

# S.100

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# Agenda/Overview

- CAFO petition and EPA directives
- Key elements of ANR response
- Nexus with 25-0904 (Senate Ag committee bill)
- Planned next steps

# CAFO Timeline and Key Concerns

- **March 2022:** Conservation Law Foundation (CLF), Lake Champlain Committee (LCC), and Vermont Natural Resource Council (VNRC) file a de-delegation petition with the US Environmental Protection Agency (EPA)
- **2022 – 2024:** EPA reviews concerns raised by the petition, including examining files and conducting EPA-led inspections
- **Summer 2024:** At the request of EPA, CLF, LCC, VNRC and ANR commence settlement discussions with EPA
- **September 2024:** EPA send letter that asserts that, based on EPA's investigations, Vermont law does not comply with the CWA and enabling federal regulations.

# CAFO Timeline and Key Concerns

Specifically, EPA's September 2024 letter states the following:

- Shared delegation of authority to AAFM and ANR is impermissible under the CWA.
- Shared responsibility for CAFO regulation with AAFM was part of a prior de-delegation petition in 2008, has been in place for decades, and has not resulted in compliance with federal law.
- EPA required a Corrective Action Plan (CAP) be submitted within 90 days that meets the following requirements:
  1. ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO permit is required;
  2. ANR personnel must review nutrient management plans and issue CAFO permits consistent with state and federal requirements;
  3. ANR must comprehensively track permitting, monitoring and enforcement actions;
  4. ANR must enforce against farms that are discharging without a permit;
  5. ANR must have sufficient personnel to fully implement the foregoing requirements in a timely manner;
  6. ANR must seek the necessary statutory and regulatory authority to fully implement the CWA requirements; and
  7. ANR must include a reasonable but expeditious timeline, including a date certain for the completion of a corrective action plan.

# CAFO Timeline and Key Concerns

**December 2024:** ANR submits a CAP drafted in consultation with AAFM. The CAP focuses on aligning the Vermont water quality regulation of farms with the federal CWA. The CAP outlines a 4-year plan that includes:

- **DEFINING ROLES** - ANR will clearly define roles, responsibilities, and authority
- **PERMITTING & REGULATION** - ANR will determine if a farm needs a CAFO permit and will regulate farms, require permits and mandate compliance for point source discharges and non-point discharges where the farm has failed to follow an NMP requires a CAFO permit. AAFM will continue to regulate farms that don't need a CAFO permit.
- **DATA MANAGEMENT** - AAFM and ANR will share data management systems and resources to increase and improve information sharing on inspection, permitting, monitoring, and enforcement activities.
- **INSPECTIONS** - ANR and AAFM will jointly inspect medium and large farms.

# CAFO Timeline and Key Concerns

## December 2024 CAP proposal, cont:

- **NMPs** - ANR will review all NMPs prior to inspections and determine if the NMPs are comply with the CWA and are being followed. NMPs will be subject to public notice and review.
- **RULES & PERMITS** - ANR will develop and adopt an updated Vermont CAFO Rule, will update the Medium Farm General CAFO Permit and Notice of Intent forms for General Permits and develop and adopt Individual CAFO Permits.
- **REPORTING AND PERFORMANCE** - ANR will commit to annual reporting and tracking of Key Performance Indicators.
- **STAFFING** –Year 1 – 2025 (ANR will convert an existing position to a CAFO position and has requested funding for database and programmatic support). ANR requested base funding for 2 additional positions– If approved, it may take until the end of 2025 or early 2026 to get these positions in place. In December of 2026, ANR will assess staff and resource needs, make recommendations and outline steps and timelines necessary to secure such resources.

# CAFO Timeline and Key Concerns

**January 2025:** EPA responds to CAP and directs ANR to submit additional information/commitments. The directive is as follows:

1. Vermont must clearly identify ANR as the authority for regulating CAFOs – ANR cannot rely on AAFM to make determination regarding discharges/CAFO jurisdiction,
2. ANR must take steps to identify all farms that are discharging and need a CAFO permit (issuing a general permit that covers all farms, designate farms that need a permit by reviewing records of discharges, winter spreading, proximity to waters and conducting water quality sampling),
3. ANR must secure sufficient staffing,
4. Explain in detail how ANR will inspect all potentially jurisdictional farms, determine what farms need a CAFO permit, review NMPs and issue CAFO permits consistent with federal CWA requirements,
5. Clarify that ANR will regulate all farms subject to the CWA (defined as Animal Feeding Operations),
6. Clarify that AAFM has no authority to regulate farms under the CWA,
7. Explain in detail how (while sharing the database) ANR will comprehensively track, monitor, and implement enforcement,
8. Explain how ANR will regulate all farms, including small farms,
9. Clarify that NMPs must be at least as stringent as federal CAFO regulations,
10. Adopt a CAFO rule that complies with the CWA, and
11. Identify key interim milestones and deadlines for tracking progress.

# Nexus between S.100 and 25-0904

- S.100 includes two key components:
  - Initial changes to Title 10 that provide an important demonstration of our commitment to implementing the Corrective Action Plan
  - Stakeholder process
- 25-0904 (Senate Ag committee bill) includes:
  - Originally included companion changes in Title 6 to S.100; now includes the full language of S.100



# Outstanding Issues

- Waters of the State vs. Waters of the United States
  - CAFO permits are required for farms discharging to waters of the US
  - LFO/MFO/SFO permits prohibit discharges to waters of the State
- Two key concerns:
  - Farms may shift between CAFO and LFO/MFO/SFO permit coverage over the course of time
    - Having different approaches to which waters are covered by/subject to the regulatory framework causes confusion
  - Evolving federal definition of waters of the US creates uncertainty

# Planned Next Steps

- Submit revised Corrective Action Plan (CAP) to EPA on or before March 18
- Initiate stakeholder process
- Begin drafting revised roles, responsibilities and authority for CAFO program and clarify AAFM roles, etc.
  - Publicly notice draft and finalize
  - Document will be subject to EPA approval
- Begin revisions necessary to issue a CAFO General Permit that covers all farm sizes (i.e., small, medium and large)
- Compile an inspection priority farm list based on recent AAFM referrals, EPA data and feedback, and other information available
  - Conduct 3 Large and 7 Medium farm inspections from the priority list during 2025 field season