



December 17, 2015

Secretary Chuck Ross
Agency of Agriculture, Food & Markets
116 State Street
Montpelier, VT 05620-2901

Re: Rural Vermont Comments on Draft Required Agricultural Practices

Dear Secretary Ross,

On behalf of Rural Vermont, thank you for the opportunity to submit comments on the Agency's initial draft of the Required Agricultural Practices.

The enclosed comments reflect a compilation of feedback Rural Vermont has received from its Board of Directors and other member farmers. Our organization will continue to engage with farmers during this critical process to ensure that the final RAPs work for *all* Vermont farmers.

We look forward to seeing a second draft that reflects the feedback the Agency has received during its extensive outreach throughout the state.

Sincerely,

A handwritten signature in black ink that reads "Andrea Stander".

Andrea Stander
Director

Vermont's lakes, rivers, and streams are treasures that provide benefits to each and every Vermonter, and must be protected now and for future generations. To do that, every type of human activity—big and small—should be held accountable for its impact on our state's water quality. The drafting of new Required Agricultural Practices (RAPs), as part of the implementation of *Act 64*, provides a significant opportunity to shape the future of Vermont's working landscapes and the role of agriculture in protecting and improving water quality. We must get it right.

Rural Vermont supports an outcome-based approach in the Required Agricultural Practices; an approach that recognizes that a well-managed farm can actually *improve* water quality rather than simply minimize pollution, and one that incentivizes regenerative agricultural practices that build healthy soils, minimize tillage and erosion, and keep nutrients on the farm where they belong. Many Vermonters and Rural Vermont members already farm this way, regardless of the size of their farm. The RAPs should recognize and reward these farmers—just as more and more of Vermont's consumers are with their purchases—and help all of our state's farmers move toward farming techniques proven to protect water quality.

We find the provisions in the current draft of the RAPs are not flexible enough for farmers who already deploy regenerative practices on their farms, and contain none of the necessary incentives or requirements to increase the number of farmers who manage their land in this way. Rather, the RAPs as written will force many sustainable farmers to undermine their own practices to certify compliance with the rules, even if their farms already produce little to no discharge into state waters. Even the most effective method of erosion control and nutrient retention—cover cropping—is hardly mentioned, and is required only in certified flood plains. If the goal of the RAPs is truly to reduce agricultural runoff in our lakes, rivers, and streams, proven methods like cover cropping should be a central component of any new regulations, and farmers already meeting this goal should be relieved of unnecessary requirements.

Vermont's farms are incredibly diverse, and the RAPs must reflect that diversity if they're going to be an effective tool for promoting water quality. In the November 20, 2015 issue of *AgriView*, Secretary Ross reiterated the Agency's desire to "ensure that we are implementing a realistic, workable framework for agricultural practices in our state that effectively protects our lakes and rivers." For many Rural Vermont members, and small-scale farmers around the state, the draft RAPs as written—particularly the requirements regarding field stacking, composting, nutrient management, and cover crop seeding dates—create considerable constraints and potentially expensive burdens, and for many farms, they are unnecessary given the stated aim of improving water quality. These farmers require flexibility, and *Act 64* empowers the Secretary of Agriculture, Food and Markets to exercise flexibility. In multiple provisions of the law, lawmakers have provided to the Agency the ability to waive requirements when it is clear that a farm is meeting the stated goals of the law itself: to eliminate discharges into state waters. The draft RAPs, however, seem to only interpret this discretion in negative terms—such as compelling non-SFOs to comply with certification requirements, or allowing the Secretary to designate any material as harmful to state waters. While this broad discretion to escalate regulation concerns many Rural Vermont members, and could lead to uncertainty in how the regulations are enforced (particularly in the likely event that successive Secretaries of Agriculture will interpret and administer the RAPs during their respective tenures), it could also be used to selectively exempt or waive certain requirements for farmers already demonstrating no impact. Rural



Vermont encourages the Agency to take full advantage of this approach by empowering farmers to make decisions that are best for their farms, and demonstrate that they are meeting the goals of *Act 64*.

In addition to being both workable and flexible, broad farming regulations such as these must be enforceable. Because the RAPs are not outcome-based, the Agency will exhaust its limited personnel and financial resources certifying, regulating, and visiting thousands of new small farms, many of which already pose little or no threat to state waterways. It's true that farms of any scale can negatively impact water quality. But with considerable budget constraints relative to the scope of the problem, the Agency would be more effective targeting the state's worst sources of agricultural pollution while allowing those farmers who do not pose a threat to be exempt from many of the RAPs provisions that are unnecessary, redundant or even harmful for water quality on their farms.

