

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, complementary 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~~
22 ~~under this chapter. The memorandum of understanding shall describe Program~~

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

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

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

1 (6)(A) Require a farm to comply with standards established by the
2 Secretary for maintaining a vegetative buffer zone of perennial vegetation
3 between annual croplands and the top of the bank of an adjoining water of the
4 State. At a minimum the vegetative buffer standards established by the
5 Secretary shall prohibit the application of manure on the farm within 25 feet of
6 the top of the bank of an adjoining water of the State or within 10 feet of a
7 ditch that is not a surface water under State law and that is not a water of the
8 United States under federal law. The minimum vegetated buffer requirement
9 required under this subdivision (A) shall not apply to a farm that is determined
10 by the Secretary of Natural Resources to be a Concentrated Animal Feeding
11 Operation and is required to obtain a CAFO permit as, as that term is defined
12 under 10 V.S.A. § 1353~~4~~. Operations determined to be a Concentrated Animal
13 Feeding Operation that require a CAFO permit -shall instead comply with the
14 setback and buffer requirements established in the federal CAFO regulations.

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

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

19 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

20 (a) No person shall, without a permit from the Secretary, construct a new
21 barn, or expand an existing barn, designed to house more than 700 mature
22 dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine

1 weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500
2 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers
3 with a liquid manure handling system, 82,000 laying hens without a liquid
4 manure handling system, 125,000 chickens other than laying hens without a
5 liquid manure handling system, 5,000 ducks with a liquid manure handling
6 system, or 30,000 ducks without a liquid manure handling system. No permit
7 shall be required to replace an existing barn in use for livestock or domestic
8 fowl production at its existing capacity. The Secretary of Agriculture, Food
9 and Markets, in consultation with the Secretary of Natural Resources, shall
10 review any application for a permit under this section with regard to water
11 quality impacts ~~and~~, prior to approval of a permit under this subsection, ~~shall~~
12 ~~issue a written determination regarding whether the applicant has established~~
13 ~~that there will be no unpermitted discharge to waters of the State pursuant to~~
14 ~~the federal regulations for concentrated animal feeding operations.~~ If, upon
15 review of ~~an~~ a large farm application for a permit under this subsection, the
16 Secretary of Agriculture, Food and Markets determines that the ~~permit~~
17 ~~applicant~~ farm may be discharging to waters of the United States, the Secretary
18 of Agriculture, Food and Markets ~~and the Secretary of Natural Resources~~
19 immediately shall promptly ~~respond to~~ refer the potential discharge to the
20 Secretary of Natural Resources for response in accordance with ~~the~~
21 ~~memorandum of understanding~~ the federal Clean Water Act regarding
22 concentrated animal feeding operations ~~under section 4810 of this title.~~ The

1 Secretary of Natural Resources ~~may require~~ shall direct a large farm to obtain a
2 permit under 10 V.S.A. § 1263 ~~pursuant to~~ if required by federal regulations
3 for concentrated animal feeding operations. If the farm is not required to
4 obtain a CAFO permit and is not in violation of federal regulations for
5 Concentrated Animal Feeding Operations, the Secretary of Natural Resources
6 shall promptly notify the Secretary of Agriculture, Food and Markets.

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

22 In order to receive this permit, the person shall demonstrate to the Secretary

1 that the farm has an adequately sized manure management system to
2 accommodate the wastes generated and a nutrient management plan to dispose
3 of wastes in accordance with Required Agricultural Practices adopted under
4 this chapter and current U.S. Department of Agriculture nutrient management
5 standards.

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

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

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

19 (f) Before granting a permit under this section, the Secretary shall make an
20 affirmative finding that the animal wastes generated by the construction or
21 expansion will be stored so as not to generate runoff from a 25-year, 24-hour
22 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.

