

1 Introduced by Committee on Agriculture

2 Date:

3 Subject: Agriculture; water resources; agricultural water quality

4 Statement of purpose of bill as introduced: This bill proposes to amend certain
5 agricultural water quality requirements administered by the Agency of
6 Agriculture, Food and Markets in order to ensure consistency with federal
7 requirements.

8 An act relating to miscellaneous agricultural subjects

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

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 as the Secretary of Natural Resources implements the federal
19 Clean Water Act for Concentrated Animal Feeding Operations (CAFOs) and
20 the Secretary of Agriculture, Food and Markets implements the State's

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

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

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

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

17 (6)(A) Require a farm to comply with standards established by the
18 Secretary for maintaining a vegetative buffer zone of perennial vegetation
19 between annual croplands and the top of the bank of an adjoining water of the
20 State. At a minimum the vegetative buffer standards established by the
21 Secretary shall prohibit the application of manure on the farm within 25 feet of

1 the top of the bank of an adjoining water of the State or within 10 feet of a
2 ditch that is not a surface water under State law and that is not a water of the
3 United States under federal law. The minimum vegetated buffer requirement
4 required under this subdivision (A) shall not apply to a Concentrated Animal
5 Feeding Operation that has an active CAFO permit subject to the federal Clean
6 Water Act and federal CAFO regulation.

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

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

11 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

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

1 fowl production at its existing capacity. The Secretary of Agriculture, Food
2 and Markets, in consultation with the Secretary of Natural Resources, shall
3 review any application for a permit under this section with regard to water
4 quality impacts and, prior to approval of a permit under this subsection, shall
5 issue a written determination regarding whether the applicant has established
6 that there will be no unpermitted discharge to waters of the State pursuant to
7 the federal regulations for concentrated animal feeding operations. If upon
8 review of an application for a permit under this subsection, the Secretary of
9 Agriculture, Food and Markets determines that the permit applicant may be
10 discharging to waters of the State, the Secretary of Agriculture, Food and
11 Markets and the Secretary of Natural Resources cooperatively shall respond to
12 the potential discharge in accordance with ~~the memorandum of understanding~~
13 their distinct federal Clean Water Act and State nonpoint source program
14 responsibilities and the document regarding concentrated animal feeding
15 operations under section 4810 of this title. The Secretary of Natural Resources
16 may require a large farm to obtain a permit under 10 V.S.A. § 1263 pursuant to
17 federal regulations for concentrated animal feeding operations.

18 (b) A person shall apply for a permit in order to operate a farm that exceeds
19 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves,
20 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55
21 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens

1 or broilers with a liquid manure handling system, 82,000 laying hens without a
2 liquid manure handling system, 125,000 chickens other than laying hens
3 without a liquid manure handling system, 5,000 ducks with a liquid manure
4 handling system, or 30,000 ducks ~~if the livestock or domestic fowl are in a~~
5 ~~barn or adjacent barns owned by the same person or if the barns share a~~
6 ~~common border or have a common waste disposal system~~ without a liquid
7 manure handling system. Two or more individual farms that are under
8 common ownership and that adjoin each other or use a common area or system
9 for the disposal of wastes shall be considered a single animal feeding operation
10 of “farm” when determining whether the combined number of livestock or
11 domestic fowl qualifies the farm as a Large Farm Operation under this section.

12 In order to receive this permit, the person shall demonstrate to the Secretary
13 that the farm has an adequately sized manure management system to
14 accommodate the wastes generated and a nutrient management plan to dispose
15 of wastes in accordance with Required Agricultural Practices adopted under
16 this chapter and current U.S. Department of Agriculture nutrient management
17 standards.

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

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

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

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

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

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

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

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

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

12 § 4858. MEDIUM FARM OPERATION PERMITS

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

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

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

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

18 (3) Each general permit issued pursuant to this section shall have a term
19 of ~~no~~ not more than five years. Prior to the expiration of each general permit,
20 the Secretary shall review the terms and conditions of the general permit and
21 may issue subsequent general permits with the same or different conditions as

1 necessary to carry out the purposes of this subchapter. Each general permit
2 shall include provisions that require public notice of the fact that a medium
3 farm has sought coverage under a general permit adopted pursuant to this
4 section. Each general permit shall provide a process by which interested
5 persons can obtain detailed information about the nature and extent of the
6 activity proposed to receive coverage under the general permit. The Secretary
7 may inspect each farm seeking coverage under the general permit at any time
8 but ~~no~~ not less frequently than once every three years.

9 (c)(1) Medium farm general permit. The owner or operator of a medium
10 farm seeking coverage under a general permit adopted pursuant to this section
11 shall certify to the Secretary within a period specified in the permit, and in a
12 manner specified by the Secretary, that the medium farm does comply with
13 permit requirements regarding an adequately sized and designed manure
14 management system to accommodate the wastes generated and a nutrient
15 management plan to dispose of wastes in accordance with Required
16 Agricultural Practices adopted under this chapter and current U.S. Department
17 of Agriculture nutrient management standards. Any certification or notice of
18 intent to comply submitted under this subdivision shall be kept on file at the
19 Agency of Agriculture, Food and Markets. The Secretary of Agriculture, Food
20 and Markets, in consultation with the Secretary of Natural Resources, shall
21 review any certification or notice of intent to comply submitted under this

1 subdivision with regard to the water quality impacts of the medium farm for
2 which the owner or operator is seeking coverage, and, for farms that have
3 never been permitted under the prior permit term, within 18 months ~~of~~ after
4 receiving the certification or notice of intent to comply, shall verify whether
5 the owner or operator of the medium farm has established that there will be no
6 unpermitted discharge to waters of the State pursuant to the federal regulations
7 for concentrated animal feeding operations. If upon review of a medium farm
8 granted coverage under the general permit adopted pursuant to this subsection
9 the Secretary of Agriculture, Food and Markets determines that the permit
10 applicant may be discharging to waters of the State, the Secretary of
11 Agriculture, Food and Markets and the Secretary of Natural Resources
12 cooperatively shall respond to the potential discharge in accordance with ~~the~~
13 ~~memorandum of understanding~~ their distinct federal Clean Water Act and State
14 nonpoint source program responsibilities and the document regarding
15 concentrated animal feeding operations under section 4810 of this title.

16 (2) The owner or operator of a small farm may seek coverage under the
17 medium farm general permit adopted pursuant to this section by certifying to
18 the Secretary, in a manner specified by the Secretary, that the small farm
19 complies with the requirements and conditions of the medium farm general
20 permit.

1 (d) Medium and small farms; individual permit. The Secretary may require
2 the owner or operator of a small or medium farm to obtain an individual permit
3 to operate after review of the farm’s history of compliance, application of
4 Required Agricultural Practices, the use of an experimental or alternative
5 technology or method to meet a State performance standard, or other factors
6 set forth by rule. The owner or operator of a small farm may apply to the
7 Secretary for an individual permit to operate under this section. To receive an
8 individual permit, an applicant shall in a manner prescribed by rule
9 demonstrate that the farm has an adequately sized and designed manure
10 management system to accommodate the wastes generated and a nutrient
11 management plan to dispose of wastes in accordance with Required
12 Agricultural Practices adopted under this chapter and current U.S. Department
13 of Agriculture nutrient management standards, including setback requirements
14 for waste application. An individual permit shall be valid for ~~no~~ not more than
15 five years. Any application for an individual permit filed under this subsection
16 shall be kept on file at the Agency of Agriculture, Food and Markets. The
17 Secretary of Agriculture, Food and Markets, in consultation with the Agency
18 of Natural Resources, shall review any application for a permit under this
19 subsection and, prior to issuance of an individual permit under this subsection,
20 shall issue a written determination regarding whether the permit applicant has
21 established that there will be no unpermitted discharge to waters of the State

1 pursuant to federal regulations for concentrated animal feeding operations. If,
2 upon review of an application for a permit under this subsection, the Secretary
3 of Agriculture, Food and Markets that the permit applicant may be discharging
4 to waters of the State, the Secretary of Agriculture, Food and Markets and the
5 Secretary of Natural Resources cooperatively shall respond to the potential
6 discharge in accordance with ~~the memorandum of understanding~~ their distinct
7 federal Clean Water Act and State nonpoint source program responsibilities
8 and the document regarding concentrated animal feeding operations under
9 ~~subsection 4810(b)~~ section 4810 of this title. The Secretary of Natural
10 Resources may require a medium or small farm to obtain a permit under 10
11 V.S.A. § 1263 pursuant to federal regulations for concentrated animal feeding
12 operations. Coverage of a medium farm under a general permit adopted
13 pursuant to this section or an individual permit issued to a medium or small
14 farm under this section is rendered void by the issuance of a permit to a farm
15 under 10 V.S.A. § 1263.

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

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

21 § 4816. SEASONAL APPLICATION OF MANURE

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

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

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

1 on a weekly, monthly, or seasonal basis or in authorized regions, areas, or
2 fields in the State, provided that any exemption shall:

3 (1) prohibit application of manure:

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

6 (B) in nonharvested permanent vegetative buffers;

7 (C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.
8 § 902(5);

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

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

12 (F) to saturated soils;

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

15 (3) require manure to be applied according to a nutrient management
16 plan; and

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

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

20 (b) Required small farm certification. Beginning on July 1, 2017, a person
21 who owns or operates a small farm, as designated by the Secretary consistent

1 with subdivision 4810a(a)(1) of this title, shall, on a form provided by the
2 Secretary, certify compliance with the Required Agricultural Practices. The
3 Secretary of Agriculture, Food and Markets shall establish the requirements
4 and manner of certification of compliance with the Required Agricultural
5 Practices, provided that the Secretary shall require an owner or operator of a
6 any newly eligible or identified small farm to submit ~~an annual~~ a certification
7 of compliance with the Required Agricultural Practices and may require any
8 small farm to regularly certify ongoing compliance with the Required
9 Agricultural Practices.

10 Sec. 7. EFFECTIVE DATE

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