

S.171

AN ACT RELATING TO AGRICULTURAL WATER QUALITY

*This is the final version of the bill, which we were very pleased with in the end. Just a few reminders about protocol for reading bills. Any text that is NOT underlined is already current law. Underlined text is what will be added to the statute, and text with strikethrough marks (~~like this~~) will be deleted from current law. If you see *** anywhere, it means that there is more current law text, but they didn't feel like retyping it all out. You can go to the current statute and find the rest of the law here: <http://www.leg.state.vt.us/statutes/sections.cfm?Title=06&Chapter=215>. This is the Agricultural Water Quality Chapter (chapter 215 of Title 6). You can look at the bill text below, and find out what section you're in (weird squiggly symbol means section), and click on that section...so, for instance, the first section right below here is 4810).*

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

Sec. 1. 6 V.S.A. § 4810 is amended to read:

§ 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 chapter 25 of Title 3, and shall implement and enforce agricultural land use practices in order to reduce the amount of agricultural pollutants entering the waters of the state. These agricultural land use practices shall be created in two categories, pursuant to subdivisions (1) and (2) of this subsection.

(1) “Accepted Agricultural Practices” (AAPs) shall be standards to be followed in conducting agricultural activities in this state. These standards shall address activities which have a potential for causing pollutants to enter the groundwater and waters of ~~this~~ the state, including dairy and other livestock operations plus all forms of crop and nursery operations. The AAPs shall include, as well as promote and encourage, practices for farmers in preventing pollutants from entering the groundwater and waters of the state when engaged in, but not limited to, animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control. Persons engaged in farming, as defined in section 6001 of Title 10, who follow these practices shall be presumed to be in compliance with water quality standards. AAPs shall be practical and cost effective to implement. The AAPs for groundwater shall include a process under which the agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner.

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So, (1) above gives the Agency of Agriculture the authority to adopt Accepted Agricultural Practices (AAPs) for groundwater. Until now, they could only be for “waters of the state” which is essentially surface water. It also adds the “promote and encourage” language which shows the legislature's intent for the Agency to be proactive with the AAPs. The last sentence in (1) above requires the Agency of Ag to include in the AAPs language that clearly outlines the process for folks to file a

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complaint and the process for responding to a complaint. This will be something to watch and comment on during the AAP rulemaking.

(b) Cooperation and coordination. The secretary of agriculture, food and markets shall coordinate with the secretary of natural resources in implementing and enforcing programs, plans and practices developed for reducing and eliminating agricultural non-point source pollutants and discharges from concentrated animal feeding operations. The secretary of agriculture, food and markets and the secretary of natural resources shall develop a memorandum of understanding for the non-point program describing program administration, grant negotiation, grant sharing and how they will coordinate watershed planning activities to comply with Public Law 92-500. The secretary of agriculture, food and markets and the secretary of the agency of natural resources shall also develop a memorandum of understanding according to the public notice and comment process of subsection 1259(i) of Title 10 regarding the implementation of the federal concentrated animal feeding operation program and the relationship between the requirements of the federal program and the state agricultural water quality requirements for large, medium, and small farms under chapter 215 of this title. The memorandum of understanding shall describe program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. The allocation of duties under this chapter between the secretary of agriculture, food and markets and the secretary of natural resources shall be consistent with the secretary's duties, established under the provisions of ~~section~~ subsection 1258(b) of Title 10, to comply with Public Law 92-500. The secretary of natural resources shall be the state lead person in applying for federal funds under Public Law 92-500, but shall consult with the secretary of agriculture, food and markets during the process. The agricultural non-point source program may compete with other programs for competitive watershed projects funded from federal funds. The secretary of agriculture, food and markets shall be represented in reviewing these projects for funding. Actions by the secretary of agriculture, food and markets under this chapter concerning agricultural non-point source pollution shall be consistent with the water quality standards and water pollution control requirements of chapter 47 of Title 10 and the federal Clean Water Act as amended.

Section (b) above deals with the Memorandum of Understanding (MOU) between the Agency of Agriculture and the Agency of Natural Resources. This section was one that we worked hard on, to clarify the relationship between these two agencies and to make it clear what the processes will be for dealing with the new regulations. The two agencies already have an MOU, so this section expands that current MOU. There is going to be a rulemaking process for this MOU also, so we can offer comments, but it will not be a full rulemaking process, and the MOU will not have the force of a rule when it is finished. What we want to make sure of is that the MOU clearly outlines the process for determining whether a farm has a discharge, and if so, which agency will do what to help the farmer deal with the discharge, and if the farmer needs a NPDES permit, what is the process for that, and how do neighbors interact with either agency to file complaints.

