

## Stormwater Utility Concerns with S.115 as written

Prepared by David Wheeler, City of South Burlington, Deputy Director of Water Resources for the Senate Committee on Finance

*Sec. 8. 24 V.S.A. § 4414(9) is amended to read:*

*(9) Stormwater management and control. Any municipality may adopt bylaws to implement stormwater management and control consistent with the program developed by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1264, provided the municipality does not exceed the Secretary's authority, maintains the exemptions in 10 V.S.A. § 1264(d)(1), and does not charge an operating fee related to exempt practices.*

Section 8 of S.115 seeks to obtain an exemption for farms from stormwater utility fees, with the justification that they provide water quality treatment through their Required Agricultural Practices (RAPs). This could create a “slippery slope” as other entities may seek out exemptions as well, such as schools, hospitals, police/fire, affordable housing, non-profits, energy efficient housing, historic buildings, etc.

VTrans previously sought out an exemption from municipal stormwater utility fees, as they are required to implement stormwater treatment as part of their TS4 permit, but it was ultimately settled that VTrans would be provided with a 35% credit on stormwater utility fees, in the law governing Municipal Sewage Rates and Rents, [24 V.S.A. §3615\(c\)](#): “When a sewage disposal charge established under this section for the management of stormwater is applied to property owned, controlled, or managed by the Agency of Transportation, the charge shall not exceed the highest rate category applicable to other properties in the municipality, and the Agency of Transportation shall receive a 35 percent credit on the charge. The Agency of Transportation shall receive no other credit on the charge from the municipal corporation.” It is recommended that the Agency of Agriculture seek to amend 24 V.S.A. §3615(c) to allow for a 35% credit for agricultural properties that are in compliance with approved RAPs, rather than seeking an exemption within [24 V.S.A. §4414](#).

This would be appropriate, to both reflect the “all in” approach to stormwater, but also to acknowledge that there are different levels of stormwater treatment and control. The first is the water quality component, such as removing pollutants or nutrients, including phosphorus. RAPs do a good job of addressing phosphorus reduction through manure and animal management. The next level of stormwater control is stream channel and ditch erosion, from the quantity of water typically experienced during the 1-year storm. Beyond that, we get into the larger extreme flooding control, managing the 25 and 100-year storms, which RAPs do not necessarily address. Between 2019 and 2021, the City of South Burlington participated in reconstructing the Muddy Brook culvert, a 15 foot diameter culvert that was washed out during the Halloween storm of 2019, which was equivalent to the 50-year storm event. The total cost was around \$3 million to replace it with a new larger culvert that provides aquatic organism passage, and the costs were shared between the stormwater fund and highway, as well as grant funding and cost sharing from the adjacent community. This transportation connection is very important for business in the area, and the impacts of the closure were felt all along Williston Road.

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Many municipalities have stormwater utility fee credit manuals that provide different levels of credit for water quality treatment, groundwater recharge, channel protection treatment, and extreme flood storage. Additionally, some municipalities already have utility fee credits for farms with approved RAPs, as well as credits for schools that teach a water quality curriculum. [In addition to MS4 communities needing to meet the various stormwater treatment standards outlined, they are also required to meet their “6 Minimum Control Measures” under the MS4 permit. The first of these, Minimum Control Measure 1 (MCM 1) is Public Education, hence the credit for schools teaching a curriculum on water quality.]

Again, the legislature could consider including an agricultural credit in 24 V.S.A. §3615(c), rather than seek out a full exemption in 24 V.S.A. §4414(9).

24 V.S.A. §4414(9) is not the appropriate place to land the amendment language of S.155 – this is the law that authorizes municipalities to adopt zoning bylaws to regulate stormwater management and control. This is an important local control tool, as municipalities subject to the MS4 permit are required to enforce a post-construction stormwater management program in accordance with Minimum Control Measure 5 of the MS4 permit. MS4 communities would be at risk of being out of permit compliance if they did not have the authority to adopt bylaws to implement stormwater management and control.

The language being inserted into 24 V.S.A. §4414(9) states that a municipality may adopt bylaws to implement stormwater management and control, “**provided the municipality does not exceed the Secretary’s authority, maintains the exemptions in 10 V.S.A. §1264(d)(1), and does not charge an operating fee related to exempt practices.**” The use of commas and the word “and” suggests that municipalities need to do all three of the items listed in order to be able to adopt municipal bylaws regulating stormwater management. As written, the **bolded section** creates significant uncertainty for municipalities. This language alone could be used outside of the arena of agriculture to circumvent other municipal stormwater bylaws and ordinances and it should be stricken or rewritten to more clearly address exemptions for farms. Or, again, 24 V.S.A. §13615(c) could be amended and all of this proposed language could be scrapped.

Additionally, as written, the last portion of the new language “*and does not charge an operating fee related to exempt practices*” has two errors. The first is quite simple, municipalities do not charge operating fees, those are paid to the State for Operational Stormwater Permits. Rather, municipalities collect stormwater utility fees. The second issue pertains to the use of the term “exempt practices”. Under 24 V.S.A. §1264(d)(1), it lists that farms are exempt from State Stormwater Permits. It is this exemption that is being used as the basis of exempting farms from municipal stormwater utility fees. However, there is another exemption under 24 V.S.A. §1264(d)(2), for subdivisions where a municipality has taken full legal responsibility for a stormwater system. As written, these properties would be exempt from the fees as well. There are many subdivisions within South Burlington that would fall under this category, so this would have a number of consequences and disincentivize municipalities from working with neighborhoods subject to the 3-Acre rule and other stormwater regulations in general.

Thank you,

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