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

20 § 4858. MEDIUM FARM OPERATION PERMITS

21 (a) Authorization to operation. No person shall operate a medium farm
22 without authorization from the Secretary pursuant to this section. Under

1 exceptional conditions, specified in subsection (d) of this section, authorization
2 from the Secretary may be required to operate a small farm.

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

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

20 (2) The rules adopted under this section shall also address permit
21 administration, public notice and hearing, permit enforcement, permit

1 transition, revocation, and appeals consistent with provisions of sections 4859
2 and 4861 of this title and subchapter 10 of this chapter.

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

15 (c)(~~1~~) Medium farm general permit.

16 (1) The owner or operator of a medium farm seeking coverage under a
17 general permit adopted pursuant to this section shall certify to the Secretary
18 within a period specified in the permit, and in a manner specified by the
19 Secretary, that the medium farm does comply with permit requirements
20 regarding an adequately sized and designed manure management system to
21 accommodate the wastes generated and a nutrient management plan to dispose
22 of wastes in accordance with Required Agricultural Practices adopted under

1 this chapter and current U.S. Department of Agriculture nutrient management
2 standards. Any certification or notice of intent to comply submitted under this
3 subdivision shall be kept on file at the Agency of Agriculture, Food and
4 Markets. The Secretary of Agriculture, Food and Markets, in consultation with
5 the Secretary of Natural Resources, shall review any certification or notice of
6 intent to comply submitted under this subdivision with regard to the water
7 quality impacts of the medium farm for which the owner or operator is seeking
8 coverage, and, for farms that have never been permitted under the prior permit
9 term, within 18 months ~~of~~ after receiving the certification or notice of intent to
10 comply, the Secretary of Natural Resources shall verify whether the owner or
11 operator of the medium farm has established that there will be no unpermitted
12 discharge to waters of the United States pursuant to the federal regulations for
13 concentrated animal feeding operations. If upon review ~~of a medium farm~~
14 ~~granted coverage under the general permit adopted pursuant to this subsection~~
15 the Secretary of Agriculture, Food and Markets determines that the permit
16 ~~applicant~~ medium farm may be discharging to waters of the United States, the
17 Secretary of Agriculture, Food and Markets ~~and~~ shall promptly~~immediately~~
18 notify the Secretary of Natural Resources ~~shall respond to the discharge in~~
19 accordance with ~~the memorandum of understanding~~ the federal Clean Water
20 Act regarding concentrated animal feeding operations ~~under section 4810 of~~
21 ~~this title~~. The Secretary of Natural Resources shall direct a medium farm to
22 obtain a permit under 10 V.S.A. § 1263 if required by federal regulations for

1 concentrated animal feeding operations. If the farm is not required to obtain a
2 CAFO permit and is not in violation of federal regulations for concentrated
3 animal feeding operations, the Secretary of the Agency of Natural Resources
4 shall promptly notify the Secretary of Agriculture, Food and Markets.

5 (2) The owner or operator of a small farm may seek coverage under the
6 medium farm general permit adopted pursuant to this section by certifying to
7 the Secretary, in a manner specified by the Secretary, that the small farm
8 complies with the requirements and conditions of the medium farm general
9 permit.

10 (d) Medium and small farms; individual permit. The Secretary may require
11 the owner or operator of a small or medium farm to obtain an individual permit
12 to operate after review of the farm's history of compliance, application of
13 Required Agricultural Practices, the use of an experimental or alternative
14 technology or method to meet a State performance standard, or other factors
15 set forth by rule. The owner or operator of a small farm may apply to the
16 Secretary for an individual permit to operate under this section. To receive an
17 individual permit, an applicant shall in a manner prescribed by rule
18 demonstrate that the farm has an adequately sized and designed manure
19 management system to accommodate the wastes generated and a nutrient
20 management plan to dispose of wastes in accordance with Required
21 Agricultural Practices adopted under this chapter and current U.S. Department
22 of Agriculture nutrient management standards, including setback requirements

