

H.586: Vermont Agency of Agriculture Comments

The Vermont Agency of Agriculture appreciates the opportunity to comment on the proposed legislation contained in H.586 related to agricultural water quality improvements. The following comments are intended to provide this Agency's perspective on the often complex realities of managing agricultural water quality issues. It is the Agency's intent to promote progress in agricultural water quality efforts and provide a realistic view of the resources required to implement many of the provisions contained in the current bill. It is also important to recognize that these efforts should be consistent with current TMDL discussions and commitments being negotiated with EPA.

1) Small Farm Certification: The majority of the provisions in the proposed Section 4858(a) are already contained in the Accepted Agricultural Practice rules. The Agency recommends that legislation regarding a small farm certification program instruct the Agency to amend the rules to create such a program. This would allow the Agency to address complex questions regarding what types and sizes of farming operations should be covered by a certification program consistent with the intent of the legislation.

There are several changes that are proposed that can and should be included in the revised AAP rules, however the Agency supports an interim statutory requirement to implement them with an established sunset date that coincides with the completion of the AAP revisions. For example, the change in erosion loss from the current 2T to T, moving to 25 foot buffers being required on all cropland and the top of bank of adjoining surface waters, requiring a 25 foot manure setback on all agricultural lands and the top of bank of adjoining surface waters, and 10 foot manure setbacks on all agricultural ditches.

Questions related to prioritizing financial assistance awards can be addressed through revision of the Best Management Practice rules which would need to be amended if the current language is passed. The Agency supports broader recognition of priorities beyond small farms in order to be able to address all potential water quality concerns on all farms. The Agency performs inspections on medium and large farms as well and believes that prioritizing the farms for cost-share assistance should be based on environmental benefit rather than farm size. Additionally, livestock exclusion should not be singled out as the highest priority for assistance as a farm may have other more pressing water quality issues to deal with

It is critically important to recognize that any requirements for Agency inspection of small farms must be accompanied by the appropriate resources needed to meet those requirements. The Agency is currently unable to inspect all farms statewide. The Agency believes that inspection priorities should be based on watersheds with agricultural impairments, waters subject to TMDLs and critical source areas.

Training requirements as outlined in the draft legislation are also beyond the Agency's resource capabilities at this time. While the Agency has substantial experience in managing these types of programs we also recognize the resource commitment that is required for them to be successful. The Agency recommends that this type of program be established via rulemaking as opposed to legislation when, and if, appropriate resources are provided.

Enforcement provisions would also need some clarity regarding the expected impacts of revoking certification. At this time these impacts are unknown.

2) Livestock Exclusion: The Agency supports the concepts of livestock exclusion in the draft legislation and has the following specific comments regarding this section of the bill:

Section 4971(1), Page 7, Line 21; definition of livestock: At the end of the definition include language such as "and any other livestock type deemed by the Secretary". This is language used in the LFO and MFO definitions and would be helpful in the future.

Section 4972(1), Page 8, line 4; Provide an exception to livestock access where a stream crossing or defined watering source exists. If needed provide additional language that ensures the crossing or watering source is managed to prevent erosion and loitering of livestock.

Section 4824a, Page 9, line 5; Eliminate the requirement that a farm be required to apply for USDA funding prior to state funding. The Agricultural Working Group was strongly opposed to this concept. Instead of requiring this, perhaps provide a higher priority to farms that have applied and been denied USDA funding? In that same paragraph take out the reference to the specific programs (EQIP and CREP) and leave the language more general to federal or even USDA conservation programs in case program names change.

Section 5 Sunset; Page 9, line 15; Instead of repealing the priority for livestock exclusion from the BMP funding program, use this as an opportunity to establish the stepped down cost-share approach of a reduced cost-share each year of the program, or allow the agency to do this via BMP policy or rule.

