

1 S.220

2 Introduced by Senator Champion

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; agriculture; water quality; permitting;
6 enforcement

7 Statement of purpose of bill as introduced: This bill proposes to transfer from
8 the Secretary of Agriculture, Food and Markets to the Secretary of Natural
9 Resources all authority to administer and enforce water quality requirements
10 on farms in Vermont.

11 An act relating to administration and enforcement of agricultural water
12 quality violations

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

14 * * * Agency of Natural Resources; Authority Over Agricultural Water

15 Quality Violations * * *

16 Sec. 1. PURPOSE; AGENCY OF NATURAL RESOURCES' AUTHORITY
17 OVER AGRICULTURAL WATER QUALITY VIOLATIONS

18 The purpose of this act is to transfer from the Secretary of Agriculture,
19 Food and Markets to the Secretary of Natural Resources all authority to
20 administer and enforce water quality requirements on farms in Vermont under

1 10 V.S.A. chapter 47 and other statutes that the Agency of Natural Resources
2 administers and enforces.

3 Sec. 2. 10 V.S.A. chapter 47, subchapter 2A is added to read:

4 Subchapter 2A. Agricultural Water Quality Permits

5 § 1320. PURPOSE

6 It is the purpose of this subchapter to ensure that agricultural animal wastes
7 and fertilizers do not enter the waters of this State. Therefore, it is State policy
8 that all farms comply with water quality standards under this subchapter that
9 eliminate or reduce the discharge or runoff of animal wastes and fertilizer to
10 waters of the State.

11 § 1321. DEFINITIONS

12 As used in this subchapter:

13 (1) “Agricultural waste” means material originating or emanating from a
14 farm that is determined by the Secretary of Natural Resources to be harmful to
15 the waters of the State, including: sediments; minerals, including heavy
16 metals; plant nutrients; pesticides; organic wastes, including livestock waste,
17 animal mortalities, compost, feed and crop debris; waste oils; pathogenic
18 bacteria and viruses; thermal pollution; silage runoff; untreated milkhouse
19 waste; and any other farm waste as the term “waste” is defined in subdivision
20 1251(12) of this title.

1 (2) “Animal feeding operation (AFO)” means a lot or facility where the
2 livestock or domestic fowl have been, are, or will be stabled or confined and
3 fed or maintained for a total of 45 days or more in any 12-month period, and
4 crops, vegetation, or forage growth are not sustained in the normal growing
5 season over any portion of the lot or facility. Two or more individual farms
6 qualifying as an AFO that are under common ownership and that adjoin each
7 other or use a common area or system for the disposal of waste shall be
8 considered to be a single AFO if the combined number of livestock or
9 domestic fowl on the combined farm qualifies as a large farm under
10 subdivision (4) of this section or as a medium farm as defined in subdivision
11 (6) of this section.

12 (3) “Best management practices (BMPs)” are site-specific on-farm
13 conservation practices implemented in order to address the potential for
14 agricultural pollutants to enter the waters of the State.

15 (4) “Domestic fowl” means laying-hens, broilers, ducks, and turkeys.

16 (5) “Farm” means a parcel or parcels of land owned, leased, or managed
17 by a person that is devoted primarily to farming and that meets the threshold
18 criteria established under the Required Agricultural Practices, provided that a
19 lessee controls the leased lands to the extent they would be considered as part
20 of the lessee’s own farm. Indicators of control may include whether the lessee
21 makes day-to-day decisions concerning the cultivation or other farming-related

1 use of the leased lands and whether the lessee manages the land for farming
2 during the leased period.

3 (6) “Farming” means:

4 (A) the cultivation or other use of land for growing food, fiber,
5 Christmas trees, maple sap, or horticultural and orchard crops;

6 (B) the raising, feeding, or management of livestock, poultry, fish,
7 or bees;

8 (C) the operation of greenhouses;

9 (D) the production of maple syrup;

10 (E) the on-site storage, preparation, and sale of agricultural products
11 principally produced on the farm;

12 (F) the on-site production of fuel or power from agricultural products
13 or wastes produced on the farm; or

14 (G) the raising, feeding, or management of four or more equines
15 owned or boarded by the farmer, including training, showing, and providing
16 instruction and lessons in riding, training, and the management of equines.

17 (7) “Large farm” means an AFO that houses 700 or more mature dairy
18 animals, 1,000 or more cattle or cow or calf pairs, 1,000 or more veal calves,
19 2,500 or more swine weighing over 55 pounds, 10,000 or more swine
20 weighing 55 pounds or less, 500 or more horses, 10,000 or more sheep or
21 lambs, 55,000 or more turkeys, 30,000 or more laying hens or broilers with a

1 liquid manure handling system, 82,000 or more laying hens without a liquid
2 manure handling system, 125,000 or more chickens other than laying hens
3 without a liquid manure handling system, 5,000 or more ducks with a liquid
4 manure handling system, 30,000 or more ducks without a liquid manure
5 handling system, or other livestock types, combinations, or numbers as
6 designated by the Secretary by rule.

7 (8) “Livestock” means cattle, cow or calf pairs, youngstock, heifers,
8 bulls, American bison, swine, sheep, goats, horses, cervids, camelids, ratites,
9 rabbits, pheasants, chukar partridge, coturnix quail, laying hens, broilers,
10 ducks, turkeys, or any other type of fowl as designated by the Secretary. Other
11 livestock types may be designated by the Secretary based on the potential to
12 generate nutrients or other associated agricultural wastes.

13 (9) “Manure” means livestock waste in solid or liquid form that may
14 also contain bedding, spilled feed, water, or soil.

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

1 liquid manure handling system, 1,500 to 4,999 ducks with a liquid manure
2 handling system, 10,000 to 29,999 ducks without a liquid manure handling
3 system, or other livestock types, combinations, or numbers as designated by
4 the Secretary by rule.

5 (11) “Secretary” means the Secretary of Natural Resources.

6 (12) “Small farm” means a parcel or parcels of land:

7 (A) on which 10 or more acres are used for farming;

8 (B) that house no more than 199 mature dairy animals, 299 cattle or
9 cow or calf pairs, 299 veal calves, 749 swine weighing over 55 pounds, 2,999
10 swine weighing 55 pounds or less, 149 horses, 2,999 sheep or lambs, 16,499
11 turkeys, 8,999 laying hens or broilers with a liquid manure handling system,
12 24,999 laying hens without a liquid manure handling system, 37,499 chickens
13 other than laying hens without a liquid manure handling system, 1,499 ducks
14 with a liquid manure handling system, or 9,999 ducks without a liquid manure
15 handling system; and

16 (C)(i) that house at least the number of mature animals designated by
17 rule under the required agricultural practices; or

18 (ii) that are used for the preparation, tilling, fertilization, planting,
19 protection, irrigation, and harvesting of crops for sale.

1 § 1322. AUTHORITY TO ADMINISTER AGRICULTURAL NONPOINT
2 SOURCE CONTROL RULES

3 (a) Transfer of authority. The Secretary of Natural Resources is transferred
4 the authority to administer and enforce the Large Farm Operation Rules (Large
5 Farm Rules), the Medium and Small Farm Operation Rules for Issuance of
6 General and Individual Permits (Medium Farm Rules), and the Required
7 Agricultural Practices Rule for the Agricultural Nonpoint Source Pollution
8 Control Program (RAPs) of the Agency of Agriculture, Food and Markets, as
9 those rules existed on July 1, 2018.

10 (b) Amendment of existing rules. The Secretary of Natural Resources may
11 amend, repeal, or replace the Large Farm Rules, Medium Farm Rules, or RAPs
12 at any time in accordance with the requirements of 3 V.S.A. chapter 25.

13 (c) Adoption of new rules. The Secretary of Natural Resources may adopt
14 additional rules in accordance with the requirement of 3 V.S.A. chapter 25 in
15 order to implement the requirements of this subchapter.