1 for waste application. An individual permit shall be valid for ~~no~~ not more than
2 five years. Any application for an individual permit filed under this subsection
3 shall be kept on file at the Agency of Agriculture, Food and Markets. The
4 Secretary of Agriculture, Food and Markets, in consultation with the Agency
5 of Natural Resources, shall review any application for a permit under this
6 subsection ~~and, prior to issuance of an individual permit under this subsection,~~
7 ~~shall issue a written determination regarding whether the permit applicant has~~
8 ~~established that there will be no unpermitted discharge to waters of the State~~
9 ~~pursuant to federal regulations for concentrated animal feeding operations.~~ If,
10 upon review of an application for a permit under this subsection a permit
11 application, the Secretary of Agriculture, Food and Markets determines that the
12 permit applicant may be discharging to waters of the United States, the
13 Secretary of Agriculture, Food and Markets ~~and~~ shall promptly refer the farm
14 to the Secretary of Natural Resources shall respond to the discharge for
15 response in accordance with ~~the memorandum of understanding regarding~~
16 ~~concentrated animal feeding operations under subsection 4810(b) of this title~~
17 the federal Clean Water Act. The Secretary of Natural Resources ~~may require~~
18 shall direct a medium or small farm to obtain a permit under 10 V.S.A. § 1263
19 ~~pursuant to~~ if required by federal regulations for concentrated animal feeding
20 operations. Coverage of a medium farm under a general permit adopted
21 pursuant to this section or an individual permit issued to a medium or small
22 farm under this section is rendered void by the issuance of a permit to a farm

1 under 10 V.S.A. § 1263. If the farm is not required to obtain a CAFO permit
2 and is not in violation of federal regulations for concentrated animal feeding
3 operations, the Secretary of the Agency of Natural Resources shall promptly
4 refer the matter to the Secretary of Agriculture, Food and Markets.

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

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

10 § 4816. SEASONAL APPLICATION OF MANURE

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

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

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

11 (1) prohibit application of manure:

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

14 (B) in nonharvested permanent vegetative buffers;

15 (C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.
16 § 902(5);

17 (D) within 50 feet of a potable water supply, as that term is defined in
18 10 V.S.A. § 1972(6);

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

20 (F) to saturated soils;

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

1 * * *

2 (3) "Direct discharge" means the placing, depositing, or emission of any
3 waste or pollutant directly into waters.

4 (4) "Discharge" means the placing, depositing, or emission of any
5 wastes or pollutants, directly or indirectly, into an injection well or into the
6 waters of the State.

7 * * *

8 (?) "Person" means any individual; partnership; company; corporation;
9 association; joint venture; trust; municipality; the State of Vermont or any
10 agency, department, or subdivision of the State; any federal agency; or any
11 other legal or commercial entity; or an agent or employee thereof.

12 (11) "Secretary" means the Secretary of Natural Resources or ~~his or her~~
13 authorized representative.

14 (12) "Waste" means effluent, sewage, or any substance or material,
15 liquid, gaseous, solid, or radioactive, including heated liquids, whether or not
16 harmful or deleterious to waters; provided, however, the term "sewage" as
17 used in this chapter shall not include the rinse or process water from a cheese
18 manufacturing process.

19 (13) "Waters" or "waters of the State" includes all rivers, streams,
20 creeks, brooks, reservoirs, ponds, lakes, springs, and all artificial or natural
21 bodies of surface waters, and waters of the United States as defined under the

1 federal Clean Water Act ~~artificial or natural~~, that are contained within, flow
2 through, or border upon the State or any portion of it.

3 * * *

4 (20) “Continuous discharge” means a discharge that occurs without
5 interruption throughout the operating hours of the facility, except for
6 infrequent shutdowns for maintenance, process changes, or other similar
7 activities.

8 (21) “Daily discharge” means the discharge of a pollutant measured
9 during a calendar day or any 24-hour period that reasonably represents the
10 calendar day for purposes of sampling. For pollutants with limitations
11 expressed in units of mass, the daily discharge is calculated as the total mass of
12 the pollutant discharged over the day. For pollutants with limitations
13 expressed in other units of measurement, the daily discharge is calculated as
14 the average measurement of the pollutant over the day.

