

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 124 entitled “An act relating to miscellaneous agricultural
4 subjects” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 * * * Agency of Agriculture, Food, and Markets Regulation of Agricultural
8 Water Quality * * *

9 Sec. 1. 6 V.S.A. § 4810(d) is amended to read:

10 (d) Cooperation and coordination. The Secretary of Agriculture, Food and
11 Markets shall coordinate with the Secretary of Natural Resources in
12 implementing and enforcing programs, plans, and practices developed for
13 reducing and eliminating agricultural nonpoint source pollutants and
14 discharges from ~~concentrated animal feeding operations. On or before July 1,~~
15 ~~2016, the~~ farms. The Secretary of Agriculture, Food and Markets and the
16 ~~Secretary of Natural Resources shall revise the memorandum of understanding~~
17 ~~for cooperate with the Secretary of Natural Resources in the implementation of~~
18 the federal Clean Water Act for Concentrated Animal Feeding Operations
19 (CAFOs). The Secretary of Agriculture, Food and Markets shall implement
20 the State’s comprehensive, complimentary nonpoint source program
21 describing. The Secretary of Agriculture, Food, and Markets and the Secretary

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

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

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

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

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

1 the top of the bank of an adjoining water of the State or within 10 feet of a
2 ditch that is not a surface water under State law and that is not a water of the
3 United States under federal law. The minimum vegetated buffer requirement
4 required under this subdivision (A) shall not apply to a farm that is determined
5 by the Secretary of Natural Resources to be a Concentrated Animal Feeding
6 Operation and is required to obtain a CAFO permit as required under 10
7 V.S.A. § 1353. Operations determined to be a Concentrated Animal Feeding
8 Operation that require a CAFO permit shall instead comply with the setback
9 and buffer requirements established in the federal CAFO regulations.

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

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

14 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

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

1 liquid manure handling system, 5,000 ducks with a liquid manure handling
2 system, or 30,000 ducks without a liquid manure handling system. No permit
3 shall be required to replace an existing barn in use for livestock or domestic
4 fowl production at its existing capacity. The Secretary of Agriculture, Food
5 and Markets, in consultation with the Secretary of Natural Resources, shall
6 review any application for a permit under this section with regard to water
7 quality impacts ~~and~~, prior to approval of a permit under this subsection, ~~shall~~
8 ~~issue a written determination regarding whether the applicant has established~~
9 ~~that there will be no unpermitted discharge to waters of the State pursuant to~~
10 ~~the federal regulations for concentrated animal feeding operations.~~ If, upon
11 review of ~~an~~ a large farm application for a permit under this subsection, the
12 Secretary of Agriculture, Food and Markets determines that the ~~permit~~
13 ~~applicant~~ farm may be discharging to waters of the State, the Secretary of
14 Agriculture, Food and Markets ~~and the Secretary of Natural Resources~~
15 promptly shall ~~respond to~~ refer the potential discharge to the Secretary of
16 Natural Resources for response in accordance with ~~the memorandum of~~
17 ~~understanding the federal Clean Water Act~~ regarding concentrated animal
18 feeding operations ~~under section 4810 of this title.~~ The Secretary of Natural
19 Resources ~~may require~~ shall direct a large farm to obtain a permit under 10
20 V.S.A. § 1263 ~~pursuant to~~ if required by federal regulations for concentrated
21 animal feeding operations. If the farm is not required to obtain a CAFO permit

1 and is not in violation of federal regulations for Concentrated Animal Feeding
2 Operations, the Secretary of Natural Resources shall promptly notify the
3 Secretary of Agriculture, Food and Markets.

