

S.100 and Agricultural Water Quality

R. Scott Sanderson
Staff Attorney, Director of Farm & Food
Conservation Law Foundation

March 14, 2025



Conservation
Law Foundation

Vermont farm regulation violates the Clean Water Act.



“ANR’s program operations are clearly failing to meet the requirements of the Clean Water Act.”



REGION 1 ADMINISTRATOR

BOSTON, MA 02109

September 9, 2024

Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Committee

Dear Secretary Moore,

On March 16, 2022, EPA Region 1 received a joint petition from the Conservation Law Foundation (“CLF”), the Vermont Natural Resources Council (“VNRC”), and the Lake Champlain Committee (“LCC”) (collectively “Petitioners”) pursuant to 40 C.F.R. §§ 123.63, 123.64. The Petitioners raised issues with Vermont’s administration of the State’s National Pollutant Discharge Elimination System (“NPDES”) program as it relates to the regulation of the State’s Concentrated Animal Feeding Operations (“CAFOs”) and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont’s NPDES program, which is administered by the Vermont Agency of Natural Resources (“ANR”).

Region 1 recognizes that two agencies, ANR and the Agency of Agriculture, Food, and Markets (“AAFAM”), each have a role in the regulation of agriculture water pollution in Vermont. Region 1 also recognizes AAFM’s critical role in providing support to the agricultural community in Vermont: agriculture is an important part of the state’s economy and is integral to Vermont’s identity. We also know that like the tourism, food and beverage, and outdoor recreation sectors, the agriculture sector depends on clean water for its operations and success. We understand the importance of AAFM’s mission and role in Vermont, *and* it is also vital to recognize that the current division of responsibilities between ANR and AAFM is interfering with the regulation of Vermont’s CAFOs and preventing Vermont from adequately addressing agricultural water quality.

1 Clean Water Act: Delegation and De-delegation

2 Agricultural Water Quality Regulation in Vermont Today

3 The Ongoing De-delegation Process

4 Proposed Resolutions: S.100 and H.146

5 Process

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What is delegation/program approval?

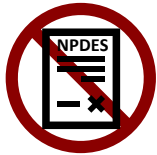
- EPA may authorize state agencies to administer the Clean Water Act in EPA's place.
- Approved state programs must “at all times” meet the minimum requirements established by the Clean Water Act.
- EPA is required to monitor approved state programs for compliance on an ongoing basis.



What is de-delegation/program withdrawal?



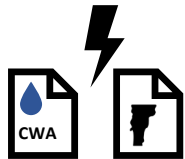
If a delegated state program no longer complies with the Clean Water Act, EPA can take back its authority.



Failure to issue required permits.



Failure to inspect and monitor regulated entities.



Conflict between state and federal regulations.



Failure to enforce when violations occur.

How does the de-delegation process work?

EPA receives a petition. (Often.)



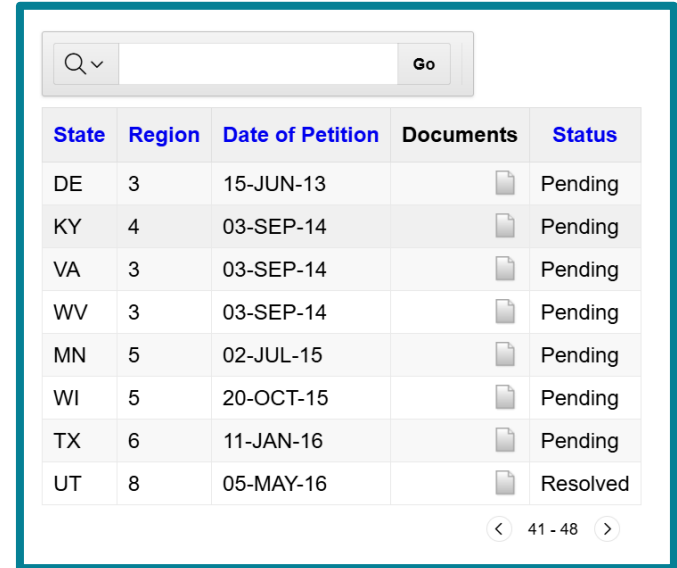
EPA investigates and makes findings.



State corrects deficiencies, **including through legislation**. This can take time, but EPA looks for diligent progress.



EPA dismisses the petition.



The screenshot shows a table with the following columns: State, Region, Date of Petition, Documents, and Status. The table contains 8 rows of data. At the bottom right of the table, there are navigation arrows and the text '41 - 48'.

State	Region	Date of Petition	Documents	Status
DE	3	15-JUN-13		Pending
KY	4	03-SEP-14		Pending
VA	3	03-SEP-14		Pending
WV	3	03-SEP-14		Pending
MN	5	02-JUL-15		Pending
WI	5	20-OCT-15		Pending
TX	6	11-JAN-16		Pending
UT	8	05-MAY-16		Resolved

<https://www.epa.gov/npdes/npdes-state-program-withdrawal-petitions>

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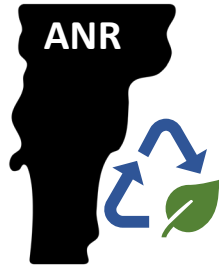
5 Process

Two delegations of authority underlie Vermont's program.



10 V.S.A. § 1259(i)

Vermont divides authority between ANR and AAFM.



- Point source pollution.
- NPDES permits for CAFOs.

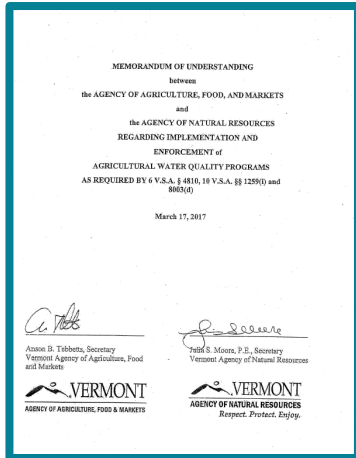
No farm in Vermont has a NPDES permit.



- Nonpoint source pollution on farms.
- State LFO, MFO, and CSFO programs.
- Required Agricultural Practices.

Vermont's program depends on close collaboration.

Challenge: How can ANR control agricultural point source pollution if AAFM conducts the majority of on-farm inspections?



AAFM inspects.



AAFM immediately refers potential point source discharges to ANR and promptly documents.



ANR investigates whether there is a Clean Water Act violation. If so, ANR leads enforcement and permitting.

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3 **The Ongoing De-delegation Process**

4 Proposed Resolutions: S.100 and H.146

5 Process

De-delegation has a long history in Vermont.

Legislation



EPA Investigation

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Stephan Puklin
Director, Office of Emergency Protection
USEPA Region 1
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Boston, Massachusetts 02114-2023

VIA REGISTER MAIL & ELECTRONIC MAIL:

PEHION FOR WITHDRAWAL OF THE NATIONAL ELIMINATION SYSTEM PROGRAM DELEGATION

Conservation Law Foundation (CLF) hereby petitions the Protection Agency (EPA) to initiate proceedings pursuant to its implementing regulations at 40 C.F.R. §§ 123.63, 123.65, and 123.66 to withdraw the National Elimination System (NES) program in accordance with the Clean Air Act's remedial action provisions. Related to agency work that the CWA, failed to require concentrated animal feeding operations and implement an anti-degradation implementation

2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF REGIONAL ADMINISTRATION AND PUBLIC AFFAIRS
1200 Pennsylvania Avenue, NW
Washington, DC 20460

DEC 13 2013

Laura Murphy
Administrative
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
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Regional Administrator
USEPA Region 1
1 Congress Street, Suite 1100
Boston, MA 02109-3912

Carl DeJor
Regional Counsel
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RE: Petition to withdraw approval for Vermont to administer the NPDES program

Dear Mr. Murphy and Mr. Langston:

On August 14, 2008, the Vermont Law School Environmental and Natural Resources Law Clinic ("ENRLC") filed a petition with the United States Environmental Protection Agency ("EPA") to withdraw the National Elimination System ("NES") program in accordance with the Clean Air Act's remedial action provisions. Subsequently, on 2010 (initially) and in 2011 (ultimately) referred to be withdrawable in the "Historical". The Petition asked EPA to withdraw approval for the State of Vermont to administer the National Freshwater Discharge Elimination System ("NFDES") program, based on a number of allegations related to the implementation and enforcement of the program. EPA Region 1 conducted an informal investigation of the various issues raised in the Petition and the relevant administrative documents. On 11/19/13, the investigation EPA identified the principal issues in the Petition of concern to EPA to include public participation, implemented enforcement program, significant non-compliance policy, concentrated animal feeding operations permitting and enforcement, anti-degradation adoption of state specific used of effluent limits to protect the "uses of Waters" management program, water quality, and the significant non-compliance policy implementation.

The discussion among the parties submitted to the Interim Response and Corrective Action Plan ("Interim Response") EPA use of ENRLC, CLF, and CWA. On July 18, 2013, a copy of which is attached to your correspondence. The Interim Response provides an analysis of the issues raised in the Petition, and the comments that the Petitioners have submitted. The Interim Response and Corrective Action Plan. With the completion of this interim, EPA believes that DEC has adequately addressed all but one of the issues identified by the Petition. Regarding the remaining one of the allegations raised in the Petition, DEC has implemented a series of measures to improve its ability to follow public participation, significant non-compliance program, significant non-compliance, and enforcement program.

