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H.586

Representative Johnson of Canaan moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

* * * Findings; Agricultural Water Quality * * *

Sec. 1. FINDINGS AND PURPOSE; AGRICULTURAL WATER QUALITY

(a) Findings. For the purpose of Secs. 1–9a of this act, the General Assembly finds that:

(1) Significant State, federal, and private financial resources have been expended over the past 20 years to address water quality issues in the State of Vermont, such as the cleanup of Lake Champlain.

(2) Despite significant funding and efforts to address the State’s water quality issues, insufficient progress has been made.

(3) The U.S. Environmental Protection Agency (EPA) revoked approval of the initial total maximum daily load (TMDL) plan for Lake Champlain despite the State’s reaching one-third of the TMDL’s goal in less than 10 years.

(4) EPA is in the process of developing a new TMDL for Lake Champlain, but Vermont may be responsible for the large majority of implementation costs.

1 (5) Much of the responsibility and cost for meeting the new EPA TMDL
2 may fall on Vermont’s farmers, who likely will be subject to additional
3 requirements under the accepted agricultural practices (AAPs) and other
4 agricultural water quality rules.

5 (6) Although the AAP rules were adopted in 1995, there is a general
6 lack of awareness in the “small farm” community about the AAPs, and the
7 Agency of Agriculture, Food and Markets should educate small farm operators
8 in the State concerning the requirements of the AAPs.

9 (7) The Vermont agricultural community recognizes that it has a role to
10 play in the future efforts to reduce nutrient loading and improve water quality
11 in the State, but additional State and federal assistance is necessary to fulfill
12 this role successfully, including technical and financial assistance to encourage
13 small farms to adopt and implement nutrient management plans.

14 (b) Purpose. It is the purpose of Secs. 1–9a of this act to:

15 (1) improve the quality of the waters of Vermont;

16 (2) authorize proactive measures designed to implement and ultimately
17 meet the impending TMDL for Lake Champlain and improve water quality
18 across the State;

19 (3) identify cost-effective strategies for the agricultural community to
20 address water quality issues, including best management practices and

1 conservation practices of cover cropping, grassed waterways, manure drag

2 lines and injection, no-till production, and contour plowing; and

3 (4) engage more agricultural operations in meaningful ways as part of
4 the State's efforts to improve the quality of the waters of Vermont.

5 * * * Agricultural Water Quality;

6 Small Farm Certification and Inspection * * *

7 Sec. 2. 6 V.S.A. § 4858a is added to read:

8 § 4858a. SMALL FARM CERTIFICATION

9 (a) Rulemaking; small farm certification. The Secretary of Agriculture,
10 Food and Markets shall adopt by rule a requirement that all small farms in the
11 State submit to the Secretary a certification of compliance with the accepted
12 agricultural practices. The rules required by this subsection shall be adopted as
13 part of the accepted agricultural practices under section 4810 of this title.

14 (b) Content of rules. The rules for small farm certification shall:

15 (1) Define what constitutes a small farm for the purposes of
16 certification.

17 (2) Require a small farm to be certified under this section in order to
18 operate in the State.

19 (3) Require the owner or operator of a small farm to certify to the
20 Secretary of Agriculture, Food and Markets at least every five years that the
21 owner or operator complies with the accepted agricultural practices adopted

1 under section 4810 of this title. The certification shall identify the farm subject
2 to the certification and the person or persons who own or operate the farm.

3 The owner or operator of the farm shall certify compliance with the accepted
4 agricultural practices, including that:

5 (A) The farm does not directly discharge wastes into the surface
6 waters from a discrete conveyance such as a pipe, ditch, or conduit without a
7 permit under 10 V.S.A. § 1258.

8 (B) Manure stacking sites, fertilizer storage, and other nutrient source
9 storage on the farm are not located within 100 feet of private wells.

10 (C) Manure is not stacked or stored on lands subject to annual
11 overflow from adjacent waters.

12 (D) Manure is not field stacked on unimproved sites within 100 feet
13 of a surface water.

14 (E) Barnyards, waste management systems, animal holding areas,
15 and production areas shall be constructed, managed, and maintained to prevent
16 runoff of waste to surface water, to groundwater, or across property
17 boundaries.