4 (b) A person shall apply for a permit in order to operate a farm that exceeds
5 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves,
6 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55
7 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens
8 or broilers with a liquid manure handling system, 82,000 laying hens without a
9 liquid manure handling system, 125,000 chickens other than laying hens
10 without a liquid manure handling system, 5,000 ducks with a liquid manure
11 handling system, or 30,000 ducks ~~if the livestock or domestic fowl are in a~~
12 ~~barn or adjacent barns owned by the same person or if the barns share a~~
13 ~~common border or have a common waste disposal system~~ without a liquid
14 manure handling system. Two or more individual farms that are under
15 common ownership and that adjoin each other or use a common area or system
16 for the disposal of wastes shall be considered a single animal feeding operation
17 or “farm” when determining whether the combined number of livestock or
18 domestic fowl qualifies the farm as a Large Farm Operation under this section.

19 In order to receive this permit, the person shall demonstrate to the Secretary
20 that the farm has an adequately sized manure management system to
21 accommodate the wastes generated and a nutrient management plan to dispose

1 of wastes in accordance with Required Agricultural Practices adopted under
2 this chapter and current U.S. Department of Agriculture nutrient management
3 standards.

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

8 (d) A person seeking a permit under this section shall apply in writing to
9 the Secretary. The application shall include a description of the proposed barn
10 or expansion of livestock or domestic fowl; a proposed nutrient management
11 plan to accommodate the number of livestock or domestic fowl the barn is
12 designed to house or the farm is intending to expand to; and a description of
13 the manure management system to be used to accommodate agricultural
14 wastes.

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

17 (f) Before granting a permit under this section, the Secretary shall make an
18 affirmative finding that the animal wastes generated by the construction or
19 expansion will be stored so as not to generate runoff from a 25-year, 24-hour
20 storm event and shall be disposed of in accordance with the Required

1 Agricultural Practices adopted under this chapter and current U.S. Department
2 of Agriculture nutrient management standards.

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

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

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

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

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

2 § 4858. MEDIUM FARM OPERATION PERMITS

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

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

11 (1) General and individual permits issued under this section shall be
12 consistent with rules adopted under this section, shall include terms and
13 conditions appropriate to each farm size category and each farm animal type as
14 defined by section 4857 of this title, and shall meet standards at least as
15 stringent as those established by federal regulations for concentrated animal
16 feeding operations. Such standards shall address waste management, waste
17 storage, development of nutrient management plans, carcass disposal, and
18 surface water and groundwater contamination, plus recordkeeping, reporting,
19 and monitoring provisions regarding such matters to ensure that the terms and
20 conditions of the permit are being met. The groundwater contamination rules
21 adopted by the Secretary under this section shall include a process under which

1 the Agency shall receive, investigate, and respond to a complaint that a farm
2 has contaminated the drinking water or groundwater of a property owner.

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

7 (3) Each general permit issued pursuant to this section shall have a term
8 of ~~no~~ not more than five years. Prior to the expiration of each general permit,
9 the Secretary shall review the terms and conditions of the general permit and
10 may issue subsequent general permits with the same or different conditions as
11 necessary to carry out the purposes of this subchapter. Each general permit
12 shall include provisions that require public notice of the fact that a medium
13 farm has sought coverage under a general permit adopted pursuant to this
14 section. Each general permit shall provide a process by which interested
15 persons can obtain detailed information about the nature and extent of the
16 activity proposed to receive coverage under the general permit. The Secretary
17 may inspect each farm seeking coverage under the general permit at any time
18 but ~~no~~ not less frequently than once every three years.

19 (c)(1) Medium farm general permit.