16 § 1323. AGRICULTURAL WATER QUALITY PERMIT; ISSUANCE

17 (a) Agricultural water quality permit required; large and medium farms.
18 No person shall operate a large farm or a medium farm in the State without an
19 agricultural water quality permit from the Secretary.

20 (b) Permit issuance. The Secretary may issue an individual permit or
21 general permit for a large farm or medium farm required to obtain a permit

1 under subsection (a) of this section. A permit issued under this section shall be
2 issued according to the procedural requirements of subsection 1263(b) of this
3 title.

4 (c) Permit term. A permit issued under this chapter shall be valid for the
5 period of time specified in the permit, but the term shall not exceed five years.
6 A permit issued under this section may be renewed upon application to the
7 Secretary.

8 § 1324. AGRICULTURAL WATER QUALITY PERMIT REQUIREMENTS

9 (a) Permit requirements. The Secretary shall require the operator of a large
10 farm or medium farm permitted under this subchapter to:

11 (1) provide to the Secretary evidence that the large farm or medium
12 farm maintains an adequately designed and sized manure management system
13 sufficient to accommodate wastes generated by livestock or domestic fowl on
14 the large farm or medium farm;

15 (2) adopt and implement a field-by-field nutrient management plan
16 consistent with the requirements of the U.S. Department of Agriculture's
17 Natural Resource Conservation Service Nutrient Management Practice Code
18 590 or other equivalent standards approved by the Secretary;

19 (3) verify that there will be no unpermitted discharge from a large farm
20 or medium farm to a water of the State; and

1 (4) comply with all applicable rules for operation of the large farm or
2 medium farm.

3 (b) Discharge permit required. The Secretary shall require an operator of a
4 large farm or medium farm to obtain a discharge permit under section 1263 of
5 this title upon a determination of one or both of the following:

6 (1) the operator is discharging or has discharged wastes to a water of the
7 State; or

8 (2) due to the physical, geomorphic, or geographic conditions of the
9 farm, it is likely that land application of nutrients will run off to a water of the
10 State.

11 § 1325. SMALL FARM CERTIFICATION; INSPECTION

12 (a) Agricultural water quality certification; small farms. A person who
13 owns or operates a small farm shall submit to the Secretary a form certifying
14 whether or not the small farm complies with the required agricultural practices.

15 (b) Certification or permit due to water quality threat. The Secretary may
16 require any person who owns or operates a farm to obtain a permit or submit a
17 small farm certification under this chapter if the person is not required to
18 obtain a permit or submit a certification under this chapter and the Secretary
19 determines that the farm poses a threat of discharge to a water of the State or
20 presents a threat of contamination to groundwater. The Secretary may waive a
21 permit or small farm certification required under this subsection upon a

1 determination that the farm no longer poses a threat of discharge to a water of
2 the State or no longer presents a threat of contamination to groundwater.

3 (c) Small farm inspection. The Secretary may inspect a small farm in the
4 State at any time for the purposes of assessing compliance by the small farm
5 with the required agricultural practices and determining consistency with a
6 certification of compliance submitted by the person who owns or operates the
7 small farm. The Secretary may prioritize inspections of small farms in the
8 State based on identified water quality issues posed by a small farm. The
9 Secretary may amend the required agricultural practices to establish the
10 required frequency of inspection of small farms.

11 (d) Notice of change of ownership or change of lease. A person who owns
12 or leases a small farm shall notify the Secretary of a change of ownership or
13 change of lessee of a small farm within 30 days of the change. The
14 notification shall include the certification of small farm compliance required
15 under subsection (a) of this section.

16 (e)(1) Identification; ranking of water quality needs. During an inspection
17 of a small farm under this section, the Secretary shall identify areas where the
18 farm could benefit from capital, structural, or technical assistance in order to
19 improve or come into compliance with the required agricultural practices and
20 any applicable State water quality permit or certification required under this
21 chapter.

1 (2) The Secretary annually shall establish a priority ranking system for
2 small farms according to the water quality benefit associated with the capital,
3 structural, or technical improvements identified as needed by the Secretary
4 during an inspection of the farm. The Secretary shall submit the list of priority
5 projects to the Secretary of Agriculture, Food and Markets to inform awards of
6 financial assistance under 6 V.S.A. chapter 215.

7 § 1326. BEST MANAGEMENT PRACTICES

8 (a) The Secretary of Natural Resources may require any person engaged in
9 farming to implement a BMP. When requiring implementation of a BMP, the
10 Secretary shall inform a farmer of financial resources available from State or
11 federal sources, private foundations, public charities, or other sources,
12 including funding from the Clean Water Fund established under section 1388
13 of this title, to assist the person in implementing BMPs and complying with the
14 requirements of this chapter. BMPs shall be designed to achieve compliance
15 with the requirements of this chapter.

16 (b) The Secretary of Natural Resources may require soil monitoring or
17 innovative manure management as a BMP under this subsection. Soil
18 monitoring or innovative manure management implemented as a BMP shall be
19 eligible for State assistance under the Clean Water Fund established under
20 section 1388 of this title.

1 § 1327. SEASONAL APPLICATION OF MANURE

2 (a) Prohibition on application. A person shall not apply manure to land in
3 the State between December 15 and April 1 of any calendar year unless
4 authorized by this section.

5 (b) Extension of prohibition. The Secretary of Natural Resources may by
6 rule adopt or amend a process under which the Secretary may prohibit the
7 application of manure to land in the State between December 1 and
8 December 15 and between April 1 and April 30 of any calendar year when the
9 Secretary determines that due to weather conditions, soil conditions, or other
10 limitations, application of manure to land would pose a significant potential of
11 discharge or runoff to a State water.

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

1 (1) prohibit application of manure:

2 (A) in areas with established channels of concentrated stormwater
3 runoff to a surface water, including ditches and ravines;

4 (B) in nonharvested permanent vegetative buffers;

5 (C) in a nonfarmed wetland, as that term is defined in subdivision
6 902(5) of this title;

7 (D) within 50 feet of a potable water supply, as that term is defined in
8 subdivision 1972(6) of this title;

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

10 (F) to saturated soils;

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

13 (3) require manure to be applied according to a nutrient management
14 plan; and

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

17 § 1328. AGRICULTURE WATER QUALITY TRAINING

18 (a) Training required. Owners or operators of certified small farms,
19 permitted medium farms, or permitted large farms shall obtain water quality
20 training as approved by the Secretary. Training shall provide information
21 regarding:

- 1 (1) the prevention of discharges;
- 2 (2) the mitigation and management of stormwater runoff;
- 3 (3) statutory and regulatory requirements of the operation of a large,
4 medium, or small farm and financial resources available to assist in
5 compliance;
- 6 (4) the mechanical application of manure or nutrients and methods or
7 techniques used to minimize the runoff of applied manure or nutrients to a
8 water of the State;
- 9 (5) weather and soil conditions that increase the risk of runoff of manure
10 or nutrients to a water of the State; and
- 11 (6) standards for nutrient management, including nutrient management
12 planning.
- 13 (b) Training hours required. Large Farm Operations, Medium Farm
14 Operations, and Certified Small Farm Operations shall obtain four hours of
15 approved training at least once in every five years. This requirement will
16 commence upon notice from the Secretary.
- 17 (c) Approved training entities. The Secretary may approve training offered
18 by other entities upon request of the entity providing the training. All requests
19 for approval to train shall be provided to the Secretary at least 30 days prior to
20 the scheduled training dates. The entity will be required to submit information
21 about the training and attendees in a manner requested by the Secretary.

