

**H.35: An Act Relating to Improving the Quality of State Waters:  
Summary of Proposed Consolidated Amendment of All Committee Amendments**

**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.

**Sec. 2. Agricultural Water Quality Findings**

- Sec. 2 declares the findings of the General Assembly regarding agricultural water quality in the State, including recognizing the need to: clean up Lake Champlain; increase small farm awareness of water quality laws; address water quality issues in Vermont by the State, not EPA; raise additional financial assistance necessary to fulfill water quality obligations; identify and map water quality drivers; and establish a collaborative approach to address water quality issues in Vermont.

**Sec. 3. Agricultural Water Quality Definitions**

- Adds definitions of “farming,” “waste,” and “waters” to 6 V.S.A. chapter 215.

**Secs. 4-7. Small Farm Certification; Accepted Agricultural Practices (AAPs); Small Farm Fee**

- Sec. 4 enacts 6 V.S.A. § 4871 to require small farms to certify compliance with the AAPs every 5 years.
- Sec. 4 defines “small farm” as a parcel of land on which 10 or more acres are used for farming and that:
  - Houses no more than the maximum number of animals for a small farm (e.g. 199 dairy cows); and
  - Houses at least the number of animals the Agency of Agriculture sets by rule; or produces crops for sale.
- The Agency of Agriculture (AAFM) is authorized to inspect farms to determine compliance with the AAPs.
  - During inspection, AAFM shall identify areas that could use assistance to improve compliance with the AAPs. Identified areas will be ranked and receive priority assistance to achieve AAP compliance.
- An annual fee of \$250 shall be assessed on farms housing fewer than 100 mature dairy animals; and \$500 shall be assessed on farms housing 100 to 199 mature dairy animals. Sec. 7 assesses the fee in FY 2016/2017.
- Sec. 5 requires AAFM to amend the AAPs by rule to establish requirements for small farm certification, including requirements for stacking or storing nutrients, soil loss tolerance, vegetative buffer zones, livestock exclusion, nutrient management planning, and tile drainage or other dewatering technology.
- Sec. 6 requires AAFM to report to the General Assembly by Jan. 15, 2017 with recommendations regarding how subsurface tile drainage or other dewatering technology should be managed.

**Sec. 8-15. Agricultural Water Quality Funding--Fees and Agency Positions**

- Sec. 8 establishes an Agricultural Water Quality Special Fund, in which fees will be deposited for the funding of AAFM administration and implementation of water quality programs.
- Sec. 9 establishes a \$2,500 annual registration fee for large farms.
- Sec. 10 establishes a \$1,500 annual registration fee for medium farms.
- Sec. 11 increases the annual registration fee for commercial feed from \$85 to \$100.
- Sec. 12 requires commercial feed distributors to report tonnage distributed in 2016 and 2017.
- Sec. 13 establishes a \$30 a ton fee on nonagricultural fertilizer distributed in the State, in addition to an existing \$0.25 fee per year on all fertilizer. The minimum annual fee to be paid shall be \$150.
- Sec. 14. Increases the annual product registration fee on pesticides from \$110 to \$125.
- Sec. 15. Appropriates \$1,056,000 to AAFM in FY2016 for 7 agricultural water quality positions.

### **Secs. 16-17. Agricultural Water Quality; Best Management Practices (BMPs)**

- Sec. 16 amends 6 V.S.A. § 4810 to require AAFM to require a farmer to implement a BMP when the farm is in compliance with AAPs but not complying with the State water quality standards.
- Secs. 16 and 17 delete language requiring AAFM to determine sufficient financial assistance is available prior to AAFM requiring a BMP. Instead, AAFM shall inform farmers of resources available to assist implementation of BMPs.

### **Sec. 18. Agricultural Water Quality Training for Farmers**

- Sec. 18 requires AAFM to adopt requirements for training owners or operators of small, medium, and large farms regarding: prevention of discharges to waters; mitigation of stormwater runoff; and land application of manure, nutrients, septage, and sludge.
- AAFM shall require training as a condition of a LFO permit, MFO permit, and SFO certification.
- AAFM may phase in training requirements based on farm size, permit type, or available staffing.