Sec. 2. 6 V.S.A. § 4812 is amended to read:

§ 4812. CORRECTIVE ACTIONS

(a) When the secretary of agriculture, food and markets determines that a person engaged in farming is managing a farm using practices which are inconsistent with practices defined by rules under this ~~chapter~~ subchapter, *(this is a technical correction, as are other "subchapter" references below)* the secretary may issue a written warning which shall be served in person or by certified mail, return receipt requested. The warning shall include a brief description of the alleged violation, identification of this statute and applicable rules, a recommendation for corrective actions that may be taken by the person, along with a summary of federal and state assistance programs which may be utilized by the person to remedy the violation and a request for an abatement schedule from the person according to which the practice shall be altered. The person shall have 30 days to respond to the written warning. If the person fails to respond to the written warning within this period or to take corrective action to change the practices in order to protect water quality, the secretary may act pursuant to subsection (b) of this section in order to protect water quality.

(b) After an opportunity for a hearing, the secretary may issue cease and desist orders and institute appropriate proceedings on behalf of the agency to enforce this ~~chapter~~ subchapter.

(c) Whenever the secretary believes that any person engaged in farming is in violation of this ~~chapter~~ subchapter, an action may be brought in the name of the agency in a court of competent jurisdiction to restrain by temporary or permanent injunction the continuation or repetition of the violation. The court may issue temporary or permanent injunctions, and other relief as may be necessary and appropriate to curtail any violations.

~~(e)~~(d) The secretary may assess administrative penalties in accordance with sections 15, 16, and 17 of this title against any farmer who violates a cease and desist order or other order issued under subsection (b) of this section.

None of the above is new language...they just broke up the paragraphs differently and added new letters.

~~(d)~~(e) Any person subject to an enforcement order or an administrative penalty who is aggrieved by the final decision of the secretary may appeal to the superior court within 30 days of the decision. ~~The environmental judge shall be a specially assigned superior court judge~~ The administrative judge may specially assign an environmental judge to superior court for the purpose of hearing an appeal.

This language in (e) above clarifies who will hear appeals.

Sec. 3. 6 V.S.A. § 4813(b) is amended to read:

(b) Any person engaged in farming that has been required by the secretary of agriculture, food and markets to implement best management practices or any person who has petitioned the secretary of agriculture, food and markets under subsection (a) of this section may appeal the

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secretary of agriculture, food and market's decision to the ~~water resources board~~ environmental court de novo.

This new language above changes the appeal forum from the water resources board to the environmental court.

Sec. 4. 6 V.S.A. § 4815 is added to read:

Section 4815 is an entirely new chapter to deal with manure pits.

§ 4815. WASTE STORAGE FACILITY

(a) No person shall construct a new waste storage facility or expand or modify a waste storage facility in existence on July 1, 2006 unless the facility meets the standard established for such facilities by the Natural Resources Conservation Service of the U.S. Department of Agriculture or an equivalent standard. If an equivalent design standard is used, the design and construction shall be certified by the secretary of agriculture, food and markets or a licensed professional engineer operating within the scope of his or her expertise.

Section (a) above says that if you are building a new pit or expanding a pit you already have, the new or expanded pit must meet NRCS standards, and it has to be certified. This is a change we advocated for because the original administration proposal said that every pit had to be certified, which would have been very costly for farmers, and potentially unnecessary.

(b) The secretary may require the owner or operator of a waste storage facility in existence on July 1, 2006, to modify the facility to meet the standard set forth in subsection (a) of this section if the facility poses a threat to human health or environment as established by a violation of the state groundwater protection standards. If the secretary determines that a facility that meets the standard set forth in subsection (a) of this section poses a threat to human health or the environment, the secretary may require the owner or operator of the facility to implement additional management measures. The costs of initial groundwater monitoring conducted to determine if a facility poses a threat to human health or the environment shall be paid by the secretary. Within 21 days of a determination under this subsection that a facility poses a threat to human health or the environment, the secretary of agriculture, food and markets shall notify the department of health and the secretary of natural resources of the location of the facility and the name of its owner or operator.