1 § 1329. CUSTOM APPLICATOR CERTIFICATION

2 (a) Certification required. Custom applicators of manure or other
3 agricultural wastes shall be certified by the Secretary in order to operate within
4 the State and shall comply with all applicable requirements of the Required
5 Agricultural Practices Rule, Medium Farm Operations Rule and Permits, and
6 Large Farm Operations Rule and Permits.

7 (b) Required knowledge. Custom applicators shall demonstrate knowledge
8 of the required agricultural practices, rules, and permit requirements for
9 medium farms, rules and permit requirements for large farms, and the U.S.
10 Department of Agriculture's Natural Resource Conservation Service Nutrient
11 Management Practice Code 590, including manure or other wastes application
12 restrictions, buffer zones, setback requirements, and recordkeeping
13 requirements.

14 (c) Demonstrated competency. Custom applicators shall demonstrate
15 competency in methods and techniques used to minimize runoff from
16 application sites, identification of weather or soil conditions that may increase
17 risk of field runoff, recordkeeping, and other information deemed pertinent by
18 the Secretary.

19 (d) Training of employees. Certified custom applicators shall train all
20 employees and seasonal workers in methods or techniques to minimize runoff
21 to surface water, identification of weather or soil conditions that may increase

1 the risk of runoff, the required agricultural practices, rules, and permit
2 requirements for medium farms, rules and permit requirements for large farms,
3 and standards and restrictions for the application of manure or other
4 agricultural wastes. Records of training shall be maintained in a manner
5 prescribed by the Secretary.

6 (e) Certification term. Certification shall be valid for five years from the
7 date of issuance and shall be renewable annually on a form and in a manner
8 prescribed by the Secretary. Certified custom applicators shall complete eight
9 hours of training in each five-year period of certification. Completion of five-
10 year training requirements will serve as meeting the requirements for
11 recertification.

12 (f) Recordkeeping. Certified custom applicators shall maintain records of
13 the amount of manure or agricultural waste applied by farm and field for a
14 period of five years and provide those records to the Agency of Natural
15 Resources upon reasonable request.

16 Sec. 3. 10 V.S.A. § 1259 is amended to read:

17 § 1259. PROHIBITIONS

18 (a) No person shall discharge any waste, substance, or material into waters
19 of the State, nor shall any person discharge any waste, substance, or material
20 into an injection well or discharge into a publicly owned treatment works any
21 waste which interferes with, passes through without treatment, or is otherwise

1 incompatible with those works or would have a substantial adverse effect on
2 those works or on water quality, without first obtaining a permit for that
3 discharge from the Secretary. This subsection shall not prohibit the proper
4 application of fertilizer to fields and crops, ~~nor reduce or affect the authority or~~
5 ~~policy declared in Joint House Resolution 7 of the 1971 Session of the General~~
6 ~~Assembly.~~

7 * * *

8 (f) The provisions of subsections (c), (d), and (e) of this section shall not
9 regulate ~~required agricultural practices, as adopted by rule by the Secretary of~~
10 ~~Agriculture, Food and Markets, or accepted silvicultural practices, as defined~~
11 ~~by the Commissioner of Forests, Parks and Recreation, including practices~~
12 ~~which are in compliance with the Acceptable Management Practices for~~
13 ~~Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the~~
14 ~~Commissioner of Forests, Parks and Recreation; nor shall these provisions~~
15 ~~regulate discharges from concentrated animal feeding operations that require a~~
16 ~~permit under section 1263 of this title; nor shall those provisions prohibit~~
17 ~~stormwater runoff or the discharge of nonpolluting wastes, as defined by the~~
18 ~~Secretary.~~

19 * * *

20 (i) ~~The Secretary of Natural Resources, to the extent compatible with~~
21 ~~federal requirements, shall delegate to the Secretary of Agriculture, Food and~~

1 ~~Markets the State agricultural non-point source pollution control program~~
2 ~~planning, implementation and regulation. A memorandum of understanding~~
3 ~~shall be adopted for this purpose, which shall address implementation grants,~~
4 ~~the distribution of federal program assistance and the development of land use~~
5 ~~performance standards. Prior to executing the memorandum, the Secretary of~~
6 ~~State shall arrange for two formal publications of information relating to the~~
7 ~~proposed memorandum. The information shall consist of a summary of the~~
8 ~~proposal; the name, telephone number, and address of a person able to answer~~
9 ~~questions and receive comments on the proposal; and the deadline for~~
10 ~~receiving comments. Publication shall be subject to the provisions of 3 V.S.A.~~
11 ~~§ 839(d), (e), and (g), relating to the publication of administrative rules. The~~
12 ~~proposed memorandum of understanding shall be available for 30 days after~~
13 ~~the final date of publication for public review and comment prior to being~~
14 ~~executed by the Secretary of Natural Resources and the Secretary of~~
15 ~~Agriculture, Food and Markets. The Secretary of Natural Resources and the~~
16 ~~Secretary of Agriculture, Food and Markets annually shall review the~~
17 ~~memorandum of understanding to assure compliance with the requirements of~~
18 ~~the Clean Water Act and the provisions of section 1258 of this title. If the~~
19 ~~memorandum is substantially revised, it first shall be noticed in the same~~
20 ~~manner that applies to the initial memorandum. Actions by the Secretary of~~
21 ~~Agriculture, Food and Markets under this section shall be consistent with the~~

1 ~~water quality standards and water pollution control requirements of chapter 47~~
2 ~~of this title and the federal Clean Water Act as amended~~ The Secretary of
3 Natural Resources shall implement and enforce an agricultural nonpoint source
4 pollution program in the State. The Secretary of Agriculture, Food and
5 Markets shall administer a financial assistance program to distribute to farmers
6 federal and State financing to assist farmers in complying with the State
7 requirements for agricultural nonpoint source pollution control.

8 * * *

9 Sec. 4. 10 V.S.A. § 1264(d) is amended to read:

10 (d) Exemptions.

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

12 (A) Stormwater runoff from farms in compliance with ~~agricultural~~
13 ~~practices adopted by the Secretary of Agriculture, Food and Markets, provided~~
14 ~~that this exemption shall not apply to construction stormwater permits required~~
15 ~~by subdivision (e)(4) of this section~~ the agricultural water quality requirements
16 of subchapter 2A of this chapter.

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

19 (C) Stormwater runoff from accepted silvicultural practices, as
20 defined by the Commissioner of Forests, Parks and Recreation, including
21 practices which are in compliance with the Acceptable Management Practices

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

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

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

12 Sec. 5. 10 V.S.A. § 8003(d) is amended to read:

13 ~~(d) Upon the request of the Secretary of Agriculture, Food and Markets, the~~
14 ~~Secretary may take action under this chapter to enforce the agricultural water~~
15 ~~quality requirements of, rules adopted under, and permits and certifications~~
16 ~~issued under 6 V.S.A. chapter 215. The Secretary of Natural Resources and the~~
17 ~~Secretary of Agriculture, Food and Markets shall enter into a memorandum of~~
18 ~~understanding to implement this subsection. [Repealed.]~~

1 * * * Agency of Agriculture, Food and Markets; Repeal of Regulatory
2 Authority Over Agricultural Water Quality * * *

3 Sec. 6. 6 V.S.A. chapter 215, subchapters 1–3 are amended to read:

4 Subchapter 1. General Provisions

5 § 4801. ~~PURPOSE; STATE POLICY~~

6 ~~It is the purpose of this chapter to ensure that agricultural animal wastes do~~
7 ~~not enter the waters of this State. Therefore, it is State policy that:~~