### **Sec. 19. Certification of Custom Applicators**

- Sec. 19 requires AAFM to adopt by rule requirements for the certification of custom applicators.
- Custom applicator means the owner of a company engaged in the business of applying manure, nutrients, septage, 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. 20-23. AAFM Enforcement of Agricultural Water Quality Requirements**

- Sec. 20 reorganizes AAFM water quality enforcement authority in 6 V.S.A. chapter. 215, subchapter. 10.
- The new enforcement 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
  - Authority to remove livestock when the volume of livestock waste exceeds farm capacity.
- Sec. 20 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, AAFM “recommends” a corrective action.
- Sec. 20 also provides AAFM with civil enforcement authority to enjoin activities, order corrective actions, and levy civil penalties of up to \$85,000 for violations.
- Secs. 21-23 are conforming changes, including repeal of sections incorporated in new subchapter.

### **Sec. 24. 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. 24 requires a stream alteration permit for an agricultural practice that moves 10 cubic yards of instream material except for NRCS or AAFM approved streambank stabilization projects.

### **Secs. 25-27. Compliance with AAPs as Condition of Participation in Use Value Appraisal**

- Under Sec. 25, Property Valuation and Review (PVR) shall remove agricultural land or a 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 for an agricultural water quality violation.
- If land or a building is removed from UVA, a farmer may not apply for reenrollment until AAFM notifies PVR that the owner or operator is complying with: agricultural water quality requirements; or an enforcement order for an agricultural water quality violation.
  - Upon certification of compliance, the owner or operator can apply for enrollment at any time according to the existing requirements for application.
- Under Sec. 26, 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. ch. 215.
- Sec. 27 redefines the term “development” under UVA to include AAFM notification of PVR to remove an agricultural parcel or farm building from UVA.
  - As development, agricultural land or a farm building included in an AAFM notification to PVR would be subject to the land use change tax.

### **Sec. 28-31. ANR Basin Planning; Regional Planning**

- Sec. 28 requires ANR to develop a schedule to update the basin plans for the 15 watersheds with plans. ANR shall report annually to the General Assembly regarding schedule implementation.
- Sec. 28 requires the Secretary to conduct certain activities in planning, including: ensuring involvement by municipal officials and interested parties; ensuring local input in planning process; providing education to municipal officials regarding planning and developing a recommendation on conformance of basin plan with applicable regional plans.
- Under Sec. 28, ANR may contract with Regional Planning Commissions to produce or assist in producing basin plans.
- Sec. 29 provides that regional planning shall be used to further the goal of maintaining water quality by following policies and actions developed in ANR basin plans.
- Under Sec. 30, ANR and AAFM shall receive notice of new or amended regional plans.
- Sec. 31 provides that a regional plan shall be consistent with water quality policies to protect and improve waters and shall be used in the development of applicable basin plans.

### **Sec. 32. Anti-degradation Policy Implementation Rule**

- Sec. 32 requires ANR to adopt by rule an implementation process for the antidegradation policy in the Vermont water quality standards.

### **Sec. 33. ANR Stormwater Management Authority**

- Sec. 33 rewrites ANR’s statutory stormwater authority in 10 V.S.A. § 1264.
  - The existing section is in need of reorganization. Much of the underlined language is existing authority.
- Clarifies activities that require an ANR stormwater permit--construction of 1 acre or more of new impervious surface; discharge from a facility with a standard industrial classification; municipal separate storm sewer

systems; earth disturbance of 1 acre or greater; expansion of existing impervious surface by more than 5,000 sq. feet if the total resulting impervious area is greater than 1 acre; discharges of stormwater from municipal roads; and retrofitting of old impervious surface.

- Clarifies the exemptions from permitting, including: stormwater runoff from farms subject to AAPs; stormwater runoff from CAFOs with a discharge permit; stormwater runoff from silvicultural activities subject to AMPs; and stormwater systems for which a municipality assumes legal responsibility.
- ANR will have rulemaking authority to implement the stormwater program, including use of basin planning to establish watershed specific priorities for stormwater management.
- ANR may issue general permits for classes of regulated stormwater runoff.
- § 1264(g)(2): ANR shall issue a general permit for stormwater discharges from municipal roads.
  - The permit shall establish a schedule for implementation, including the inventory of roads, prioritization of projects, and implementation.
  - All cities, towns, and villages shall apply for the permit by July 1, 2021.
- § 1264(g)(3): On or before Jan. 1, 2018, ANR shall issue a general permit for discharges of stormwater from impervious surface of 3 or more acres in size that previously were never permitted or were permitted under a pre-2002 permit standard.
  - The general permit shall require retrofitting or redevelopment of old impervious surface.
  - The general permit shall establish a schedule for implementation, provided that it will be implemented in the Lake Champlain watershed no later than Oct. 1, 2023, and no later than Oct. 1, 2028 for the rest of the State.
- 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.
  - Discharge standards will apply to discharges of regulated stormwater to stormwater impaired waters, Lake Champlain, and waters contributing to Lake Champlain's impairment.
- ANR may deny an application for a stormwater permit due to an applicant's compliance history.

#### **Sec. 34. ANR Report on Regulatory Threshold for Stormwater Permitting**

- ANR shall report to General Assembly regarding whether and how the State should lower from 1 acre to 1/2 acre of impervious surface, the permitting threshold for an operating permit for stormwater runoff.

#### **Sec. 35. ANR Stormwater Management Practices Handbook**

- ANR shall publish practical and cost-effective BMPs for control of stormwater from construction, redevelopment, or expansion of impervious surface that does not require a permit.

#### **Sec. 36. 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. 37. Vermont Clean Water Fund**

- Sec. 37 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; and
- Programs or projects to repair riparian conditions that pose a risk of flooding.
- The Fund shall consist of revenue dedicated to it including a 0.2% surcharge on the property transfer tax.
- A Clean Water Fund Board shall administer the Fund. The Board shall consist of the Secretaries of ANR, AAFM, AOT, and ACCD, and 8 additional members, appointed by the Speaker of the House, the Committee on Committees, and 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.

### **Sec. 38-39. Clean Water Surcharge**

- Sec. 38 establishes a 0.2% surcharge on the value of property subject to the property transfer tax.
  - The surcharge is not assessed against property exempt from the property transfer tax;
  - The surcharge is not assessed on the first \$100,000 in value of property used for the principal residence of the transferee;
  - The surcharge is not assessed on the first \$110,000 in value of property purchased with VHFA funds.
- The surcharge is deposited in the Clean Water Fund.
- Under Sec. 39, the Clean Water Surcharge is repealed July 1, 2021.

### **Sec. 40. Agency of Administration Report on Per Parcel Water Quality Fee**

- Sec. 40 requires Secretary of Administration to report the General Assembly by 2016 with a recommendation for establishing a fee on parcels of property for the purpose of water quality funding.

### **Sec. 41-42. DEC Permit Fees**

- Sec. 41 provides for increases in DEC water quality related permits. The increase in fees would provide additional revenue of \$1.3 million to be used for additional DEC water quality staff.
- Sec. 42 removes permit fee exemption for municipalities, AOT and BGS.

### **Sec. 43. Appropriations for ANR Water Quality Staff**

- Appropriates \$1,312,556 to ANR in FY2016 for 13 water quality positions.

### **Sec. 44-45. State Assistance for Phosphorus Reduction at Wastewater Treatment Plants**

- Current law provides that wastewater treatment plants shall not discharge waste with a phosphorus concentration in excess of 0.80 milligrams per liter on a monthly basis.
  - 10 V.S.A. § 1266a provides that a municipality does not need to comply with the 0.80 milligrams per liter standard if State funds are not provided to the municipality for compliance.
  - Sec. 44 repeals the provision allowing municipalities not to comply if assistance is not provided.
- 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. 45 repeals the requirement that the State finance the project cost.

**Secs. 46-49. Acceptable Management Practices for Water Quality on Logging Jobs (AMPs)**

- Sec. 46 requires the Commissioner of Forests, Parks and Recreation to revise the AMPs by rule by March 1, 2016 to ensure that all logging jobs are designed to prevent water quality impacts.
- Sec. 47 requires the Commissioner of Forests, Parks and Recreation to report to the General Assembly regarding whether the AMPs should be mandatory and whether maple syrup production should enroll in Use Value Appraisal as forestland and not agricultural land.
- Secs. 48-49 make conforming changes to ANR enforcement and appeals statutes. Also revises terms of reference to AMPs.

**Sec. 50. MS4 Eligibility for Ecosystem Restoration Program (ERP) and Clean Water Funds**

- Municipalities shall not be denied funds from the ERP or the Clean Water Fund solely because they are an MS4 community.

**Sec. 51. Effective Dates**

- Most of the bill goes into effect on July 1, 2015, except that:
  - Small farm certification shall take effect on July 1, 2017;
  - Required certification of custom applicators shall take effect 45 days after AAFM adoption of custom applicator rules;
  - The permit requirements for discharges of regulated stormwater to Lake Champlain or a water contributing to an impairment of Lake Champlain shall take effect on October 1, 2015.
  - The Clean Water Fund shall take effect on passage.