Section (b) above says that if a current pit has a problem, the Secretary of Agriculture can require that it be brought up to NRCS standards and certified. If the pit is already meeting NRCS standards and is still causing a problem, then the Secretary can require additional things above the standards. The testing that is done to determine if the pit is threatening groundwater will be paid for by the state. If the pit is determined to be a threat to "human health or the environment" then the Secretary of Ag must notify the department of health within 21 days. This last piece was added by Senator Snelling, and was an attempt to protect neighbors from having their wells poisoned by leaking pits without their knowledge. The Agency of Ag is not required to notify neighbors about leaking pits, and there was much opposition to that idea, so Senator Snelling went this route instead.

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(c) For purposes of this section, “waste storage facility” means an impoundment made for the purpose of storing agricultural waste by constructing an embankment, excavating a pit or dugout, fabricating an in-ground or above-ground structure, or any combination thereof. This section does not apply to concrete slabs used for agricultural waste management.

Section (d) was added to make sure that folks who are stacking manure don't have to get their concrete slabs certified by NRCS, which would be really expensive, and might be a disincentive for having a slab.

Sec. 5. 6 V.S.A. § 4826 is added to read:

Section 4826 is also an entirely new section.

§ 4826. COST ASSISTANCE FOR WASTE STORAGE FACILITIES

(a) The owner or operator of a farm required under section 4815 of this title to design, construct, or modify a waste storage facility may apply in writing to the secretary of agriculture, food and markets for cost assistance. Using state or federal funds or both, a state assistance grant shall be awarded, subject to the availability of funds, to applicants. Such grants shall not exceed 85 percent of the cost of an adequately sized and designed waste storage facility and the equipment eligible for Natural Resources Conservation Service cost share assistance. Application for a state assistance grant shall be made in the manner prescribed by the secretary. For purposes of this section, “waste storage facility” means an impoundment made for the purpose of storing agricultural waste by constructing an embankment, excavating a pit or dugout, fabricating an in-ground or above-ground structure, or any combination thereof. This section does not apply to concrete slabs used for agricultural waste management.

Section (a) above says that farmers can apply to the state (and also for federal funds) for cost assistance up to 85% of the cost of designing, building, or expanding a pit.

(b) If the secretary lacks adequate funds necessary for the cost assistance awards required by subsection (a) of this section, the secretary shall appear before the emergency board, as soon as possible, and shall request that necessary funds be provided. If the emergency board fails to provide adequate funds, the design and construction requirements for waste storage facilities under subsection 4815(b) of this title and the AAPs for groundwater, as they relate to a waste storage facility, shall be suspended for a farm with a waste storage facility subject to the requirements of subsection 4815(b) of this title until adequate funding becomes available. Suspension of the design and construction requirements of subsection 4815(b) of this title does not relieve an owner or operator of a farm permitted under section 4858 of this title from the remaining requirements of the owner’s or operator’s permit, including discharge standards, groundwater protection, nutrient management planning, and land application of manure. This subsection does not apply to farms permitted under section 1263 of Title 10 or farms permitted under section 4851 of this title.

Section (b) above was added by Senator Bobby Starr in conference committee. It requires that if there are not funds available to help a farmer with a pit, the Secretary of Ag will go to the emergency board to get the necessary funding. Then, the rest of the language is the “circuit breaker” language which says

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that even if the pit has a problem, the state won't require the farmer to fix it if there aren't any funds available. However, the farmer is NOT exempted from federal Clean Water Act requirements, so if they are bumped into the NPDES program, they may have to spend their own money to fix their pit.

Sec. 6. 6 V.S.A. § 4827 is added to read:

Section 4827 is another new section.

§ 4827. NUTRIENT MANAGEMENT PLANNING; INCENTIVE GRANTS

(a) A farm developing or implementing a nutrient management plan under chapter 215 of this title or federal regulations may apply to the secretary of agriculture, food and markets for financial assistance. The financial assistance shall be in the form of incentive grants. Annually, after consultation with the U.S. Department of Agriculture Natural Resources Conservation Service, natural resources conservation districts, the University of Vermont extension service and others, the secretary shall determine the average cost of developing and implementing a nutrient management plan in Vermont. The dollar amount of an incentive grant awarded under this section shall be equal to the average cost of developing a nutrient management plan as determined by the secretary or the cost of complying with the nutrient management planning requirements of chapter 215 of this title or federal regulations, whichever is less.

