

S.124 RECOMMENDATIONS – AGRICULTURAL WATER QUALITY TRANSITION BILL

This proposal recommends amendments to S.124 that improve the bill’s alignment with the federal Clean Water Act (“CWA”), EPA’s findings, and ANR’s proposed corrective action plan:

- (1) **Establish an inspection schedule.** Ensure that ANR fulfills its responsibility under the CWA to monitor animal feeding operations (“AFOs”) by requiring ANR to conduct AFO inspections at regular intervals.
- (2) **Treat the CWA as the regulatory floor.** Establish federal agricultural water quality regulations as the regulatory floor, not the regulatory ceiling.
- (3) **Guarantee ANR’s independence.** Protect ANR’s authority to determine whether a farm discharges by eliminating a presumption that interferes with ANR’s independent judgment.
- (4) **Protect ANR’s permitting authority.** Guarantee ANR’s authority to determine independently whether a farm requires a concentrated animal feeding operation (“CAFO”) permit.
- (5) **Establish clear permitting requirements.** Provide clarity, consistency, and fairness by establishing permitting requirements for CAFOs that conform to federal law.
- (6) **Ensure that S.124’s stakeholder process informs relevant decisions.** Wait until ANR has completed S.124’s stakeholder engagement process before determining how to address ANR and AAFM’s memorandum of understanding (“MOU”).
- (7) **Preserve programs that protect water quality.** Do not weaken the winter manure spreading prohibition exemption process and the small farm certification process.
- (8) **Protect all state waters.** Do not amend S.124’s definition of “waters”, which properly includes all waters traditionally regulated by Vermont’s water quality programs.

Recommendation 1 – Establish an inspection schedule. Ensure that ANR fulfills its responsibility under the CWA to monitor AFOs on an ongoing basis by requiring ANR to conduct AFO inspections at regular intervals. Use an inspection frequency made familiar to farmers by AAFM’s inspections.

(New Section) **10 V.S.A. § 1354. INSPECTION**

(a) The Secretary may inspect any farm at any time to carry out the provisions of this subchapter.

(b) After January 1, 2028, the Secretary shall inspect:

(1) each large CAFO not less frequently than once per year;

(2) each medium CAFO, MFO, and small CAFO not less frequently than once every three years; and

(3) each SFO not less frequently than once every five years.

Notes:

- ANR’s most recent proposed corrective action plan, submitted to EPA on March 18, 2025, commits to inspecting “all potentially jurisdictional farms under the CWA.”
- In a letter to ANR dated January 17, 2025, EPA explained that ANR must “regulate all farms subject to CWA jurisdiction (farms that meet the federal regulatory definition for Animal Feeding Operations) and should not only regulate farms that are discharging and require an NPDES permit.”
- In a letter to ANR dated September 6, 2024, EPA explained that “ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO permit is required” It also stated that “[t]his includes making ANR responsible for conducting routine inspections”

Recommendation 2 – Treat the CWA as the regulatory floor. Establish federal agricultural water quality regulations as the regulatory floor, not the regulatory ceiling.

(Page 24, Line 13, 10 V.S.A. § 1352) § 1352. POWERS OF THE SECRETARY

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

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

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

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

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

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(Page 6, Line 15, 6 V.S.A. 4851(a)) . . . The Secretary of Natural Resources ~~may require~~ shall direct a large farm to obtain a permit under 10 V.S.A. § 1263 ~~pursuant to~~ if required by federal regulations for concentrated animal feeding operations or the VPDES CAFO Rules. . . .

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(Page 12, Line 19, 6 V.S.A. § 4858(c)(1)) . . . The Secretary of Natural Resources shall direct a medium farm to obtain a permit under 10 V.S.A. § 1263 if required by federal regulations for concentrated animal feeding operations or the VPDES CAFO Rules. . . .

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(Page 14, Line 18, 6 V.S.A. § 4858(d)) . . . The Secretary of Natural Resources ~~may require~~ shall direct a medium or small farm to obtain a permit under 10 V.S.A. § 1263 ~~pursuant to if required~~ by federal regulations for concentrated animal feeding operations or the VPDES CAFO Rules. . . .

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(Page 21, Line 16, 10 V.S.A. § 1251(8)) (8) “Medium concentrated animal feeding operation” or “Medium CAFO” means an AFO that is defined as an AFO by the VPDES CAFO Rules adopted by the Secretary, including any AFO that: . . .

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(Page 31, Line 11, 10 V.S.A. § 1259(i)) (i) The Secretary of Natural Resources, ~~to the extent compatible~~ shall regulate AFOs in accordance with federal requirements and the VPDES CAFO Rules, ~~shall delegate to~~ and the Secretary of Agriculture, Food and Markets shall implement the State ~~agricultural non-point~~ nonpoint source pollution control program planning, implementation, and regulation. . . .