20 (1) The owner or operator of a medium farm seeking coverage under a
21 general permit adopted pursuant to this section shall certify to the Secretary

1 within a period specified in the permit, and in a manner specified by the
2 Secretary, that the medium farm does comply with permit requirements
3 regarding an adequately sized and designed manure management system to
4 accommodate the wastes generated and a nutrient management plan to dispose
5 of wastes in accordance with Required Agricultural Practices adopted under
6 this chapter and current U.S. Department of Agriculture nutrient management
7 standards. Any certification or notice of intent to comply submitted under this
8 subdivision shall be kept on file at the Agency of Agriculture, Food and
9 Markets. The Secretary of Agriculture, Food and Markets, in consultation with
10 the Secretary of Natural Resources, shall review any certification or notice of
11 intent to comply submitted under this subdivision with regard to the water
12 quality impacts of the medium farm for which the owner or operator is seeking
13 coverage, and, for farms that have never been permitted under the prior permit
14 term, within 18 months ~~of~~ after receiving the certification or notice of intent to
15 comply, the Secretary of Natural Resources shall verify whether the owner or
16 operator of the medium farm has established that there will be no unpermitted
17 discharge to waters of the State pursuant to the federal regulations for
18 concentrated animal feeding operations. If upon review ~~of a medium farm~~
19 ~~granted coverage under the general permit adopted pursuant to this subsection~~
20 the Secretary of Agriculture, Food and Markets determines that the ~~permit~~
21 ~~applicant~~ medium farm may be discharging to waters of the State, the

1 Secretary of Agriculture, Food and Markets ~~and~~ shall promptly notify the
2 Secretary of Natural Resources ~~shall respond to the discharge~~ in accordance
3 with ~~the memorandum of understanding~~ the federal Clean Water Act regarding
4 concentrated animal feeding operations ~~under section 4810 of this title~~. The
5 Secretary of Natural Resources shall direct a medium farm to obtain a permit
6 under 10 V.S.A. § 1263 if required by federal regulations for concentrated
7 animal feeding operations. If the farm is not required to obtain a CAFO permit
8 and is not in violation of federal regulations for concentrated animal feeding
9 operations, the Secretary of the Agency of Natural Resources shall promptly
10 notify the Secretary of Agriculture, Food and Markets.

11 (2) The owner or operator of a small farm may seek coverage under the
12 medium farm general permit adopted pursuant to this section by certifying to
13 the Secretary, in a manner specified by the Secretary, that the small farm
14 complies with the requirements and conditions of the medium farm general
15 permit.

16 (d) Medium and small farms; individual permit. The Secretary may require
17 the owner or operator of a small or medium farm to obtain an individual permit
18 to operate after review of the farm's history of compliance, application of
19 Required Agricultural Practices, the use of an experimental or alternative
20 technology or method to meet a State performance standard, or other factors
21 set forth by rule. The owner or operator of a small farm may apply to the

1 Secretary for an individual permit to operate under this section. To receive an
2 individual permit, an applicant shall in a manner prescribed by rule
3 demonstrate that the farm has an adequately sized and designed manure
4 management system to accommodate the wastes generated and a nutrient
5 management plan to dispose of wastes in accordance with Required
6 Agricultural Practices adopted under this chapter and current U.S. Department
7 of Agriculture nutrient management standards, including setback requirements
8 for waste application. An individual permit shall be valid for ~~no~~ not more than
9 five years. Any application for an individual permit filed under this subsection
10 shall be kept on file at the Agency of Agriculture, Food and Markets. The
11 Secretary of Agriculture, Food and Markets, in consultation with the Agency
12 of Natural Resources, shall review any application for a permit under this
13 subsection ~~and, prior to issuance of an individual permit under this subsection,~~
14 ~~shall issue a written determination regarding whether the permit applicant has~~
15 ~~established that there will be no unpermitted discharge to waters of the State~~
16 ~~pursuant to federal regulations for concentrated animal feeding operations. If,~~
17 ~~upon review of an application for a permit under this subsection a permit~~
18 application, the Secretary of Agriculture, Food and Markets determines that the
19 permit applicant may be discharging to waters of the State, the Secretary of
20 Agriculture, Food and Markets ~~and~~ shall promptly refer the farm to the
21 Secretary of Natural Resources ~~shall respond to the discharge for response in~~

