

1 S.255

2 Introduced by Senator Starr

3 Referred to Committee on

4 Date:

5 Subject: Agriculture; miscellaneous agricultural subjects

6 Statement of purpose of bill as introduced: The bill would amend
7 miscellaneous agricultural subjects. It would amend requirements for how the
8 Agency of Agriculture, Food and Markets responds to alleged agricultural
9 water quality violations. The bill would clarify potential penalties for
10 cultivation of hemp under the jurisdiction of the Agency of Agriculture, Food
11 and Markets. The bill would delay the due date for rules establishing
12 requirements for agricultural subsurface drainage. The bill would clarify the
13 type of lands used for agricultural activities that are not wetlands for purposes
14 of regulation. It also would exempt from permitting fees the temporary
15 disturbance of a wetland for the purpose of installing pipelines to transport
16 manure for use in farming.

17 An act relating to miscellaneous agricultural subjects

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 * * * Agricultural Water Quality Complaints * * *

3 Sec. 1. 6 V.S.A. § 11a is added to read:

4 § 11a. COMPLAINTS; PROCEDURE

5 (a) Any person may file with the Secretary of Agriculture, Food and
6 Markets a complaint alleging a violation of this title or any other law
7 administered by the Agency of Agriculture, Food and Markets. A person may
8 file a complaint in writing, electronically, or in person with staff of the Agency
9 of Agriculture, Food and Markets. The complaint shall include a summary of
10 the nature of the alleged violation and the name, address, and contact
11 information of the person filing the complaint for purposes of communicating
12 the result of the investigation of the complaint.

13 (b) Except as provided for under section 4991a of this title, the Secretary of
14 Agriculture, Food and Markets shall not investigate anonymous complaints
15 unless the complaint is accompanied by specific, credible information the
16 Secretary reasonably believes can be corroborated and that would justify
17 investigation on the Secretary's own motion.

18 Sec. 2. 6 V.S.A. § 4991a is added to read:

19 § 4991a. COMPLAINTS; PROCEDURE

20 (a) Any person may file with the Secretary of Agriculture, Food and
21 Markets a complaint alleging a violation of this chapter, rules adopted under

1 this chapter, or a permit or certification issued under this chapter. A person
2 may file a complaint in writing, electronically, or in person with staff of the
3 Agency of Agriculture, Food and Markets. The complaint shall include a
4 summary of the nature of the alleged violation and the name, address, and
5 contact information of the person filing the complaint for purposes of
6 communicating the result of the investigation of the complaint.

7 (b) The Secretary of Agriculture, Food and Markets shall not initiate an
8 investigation of an anonymous complaint of a violation of this chapter unless
9 the complaint alleges one or more of the following violations and is
10 accompanied by specific, credible information that the Secretary reasonably
11 believes can be corroborated and that would justify investigation on the
12 Secretary's own motion:

13 (1) a violation of a concentrated animal feeding operation permit issued
14 by the Agency of Natural Resources under 10 V.S.A. chapter 47;

15 (2) a point source discharge of agricultural waste to waters; or

16 (3) a discharge of waste other than agricultural waste to a water of
17 the State.

18 (c) Investigation of a complaint alleging one or more of the violations listed
19 in subdivisions (b)(1)-(3) of this section shall be investigated and enforced
20 according to the terms of the Memorandum of Understanding Between the
21 Agency of Agriculture, Food and Markets and the Agency of Natural

1 Resources Regarding Implementation and Enforcement of Agricultural Water
2 Quality Programs.

3 (d) As used in this section:

4 (1) “Discharge” shall have the same meaning as set forth in 10 V.S.A.

5 § 1251.

6 (2) “Point source” shall have the same meaning as set forth in 33 U.S.C.

7 § 1362.

8 Sec. 3. 6 V.S.A. § 4992(a) is amended to read:

9 (a) When the Secretary of Agriculture, Food and Markets receives a
10 complaint and determines that a farmer is in violation of the requirements of
11 this chapter, rules adopted under this chapter, or a permit or certification issued
12 under this chapter, the Secretary shall notify the farmer of the complaint,
13 including the alleged violation. ~~The Secretary shall not be required to identify~~
14 ~~the source of the complaint.~~

15 * * * Subsurface Tile Drainage * * *

16 Sec. 4. 6 V.S.A. § 4810a is amended to read:

17 § 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION

18 * * *

19 (b) On or before December 1, 2021, and prior to prefiling of a rule under
20 3 V.S.A. § 837, the Secretary of Agriculture, Food and Markets shall submit to
21 the Senate Committee on Agriculture and the House Committee on Agriculture

1 and Forestry draft rules amending the required agricultural practices, in order
2 to include requirements for reducing nutrient contribution to waters of the State
3 from subsurface tile drainage. On or before ~~January 15, 2018~~ July 1, 2022, the
4 Secretary of Agriculture, Food and Markets shall ~~amend by rule~~ initiate
5 rulemaking to amend the required agricultural practices in order to include
6 requirements for reducing nutrient contribution to waters of the State from
7 subsurface tile drainage. Upon adoption of requirements for subsurface tile
8 drainage, the Secretary may require an existing subsurface tile drain to comply
9 with the requirements of the RAPs for subsurface tile drainage upon a
10 determination that compliance is necessary to reduce adverse impacts to water
11 quality from the subsurface tile drain.