Section (a) above says farmers can get the full amount of cost assistance for a nutrient management plan by applying to the state for incentive grants (this is Clean and Clear money). Section (b) below says that the Secretary of Ag should create a process for applying for these incentive grants and what the application form should include.

(b) Application for a state assistance grant shall be made in a manner prescribed by the secretary and shall include, at a minimum:

(1) an estimated cost of developing and implementing a nutrient management plan for the applicant;

(2) the amount of incentive grant requested; and

(3) a schedule for development and implementation of the nutrient management plan.

Section (c) below says that it should be clear how the priority points will be given to farms for these grants (and specifies some things that must be considered), and that the Secretary of Ag must prepare a list of the rankings every year.

(c) The secretary annually shall prepare a list of farms ranked, regardless of size, in priority order that have applied for an incentive grant under this section. The priority list shall be established according to factors that the secretary determines are relevant to protect the quality of waters of the state, including:

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(1) the proximity of a farm to a water listed as impaired for agricultural runoff, pathogens, phosphorus, or sediment by the agency of natural resources;

(2) the proximity of a farm to an unimpaired water of the state;

(3) the proximity of a drinking water well to land where a farm applies manure; and

(4) the risk of discharge to waters of the state from the land application of manure by a farm.

(d) Assistance in accordance with this section shall be provided from state funds appropriated to the agency of agriculture, food and markets for integrated crop management.

(e) If the secretary lacks adequate funds necessary for the financial assistance required by subsection (a) of this section, the requirement to develop and implement a nutrient management plan under state statute or state regulation shall be suspended until adequate funding becomes available. Suspension of a state-required nutrient management plan does not relieve an owner or operator of a farm permitted under section 4858 of this title of the remaining requirements of a state permit, including discharge standards, groundwater protection, and land application of manure. This subsection does not apply to farms permitted under section 1263 of Title 10 or farms permitted under section 4851 of this title.

Section (e) above is "circuit breaker" language, stating that if there aren't state funds to help farmers get NMPs, then they don't have to under the state requirements until funds become available. However, the other requirements under state law are not suspended, and the farmer still has to comply with the Clean Water Act and any NPDES requirements s/he may fall under.

(f) The secretary may contract with natural resources conservation districts, the University of Vermont extension service, and other persons and organizations to aid in the implementation of the incentive grants program under subsection (a) of this section and to assist farmers in the development and implementation of nutrient management plans.

Section (f) above just gives the Agency of Ag permission to work with other folks to help farmers get NMPs.

Sec. 7. 6 V.S.A. § 4850 is amended to read:

§ 4850. DEFINITIONS

This definitions part just brings our state statute into compliance with the new federal definitions. It changes the measuring units from "animal units" to actual numbers of animals. The actual numbers were added last year in the Ag Water Quality bill, but they needed to delete the reference to "animal units."

For purposes of this subchapter:

~~(1) “Animal unit” means 1,000 pounds of live body weight of livestock. Animal units are calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0, for any large farm operation.~~

~~(2)~~(1) “Domestic fowl” means laying-hens, broilers, ducks, and turkeys.

~~(3)~~(2) “Livestock” means cattle, swine, sheep, or horses.

Sec. 8. 6 V.S.A. § 4851 is amended to read:

§ 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

(a) No person shall, without a permit from the secretary, construct a new barn, or expand an existing barn, designed to house more than 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers with a liquid manure handling system, 82,000 laying hens without a liquid manure handling system, 125,000 chickens other than laying hens without a liquid manure handling system, 5,000 ducks with a liquid manure handling system, or 30,000 ducks without a liquid manure handling system. No permit shall be required to replace an existing barn in use for livestock or domestic fowl production at its existing capacity. The secretary of agriculture, food and markets, in consultation with the secretary of natural resources, shall review any application for a permit under this section with regard to water quality impacts and, prior to approval of a permit under this subsection, shall issue a written determination regarding whether the applicant has established that there will be no unpermitted discharge to waters of the state pursuant to the federal regulations for concentrated animal feeding operations. If upon review of an application for a permit under this subsection, the secretary of agriculture, food and markets determines that the permit applicant may be discharging to waters of the state, the secretary of agriculture, food and markets and the secretary of natural resources shall respond to the discharge in accordance with the memorandum of understanding regarding concentrated animal feeding operations under subsection 4810(b) of this title. The secretary of natural resources may require a large farm to obtain a permit under section 1263 of Title 10 pursuant to federal regulations for concentrated animal feeding operations.