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

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

21 Subchapter 3A. Concentrated Animal Feeding Operations

22 § 1351. DEFINITIONS

1 As used in this subchapter:

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

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

12 (i) animals, other than aquatic animals, have been, are, or will be
13 stabled or confined and fed or maintained for a total of 45 days or more in any
14 12-month period; and

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

17 (B) Two or more individual farms qualifying as an AFO that are
18 under common ownership and that adjoin each other or use a common area or
19 system for the disposal of waste shall be considered to be a single AFO if the
20 combined number of livestock or domestic fowl on the combined farm
21 qualifies the combined farm as a large CAFO as defined in subdivision (11) of

1 this section or as a medium CAFO as defined in subdivision (14) of this
2 section.

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

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

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

10 (A) houses 700 or more mature dairy animals, 1,000 or more cattle or
11 cow or calf pairs, 1,000 or more veal calves, 2,500 or more swine weighing
12 over 55 pounds, 10,000 or more swine weighing 55 pounds or less, 500 or
13 more horses, 10,000 or more sheep or lambs, 55,000 or more turkeys, 30,000
14 or more laying hens or broilers with a liquid manure handling system, 82,000
15 or more laying hens without a liquid manure handling system, 125,000 or more
16 chickens other than laying hens without a liquid manure handling system,
17 5,000 or more ducks with a liquid manure handling system, or 30,000 or more
18 ducks without a liquid manure handling system; ~~and~~

19 ~~(B) any of the following conditions are met:~~

20 ~~(i) wastes are discharged into waters of the United States via a point~~

21 source;

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

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

9 (6) “Large farm operation” or “LFO” has the same meaning as in
10 6 V.S.A. chapter 215.

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

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

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

1 1,500 to 4,999 ducks with a liquid manure handling system, or 10,000 to
2 29,999 ducks without a liquid manure handling system; and

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

4 (i) wastes are discharged into waters of the United States through
5 a man-made ditch, flushing system, or other similar man-made device via a
6 point source; or

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

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

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

19 (11) “Process wastewater” means water directly or indirectly used in the
20 operation of an AFO or CAFO for any or all of the following: spillage or
21 overflow from animal or poultry watering systems; washing, cleaning, or
22 flushing pens, barns, manure pits, or other AFO or CAFO facilities; direct

1 contact swimming, washing, or spray cooling of animals; or dust control.

2 Process wastewater also includes any water that comes into contact with any
3 raw materials, products, or byproducts, including manure, litter, feed, milk,
4 eggs, or bedding.

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

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

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

1 (15) “Small concentrated animal feeding operation” or “small CAFO”
2 means a small AFO designated as a small CAFO by the Secretary upon
3 determining that the AFO is a significant contributor of pollutants to waters of
4 the United States and is defined as a CAFO by the regulations under the
5 federal Clean Water Act, and either of the following conditions are met:
6 (A) wastes are discharged into waters via a point source; or
7 (B) wastes are discharged directly into waters that originate outside of or
8 pass over, across, or through the facility or otherwise come into direct contact
9 with the animals confined in the operation.

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

12 § 1352. POWERS OF THE SECRETARY

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

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

18 (2) Make, adopt, revise, and amend rules as necessary to administer a
19 VPDES CAFO program that is consistent with and equivalent to the federal
20 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) Designate any small AFO as a CAFO if after an on-site inspection,
8 the Secretary determines that the small AFO is discharging into water and is a
9 significant contributor of pollutants to waters of the United [s](#)States. The
10 Secretary shall consider the following factors:

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

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

13 (C) the means of conveyance of animal wastes and process waste
14 waters into waters;

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

18 (E) other relevant factors.