18 (F) Nutrient application on the farm is based on soil testing by field
19 and is consistent with University recommendations, standard agricultural
20 practices, or a Secretary-approved nutrient management plan for the farm.

1 (G) Manure on the farm is not applied within 25 feet of an adjoining
2 surface water, is not applied within 10 feet of a ditch, or is applied in such a
3 manner as to enter surface water.

4 (H) Fertigation and chemigation equipment is operated only with an
5 adequate anti-siphon device between the system and the water source.

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

10 (J) A vegetative buffer zone of perennial vegetation is maintained
11 between annual croplands and the top of the bank of adjoining surface waters
12 in a manner that complies with requirements of the accepted agricultural
13 practices.

14 (K) Manure, fertilizer, pesticide storage structures, and farm
15 structures are not located within a floodway area as presented on National
16 Flood Insurance Maps on file with town clerks or within a Fluvial Erosion
17 Hazard Zone as designated by municipal bylaw or ordinance.

18 (4) Authorize the Secretary to visit small farms in the State for the
19 purposes of assessing compliance with the accepted agricultural practices and
20 consistency with a certification issued under this section. The Secretary may

1 prioritize visits to small farms in the State based on identified water quality
2 issues posed by a farm.

3 (5) Require notice to the Secretary of a change of ownership or a change
4 of operator of a small farm and the time frame by which a new owner or
5 operator shall be required to certify compliance with the accepted agricultural
6 practices under this section.

7 (c)(1) Identification; ranking of water quality needs. During a visit to a
8 small farm required under subsection (b) of this section, the Secretary shall
9 identify areas where the farm could benefit from capital, structural, or technical
10 assistance in order to improve or come into compliance with the accepted
11 agricultural practices.

12 (2) Annually, the Secretary shall establish a priority ranking system for
13 small farms according to the degree of assistance required for compliance with
14 the accepted agricultural practices if the identified capital, structural, or
15 technical needs on the farm are not addressed.

16 (3) Notwithstanding the requirements of section 4823 of this title, farms
17 identified under subdivision (2) of this subsection in the greatest level of need
18 in order to come into compliance with the accepted agricultural practices shall
19 be given first priority for State financial assistance under subchapter 3 of this
20 chapter, provided that the Secretary may give first priority for financial
21 assistance to any farm other than one identified under subdivision (2) of this

1 subsection when the Secretary determines that a farm needs assistance to
2 address a water quality issue that requires immediate abatement.

3 Sec. 3. 6 V.S.A. § 4860 is amended to read:

4 § 4860. REVOCATION; ENFORCEMENT

5 (a) The ~~secretary~~ Secretary may revoke coverage under a general permit ~~or,~~
6 an individual permit, or a small farm certification issued under this subchapter
7 after following the same process prescribed by section 2705 of this title
8 regarding the revocation of a handler's license. The ~~secretary~~ Secretary may
9 also seek enforcement remedies under sections 1, 11, 12, 13, 16, and 17 of this
10 title as well as assess an administrative penalty under section 15 of this title
11 from any person who fails to comply with any permit provision as required by
12 this subchapter or who violates the terms or conditions of coverage under any
13 general permit ~~or,~~ any individual permit, or any small farm certification issued
14 under this subchapter. However, notwithstanding provisions of section 15 of
15 this title to the contrary, the maximum administrative penalty assessed for a
16 violation of this subchapter shall not exceed \$5,000.00 for each violation, and
17 the maximum amount of any penalty assessed for separate and distinct
18 violations of this chapter shall not exceed \$50,000.00.

19 (b) Any person who violates any provision of this subchapter or who fails
20 to comply with any order or the terms of any permit or certification issued in
21 accordance with this subchapter shall be fined not more than \$10,000.00 for

1 each violation. Each violation may be a separate offense and, in the case of a
2 continuing violation, each day's continuance may be deemed a separate
3 offense.

4 (c) Any person who knowingly makes any false statement, representation,
5 or certification in any application, record, report, plan, certification, or other
6 document filed or required to be maintained by this subchapter or by any
7 permit, rule, regulation, or order issued under this subchapter, or who falsifies,
8 tampers with, or knowingly renders inaccurate any monitoring device or
9 method required to be maintained by this subchapter or by any permit, rule,
10 regulation, or order issued under this subchapter shall upon conviction be
11 punished by a fine of not more than \$5,000.00 for each violation. Each
12 violation may be a separate offense and, in the case of a continuing violation,
13 each day's continuance may be deemed a separate offense.