* * *

Section (a) above adds a step in the Large Farm Permitting process where the Secretary of Agriculture has to make a determination as to whether or not he thinks there might be a discharge from the proposed Large Farm. If the Secretary of Ag thinks the Large Farm might have a discharge, then the MOU described above will kick in, and the Agency of Ag and the Agency of Natural Resources will work together to either make sure the Large Farm solves the problem before they get a Large Farm permit and thus won't have a discharge, or the Large Farm gets a NPDES permit. This is the first time a written determination of a discharge has been required, which means farmers will have a written record of compliance with state and federal regulations.

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(d) A person seeking a permit under this section shall apply in writing to the secretary. The application shall include a description of the proposed barn or expansion of ~~animal units livestock or domestic fowl~~; *(just a technical correction to change the language to the new federal definitions)* a proposed nutrient management plan to accommodate the number of livestock or domestic fowl the barn is designed to house or expand to; and a description of the manure management system to be used to accommodate agricultural wastes.

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Sec. 9. 6 V.S.A. § 4852 is amended to read:

§ 4852. RULES

This section (bleow) adds setbacks and siting criteria for new barns or barn expansions and groundwater contamination criteria to the Large Farm permits. This will also be a rulemaking that we have to watch. The groundwater provisions also include a requirement that the rules include a clear process for getting and responding to complaints about drinking or groundwater contamination.

The secretary may adopt rules pursuant to chapter 25 of Title 3 concerning program administration, program enforcement, appeals and standards for waste management and waste storage, setbacks or siting criteria for new construction or expansion, groundwater contamination, odor, noise, traffic, insects, flies, and other pests in order to implement this subchapter. ~~In no case shall the rules be stricter than the federal regulations when adjusted where appropriate to 95 percent of the federal threshold governing concentrated animal feeding operations, as set forth in the EPA Guide Manual on NPDES Regulations and in EPA Document 833-B-95-001 of December, 1995.~~ The siting criteria adopted by the secretary by rule shall be consistent with the standards for the quality of state waters and standards for acceptable agricultural practices pursuant to subchapter 2 of this chapter. The groundwater contamination rules adopted by the secretary shall include a process under which the agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner.

Sec. 10. 6 V.S.A. § 4853 is amended to read:

§ 4853. INFORMATIONAL MEETING

Section (a) below creates an advisory group to work with the Agency of Ag regarding the siting criteria for new or expanded barns.

(a) Upon receipt by the secretary of a permit application for construction of a new barn under this subchapter, the secretary shall establish an advisory group to assist in reviewing the application. The advisory group shall consist of, in addition to the secretary, the secretary of natural resources or his or her duly authorized representative, a farmer appointed by the governor, and a representative of the legislative body of the municipality in which the proposed facility would be located. Such representative shall be appointed by the legislative body but need not be a resident of the municipality. The secretary may establish the advisory group

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pursuant to this subsection upon receipt of a permit application for expansion of an existing barn under this subchapter.

(b) The secretary shall conduct an informational meeting in a municipality when there is a proposal to construct a new barn, within the municipality, that would require a permit under this subchapter.

~~(b)~~(c) The secretary may conduct an informational meeting in a municipality in which a barn expansion is sought, if the barn is already subject to permitting requirements under this subchapter.

~~(e)~~(d) The secretary shall upon request prepare in writing the response of the agency to matters raised during a meeting held pursuant to this section, or submitted to the secretary in writing. Such response shall pertain to considerations required under this subchapter.

Sec. 11. 6 V.S.A. § 4858 is amended to read:

§ 4858. ANIMAL WASTE PERMITS

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This section is the Medium Farm General Permit section. Most of the language was adopted last year in the Miscellaneous Ag Bill, and that's why it's not underlined. The underlined and strikethrough parts are the changes we made this year.

(b) Rules; general and individual permits. The secretary shall establish by rule, pursuant to chapter 25 of Title 3, requirements for a “general permit” and “individual permit” to ensure that medium and small farms generating animal waste comply with the water quality standards of the state.