19 (6) Access private or public property to inspect AFOs [and CAFOs](#), take
20 photos and samples, and review and copy AFO [and CAFO](#) land management
21 records, including nutrient management plans, as may be necessary to carry out
22 the provisions of this subchapter.

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

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

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

8 § 1353. CAFO PERMIT REQUIREMENTS AND EXEMPTIONS

9 (a) The discharge of manure, litter, or process wastewater to waters of the
10 United States from a [permitted](#) CAFO as a result of the application of that
11 manure, litter or process wastewater by the CAFO to land areas under its
12 control is a discharge from that CAFO subject to NPDES permit requirements,
13 except where it is an agricultural stormwater discharge as provided under the
14 Clean Water Act. For purposes of this paragraph, the manure, litter, or process
15 wastewater has been applied in accordance with ~~a site-specific nutrient~~
16 management plan approved by the Secretary—the federal regulations under the
17 Clean Water Act, a precipitation-related discharge of manure, litter or process
18 wastewater from land areas under the control of a CAFO is an agricultural
19 stormwater discharge. For unpermitted Large CAFOs,
20 ~~(b) A precipitation-related discharge of manure, litter, or process~~
21 wastewater from land areas under the control of a ~~L~~CAFO shall be considered
22 an exempt agricultural stormwater discharge only where the manure, litter, or

1 process wastewater has been land applied in accordance with site-specific
2 nutrient management practices that ensure appropriate agricultural utilization
3 of the nutrients in the manure, litter, or process wastewater, as determined by
4 the Secretary.

5 (b)

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

9 (2) SFOs shall maintain documentation of soil testing and nutrient
10 management practices.

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

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

19 Sec. 9. COMMUNITY STAKEHOLDER GROUP ON AGRICULTURAL
20 WATER QUALITY

21 (a) On or before December 1, 2025, the Secretary of Natural Resources, in
22 coordination with the Secretary of Agriculture, Food and Markets, shall engage

1 key agricultural stakeholders as part of a pre-rulemaking process to gather
2 input on proposed concentrated animal feeding operation (CAFO) rules. The
3 rulemaking process also shall include public notice and informational hearings
4 to provide updates on the CAFO program and gather broad public input. In
5 addition, the stakeholder engagement process shall include specific
6 opportunities for the agricultural community, including livestock farmers, farm
7 and watershed groups, and agricultural consultants, to share their input on:

8 (1) the implementation of the Agency of Natural Resources' CAFO
9 program;

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

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

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

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

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

5 (1) summarize the stakeholder process, including public comments
6 received;

7 (2) summarize public input received during rulemaking;

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

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

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

16 § 1259. PROHIBITIONS

17 (a) No person shall discharge any waste, substance, or material into waters
18 of the State, nor shall any person discharge any waste, substance, or material
19 into an injection well or discharge into a publicly owned treatment works any
20 waste that interferes with, passes through without treatment, or is otherwise
21 incompatible with those works or would have a substantial adverse effect on
22 those works or on water quality, without first obtaining a permit for that

1 discharge from the Secretary. This subsection shall not prohibit the proper
 2 application of fertilizer to fields and crops, nor reduce or affect the authority or
 3 policy declared in Joint House Resolution 7 of the 1971 Session of the General
 4 Assembly.

5 * * *

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

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

14 (2) accepted silvicultural practices, as defined by the Commissioner of
 15 Forests, Parks and Recreation, including practices ~~which that~~ are in compliance
 16 with the Acceptable Management Practices for Maintaining Water Quality on
 17 Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks
 18 and Recreation; ~~nor shall these provisions regulate discharges from~~
 19 ~~concentrated animal feeding operations that require a permit under section~~
 20 ~~1263 of this title; nor shall those provisions prohibit stormwater runoff or the~~
 21 ~~discharge of nonpolluting wastes, as defined by the Secretary.~~