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(Page 34, Line 11, 10 V.S.A. § 1263(g)) (g) ~~Notwithstanding any other provision of law, any~~ Any person who owns or operates a concentrated animal feeding operation that requires a permit under the federal National Pollutant Discharge Elimination System permit regulations or the VPDES CAFO Rules shall submit an application to the Secretary for a discharge permit and pay the required fees specified in 3 V.S.A. § 2822. . . .

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(Page 36, Line 16, 10 V.S.A. § 1264(d)(1)(A)) (A) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, ~~provided that this and not subject to the federal Clean Water Act, and its enabling regulations, or the~~ VPDES CAFO Rules as determined by the Secretary of Natural Resources. . . .

Notes:

- As drafted, S.124 establishes federal regulation as a ceiling. This denies ANR the flexibility it needs to build a CAFO program that responds to Vermont’s needs.

Recommendation 3 – Guarantee ANR’s independence. Protect ANR’s authority to determine whether a farm discharges by eliminating a presumption that contradicts the CWA and that interferes with ANR’s independent judgment.

(Page 27, Line 12, 10 V.S.A. § 1353(c)) . . . (c) The presumption in 6 V.S.A. § 4810(b) that farms in compliance with 19 the Agency of Agriculture, Food and Markets’ Required Agricultural Practices Rule are not discharging is not applicable to any AFO determined by the 1 Secretary’s decision to be a CAFO.

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(New Section) Sec. XYZ. 6 V.S.A. § 4810(b) is amended to read:

(b) Required Agricultural Practices. Required Agricultural Practices (RAPs) shall be

management standards to be followed by all persons engaged in farming in this State. . . . Persons engaged in farming who are in compliance with these practices shall be presumed to not have a discharge of agricultural pollutants to waters of the State. RAPs shall be designed to protect water quality and shall be practical and cost-effective to implement, as determined by the Secretary. . . .

Notes:

- ANR’s most recent proposed corrective action plan states that “ANR shall be the only entity authorized to determine, for Clean Water Act purposes, whether a discharge to surface water occurred or is occurring” It notes that “AAFM will not have jurisdiction over discharges . . . under the Clean Water Act.”
- EPA’s January 2025 letter to ANR explains that “ANR is the only state entity authorized to administer the NPDES program and as such is the only entity authorized to determine, for Clean Water Act purposes, whether a discharge to a surface water has or is occurring, or whether a discharge has been fully remedied; this jurisdictional determination, in other words, is not within the purview of AAFM. In the history of NPDES regulation in Vermont, the divide between ANR and AAFM has led to confusion and regulatory inaction.”
- The proposed language frees ANR from presuming based on AAFM’s findings that farms do not discharge. As drafted, and contrary to EPA’s instructions, S.124 requires ANR to give weight to AAFM’s conclusions when enforcing the CWA.

Recommendation 4 – Protect ANR’s permitting authority. Guarantee ANR’s authority to determine independently whether a farm requires a CAFO permit.

(Page 6, Line 1, 6 V.S.A. 4851(a)) . . . The Secretary of Agriculture, Food and Markets, in consultation with the Secretary of Natural Resources, shall review any application for a permit under this section with regard to water quality impacts ~~and, p.~~ Prior to approval of a permit under this subsection and after inspecting the farm, the Secretary of Natural Resources shall issue a written determination regarding whether the applicant has established that there will be no unpermitted discharge to waters of the State, pursuant to the federal regulations for concentrated animal feeding operations. ~~If, upon review of an a large farm application for a permit under this subsection, the Secretary of Agriculture, Food and Markets determines that the permit applicant farm may be discharging to waters of the State, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall respond to promptly refer the potential discharge to the Secretary of Natural Resources for response in accordance with the memorandum of understanding the federal Clean Water Act regarding concentrated animal feeding operations under section 4810 of this title. . . .~~

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(Page 8, Line 1, 6 V.S.A. 4851(c)) . . . (c) The Secretary shall approve, condition, or disapprove the application within 45 business days of following the date of receipt of a complete application for a permit under this section. Failure to act within the 45 business days shall be deemed approval. . . .

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(Page 12, Line 3, 6 V.S.A. § 4858(c)) . . . The Secretary of Agriculture, Food and Markets, in consultation with the Secretary of Natural Resources, shall review any certification or notice of intent to comply submitted under this subdivision with regard to the water quality impacts of the medium farm for which the owner or operator is seeking coverage, and, for farms that have never been permitted under the prior permit term, within 18 months of after receiving the certification or notice of intent to comply, t. The Secretary of Natural Resources shall verify whether the owner or operator of the medium farm has established that there will be no unpermitted discharge to waters of the State pursuant to the federal regulations for concentrated animal feeding operations. If upon review of a medium farm granted coverage under the general permit adopted pursuant to this subsection the Secretary of Agriculture, Food and Markets determines that the permit applicant medium farm may be discharging to waters of the State, the Secretary of Agriculture, Food and Markets and shall promptly notify the Secretary of Natural Resources shall respond to the discharge in accordance with the memorandum of understanding the federal Clean Water Act regarding concentrated animal feeding operations under section 4810 of this title. . . .