1 accordance with ~~the memorandum of understanding regarding concentrated~~
2 ~~animal feeding operations under subsection 4810(b) of this title~~ the federal
3 Clean Water Act. The Secretary of Natural Resources ~~may require~~ shall direct
4 a medium or small farm to obtain a permit under 10 V.S.A. § 1263 ~~pursuant to~~
5 if required by federal regulations for concentrated animal feeding operations.
6 Coverage of a medium farm under a general permit adopted pursuant to this
7 section or an individual permit issued to a medium or small farm under this
8 section is rendered void by the issuance of a permit to a farm under 10 V.S.A.
9 § 1263. If the farm is not required to obtain a CAFO permit and is not in
10 violation of federal regulations for concentrated animal feeding operations, the
11 Secretary of the Agency of Natural Resources shall promptly refer the matter
12 to the Secretary of Agriculture, Food and Markets.

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

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

18 § 4816. SEASONAL APPLICATION OF MANURE

19 (a) Prohibition on application. A person shall not apply manure to land in
20 the State between December 15 and April 1 of any calendar year unless

1 authorized by this section or as authorized under an emergency exemption
2 granted by the Secretary.

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

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

- 1 (1) prohibit application of manure:
- 2 (A) in areas with established channels of concentrated stormwater
- 3 runoff to surface waters, including ditches and ravines;
- 4 (B) in nonharvested permanent vegetative buffers;
- 5 (C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.
- 6 § 902(5);
- 7 (D) within 50 feet of a potable water supply, as that term is defined in
- 8 10 V.S.A. § 1972(6);
- 9 (E) to fields exceeding tolerable soil loss; and
- 10 (F) to saturated soils;
- 11 (2) establish requirements for the application of manure when frozen or
- 12 snow-covered soils prevent effective incorporation at the time of application;
- 13 (3) require manure to be applied according to a nutrient management
- 14 plan; and
- 15 (4) establish the maximum tons of manure that may be applied per acre
- 16 during any one application.

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

- 18 (b) Required small farm certification. Beginning on July 1, 2017, a person
- 19 who owns or operates a small farm, as designated by the Secretary consistent
- 20 with subdivision 4810a(a)(1) of this title, shall, on a form provided by the
- 21 Secretary, certify compliance with the Required Agricultural Practices. The

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

8 * * * Agency of Natural Resources Regulation of Concentrated Animal
9 Feeding Operations * * *

10 Sec. 7. 10 V.S.A. § 1251 is amended to read:

11 § 1251. DEFINITIONS

12 Whenever used or referred to in this chapter, unless a different meaning
13 clearly appears from the context:

14 * * *

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

18 * * *

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

1 expressed in other units of measurement, the daily discharge is calculated as
2 the average measurement of the pollutant over the day.

3 (22) “Direct discharge” means the placing, depositing, or emission of
4 any waste or pollutant directly into waters.

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

10 Sec. 8. 10 V.S.A. chapter 47, subchapter 3A is added to read:

11 Subchapter 3A. Concentrated Animal Feeding Operations

12 § 1351. DEFINITIONS

13 As used in this subchapter:

14 (1) “Agricultural waste” means material originating or emanating from a
15 farm or imported onto a farm that contains sediments; minerals, including
16 heavy metals; plant nutrients; pesticides; organic wastes, including livestock
17 waste; animal mortalities; compost; feed, litter, and crop debris; waste oils;
18 pathogenic bacteria and viruses; thermal pollution; silage runoff; process
19 wastewater, untreated milk house waste; and any other farm waste as the term
20 “waste” is defined in subdivision 1251(12) of this chapter.