3) Seasonal Application of Manure: The Agency suggests that these provisions be addressed via rulemaking within the AAPs and supplemented by policy. The AAP rules currently allow the Secretary to provide winter spreading exemptions for emergency conditions and "other specific management needs". The additional requirements for seasonal exemptions could be developed as policy associated with this rule in order to allow for future flexibility. The current exemption process is time limited and provides relief only for short duration in order to address emergency situations.

4) Water Quality Training and custom manure applicator certification: The Agency also suggests that these provisions, if included, be directives to the Agency to engage in rulemaking to create these programs if, and when, resources are provided to effectively manage them. As

stated earlier, the Agency has experience with these types of programs and clearly understands the resources required to manage them.

5) Permits; Rights of Way: The Agency believes that the permitting process currently used to manage herbicide use in rights of way is appropriate and adequately protective of surface waters. Buffer requirements are established within this process based on the recommendations of the Vermont Pesticide Advisory Council. The Agency has conducted monitoring in areas associated with this type of herbicide use and has not observed issues related to these uses. The Agency believes that the most appropriate venue for the discussion of pesticide use buffers is with the Vermont Pesticide Advisory Council.

6) Section 1002 of Title 10 (10) Page 15, lines 3-4: The Agency does not support such a broad definition of perennial stream. These maps are often incorrect and should not be relied upon for regulatory determinations in the field.

7) Page 23, line 9. The one-half acre concept will impact the implementation of on farm conservation projects. Our Agency needs to understand whether a reporting mechanism could be utilized similar to the stream alteration rules where specific practices are implemented to ensure proper manage but a permit is not required, only reporting to DEC.

Page 26, lines 21-22: by creating an impervious surface fee there may be relatively high costs for some of the barns as their roof sizes can be large. Many of these barns are surrounded by acres of pervious land and therefore the impact on flow to the watershed is minimized. This situation will be very different than an industrial building of similar size that is surrounded by parking lots and therefore the taxation structure should probably be different.

Page 27, lines 9-12: This references a reduction in rates for impervious area that a farm might be eligible for, however it is contingent upon a NRCS conservation plan. NRCS conservation plans are mostly focused on sediment and nutrient reduction and not flow reduction from a production area. These plans are not the appropriate mechanism for a reduction. Rather it would be better to have something that addresses flow retention (which currently doesn't exist on farms as a specific practice or plan) and also that the farm is in compliance with applicable water quality rules (AAPs, MFO or LFO). Being in compliance would be an incentive and perhaps it is a way to have a third party (non-governmental employee) document compliance for a tax benefit (similar to how a current use plan for forestry might be done by a third party) and this would allow an education and outreach opportunity without the need for enforcement or government resources.

Page 20 section 1296. By distributing the preservation funding to the watersheds based on funds raised in each watershed it may create an unbalanced dynamic if the main source of pollution in a watershed is agriculture and there is very little impervious surface due to the rural nature of the area. Redistribution of the fee based on fees generated works well if stormwater is the issue, but you may run into problems otherwise. Further down in this section there are a series of priorities

for distributing the funds. A clarification of what impairments are the highest priority would be helpful (stormwater, agriculture, e.coli, temperature, etc). Priorities 3 & 4 should probably be switched as a TMDL should rank higher than an impaired watershed as a TMDL is a more rigorous standard to meet.

8) Agricultural Best Management Practices Tax Credit: Page 38, lines 9-10. The tax credit is listed for someone engaged in farming or who has an approved NMP. The Agency recommends changing the 'or' to 'and' as golf courses are also required to have NMPs.

Page 39, line 9. By requiring all farm practices to be approved by the Agency of Agriculture in order for the farm to receive the tax credit the Agency will need more staff to do these sign offs. An alternative concept may be to allow the private sector to do these sign offs thus reducing government demands on resources. Additionally, if a farm is allowed to take a tax deduction for their own funds they've invested can they also get this tax credit? Seems like a double dip and someone with more tax knowledge should clarify what is and is not currently eligible for a deduction.