

S.115: Municipal Authority to Regulate Agricultural Stormwater

House Ways and Means

May 5, 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.

(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 Repealed. 2003, No. 115 (Adj.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

ANR Regulates Agricultural Point Sources

10 V.S.A. § 1263(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.

Logic Chain

Municipalities Can Regulate Stormwater, Consistent with ANR Authority

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.

MS4 Utilities

- Municipalities have adopted stormwater utilities to satisfy the requirements of the State municipal separate storm sewer system (MS4) permit.
- On July 27, 2018, Vermont's MS4 Permit was issued. This MS4 permit is the third MS4 General Permit issued by the State of Vermont. The first MS4 permit was issued in 2003 and amended in 2004 and the next was issued in 2012. The 2018 permit authorizes stormwater discharges within the Urbanized Areas of the following small MS4s: Burlington, Colchester, Essex, Essex Junction, Milton, Shelburne, South Burlington, Williston, and Winooski, the University of Vermont, and the Burlington International Airport.
- Concurrent with the 2012 MS4 permit issuance, the Department has designated those portions of Municipal Separate Storm Sewer Systems that discharge to the stormwater impaired waters. The designated small MS4s, within the stormwater impaired watersheds, are operated by the City of Rutland, the Town of Rutland, the City of St. Albans, the Town of St. Albans, and the Vermont Agency of Transportation within the geographic boundaries of the stormwater impaired watersheds in the municipalities listed above.

Applicability of MS4 Permit

- Stormwater discharges. This general permit [MS4] authorizes stormwater discharges to waters of the State from regulated small MS4s and developed lands subject to this permit, except as excluded in Subpart 2.3.
- “Developed land” means impervious surface and associated open lands including lawns, golf courses, and other managed vegetated areas. Developed land does not include farms or forested areas and associated logging trails and logging roads.
- See State of Vermont, Agency of Natural Resources, Department of Environmental Conservation, Vermont Pollutant Discharge Elimination System (VPDES), General permit 3-9014 (2018) for Stormwater Discharges from Regulated Small Municipal Separate Storm Sewer Systems (MS4s) and Certain Developed Lands.

But Maybe Runoff from Farms Is Regulated?

- “MS4” or “municipal separate storm sewer system” means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains: (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under Section 208 of the CWA that discharges to waters of the State; (ii) Designed or used for collecting or conveying stormwater; (iii) Which is not a combined sewer; and (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 C.F.R. § 122.2.
- See ANR, DEC, VPDES General Permit for MS4s.

But Maybe Not—EPA NPDES Rules

These provisions cover basic EPA permitting requirements (this part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program, and minimum requirements for administering the approved State program. U.S. EPA, 40 C.F.R. Part 122 - EPA Administered Permit Programs: The National Pollutant Discharge Elimination System.

But Maybe Not—EPA NPDES Rules

40 C.F.R. § 122.3 Exclusions.

The following discharges do not require NPDES permits:

Any introduction of pollutants from non point-source agricultural and silvicultural activities, including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands, but not discharges from concentrated animal feeding operations as defined in [§ 122.23](#), discharges from concentrated aquatic animal production facilities as defined in [§ 122.24](#), discharges to aquaculture projects as defined in [§ 122.25](#), and discharges from silvicultural point sources as defined in [§ 122.27](#).

MS4 is NPDES

- The MS4 permit is a NPDES permit.
- If agricultural runoff does not require a NPDES permit per EPA NPDES rules.
- Why is agricultural stormwater runoff being assessed/regulated by Vermont's MS4 towns?



Related Links

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- Permit
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[Home](#) › [Departments](#) › [Stormwater Utility](#) › [MS4 Permit](#)

Municipal Separate Stormwater Permit

The Municipal Separate Storm Sewer System (MS4) General permit under the National Pollutant Discharge Elimination S MS4 permit program is administered by the VT Department division of the Agency of Natural Resources (ANR). The MS4 five-year period. The primary mechanism by which the Town the MS4 General Permit is through the activities of the Storm

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. Municipalities shall not charge an impervious surface fee or other stormwater fee under this subdivision or under other provisions of this title on property regulated under the Required Agricultural Practices for discharges of agricultural waste or agricultural nonpoint source pollution.

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.