be consistent with
14 the water quality standards and water pollution control requirements of chapter
15 47 of this title and the federal Clean Water Act as amended.

16 * * *

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

18 § 1263. DISCHARGE PERMITS

19 (a) Any person who intends to discharge waste into the waters of the State
20 or who intends to discharge into an injection well or who intends to discharge
21 into any publicly owned treatment works any waste that interferes with, passes

1 through without treatment, or is otherwise incompatible with that works or
2 would have a substantial adverse effect on that works or on water quality, or is
3 required to apply for a CAFO permit, shall make application to the Secretary
4 for a discharge permit. Application shall be made on a form prescribed by the
5 Secretary. An applicant shall pay an application fee in accordance with
6 3 V.S.A. § 2822.

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

14 * * *

15 (g) ~~Notwithstanding any other provision of law, any~~ Any person who owns
16 or operates a concentrated animal feeding operation that requires a permit
17 under the federal National Pollutant Discharge Elimination System permit
18 regulations shall submit an application to the Secretary for a discharge permit
19 and pay the required fees specified in 3 V.S.A. § 2822. ~~On or before July 1,~~
20 ~~2007, the Secretary of Natural Resources shall adopt rules implementing the~~
21 ~~federal National Pollutant Discharge Elimination System permit regulations for~~

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

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

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

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

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

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

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

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

20 (d) Exemptions.

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

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

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

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

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

16 (2) No permit is required under subdivision (c)(1), (5), or (7) of this
17 section and for which a municipality has assumed full legal responsibility as
18 part of a permit issued to the municipality by the Secretary. As used in this
19 subdivision, “full legal responsibility” means legal control of the stormwater
20 system, including a legal right to access the stormwater system, a legal duty to
21 properly maintain the stormwater system, and a legal duty to repair and replace

1 the stormwater system when it no longer adequately protects waters of the
2 State.

3 * * * Effective Date * * *

4 Sec. 13. EFFECTIVE DATE

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

6

7

8

9

10

11

12 (Committee vote: _____)

13

14

15

Representative _____

FOR THE COMMITTEE