

**H.35: An Act Relating to Improving the Quality of State Waters:  
HFWWR Proposed Amendment Dr. 1.3--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.

**Sec. 2. Agricultural Water Quality Definitions**

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

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

- Sec. 3 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. 4 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, 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. 4, 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. 5 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).

### **Secs. 6-7. 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. 6 & 7 would delete the required determination of sufficient financial assistance. Instead, the Secretary shall inform farmers of resources available to assist implementation of BMPs.

### **Sec. 8. 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;
  - mitigation of stormwater runoff from farms; and
  - land application of manure, nutrients and sludge.
- AAFM shall require training as condition of LFO permit, MFO permit, and SFO certification.
- AAFM may phase in training requirements based on farm size, permit type, or available staffing.

### **Sec. 9. Certification of Custom Applicators**

- Sec. 9 requires AAFM to adopt by rule requirements for the certification of custom applicators.
- Custom applicators are persons 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. 10-14. AAFM Enforcement of Agricultural Water Quality Requirements**

- Sec. 10 adopts water quality enforcement authority in a new subchapter of 6 V.S.A. chap. 215.
- 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
  - Mandatory removal of livestock when the volume of livestock waste exceeds farm capacity.
- Sec. 10 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. 10 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. 11-14 are conforming amendments, including repeal of sections now incorporated under new enforcement subchapter.
- 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. 15. 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. 15 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 streambank stabilization project approved by NRCS or the AAFM.

#### **Secs. 16-18. Compliance with AAPs as Condition of Participation in Use Value Appraisal**

- Under Sec. 16, Division of Property Valuation and Review (PVR) 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 for an agricultural water quality violation.
- After a parcel or building is removed from UVA, a farmer may not apply for reenrollment of the parcel or farm building until AAFM notifies PVR that the owner or operator is complying with the agricultural water quality requirements or is complying with 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. 17, 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. 18 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 would be subject to the land use change tax of 20% of the fair market value of the land or building.

### **Sec. 19-22. ANR Basin Planning; Regional Planning**

- Sec. 19 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. 19 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. 19, ANR may contract with Regional Planning Commissions to produce or assist in producing basin plans.
- Sec. 20 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.
- Sec. 21 provides that ANR should receive notice of new regional plans and proposed amendments to regional plans.
- Sec. 22 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.
- TMDL Implementation: integrated planning for TMDL implementation and water quality improvement. See Phase I Plan, pp. 58-63 (integrated basin planning).

### **Sec. 23. 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. 24. ANR Stormwater Management Authority**

- Sec. 23 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.
- § 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;
  - Municipalities ANR requires a permit for as a municipal separate storm sewer system;
  - Earth disturbance of 1 acre or greater, or less than 1 acre if part of a common plan of development;
  - Expansion of existing impervious surface by more than 5,000 sq. feet if the total resulting impervious area is greater than one acre;
  - Beginning July 1, 2021, discharges of stormwater from municipal roads.
- § 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).
  - ANR's proposed Phase I Implementation plan includes proposals for a state 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(g): 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(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. 25. 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. 26. 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, specific revenue is not identified in Draft 1.3.
- 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: To implement programs necessary for TMDL implementation, the State will require additional staff and funding. See Phase I Plan, p. 117 (funding and capacity).

**Sec. 27. [Reserved for potential funding proposal]**

**Sec. 28. [Reserved for potential funding proposal]**

**Secs. 29-30. Department of Environmental Conservation (DEC) Permit Fees**

- Sec. 29 provides for increases in DEC water quality related permits. The increase in fees would provide for additional revenue of \$1.5 million to be used for DEC's share of clean water initiative, including Lake Champlain restoration efforts.
- Municipal, AOT and BGS fee exemptions for certain permits would be repealed.

### **Sec. 31-32. 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 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. 31 repeals the provision allowing municipalities not to comply if not assistance is 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. 32 repeals the requirement that the State finance the project cost.

### **Secs. 33-37. Accepted Management Practices for Timber Harvesting**

- Sec. 33 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. 34-37 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. 38. 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. 39. 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;
  - Clean Water Fund shall take effect on passage; and
  - Impervious surface assessment shall take effect on passage.