14 Sec. 4. 6 V.S.A. § 4810 is amended to read:

15 § 4810. AUTHORITY; COOPERATION; COORDINATION

16 (a) Agricultural land use practices. In accordance with 10 V.S.A.
17 § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A.
18 chapter 25 of ~~Title 3~~, and shall implement and enforce agricultural land use
19 practices in order to reduce the amount of agricultural pollutants entering the
20 waters of the ~~state~~ State. These agricultural land use practices shall be created
21 in two categories, pursuant to subdivisions (1) and (2) of this subsection.

1 (1) “Accepted Agricultural Practices” (AAPs) shall be standards to be
2 followed in conducting agricultural activities in this ~~state~~ State. These
3 standards shall address activities which have a potential for causing pollutants
4 to enter the groundwater and waters of the ~~state~~ State, including dairy and
5 other livestock operations plus all forms of crop and nursery operations and
6 on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902,
7 livestock and poultry slaughter and processing activities. The AAPs shall
8 include, as well as promote and encourage, practices for farmers in preventing
9 pollutants from entering the groundwater and waters of the ~~state~~ State when
10 engaged in, ~~but not limited to~~, animal waste management and disposal, soil
11 amendment applications, plant fertilization, and pest and weed control.
12 Persons engaged in farming, as defined in 10 V.S.A. § 6001, who follow these
13 practices shall be presumed to be in compliance with water quality standards.
14 AAPs shall be practical and cost effective to implement. The AAPs for
15 groundwater shall include a process under which the ~~agency~~ Agency shall
16 receive, investigate, and respond to a complaint that a farm has contaminated
17 the drinking water or groundwater of a property owner.

18 (2) “Best Management Practices” (BMPs) may be required by the
19 ~~secretary~~ Secretary on a ~~case-by-case~~ case-by-case basis. Before requiring
20 BMPs, the ~~secretary~~ Secretary shall determine that sufficient financial

1 assistance is available to assist farmers in achieving compliance with
2 applicable BMPs. BMPs shall be practical and cost effective to implement.

3 (b) Cooperation and coordination. The ~~secretary of agriculture, food and~~
4 ~~markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the
5 ~~secretary of natural resources~~ Secretary of Natural Resources in implementing
6 and enforcing programs, plans, and practices developed for reducing and
7 eliminating agricultural non-point source pollutants and discharges from
8 concentrated animal feeding operations. The ~~secretary of agriculture, food and~~
9 ~~markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of~~
10 ~~natural resources~~ Secretary of Natural Resources shall develop a memorandum
11 of understanding for the non-point program describing program administration,
12 grant negotiation, grant sharing, and how they will coordinate watershed
13 planning activities to comply with Public Law 92-500. The ~~secretary of~~
14 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and
15 the ~~secretary of the agency of natural resources~~ Secretary of Natural Resources
16 shall also develop a memorandum of understanding according to the public
17 notice and comment process of 10 V.S.A. § 1259(i) regarding the
18 implementation of the federal concentrated animal feeding operation program
19 and the relationship between the requirements of the federal program and the
20 ~~state~~ State agricultural water quality requirements for large, medium, and small
21 farms under chapter 215 of this title. The memorandum of understanding shall

1 describe program administration, permit issuance, an appellate process, and
2 enforcement authority and implementation. The memorandum of
3 understanding shall be consistent with the federal National Pollutant Discharge
4 Elimination System permit regulations for discharges from concentrated
5 animal feeding operations. The allocation of duties under this chapter between
6 ~~the secretary of agriculture, food and markets~~ Secretary of Agriculture, Food
7 and Markets and the ~~secretary of natural resources~~ Secretary of Natural
8 Resources shall be consistent with the ~~secretary's~~ Secretary's duties,
9 established under the provisions of 10 V.S.A. § 1258(b), to comply with Public
10 Law 92-500. The ~~secretary of natural resources~~ Secretary of Natural
11 Resources shall be the ~~state~~ State lead person in applying for federal funds
12 under Public Law 92-500, but shall consult with the ~~secretary of agriculture,~~
13 ~~food and markets~~ Secretary of Agriculture, Food and Markets during the
14 process. The agricultural non-point source program may compete with other
15 programs for competitive watershed projects funded from federal funds. The
16 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and
17 Markets shall be represented in reviewing these projects for funding. Actions
18 by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,
19 Food and Markets under this chapter concerning agricultural non-point source
20 pollution shall be consistent with the water quality standards and water
21 pollution control requirements of 10 V.S.A. chapter 47 ~~of Title 10~~ and the