8 ~~(1) All farms meet certain standards in the handling and disposal of~~
9 ~~animal wastes, as provided by this chapter and the cost of meeting these~~
10 ~~standards shall not be borne by farmers only, but rather by all members of~~
11 ~~society, who are in fact the beneficiaries. Accordingly, State and federal funds~~
12 ~~shall be made available to farms, regardless of size, to defray the major cost of~~
13 ~~complying with the requirements of this chapter. State and federal~~
14 ~~conservation programs to assist farmers should be directed to those farms that~~
15 ~~need to improve their infrastructure to prohibit direct discharges or bring~~
16 ~~existing water pollution control structures into compliance with U.S.~~
17 ~~Department of Agriculture (U.S.D.A.) Natural Resources Conservation Service~~
18 ~~standards. Additional resources should be directed to education and technical~~
19 ~~assistance for farmers to improve the management of agricultural wastes and~~
20 ~~protect water quality.~~

21 ~~(2) Officials who administer the provisions of this chapter:~~

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~~§ 4803. AGRICULTURAL WATER QUALITY SPECIAL FUND~~

~~(a) There is created the Agricultural Water Quality Special Fund to be administered by the Secretary of Agriculture, Food and Markets. Fees collected under this chapter, including fees for permits or certifications issued under the chapter, shall be deposited in the Fund.~~

~~(b) The Secretary may use monies deposited in the Fund for the Secretary's implementation and administration of agricultural water quality programs or requirements established by this chapter, including to pay salaries of Agency staff necessary to implement the programs and requirements of this chapter.~~

~~(c) Notwithstanding the requirements of 32 V.S.A. § 588(3), interest earned by the Fund shall be retained in the Fund from year to year. [Repealed.]~~

~~Subchapter 2. Water Quality; Required Agricultural Practices and Best
Management Practices~~

~~§ 4810. AUTHORITY; COOPERATION; COORDINATION~~

~~(a) Agricultural land use practices. In accordance with 10 V.S.A. § 1259(i), the Secretary shall adopt by rule, pursuant to 3 V.S.A. chapter 25, and shall implement and enforce agricultural land use practices in order to satisfy the requirements of 33 U.S.C. § 1329 that the State identify and implement best management practices to control nonpoint sources of agricultural waste to~~

1 ~~waters of the State. These agricultural land use practices shall be created in~~
2 ~~two categories, pursuant to subsections (b) and (c) of this section.~~

3 ~~(b) Required Agricultural Practices. Required Agricultural Practices~~
4 ~~(RAPs) shall be management standards to be followed by all persons engaged~~
5 ~~in farming in this State. These standards shall address activities which have a~~
6 ~~potential for causing agricultural pollutants to enter the groundwater and~~
7 ~~waters of the State, including dairy and other livestock operations plus all~~
8 ~~forms of crop and nursery operations and on farm or agricultural fairground,~~
9 ~~registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and~~
10 ~~processing activities. The RAPs shall include, as well as promote and~~
11 ~~encourage, practices for farmers in preventing agricultural pollutants from~~
12 ~~entering the groundwater and waters of the State when engaged in animal~~
13 ~~waste management and disposal, soil amendment applications, plant~~
14 ~~fertilization, and pest and weed control. Persons engaged in farming who are~~
15 ~~in compliance with these practices shall be presumed to not have a discharge of~~
16 ~~agricultural pollutants to waters of the State. RAPs shall be designed to protect~~
17 ~~water quality and shall be practical and cost-effective to implement, as~~
18 ~~determined by the Secretary. Where the Secretary determines, after inspection~~
19 ~~of a farm, that a person engaged in farming is complying with the RAPs but~~
20 ~~there still exists the potential for agricultural pollutants to enter the waters of~~
21 ~~the State, the Secretary shall require the person to implement additional, site-~~

1 ~~specific on farm conservation practices designed to prevent agricultural~~
2 ~~pollutants from entering the waters of the State. When requiring~~
3 ~~implementation of a conservation practice under this subsection, the Secretary~~
4 ~~shall inform the person engaged in farming of the resources available to assist~~
5 ~~the person in implementing the conservation practice and complying with the~~
6 ~~requirements of this chapter. The RAPs for groundwater shall include a~~
7 ~~process under which the Agency shall receive, investigate, and respond to a~~
8 ~~complaint that a farm has contaminated the drinking water or groundwater of a~~
9 ~~property owner. A farmer may petition the Secretary to reduce the size of a~~
10 ~~perennial buffer or change the perennial buffer type based on site-specific~~
11 ~~conditions.~~

12 ~~(e) Best Management Practices. Best management practices (BMPs) are~~
13 ~~site specific on farm conservation practices implemented in order to address~~
14 ~~the potential for agricultural pollutants to enter the waters of the State. The~~
15 ~~Secretary may require any person engaged in farming to implement a BMP.~~
16 ~~When requiring implementation of a BMP, the Secretary shall inform a farmer~~
17 ~~of financial resources available from State or federal sources, private~~
18 ~~foundations, public charities, or other sources, including funding from the~~
19 ~~Clean Water Fund established under 10 V.S.A. § 1388, to assist the person in~~
20 ~~implementing BMPs and complying with the requirements of this chapter.~~
21 ~~BMPs shall be practical and cost effective to implement, as determined by the~~

1 ~~Secretary, and shall be designed to achieve compliance with the requirements~~
2 ~~of this chapter. The Secretary may require soil monitoring or innovative~~
3 ~~manure management as a BMP under this subsection. Soil monitoring or~~
4 ~~innovative manure management implemented as a BMP shall be eligible for~~
5 ~~State assistance under the Clean Water Fund established under 10 V.S.A.~~
6 ~~chapter 47, subchapter 7. If a perennial buffer of trees or other woody~~
7 ~~vegetation is required as a BMP, the Secretary shall pay the farmer for a first~~
8 ~~priority easement on the land on which the buffer is located.~~

9 ~~(d) Cooperation and coordination. The Secretary of Agriculture, Food and~~
10 ~~Markets shall coordinate with the Secretary of Natural Resources in~~
11 ~~implementing and enforcing programs, plans, and practices developed for~~
12 ~~reducing and eliminating agricultural non point source pollutants and~~
13 ~~discharges from concentrated animal feeding operations. On or before July 1,~~
14 ~~2016, the Secretary of Agriculture, Food and Markets and the Secretary of~~
15 ~~Natural Resources shall revise the memorandum of understanding for the non-~~
16 ~~point program describing program administration, grant negotiation, grant~~
17 ~~sharing, and how they will coordinate watershed planning activities to comply~~
18 ~~with Public Law 92-500. The memorandum of understanding shall describe~~
19 ~~how the agencies will implement the antidegradation implementation policy,~~
20 ~~including how the agencies will apply the antidegradation implementation~~
21 ~~policy to new sources of agricultural non point source pollutants. The~~

1 ~~Secretary of Agriculture, Food and Markets and the Secretary of Natural~~
2 ~~Resources shall also develop a memorandum of understanding according to the~~
3 ~~public notice and comment process of 10 V.S.A. § 1259(i) regarding the~~
4 ~~implementation of the federal concentrated animal feeding operation program~~
5 ~~and the relationship between the requirements of the federal program and the~~
6 ~~State agricultural water quality requirements for large, medium, and small~~
7 ~~farms under this chapter. The memorandum of understanding shall describe~~
8 ~~program administration, permit issuance, an appellate process, and~~
9 ~~enforcement authority and implementation. The memorandum of~~
10 ~~understanding shall be consistent with the federal National Pollutant Discharge~~
11 ~~Elimination System permit regulations for discharges from concentrated~~
12 ~~animal feeding operations. The allocation of duties under this chapter between~~
13 ~~the Secretary of Agriculture, Food and Markets and the Secretary of Natural~~
14 ~~Resources shall be consistent with the Secretary's duties, established under the~~
15 ~~provisions of 10 V.S.A. § 1258(b), to comply with Public Law 92-500. The~~
16 ~~Secretary of Natural Resources shall be the State lead person in applying for~~
17 ~~federal funds under Public Law 92-500, but shall consult with the Secretary of~~
18 ~~Agriculture, Food and Markets during the process. The agricultural non point~~
19 ~~source program may compete with other programs for competitive watershed~~
20 ~~projects funded from federal funds. The Secretary of Agriculture, Food and~~
21 ~~Markets shall be represented in reviewing these projects for funding. Actions~~

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

19 [Repealed.]

