

1 S.100

2 Introduced by Senators Hardy, Brennan, Chittenden and Norris

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; agriculture; water quality;

6 concentrated animal feeding operations; permitting; enforcement

7 Statement of purpose of bill as introduced: This bill proposes to clarify the

8 authority of the Secretary of Natural Resources to regulate, permit, and enforce

9 discharges of pollutants from concentrated animal feeding operations in the

10 State.

11 An act relating to administration of the concentrated animal feeding
12 operation water quality permit

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

14 Sec. 1. 10 V.S.A. § 1251 is amended to read:

15 § 1251. DEFINITIONS

16 Whenever used or referred to in this chapter, unless a different meaning

17 clearly appears from the context:

18 * * *

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

4 * * *

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

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

12 (13) “Waters” includes all rivers, streams, creeks, brooks, reservoirs,
13 ponds, lakes, springs, and all artificial or natural bodies of surface waters;
14 ~~artificial or natural~~, that are contained within, flow through, or border upon the
15 State or any portion of it.

16 * * *

17 (20) “Continuous discharge” means a discharge that occurs without
18 interruption throughout the operating hours of the facility, except for
19 infrequent shutdowns for maintenance, process changes, or other similar
20 activities.

1 (21) “Daily discharge” means the discharge of a pollutant measured
2 during a calendar day or any 24-hour period that reasonably represents the
3 calendar day for purposes of sampling. For pollutants with limitations
4 expressed in units of mass, the daily discharge is calculated as the total mass of
5 the pollutant discharged over the day. For pollutants with limitations
6 expressed in other units of measurement, the daily discharge is calculated as
7 the average measurement of the pollutant over the day.

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

13 Sec. 2. 10 V.S.A. chapter 47, subchapter 3A is added to read:

14 Subchapter 3A. Concentrated Animal Feeding Operations

15 § 1351. DEFINITIONS

16 As used in this subchapter:

17 (1) “Agricultural waste” means material originating or emanating from a
18 farm or imported onto a farm that contains sediments; minerals, including
19 heavy metals; plant nutrients; pesticides; organic wastes, including livestock
20 waste; animal mortalities; compost; feed, litter, and crop debris; waste oils;
21 pathogenic bacteria and viruses; thermal pollution; silage runoff; process

1 wastewater, untreated milk house waste; and any other farm waste as the term
2 “waste” is defined in subdivision 1251(12) of this chapter.

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

6 (i) animals, other than aquatic animals, have been, are, or will be
7 stabled or confined and fed or maintained for a total of 45 days or more in any
8 12-month period; and

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

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

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

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

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

6 (A) houses 700 or more mature dairy animals, 1,000 or more cattle or
7 cow or calf pairs, 1,000 or more veal calves, 2,500 or more swine weighing
8 over 55 pounds, 10,000 or more swine weighing 55 pounds or less, 500 or
9 more horses, 10,000 or more sheep or lambs, 55,000 or more turkeys, 30,000
10 or more laying hens or broilers with a liquid manure handling system, 82,000
11 or more laying hens without a liquid manure handling system, 125,000 or more
12 chickens other than laying hens without a liquid manure handling system,
13 5,000 or more ducks with a liquid manure handling system, or 30,000 or more
14 ducks without a liquid manure handling system; and

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

16 (i) wastes are discharged into waters of the United States via a
17 point source;

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; or

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

6 (6) “Large farm operation” or “LFO” has the same meaning in in
7 6 V.S.A. chapter 215.

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

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

13 (A) houses 200 to 699 mature dairy animals, 300 to 999 cattle or cow
14 or calf pairs, 300 to 999 veal calves, 750 to 2,499 swine weighing over 55
15 pounds, 3,000 to 9,999 swine weighing 55 pounds or less, 150 to 499 horses,
16 3,000 to 9,999 sheep or lambs, 16,500 to 54,999 turkeys, 9,000 to 29,999
17 laying hens or broilers with a liquid manure handling system, 25,000 to 81,999
18 laying hens without a liquid manure handling system, 37,500 to 124,999
19 chickens other than laying hens without a liquid manure handling system,
20 1,500 to 4,999 ducks with a liquid manure handling system, or 10,000 to
21 29,999 ducks without a liquid manure handling system; and

1 (B) either of the following conditions are met;

2 (i) wastes are discharged into waters of the United States via a
3 point source; or

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

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

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

16 (11) “Process wastewater” means water directly or indirectly used in the
17 operation of an AFO or CAFO for any or all of the following: spillage or
18 overflow from animal or poultry watering systems; washing, cleaning, or
19 flushing pens, barns, manure pits, or other AFO or CAFO facilities; direct
20 contact swimming, washing, or spray cooling of animals; or dust control.
21 Process wastewater also includes any water that comes into contact with any

1 raw materials, products, or byproducts, including manure, litter, feed, milk,
2 eggs, or bedding.