1 federal Clean Water Act as amended. In addition, the ~~secretary of agriculture,~~
2 ~~food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate
3 with the ~~secretary of natural resources~~ Secretary of Natural Resources in
4 implementing and enforcing programs, plans, and practices developed for the
5 proper management of composting facilities when those facilities are located
6 on a farm.

7 (c) The Secretary of Agriculture, Food and Markets shall amend by rule the
8 accepted agricultural practices required under this section to include
9 requirements for the certification of small farms under section 4858a of this
10 title. The rules adopted under this section shall be at least as stringent as the
11 requirements of section 4858a of this title.

12 * * * Agricultural Water Quality; Corrective Actions * * *

13 Sec. 5. 6 V.S.A. § 4812 is amended to read:

14 § 4812. CORRECTIVE ACTIONS

15 (a) When the ~~secretary of agriculture, food and markets~~ Secretary of
16 Agriculture, Food and Markets determines that a person engaged in farming is
17 managing a farm using practices which are inconsistent with the ~~practices~~
18 ~~defined by~~ requirements of this chapter or rules adopted under this subchapter,
19 the ~~secretary~~ Secretary may issue a written warning which shall be served in
20 person or by certified mail, return receipt requested. The warning shall include
21 a brief description of the alleged violation, identification of this statute and

1 applicable rules, a recommendation for corrective actions that may be taken by
2 the person, along with a summary of federal and state assistance programs
3 which may be utilized by the person to remedy the violation ~~and a request for~~
4 ~~an abatement schedule from the person according to which the practice shall be~~
5 ~~altered.~~ The person shall have 30 days to respond to the written warning and
6 shall provide an abatement schedule for curing the violation and a description
7 of the corrective action to be taken to cure the violation. If the person fails to
8 respond to the written warning within this period or to take corrective action to
9 change the practices ~~in order to protect water quality,~~ the ~~secretary~~ Secretary
10 may act pursuant to subsection (b) of this section in order to protect water
11 quality.

12 (b) ~~After an opportunity for a hearing, the secretary~~ The Secretary may:
13 (1) issue cease and desist orders and administrative penalties in
14 accordance with the requirements of sections 15, 16, and 17 of this title; and
15 (2) institute appropriate proceedings on behalf of the agency Agency to
16 enforce this subchapter.

17 (c) Whenever the ~~secretary~~ Secretary believes that any person engaged in
18 farming is in violation of this subchapter or rules adopted thereunder, an action
19 may be brought in the name of the ~~agency~~ Agency in a court of competent
20 jurisdiction to restrain by temporary or permanent injunction the continuation
21 or repetition of the violation. The court may issue temporary or permanent

1 injunctions, and other relief as may be necessary and appropriate to curtail any
2 violations.

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

6 [Repealed.]

7 (e) Any person subject to an enforcement order or an administrative
8 penalty who is aggrieved by the final decision of the ~~secretary~~ Secretary may
9 appeal to the ~~superior court~~ Superior Court within 30 days of the decision. The
10 administrative judge may specially assign an ~~environmental~~ Environmental
11 judge to ~~superior court~~ Superior Court for the purpose of hearing an appeal.

12 * * * Agricultural Water Quality; Livestock Exclusion * * *

13 Sec. 6. 6 V.S.A. chapter 215, subchapter 8 is added to read:

14 Subchapter 8. Livestock Exclusion

15 § 4971. DEFINITIONS

16 As used in this subchapter:

17 (1) “Livestock” means cattle, sheep, goats, equines, fallow deer, red
18 deer, American bison, swine, water buffalo, poultry, pheasant, Chukar
19 partridge, Coturnix quail, camelids, ratites, and, as necessary, other animals
20 designated by the Secretary by rule.

