

## **H.35: An Act Relating to Improving the Quality of State Waters: HFWWR Proposed Amendment--Section by Section Summary**

### **Sec. 1. Purpose Section**

- The purpose of the bill is to improve the quality of State waters; implement the Lake Champlain TMDL; meet impending TMDLs for other waters; identify cost effective strategies to address water quality; and engage interested parties in water quality efforts.

### **Secs. 2 and 13. Agricultural Water Quality; Best Management Practices (BMPs)**

- Under current law, before AAFM requires BMPS, AAFM shall determine that “sufficient financial assistance” is available to assist farmers in implementing BMPs.
- Secs. 2 & 13 would delete the required determination of sufficient financial assistance. Instead, the Secretary shall inform farmers of resources available to assist implementation of BMPs.

### **Secs. 3-5. Small Farm Certification; Subsurface Tile Drainage; Accepted Agricultural Practices (AAPs)**

- Sec. 5 requires small farms in the State to certify compliance with the AAPs every 5 years.
- The Agency of Agriculture, Food & Markets (AAFM) is authorized to inspect farms to determine compliance with the AAPs.
- During inspection, AAFM shall identify areas on a farm that could benefit from assistance to improve compliance with the AAPs.
  - Identified areas will be ranked and receive priority assistance to achieve AAP compliance.
- Sec. 3 requires AAFM to amend the AAPs by rule to establish the requirements for small farm certification. Sec. 3 requires the rule to:
  - Define what is a small farm;
  - Set standards for manure stacking, material storage, farm structure construction, and siting;
  - Require cropland to be cultivated to meet a soil loss tolerance of 1T;
  - Require vegetative buffer zones of 25 feet next to surface waters and 10 feet next to a ditch;
  - Establish standards for livestock exclusion;
  - Establish standards for subsurface agriculture tile drainage; and
  - Require nutrient management planning on all small farms that manage agricultural waste.
- Under Sec. 3, subsection (b), by Jan. 15, 2018, AAFM shall amend the AAPs to include requirements for reducing nutrient contribution to waters from subsurface tile drains.
- Sec. 4 requires AAFM to report to the General Assembly by Jan. 15, 2017 with recommendations regarding how subsurface tile drainage should be managed.
- TMDL Implementation: implements in part State commitment to reduce nonpoint sources of phosphorus to Lake Champlain. See Phase I Plan, pp. 70-79 (small farm certification; updated AAPs for buffers and livestock exclusion; nutrient management planning).

## **Sec. 6. Agricultural Water Quality Training for Farmers**

- AAFM shall adopt requirements for training owners or operators of small farms, medium farms, and large farms regarding prevention of discharges to waters and mitigation of stormwater runoff from farms.

## **Sec. 7. Certification of Custom Applicators**

- Sec. 10 requires AAFM to adopt by rule requirements for the certification of custom applicators.
- Custom applicators are person who apply manure, nutrients, or sludge to land for compensation.
- Custom applicators shall be required to complete 8 hours of training over each 5 year period.
- The training shall address application methods to minimize runoff and identification of weather or soil conditions that increase risk of runoff.

## **Secs. 8-12. AAFM Enforcement of Agricultural Water Quality Requirements**

- Sec. 8 adopts water quality enforcement authority in a new subchapter of 6 V.S.A. chapter 215.
- New subchapter streamlines and makes consistent the existing enforcement authority, while also providing new authority, including:
  - Emergency assistance orders to protect water quality;
  - Mandatory corrective actions; and
  - Mandatory removal of livestock when the volume of livestock waste exceeds farm capacity.
- Sec. 8 mandates that when AAFM identifies a farm in violation of the LFO, MFO, or AAP requirements, the agency shall provide the farm with a “required corrective action”
  - Under current law, when AAFM identifies a violation, statute provides that they will “recommend” a corrective action.
- Sec. 8 also provides AAFM with civil enforcement authority to enjoin activities, order corrective actions, and levy civil penalties of up to \$85,000 for violations.
- TMDL Implementation: increased inspection of farms and enforcement of water quality requirements under relevant LFO, MFO, and AAPs. See Phase I Plan, pp. 66-69 (water quality permitting programs—LFO, MFO, and CAFO).

## **Sec. 14. Stream Alteration; Agricultural Activities**

- ANR currently requires a stream alteration permit for the movement of 10 cubic yards or more of instream material in a watercourse.
  - Instream material is rock, dirt, silt, large woody debris, etc.
- Current statute provides that a stream alteration permit is not required for AAPs.
- Sec. 14 provides that a stream alteration permit would be required for an agricultural practice that moves 10 cubic yards of instream material unless the practice is a conservation practice approved by NRCS or the AAFM.

### **Secs. 15-16. Compliance with AAPs as a Condition of Participation in Use Value Appraisal**

- Division of Property Valuation and Review shall remove a parcel of agricultural land or farm building from use value appraisal (UVA) if the owner/operator is identified by AAFM as:
  - Out of compliance with the water quality requirements of 6 V.S.A. ch. 215; or
  - Not in compliance with an enforcement order issued for a violation of a water quality requirement of 6 V.S.A. ch. 215.
- After a parcel or building is removed from UVA, a new application from the person for participation in UVA will not be considered for a period of one year from AAFM certification that the owner/operator is complying with water quality standards or an enforcement order.
- An appeal of the removal of an agricultural parcel or farm building from UVA would be brought under the appeals process for agricultural water quality in 6 V.S.A. chapter 215.

### **Sec. 17. ANR Basin Planning**

- ANR shall prepare a schedule to update the basin plans for the 15 watersheds with plans.
- ANR shall report to the General Assembly annually with a schedule for updating basin plans and a summary of actions to be taken over the next 3 years.
- ANR may contract with Regional Planning Commissions to produce or assist in producing basin plans.
- TMDL Implementation: integrated planning for TMDL implementation and water quality improvement. See Phase I Plan, pp. 58-63 (integrated basin planning).

### **Sec. 18. Anti-degradation Policy Implementation Rule**

- Requires ANR to adopt by rule an implementation process for the antidegradation policy in the Vermont water quality standards.

### **Sec. 19. ANR Stormwater Management Authority**

- Sec. 19 rewrites ANR's statutory stormwater authority under 10 V.S.A. § 1264. The existing statutory section is in need of reorganization. Most of the underlined language is existing authority and not new.
- § 1264(b), important definitions under this section include:
  - "Impervious surface" means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.
  - "Regulated stormwater runoff" means precipitation, snowmelt, and the material dissolved or suspended in precipitation and snowmelt that runs off impervious surfaces and discharges into surface waters or into groundwater via infiltration.
  - "Stormwater runoff" means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

- § 1264(c), clarifies the activity that requires a stormwater permit from ANR, including:
  - Construction of one acre or more of new impervious surface;
  - Discharge from a facility with a standard industrial classification under 40 C.F.R. § 122.26;
  - A municipality designated by ANR as requiring coverage for a municipal separate storm sewer system;
  - Earth disturbance of one acre or greater, or less than one acre if part of a common plan of development; and
  - Expansion of existing impervious surface by more than 5,000 sq. feet or redevelopment of more than 5,000 sq. feet of existing impervious surface if the total resulting impervious area is greater than one acre.
- § 1264(d), clarifies the exemptions from permitting, including:
  - Stormwater runoff from farms subject to AAPs;
  - Stormwater runoff from CAFOs that require a discharge permit;
  - Stormwater runoff from silvicultural activities subject to AMPs; and
  - Stormwater systems that a municipality has assumed legal responsibility.
- § 1264(e), ANR authority to require a permit for a discharge of stormwater runoff from impervious surface that ANR designates as in need of a permit in order reduce the adverse impacts to water quality.
  - This authority is known as residual designation authority (RDA) and is required under the Clean Water Act for delegated states, like Vermont.
  - ANR's proposed Phase I Implementation plan includes proposals for a state roads permit, a municipal roads permit, and a permit for retrofitting old, impervious surface. If these permits are adopted, they likely will be adopted under the RDA authority in this subsection.
- § 1264(f): ANR will have rulemaking authority to implement the stormwater program, including use of basin planning to establish watershed specific priorities for stormwater management.
- § 1264(g): ANR may issue general permits for classes of regulated stormwater runoff according to statutory requirements for general permit issuance.
- § 1264(h): Establishes permit requirements for regulated stormwater runoff permits, including:
  - A stormwater permit may be issued for a term of up to 10 years, but any permit required under the federal CWA must have a permit term of up to 5 years.
  - Regulated stormwater runoff must meet discharge standards based on type of discharge
- § 1264(i): ANR may deny an application for the discharge of regulated stormwater based upon the applicant's prior history of compliance.
- TMDL Implementation: contemplates new permit requirements for stormwater runoff from roads and existing developed lands to reduce erosion and sedimentation. See Phase I Plan, pp. 80-83 (stormwater management).

## **Sec. 20. Municipal Highway Stormwater Permit**

- Provides that a municipality shall not construct or redevelop municipal road without first obtaining an ANR stormwater permit.
- ANR shall require a permit for runoff or a discharge from any municipal road if ANR determines that treatment of the discharge or stormwater runoff is necessary to reduce adverse impacts to water quality.
- ANR shall adopt rules to implement the stormwater permit for municipal roads, including
- Criteria for prioritization of stormwater improvements on municipal roads;
- Technical standards and best management practices that address stormwater discharges from construction and redevelopment of municipal roads.
- As part of a permit, ANR shall require municipalities to inventory municipal roads, prioritize improvement, develop a schedule of improvements, and implement improvements.

## **Sec. 21. Water Quality Data Coordination**

- ANR shall be required to coordinate and assess all available water quality data and identify on a map the areas of the State that are significant contributors to water quality issues.

## **Sec. 22. Vermont Clean Water Fund**

- Establishes a Clean Water Fund Special Fund to provide funding to:
  - Programs and projects that address sources of water pollution in waters listed as impaired;
  - Projects that address water pollution in critical source areas;
  - Programs or projects to repair riparian conditions that pose a risk of flooding.
- The Fund shall consist of revenue dedicated for deposit in the Fund, including the impervious surface fee established under Section 23 and gifts or donation.
- A Clean Water Fund Board shall administer the Fund. The Board shall consist of the Secretaries of Natural Resources, Agriculture, Transportation, Commerce and Community Development and six additional members, appointed by the Speaker of the House, the Committee on Committees, or the Governor.
- The Clean Water Fund Board shall make recommendations to the Secretary of Administration regarding how funds from the Clean Water Fund shall be included in the State budget.
  - The Secretary of Administration shall give deference to the Board's recommendations.
- The Clean Water Fund Board shall publish an annual report summarizing all Fund investments.
- TMDL Implementation: in order to implement the programs and activities necessary for TMDL implementation, the State will require additional staff resources and funding. See Phase I Plan, p. 117 (funding and capacity).

### **Sec. 23. Impervious Surface Assessment**

- Establishes an impervious surface assessment of \$200.00 per calendar year on each commercial and industrial parcel in the Lake Champlain basin that contains any amount of impervious surface.
  - “Commercial property” means a real property that has a highest and best use of providing goods and services for sale, including retail stores, malls, motels, hotels, filling stations, restaurants, office buildings, bowling alleys, and golf courses. Commercial property does not mean industrial property.
  - “Industrial property” means a property that has a highest and best use of producing a product from raw materials, rather than a product or service simply being sold. Industrial property includes all property used by a utility for the provision of that regulated service, including a gas pipeline, water treatment plant, or electric generation facility, but not administrative offices of a utility.
- The assessment shall be collected by the Department of Taxes under 32 VSA chs. 103 and 151.
  - The assessment shall not apply to farming.

### **Sec. 24. Fertilizer Fee**

- Establishes a new fee for fertilizer distributed in the State.
- Distributors of fertilizer would pay \$30.00 per ton.
  - There shall be a minimum fee of \$150.00 per year for any fertilizer distributor.
- The new fees would be used for staffing and administering agricultural water quality program.
- A separate fee of \$0.25 fee per ton would be assessed for use by AAFM for fertilizer inspection.

### **Sec. 25. State Assistance for Phosphorus Reduction at Wastewater Treatment Plants**

- Current law provides that if a municipality is required to reduce phosphorus concentration in wastewater effluent below 0.80 milligrams per liter on a monthly average basis, the State shall provide the municipality with a grant for 100% of the eligible project cost.
  - Sec. 25 reduces the amount of State assistance from 100% to 25%.

### **Secs. 26-30. Accepted Management Practices for Timber Harvesting**

- Sec. 26 clarifies that the accepted management practices for timber harvesting are mandatory rules to be followed for all timber harvesting on private and public land.
  - Secs. 27-30 make conforming changes to ANR enforcement and appeals statutes. Also revises terms of reference to AMPs.
- TMDL Implementation: updating the AMPs. See Phase I Plan, pp. 94-96 (forest management).

### **Sec. 31. MS4 Eligibility for Ecosystem Restoration Program (ERP) Funds**

- Municipalities shall not be denied ERP funds solely because they are an MS4 community.

### **Sec. 32. Voluntary Shoreland Erosion Control Certification Program**

- Requires ANR to develop an optional shoreland erosion control certification program.