Small Farm Definition

- The categories for small farms must be very clearly defined in a single section of the document. Farmers must be able to easily and accurately determine which definition they fall under. Because they're located in separate sections of the draft RAPs, these distinctions are confusing.
- The thresholds for these farm size designations are incredibly broad and do not adequately reflect reality for small, diversified farms.
 - The categories use numbers of specific animals to define farm size, but they do not account for different combinations of animals, as you'd expect to find on a small, diversified farm. This has led to significant confusion on the part of small-scale farmers, and would benefit from establishing an "Animal Unit" formula that would more accurately reflect each animal's relative impact on water quality.
 - The animal thresholds, particularly for SFOs, are far too broad, and do not account for animal stocking density. For example, the difference between a 10-acre farm with 20 cows and a 10-acre farm with 199 cows is *enormous* in terms of the potential negative impacts on water quality, particularly if the former farm is grass-based, and the latter is confinement-based. This underscores the importance of accounting for farming practices and animal stocking density, and not simply acreage and animal numbers.
 - The \$2,000 AGI distinction between NROs and UFOs is an incredibly low bar, and will result in many "micro-farms" and even homesteads being unnecessarily subject to VAAFMM regulation and the RAPs. How was this number chosen?
- Creating a category of NROs that will be wholly under the jurisdiction of local authorities could lead to significant frustration and confusion for very small farms as well as the municipalities that will be required to oversee them. In this case, Rural Vermont strongly recommends that VAAFMM issue strong guidance, education, and standards to the local authorities that will increase continuity between towns. There will likely also be a need for a case-by-case appeals process for affected farmers that does not require formal litigation.

Small Farm Certification

- The “schedule and form” for small farms to certify compliance should be clearly defined and outlined *prior* to the formal rulemaking process. What will this form look like? And though VAAFMM has affirmed that there will be no certification fee, this should be stated in the RAPs.
- Without knowing how many small farms will be required to certify with the Agency, and given VAAFMM’s current budget and staffing constraints, the ten-year horizon for inspecting each SFO is highly unrealistic, particularly given that small farms are the most likely to change hands over a ten year period. This requirement will come at the expense of enforcement for larger polluters. It will also undermine and discourage participation in the self-certification requirement and overall compliance with the RAPs. Again, building in flexibility and focusing on an outcome-based approach rather than a blanket approach to all farms will relieve the Agency from having to inspect every farm, and instead allow it to focus on the most problematic farms.
- The requirements for water quality training outlined in Section 4.12 require more clarification, and could pose an undue financial and time commitment burden on small-scale farmers. How will the Agency track who has done the training? How often and what months will the trainings be offered? Who has the capacity to train thousands of farmers, and what criteria will the Agency use for allowing third-party entities to administer the training? How will farmers be informed of training opportunities? Most importantly, what types of assistance will be available to offset both the potential costs of attending the training, as well as the cost of lost labor time? While the intent of the required training is clear, in many cases it is unnecessary and redundant. Rural Vermont recommends that farmers be granted exemptions from this training if they can demonstrate an understanding of best practices and have adequate water quality outcomes on their farms.

Fertility Inputs and Management

- By failing to differentiate between raw manure and compost, and then tying them to the farm size definitions and requirements regardless of total volume and application methods, risks disincentivizing the critical and regenerative practice of aerobic composting. For many small farms, aerobic composting is integral to building healthy soils which can improve water quality and nutrient retention, as well as reduce the need for off-farm fertility inputs.
- The requirements for moving and location of field stacks on unimproved sites are unworkable. These will be extremely problematic for small farmers with limited acreage, and in many cases would force a farmer to move his or her stack from a good site to a worse one, just to comply with the RAPs. The net result could well *increase* the risk of runoff into state waters.
- Requiring every SFO to create a USDA/NRCS 509-compliant nutrient management plan will place a huge burden and expense on small-scale farmers, and will be unnecessary in many cases, particularly for farmers already deploying grass-based and regenerative agricultural techniques. What is the justification for this blanket requirement, rather than having the requirement be triggered by a set of negative water quality outcomes? Is a 509 necessary if a farmer can prove that he or she is already managing nutrients effectively? What resources will be available to help farmers create the plans, and offset the considerable loss of labor that such a time-intensive process would require?
- The manure application standards should be less tied to specific dates, and more dependent on the situational risks of potential runoff, to include soil and weather conditions. Again, this would reflect an outcome-based approach rather than a prescriptive one.



Cover Crop Requirements and Soil Health Management Recommendations

- Promoting and incentivizing farming practices that build healthy, biologically-active soils, increase organic matter, reduce tillage and compaction, and reduce erosion is the most effective and holistic strategy for improving Vermont agriculture's impact on water quality. Yet, the RAPs mention these critical practices only as "recommendations" in a single subsection, and provide no incentives for farmers to use them.
- The requirements for cover crops are both inadequate and misguided. Annual croplands subject to flooding should, *of course*, be planted into cover crops. In the interest of improving water quality by building healthy soils and reducing erosion, so should *all annual croplands*. The requirements should focus on where to sow cover crop and how often, not simply the date by which it must be done.
 - The sowing dates specified in Section 5.4(c) are particularly problematic for annual vegetable growers, who often have crops still in the ground well past October 1st. This must be changed to reflect the seasonal needs of diversified farmers and fluctuating weather patterns.