21 (2) “Waters” shall have the same meaning as in 10 V.S.A. § 1251(13).

1 § 4972. PURPOSE

2 The purpose of this subchapter is to authorize the Secretary of Agriculture,
3 Food and Markets to require exclusion of livestock from a water of the State
4 where continued access to the water by livestock poses a high risk of violating
5 the accepted agricultural practices.

6 § 4973. LIVESTOCK EXCLUSION; PERMIT CONDITION

7 As a condition of a small farm certification, an animal waste permit, or a
8 large farm permit issued under this chapter, the Secretary of Agriculture, Food
9 and Markets may require exclusion of livestock from a water of the State
10 where continued access to the water by livestock poses a high risk of violating
11 the accepted agricultural practices.

12 * * * Seasonal Exemption for Manure Application * * *

13 Sec. 7. 6 V.S.A. § 4816 is added to read:

14 § 4816. SEASONAL APPLICATION OF MANURE

15 (a) Unless authorized under subsection (b) of this section, a person shall
16 not apply manure to land in the State:

17 (1) between December 15 and April 1 of any calendar year; or

18 (2) between December 1 and December 15 and between April 1 and
19 April 30 of any calendar year when prohibited under subsection (c) of this
20 section.

21 (b) Seasonal exemption.

1 (1) The Secretary of Agriculture, Food and Market may authorize an
2 exemption to the prohibition on the application of manure to land in the State
3 between December 15 and April 1 of any calendar year or during any period
4 established under subsection (c) of this section when manure is prohibited from
5 application. An exemption issued under this section may authorize land
6 application of manure on a weekly, monthly, or seasonal basis or in authorized
7 regions, areas, or fields in the State, provided that the requirements of
8 subdivision (2) of this subsection are complied with.

9 (2) Any exemption issued under this subsection shall:

10 (A) prohibit application of manure:

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

13 (ii) in nonharvested permanent vegetative buffers;

14 (iii) in a nonfarmed wetland, as that term is defined in 10 V.S.A.

15 § 902(5);

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

18 (v) to fields exceeding tolerable soil loss; and

19 (vi) to saturated soils;

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

4 (C) require manure to be applied according to a nutrient management
5 plan; and

6 (D) establish the maximum tons of manure that may be applied per
7 acre during any one application.

8 (c) Restriction on application. The Secretary of Agriculture, Food and
9 Markets may by procedure prohibit the application of manure to land in the
10 State between December 1 and December 15 and April 1 and April 30 of any
11 calendar year when the Secretary determines that due to weather conditions,
12 soil conditions, or other limitations, application of manure to land would pose
13 a significant potential of discharge or runoff to State waters.

14 * * * Agricultural Water Quality; Training * * *

15 Sec. 8. 6 V.S.A. chapter 215, subchapter 9 is added to read:

16 Subchapter 9. Agricultural Water Quality Certification Training

17 § 4981. AGRICULTURAL WATER QUALITY CERTIFICATION

18 TRAINING; RULEMAKING

19 (a) The Secretary of Agriculture, Food and Markets shall adopt by
20 procedure requirements for training classes or programs for owners or

1 operators of small farms, medium farms, or large farms certified or permitted
2 under this chapter regarding:

3 (1) the prevention of discharges, as that term is defined in 10 V.S.A.
4 § 1251(3); and

5 (2) the mitigation and management from farms of stormwater runoff, as
6 that term is defined in 10 V.S.A. § 1264.

7 (b) Any training required by procedure under this section shall:

8 (1) address the existing statutory and regulatory requirements for
9 operation of a large, medium, or small farm in the State; and

10 (2) address the management practices and technical and financial
11 resources available to assist in compliance with statutory or regulatory
12 agricultural requirements.

13 * * * Agricultural Water Quality;

14 Certification of Custom Applicators * * *

15 Sec. 9. 6 V.S.A. chapter 215, subchapter 10 is added to read:

16 Subchapter 10. Certification of Custom Applicators of Manure,
17 Nutrients, or Sludge

18 § 4987. DEFINITIONS

19 As used in this subchapter:

1 (1) “Custom applicator” means a person who applies manure, nutrients,
2 or sludge to land and who charges or collects other consideration for the
3 service.

4 (2) “Manure” means livestock waste that may also contain bedding,
5 spilled feed, water, or soil.