12 * * * Farming in Wetlands * * *

13 Sec. 5. 10 V.S.A. § 902 is amended to read:

14 § 902. DEFINITIONS

15 Wherever used or referred to in this chapter, unless a different meaning
16 clearly appears from the context:

17 (1) “Board” means the Natural Resources Board.

18 (2) “Department” means the Department of Environmental
19 Conservation.

1 (3) “Waters” or “surface waters” means any and all rivers, streams,
2 brooks, creeks, lakes, ponds, or stored water,~~and groundwaters~~, excluding
3 municipal and farm water supplies.

4 (4) “Water resources” means the waters and groundwater of the State
5 and the values inherent or potential in waters and their uses.

6 (5) “Wetlands” means those areas of the State that are inundated by
7 surface water or groundwater with a frequency sufficient to support significant
8 vegetation or aquatic life that depend on saturated or seasonally saturated soil
9 conditions for growth and reproduction. Such areas include marshes, swamps,
10 sloughs, potholes, fens, river and lake overflows, mud flats, bogs, and ponds,
11 but ~~excluding such~~ exclude areas as ~~grow food or crops in connection with~~
12 used for farming activities.

13 * * *

14 (13) “Farm” means a parcel or parcels of land owned, leased, or
15 managed by a person and devoted primarily to farming.

16 (14) “Farming” shall have the same meaning as in subdivision 6001(22)
17 of this title, provided that under this chapter “farming” shall also include repair
18 or maintenance of a farm structure, farm road, farm pond, irrigation ditch, or
19 production area on a farm in existence on January 1, 2018.

20 (15) “Farm structure” means a structure created from an assembly of
21 materials that is used by a person for farming that is subject to the required

1 agricultural practices and shall include a silo, a building to house livestock,
2 a building to raise horticultural or agronomic plants, a barnyard, or a waste
3 management system. "Farm structure" shall not mean a dwelling for human
4 habitation.

5 (16) "Groundwater" means water below the land surface, and does not
6 include surface waters.

7 (17) "Production area" means those areas of a farm where animals,
8 agricultural inputs, or raw agricultural products are confined, housed, stored, or
9 prepared whether within or without the structure, including barnyards, raw
10 material storage areas, heavy use areas, fertilizer and pesticide storage areas,
11 and waste storage and containment areas. "Production area" includes egg
12 washing or egg processing facilities, milkhouses, raw agricultural commodity
13 preparation or storage areas, or any area used in the storage, handling,
14 treatment, or disposal of animal mortalities.

15 (18) "Temporary disturbance" means construction or an activity in a
16 Class II wetland that meets all of the following requirements:

17 (A) The impact to the wetland from the construction or activity is
18 minor or designed to minimize, as much as possible, adverse impacts.

19 (B) The construction or activity shall not convert wetlands to upland.

20 (C) The construction or activity shall not convert a forested or shrub
21 wetland to another wetland type.

1 to section 913 of this title and the rules authorized by this subdivision, issue
2 wetland determinations pursuant to section 914 of this title, issue orders
3 pursuant to section 1272 of this title, and in accordance with 3 V.S.A.
4 chapter 25, adopt rules to address the following:

5 (A) The identification of wetlands that are so significant they merit
6 protection. Any determination that a particular wetland is significant will
7 result from an evaluation of at least the following functions and values ~~which~~
8 that a wetland serves:

9 (i) provides temporary ~~water~~ storage ~~for~~ of flood water and ~~storm~~
10 stormwater runoff;

11 (ii) contributes to the quality of surface waters and groundwater
12 through chemical action;

13 * * *

14 (B) The ability to reclassify wetlands, in general; or on a case-by-
15 case basis.

16 (C) The protection of wetlands that have been determined under
17 subdivision (A) or (B) of this subdivision (18) to be significant, including rules
18 that provide for the issuance or denial of permits and the issuance of wetland
19 determinations by the Department under this chapter; provided, however, that
20 the rules may only protect the values and functions sought to be preserved by
21 the designation. The Department shall not adopt rules that restrain ~~agricultural~~

1 ~~activities~~ farming without the consent of the Secretary of Agriculture, Food
2 and Markets and shall not adopt rules that restrain silvicultural activities
3 without the consent of the Commissioner of Forests, Parks and Recreation.