22 * * *

1 (i) The Secretary of Natural Resources, shall regulate farms in accordance
2 to the extent compatible with federal requirements, shall delegate to and the
3 Secretary of Agriculture, Food and Markets the State agricultural shall
4 implement the state non-point nonpoint source pollution control program
5 planning, implementation, and regulation. ~~A memorandum of understanding~~
6 ~~shall be adopted for this purpose, which shall address implementation grants,~~
7 ~~the 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 shared 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
22 respective roles and responsibilities of the Agency of Natural Resources in

1 implementing the Clean Water Act on farms and responsibilities of the Agency
2 of Agriculture, Food and Markets in implementing the State's complementary
3 nonpoint source program on farms. The document shall replace the existing
4 memorandum of understanding between the agencies. The Secretary shall post
5 the draft document and information regarding the document on the Agency's
6 website, shall issue public notice by press release and social media, shall
7 submit the draft documents to the Senate Committees on Agriculture and on
8 Natural Resources and Energy and the House Committees on Agriculture,
9 Food Resiliency, and Forestry and on Environment, and shall allow for public
10 comment. The proposed ~~memorandum of understanding~~ document shall be
11 available for 30 days after the final date of publication for public review and
12 comment ~~prior to being executed by the Secretary of Natural Resources and~~
13 ~~the Secretary of Agriculture, Food and Markets.~~ The Secretary of Natural
14 Resources ~~and~~ in consultation with the Secretary of Agriculture, Food and
15 Markets ~~annually~~ shall review ~~the memorandum of understanding the~~
16 document every five years to ensure compliance with the requirements of the
17 Clean Water Act ~~and the provisions of section 1258 of this title.~~ If the
18 ~~memorandum~~ document is substantially revised, it first shall be noticed in the
19 same manner that applies to the initial memorandum. Actions by the Secretary
20 of Agriculture, Food and Markets under this section shall be consistent with
21 the water quality standards and water pollution control requirements of chapter
22 47 of this title and the federal Clean Water Act as amended.

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

§ 1263. DISCHARGE PERMITS

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

(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, 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.

* * *

(g) ~~Notwithstanding any other provision of law, any~~ Any person who owns or operates a concentrated animal feeding operation that requires a permit

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

1 (h) A large CAFO shall not be required to have a CAFO permit unless one
2 of the following conditions are met;

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

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

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

13 (i) The Secretary shall require nutrient management plans for all CAFOs
14 and shall include the plans in the permits for public comment in accordance
15 with the process set forth in 10 V.S.A. chapter 170. The Secretary may amend
16 a permit in accordance with 10 V.S.A. chapter 170 or revoke a permit in
17 accordance with 3 V.S.A. § 814.

18 (j) Once a CAFO is covered under a CAFO permit, the farm shall be
19 covered for the five year duration of the permit. A farm covered by a CAFO
20 permit shall renew the permit in accordance with its terms, unless the farm
21 wants to opt out and can demonstrate it is not discharging and shall

1 accordingly comply with the federal ~~Clean Water Act~~WA and the Vermont
2 CAFO rules.

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

4 (d) Exemptions.

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

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

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

14 (C) Stormwater runoff from accepted silvicultural practices, as
15 defined by the Commissioner of Forests, Parks and Recreation, including
16 practices that are in compliance with the federal Clean Water Act as
17 determined by the Secretary of Natural Resources and the Acceptable
18 Management Practices for Maintaining Water Quality on Logging Jobs in
19 Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

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

21 (2) No permit is required under subdivision (c)(1), (5), or (7) of this
22 section and for which a municipality has assumed full legal responsibility as

1 part of a permit issued to the municipality by the Secretary. As used in this
2 subdivision, “full legal responsibility” means legal control of the stormwater
3 system, including a legal right to access the stormwater system, a legal duty to
4 properly maintain the stormwater system, and a legal duty to repair and replace
5 the stormwater system when it no longer adequately protects waters of the
6 State.

7 * * * Effective Date * * *

8 Sec. 13. EFFECTIVE DATE

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

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