2013

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Ken Small
Director, Water Division
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VIA ELECTRONIC MAIL:

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

Conservation Law Foundation ("CLF"), Vermont Natural Resources Council ("VNRC"), and Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") hereby petition the United States Environmental Protection Agency ("EPA") to initiate proceedings pursuant to Clean Air Act ("CAA") to withdraw the National Elimination System ("NES") program in accordance with the Clean Air Act's remedial action provisions. Related to agency work that the CWA, failed to require concentrated animal feeding operations and implement an anti-degradation implementation

2022

REGION 1 ADMINISTRATOR
BOSTON, MA 02109
September 9, 2024

Julia Moore
Secretary
Vermont Agency of Natural Resources
1 Montpelier Life Drive, Suite 2
Montpelier, VT 05620-3901

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy

Dear Secretary Moore,

On March 16, 2022, EPA Region 1 received joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") pursuant to 40 C.F.R. §§ 123.63, 123.64. The Petitioners stated issues with Vermont's administration of the State's National Pollutant Discharge Elimination System ("NPDES") program in relation to the regulation of the State's Concentrated Animal Feeding Operations ("CAFOs") and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("ANR").

Region 1 recognizes that the agencies, ANR and the Agency of Agriculture, Food, and Markets ("AFFM") each have a role in the regulation of agriculture water pollution in Vermont. Region 1 also recognizes ANR's critical role in providing support to the agricultural community in Vermont; agriculture is an important part of the state's economy and is integral to Vermont's identity. We also know that like the tourism, food and beverage, and outdoor recreation sectors, the agriculture sector depends on clean water for its operations and success. We understand the importance of ANR's mission and role in Vermont, and it is vital to recognize that the current division of responsibilities between ANR and AFFM is interfering with the regulation of Vermont's CAFOs and preventing Vermont from adequately addressing agricultural water quality.

2024

VERMONT
Vermont's Natural Resources
www.vermont.gov

STATE OF VERMONT
Agency of Natural Resources
1 Montpelier Life Drive, Suite 2
Montpelier, VT 05620-3901

October 8, 2024

Quinn M. Capri, Administrator
EPA Region 1, Suite 1100
Boston, MA 02109-3912

Dear Mr. Administrator:

Thank you for the Agency of Natural Resources Joint Corrective Action Plan. The Agency of Natural Resources ("ANR") requests that the United States Environmental Protection Agency ("EPA") take corrective action or withdraw its authorization of Vermont's National Pollutant Discharge Elimination System ("NPDES") program in accordance with the Clean Air Act's remedial action provisions. Related to agency work that the CWA, failed to require concentrated animal feeding operations and implement an anti-degradation implementation

ANR is committed to implementing changes to the Vermont CAFO program to address the concerns identified in the Petition. We request that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("ANR").

Please feel free to reach out to our team to discuss any of the details in the Corrective Action Plan. Sincerely,

Julia Moore, P.E., Secretary
Vermont Agency of Natural Resources

cc: Theresa Murphy, Deputy Director EPA Region 1 Water Division
EPA Region 1, Vermont Office of Water Quality
Laura Cook, Director, ANR
Laurie Ryan, Director, ANR
Steve Cook, General Counsel, ANR
Paul Johnson, Director, ANR
John Richardson, Commissioner, DEC

2024

REGION 1 ADMINISTRATOR
BOSTON, MA 02109
September 9, 2024

Julia Moore
Secretary
Vermont Agency of Natural Resources
1 Montpelier Life Drive, Suite 2
Montpelier, VT 05620-3901

RE: Joint Petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy

Dear Secretary Moore,

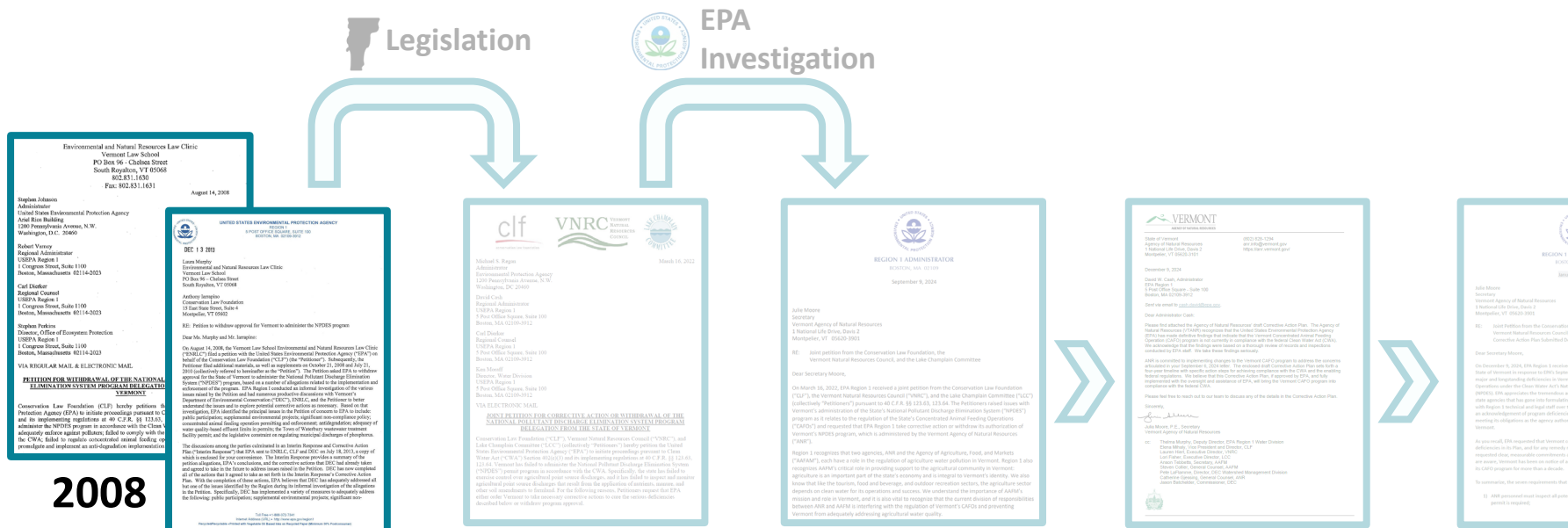
On November 9, 2024, EPA Region 1 received a joint petition to withdraw approval for Vermont to administer the NPDES program in accordance with the Clean Air Act's remedial action provisions. Related to agency work that the CWA, failed to require concentrated animal feeding operations and implement an anti-degradation implementation

ANR is committed to implementing changes to the Vermont CAFO program to address the concerns identified in the Petition. We request that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("ANR").

In summary, the seven requests that ANR proposed would impact all permittees to be impacted.

2024

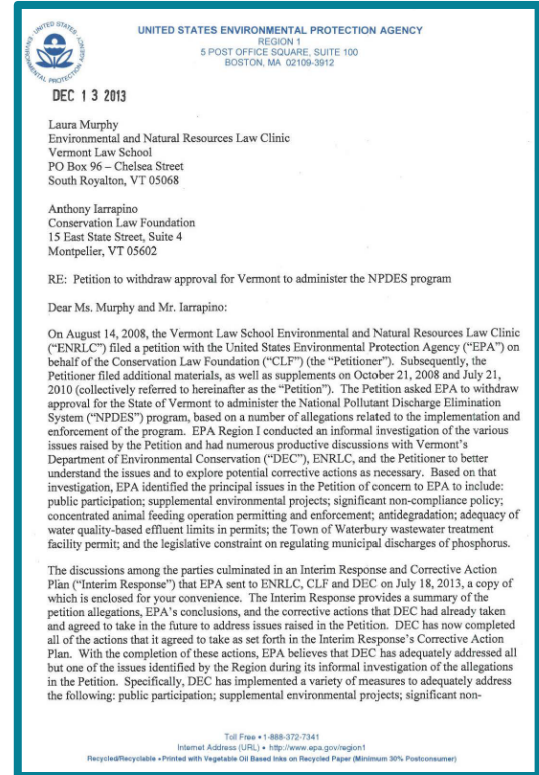
EPA required Vermont to fix its CWA program in 2013.



EPA found Vermont's CAFO program inadequate in 2013.



“[ANR] has never issued a NPDES permit to any CAFO in Vermont and has not adequately regulated a sector of dischargers that are subject to the NPDES program.”



CLF, VNRC, and LCC filed a de-delegation petition in 2022.

Legislation



EPA Investigation

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August 14, 2008

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VIA REGULAR MAIL & ELECTRONIC MAIL

PETITION FOR WITHDRAWAL OF THE NATIONAL ELIMINATION SYSTEM PROGRAM DELEGATION

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clf VNRC VERMONT NATURAL RESOURCES COUNCIL

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Ken Skoff
 Director, Water Division
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VIA ELECTRONIC MAIL

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

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2022

REGION 1 ADMINISTRATOR
 SEPTEMBER 9, 2024

John O'Keefe
 Secretary
 Vermont Agency of Natural Resources
 1 National Life Drive, Suite 2
 Montpelier, VT 05602-3001

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy.

Dear Secretary O'Keefe:

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VERMONT
 Agency of Natural Resources
 1 National Life Drive, Suite 2
 Montpelier, VT 05602-3001

SEPTEMBER 9, 2024

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2024

EPA conducted a 2-year independent investigation.

Legislation



EPA Investigation

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April 14, 2008

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VIA REGISTERED MAIL & ELECTRONIC MAIL

REASON FOR WITHDRAWAL OF THE NATIONAL ELIMINATION SYSTEM PROGRAM DELEGATION

Conservation Law Foundation (CLF) hereby notifies the Protection Agency (EPA) to initiate proceedings pursuant to its implementing regulations at 40 C.F.R. §§ 123.65, 123.66, and the NPDES program in accordance with the Clean Water Act (CWA) and related regulations. CLF hereby notifies the CWA, BAF, and related regulations. CLF hereby notifies the CWA, BAF, and related regulations. CLF hereby notifies the CWA, BAF, and related regulations.

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DEC 1 2013

Laura Murphy
 Administrator
 Environmental and Natural Resources Law Clinic
 Vermont Law School
 PO Box 96 - Chelsea Street
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via electronic mail

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clf VNRC VERMONT NATURAL RESOURCES COUNCIL

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VIA ELECTRONIC MAIL

NOTICE OF WITHDRAWAL OF THE NATIONAL ELIMINATION SYSTEM PROGRAM DELEGATION FROM THE STATE OF VERMONT

Conservation Law Foundation (CLF), Vermont Natural Resources Council (VNRC), and Lake Champlain Conservancy (LCC) (collectively "Petitioners") hereby petition the United States Environmental Protection Agency ("EPA") to initiate proceedings pursuant to 40 C.F.R. §§ 123.65, 123.66, and the NPDES program in accordance with the Clean Water Act (CWA) and related regulations. CLF hereby notifies the CWA, BAF, and related regulations. CLF hereby notifies the CWA, BAF, and related regulations.

2022

REGION 1 ADMINISTRATOR
 BOSTON, MA 02109

September 9, 2024

John O'Neil
 Secretary
 Vermont Agency of Natural Resources
 1 National Life Drive, Suite 2
 Montpelier, VT 05602-0001

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy.

Dear Secretary O'Neil:

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Region 1 recognizes that the Agencies, ANR and the Agency of Agriculture, Food, and Markets ("AFM") each have a role in the regulation of agricultural water pollution in Vermont. Region 1 also recognizes AFM's critical role in providing support to the agricultural community in Vermont. Agriculture is an important part of the state's economy and is integral to Vermont's identity. We also know that like the tourism, food and beverage, and outdoor recreation sectors, the agriculture sector plays an important role in the state's economy and identity. We are committed to the protection of water quality and public health. We are committed to the protection of water quality and public health. We are committed to the protection of water quality and public health.

2024

VERMONT
 STATE OF VERMONT
 Agency of Natural Resources
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 Montpelier, VT 05602-0001

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 802.249.6200
 802.249.6200

October 8, 2024

David M. Cook, Administrator
 EPA Region 1
 1 Congress Street, Suite 1100
 Boston, MA 02114-2023

Dear Administrator Cook:

Reason for the withdrawal of the National Elimination System ("NES") program from the State of Vermont is the State's National Pollutant Discharge Elimination System ("NPDES") program in its waters in the regulation of the State's Conventional Animal Feeding Operations ("CAFOs") and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("VARN").

Region 1 recognizes that the Agencies, ANR and the Agency of Agriculture, Food, and Markets ("AFM") each have a role in the regulation of agricultural water pollution in Vermont. Region 1 also recognizes AFM's critical role in providing support to the agricultural community in Vermont. Agriculture is an important part of the state's economy and is integral to Vermont's identity. We also know that like the tourism, food and beverage, and outdoor recreation sectors, the agriculture sector plays an important role in the state's economy and identity. We are committed to the protection of water quality and public health. We are committed to the protection of water quality and public health. We are committed to the protection of water quality and public health.

2024

REGION 1 ADMINISTRATOR
 BOSTON, MA 02109

October 8, 2024

John O'Neil
 Secretary
 Vermont Agency of Natural Resources
 1 National Life Drive, Suite 2
 Montpelier, VT 05602-0001

Dear Secretary O'Neil:

On March 16, 2022, EPA Region 1 received a joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Conservancy ("LCC") (collectively "Petitioners") pursuant to 40 C.F.R. §§ 123.65, 123.66. The Petitioners request leave with Vermont's administration of the State's National Pollutant Discharge Elimination System ("NPDES") program in its waters in the regulation of the State's Conventional Animal Feeding Operations ("CAFOs") and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("VARN").

Region 1 recognizes that the Agencies, ANR and the Agency of Agriculture, Food, and Markets ("AFM") each have a role in the regulation of agricultural water pollution in Vermont. Region 1 also recognizes AFM's critical role in providing support to the agricultural community in Vermont. Agriculture is an important part of the state's economy and is integral to Vermont's identity. We also know that like the tourism, food and beverage, and outdoor recreation sectors, the agriculture sector plays an important role in the state's economy and identity. We are committed to the protection of water quality and public health. We are committed to the protection of water quality and public health. We are committed to the protection of water quality and public health.

2024

EPA responded to the petition in September 2024.

Legislation



EPA Investigation

Environmental and Natural Resources Law Clinic
 Vermont Law School
 PO Box 96 - Chelsea Street
 South Royalton, VT 05588
 802.831.1630
 Fax: 802.831.1631

Stephen Adams
 Administrator
 United States Environmental Protection Agency
 Ariel Rios Building
 1200 Pennsylvania Avenue, N.W.
 Washington, D.C. 20460

Robert Verney
 Regional Administrator
 USEPA Region 1
 1 Congress Street, Suite 1100
 Boston, Massachusetts 02114-2023

Carl DeJor
 Regional Counsel
 USEPA Region 1
 1 Congress Street, Suite 1100
 Boston, Massachusetts 02114-2023

Stephan Puklin
 Director, Office of Enforcement Protection
 USEPA Region 1
 1 Congress Street, Suite 1100
 Boston, Massachusetts 02114-2023

VIA RICERCA MAIL & ELECTRONIC MAIL

PEITION FOR WITHDRAWAL OF THE NATIONAL ELIMINATION SYSTEM PROGRAM DELEGATION

Conservation Law Foundation (CLF) hereby petitions the Protection Agency (EPA) to initiate proceedings pursuant to CWA and its implementing regulations at 40 C.F.R. §§ 123.63, 123.65, and 123.66 to withdraw the National Elimination System (NES) program from the State of Vermont in accordance with the Clean Water Act (CWA) and its implementing regulations. CLF also requests that the CWA, RCRA, and its implementing regulations be amended to require the EPA to initiate proceedings to withdraw the NES program from the State of Vermont in accordance with the Clean Water Act (CWA) and its implementing regulations. CLF also requests that the CWA, RCRA, and its implementing regulations be amended to require the EPA to initiate proceedings to withdraw the NES program from the State of Vermont in accordance with the Clean Water Act (CWA) and its implementing regulations.

2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 OFFICE OF PUBLIC AFFAIRS, SUITE 100
 WASHINGTON, DC 20460

DEC 1 2013

Laura Murphy
 Administrator
 Environmental and Natural Resources Law Clinic
 Vermont Law School
 PO Box 96 - Chelsea Street
 South Royalton, VT 05588

Julianne Delaney
 Conservation Law Foundation
 17 East Street, Suite 4
 Montpelier, VT 05602

RE: Petition to withdraw approval for Vermont to administer the NPDES program

Dear Ms. Murphy and Mr. Langston:

On August 14, 2008, the Vermont Law School Environmental and Natural Resources Law Clinic ("ENRLC") filed a petition with the United States Environmental Protection Agency ("EPA") to withdraw the National Elimination System ("NES") program from the State of Vermont. The petition was filed in accordance with the Clean Water Act ("CWA") and its implementing regulations. The petition requested that the EPA initiate proceedings to withdraw the NES program from the State of Vermont in accordance with the CWA and its implementing regulations. The petition also requested that the EPA initiate proceedings to withdraw the NES program from the State of Vermont in accordance with the CWA and its implementing regulations.

2013

clf VNRC VERMONT NATURAL RESOURCES COUNCIL

Michael S. Ryan
 Administrator
 Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W.
 Washington, DC 20460

David Cook
 Regional Administrator
 USEPA Region 1
 1 Congress Street, Suite 1100
 Boston, MA 02109-3912

Carl DeJor
 Regional Counsel
 USEPA Region 1
 1 Congress Street, Suite 1100
 Boston, MA 02109-3912

Ken Skoff
 Director, Water Division
 USEPA Region 1
 1 Congress Street, Suite 1100
 Boston, MA 02109-3912

VIA ELECTRONIC MAIL

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

Conservation Law Foundation ("CLF"), Vermont Natural Resources Council ("VNRC"), and Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") hereby petition the United States Environmental Protection Agency ("EPA") to initiate proceedings pursuant to the Clean Water Act ("CWA") and its implementing regulations at 40 C.F.R. §§ 123.63, 123.65, and 123.66 to withdraw the National Elimination System ("NES") program from the State of Vermont in accordance with the CWA. Specifically, we urge you to initiate proceedings to withdraw the NES program from the State of Vermont in accordance with the CWA and its implementing regulations. We also urge you to initiate proceedings to withdraw the NES program from the State of Vermont in accordance with the CWA and its implementing regulations.

2022

REGION 1 ADMINISTRATOR
 BOSTON, MA 02109
 September 9, 2024

John Moore
 Secretary
 Vermont Agency of Natural Resources
 1 National Life Drive, Suite 2
 Montpelier, VT 05620-3001

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy

Dear Secretary Moore,

On March 16, 2022, EPA Region 1 received a joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") pursuant to 40 C.F.R. §§ 123.63, 123.65, and 123.66. The petitioners stated their intent to petition the Administrator of the State's Concentrated Animal Feeding Operations ("CAFO") program and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("VARNR").

2024

VERMONT
 STATE OF VERMONT
 Agency of Natural Resources
 1 National Life Drive, Suite 2
 Montpelier, VT 05620-3001

0923.076.0204
 802.249.6200 ext 200
 802.249.6200 ext 200
 802.249.6200 ext 200

October 9, 2024

Quinn M. Cunniff, Administrator
 Agency of Natural Resources
 1 National Life Drive, Suite 2
 Montpelier, VT 05620-3001

Dear Administrator Cunniff:

On September 9, 2024, EPA Region 1 received a joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") pursuant to 40 C.F.R. §§ 123.63, 123.65, and 123.66. The petitioners stated their intent to petition the Administrator of the State's Concentrated Animal Feeding Operations ("CAFO") program and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("VARNR").

