

Further Proposed Changes to S.100/S.124

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Secretary

Agency of Natural Resources



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Background/Context

- September 2024: EPA directs ANR to prepare a Corrective Action Plan (CAP) to address identified deficiencies with Vermont's Concentrated Animal Feeding Operation (CAFO) Program
- December 2024: ANR submits draft CAP to EPA
- January 2025: EPA provides feedback on draft CAP, largely asking for additional detail
- March 2025: ANR submits updated draft CAP to EPA; S.100 language is provided as attachment
 - on-going/informal dialogue with EPA is reflected in proposed changes shown in the following slides

Page 5, lines 11-17

- The minimum vegetated buffer requirement required under this subdivision (A) shall not apply to a farm that is determined by the Secretary of Natural Resources to be a Concentrated Animal Feeding Operation, and is required to have a CAFO permit as that term is defined under 10 V.S.A. § 1353~~4~~. Operations determined to be a Concentrated Animal Feeding Operation that require a CAFO permit shall instead comply with the setback and buffer requirements established in the federal 16 CAFO regulations.

Promptly

Align with language on Page 7, line 11
and Page 13, line 14.

- Page 7, line 3 & Page 13, line 6 - Replace immediately with promptly
- Page 15, line 5 - Secretary of Agriculture, Food and Markets and shall promptly refer the farm Add promptly before
- Page 15, line 17 - the Agency of Natural Resources shall promptly refer the matter to the Secretary of

NPDES Definitions

- Page 19, line 1 - (3) "Direct discharge" means the placing, depositing, or emission of any waste or pollutant directly into waters.
- Add to definition - "Person" means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State; any federal agency; or any other legal or commercial entity; or an agent or employee thereof.
- Page 19, lines 13 to 15 - "Waters" or "waters of the State" includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all artificial or natural bodies of surface waters, and waters of the United States as defined under the federal Clean Water Act artificial or natural, that are contained within, flow through, or border upon the State or any portion of it.
- Renumber definitions

CAFO Definitions

- Place a period after the word “system” on Page 22, line 14 and delete all the words and lines until Page 23, line 5.
- Page 23, line 6 - (6) “Large farm operation” or “LFO” has the same meaning in as in . . .
- Page 24, lines 2 to 6 – (i) wastes are discharged into waters of the United States ~~via a point source~~ through a man-made ditch, flushing system, or other similar man-made device; or (ii) wastes are discharged directly into waters of the United States

CAFO Definitions, cont.

- Page 26, lines 1 to 6 -determining that the AFO is a significant contributor of pollutants to waters of the United States and is defined as a CAFO by the federal regulations under the federal Clean Water Act.~~either of the following conditions are met:~~
 - ~~(A) wastes are discharged into waters via a point source; or~~
 - ~~(B) wastes are discharged directly into waters that originate outside 4 of or pass over, across, or through the facility or otherwise come into direct 5 contact with the animals confined in the operation.~~
- (16) “Waters of the United States” shall have the same meaning as “waters” defined by the federal regulations under the Clean Water Act.

Powers of the Secretary

CAFO Permit Requirements

- Page 27, lines 1 to 2 - (4) Designate any AFO that meets the definition of a CAFO under the federal Clean Water Act regulations as a CAFO, in the Secretary's sole discretion.
- Page 27, line 5 – waters of the ~~state~~ United States
- Page 28, line 8 to 13 – (a) The discharge of manure, litter, or process wastewater to waters of the United States from a permitted CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to NPDES permit requirements, except where it is an agricultural stormwater discharge as in provided in the Clean Water Act. For purposes of this paragraph, where the manure, litter, or process wastewater has been applied in accordance with the federal regulations under the Clean Water Act, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge ~~a site-specific nutrient management plan approved by the Secretary.~~

CAFO Permit Requirements

- Page 28, lines 14 to 15 - ~~(b) A~~ For unpermitted large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a LFO CAFO shall be considered an . . .
- Page 29, lines 1 to 5 - ~~(1b)~~ All CAFOs, MFOs and LFOs shall maintain documentation of a nutrient management plan and practices on site or at a nearby office and make the documentation readily available to the Secretary upon request.
- ~~(2) SFOs shall maintain documentation of soil testing and nutrient management practices.~~

CAFO Permit Requirements – Prohibitions

- Page 29, lines 10 to 13 – Delete - ~~(d) Prima facie evidence sufficient to determine that a farm is a CAFO 10 includes an observed discharge from a point source, evidence of a recent prior 11 discharge from a point sources such as a stained drainage swale and standing 12 water in a ditch close to waters.~~
- Page 32, lines 5 to 7 - Provided that the introduction of wastes are from sources that **do not discharge pollutants from a point source into waters of the United States,** and comply with the federal Clean Water Act and federal CAFO regulations, the following 6 activities shall not require a VPDES permit under section 1263 of this title:

Prohibitions, cont. – Discharge Permits

- Page 32, lines 19 to 21 - ~~(i) The Secretary of Natural Resources, to the extent compatible shall regulate farms in accordance with federal requirements, and shall delegate to the Secretary of Agriculture, Food and Markets the State agricultural non-point shall implement the state nonpoint source pollution control~~
- Page 35, lines 13 to 17 - ~~The Secretary may require any applicant to submit any additional information that the Secretary considers necessary before issuing a permit application completeness determination., and~~ ~~The Secretary may take appropriate steps to secure compliance,~~ refuse to grant a permit, or permission to discharge under the terms of a general permit, until the information is furnished and evaluated.

Discharge Permits

- Page 35, line 19 – Add “Any” to the beginning of the sentence.
- Page 36, line 14 – Delete Medium
- Page 37, line 10 – spell out CWA – Clean Water Act
- Page 37, line 1 – Insert new (h)/reletter - A large CAFO shall not be required to have a CAFO permit unless one of the following conditions are met;
 - (1) wastes are discharged into waters of the United States via a point source;
 - (2) wastes are discharged directly into waters that originate outside of or pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation; or
 - (3) a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a LFO has occurred that was not in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as determined by the Secretary.

Stormwater

- Page 37, lines 14 to 18 – No permit is required for (A) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets; ~~provided that this and~~ not subject to the federal Clean Water Act and enabling regulations, as determined by the Secretary of Natural Resources. This exemption shall not apply to construction stormwater permits required by subdivision (c)(4) of this section.

Proposed Next Steps

- Review changes being sought to S.100/124 by environmental interest groups for consistency with ANR's obligations to EPA
 - Propose any further modifications (by COB tomorrow?)
- Finalize *Corrective Action Plan* with EPA
- Initiate agricultural stakeholder engagement