4 * * *

5 Sec. 7. 10 V.S.A. § 911 is amended to read:

6 § 911. ENTRANCE UPON LANDS; RECORDS, MAINTENANCE

7 ~~The department~~ A Department employee or agent may enter upon lands for
8 the purposes of inspecting and investigating conditions relating to sources of
9 pollution or potential pollution of the surface waters and groundwater of the
10 ~~state or the potential pollution thereof, State~~ and to determine whether the rules
11 and orders of the ~~department~~ Department are being complied with. Any
12 authorized representative of the ~~department~~ Department may examine any
13 records or memoranda pertaining to the operation of disposal systems or
14 related water quality projects. The ~~department~~ Department may require the
15 maintenance of records relating to the operation of disposal systems. Copies of
16 these records shall be submitted to the ~~department~~ Department on request.

17 Sec. 8. 10 V.S.A. § 913 is amended to read:

18 § 913. PROHIBITION; EXEMPTIONS

19 (a) Except for allowed uses adopted by the Department by rule, no person
20 shall conduct or allow to be conducted an activity in a significant wetland or

1 buffer zone of a significant wetland except in compliance with a permit,
2 conditional use determination, or order issued by the Secretary.

3 (b) A permit shall not be required under this section for any of the
4 following activities:

5 (1) any activity that occurred before the effective date of this section
6 unless the activity occurred within:

7 (A) an area identified as a wetland on the Vermont significant
8 wetlands inventory maps;

9 (B) a wetland that was contiguous to an area identified as a wetland
10 on the Vermont significant wetlands inventory maps; or

11 (C) the buffer zone of a wetland referred to in subdivision (A) or (B)
12 of this subdivision (1);

13 (2) any construction within a wetland that is identified on the Vermont
14 significant wetlands inventory maps or within the buffer zone of such a
15 wetland, provided that the construction was completed prior to February 23,
16 1992, and no action for which a permit is required under the rules of the
17 Department was taken or caused to be taken on or after February 23, 1992; or

18 (3) temporary disturbances.

1 Sec. 9. 3 V.S.A. § 2822(j) is amended to read:

2 (j) In accordance with subsection (i) of this section, the following fees are
3 established for permits, licenses, certifications, approvals, registrations, orders,
4 and other actions taken by the Agency of Natural Resources.

5 * * *

6 (26) For individual conditional use determinations, for individual
7 wetland permits, for general conditional use determinations issued under
8 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit,
9 an administrative processing fee assessed under subdivision (2) of this
10 subsection (j) and an application fee of:

11 (A) \$0.75 per square foot of proposed impact to Class I or II
12 wetlands.

13 (B) \$0.25 per square foot of proposed impact to Class I or II wetland
14 buffers.

15 (C) Maximum fee, for the conversion of Class II wetlands or wetland
16 buffers to cropland use, \$200.00 per application. As used in this subdivision,
17 “cropland” means land that is used for the production of agricultural crops,
18 including row crops, fibrous plants, pasture, fruit-bearing bushes, trees, or
19 vines, and the production of Christmas trees.

20 (D) \$0.25 per square foot of proposed impact to Class I or II wetlands
21 or Class I or II wetland buffer for utility line, pipeline, and ski trail projects

1 when the proposed impact is limited to clearing forested wetlands in a corridor
2 and maintaining a cleared condition in that corridor for the project life.

3 (E) \$1.50 per square foot of impact to Class I or II wetlands when the
4 permit is sought after the impact has taken place.

5 (F) \$100.00 per revision to an application for an individual wetland
6 permit or authorization under a general permit when the supplement is due to a
7 change to the project that was not requested by the Secretary.

8 (G) Minimum fee, \$50.00 per application.

9 (H) No fee shall be charged for an individual wetland permit or
10 authorization under a general permit when the proposed impact to a Class I
11 or II wetland is limited to a installing a pipeline in a wetland for the transport
12 of manure for the purposes of farming, as that term is defined in 10 V.S.A.
13 § 6001(22).

14 * * * Industrial Hemp * * *

15 Sec. 10. 6 V.S.A. § 567 is added to read:

16 § 567. TEST RESULTS; ENFORCEMENT

17 The Secretary shall destroy a hemp crop registered under this chapter if the
18 Secretary tests the hemp crop under section 564 of this title and the hemp has a
19 delta-9 tetrahydrocannabinol concentration of more than 0.3 percent on a dry
20 weight basis. The person registered with the Secretary as growing the hemp
21 crop shall not be subject to civil, criminal, or administrative liability or penalty

1 under 18 V.S.A. chapter 84 if the tested industrial hemp has a delta-9
2 tetrahydrocannabinol concentration of one percent or less on a dry weight
3 basis.

4 * * * Effective Dates * * *

5 Sec. 11. EFFECTIVE DATES

6 (a) This section and Secs. 1-3 (enforcement of agricultural water quality
7 requirements) and 4 (subsurface tile drainage) shall take effect on passage.

8 (b) All other sections shall take effect on July 1, 2018.