(1) “General” and “individual” permits issued under this section shall be consistent with rules adopted under this section, shall include terms and conditions appropriate to each farm size category and each farm animal type as defined by section 4857 of this title and shall meet standards at least as stringent as those established by ~~the U.S. Environmental Protection Agency for concentrated animal feeding operations, as set forth in USEPA National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitation Guidelines and Standards for Concentrated Animal Feeding Operations; Final Rule, 68 Fed. Reg. 7176 (2004)(to be codified at 40 C.F.R. Parts 9, 122, 123, 68, and 412)~~ federal regulations for concentrated animal feeding operations. Such standards shall address waste management, waste storage, development of nutrient management plans, carcass disposal, and surface water and groundwater contamination, plus recordkeeping and reporting ~~regarding such matters, and monitoring provisions regarding such matters to ensure that the terms and conditions of the permit are being met.~~ The groundwater contamination rules adopted by the secretary under this section shall include a process under which the agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner.

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Section (1) above makes a small technical change with the reference to the federal regulations for CAFOs because some of the provisions are being decided in court. The end adds monitoring provisions to the rulemaking and the groundwater/drinking water complaint process that was also added to the AAPs and LFO permit process.

(c)(1) Medium farm general permit. The owner or operator of a medium farm seeking coverage under a general permit adopted pursuant to this section shall certify to the secretary within a period specified in the permit, and in a manner specified by the secretary, that the medium farm does comply with permit requirements regarding an adequately sized and designed manure management system to accommodate the wastes generated and a nutrient management plan to dispose of wastes in accordance with accepted agricultural practices adopted under this chapter. Any certification or notice of intent to comply submitted under this subdivision shall be kept on file at the agency of agriculture, food and markets. The secretary of agriculture, food and markets, in consultation with the secretary of natural resources, shall review any certification or notice of intent to comply submitted under this subdivision with regard to the water quality impacts of the medium farm for which the owner or operator is seeking coverage, and, within 18 months of receiving the certification or notice of intent to comply, shall verify whether the owner or operator of the medium farm has established that there will be no unpermitted discharge to waters of the state pursuant to the federal regulations for concentrated animal feeding operations. If upon review of a medium farm granted coverage under the general permit adopted pursuant to this subsection, the secretary of agriculture, food and markets determines that the permit applicant may be discharging to waters of the state, the secretary of agriculture, food and markets and the secretary of natural resources shall respond to the discharge in accordance with the memorandum of understanding regarding concentrated animal feeding operations under subsection 4810(b) of this title.

The new language in (c)(1) does a couple of things: it says that the Agency of Ag will keep the Notices of Intent to Comply (NOICs) on file at the agency. This language was a compromise between the "neighbor" groups and the "farm" groups. The neighbors wanted the NOICs and the NMPs of the farmers to be public record so they could check and see if the farmer was doing what they said they would do. We (Rural Vermont) opposed this, and proposed that the NOICs be kept on file at the Agency, and thus available through a FOIA (freedom of information act) request if there is a real problem that a neighbor wants to check up on. This section also says that once the Agency of Ag receives an NOIC, they have to go and visit the farm within 18 months to make sure the farm will not have a discharge. The 18 months seems like a long time, but it is to allow for the large number of applications that will be submitted when this law goes into effect. It essentially gives the Agency two full growing seasons to go out to the farms, because they are estimating at least 120 applications, and they can't inspect when there is snow cover. If the Agency of Ag thinks the farm will have a discharge, then they will follow the procedures outlined in the MOU to deal with it, and if necessary, the farmer will get a NPDES permit.

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

Section (2) above opens up the General Permit program to all small and medium farms.

(d) Medium and small farms; individual permit. ~~Upon determination by the secretary that a medium or small farm may be a significant contributor of pollutants to the waters of the state, the secretary may require the farm to obtain an individual permit in order to continue in operation~~ The secretary may require the owner or operator of a small or medium farm to obtain an individual permit to operate after review of the farm’s history of compliance, application of accepted agricultural practices, the use of an experimental or alternative technology or method to meet a state performance standard, or other factors set forth by rule. The owner or operator of a small farm may apply to the secretary for an individual permit to operate under this section. To receive such a an individual permit, an applicant shall in a manner prescribed by rule demonstrate that the farm has an adequately sized and designed manure management system to accommodate the wastes generated and a nutrient management plan to dispose of wastes in accordance with accepted agricultural practices adopted under this chapter, including setback requirements for waste application. An individual permit shall be valid for no more than five years. Any application for an individual permit filed under this subsection shall be kept on file at the agency of agriculture, food and markets. The secretary of agriculture, food and markets, in consultation with the agency of natural resources, shall review any application for a permit under this subsection and, prior to issuance of an individual permit under this subsection, shall issue a written determination regarding whether the permit applicant has established that there will be no unpermitted discharge to waters of the state pursuant to federal regulations for concentrated animal feeding operations. If, upon review of an application for a permit under this subsection, the secretary of agriculture, food and markets determines that the permit applicant may be discharging to waters of the state, the secretary of agriculture, food and markets and the secretary of natural resources shall respond to the discharge in accordance with the memorandum of understanding regarding concentrated animal feeding operations under subsection 4810(b) of this title. The secretary of natural resources may require a medium or small farm to obtain a permit under section 1263 of Title 10 pursuant to federal regulations for concentrated animal feeding operations. Coverage of a medium farm under a general permit adopted pursuant to this section or an individual permit issued to a medium or small farm under this section is rendered void by the issuance of a permit to a farm under section 1263 of Title 10.

Section (d) above says that the Agency of Agriculture can require a small or medium farm to get an individual permit if they believe it's necessary to prevent discharges. Also, if a farm wants an individual permit, they can ask for one. It also adds language similar to the language above saying if the Agency thinks the farm is going to have a discharge, the MOU will kick in and a NPDES permit will be issued if necessary.

* * * Agency of Natural Resources * * *

So, now we're heading into Title 10, which is Natural Resources, so if you want to see the current statutes, they will be here: <http://www.leg.state.vt.us/statutes/sections.cfm?Title=10&Chapter=047>

Sec. 12. 10 V.S.A. § 1259(f) is amended to read:

(f) The provisions of subsections (c), (d), and (e) of this section shall not regulate accepted agricultural or silvicultural practices, as such are defined by the secretary of agriculture, food and

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markets and the commissioner of forests, parks and recreation, respectively, after an opportunity for a public hearing; nor shall these provisions regulate discharges from concentrated animal feeding operations that require a permit under section 1263 of this title; nor shall those provisions prohibit stormwater runoff or the discharge of nonpolluting wastes, as defined by the board.

Section (f) above exempts farms from the state stormwater regulations. It sets up that ag regulations are in a different section of the statute.

Sec. 13. 10 V.S.A. § 1263(g) is added to read:

(g) Notwithstanding any other provision of law, any person who owns or operates a concentrated animal feeding operation that requires a permit under the federal National Pollutant Discharge Elimination System permit regulations shall submit an application to the secretary for a discharge permit and pay the required fees specified in 3 V.S.A. § 2822. On or before July 1, 2007, the secretary of natural resources shall adopt rules implementing the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. Until such regulations are adopted, the substantive permitting standards and criteria used by the secretary to evaluate applications and issue or deny discharge permits for concentrated animal feeding operations shall be those specified by federal regulations. The secretary may issue an individual or general permit for these types of discharges in accordance with the procedural requirements of subsection (b) of this section and other state law. For the purposes of this subsection, “concentrated animal feeding operation” means a farm that meets the definition contained in the federal regulations.

Section (g) above requires the Secretary of Natural Resources to promulgate rules for CAFO NPDES permits. This section was a major victory for us!

Sec. 14. 10 V.S.A. § 1264(e)(2) is amended to read:

(2) As one of the principal means of administering an enhanced stormwater program, the secretary may issue and enforce general permits. To the extent appropriate, such permits shall include the use of certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty. The secretary may issue general permits for classes of regulated stormwater runoff permittees and may specify the period of time for which the permit is valid other than that specified in subdivision 1263(d)(4) of this title when such is consistent with the provisions of this section. General permits shall be adopted and administered in accordance with the provisions of subsection 1263(b) of this title. No permit is required under this section for:

(A) ~~stormwater~~ Stormwater runoff from farms subject to accepted agricultural practices adopted by the secretary of agriculture, food and markets;

(B) Stormwater runoff from concentrated animal feeding operations that require a permit under subsection 1263(g) of this chapter; or

~~(C) for stormwater~~ Stormwater runoff from silvicultural activities subject to accepted management practices adopted by the commissioner of forests, parks and recreation.