6 (3) “Seasonal employee” means a person who:

7 (A) works for a custom applicator for 20 weeks or fewer in a
8 calendar year; and

9 (B) works in a job scheduled to last 20 weeks or fewer.

10 (4) “Sludge” means any solid, semisolid, or liquid generated from a
11 municipal, commercial, or industrial wastewater treatment plant or process,
12 water supply treatment plant, air pollution control facility, or any other such
13 waste having similar characteristics and effects.

14 § 4988. CERTIFICATION OF CUSTOM APPLICATOR

15 (a) The Secretary of Agriculture, Food and Markets shall adopt by rule a
16 process by which a custom applicator shall be certified to operate within the
17 State. The certification process shall require a custom applicator to complete
18 eight hours of training over each five-year period regarding:

19 (1) application methods or techniques to minimize the runoff of
20 land-applied manure, nutrients, or sludge to waters of the State; and

1 (2) identification of weather or soil conditions that increase the risk of
2 runoff of land-applied manure, nutrients, or sludge to waters of the State.

3 (b) A custom applicator shall not apply manure, nutrients, or sludge unless
4 certified by the Secretary of Agriculture, Food and Markets.

5 (c) A custom applicator certified under this section may train seasonal
6 employees in methods or techniques to minimize runoff to surface waters and
7 to identify weather or soil conditions that increase the risk of runoff. A custom
8 applicator that trains a seasonal employee under this subsection shall be liable
9 for damages done and liabilities incurred by a seasonal employee who
10 improperly applies manure, nutrients, or sludge.

11 (d) The requirements of this section shall not apply to an owner or operator
12 of a farm applying manure, nutrients, or sludge to a field that he or she owns or
13 controls.

14 * * * Agricultural Stream Alteration * * *

15 Sec. 9a. 6 V.S.A. § 4810a is added to read:

16 § 4810a. AGRICULTURAL ACTIVITIES; STREAMS

17 (a) As used in this section:

18 (1) “Instream material” means:

19 (A) all gradations of sediment from silt to boulders;

20 (B) ledge rock; or

1 (C) large woody debris in the bed of a perennial stream or within the
2 banks of a perennial stream.

3 (2) “Intermittent stream” means any stream or stream segment of
4 significant length that is not a perennial stream.

5 (3) “Large woody debris” means any piece of wood within a perennial
6 stream with a diameter of 10 or more inches and a length of 10 or more feet
7 that is detached from the soil where it grew.

8 (4) “Perennial stream” means a stream or portion, segment, or reach of a
9 stream, generally exceeding 0.5 square miles in watershed size, in which
10 surface flows are not frequently or consistently interrupted during normal
11 seasonal low flow periods. Perennial streams that begin flowing subsurface
12 during low flow periods, due to natural geologic conditions, remain defined as
13 perennial. “Perennial stream” shall not mean standing waters in wetlands,
14 lakes, and ponds.

15 (5) “Secretary” means the Secretary of Agriculture, Food and Markets.

16 (6) “Stream” means a current of water that flows at any time at a rate of
17 less than 1.5 cubic feet per second and exhibits evidence of sediment transport.
18 A stream shall include the full length and width, including the bed and banks
19 of any watercourse, including rivers, streams, creeks, brooks, and branches,
20 which experience perennial flow. “Stream” shall not include swales, roadside

1 ditches, or ditches or other constructed channels primarily associated with land
2 drainage or water conveyance through or around private infrastructure.

3 (b) The Secretary shall amend the accepted agricultural practices to include
4 requirements for agricultural activities that alter or impact streams in the State.

5 The accepted agricultural practices for stream activities shall:

6 (1) prohibit the discharge or deposit of manure, milk house waste,
7 compost, or other waste in a stream; and

8 (2) require authorization from the Secretary, prior to any change,
9 alteration, or modification of the course, current, or cross section of a perennial
10 stream in this State either by movement, fill, or excavation of 10 cubic yards or
11 more of instream material in any year.

12 (c) The Secretary shall authorize an agricultural activity that alters or
13 impacts streams in the State if the activity:

14 (1) will not adversely affect the public safety by increasing flood or
15 fluvial erosion hazards;

16 (2) will not significantly damage fish life or wildlife;

17 (3) will not significantly damage the rights of riparian owners; and

18 (4) in case of any waters designated as outstanding resource waters, will
19 not adversely affect the values sought to be protected by designation.

