

1 S.124

2 Introduced by Committee on Agriculture

3 Date:

4 Subject: Agriculture; water resources; agricultural water quality

5 Statement of purpose of bill as introduced: This bill proposes to clarify the
6 authority of the Secretary of Natural Resources to regulate, permit, and enforce
7 discharges of pollutants from concentrated animal feeding operations in the
8 State. The bill also proposes to amend certain agricultural water quality
9 requirements administered by the Agency of Agriculture, Food and Markets in
10 order to ensure consistency with federal requirements.

11 An act relating to miscellaneous agricultural subjects

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

13 * * * Agency of Agriculture, Food, and Markets Regulation of Agricultural

14 Water Quality * * *

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

16 (d) Cooperation and coordination. The Secretary of Agriculture, Food and
17 Markets shall coordinate with the Secretary of Natural Resources in
18 implementing and enforcing programs, plans, and practices developed for
19 reducing and eliminating agricultural nonpoint source pollutants and
20 discharges from ~~concentrated animal feeding operations. On or before July 1,~~

1 ~~2016, the farms. The Secretary of Agriculture, Food and Markets and the~~
2 ~~Secretary of Natural Resources shall revise the memorandum of understanding~~
3 ~~for cooperate with the Secretary of Natural Resources in the implementation of~~
4 ~~the federal Clean Water Act for Concentrated Animal Feeding Operations~~
5 ~~(CAFOs). The Secretary of Agriculture, Food and Markets shall implement~~
6 ~~the State's comprehensive, complimentary nonpoint source program~~
7 ~~describing. The Secretary of Agriculture, Food, and Markets and the Secretary~~
8 ~~of Natural Resources shall coordinate regarding program administration; grant~~
9 ~~negotiation; grant sharing, and how they will coordinate; implementation of~~
10 ~~the antidegradation policy including to new sources of agricultural nonpoint~~
11 ~~source pollutants, and watershed planning activities to comply with Pub. L.~~
12 ~~No. 92-500. The memorandum of understanding shall describe how the~~
13 ~~agencies will implement the antidegradation implementation policy, including~~
14 ~~how the agencies will apply the antidegradation implementation policy to new~~
15 ~~sources of agricultural nonpoint source pollutants. The Secretary of~~
16 ~~Agriculture, Food and Markets and the Secretary of Natural Resources shall~~
17 ~~also develop a memorandum of understanding according to the public notice~~
18 ~~and comment process of 10 V.S.A. § 1259(i) regarding the implementation of~~
19 ~~the federal Concentrated Animal Feeding Operation Program and the~~
20 ~~relationship between the requirements of the federal Program and the State~~
21 ~~agricultural water quality requirements for large, medium, and small farms~~

1 ~~under this chapter. The memorandum of understanding shall describe Program~~
2 ~~administration, permit issuance, an appellate process, and enforcement~~
3 ~~authority and implementation.~~ In accordance with 10 V.S.A. § 1259(i), the
4 Secretary of Natural Resources, in consultation with the U.S. Environmental
5 Protection Agency and the Secretary of Agriculture, Food and Markets, shall
6 issue a document that sets forth the respective roles and responsibilities of the
7 Agency of Natural Resources in implementing the federal Clean Water Act on
8 farms and the Agency of Agriculture, Food and Markets' roles and
9 responsibilities in implementing the State's complementary nonpoint source
10 program on farms. ~~The memorandum of understanding~~ document shall be
11 consistent with and equivalent with the federal National Pollutant Discharge
12 Elimination System permit regulations for discharges from ~~concentrated~~
13 ~~animal feeding operations~~ CAFOs. The document will replace the
14 memorandum of understanding between the agencies. The allocation of duties
15 under this chapter between the Secretary of Agriculture, Food and Markets and
16 the Secretary of Natural Resources shall be consistent with the Secretary's
17 duties, established under the provisions of 10 V.S.A. § 1258(b), to comply
18 with Pub. L. No. 92-500. The Secretary of Natural Resources shall be the
19 State lead person in applying for federal funds under Pub. L. No. 92-500 but
20 shall consult with the Secretary of Agriculture, Food and Markets during the
21 process. The agricultural nonpoint source program may compete with other

1 programs for competitive watershed projects funded from federal funds. The
2 Secretary of Agriculture, Food and Markets shall be represented in reviewing
3 these projects for funding. Actions by the Secretary of Agriculture, Food and
4 Markets under this chapter concerning agricultural nonpoint source pollution
5 shall be consistent with the water quality standards and water pollution control
6 requirements of 10 V.S.A. chapter 47 and the federal Clean Water Act as
7 amended. In addition, the Secretary of Agriculture, Food and Markets shall
8 coordinate with the Secretary of Natural Resources in implementing and
9 enforcing programs, plans, and practices developed for the proper management
10 of composting facilities when those facilities are located on a farm. ~~On or~~
11 ~~before January 15, 2016, the~~ The Secretary of Agriculture, Food and Markets
12 and the Secretary of Natural Resources shall each develop three separate
13 measures of the performance of the agencies under the ~~memorandum of~~
14 ~~understanding required by this subsection. Beginning on January 15, 2017~~
15 federal Clean Water Act and State nonpoint source regulatory authority, and
16 annually ~~thereafter~~ on or before January 15, the Secretary of Agriculture, Food
17 and Markets and the Secretary of Natural Resources shall submit separate
18 reports to the Senate Committee on Agriculture, the House Committee on
19 Agriculture, Food Resiliency, and Forestry, the Senate Committee on Natural
20 Resources and Energy, and the House Committee on Environment ~~and Energy~~

1 regarding the success of each agency in meeting the selected performance
2 measures for the memorandum of understanding.

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

4 (6)(A) Require a farm to comply with standards established by the
5 Secretary for maintaining a vegetative buffer zone of perennial vegetation
6 between annual croplands and the top of the bank of an adjoining water of the
7 State. At a minimum the vegetative buffer standards established by the
8 Secretary shall prohibit the application of manure on the farm within 25 feet of
9 the top of the bank of an adjoining water of the State or within 10 feet of a
10 ditch that is not a surface water under State law and that is not a water of the
11 United States under federal law. The minimum vegetated buffer requirement
12 required under this subdivision (A) shall not apply to a farm that is determined
13 by the Secretary of Natural Resources to be a Concentrated Animal Feeding
14 Operation, as that term is defined under 10 V.S.A. § 1351. Operations
15 determined to be a Concentrated Animal Feeding Operation shall instead
16 comply with the setback and buffer requirements established in the federal
17 CAFO regulations.

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

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

2 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

3 (a) No person shall, without a permit from the Secretary, construct a new
4 barn, or expand an existing barn, designed to house more than 700 mature
5 dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine
6 weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500
7 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers
8 with a liquid manure handling system, 82,000 laying hens without a liquid
9 manure handling system, 125,000 chickens other than laying hens without a
10 liquid manure handling system, 5,000 ducks with a liquid manure handling
11 system, or 30,000 ducks without a liquid manure handling system. No permit
12 shall be required to replace an existing barn in use for livestock or domestic
13 fowl production at its existing capacity. The Secretary of Agriculture, Food
14 and Markets, in consultation with the Secretary of Natural Resources, shall
15 review any application for a permit under this section with regard to water
16 quality impacts ~~and, prior to approval of a permit under this subsection, shall~~
17 ~~issue a written determination regarding whether the applicant has established~~
18 ~~that there will be no unpermitted discharge to waters of the State pursuant to~~
19 ~~the federal regulations for concentrated animal feeding operations.~~ If, upon
20 review of ~~an~~ a large farm application for a permit under this subsection, the
21 Secretary of Agriculture, Food and Markets determines that the ~~permit~~

1 ~~applicant farm~~ may be discharging to waters of the State, the Secretary of
2 Agriculture, Food and Markets ~~and the Secretary of Natural Resources~~
3 immediately shall respond to refer the potential discharge to the Secretary of
4 Natural Resources for response in accordance with ~~the memorandum of~~
5 ~~understanding the federal Clean Water Act~~ regarding concentrated animal
6 feeding operations ~~under section 4810 of this title~~. The Secretary of Natural
7 Resources ~~may require~~ shall direct a large farm to obtain a permit under 10
8 V.S.A. § 1263 ~~pursuant to~~ if required by federal regulations for concentrated
9 animal feeding operations. If the farm is not required to obtain a CAFO permit
10 and is not in violation of federal regulations for Concentrated Animal Feeding
11 Operations, the Secretary of Natural Resources shall promptly notify the
12 Secretary of Agriculture, Food and Markets.

13 (b) A person shall apply for a permit in order to operate a farm that exceeds
14 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves,
15 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55
16 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens
17 or broilers with a liquid manure handling system, 82,000 laying hens without a
18 liquid manure handling system, 125,000 chickens other than laying hens
19 without a liquid manure handling system, 5,000 ducks with a liquid manure
20 handling system, or 30,000 ducks ~~if the livestock or domestic fowl are in a~~
21 ~~barn or adjacent barns owned by the same person or if the barns share a~~

1 ~~common border or have a common waste disposal system~~ without a liquid
2 manure handling system. Two or more individual farms that are under
3 common ownership and that adjoin each other or use a common area or system
4 for the disposal of wastes shall be considered a single animal feeding operation
5 or “farm” when determining whether the combined number of livestock or
6 domestic fowl qualifies the farm as a Large Farm Operation under this section.

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

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

17 (d) A person seeking a permit under this section shall apply in writing to
18 the Secretary. The application shall include a description of the proposed barn
19 or expansion of livestock or domestic fowl; a proposed nutrient management
20 plan to accommodate the number of livestock or domestic fowl the barn is
21 designed to house or the farm is intending to expand to; and a description of

1 the manure management system to be used to accommodate agricultural
2 wastes.

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

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

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

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

19 (i) A person required to obtain a permit under this section shall submit an
20 annual operating fee of \$2,500.00 to the Secretary. During any calendar year
21 in which a person has an active Large Concentrated Animal Feeding Operation

1 permit issued by the Agency of Natural Resources pursuant to the federal
2 Clean Water Act and pays the required associated fee, that person shall not be
3 required to pay the \$2,500.00 annual operating fee described in this section.

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

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

7 § 4858. MEDIUM FARM OPERATION PERMITS

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

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

16 (1) General and individual permits issued under this section shall be
17 consistent with rules adopted under this section, shall include terms and
18 conditions appropriate to each farm size category and each farm animal type as
19 defined by section 4857 of this title, and shall meet standards at least as
20 stringent as those established by federal regulations for concentrated animal
21 feeding operations. Such standards shall address waste management, waste

1 storage, development of nutrient management plans, carcass disposal, and
2 surface water and groundwater contamination, plus recordkeeping, reporting,
3 and monitoring provisions regarding such matters to ensure that the terms and
4 conditions of the permit are being met. The groundwater contamination rules
5 adopted by the Secretary under this section shall include a process under which
6 the Agency shall receive, investigate, and respond to a complaint that a farm
7 has contaminated the drinking water or groundwater of a property owner.

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

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

1 may inspect each farm seeking coverage under the general permit at any time
2 but ~~no~~ not less frequently than once every three years.

3 (c)~~(4)~~ Medium farm general permit.

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

1 discharge to waters of the State pursuant to the federal regulations for
2 concentrated animal feeding operations. If upon review ~~of a medium farm~~
3 ~~granted coverage under the general permit adopted pursuant to this subsection~~
4 the Secretary of Agriculture, Food and Markets determines that the ~~permit~~
5 ~~applicant~~ medium farm may be discharging to waters of the State, the
6 Secretary of Agriculture, Food and Markets ~~and~~ shall immediately notify the
7 Secretary of Natural Resources ~~shall respond to the discharge~~ in accordance
8 with ~~the memorandum of understanding~~ the federal Clean Water Act regarding
9 concentrated animal feeding operations ~~under section 4810 of this title~~. The
10 Secretary of Natural Resources shall direct a medium farm to obtain a permit
11 under 10 V.S.A. § 1263 if required by federal regulations for concentrated
12 animal feeding operations. If the farm is not required to obtain a CAFO permit
13 and is not in violation of federal regulations for concentrated animal feeding
14 operations, the Secretary of the Agency of Natural Resources shall promptly
15 notify the Secretary of Agriculture, Food and Markets.

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

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

1 ~~pursuant to federal regulations for concentrated animal feeding operations.~~ If,
2 upon review of ~~an application for a permit under this subsection~~ a permit
3 application, the Secretary of Agriculture, Food and Markets determines that the
4 permit applicant may be discharging to waters of the State, the Secretary of
5 Agriculture, Food and Markets ~~and shall refer the farm to~~ the Secretary of
6 Natural Resources ~~shall respond to the discharge~~ for response in accordance
7 with ~~the memorandum of understanding regarding concentrated animal feeding~~
8 ~~operations under subsection 4810(b) of this title~~ the federal Clean Water Act.

9 The Secretary of Natural Resources ~~may require~~ shall direct a medium or small
10 farm to obtain a permit under 10 V.S.A. § 1263 ~~pursuant to~~ if required by
11 federal regulations for concentrated animal feeding operations. Coverage of a
12 medium farm under a general permit adopted pursuant to this section or an
13 individual permit issued to a medium or small farm under this section is
14 rendered void by the issuance of a permit to a farm under 10 V.S.A. § 1263. If
15 the farm is not required to obtain a CAFO permit and is not in violation of
16 federal regulations for concentrated animal feeding operations, the Secretary of
17 the Agency of Natural Resources shall refer the matter to the Secretary of
18 Agriculture, Food and Markets.

19 (e) Operating fee. A person required to obtain a permit or coverage under
20 this section shall submit an annual operating fee of \$1,500.00 to the Secretary.

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

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

4 § 4816. SEASONAL APPLICATION OF MANURE

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

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

17 (c) Seasonal exemption. The Secretary of Agriculture, Food and Markets
18 shall amend the Required Agricultural Practices by rule in order to establish a
19 process under which the Secretary may authorize an exemption to the
20 prohibition on the application of manure to land in the State between
21 December 15 and April 1 of any calendar year or during any period established

1 under subsection (b) of this section when manure is prohibited from
2 application. Any process established for the issuance of an exemption under
3 the Required Agricultural Practices may authorize land application of manure
4 on a weekly, monthly, or seasonal basis or in authorized regions, areas, or
5 fields in the State, provided that any exemption shall:

6 (1) prohibit application of manure:

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

9 (B) in nonharvested permanent vegetative buffers;

10 (C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.
11 § 902(5);

12 (D) within 50 feet of a potable water supply, as that term is defined in
13 10 V.S.A. § 1972(6);

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

15 (F) to saturated soils;

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

18 (3) require manure to be applied according to a nutrient management
19 plan; and

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

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

2 (b) Required small farm certification. Beginning on July 1, 2017, a person
3 who owns or operates a small farm, as designated by the Secretary consistent
4 with subdivision 4810a(a)(1) of this title, shall, on a form provided by the
5 Secretary, certify compliance with the Required Agricultural Practices. The
6 Secretary of Agriculture, Food and Markets shall establish the requirements
7 and manner of certification of compliance with the Required Agricultural
8 Practices, provided that the Secretary shall require an owner or operator of a
9 any newly eligible or identified small farm to submit ~~an annual~~ a certification
10 of compliance with the Required Agricultural Practices and may require any
11 small farm to regularly certify ongoing compliance with the Required
12 Agricultural Practices.

13 * * * Agency of Natural Resources Regulation of Concentrated Animal
14 Feeding Operations * * *

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

16 § 1251. DEFINITIONS

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

19 * * *

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

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

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

14 Subchapter 3A. Concentrated Animal Feeding Operations

15 § 1351. DEFINITIONS

16 As used in this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

18 (ii) wastes are discharged directly into waters that originate
19 outside of or pass over, across, or through the facility or otherwise come into
20 direct contact with the animals confined in the operation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 § 1352. POWERS OF THE SECRETARY

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

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

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

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

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

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

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

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

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

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

14 (E) other relevant factors.

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

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

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

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

7 § 1353. CAFO PERMIT REQUIREMENTS AND EXEMPTIONS

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

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

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

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

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

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

14 Sec. 9. COMMUNITY STAKEHOLDER GROUP ON AGRICULTURAL
15 WATER QUALITY

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

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

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

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

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

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

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

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

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

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

12 § 1259. PROHIBITIONS

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

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

3 * * *

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

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

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

18 * * *

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

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

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

21 * * *

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

2 § 1263. DISCHARGE PERMITS

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

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

18 * * *

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

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

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

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

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

12 (d) Exemptions.

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

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

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

