



Overview of the Recommendations of the Act 67 Community Stakeholder Group on Agricultural Water Quality

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Lake Champlain Committee

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From the Introduction of the De-Delegation Petition filed with EPA March 2022

JOINT PETITION FOR CORRECTIVE ACTION OR WITHDRAWAL OF THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PROGRAM DELEGATION FROM THE STATE OF VERMONT

Conservation Law Foundation (“CLF”), Vermont Natural Resources Council (“VNRC”), and Lake Champlain Committee (“LCC”) (collectively “Petitioners”) hereby petition the United States Environmental Protection Agency (“EPA”) to initiate proceedings pursuant to Clean Water Act (“CWA”) Section 402(c)(3) and its implementing regulations at 40 C.F.R. §§ 123.63, 123.64. Vermont has failed to administer the National Pollutant Discharge Elimination System (“NPDES”) permit program in accordance with the CWA. Specifically, the state has failed to exercise control over agricultural point source discharges, and it has failed to inspect and monitor agricultural point source discharges that result from the application of nutrients, manure, and other soil amendments to farmland. For the following reasons, Petitioners request that EPA either order Vermont to take necessary corrective actions to cure the serious deficiencies described below or withdraw program approval.



EPA Letter to ANR, Sept 9, 2024, re: Response to Joint Petition

inadequate monitoring and enforcement activity, among other problems. EPA has closely observed program operations in Vermont for well over a decade and despite having had ample time and opportunity to cure longstanding program deficiencies, many of which were outlined in the 2008 withdrawal petition, ANR has failed to do so. Based on these considerations and EPA's direct experience overseeing program administration, EPA has concluded that the consolidation of authority to implement the NPDES program into ANR, which is the agency that has the legal authority to implement the program, is the only workable solution to quickly resolve this matter and to avoid the initiation of withdrawal proceedings. The following actions are necessary to achieve that end:

1. ANR, the state agency with authority to administer the CWA program, must be responsible for CAFO permitting, monitoring, and enforcement relevant to implementing the Clean Water Act's NPDES program on Vermont's farms. This includes making ANR responsible for conducting routine inspections, enforcing nutrient management planning requirements, and administering discharge permits. While EPA recognizes the critical role played by AAFM in addressing agricultural water pollution, Vermont's extensive sub-delegation of authority to AAFM has undermined the state's NPDES program and rendered it out of compliance with Clean Water Act requirements.
2. Vermont must provide ANR with sufficient resources to administer the NPDES program to meet CWA requirements.



EPA Letter to ANR, Jan. 17, 2025, re: Corrective Action Plan

concerns. We hope the issues identified below will help Vermont in its efforts to bring the program into compliance with the Clean Water Act:

- First, an acceptable corrective action plan must clearly identify ANR as the sole state agency authorized to administer the NPDES permitting program in Vermont and the only state authority authorized to enforce Clean Water Act requirements, generally, and specifically with respect to CAFOs. We appreciate the important role of the Agency of Agriculture, Food, and Markets (AAFM) in supporting Vermont's agricultural sector. EPA would strongly caution against relying on AAFM to draw the distinction between discharging and non-discharging farms for the purposes of establishing jurisdiction under the Clean Water Act. 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.

Act 67 Stakeholder Group Report



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

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

(2) summarize public input received during rulemaking;

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

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



Instead of the Report, the Five-Year Timeline for implementation is key

- Per the EPA, ANR is required to lead CAFO inspections and determine when a discharge occurs, but the Stakeholder Group requested joint inspections at least initially, then in a few years will discuss if / when joint inspections cease.
- The CAFO permit will be phased in, including individual CAFO permit requirements by July 2026 that will include specific requirements. The medium CAFO general permit is required by Sept. 2028.
- ANR needs to set a formal inspection schedule based on farm size.
- ANR and AAFM are asked to make annual budget requests in the Governor's budget recommendation.
- Request for a third-party consultant to conduct joint trainings for ANR and AAFM for at least two years.
- Request for an extension of stakeholder group to continue discussing the process.