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

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

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

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

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

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

1 (5) “Large concentrated animal feeding operation” or “Large CAFO”
2 means an AFO that houses 700 or more mature dairy animals, 1,000 or more
3 cattle or cow or calf pairs, 1,000 or more veal calves, 2,500 or more swine
4 weighing over 55 pounds, 10,000 or more swine weighing 55 pounds or less,
5 500 or more horses, 10,000 or more sheep or lambs, 55,000 or more turkeys,
6 30,000 or more laying hens or broilers with a liquid manure handling system,
7 82,000 or more laying hens without a liquid manure handling system, 125,000
8 or more chickens other than laying hens without a liquid manure handling
9 system, 5,000 or more ducks with a liquid manure handling system, or 30,000
10 or more ducks without a liquid manure handling system.

11 (6) “Large farm operation” or “LFO” has the same meaning as in
12 6 V.S.A. chapter 215.

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

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

18 (A) houses 200 to 699 mature dairy animals, 300 to 999 cattle or cow
19 or calf pairs, 300 to 999 veal calves, 750 to 2,499 swine weighing over 55
20 pounds, 3,000 to 9,999 swine weighing 55 pounds or less, 150 to 499 horses,
21 3,000 to 9,999 sheep or lambs, 16,500 to 54,999 turkeys, 9,000 to 29,999

1 laying hens or broilers with a liquid manure handling system, 25,000 to 81,999
2 laying hens without a liquid manure handling system, 37,500 to 124,999
3 chickens other than laying hens without a liquid manure handling system,
4 1,500 to 4,999 ducks with a liquid manure handling system, or 10,000 to
5 29,999 ducks without a liquid manure handling system; and

6 (B) either of the following conditions are met:

7 (i) wastes are discharged into waters of the United States through
8 a man-made ditch, flushing system, or other similar man-made device; or

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

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

15 (10) “Point source” means any discernible, confined, and discrete
16 conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete
17 fissure, container, rolling stock, concentrated animal feeding operation, or
18 vessel or other floating craft from which pollutants are or may be discharged.

19 This term does not include agricultural stormwater discharges and return flows
20 from irrigated agriculture.

1 (11) “Process wastewater” means water directly or indirectly used in the
2 operation of an AFO or CAFO for any or all of the following: spillage or
3 overflow from animal or poultry watering systems; washing, cleaning, or
4 flushing pens, barns, manure pits, or other AFO or CAFO facilities; direct
5 contact swimming, washing, or spray cooling of animals; or dust control.
6 Process wastewater also includes any water that comes into contact with any
7 raw materials, products, or byproducts, including manure, litter, feed, milk,
8 eggs, or bedding.

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

1 processing facility and any area used in the storage, handling, treatment, or
2 disposal of mortalities.

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

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

6 (15) “Small concentrated animal feeding operation” or “small CAFO”
7 means a small AFO designated as a small CAFO by the Secretary upon
8 determining that the AFO is a significant contributor of pollutants to waters of
9 the State and is defined as a CAFO by the regulations adopted under the
10 federal Clean Water Act.

11 (16) “Waters of the United States” shall have the same meaning as
12 defined by the federal Clean Water Act.

13 § 1352. POWERS OF THE SECRETARY

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

15 (1) Implement the federal Clean Water Act to administer a Vermont
16 pollutant discharge elimination system (VPDES) CAFO program that is
17 consistent with and equivalent to the federal Clean Water Act and enabling
18 rules.

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

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

4 (4) Designate any AFO that meets the definition of a CAFO under the
5 federal Clean Water Act regulations as a CAFO, in the Secretary's sole
6 discretion.

7 (5) Require any AFO to obtain a CAFO permit under this chapter upon a
8 determination that the AFO is discharging to waters of the State.

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

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

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

15 (C) the means of conveyance of animal wastes and process waste
16 waters into waters;

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

20 (E) other relevant factors.

1 (7) Access private or public property to inspect AFOs and CAFOs, take
2 photos and samples, and review and copy AFO and CAFO land management
3 records, including nutrient management plans, as may be necessary to carry out
4 the provisions of this subchapter.

5 (8) Solicit and receive federal funds to implement the CAFO program.