The above section is the agricultural stormwater exemption.

Sec. 15. AGENCY OF AGRICULTURE WATER QUALITY OUTREACH, EDUCATION, AND TRAINING

This section requires the Agency of Agriculture to do outreach to explain all this stuff to farmers. It will not appear in the "green books" which are the state statute, but it is still a requirement.

(a) Prior to February 2006, the agency of agriculture, food and markets shall develop educational and training programs and conduct public hearings to inform farmers in Vermont of the requirements of this act, the proposed general permit for medium farm operations, and the federal regulations for concentrated animal feeding operations. In developing the education programs required by this section, the agency may utilize various types of media, group meetings, on-farm demonstrations, and one-on-one farm visits.

(b) The agency of agriculture, food and markets, in consultation with the agency of natural resources, shall coordinate the training of staff from the natural resources conservation districts, the University of Vermont extension service, the Natural Resources Conservation Service, and other persons and organizations regarding the requirements of the state animal waste permit program and what may constitute a discharge from a concentrated animal feeding operation.

Sec. 16. ANNUAL REPORT

This section lays out the reporting requirements to all four committees (both ag cmtes, the house fish and wildlife, and the senate natural resources). They are pretty self explanatory, and we are quite pleased with this section. It will provide some level of accountability for the two agencies (ag and natural resources) and provide us with a way to continue to have input into the programs. The "sunset" only ends the reporting requirement. The idea is to have the reports come in every year for five years, which would be the first full cycle of the Medium Farm General Permit. Pretty much every one of these requirements was a fight, and Dexter Randall's amendment put a good few of them into the bill.

(a) On January 1 of each year, the agency of natural resources shall submit an annual report to the house and senate committees on agriculture, the house committee on fish, wildlife and water resources, and the senate committee on natural resources and energy regarding implementation by the agency of a National Pollutant Discharge Elimination System (NPDES) permit program for farms subject to the federal Clean Water Act regulations for concentrated animal feeding operations (CAFOs). The report shall include:

- (1) a summary of the status of the federal regulations;
- (2) a summary of the litigation challenging the federal regulations;

(3) a summary of any revised rulemaking by the U.S. Environmental Protection Agency;

(4) a recommendation by the agency of natural resources regarding the rules regulating discharges from concentrated animal feeding operations;

(5) a copy of the memorandum of understanding for concentrated animal feeding operations required by section 4810 of Title 6 and a recommendation by the agency of natural resources regarding any need to amend the memorandum of understanding;

(6) an assessment of the impact on surface water quality of the implementation of agricultural water quality programs in the state; and

(7) a summary of the impact on small farms of the implementation of the NPDES permit program, including the number of small farms required to obtain an NPDES permit.

(b) On January 1 of each year, the agency of agriculture, food and markets shall submit an annual report to the house and senate committees on agriculture, the house committee on fish, wildlife and water resources, and the senate committee on natural resources and energy concerning the status of the state animal waste permit program. The report shall include:

(1) an assessment of the adequacy of agricultural waste storage and land application of manure on farms in Vermont;

(2) an assessment of the extent of the financial and technical resources required to implement successfully the state agricultural water quality program, including the number of nutrient management plans required, the number of waste storage facilities that require upgrading, and an estimate of the appropriations necessary to fund state assistance programs;

(3) the status of rulemaking for the medium farm general permit;

(4) the status of any pending or proposed rulemaking for large farms or accepted agricultural practices;

(5) a summary of the year-to-date funding of the nutrient management planning by the agency of agriculture, food and markets;

(6) a summary of agency efforts to develop educational programs and conduct public hearings to inform farmers in Vermont of the requirements of this act, the proposed general permit for medium farm operations, and the status of the federal regulations for concentrated animal feeding operations;

(7) an assessment of the impact of the state agricultural water quality program on small farms in Vermont, including the number of small farms voluntarily entering the program and the number of small farms required to obtain a state animal waste permit;

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(8) a summary of the financial and technical assistance provided to farms, including the type and amount of assistance awarded according to farm size; and

(9) an assessment of the impact on the groundwater of the state of the implementation of the state agricultural water quality program.

Sec. 17. SUNSET

Sec. 16 of this act (annual report) shall be repealed on January 2, 2010.

Sec. 18. EFFECTIVE DATE

This act shall take effect on passage.