2024

REGION 1 ADMINISTRATOR
 BOSTON, MA 02109
 September 9, 2024

John Moore
 Secretary
 Vermont Agency of Natural Resources
 1 National Life Drive, Suite 2
 Montpelier, VT 05620-3001

Dear Secretary Moore,

On September 9, 2024, EPA Region 1 received a joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") pursuant to 40 C.F.R. §§ 123.63, 123.65, and 123.66. The petitioners stated their intent to petition the Administrator of the State's Concentrated Animal Feeding Operations ("CAFO") program and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("VARNR").

2024

Vermont farm regulation violates the Clean Water Act.



“ANR’s program operations are clearly failing to meet the requirements of the Clean Water Act.”



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

September 9, 2024

Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

RE: Joint petition from the Conservation Law Foundation, the
Vermont Natural Resources Council, and the Lake Champlain Committee

Dear Secretary Moore,

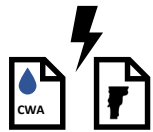
On March 16, 2022, EPA Region 1 received a joint petition from the Conservation Law Foundation (“CLF”), the Vermont Natural Resources Council (“VNRC”), and the Lake Champlain Committee (“LCC”) (collectively “Petitioners”) pursuant to 40 C.F.R. §§ 123.63, 123.64. The Petitioners raised issues with Vermont’s administration of the State’s National Pollutant Discharge Elimination System (“NPDES”) program as it relates to the regulation of the State’s Concentrated Animal Feeding Operations (“CAFOs”) and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont’s NPDES program, which is administered by the Vermont Agency of Natural Resources (“ANR”).

Region 1 recognizes that two agencies, ANR and the Agency of Agriculture, Food, and Markets (“AAFAM”), each have a role in the regulation of agriculture water pollution in Vermont. Region 1 also recognizes AAFAM’s critical role in providing support to the agricultural community in Vermont: agriculture is an important part of the state’s economy and is integral to Vermont’s identity. We also know that like the tourism, food and beverage, and outdoor recreation sectors, the agriculture sector depends on clean water for its operations and success. We understand the importance of AAFAM’s mission and role in Vermont, *and* it is also vital to recognize that the current division of responsibilities between ANR and AAFAM is interfering with the regulation of Vermont’s CAFOs and preventing Vermont from adequately addressing agricultural water quality.

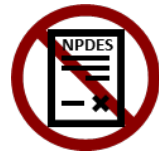
Vermont farm regulation violates the Clean Water Act.



Inadequate monitoring and enforcement.



Problems with state regulations.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

September 9, 2024

Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

RE: Joint petition from the Conservation Law Foundation, the
Vermont Natural Resources Council, and the Lake Champlain Committee

Dear Secretary Moore,

On March 16, 2022, EPA Region 1 received a joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Committee ("LCC") (collectively "Petitioners") pursuant to 40 C.F.R. §§ 123.63, 123.64. The Petitioners raised issues with Vermont's administration of the State's National Pollutant Discharge Elimination System ("NPDES") program as it relates to the regulation of the State's Concentrated Animal Feeding Operations ("CAFOs") and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("ANR").

Region 1 recognizes that two agencies, ANR and the Agency of Agriculture, Food, and Markets ("AAFAM"), each have a role in the regulation of agriculture water pollution in Vermont. Region 1 also recognizes AAFAM's critical role in providing support to the agricultural community in Vermont: agriculture is an important part of the state's economy and is integral to Vermont's identity. We also know that like the tourism, food and beverage, and outdoor recreation sectors, the agriculture sector depends on clean water for its operations and success. We understand the importance of AAFAM's mission and role in Vermont, *and* it is also vital to recognize that the current division of responsibilities between ANR and AAFAM is interfering with the regulation of Vermont's CAFOs and preventing Vermont from adequately addressing agricultural water quality.

Vermont farm regulation violates the Clean Water Act.



Inadequate monitoring and enforcement.



Problems with state regulations.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



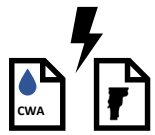
REGION 1 ADMINISTRATOR
BOSTON, MA 02109

“In general, ANR fails to conduct sufficient and timely inspections and fails to take appropriate enforcement actions to deter or mitigate violations. **This is because ANR largely relies on AAFM to be their eyes and ears on the ground.** . . . This arrangement often breaks down.”

Vermont farm regulation violates the Clean Water Act.



Inadequate monitoring and enforcement.



Problems with state regulations.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



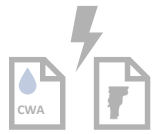
REGION 1 ADMINISTRATOR
BOSTON, MA 02109

“Existing ANR CAFO regulations are not consistent with the 2008 Federal CAFO regulations in numerous respects.”

Vermont farm regulation violates the Clean Water Act.



Inadequate monitoring and enforcement.



Problems with state regulations.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



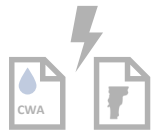
REGION 1 ADMINISTRATOR
BOSTON, MA 02109

“There is ample evidence in the record that **farms are discharging pollutants . . . ; thus, these farms require NPDES permits, which ANR is failing to issue** notwithstanding a commitment . . . which resolved the 2008 Petition.”

Vermont farm regulation violates the Clean Water Act.



Inadequate monitoring and enforcement.



Problems with state regulations.



Failure to require NPDES permits on CAFOs.



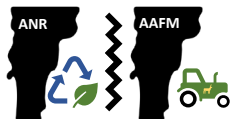
Failure to require proper manure management.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

“Insufficient review and oversight of NMPs is resulting in **farms applying manure at inappropriate application rates, in fields that are unsuitable . . .** and in locations that are not sufficiently protective” of water quality.

EPA identified two causes of the program's failure.



The “division of Vermont’s agricultural water quality program between ANR and AAFM”.

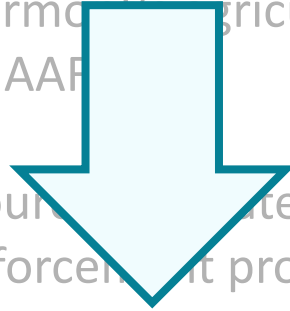


“[I]nsufficient resources allocated to administer ANR’s CAFO permitting and enforcement program.”

EPA outlined two practical solutions.



The “division of Vermont’s agricultural water quality program between ANR and AAFM



“[I]nsufficient resources are allocated to administer ANR’s CAFO permitting and enforcement program.”



“The only viable option of those presented . . . is . . . consolidated agricultural regulatory authority with ANR.”



“Vermont must provide ANR with sufficient resources to administer the NPDES program to meet CWA requirements.”

ANR responded with a draft corrective action plan.

EPA Investigation

Michael S. Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

David Cook
Regional Administrator
USEPA Region 1
1 New Office Square, Suite 300
Boston, MA 02109-3912

Rad Decker
Regional Counsel
USEPA Region 1
1 New Office Square, Suite 300
Boston, MA 02109-3912

Ken Knoff
Deputy Water Division
USEPA Region 1
1 New Office Square, Suite 300
Boston, MA 02109-3912

VIA ELECTRONIC MAIL

NOTE: PERMIT FOR CORRECTIVE ACTION OR WITHDRAWAL OF THE NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PROGRAM DEREGULATION FROM THE STATE OF VERMONT.

Conservation Law Foundation (CLF), Vermont Natural Resources Council (VNRC), and Lake Champlain Conservancy (LCC) (collectively "Petitioners") hereby petition the United States Environmental Protection Agency ("EPA") to initiate proceedings pursuant to Clean Water Act ("CWA"), Section 402(d) and to implementing regulations at 40 C.F.R. §§ 121.45, 121.46, and 121.47. Vermont has failed to submit for the National Pollution Discharge Elimination System ("NPDES") permit program to a discharge with the CWA. Specifically, the use has failed to submit for an NPDES permit for agricultural point source discharges with 100 lbs/day or more of agricultural point source discharges per acre from the application of fertilizers, 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 identified herein or withdraw program approval.

2022

REGION 1 ADMINISTRATOR
BOSTON, MA 02109
September 9, 2024

Jill Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3003

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy

Dear Secretary Moore,

On March 16, 2022, EPA Region 1 received a joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") pursuant to 40 C.F.R. §§ 121.45, 121.46. The Petitioners raised issues with Vermont's administration of the State's National Pollution Discharge Elimination System ("NPDES") program as it relates to the regulation of the State's Concentrated Animal Feeding Operations ("CAFOs") and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("ANR").

Region 1 recognizes that two agencies, ANR and the Agency of Agriculture, Food, and Markets ("AAFM"), each have a role in the regulation of agriculture water pollution in Vermont. Region 1 also recognizes AAFM's critical role in providing support to the agricultural community in Vermont; agriculture is an important part of the state's economy and is integral to Vermont's identity. We also know that like the burmese, food and beverage, and outdoor recreation sectors, the agriculture sector depends on clean water for its operations and customers. We understand the importance of AAFM's mission and role in Vermont, and it is also vital to recognize that the current division of responsibilities between ANR and AAFM is interfering with the regulation of Vermont's CAFOs and preventing Vermont from adequately addressing agricultural water quality.

2024

REGION 1 ADMINISTRATOR
BOSTON, MA 02109
October 9, 2024

David C. Cook, Administrator
EPA Region 1
1 National Life Drive, Suite 100
Boston, MA 02109-3912

Dear Administrator Cook:

As requested by the Agency of Natural Resources' draft Corrective Action Plan, the Agency of Natural Resources ("ANR") notifies that the United States Environmental Protection Agency ("EPA") has issued a draft corrective action plan for the Vermont Concentrated Animal Feeding Operation ("CAFO") program to be submitted in compliance with the Clean Water Act ("CWA"). We acknowledge that the Agency was notified of a change in terms of ownership and responsibility for the draft plan. We are in receipt of the draft plan.