1 § 4810a. ~~REQUIRED AGRICULTURAL PRACTICES; REVISION~~

2 ~~(a) On or before September 15, 2016, the Secretary of Agriculture, Food~~
3 ~~and Markets shall file under 3 V.S.A. § 841 a final proposal of a rule amending~~
4 ~~the required agricultural practices in order to improve water quality in the~~
5 ~~State, assure practices on all farms eliminate adverse impacts to water quality,~~
6 ~~and implement the small farm certification program required by section 4871~~
7 ~~of this title. At a minimum, the amendments to the required agricultural~~
8 ~~practices shall:~~

9 ~~(1) Specify those farms that:~~

10 ~~(A) are required to comply with the small farm certification~~
11 ~~requirements under section 4871 of this title due to the potential impact of the~~
12 ~~farm or type of farm on water quality as a result of livestock managed on the~~
13 ~~farm, agricultural inputs used by the farm, or tillage practices on the farm; and~~

14 ~~(B) shall be subject to the required agricultural practices, but shall not~~
15 ~~be required to comply with small farm certification requirements under section~~
16 ~~4871 of this title.~~

17 ~~(2)(A) Except as authorized under subdivision (C) of this subdivision~~
18 ~~(2), prohibit a farm from stacking or piling manure, storing fertilizer, or storing~~
19 ~~other nutrients on the farm:~~

20 ~~(i) in a manner and location that presents a threat of discharge to a~~
21 ~~water of the State or presents a threat of contamination to groundwater; or~~

1 ~~(ii) on lands in a floodway or otherwise subject to annual flooding.~~

2 ~~(B) Except as authorized under subdivision (C) of this subdivision~~
3 ~~(2), manure stacking or piling sites, fertilizer storage, or other nutrient storage~~
4 ~~shall not be located within 200 feet of a private well or within 200 feet of a~~
5 ~~water of the State.~~

6 ~~(C) The Secretary may authorize:~~

7 ~~(i) siting of manure stacking or piling sites, fertilizer storage, or~~
8 ~~other nutrient storage within 200 feet, but not less than 100 feet, of a private~~
9 ~~well or surface water if the Secretary determines that the site is the best~~
10 ~~available site on the farm for the purposes of protecting groundwater quality or~~
11 ~~surface water quality;~~

12 ~~(ii) siting of a waste storage facility within 200 feet of a surface~~
13 ~~water or private well if the site is the best available site on the farm for the~~
14 ~~purposes of protecting groundwater quality or surface water quality and the~~
15 ~~waste storage facility is designed by a licensed engineer to meet the~~
16 ~~requirements of section 4815 of this title.~~

17 ~~(3) Require the construction and management of barnyards, waste~~
18 ~~management systems, animal holding areas, and production areas in a manner~~
19 ~~to prevent runoff of waste to a surface water, to groundwater, or across~~
20 ~~property boundaries.~~

21 ~~(4) Establish standards for nutrient management on farms, including:~~

1 ~~(A) required nutrient management planning on all farms that manage~~
2 ~~agricultural wastes; and~~

3 ~~(B) recommended practices for improving and maintaining soil~~
4 ~~quality and healthy soils in order to increase the capacity of soil to retain water,~~
5 ~~improve flood resiliency, reduce sedimentation, reduce reliance on fertilizers~~
6 ~~and pesticides, and prevent agricultural stormwater runoff.~~

7 ~~(5) Require cropland on the farm to be cultivated in a manner that~~
8 ~~results in an average soil loss of less than or equal to the soil loss tolerance for~~
9 ~~the prevalent soil, known as 1T, as calculated through application of the~~
10 ~~Revised Universal Soil Loss Equation, or through the application of similarly~~
11 ~~accepted models.~~

12 ~~(6)(A) Require a farm to comply with standards established by the~~
13 ~~Secretary for maintaining a vegetative buffer zone of perennial vegetation~~
14 ~~between annual croplands and the top of the bank of an adjoining water of the~~
15 ~~State. At a minimum the vegetative buffer standards established by the~~
16 ~~Secretary shall prohibit the application of manure on the farm within 25 feet of~~
17 ~~the top of the bank of an adjoining water of the State or within 10 feet of a~~
18 ~~ditch that is not a surface water under State law and that is not a water of the~~
19 ~~United States under federal law.~~

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

4 ~~(7) [Repealed.]~~

5 ~~(8) Regulate, in a manner consistent with the Agency of Natural~~
6 ~~Resources' flood hazard area and river corridor rules, the construction or siting~~
7 ~~of a farm structure or the storage of manure, fertilizer, or pesticides within a~~
8 ~~river corridor designated by the Secretary of Natural Resources.~~

9 ~~(9) Establish standards for the exclusion of livestock from the waters of~~
10 ~~the State to prevent erosion and adverse water quality impacts.~~

11 ~~(10) Establish standards for soil conservation practices such as cover~~
12 ~~cropping.~~

13 ~~(11) Allow for alternative techniques or practices, approved by the~~
14 ~~Secretary, for compliance by an owner or operator of a farm when the owner or~~
15 ~~operator cannot comply with the requirements of the required agricultural~~
16 ~~practices due to site specific conditions. Approved alternative techniques or~~
17 ~~practices shall meet State requirements to reduce adverse impacts to water~~
18 ~~quality.~~

19 ~~(b) On or before January 15, 2018, the Secretary of Agriculture, Food and~~
20 ~~Markets shall amend by rule the required agricultural practices in order to~~
21 ~~include requirements for reducing nutrient contribution to waters of the State~~

1 ~~from subsurface tile drainage. Upon adoption of requirements for subsurface~~
2 ~~tile drainage, the Secretary may require an existing subsurface tile drain to~~
3 ~~comply with the requirements of the RAPs for subsurface tile drainage upon a~~
4 ~~determination that compliance is necessary to reduce adverse impacts to water~~
5 ~~quality from the subsurface tile drain. [Repealed.]~~

6 § 4811. POWERS OF SECRETARY

7 The Secretary of Agriculture, Food and Markets in furtherance of the
8 purposes of this chapter may:

9 (1) ~~Make, adopt, revise, and amend reasonable rules which define~~
10 ~~practices described in section 4810 of this title as well as other rules deemed~~
11 ~~necessary to carry out the provisions of this chapter. [Repealed.]~~

12 (2) Appoint assistants, subject to applicable laws, to perform or assist in
13 the performance of any duties or functions of the Secretary under this chapter.

14 (3) ~~Enter any lands, public or private, and review and copy any land~~
15 ~~management records as may be necessary to carry out the provisions of this~~
16 ~~chapter. [Repealed.]~~

17 (4) ~~Sign memorandums of understanding between agencies when the~~
18 ~~Secretary of Agriculture, Food and Markets agrees it is necessary for the~~
19 ~~success of the program. [Repealed.]~~

20 (5) Solicit and receive federal or private funds.

1 under subsection (a) of this section may appeal the Secretary of Agriculture,
2 Food and Markets' decision to the Environmental Division de novo.

3 (c) ~~When requiring implementation of a best management practice, the~~
4 ~~Secretary shall inform a farmer of the resources available to assist the farmer in~~
5 ~~implementing the best management practice and complying with the~~
6 ~~requirements of this chapter. [Repealed.]~~

7 * * *

8 § 4816. SEASONAL APPLICATION OF MANURE

9 (a) ~~Prohibition on application. A person shall not apply manure to land in~~
10 ~~the State between December 15 and April 1 of any calendar year unless~~
11 ~~authorized by this section.~~

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

20 (c) ~~Seasonal exemption. The Secretary of Agriculture, Food and Markets~~
21 ~~shall amend the required agricultural practices adopt by rule in order to~~

1 ~~establish a process under which the Secretary may authorize an exemption to~~
2 ~~the prohibition on the application of manure to land in the State between~~
3 ~~December 15 and April 1 of any calendar year or during any period established~~
4 ~~under subsection (b) of this section when manure is prohibited from~~
5 ~~application. Any process established for the issuance of an exemption under~~
6 ~~the required agricultural practices may authorize land application of manure on~~
7 ~~a weekly, monthly, or seasonal basis or in authorized regions, areas, or fields in~~
8 ~~the State, provided that any exemption shall:~~

9 ~~(1) prohibit application of manure:~~

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

12 ~~(B) in nonharvested permanent vegetative buffers;~~

13 ~~(C) in a nonfarmed wetland, as that term is defined in 10 V.S.A.~~
14 ~~§ 902(5);~~

15 ~~(D) within 50 feet of a potable water supply, as that term is defined in~~
16 ~~10 V.S.A. § 1972(6);~~

17 ~~(E) to fields exceeding tolerable soil loss; and~~

18 ~~(F) to saturated soils;~~

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

1 ~~facilities under subsection 4815(b) of this title and the RAPs for groundwater,~~
2 ~~as they relate to a waste storage facility, shall be suspended for a farm with a~~
3 ~~waste storage facility subject to the requirements of subsection 4815(b) of this~~
4 ~~title until adequate funding becomes available. Suspension of the design and~~
5 ~~construction requirements of subsection 4815(b) of this title does not relieve an~~
6 ~~owner or operator of a farm permitted under section 4858 or 4851 of this title~~
7 ~~from the remaining requirements of the owner's or operator's permit, including~~
8 ~~discharge standards, groundwater protection, nutrient management planning,~~
9 ~~and land application of manure. This subsection does not apply to farms~~
10 ~~permitted under 10 V.S.A. § 1263. [Repealed.]~~

11 (c) The owner or operator of a farm with a waste storage facility may apply
12 in writing to the Secretary of Agriculture, Food and Markets for a State
13 assistance grant for the costs of complying with the U.S. Department of
14 ~~Agriculture~~ Agriculture's Natural Resources Conservation Service
15 requirements for inspection of a waste storage facility. Such grants shall not
16 exceed 90 percent of the cost of the inspection of the waste storage facility.
17 Application for a State assistance grant shall be made in the manner prescribed
18 by the Secretary.

19 § 4827. NUTRIENT MANAGEMENT PLANNING; INCENTIVE GRANTS

20 (a) A farm developing or implementing a nutrient management plan under
21 ~~chapter 215 of this title~~ 10 V.S.A. chapter 47 or federal regulations may apply

1 to the Secretary of Agriculture, Food and Markets for financial assistance. The
2 financial assistance shall be in the form of incentive grants. Annually, after
3 consultation with the Natural Resources Conservation Service of the U.S.
4 Department of Agriculture, natural resources conservation districts, the
5 University of Vermont Extension Service and others, the Secretary shall
6 determine the average cost of developing and implementing a nutrient
7 management plan in Vermont. The dollar amount of an incentive grant
8 awarded under this section shall be equal to the average cost of developing a
9 nutrient management plan as determined by the Secretary or the cost of
10 complying with the nutrient management planning requirements of ~~chapter 215~~
11 ~~of this title~~ 10 V.S.A. chapter 47 or federal regulations, whichever is less.

12 * * *

13 (e) ~~If the Secretary or the applicable U.S. Department of Agriculture~~
14 ~~conservation programs lack adequate funds necessary for the financial~~
15 ~~assistance required by subsection (a) of this section, the requirement to develop~~
16 ~~and implement a nutrient management plan under State statute or State~~
17 ~~regulation shall be suspended until adequate funding becomes available.~~
18 ~~Suspension of a State required nutrient management plan does not relieve an~~
19 ~~owner or operator of a farm permitted under section 4858 or 4851 of this title~~
20 ~~of the remaining requirements of a State permit, including discharge standards,~~

1 ~~groundwater protection, and land application of manure. This subsection does~~
2 ~~not apply to farms permitted under 10 V.S.A. § 1263. [Repealed.]~~

3 * * *

4 Sec. 7. 6 V.S.A. § 4851 is amended to read:

5 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

6 (a) No person shall, without a permit from the Secretary, construct a new
7 barn, or expand an existing barn, designed to house more than 700 mature
8 dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine
9 weighing over 55 pounds, 10,000 swine weighing ~~less than~~ 55 pounds or less,
10 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or
11 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 without a liquid manure handling system.

15 No permit shall be required to replace an existing barn in use for livestock or
16 domestic fowl production at its existing capacity. ~~The Secretary of~~
17 ~~Agriculture, Food and Markets, in consultation with the Secretary of Natural~~
18 ~~Resources, shall review any application for a permit under this section with~~
19 ~~regard to water quality impacts and, prior to approval of a permit under this~~
20 ~~subsection, shall issue a written determination regarding whether the applicant~~
21 ~~has established that there will be no unpermitted discharge to waters of the~~

1 State pursuant to the federal regulations for concentrated animal feeding
2 operations. If upon review of an application for a permit under this subsection,
3 the Secretary of Agriculture, Food and Markets determines that the permit
4 applicant may be discharging to waters of the State, the Secretary of
5 Agriculture, Food and Markets and the Secretary of Natural Resources shall
6 respond to the discharge in accordance with the memorandum of
7 understanding regarding concentrated animal feeding operations under section
8 4810 of this title. The Secretary of Natural Resources may require a large farm
9 to obtain a permit under 10 V.S.A. § 1263 pursuant to federal regulations for
10 concentrated animal feeding operations The Secretary of Agriculture, Food and
11 Markets shall not issue a permit under this section unless and until the
12 applicant is issued an agricultural water quality permit under 10 V.S.A.
13 chapter 47.

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

1 fowl are in a barn or adjacent barns owned by the same person, or if the barns
2 share a common border or have a common waste disposal system. In order to
3 receive this permit, the person shall demonstrate to the Secretary that the farm
4 has an adequately sized manure management system to accommodate the
5 wastes generated and a nutrient management plan to dispose of wastes in
6 accordance with required agricultural practices ~~adopted under this chapter~~
7 administered by the Secretary of Natural Resources and current U.S.
8 Department of Agriculture nutrient management standards.

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

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

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

1 (f) Before granting a permit under this section, the Secretary shall make an
2 affirmative finding that the animal wastes generated by the construction or
3 expansion will be stored so as not to generate runoff from a 25-year, 24-hour
4 storm event and shall be disposed of, in accordance with the required
5 agricultural practices ~~adopted under this chapter~~ administered by the Secretary
6 of Natural Resources and current U.S. Department of Agriculture nutrient
7 management standards.

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

14 (h) The Secretary may inspect a farm permitted under this section at any
15 time, but no less frequently than once per year.

16 (i) ~~A person required to obtain a permit under this section shall submit an~~
17 ~~annual operating fee of \$2,500.00 to the Secretary. The fees collected under~~
18 ~~this section shall be deposited in the Agricultural Water Quality Special Fund~~
19 ~~under section 4803 of this title.~~

1 (2) All fees collected under subdivision (a)(3) of this section shall be
2 deposited in the ~~Agricultural Water Quality Special Fund created under section~~
3 ~~4803 of this title~~ Clean Water Fund established under 10 V.S.A. § 1389.

4 Sec. 10. 6 V.S.A. § 563 is amended to read:

5 § 563. HEMP; AN AGRICULTURAL PRODUCT

6 Hemp is an agricultural product which may be grown as a crop, produced,
7 possessed, and commercially traded in Vermont pursuant to the provisions of
8 this chapter. The cultivation of hemp shall be subject to and comply with the
9 requirements of the required agricultural practices ~~adopted under section 4810~~
10 ~~of this title.~~

11 Sec. 11. 6 V.S.A. § 918(b) is amended to read:

12 (b) The registrant shall pay an annual fee of \$175.00 for each product
13 registered, and \$160.00 of that amount shall be deposited in the special fund
14 created in section 929 of this title, of which \$5.00 from each product
15 registration shall be used for an educational program related to the proper
16 purchase, application, and disposal of household pesticides, and \$5.00 from
17 each product registration shall be used to collect and dispose of obsolete and
18 unwanted pesticides. Of the registration fees collected under this subsection,
19 \$15.00 of the amount collected shall be deposited in the ~~Agricultural Water~~
20 ~~Quality Special Fund under section 4803 of this title~~ Clean Water Fund

1 established under 10 V.S.A. § 1389. The annual registration year shall be from
2 December 1 to November 30 of the following year.

3 Sec. 12. 10 V.S.A. § 905b(18) is amended to read:

4 (18) Study and investigate the wetlands of the State and cooperate with
5 municipalities, the general public, other agencies, and the Board in collecting
6 and compiling data relating to wetlands, propose to the Board specific
7 wetlands to be designated as Class I wetlands, issue or deny permits pursuant
8 to section 913 of this title and the rules authorized by this subdivision, issue
9 wetland determinations pursuant to section 914 of this title, issue orders
10 pursuant to section 1272 of this title, and in accordance with 3 V.S.A. chapter
11 25, adopt rules to address the following:

12 * * *

13 (C) The protection of wetlands that have been determined under
14 subdivision (A) or (B) of this subdivision (18) to be significant, including rules
15 that provide for the issuance or denial of permits and the issuance of wetland
16 determinations by the Department under this chapter; provided, however, that
17 the rules may only protect the values and functions sought to be preserved by
18 the designation. The Department ~~shall not adopt rules that restrain agricultural~~
19 ~~activities without the consent of the Secretary of Agriculture, Food and~~
20 ~~Markets and~~ shall not adopt rules that restrain silvicultural activities without
21 the consent of the Commissioner of Forests, Parks and Recreation.

1 Sec. 13. 10 V.S.A. § 1266b(d) is amended to read:

2 (d) Application of fertilizer to impervious surface; in proximity to water;
3 and seasonal restriction. No person shall apply any fertilizer:

4 (1) ~~to~~ To an impervious surface. Fertilizer applied or released to an
5 impervious surface shall be immediately collected and returned to a container
6 for legal application. This subdivision shall not apply to activities regulated
7 under the required agricultural practices ~~as those practices are defined by the~~
8 ~~Secretary of Agriculture, Food and Markets under 6 V.S.A. § 4810;~~

9 (2) ~~to~~ To turf before April 1 or after October 15 in any calendar year or
10 at any time when the ground is frozen; ~~or~~.

11 (3) ~~to~~ To turf within 25 feet of a water of the State.

12 Sec. 14. 10 V.S.A. § 1386(e) is amended to read:

13 (e) Beginning on February 1, 2016, and annually thereafter, the Secretary,
14 after consultation with the ~~Secretary of Agriculture, Food and Markets and the~~
15 Secretary of Transportation, shall submit to the House Committee on Natural
16 Resources, Fish and Wildlife, the Senate Committee on Natural Resources and
17 Energy, the House Committee on Agriculture and Forestry, and the Senate
18 Committee on Agriculture a summary of activities and measures of progress of
19 water quality ecosystem restoration programs.

1 Sec. 15. 10 V.S.A. § 1387 is amended to read:

2 § 1387. PURPOSE

3 The General Assembly establishes in this subchapter a the Vermont Clean
4 Water Fund as a mechanism for financing the improvement of water quality in
5 the State. The Clean Water Fund shall be used to:

6 (1) assist the State in complying with water quality requirements and
7 construction or implementation of water quality projects or programs;

8 (2) fund staff positions at the Agency of Natural Resources, ~~Agency of~~
9 ~~Agriculture, Food and Markets,~~ or the Agency of Transportation when the
10 positions are necessary to achieve or maintain compliance with water quality
11 requirements and existing revenue sources are inadequate to fund the necessary
12 positions; and

13 (3) provide funding to nonprofit organizations, regional associations,
14 and other entities for implementation and administration of community-based
15 water quality programs or projects.

16 Sec. 16. 10 V.S.A. § 1389(b) is amended to read:

17 (b) Organization of the Board. The Clean Water Fund Board shall be
18 composed of:

19 (1) the Secretary of Administration or designee;

20 (2) the Secretary of Natural Resources or designee;

1 (3) ~~the Secretary of Agriculture, Food and Markets or designee;~~

2 [Repealed.]

3 (4) the Secretary of Commerce and Community Development or
4 designee; and

5 (5) the Secretary of Transportation or designee.

6 Sec. 17. 10 V.S.A. § 1389b is amended to read:

7 § 1389b. CLEAN WATER FUND AUDIT

8 (a) On or before January 15, 2021, the Secretary of Administration shall
9 submit to the House and Senate Committees on Appropriations, the Senate
10 Committee on Finance, the House Committee on Ways and Means, the Senate
11 Committee on Agriculture, the House Committee on Agriculture and ~~Forest~~
12 ~~Products~~ Forestry, the Senate Committee on Natural Resources and Energy,
13 and the House Committee on Natural Resources, Fish and Wildlife a program
14 audit of the Clean Water Fund. The audit shall include:

15 (1) a summary of the expenditures from the Clean Water Fund,
16 including the water quality projects and programs that received funding;

17 (2) an analysis and summary of the efficacy of the water quality projects
18 and programs funded from the Clean Water Fund or implemented by the State;

19 (3) an evaluation of whether water quality projects and programs funded
20 or implemented by the State are achieving the intended water quality
21 benefits; and

1 practices, best management practices, medium and small farm operation, and
2 large farm operation.

3 Sec. 19. 10 V.S.A. § 1671(8) is amended to read:

4 (8) “Required agricultural practices” shall be as defined by the Secretary
5 of ~~Agriculture, Food and Markets under 6 V.S.A. § 4810~~ Natural Resources
6 under chapter 47 of this title.

7 Sec. 20. 10 V.S.A. § 1679(c) is amended to read:

8 (c) Rules adopted by the Secretary under subsection (a) of this section shall
9 include provisions for the identification of agricultural lands, as defined in
10 32 V.S.A. § 3752, within public water source protection areas and for assuring
11 that ~~required agricultural practices~~ farming, as that term is defined in section
12 6001 of this title, on those lands ~~are~~ is not unduly restricted by the
13 development of the public water source protection area without the consent of
14 the owner of those agricultural lands. Prior to the adoption of rules under this
15 subsection, the Secretary shall consult with the Secretary of Agriculture, Food
16 and Markets and, if possible, obtain concurrence of the Secretary of
17 Agriculture, Food and Markets. If the Secretary of Agriculture, Food and
18 Markets does not concur, the Secretary of Agriculture, Food and Markets shall
19 state any objections in writing; and those objections shall be included by the
20 Secretary in filing the final proposed rule with the Legislative Committee on
21 Administrative Rules.

1 Sec. 21. 10 V.S.A. § 6001(3)(E) is amended to read:

2 (E) When development is proposed to occur on a parcel or tract of
3 land that is devoted to farming activity as defined in subdivision (22) of this
4 section, only those portions of the parcel or the tract that support the
5 development shall be subject to regulation under this chapter. Permits issued
6 under this chapter shall not impose conditions on other portions of the parcel or
7 tract of land which do not support the development and that restrict or conflict
8 with required agricultural practices ~~adopted by the Secretary of Agriculture,~~
9 ~~Food and Markets.~~ Any portion of the tract that is used to produce compost
10 ingredients for a composting facility located elsewhere on the tract shall not
11 constitute land which supports the development unless it is also used for some
12 other purpose that supports the development.

