

S.124 DRAFT PROPOSAL – AGRICULTURAL WATER QUALITY TRANSITION BILL

10 V.S.A. § 1263(g) authorizes the Agency of Natural Resources (“ANR”) to issue Clean Water Act permits to concentrated animal feeding operations (“CAFOs”) and to promulgate rules implementing the Clean Water Act on CAFOs. Until ANR uses its existing rulemaking authority, Vermont law requires it to apply federal CAFO permitting standards and criteria.

This proposal supplements ANR’s existing authority, ensuring that ANR can begin to improve monitoring, enforcement, and permitting on CAFOs immediately. The proposal disturbs existing law as little as possible. This avoids making substantial policy commitments as the EPA de-delegation process and legislative process weigh the long-term reforms necessary to align agricultural water quality regulation in Vermont with the Clean Water Act.

The new authorities that this proposal suggests are similar to those offered by S.124. For example, it recommends authorizing ANR to enter lands to conduct inspections. Next, like S.124, this proposal suggests a stakeholder engagement process. The process is designed to seek broad input that will inform ANR’s efforts to establish an agricultural water quality program that meets the Clean Water Act’s requirements. Third, the proposal recommends removing the presumption that farms found in compliance with the Required Agricultural Practices by the Agency of Agriculture, Food, and Markets (“AAFM”) do not discharge, a presumption contrary to the Clean Water Act. Last, the proposal recommends striking the remainder of the bill, including provisions related to Title 6 and the memorandum of understanding that governs ANR and AAFM’s relationship as unnecessary to achieve the proposal’s transitional purposes.

Recommendation 1. Amend 10 V.S.A. § 1263(g) to ensure that ANR has sufficient authority to issue NPDES permits to CAFOs and to conduct inspections.

§ 1263. DISCHARGE PERMITS

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

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(g) Notwithstanding any other provision of law, the Secretary of Natural Resources shall require 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 to submit an application to the Secretary for a discharge permit and to pay the required fees specified in 3 V.S.A. § 2822. ~~On or before July 1, 2007, the~~ The Secretary of Natural Resources shall may make and adopt rules, guidelines, procedures, inspection checklists, permit applications, and other documents 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 require and 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 or a farm that is designated by the Secretary of Natural Resources as a concentrated animal feeding operation after inspection in accordance with the federal regulations. In furtherance of this subsection, the Secretary may:

- (1) appoint assistants, subject to applicable laws, to perform or assist in the performance of any duties or functions of the Secretary under this subsection;
- (2) enter any lands, public or private, to inspect farms, including to review and copy any records, take photographs, and collect samples, as may be necessary to carry out the provisions of this subsection;
- (3) request additional information from a farm to process a permit and administer the National Discharge Elimination System;
- (4) solicit and receive federal or private funds; and
- (5) cooperate fully with the federal government or other agencies in the operation of any joint federal-state programs concerning the regulation of agricultural pollution.

Recommendation 2. Authorize a stakeholder process that informs the transition to a program that meets the Clean Water Act’s requirements.

Sec. ####. STAKEHOLDER GROUP ON AGRICULTURAL WATER QUALITY

(a) On or before November 1, 2025, the Secretary of Natural Resources, in coordination with the Secretary of Agriculture, Food and Markets, shall engage agricultural water quality stakeholders regarding the implementation of and transition to an agricultural water quality program that conforms with the requirements of the Clean Water Act. The stakeholder engagement process shall include opportunities for the agricultural community, including livestock farmers, farm groups, and agricultural consultants; the environmental community, including watershed groups and water quality experts; and the public to provide input. The Secretary of Natural Resources shall seek input on the following topics:

- (1) the establishment of a clear, consistent, and predictable water quality regulation, permitting, and enforcement by the Agency of Natural Resources that meets the requirements of the Clean Water Act;
- (2) the implementation of inspections by the Agency of Natural Resources on concentrated animal feeding operations, animal feeding operations, and other farms that satisfy the Clean Water Act’s ongoing monitoring requirements;
- (3) the establishment of a permitting process administered by the Agency of Natural Resources that ensures that no farm discharges without coverage under a

National Pollutant Discharge Elimination System permit;

(4) the coordination of agricultural water quality regulatory programs administered by the Agency of Natural Resources and technical and financial assistance programs administered by the Secretary of Agriculture, Food, and Markets to facilitate compliance with the Clean Water Act's requirements;

(5) the resources and technical assistance available to facilitate compliance with the Clean Water Act by concentrated animal feeding operation, animal feeding operations, and other farms; and

(6) the orderly establishment of an agricultural water quality program administered by the Agency of Natural Resources that meets the requirements of the Clean Water Act.

(b) On or before December 1, 2025, the Secretary of Natural Resources shall file a report with the House Committees Environment and on Agriculture, Food Resiliency and Forestry and the Senate Committees on Natural Resources and Energy and on Agriculture. The report shall summarize the stakeholder process, including public comments received, and make recommendations.

Recommendation 3. Amend 6 V.S.A. § 4810 to eliminate the presumption that a farm deemed in compliance with the RAPs does not discharge.

§ 4810. AUTHORITY; COOPERATION; COORDINATION

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(b) Required Agricultural Practices. Required Agricultural Practices (RAPs) shall be management standards to be followed by all persons engaged in farming in this State. These standards shall address activities that have a potential for causing agricultural pollutants to enter the groundwater and waters of the State, including dairy and other livestock operations plus all forms of crop and nursery operations and on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities. The RAPs shall include, as well as promote and encourage, practices for farmers in preventing agricultural pollutants from entering the groundwater and waters of the State when engaged in animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control. ~~Persons engaged in farming who are in compliance with these practices shall be presumed to not have a discharge of agricultural pollutants to waters of the State.~~ RAPs shall be designed to protect water quality and shall be practical and cost-effective to implement, as determined by the Secretary. Where the Secretary determines, after inspection of a farm, that a person engaged in farming is complying with the RAPs but there still exists the potential for agricultural pollutants to enter the waters of the State, the Secretary shall require the person to implement additional, site-specific on-farm conservation practices designed to prevent agricultural pollutants from entering the waters of the State. When requiring implementation of a conservation practice under this subsection, the Secretary shall inform the person engaged in farming of the resources available to assist the person in implementing the conservation practice and complying with the requirements of this chapter. The RAPs for groundwater shall include a process

under which the Agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner. A farmer may petition the Secretary to reduce the size of a perennial buffer or change the perennial buffer type based on site-specific conditions.

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Recommendation 4. Strike the remainder of the bill.