ANR is committed to implementing changes to the Vermont CAFO program to address the concerns identified in the draft corrective action plan. The current CAFO program has been in place for a 10-year period and we would like to work with EPA and the existing NPDES program to ensure that the corrective action plan, if approved by EPA, will fully implement the changes and ensure that EPA will bring the Vermont CAFO program into compliance with the CWA.

Please feel free to reach out to our team to discuss any of the details in the Corrective Action Plan.

Sincerely,
Jill Moore, P.E., Secretary
Vermont Agency of Natural Resources

cc: Thelma Maddy, Deputy Director, EPA Region 1 Water Division
Chris Miley, Unit Manager and Deputy CWF
Laurie Decker, Executive Director, VNRC
Jeff Farnham, Executive Director, LCC
John Decker, Executive Director, CLF
Steven Cohen, General Counsel, AAFM
John Decker, General Counsel, ANR
Catherine Givens, General Counsel, ANR
John Decker, Commissioner, CFC

2024

REGION 1 ADMINISTRATOR
BOSTON, MA 02109
November 27, 2024

Jill Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Suite 2
Montpelier, VT 05602-3003

RE: Joint petition from the Conservation Law Foundation, Vermont Natural Resources Council, and Lake Champlain Conservancy, Corrective Action Plan Submitted December 9, 2024

Dear Secretary Moore,

On December 9, 2024, EPA Region 1 received a Corrective Action Plan ("CAP") submitted by the State of Vermont in response to EPA's September 9, 2024, letter in which we identified serious and longstanding deficiencies in Vermont's regulation of Concentrated Animal Feeding Operations under the Clean Water Act's National Pollution Discharge Elimination Program ("NPDES"). EPA appreciates the responsible, prompt, and good faith communication among state agencies that has gone into formulating the Plan, as well as Vermont's close collaboration with Region 1 to research and draft the plan over the past year and half. Our Plan represents not only an acknowledgment of program deficiencies, but also a positive step toward remedial actions and obligations as the agency undertakes the CAP to address the NPDES program in Vermont.

As you recall, EPA requested that Vermont comprehensively address each of the seven deficiencies in the Plan, and that you identify ongoing or planned compliance to implement, we requested that Vermont communicate and collaborate along the path to compliance, as you are aware, Vermont has been in a state of non-compliance since the initial deficiencies in the CAP program for more than a decade.

We continue to have the same requirements that EPA requested for the corrective action plan.

If ANR proposed next steps require parallel, jurisdictional forms to determine if a CAP is required to respond.

2025

S.100

H.146

Misc. Ag.

ANR

EPA did not approve ANR's draft plan.



EPA Investigation

Michael S. Regan
 Administrator
 Environmental Protection Agency
 1200 Pennsylvania Avenue, N.W.
 Washington, DC 20460

David Cook
 Regional Administrator
 USEPA Region 1
 1 Pool Office Square, Suite 100
 Boston, MA 02109-3912

Cal DiStasio
 Regional Counsel
 USEPA Region 1
 1 Pool Office Square, Suite 100
 Boston, MA 02109-3912

Ken Knoff
 Deputy Water Division
 USEPA Region 1
 1 Pool Office Square, Suite 100
 Boston, MA 02109-3912

VIA ELECTRONIC MAIL

NOTE: EPF THRU 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 Conservancy ("LCC" (collectively "Petitioners") hereby petition the United States Environmental Protection Agency ("EPA") to initiate proceedings pursuant to Clean Water Act ("CWA"), Section 402(d) and to implementing regulations at 40 C.F.R. §§ 121.45, 121.46, and 121.47. 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: (1) establish an adequate permit review discharge with final discharge permit and authorize national pollutant review discharge that are done the application of standards, issuance, and other rule amendments to final discharge. For the following reasons, Petitioners request that EPA either order Vermont to take necessary corrective action to cure the serious deficiencies identified herein or withdraw progressive approval.

2022

REGION 1 ADMINISTRATOR
 BOSTON, MA 02109
 September 9, 2024

Julie Moore
 Secretary
 Vermont Agency of Natural Resources
 1 National Life Drive, Davis 2
 Montpelier, VT 05602-3003

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy

Dear Secretary Moore,

On March 16, 2024, EPA Region 1 received a joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") pursuant to 40 C.F.R. §§ 121.45, 121.46. The Petitioners raised issues with Vermont's administration of the State's National Pollutant Discharge Elimination System ("NPDES") program as it relates to the regulation of the State's Concentrated Animal Feeding Operations ("CAFOs") and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("ANR").

Region 1 recognizes that two agencies, ANR and the Agency of Agriculture, Food, and Markets ("AAFM"), each have a role in the regulation of agriculture water pollution in Vermont. Region 1 also recognizes AAFM's critical role in providing support to the agricultural community in Vermont; agriculture is an important part of the state's economy and is integral to Vermont's identity. We also know that like the burmese, food and beverage, and outdoor recreation sectors, the agriculture sector depends on clean water for its operations and success. We understand the importance of AAFM's mission and role in Vermont, and it is also vital to recognize that the current division of responsibilities between ANR and AAFM is interfering with the regulation of Vermont's CAFOs and preventing Vermont from adequately addressing agricultural water quality.

2024

STATE OF VERMONT
 2025 FEB 12 PM
 BY: JMM/vermont.gov
 10:56 AM - Vermont.gov

October 9, 2024
 David C. Cook, Administrator
 EPA Region 1
 1 Pool Office Square, Suite 100
 Boston, MA 02109-3912

Dear Mr. Administrator:

Thank you for the Agency of Natural Resources' draft Corrective Action Plan. The Agency of Natural Resources ("ANR") notifies that the United States Environmental Protection Agency ("EPA") has issued a final order finding that Vermont's National Pollutant Discharge Elimination System ("NPDES") program is not currently in compliance with the federal Clean Water Act ("CWA"), and subsequently that the State was in violation of a discharge permit of several water quality standards under the CWA. We are very sorry about that.

ANR is committed to implementing changes to the Vermont CAFO program to address the serious deficiencies in the NPDES program. The current NPDES program has been in place since 1990 and we are aware of our role in ensuring compliance with the CWA and the existing NPDES program. We believe that the Corrective Action Plan ("CAP") and the existing NPDES program will be completed and approved by EPA, and fully implemented with the consent and assistance of EPA, we bring the Vermont CAFO program into compliance with the federal CWA.

Please free to reach out to our team to discuss any of the details in the Corrective Action Plan.

Julie Moore, P. E., Secretary
 Vermont Agency of Natural Resources

cc: Thelma Murphy, Deputy Director, EPA Region 1 Water Division
 Chris Wiley, Deputy Director and Deputy CDF
 Lauren Taylor, Executive Director, VNRC
 Jeff Hines, Executive Director, LCC
 Vermont Natural Resources Council
 Steven Cook, General Counsel, AAFM
 Lisa Gagnon, Director, Vermont Agency of Agriculture, Food, and Forestry
 John Beckwith, Commissioner, CDF

2024

REGION 1 ADMINISTRATOR
 BOSTON, MA 02109
 January 27, 2025

Julie Moore
 Secretary
 Vermont Agency of Natural Resources
 1 National Life Drive, Davis 2
 Montpelier, VT 05602-3003

RE: Joint Petition from the Conservation Law Foundation, Vermont Natural Resources Council, and Lake Champlain Conservancy to Suspend Permit Submittal December 9, 2024

Dear Secretary Moore,

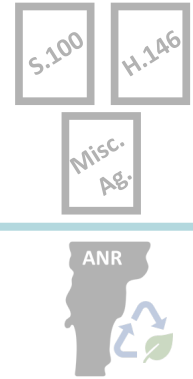
On November 6, 2024, EPA Region 1 received a Corrective Action Plan ("CAP") submitted by the State of Vermont in response to EPA's September 8, 2024, letter in which we identified serious and longstanding deficiencies in Vermont's regulation of Concentrated Animal Feeding Operations under the Clean Water Act's National Pollutant Discharge Elimination Program ("NPDES"). EPA appreciates the tremendous amount of work and internal coordination among state agencies that has gone into formulating the Plan, as well as Vermont's close collaboration with Region 1 technical and legal staff over the past year and half. The Plan represents not only an acknowledgment of program deficiencies, but also a positive step forward toward ANR meeting its obligations as the agency authorized by EPA to administer the NPDES program in Vermont.

As you recall, EPA requested that Vermont comprehensively address each of the seven deficiencies in its Plan, and for any items requiring an extended timeframe to implement, we requested clear, measurable commitments and milestones along the path to completion. As you are aware, Vermont has been an integral part of our acknowledgment sessions, formal debriefs in its CAFO program for more than a decade.

To summarize, the seven requirements that EPA requested for the corrective action plan are:

- ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO permit is required.

2025



EPA did not approve ANR's draft plan.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

RE: Joint Petition from the Conservation Law Foundation,
Vermont Natural Resources Council, and Lake Champlain Committee;
Corrective Action Plan Submitted December 9, 2024

Dear Secretary Moore,

On December 9, 2024, EPA Region 1 received a Corrective Action Plan ("Plan") submitted by the State of Vermont in response to EPA's September 6, 2024, letter in which we identified seven major and longstanding deficiencies in Vermont's regulation of Concentrated Animal Feeding Operations under the Clean Water Act's National Pollutant Discharge Elimination Program (NPDES). EPA appreciates the tremendous amount of work and internal coordination among state agencies that has gone into formulating the Plan, as well as Vermont's close collaboration with Region 1 technical and legal staff over the past year and half. The Plan represents not only an acknowledgement of program deficiencies, but also a positive step forward toward ANR meeting its obligations as the agency authorized by EPA to administer the NPDES program in Vermont.

As you recall, EPA requested that Vermont comprehensively address each of the seven deficiencies in its Plan, and for any remedy requiring an extended timeframe to implement, we requested clear, measurable commitments and milestones along the path to completion. As you are aware, Vermont has been on notice of and has acknowledged serious, facial deficiencies in its CAFO program for more than a decade.

To summarize, the seven requirements that EPA requested for the corrective action plan are:

- 1) ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO permit is required;

Problem #1. ANR's draft plan does not adequately consolidate authority in ANR. It relies too heavily on AAFM.

Problem #2. ANR's plan does not adequately resource ANR.

Problem #3. ANR's plan is missing important details.

EPA did not approve ANR's draft plan.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

“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 . . . **In the history of NPDES regulation in Vermont, the divide between ANR and AAFM has led to confusion and regulatory inaction.**”

Problem #1. ANR's draft plan does not adequately consolidate authority in ANR. It relies too heavily on AAFM.

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Conservation
Law Foundation
clf.org

EPA did not approve ANR's draft plan.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

“EPA is concerned that the proposed staffing levels are not sufficient to complete the tasks required.”

Problem #1. ANR's draft plan does not adequately consolidate authority in ANR. It relies too heavily on AAFM.

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Conservation
Law Foundation
clf.org

EPA did not approve ANR's draft plan.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

“[T]he Corrective Action Plan . . . includes the statement, ‘ANR will determine if the farm needs a NPDES CAFO permit.’ **EPA concurs with this general statement, but it is by itself insufficient.**”

Problem #1. ANR's draft plan does not adequately consolidate authority in ANR. It relies too heavily on AAFM.

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Problem #3. ANR's plan is missing important details.



Conservation
Law Foundation
clf.org

EPA did not approve ANR's draft plan.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

“[T]he Corrective Action Plan . . . includes the statement, ‘ANR will commit to annual reporting and tracking of Key Performance Indicators.’ **The Plan needs to identify relevant interim milestones and deadlines** for completion in order to fully address EPA’s corrective action plan requirement.”

Problem #1. ANR’s draft plan does not adequately consolidate authority in ANR. It relies too heavily on AAFM.

Problem #2. ANR’s plan does not adequately resource ANR.

Problem #3. ANR’s plan is missing important details.



Conservation
Law Foundation
clf.org

EPA required diligent, steady progress, not haste.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

RE: Joint Petition from the Conservation Law Foundation,
Vermont Natural Resources Council, and Lake Champlain Committee;
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To summarize, the seven requirements that EPA requested for the corrective action plan are:

- 1) ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO permit is required;

Revised plan. ANR must submit a revised plan to EPA by March 18th. The plan must include milestones.

ANR should begin work. ANR should begin hiring to bolster its CAFO program and to begin inspections.

Progress on legislation is key. EPA won't approve a plan that doesn't include legislation.

EPA required diligent, steady progress, not haste.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901

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Vermont Natural Resources Council, and Lake Champlain Committee;
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Progress on legislation is key. EPA won't approve a plan that doesn't include legislation.

EPA required diligent, steady progress, not haste.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

“As the State makes progress on necessary legislative and regulatory changes, **there are some actions . . . that [ANR] can take immediate action on,** including obtaining contractor support for conducting inspections and hiring new staff **Such action will continue the progress** toward addressing achieving a CAFO program that is fully compliant with the Clean Water Act.”

Revised plan. ANR must submit a revised plan to EPA by March 18th. The plan must include milestones.

ANR should begin work. ANR should begin hiring to bolster its CAFO program and to begin inspections.

Progress on legislation is key. EPA won't approve a plan that doesn't include legislation.

EPA required diligent, steady progress, not haste.



REGION 1 ADMINISTRATOR
BOSTON, MA 02109

January 17, 2025

“Plan implementation will hinge on legislative action, EPA will need to comprehensively evaluate draft legislation . . . related to the Plan prior to approving it. EPA requests that you **keep us fully apprised of legislative activity and provide draft statutory and regulatory language for EPA’s review when this material becomes available.”**

Revised plan. ANR must submit a revised plan to EPA by March 18th. The plan must include milestones.

ANR should begin work. ANR should begin hiring to bolster its CAFO program and to begin inspections.

Progress on legislation is key. EPA won’t approve a plan that doesn’t include legislation.

EPA required ANR to revise the draft plan by March 18th.



EPA Investigation

2022

Michael S. Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

David Cook
Regional Administrator
EPA Region 1
1 Poo Office Square, Suite 100
Boston, MA 02109-3912

Rafael Duarte
Regional Counsel
EPA Region 1
1 Poo Office Square, Suite 100
Boston, MA 02109-3912

Ken Knoff
Deputy Water Division
EPA Region 1
1 Poo Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC MAIL:

NOTICE OF INTENT 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 Conservancy ("LCC" (collectively "Petitioners") hereby petition the United States Environmental Protection Agency ("EPA") to initiate proceedings pursuant to Clean Water Act ("CWA"), Section 402(d) and its implementing regulations at 40 C.F.R. §§ 121.45, 121.46, and 121.47, Vermont to be listed for withdrawal from the National Pollutant Discharge Elimination System ("NPDES") permit program in accordance with the CWA. Specifically, we seek to discontinue the NPDES permit program for agricultural point source discharges into Lake Champlain and authorize national point source discharges that arise from the application of fertilizers, manure, and other soil amendments to farmland. For the following reasons, Petitioners request that EPA either order Vermont to take necessary corrective action to cure the serious deficiencies identified herein or withdraw progressive approval.

2024

John Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3003

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy

Dear Secretary Moore,

On March 16, 2024, EPA Region 1 received a joint petition from the Conservation Law Foundation ("CLF"), the Vermont Natural Resources Council ("VNRC"), and the Lake Champlain Conservancy ("LCC") (collectively, "Petitioners") pursuant to 40 C.F.R. §§ 121.45, 121.46. The Petitioners raised issues with Vermont's administration of the State's National Pollutant Discharge Elimination System ("NPDES") program as it relates to the regulation of the State's Concentrated Animal Feeding Operations ("CAFOs") and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont's NPDES program, which is administered by the Vermont Agency of Natural Resources ("ANR").

Region 1 recognizes that two agencies, ANR and the Agency of Agriculture, Food, and Markets ("AAFM"), each have a role in the regulation of agriculture water pollution in Vermont. Region 1 also recognizes AAFM's critical role in providing support to the agricultural community in Vermont; agriculture is an important part of the state's economy and is integral to Vermont's identity. We also know that like the burmese, food and beverage, and outdoor recreation sectors, the agriculture sector depends on clean water for its operations and success. We understand the importance of AAFM's mission and role in Vermont, and it is also vital to recognize that the current division of responsibilities between ANR and AAFM is interfering with the regulation of Vermont's CAFOs and preventing Vermont from adequately addressing agricultural water quality.

2024

State of Vermont
Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3003

2023 EPA 1204
anr@epa.gov
988.949.4689 ext 400

December 9, 2024

David C. Capri, Administrator
EPA Region 1
1 National Life Drive, Suite 100
Boston, MA 02109-3912

Dear Mr. Administrator:

Thank you for allowing the Agency of Natural Resources ("ANR") to participate in the Agency of Public Health ("APH") activities that the United States Environmental Protection Agency ("EPA") has been conducting leading to the proposed Concentrated Animal Feeding Operation ("CAFO") program. This program is not currently in compliance with the federal Clean Water Act ("CWA"), and we understand that the Agency was looking to change the scope of research and investigations surrounding the issue.

ANR is committed to implementing changes to the Vermont CAFO program to address the serious deficiencies in the current NPDES program. The current NPDES program has been in place for a few years and we would like to see the program in compliance with the CWA, and the existing NPDES program is not currently in compliance with the CWA, and we are looking to change the program to be in compliance with the CWA and the existing NPDES program. We are looking to change the program to be in compliance with the CWA and the existing NPDES program.

Please feel free to reach out to our team to discuss any of the details in the Corrective Action Plan.

John Moore, P.E., Secretary
Vermont Agency of Natural Resources

cc: Thelma Murphy, Deputy Director, EPA Region 1 Water Division
Christy Miller, Deputy Director, EPA Region 1 Water Division
Laurie Taylor, Executive Director, VNRC
John Moore, Executive Director, LCC
John Moore, Executive Director, LCC
Steven Collier, General Counsel, AAFM
John Moore, Executive Director, Vermont Agency of Natural Resources
John Moore, Executive Director, ANR
John Moore, Executive Director, ANR

2025

REGION 1 ADMINISTRATOR
BOSTON, MA 02109
January 27, 2025

John Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3003

RE: Joint Petition from the Conservation Law Foundation, Vermont Natural Resources Council, and Lake Champlain Conservancy to Withdraw Progressive Approval of the National Pollutant Discharge Elimination System ("NPDES") Program from the State of Vermont

Dear Secretary Moore,

On November 6, 2024, EPA Region 1 received a Corrective Action Plan ("CAP") submitted by the State of Vermont in response to EPA's September 6, 2024, letter in which we identified serious and longstanding deficiencies in Vermont's regulation of Concentrated Animal Feeding Operations under the Clean Water Act's National Pollutant Discharge Elimination Program ("NPDES"). EPA appreciates the tremendous amount of work and internal coordination among state agencies that has gone into formulating the Plan, as well as Vermont's close collaboration with Region 1 technical and legal staff over the past year and half. The Plan represents not only an acknowledgment of program deficiencies, but also a positive step forward toward ANR meeting its obligations as the agency authorized to fully administer the NPDES program in Vermont.

As you recall, EPA requested that Vermont comprehensively address each of the seven deficiencies in this Plan, and that any remedy requiring an extended timeframe to implement, we requested clear, measurable commitments and milestones along the path to completion. As you are aware, Vermont has been an outlier of not fully acknowledging serious, longstanding deficiencies in its CAFO program for more than a decade.

To summarize, the seven requirements that EPA requested for the corrective action plan are:

1) ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO permit is required.

S.100

H.146

Misc. Ag.



... but the legislature has an important role to play.



EPA Investigation

clf **VNRC** VERMONT NATURAL RESOURCES COUNCIL

March 16, 2022

Michael S. Regan
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

David Cook
Regional Administrator
EPA Region 1
1 Piner Office Square, Suite 100
Boston, MA 02109-3912

Rad Disiker
Regional Counsel
EPA Region 1
1 Piner Office Square, Suite 100
Boston, MA 02109-3912

Ken Knoff
Deputy Water Division
EPA Region 1
1 Piner Office Square, Suite 100
Boston, MA 02109-3912

VIA ELECTRONIC MAIL:

NOTE: PLETHORS FOR CORRECTIVE ACTION OR WITHDRAWAL OF THE NATIONALLY POLLUTING DISCHARGE ELIMINATION SYSTEM PROGRAM DELEGATION FROM THE STATE OF VERMONT.

Conservation Law Foundation (“CLF”), Vermont Natural Resources Council (“VNRC”), and Lake Champlain Conservancy (“LCC”) (collectively “Petitioners”) hereby petition the United States Environmental Protection Agency (“EPA”) to initiate proceedings pursuant to Clean Water Act (“CWA”), Section 402(d) and to implementing regulations at 40 C.F.R. §§ 121.61, 121.62, and 121.63. Vermont has failed to administer the National Pollutant Discharge Elimination System (“NPDES”) permit program to accordance with the CWA. Specifically, the state has failed to submit to EPA all required permit notices discharging into Federal Waters, it requires and enforces nationalized point source discharge standards from the application of standards, issuance and other rule amendments to facilities. For the following reasons, Petitioners request that EPA either order Vermont to take necessary corrective actions to cure the serious deficiencies identified herein or withdraw progressive approval:

2022

VERMONT
REGION 1 ADMINISTRATOR
BOSTON, MA 02109
September 9, 2024

John Deery
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3001

RE: Joint petition from the Conservation Law Foundation, the Vermont Natural Resources Council, and the Lake Champlain Conservancy

Dear Secretary Moore,

On March 16, 2022, EPA Region 1 received a joint petition from the Conservation Law Foundation (“CLF”), the Vermont Natural Resources Council (“VNRC”), and the Lake Champlain Conservancy (“LCC”) (collectively, “Petitioners”) pursuant to 40 C.F.R. §§ 121.61, 121.62. The Petitioners raised issues with Vermont’s administration of the State’s National Pollutant Discharge Elimination System (“NPDES”) program as it relates to the regulation of the State’s Concentrated Animal Feeding Operations (“CAFO”) and requested that EPA Region 1 take corrective action or withdraw its authorization of Vermont’s NPDES program, which is administered by the Vermont Agency of Natural Resources (“ANR”).

Region 1 recognizes that two agencies, ANR and the Agency of Agriculture, Food, and Markets (“AAFM”), each have a role in the regulation of agriculture water pollution in Vermont. Region 1 also recognizes ANR’s critical role in providing support to the agricultural community in Vermont; agriculture is an important part of the state’s economy and is integral to Vermont’s identity. We also know that like the farm, food and beverage, and outdoor recreation sectors, the agriculture sector depends on clean water for its operations and success. We understand the importance of ANR’s mission and role in Vermont, and it is also vital to recognize that the current division of responsibilities between ANR and AAFM is interfering with the regulation of Vermont’s CAFOs and preventing Vermont from adequately addressing agricultural water quality.

2024

VERMONT
REGION 1 ADMINISTRATOR
BOSTON, MA 02109
December 9, 2024

Cathie Sabatone
EPA Region 1
1 National Life Drive, Suite 100
Boston, MA 02109-3912

Dear Administrator Sabatone:

Presented to you by the Agency of Natural Resources and the Conservation Action Plan (“CAP”) is a request submitted by the State of Vermont to the United States Environmental Protection Agency (“EPA”) to request federal funding that supports the Vermont Concentrated Animal Feeding Operation (“CAFO”) program as not currently in compliance with the federal Clean Water Act (“CWA”). We acknowledge that the funding was intended to manage various issues of agency and responsibility, including the CWA.

ANR is committed to implementing changes to the Vermont CAFO program to address the serious deficiencies identified in the CAP. The current CAP contains about five sets with a two-year timeline and several other steps to achieving compliance with the CWA and the existing NPDES program. The Vermont State Conservation Action Plan (“CAP”) is a two-year timeline and the current NPDES program and their. EPA Region 1, and fully implements the compliance and assistance of EPA, we bring the Vermont CAFO program into compliance with the CWA.

Please free to reach out to our team to discuss any of the details in the Corrective Action Plan.

John Moore, P. E., Secretary
Vermont Agency of Natural Resources

cc: Thelma Mathey, Deputy Director, EPA Region 1 Water Division
Chris Wiley, Compliance and Control Unit
Loren Tarr, Compliance Director, VNR
Jeff Blevins, Compliance Director, LCC
Katie Blevins, Compliance Unit
Steven Collier, Senior Counsel, AAFM
Robert Heisterkamp, Director of Natural Resources and Management Division
Christina Williams, Vermont Council on Jobs
John Deckerholtz, Commissioner, CEC

2024

VERMONT
REGION 1 ADMINISTRATOR
BOSTON, MA 02109
January 27, 2025

John Deery
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05602-3001

RE: Joint Petition from the Conservation Law Foundation, Vermont Natural Resources Council, and Lake Champlain Conservancy to Withdraw Progressive Approval of the NPDES Program

Dear Secretary Moore,

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As you recall, EPA requested that Vermont comprehensively address each of the seven deficiencies in this CAP, and for any items requiring an extended timeframe to implement, we requested clear, measurable commitments and milestones along the path to completion. As you are aware, Vermont has been an integral part of our acknowledgment process, formal disclosure of its CAFO program for more than a decade.

To summarize, the seven requirements that EPA requested for the corrective action plan are:

1) ANR personnel must inspect all potentially jurisdictional farms to determine if a CAFO program is required.

2025

S.100 H.146

Misc. Ag.



1 Clean Water Act: Delegation and De-delegation

2 Agricultural Water Quality Regulation in Vermont Today

3 The Ongoing De-delegation Process

4 Proposed Resolutions: S.100 and H.146

5 Process

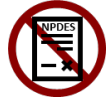
EPA requires reforms that resolve program deficiencies.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



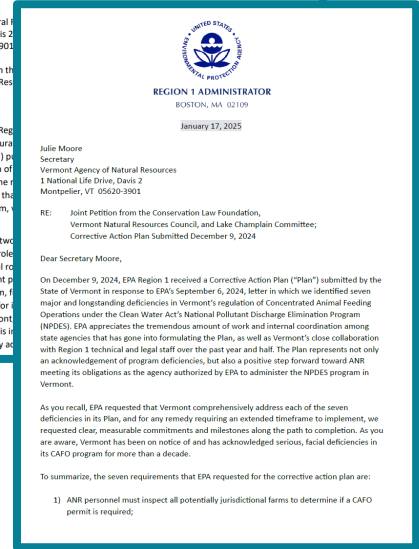
Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3902

RE: Joint petition from the
Vermont Natural Resources Council

Dear Secretary Moore,

On March 16, 2022, EPA Region 1 ("CLF"), the Vermont Natural Resources Council ("VTRC"), and the Vermont Agency of Natural Resources ("ANR") collectively "Petitioners" petitioned the Vermont Agency of Natural Resources ("ANR") for the Vermont's administration of the Clean Water Act's National Pollutant Discharge Elimination Program ("NPDES") and requested that the Vermont's NPDES program, ("ANR").

Region 1 recognizes that two ("AAFAM"), each have a role in the Vermont's critical role in agriculture is an important part of the Vermont economy. We know that like the tourism, Vermont's economy depends on clean water for recreation and its mission and role in Vermont. We appreciate the collaboration between ANR and AAFM in addressing the Vermont from adequately addressing the



REGION 1 ADMINISTRATOR
BOSTON, MA 02109
September 9, 2024

REGION 1 ADMINISTRATOR
BOSTON, MA 02109
January 27, 2025

Julie Moore
Secretary
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3902

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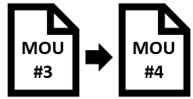
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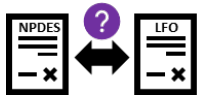
What does S.100 do?



Mostly maintains the status quo—including split jurisdiction—despite EPA’s findings and directions.



Requires a new MOU governing ANR and AAFM’s relationship, although there have already been three.



Uses both state permits and Clean Water Act NPDES permits, but it doesn’t establish clear-cut permitting criteria.



Creates a stakeholder engagement process, but that process should be adjusted to align with EPA’s regulatory expectations.



Provides ANR several important powers, including the power to access AFOs to inspect and to hire contract inspectors.

S.100 does not solve the problems that EPA identified.



Split authority undermines regulation.



S.100

(1) Maintains the current jurisdictional division between ANR and AAFM.

(2) Depends on a new MOU—the fourth—to resolve longstanding problems with collaboration.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.

S.100 does not solve the problems EPA identified.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



S.100

(1) Does not require ANR to inspect all farms or to conduct regular farm inspections.

(2) May force ANR to rely on referrals from AAFM, much like the current system.

S.100 does not solve the problems that EPA identified.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



S.100

It is unclear when ANR would require a CAFO to obtain a NPDES permit.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.

S.100 does not solve the problems that EPA identified.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



S.100

(1) Does not make ANR responsible for enforcing NMP requirements.

(2) Does not require Small AFOs to have an NMP on site.

(3) Appears to depend on AAFM to enforce the RAPs.

S.100 does not solve the problems that EPA identified.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



S.100

(1) Maintains the presumption that farms deemed in compliance with the RAPs by AAFM do not discharge.

(2) Large CAFO definition is less stringent than the Clean Water Act's definition.

S.100 does not solve the problems that EPA identified.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



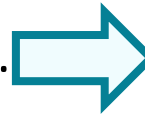
Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



S.100

Does not address staffing and resources, though the budget request takes a first step.

What does H.146 do?



Consolidates authority to regulate agricultural water quality in ANR, including the RAPs and LFO Rules.



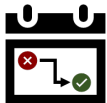
Requires ANR to conduct inspections at regular intervals on all jurisdictional farms.



Shifts from mandatory state LFO and MFO permits to mandatory Clean Water Act NPDES permits.



Continues to empower AAFM to provide technical assistance, grants, and support to farmers.



Establishes a 3.5-year transition between systems.

H.146 disrupts farmers' experience as little as possible.



Inspections generally occur at the same frequency that they do today, but ANR conducts water quality inspections, not AAFM.



Large CAFOs and Medium AFOs are required to obtain permits, but NPDES permits—not LFO and MFO permits—are required.



Farms remain regulated by the RAPS, LFO Rules, and MFO Rules, but ANR administers those rules, not AAFM.



Small farms continue to certify compliance with the RAPS, but they certify with ANR, not AAFM.



AAFM continues to provide farms technical and financial assistance.

H.146 proposes reforms that address EPA's concerns.



Split authority undermines regulation.



H.146

Consolidates authority to regulate agricultural water quality in ANR, including the RAPs and LFO Rules.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.

H.146 proposes reforms that address EPA's concerns.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



H.146

Requires ANR to inspect all farms at regular intervals. Larger farms are inspected more frequently.

H.146 proposes reforms that address EPA's concerns.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



H.146

(1) Requires Large CAFOs to obtain an individual NPDES permit.

(2) Requires Medium AFOs to obtain coverage under a general or individual NPDES permit.

(3) Requires Small AFOs to certify.

H.146 proposes reforms that address EPA's concerns.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



H.146

Requires CAFOs and AFOs to implement NMPs that meet USDA standards.

H.146 proposes reforms that address EPA's concerns.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



Failure to require proper manure management.



Problems with state regulations.



Insufficient staffing and resources at ANR.



H.146

Eliminates the
RAPs-based
presumption of no-
discharge.

H.146 proposes reforms that address EPA's concerns.



Split authority undermines regulation.



Inadequate monitoring and enforcement.



Failure to require NPDES permits on CAFOs.



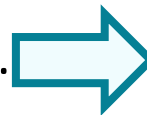
Failure to require proper manure management.




Problems with state regulations.



Insufficient staffing and resources at ANR.



 **H.146**
Shifts the Agricultural Water Quality Special Fund to ANR.

1 Clean Water Act: Delegation and De-delegation

2 Agricultural Water Quality Regulation in Vermont Today

3 The Ongoing De-delegation Process

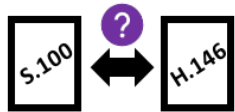
4 Proposed Resolutions: S.100 and H.146

5 Process

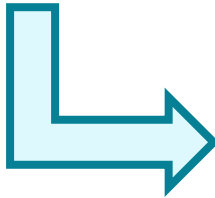
S.100 would benefit from significant discussion.



EPA's letters and practice require diligent progress, not haste.



S.100 and H.146 weigh complicated decisions that require time, discussion, and input to resolve.



- (1) When to require a NPDES permit.
- (2) How to define “waters”.
- (3) How align Vermont’s agricultural water quality and non-water quality programs.
- (4) How to transition between the status quo and a program the meets all requirements.

An important question to consider.

What does ANR need to get started?

Questions?



Conservation
Law Foundation
clf.org

What does the Clean Water Act do?



The Clean Water Act prohibits any farm from adding a pollutant to a jurisdictional water from a **point source** without a **NPDES permit**.

What is a point source?

“The term ‘**point source**’ means any discernible, confined and discrete conveyance, including but not limited to

any pipe, ditch, channel, tunnel, conduit,
well . . . container . . .

concentrated animal feeding operation”

33 U.S.C. § 1362(14)

187

FEDERAL WATER POLLUTION CONTROL ACT

Sec. 402

applicable provisions of section 301, 302, 303, 306, or 307 of this Act.

(6) Except with respect to a permit issued under section 402 of this Act, in any case where actual construction of a facility has been lawfully commenced prior to April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations, or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 301 or 302 of this Act, standard of performance under section 306 of this Act, or prohibition, effluent standard, or pretreatment standard under section 307 of this Act, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

(33 U.S.C. 1341)

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

SEC. 402. (a)(1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301(a), upon condition that such discharge will meet either (A) all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or (B) prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

What is a point source?

“The term ‘**point source**’ means any discernible, confined and discrete conveyance, including but not limited to

any pipe, ditch, channel, tunnel, conduit,
well . . . container . . .

concentrated animal feeding operation”



Drainage Ditches
Manure Lagoons
Silage Bunkers
Manure Spreaders
Pesticide Sprayers



Fields
Overland Runoff

What is a CAFO?

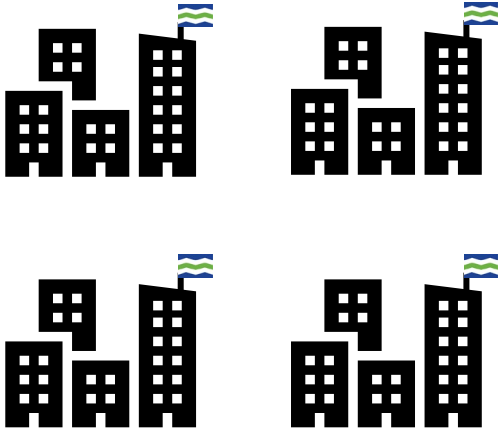


A CAFO is a **farm with livestock** that the Clean Water Act regulates as a **point source** because it presents a **greater risk to water** quality than other farms do.

What is a CAFO?



P N
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<https://blogs.cornell.edu/whatscroppingup/2017/06/21/series-phosphorus-and-the-environment-2-setting-the-record-straight-comparing-bodily-waste-between-dairy-cows-and-people/>

What is a CAFO?



Type. Only farms that raise and confine livestock can be CAFOs.



Size. Larger farms are more likely to be CAFOs than smaller farms.



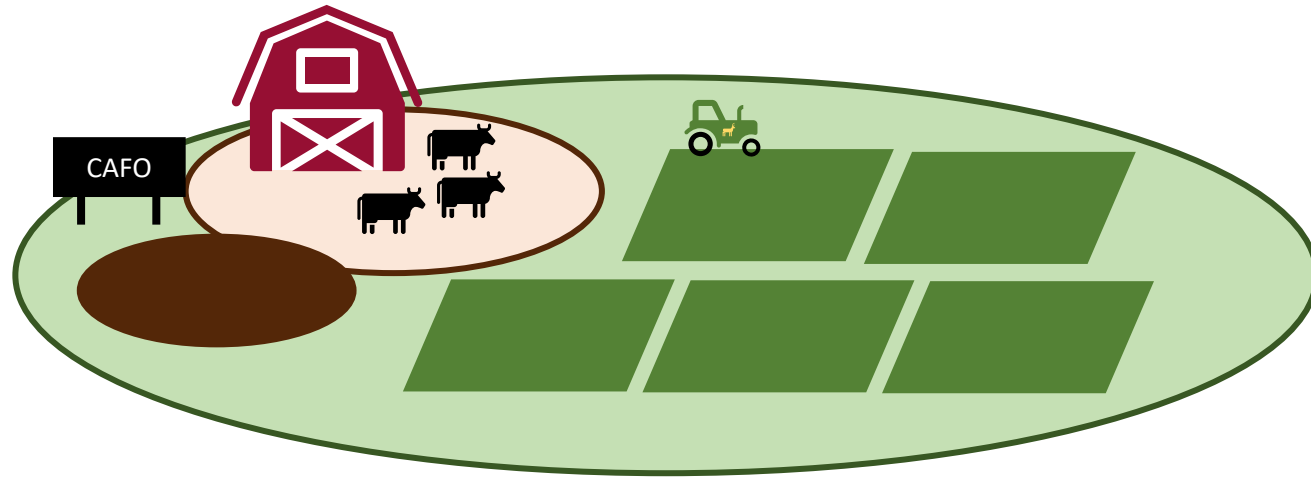
Impact. Farms are more likely to be CAFOs if they significantly impact water quality.

What is a CAFO?



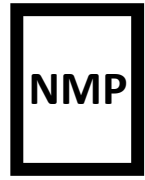
Large Farm Operations in Vermont are Large CAFOs because of their size.

A CAFO is a point source, including its fields.

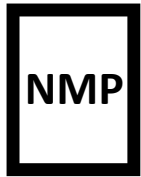


40 C.F.R. § 122.23

What is a nutrient management plan (“NMP”)?



A NMP is a plan to apply manure and fertilizer at the appropriate rate, time, and place to support healthy crops and protect water quality.

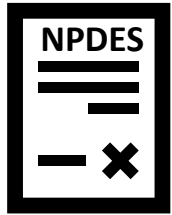


+ Farm Runoff = Nonpoint Source



+ Farm Runoff = Point Source

What is a NPDES permit?



A NPDES permit is a Clean Water Act permit that protects the permit holder from liability for discharges that comply with the permit.



Rigorous terms to protect water quality.



Public process to promote trust and transparency.



Permit holders who comply are shielded from liability when things go wrong.