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

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

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

20 (15) “Small concentrated animal feeding operation” or “small CAFO”
21 means a small AFO designated as a small CAFO by the Secretary upon

1 determining that the AFO is a significant contributor of pollutants to waters of
2 the State, and either of the following conditions are met:

3 (A) wastes are discharged into waters via a point source; or

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

7 (16) “Waters of the United States” shall have the same meaning as
8 “waters” defined by the federal regulations under the Clean Water Act.

9 § 1352. POWERS OF THE SECRETARY

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

11 (1) Implement the federal Clean Water Act to administer a Vermont
12 pollutant discharge elimination system (VPDES) CAFO program that is
13 consistent with and equivalent to the federal Clean Water Act and enabling
14 rules.

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

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

1 (4) Designate any AFO that meets the definition of a CAFO as a CAFO,
2 in the Secretary's sole discretion.

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

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

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

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

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

14 (E) other relevant factors.

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

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

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

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

7 § 1353. CAFO PERMIT REQUIREMENTS AND EXEMPTIONS

8 (a) The discharge of manure, litter, or process wastewater to waters of the
9 United States from a CAFO as a result of the application of that manure, litter
10 or process wastewater by the CAFO to land areas under its control is a
11 discharge from that CAFO subject to NPDES permit requirements, except
12 where the manure, litter, or process wastewater has been applied in accordance
13 with a site-specific nutrient management plan approved by the Secretary.

14 (b) A precipitation-related discharge of manure, litter, or process
15 wastewater from land areas under the control of a LFO shall be considered an
16 exempt agricultural stormwater discharge only where the manure, litter, or
17 process wastewater has been land applied in accordance with site-specific
18 nutrient management practices that ensure appropriate agricultural utilization
19 of the nutrients in the manure, litter, or process wastewater, as determined by
20 the Secretary.

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

4 (2) SFOs shall maintain documentation of soil testing and nutrient
5 management practices.

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

10 (d) Prima facie evidence sufficient to determine that a farm is a CAFO
11 includes: an observed discharge from a point source, evidence of a recent prior
12 discharge from a point sources such as a stained drainage swale and standing
13 water in a ditch close to waters.

14 Sec. 3. COMMUNITY STAKEHOLDER GROUP ON AGRICULTURAL
15 WATER QUALITY

16 (a) On or before September 1, 2025, the Secretary of Natural Resources, in
17 coordination with the Secretary of Agriculture, Food and Markets, shall engage
18 key agricultural stakeholders as part of a pre-rulemaking process to gather
19 input on proposed concentrated animal feeding operation (CAFO) rules. The
20 rulemaking process also shall include public notice and informational hearings
21 to provide updates on the CAFO program and gather broad public input. In

1 addition, the stakeholder engagement process shall include specific
2 opportunities for the agricultural community, including livestock farmers, farm
3 and watershed groups, and agricultural consultants, to share their input on:

4 (1) the implementation of the Agency of Natural Resources' CAFO
5 program;

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

9 (3) how to best create regulatory clarity for agricultural producers for
10 the long-term, within a two-agency regulatory system or through a full transfer
11 of regulatory authority to one agency;

12 (4) the resources, technical assistance, and regulatory structure
13 necessary to create a path to compliance for agricultural producers that
14 maintain CAFO operations; and

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

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

- 1 (1) summarize the stakeholder process, including public comment
2 receive;
3 (2) summarize public input received during rulemaking;
4 (3) assess whether the regulatory structure for administering agricultural
5 water quality requirements in the State is sufficient or whether further
6 structural changes, such as sole regulation by the Agency of Natural
7 Resources, should be implemented; and
8 (4) recommended any statutory amendment or other changes related to
9 implementation of the CAFO program and agricultural water quality regulation
10 more generally.

11 Sec. 4. 10 V.S.A. § 1259 is amended to read:

12 § 1259. PROHIBITIONS

13 (a) No person shall discharge any waste, substance, or material into waters
14 of the State, nor shall any person discharge any waste, substance, or material
15 into an injection well or discharge into a publicly owned treatment works any
16 waste that interferes with, passes through without treatment, or is otherwise
17 incompatible with those works or would have a substantial adverse effect on
18 those works or on water quality, without first obtaining a permit for that
19 discharge from the Secretary. This subsection shall not prohibit the proper
20 application of fertilizer to fields and crops, nor reduce or affect the authority or

1 policy declared in Joint House Resolution 7 of the 1971 Session of the General
2 Assembly.

3 * * *

4 (f) ~~The provisions of subsections (c), (d), and (e) of this section shall not~~
5 ~~regulate~~ Provided that the introduction of wastes are from sources that comply
6 with the federal Clean Water Act and federal CAFO regulation, the following
7 activities shall not require a VPDES permit under section 1263 of this title:

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

10 (2) accepted silvicultural practices, as defined by the Commissioner of
11 Forests, Parks and Recreation, including practices ~~which~~ that are in compliance
12 with the Acceptable Management Practices for Maintaining Water Quality on
13 Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks
14 and Recreation; ~~nor shall these provisions regulate discharges from~~
15 ~~concentrated animal feeding operations that require a permit under section~~
16 ~~1263 of this title; nor shall those provisions prohibit stormwater runoff or the~~
17 ~~discharge of nonpolluting wastes, as defined by the Secretary.~~

18 * * *

19 (i) ~~The Secretary of Natural Resources,~~ to the extent compatible with
20 federal requirements, shall delegate to the Secretary of Agriculture, Food and
21 Markets the State agricultural ~~non-point~~ nonpoint source pollution control

1 program planning, implementation, and regulation. ~~A memorandum of~~
2 ~~understanding shall be adopted for this purpose, which shall address~~
3 ~~implementation grants, the distribution of federal program assistance, and the~~
4 ~~development of land use performance standards. Prior to executing the~~
5 ~~memorandum, the Secretary of State shall arrange for two formal publications~~
6 ~~of information relating to the proposed memorandum. The information shall~~
7 ~~consist of a summary of the proposal; the name, telephone number, and~~
8 ~~address of a person able to answer questions and receive comments on the~~
9 ~~proposal; and the deadline for receiving comments. Publication shall be subject~~
10 ~~to the provisions of 3 V.S.A. § 839(d), (e), and (g), relating to the publication~~
11 ~~of administrative rules~~ This shared authority ensures comprehensive water
12 quality protection and implements equivalent State nonpoint source pollution
13 controls on farms not covered by the Clean Water Act. The Agencies shall
14 cooperate and share information to enable effective and consistent regulation
15 and enforcement. Not later than September 1, 2025, the Agency of Natural
16 Resources in consultation with the U.S. Environmental Protection Agency and
17 the Agency of Agriculture, Food and Markets, shall issue a document that sets
18 forth the respective roles and responsibilities of the Agency of Natural
19 Resources in implementing the Clean Water Act on farms and responsibilities
20 of the Agency of Agriculture, Food and Markets in implementing the State's
21 complementary nonpoint source program on farms. The document will replace

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

21 * * *

1 Sec. 5. 10 V.S.A. § 1263 is amended to read:

2 § 1263. DISCHARGE PERMITS

3 (a) Any person who intends to discharge waste into the waters of the State
4 or who intends to discharge into an injection well or who intends to discharge
5 into any publicly owned treatment works any waste that interferes with, passes
6 through without treatment, or is otherwise incompatible with that works or
7 would have a substantial adverse effect on that works or on water quality, or is
8 required to apply for a CAFO permit, shall make application to the Secretary
9 for a discharge permit. Application shall be made on a form prescribed by the
10 Secretary. An applicant shall pay an application fee in accordance with
11 3 V.S.A. § 2822.

12 (b) When an application is filed under this section, the Secretary shall
13 proceed in accordance with chapter 170 of this title. The Secretary may
14 require any applicant to submit any additional information that the Secretary
15 considers necessary and may refuse to grant a permit, or permission to
16 discharge under the terms of a general permit, until the information is
17 furnished and evaluated.

18 * * *

19 (g) ~~Notwithstanding any other provision of law, any~~ Any person who owns
20 or operates a concentrated animal feeding operation that requires a permit
21 under the federal National Pollutant Discharge Elimination System permit

1 regulations shall submit an application to the Secretary for a discharge permit
2 and pay the required fees specified in 3 V.S.A. § 2822. ~~On or before July 1,~~
3 ~~2007, the Secretary of Natural Resources shall adopt rules implementing the~~
4 ~~federal National Pollutant Discharge Elimination System permit regulations for~~
5 ~~discharges from concentrated animal feeding operations. Until such regulations~~
6 ~~are adopted, the substantive permitting standards and criteria used by the~~
7 ~~Secretary to evaluate applications and issue or deny discharge permits for~~
8 ~~concentrated animal feeding operations shall be those specified by federal~~
9 ~~regulations. The Secretary may issue an individual or general permit for these~~
10 ~~types of discharges in accordance with the procedural requirements of~~
11 ~~subsection (b) of this section and other State law. For the purposes of this~~
12 ~~subsection, “concentrated animal feeding operation” means a farm that meets~~
13 ~~the definition contained in the federal regulations~~ Not later than December 15,
14 2025, the Secretary shall amend and issue the Medium CAFO General Permit
15 and Notice of Intent. Not later than July 1, 2026, the Secretary shall issue a
16 CAFO application and an individual CAFO permit. The Secretary may request
17 any additional information from a farm as necessary to process a permit and
18 administer the CAFO program. The Secretary may direct a farm to apply for
19 an individual or general permit in accordance with the procedural requirements
20 of subsection (b) of this section.

1 (h) The Secretary shall require nutrient management plans for all CAFOs
2 and shall include the plans in the permits for public comment in accordance
3 with the process set forth in 10 V.S.A. chapter 170. The Secretary may amend
4 a permit in accordance with 10 V.S.A. chapter 170 or revoke a permit in
5 accordance with 3 V.S.A. § 814.

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

11 Sec. 6. 10 V.S.A. § 1264(d) is amended to read:

12 (d) Exemptions.

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

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

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

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

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

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

16 Sec. 7. EFFECTIVE DATE

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