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

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

12 § 1353. CAFO PERMIT REQUIREMENTS AND EXEMPTIONS

13 (a) The discharge of manure, litter, or process wastewater to waters of the
14 State from a permitted CAFO as a result of the application of that manure,
15 litter or process wastewater by the CAFO to land areas under its control is a
16 discharge from that CAFO subject to NPDES permit requirements, except
17 where it is an agricultural stormwater discharge as provided under the federal
18 Clean Water Act. For purposes of this subsection, the manure, litter, or
19 process wastewater [missing something] has been applied in accordance with
20 the federal regulations under the Clean Water Act, a precipitation-related
21 discharge of manure, litter or process wastewater from land areas under the

1 control of a CAFO is an agricultural stormwater discharge. For unpermitted
2 Large CAFOs, a precipitation-related discharge of manure, litter, or process
3 wastewater from land areas under the control of the CAFO shall be considered
4 an exempt agricultural stormwater discharge only where the manure, litter, or
5 process wastewater has been land applied in accordance with site-specific
6 nutrient management practices that ensure appropriate agricultural utilization
7 of the nutrients in the manure, litter, or process wastewater, as determined by
8 the Secretary.

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

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

16 Sec. 9. COMMUNITY STAKEHOLDER GROUP ON AGRICULTURAL
17 WATER QUALITY

18 (a) On or before December 1, 2025, the Secretary of Natural Resources, in
19 coordination with the Secretary of Agriculture, Food and Markets, shall engage
20 key agricultural stakeholders as part of a pre-rulemaking process to gather
21 input on proposed concentrated animal feeding operation (CAFO) rules. The

1 rulemaking process also shall include public notice and informational hearings
2 to provide updates on the CAFO program and gather broad public input. In
3 addition, the stakeholder engagement process shall include specific
4 opportunities for the agricultural community, including livestock farmers, farm
5 and watershed groups, and agricultural consultants, to share their input on:

6 (1) the implementation of the Agency of Natural Resources' CAFO
7 program;

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

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

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

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

20 (b) On or before February 15, 2026, the Secretary of Natural Resources
21 shall file a report with the House Committees on Agriculture, Food Resiliency

1 and Forestry and on Environment and the Senate Committees on Agriculture
2 and on Natural Resources and Energy. The report shall:

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

5 (2) summarize public input received during rulemaking;

6 (3) assess whether the regulatory structure for administering agricultural
7 water quality requirements in the State is sufficient or whether further
8 structural changes, such as sole regulation by the Agency of Natural
9 Resources, should be implemented; and

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

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

14 § 1259. PROHIBITIONS

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

1 application of fertilizer to fields and crops, nor reduce or affect the authority or
2 policy declared in Joint House Resolution 7 of the 1971 Session of the General
3 Assembly.

4 * * *

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

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

12 (2) accepted silvicultural practices, as defined by the Commissioner of
13 Forests, Parks and Recreation, including practices ~~which~~ that are in compliance
14 with the Acceptable Management Practices for Maintaining Water Quality on
15 Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks
16 and Recreation; ~~nor shall these provisions regulate discharges from~~
17 ~~concentrated animal feeding operations that require a permit under section~~
18 ~~1263 of this title; nor shall those provisions prohibit stormwater runoff or the~~
19 ~~discharge of nonpolluting wastes, as defined by the Secretary.~~

20 * * *

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

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

1 the water quality standards and water pollution control requirements of chapter
2 47 of this title and the federal Clean Water Act as amended.

3 * * *

4 Sec. 11. 10 V.S.A. § 1263 is amended to read:

5 § 1263. DISCHARGE PERMITS

6 (a) Any person who intends to discharge waste into the waters of the State
7 or who intends to discharge into an injection well or who intends to discharge
8 into any publicly owned treatment works any waste that interferes with, passes
9 through without treatment, or is otherwise incompatible with that works or
10 would have a substantial adverse effect on that works or on water quality, or is
11 required to apply for a CAFO permit, shall make application to the Secretary
12 for a discharge permit. Application shall be made on a form prescribed by the
13 Secretary. An applicant shall pay an application fee in accordance with
14 3 V.S.A. § 2822.