20 (d) Prior to issuing an authorization under subdivision (b)(2) of this section,
21 the Secretary shall consult with the Secretary of Natural Resources regarding

1 appropriate management measures to be used in conducting any authorized
2 activity.

3 * * * Stormwater Management * * *

4 Sec. 10. 10 V.S.A. § 1264 is amended to read:

5 § 1264. STORMWATER MANAGEMENT

6 * * *

7 (b) The ~~secretary~~ Secretary shall prepare a plan for the management of
8 collected stormwater runoff found by the ~~secretary~~ Secretary to be deleterious
9 to receiving waters. The plan shall recognize that the runoff of stormwater is
10 different from the discharge of sanitary and industrial wastes because of the
11 influence of natural events of stormwater runoff, the variations in
12 characteristics of those runoffs, and the increased stream flows and natural
13 degradation of the receiving water quality at the time of discharge. The plan
14 shall be cost effective and designed to minimize any adverse impact of
15 stormwater runoff to waters of the ~~state~~ State. By no later than February 1,
16 2001, the ~~secretary~~ Secretary shall prepare an enhanced stormwater
17 management program and report on the content of that program to the ~~house~~
18 ~~committees on fish, wildlife and water resources and on natural resources and~~
19 ~~energy and to the senate committee on natural resources and energy~~ House
20 Committees on Fish, Wildlife and Water Resources and on Natural Resources
21 and Energy and to the Senate Committee on Natural Resources and Energy. In

1 developing the program, the ~~secretary~~ Secretary shall consult with ~~the board~~,
2 affected municipalities, regional entities, other ~~state~~ State and federal agencies,
3 and members of the public. The ~~secretary~~ Secretary shall be responsible for
4 implementation of the program. The ~~secretary's~~ Secretary's stormwater
5 management program shall include, at a minimum, provisions that:

6 * * *

7 (12) Encourage municipal governments to utilize existing regulatory and
8 planning authority to implement improved stormwater management by
9 providing technical assistance, training, research and coordination with respect
10 to stormwater management technology, and by preparing and distributing a
11 model local stormwater management ordinance or bylaw. The Secretary
12 annually shall provide municipalities with outreach and education through
13 published materials or training courses regarding the environmental and
14 municipal benefits of adoption of a local stormwater management ordinance or
15 bylaw. The stream alteration training and education activities required under
16 subsection 1023(d) of this title and any education and outreach conducted
17 under this subdivision (12) shall inform municipalities of model stormwater
18 management ordinances or bylaws that are available in the State.

19 * * *

1 * * * Water Quality Data Coordination * * *

2 Sec. 11. 10 V.S.A. § 1284 is added to read:

3 § 1284. WATER QUALITY DATA COORDINATION

4 (a) To facilitate attainment or accomplishment of the purposes of this
5 chapter, the Secretary shall coordinate and assess all available data and science
6 regarding the quality of the waters of the State, including:

7 (1) light detection and ranging information data (LIDAR) identifying
8 water quality issues;

9 (2) stream gauge data;

10 (3) stream mapping, including fluvial erosion hazard maps;

11 (4) water quality monitoring or sampling data;

12 (5) cumulative stressors on watershed, such as the frequency with which
13 an activity is conducted within a watershed or the number of stormwater or
14 other permits issued in a watershed; and

15 (6) any other data available to the Secretary.

16 (b) After coordination of the data required under subsection (a) of this
17 section, the Secretary shall:

18 (1) assess where additional data are needed and the best methods for
19 collection of such data;

1 (2) identify and map on a regional basis areas of the State that are
2 significant contributors to water quality problems or are in critical need of
3 water quality remediation or response.

4 (c) The Secretary shall post all data compiled under this section on the
5 website of the Agency of Natural Resources.

6 * * * Shoreland Contractor Certification * * *

7 Sec. 12. VOLUNTARY SHORELAND EROSION CONTROL
8 CERTIFICATION PROGRAM

9 (a) Definitions. As used in this section:

10 (1) “Impervious surface” shall have the same meaning as in 10 V.S.A.
11 § 1264.

12 (2) “Lake” means a body of standing water, including a pond or a
13 reservoir, which may have natural or artificial water level control. Private
14 ponds shall not be considered lakes.

15 (3) “Mean water level” means the mean water level of a lake as defined
16 in the Mean Water Level Rules of the Agency of Natural Resources adopted
17 under 29 V.S.A. § 410.

18 (4) “Shoreland area” means all land located within 250 feet of the mean
19 water level of a lake that is greater than 10 acres in surface area.

20 (b) Voluntary certification. The Agency of Natural Resources, in
21 consultation with the Associated General Contractors of Vermont, shall

1 develop an optional shoreland erosion control certification program. The
2 program shall include training related to the disturbance of soil, clearance of
3 vegetation, and construction of impervious surfaces of more than 1,000 square
4 feet in a shoreland area. The voluntary certification program shall end after
5 three years of operation.

6 (c) Report. After two years of operation of the certification program, the
7 Agency of Natural Resources shall report to the House and Senate Committees
8 on Natural Resources and Energy and the House Committee on Fish, Wildlife
9 and Water Resources regarding the voluntary shoreland erosion control
10 certification program created in subsection (b) of this section. The report shall
11 include:

12 (1) a general summary of the program's success, including an overview
13 of shoreland projects constructed by certified persons;

14 (2) the number of persons certified under the certification program;

15 (3) a recommendation of whether the State should continue the
16 voluntary certification program, including whether to make the program
17 mandatory; and

18 (4) any other recommendations for improving the program.

19 (d) The requirements of this section shall not apply to the owner or
20 operator of a farm conducting agricultural activities on the farm that comply
21 with the rules adopted by the Secretary of Agriculture, Food and Markets

1 under 6 V.S.A. chapter 215, regarding agricultural water quality, including
2 accepted agricultural practices, best management practices, animal waste
3 permits, and large farm permits. The requirements of this section shall apply
4 to a person, other than an employee of the owner or operator of the farm, who
5 charges for the service of tillage, harvesting, or other agricultural activity that
6 disturbs soil, clears vegetation, or constructs an impervious surface of more
7 than 500 square feet in a shoreland area.

8 * * * Water Quality Restoration; Financing Report * * *

9 Sec. 13. AGENCY OF NATURAL RESOURCES REPORT ON WATER
10 QUALITY FINANCING

11 On or before January 15, 2015, the Secretary of Natural Resources, after
12 consultation with the Joint Fiscal Office, the Secretary of Agriculture, Food
13 and Markets, and the Secretary of Transportation, shall submit to the Senate
14 and House Committees on Natural Resources and Energy, the House
15 Committee on Fish, Wildlife and Water Resources, the House Committee on
16 Ways and Means, the Senate Committee on Finance, and the Senate and House
17 Committees on Appropriations a report that provides recommendations for
18 establishing financing mechanisms for the requirements of this act and other
19 State actions to improve the quality of State waters. The report shall include:

20 (1) a summary of the anticipated costs for each agency to implement the
21 requirements of this act;

1 (2) a summary and analysis of existing State tax expenditures that affect
2 State water quality;

3 (3) a recommendation for a financing mechanism that assesses property
4 owners in the State based on the property’s impact on water quality;

5 (4) at least two alternative financing mechanisms in addition to the
6 recommendation under subdivision (3) of this section, which may include a
7 recommendation for an excise tax;

8 (5) a summary of how each recommended financing mechanism would
9 be implemented, including administration and enforcement; and

10 (6) an estimated amount of revenue that each recommended financing
11 proposal would generate.

12 Sec. 14. EFFECTIVE DATES

13 (a) This section and Sec. 13 (water quality restoration financing report)
14 shall take effect on passage.

15 (b) Secs. 1 (agricultural findings), 2–4 (small farm certification rules), 5
16 (Agency of Agriculture, Food and Markets corrective action), 6 (livestock
17 exclusion), 7 (seasonal exemption for application of manure), 8 (agricultural
18 water quality certification), 9 (custom applicator certification), 9a (agricultural
19 stream alteration), 10 (stormwater model bylaw), 11 (water quality data
20 coordination), and 12 (shoreland contractor certification) shall take effect one

- 1 year after the General Assembly appropriates or otherwise generates funding
- 2 sufficient to fund the requirements of this act.