13 Sec. 22. 24 V.S.A. § 4413(d)(1) is amended to read:

14 (d)(1) A bylaw under this chapter shall not regulate:

15 (A) required agricultural practices, including the construction of farm
16 structures, as those practices are defined ~~by the Secretary of Agriculture, Food~~
17 ~~and Markets~~ or administered by the Secretary of Natural Resources;

18 * * *

19 Sec. 23. 32 V.S.A. § 3752(5) is amended to read:

20 (5) "Development" means, for the purposes of determining whether a
21 land use change tax is to be assessed under section 3757 of this chapter, the

1 construction of any building, road, or other structure, or any mining,
2 excavation, or landfill activity. “Development” also means the subdivision of
3 a parcel of land into two or more parcels, regardless of whether a change in use
4 actually occurs, where one or more of the resulting parcels contains less than
5 25 acres each; but if subdivision is solely the result of a transfer to one or more
6 of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of
7 the transferor, or to the surviving spouse of any of the foregoing, then
8 “development” shall not apply to any portion of the newly created parcel or
9 parcels which qualifies for enrollment and for which, within 30 days following
10 the transfer, each transferee or transferor applies for reenrollment in the use
11 value appraisal program. “Development” also means the cutting of timber on
12 property appraised under this chapter at use value in a manner contrary to a
13 forest or conservation management plan as provided for in subsection 3755(b)
14 of this title during the remaining term of the plan, or contrary to the minimum
15 acceptable standards for forest management if the plan has expired; or a
16 change in the parcel or use of the parcel in violation of the conservation
17 management standards established by the Commissioner of Forests, Parks and
18 Recreation. “Development” also means notification of the Director by the
19 Secretary of ~~Agriculture, Food and Markets~~ Natural Resources under section
20 3756 of this title that the owner or operator of agricultural land or a farm
21 building is violating the water quality requirements of ~~6 V.S.A. chapter 215~~

1 10 V.S.A. chapter 47 or is failing to comply with the terms of an order issued
2 under ~~6 V.S.A. chapter 215, subchapter 10~~ 10 V.S.A. chapter 201. The term
3 “development” shall not include the construction, reconstruction, structural
4 alteration, relocation, or enlargement of any building, road, or other structure
5 for farming, logging, forestry, or conservation purposes, but shall include the
6 subsequent commencement of a use of that building, road, or structure for
7 other than farming, logging, or forestry purposes.

8 Sec. 24. 32 V.S.A. § 3756(i) is amended to read:

9 (i)(1) After providing 30 days’ notice to the owner, the Director shall
10 remove from use value appraisal an entire parcel of managed forestland and
11 notify the owner when the Commissioner of Forests, Parks and Recreation has
12 not received a required management activity report or has received an adverse
13 inspection report, unless the lack of conformance consists solely of the failure
14 to make prescribed planned cutting. In that case, the Director may delay
15 removal from use value appraisal for a period of one year at a time to allow
16 time to bring the parcel into conformance with the plan.

17 (2)(A) The Director shall remove from use value appraisal an entire
18 parcel or parcels of agricultural land and farm buildings identified by the
19 Secretary of ~~Agriculture, Food and Markets~~ Natural Resources as being used
20 by a person:

1 (i) found, after administrative hearing, or contested judicial
2 hearing or motion, to be in violation of water quality requirements established
3 under ~~6 V.S.A. chapter 215~~ 10 V.S.A. chapter 47, or any rules adopted or
4 administered or any permit or certification issued under ~~6 V.S.A. chapter 215~~
5 10 V.S.A. chapter 47; or

6 (ii) who is not in compliance with the terms of an administrative
7 or court order issued under ~~6 V.S.A. chapter 215, subchapter 10~~ 10 V.S.A.
8 chapter 202 to remedy a violation of the requirements of ~~6 V.S.A. chapter 215~~
9 10 V.S.A. chapter 47 or any rules adopted or administered or any permit or
10 certification issued under ~~6 V.S.A. chapter 215~~ 10 V.S.A. chapter 47.

11 (B) The Director shall notify the owner that agricultural land or a
12 farm building has been removed from use value appraisal by mailing
13 notification of removal to the owner or operator's last and usual place of
14 abode. After removal of agricultural land or a farm building from use value
15 appraisal under this section, the Director shall not consider a new application
16 for use value appraisal for the agricultural land or farm building until the
17 Secretary of ~~Agriculture, Food and Markets~~ Natural Resources submits to the
18 Director a certification that the owner or operator of the agricultural land or
19 farm building is complying with the water quality requirements of ~~6 V.S.A.~~
20 ~~chapter 215~~ 10 V.S.A. chapter 47 or an order issued under ~~6 V.S.A. chapter~~
21 ~~215~~ 10 V.S.A. chapter 47. After submission of a certification by the Secretary

1 of ~~Agriculture, Food and Markets~~ Natural Resources, an owner or operator
2 shall be eligible to apply for enrollment of the agricultural land or farm
3 building according to the requirements of this section.

4 Sec. 25. 32 V.S.A. § 3758(e) is amended to read:

5 (e) When the Director removes agricultural land or a farm building
6 pursuant to notification from the Secretary of ~~Agriculture, Food and Markets~~
7 Natural Resources under section 3756 of this title, the exclusive right of appeal
8 shall be as provided in 6 V.S.A. § 4996(a).

9 * * * Agricultural Water Quality; Permit Fees * * *

10 Sec. 26. 3 V.S.A. § 2822(j) is amended to read:

11 (j) In accordance with subsection (i) of this section, the following fees are
12 established for permits, licenses, certifications, approvals, registrations, orders,
13 and other actions taken by the Agency of Natural Resources.

14 * * *

15 (2) For discharge permits issued under 10 V.S.A. chapter 47 and orders
16 issued under 10 V.S.A. § 1272, an administrative processing fee of \$240.00
17 shall be paid at the time of application for a discharge permit in addition to any
18 application review fee and any annual operating fee, except for permit
19 applications under subdivisions (A)(iii)(III) and (V) of this subdivision (j)(2):

20 (A) Application review fee.

21 * * *

1 the Secretary of Agriculture, Food and Markets against a farm under 6 V.S.A.
2 chapter 215 shall not preclude or prevent the Secretary of Natural Resources
3 from enforcing violations of 10 V.S.A. chapter 47 that occur on or after
4 January 1, 2020.

5 (c) Budget and staffing. On or before January 1, 2019, the Secretary of
6 Natural Resources, after consultation with the Secretary of Agriculture, Food
7 and Markets, shall submit to the House and Senate Committees on
8 Appropriations a proposed transfer of sufficient appropriations and staffing
9 from the Agency of Agriculture, Food and Markets to the Agency of Natural
10 Resources for the purposes of implementing and enforcing on or before
11 January 1, 2020 the agricultural water quality requirements of 10 V.S.A.
12 chapter 47, subchapter 1A.

13 * * * Statutory Revision * * *

14 Sec. 28. STATUTORY REVISION; AGRICULTURAL PRACTICES

15 In its statutory revision capacity under 2 V.S.A. § 424, the Office of
16 Legislative Council is authorized, where appropriate, to replace the words
17 “Secretary of Agriculture, Food and Markets” or “Agency of Agriculture, Food
18 and Markets” with the appropriate words or phrase to reflect the transfer of the
19 agricultural nonpoint source pollution program from the Agency of
20 Agriculture, Food and Markets to the Agency of Natural Resources under
21 10 V.S.A. chapter 47, subchapter 1A.

1

* * * Effective Date * * *

2

Sec. 29. EFFECTIVE DATE

3

This act shall take effect on July 1, 2018.