15 (b) When an application is filed under this section, the Secretary shall
16 proceed in accordance with chapter 170 of this title. The Secretary may
17 require any applicant to submit any additional information that the Secretary
18 considers necessary and, before issuing a permit application completeness
19 determination. The Secretary may take appropriate steps to secure compliance.
20 refuse to grant a permit, or permission to discharge under the terms of a
21 general permit, until the information is furnished and evaluated.

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(g) ~~Notwithstanding any other provision of law, any~~ Any person who owns or operates a concentrated animal feeding operation that requires a permit under the federal National Pollutant Discharge Elimination System permit regulations shall submit an application to the Secretary for a discharge permit and pay the required fees specified in 3 V.S.A. § 2822. ~~On or before July 1, 2007, the Secretary of Natural Resources shall adopt rules implementing the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. Until such regulations are adopted, the substantive permitting standards and criteria used by the Secretary to evaluate applications and issue or deny discharge permits for concentrated animal feeding operations shall be those specified by federal regulations. The Secretary may issue an individual or general permit for these types of discharges in accordance with the procedural requirements of subsection (b) of this section and other State law. For the purposes of this subsection, “concentrated animal feeding operation” means a farm that meets the definition contained in the federal regulations~~ Not later than December 15, 2025, the Secretary shall amend and issue the CAFO General Permit and Notice of Intent. Not later than July 1, 2026, the Secretary shall issue a CAFO application and an individual CAFO permit. The Secretary may request any additional information from a farm as necessary to process a permit and

1 administer the CAFO program. The Secretary may direct a farm to apply for
2 an individual or general permit in accordance with the procedural requirements
3 of subsection (b) of this section.

4 (h) A large CAFO shall not be required to have a CAFO permit unless one
5 of the following conditions are met:

6 (1) wastes are discharged into waters of the United States via a point
7 source;

8 (2) wastes are discharged directly into waters that originate outside or
9 pass over, across, or through the facility or otherwise come into direct contact
10 with the animals confined in the operation; or

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

16 (i) The Secretary shall require nutrient management plans for all CAFOs
17 and shall include the plans in the permits for public comment in accordance
18 with the process set forth in chapter 170 of this title. The Secretary may
19 amend a permit in accordance with chapter 170 of this title or revoke a permit
20 in accordance with 3 V.S.A. § 814.

1 (j) Once a CAFO is covered under a CAFO permit, the farm shall be
2 covered for the five year duration of the permit. A farm covered by a CAFO
3 permit shall renew the permit in accordance with its terms, unless the farm
4 wants to opt out and can demonstrate it is not discharging and shall
5 accordingly comply with the federal CWA and the Vermont CAFO rules.

6 Sec. 12. 10 V.S.A. § 1264(d) is amended to read:

7 (d) Exemptions.

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

9 (A) Stormwater runoff from farms in compliance with agricultural
10 practices adopted by the Secretary of Agriculture, Food and Markets, ~~provided~~
11 ~~that this and~~ **not subject to** the federal Clean Water Act and **its enabling**
12 **regulations** as determined by the Secretary of Natural Resources. This
13 exemption shall not apply to construction stormwater permits required by
14 subdivision (c)(4) of this section.

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

17 (C) Stormwater runoff from accepted silvicultural practices, as
18 defined by the Commissioner of Forests, Parks and Recreation, including
19 practices that are in compliance with the federal Clean Water Act as
20 determined by the Secretary of Natural Resources and the Acceptable

1 Management Practices for Maintaining Water Quality on Logging Jobs in
2 Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

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

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

12 * * * Effective Date * * *

13 Sec. 13. EFFECTIVE DATE

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

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21 (Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE