

# S.115: Municipal Authority to Regulate Agricultural Stormwater

Senate Natural Resources and Energy

March 21, 2023

Municipal  
Authority to  
Regulate  
Stormwater

**24 V.S.A. § 4414. Zoning; permissible types of regulations**

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

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(9) Stormwater management and control. Any municipality may adopt bylaws to implement stormwater management and control consistent with the program developed by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1264.

24 V.S.A.  
§4413  
Limitations on  
Municipal  
Bylaws

**Subchapter 7: Bylaws**

- § 4410. Regulatory implementation of the municipal plan
- § 4411. Zoning bylaws
- § 4412. Required provisions and prohibited effects
- § 4413. Limitations on municipal bylaws
- § 4414. Zoning; permissible types of regulations
- § 4415. Interim bylaws
- § 4416. Site plan review
- § 4417. Planned unit development
- § 4418. Subdivision bylaws
- § 4419. Unified development bylaws
- § 4420. Local Act 250 review of municipal impacts
- § 4421. Official map
- § 4422. Adequate public facilities; phasing
- § 4423. Transfer of development rights
- § 4424. Shorelands; river corridor protection areas; flood or hazard area; special or freestanding bylaws
- §§ 4425, 4426. Repealed. 2003, No. 115 (Adj. Sess.), § 119(c).
- § 4427. Persons eligible to apply for permits

# Limitation of Municipal Bylaws to Regulate RAPs

## **24 V.S.A. § 4413(d)(1)**

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

(A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;

(B) accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices that are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; or

(C) forestry operations.

## RAPs—What do they Regulate?

### **6 V.S.A. § 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 waters of the State. . .

# RAPs—What do they Regulate?

## REQUIRED AGRICULTURAL PRACTICES RULE FOR THE AGRICULTURAL NONPOINT SOURCE POLLUTION CONTROL PROGRAM

### Section 1.

General 1.1 Preamble: Agriculture has been identified as a major contributor of non-point source pollution to surface waters of Vermont. For example, the Lake Champlain Total Maximum Daily Load (TMDL), as modeled by the Environmental Protection Agency, estimates that nutrient losses from agricultural activities represent 29% of the total phosphorous load to the Lake Champlain basin and over 40% of Vermont's contribution to the phosphorous load to the basin. Agriculture contributes non-point source pollution to surface and groundwater from multiple sources, including cropland erosion, farmstead management, crop storage, and manure storage and application. While contributions of non-point source pollution from agriculture may vary from watershed to watershed, the overall impact to water quality from agricultural lands, when not managed well, is significant.

## Non-point Source Pollution = Stormwater

# What Is Another Word for Non-Point Source Pollution

The CWA does not provide a detailed definition of nonpoint sources. Rather, they are defined by exclusion—anything not considered a “point source” according to the act and EPA regulations. All nonpoint sources of pollution are caused by runoff of precipitation (rain and/or snow) over or through the ground. This includes stormwater associated with industrial activity, construction-related runoff, and discharges from municipal separate storm sewer systems (MS4s). U.S. EPA, Section 319: Nonpoint Source Program

# Logic Chain

Municipalities Can Regulate Stormwater

*But*

Municipalities Cannot Regulate RAPs

*And*

RAPs are requirements for Agricultural Stormwater

*Thus*

Municipalities Cannot Regulate Agricultural Stormwater



## But They Do

- Colchester farm assessed a \$1,800 annual bill from the town.
- Shelburne farm received a bill for \$150 for a quarter (\$600/yr).
- Multiple St. Albans Town farms assessed over \$1,000 annual bill.

Which is In addition to:

- LFO annual operating permit fee of: \$2,500
- MFO annual operating permit fee of: \$1,500

# 83 Farms and Counting

## Total Farm Facilities

- Colchester: 19
- Essex, Essex Jct, Essex Town: 8
- Shelburne: 13
- South Burlington: 4
- St. Albans Town: 28
- Williston: 11

Equity—  
No Equity  
Municipal Bylaw  
Must be  
Consistent with  
State  
Stormwater  
Permitting

**10 V.S.A. §1264(d)(1) Exemptions [State Stormwater Operating Permitting].**

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

(A) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, provided that this exemption shall not apply to construction stormwater permits required by subdivision (c)(4) of this section.

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

(C) Stormwater runoff from accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices that are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

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

24 VSA 4414(9) Any municipality may adopt bylaws to implement stormwater management and control consistent with the program developed by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1264

# Municipal Argument-- Utility

- Under Title 24, municipalities have authority to create sewer districts or consolidated sewer districts.
- Sewage, as defined in Title 24, includes stormwater. 24 V.S.A. §§3501, 3601, 3672.
- These sewer districts can assess rates and charges, but two of the three chapters require the charges to be called sewage disposal rates. 24 V.S.A. §3615.
- Stormwater charges are not called sewage disposal rates.

## Your Intent?

- When construing statutes, the primary goal of a court is to give effect to the Legislature's intent. *Lydy v. Trustaff, Inc./Wausau Ins. Co.*, 194 Vt. 165, 168 (2013)
- “There are many rules of construction, however, the paramount one being to discern and give effect to the intent of the Legislature....[R]ules of construction ... [are] an aid to be relied upon where appropriate, but not where it leads to a result inconsistent with legislative intent.” *State v. O'Neill*, 165 Vt. 270, 275 (1996).

S.115  
Secs. 8 and 9  
Clarify Intent

Sec. 8. 24 V.S.A. § 4414(9) is amended to read:

(9) Stormwater management and control. Any municipality may adopt bylaws to implement stormwater management and control consistent with the program developed by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1264, provided the municipality does not exceed the Secretary's authority, maintains the exemptions in 10 V.S.A. § 1264(d)(1), and does not charge an operating fee related to exempt practices.

Sec. 9. IMPLEMENTATION PROSPECTIVE  
APPLICATION

Sec. 8 (exemption from municipal stormwater fees) shall apply prospectively and shall not require a municipality to refund stormwater operating fees assessed prior to the effective date of this act on properties or activities that are exempt from such fees under 24 V.S.A. § 4414(9) as amended by this act.