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(Page 14, Line 4, 6 V.S.A. § 4858(d)) The Secretary of Agriculture, Food and Markets, in consultation with the Agency of Natural Resources, shall review any application for a permit under this subsection and, p. Prior to issuance of an individual permit under this subsection, the Secretary of Natural Resources shall issue a written determination regarding whether the permit applicant has established that there will be no unpermitted discharge to waters of the State pursuant to federal regulations for concentrated animal feeding operations. If, upon review of an application for a permit under this subsection a permit application, the Secretary of Agriculture, Food and Markets determines that the permit applicant may be discharging to waters of the State, the Secretary of Agriculture, Food and Markets and shall promptly refer the farm to the Secretary of Natural Resources shall respond to the discharge for response in accordance with the memorandum of understanding regarding concentrated animal feeding operations under subsection 4810(b) of this title the federal Clean Water Act. . . .

Notes:

- ANR’s most recent proposed corrective action plan explains that “ANR shall be the only entity authorized to determine, for Clean Water Act purposes . . . whether a permit is required . . .” It continues that “AAFM will not have jurisdiction over . . . permit determinations under the Clean Water Act.”
- EPA’s September 2024 letter states that “ANR, the state agency with authority to administer the CWA program, must be responsible for CAFO permitting . . .”
- The proposed language requires ANR to make a written determination that a farm is not discharging before AAFM may issue a state permit. (This does not affect small farm certifications.) As drafted, S.124 does not reserve this responsibility to ANR. Instead, it requires AAFM to refer farms that AAFM determines may be discharging to ANR for review. This effectively delegates some discharge determinations and permitting decisions to AAFM.

Recommendation 5 – Establish clear permitting requirements. Provide clarity, consistency, and fairness by establishing permitting requirements for CAFOs that align with federal law.

(Page 35, Line 13, 10 V.S.A. § 1263(h)) . . . (h) A large CAFO shall not be required to have a CAFO permit unless one if any of the following conditions are met:

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

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

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

(4) other conditions as established by the Secretary in the VPDES CAFO Rules.

Notes:

- ANR’s recent proposed corrective action plan outlines clear permitting criteria:

“ANR will determine if the farm needs a NPDES CAFO permit.

“a. Point source discharge(s) from a Large or Medium Farm Animal Feeding Operation requires a CAFO permit.

“b. Non-point discharge(s) that do not qualify as exempt stormwater runoff under the CWA requires a CAFO permit.

“c. A Small Animal Feeding Operation that discharges from a point source and is a significant contributor of pollutants requires a CAFO permit.”

Recommendation 6 – Ensure that S.124’s stakeholder process informs relevant decisions.

Wait until ANR has completed S.124’s stakeholder engagement process before determining how to address ANR and AAFM’s MOU.

(Page 1, Line 6, 6 V.S.A. § 4810(d)) Sec. 10. 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) farms. The Secretary of Agriculture, Food and Markets shall implement the State’s comprehensive, complementary nonpoint source program describing. ~~The Secretary of~~

~~Agriculture, Food, and Markets [Continue strike through until end of S.124, Sec. 1.]~~

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(Page 31, Line 10, 6 V.S.A. § 1259(i)) ~~(i) The Secretary of Natural Resources, to the extent compatible shall regulate AFOs in accordance with federal requirements, shall delegate to and the Secretary of Agriculture, Food and Markets shall implement [Continue strike through until end of S.124, Sec. 10, 6 V.S.A. § 1259(i).]~~

Notes:

- As drafted, S.124 requires ANR and AAFM to replace the MOU that governs their relationship by September 1, 2025. This timely prevents the stakeholder engagement process from informing how ANR and AAFM will.

Recommendation 7 – Preserve programs that protect water quality. Do not weaken the winter manure spreading prohibition exemption process and the small farm certification process.

(Page 15, Line 11) ~~Strike S.124, Sec. 5.~~

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(Page 17, Line 9) ~~Strike S.124, Sec. 6.~~

Notes:

- Under current law, AAFM may only issue winter manure spreading exemptions on a farm-by-farm basis in writing. As drafted, S.124 authorizes AAFM to issue blanket emergency exemptions, by passing the existing process.

Recommendation 8 – Protect all state waters. Do not amend S.124’s definition of “waters”, which properly includes all waters traditionally regulated by Vermont’s water quality programs.

Notes:

- Committees considering S.124 have heard recommendations to weaken its definition of “waters”. Following these recommendations would result in a less protective CAFO program that does not align with Vermont’s other water quality and agricultural programs.