

MEMORANDUM

TO: Senate Committee on Natural Resources and Energy
FROM: Ryan Patch, Agriculture Climate and Land Use Policy Manager
DATE: March 22, 2022
SUBJECT: S.115: An act relating to miscellaneous agricultural subjects, Sections 8 & 9

1. Municipalities, when assuming state authority to regulate stormwater in their towns and cities under 24 V.S.A. § 4414(9), must follow state standards and restrictions and are prohibited from charging stormwater utility user fees to farms because they are exempt from state permitting requirements for operational stormwater.

Specifically, municipalities may choose to regulate stormwater under the following statutory authority: “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.” [24 V.S.A. § 4414 (9), emphasis added]. Since the Secretary of the Agency of Natural Resources (ANR) cannot issue a stormwater operations permit for farms or charge them a related fee, the small percentage of towns that have elected to charge farms are not operating a program “consistent” with ANR’s authority.

Instead, those towns are operating a program that exceeds ANR’s authority and directly contradicts ANR’s program by ignoring the following statutorily required exemption. “No permit is required under this section for: (A) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, provided that this exemption shall not apply to construction stormwater permits required by subdivision (c)(4) of this section. (B) Stormwater runoff from concentrated animal feeding operations permitted under subsection 1263(g) of this chapter.” 10 V.S.A. § 1264 (d)(1).

Since ANR cannot issue a permit or charge farms a related stormwater operations fee, and since municipalities’ regulatory authority is limited to the authority granted to ANR, towns cannot ignore the clear exemption and effectively charge farms twice to manage their stormwater. Moreover, municipalities are also precluded from regulating farms Required Agricultural Practices under their municipal bylaws per 24 V.S.A. § 4413(d)(1)(A).¹

2. Farms are exempted from State operational stormwater permitting at ANR/DEC because **farms are regulated for agricultural stormwater and runoff by VAAF. VAAF regulates farms to a higher standard than municipalities or other stormwater sectors:** farms cannot have a discharge of pollutants to waters of the state. For example: A Certified Small Farm Operation in Colchester invested over \$660,000 to construct farm infrastructure to collect all farm agricultural waste and runoff. All runoff on the farm goes to a waste storage facility. This collected agricultural waste is then spread on crop fields during the growing season. This farm in Colchester is being assessed for 28,000 square feet of impervious surface and stormwater runoff fees by the town – all while the farm has zero impervious surface runoff that leaves the farm because it is all collected in the farm’s waste storage facility.
3. **Farms are paying into a municipal stormwater utility they cannot benefit from.** The State of Vermont Stormwater Management Manual Rule and Design Guidance does not include agricultural waste treatment and collection practices in its standards – stormwater utilities cannot install stormwater practices on farms under the standards they must follow to construct stormwater treatment that meets the standards of the State of Vermont. Farms cannot have agricultural waste runoff in the production area per the RAPs. While municipal stormwater ponds have

¹ 24 V.S.A. § 4413(d)(1)(A): (d)(1) A bylaw under this chapter shall not regulate: (A) required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets.



spillways for overflow; farm waste storage facilities cannot overtop and cannot runoff per the RAPs. Invoices that VAAFM has collected from farmers in towns assessed fees by a municipality for stormwater (e.g. Colchester, Shelburne, Williston) demonstrate how towns are assessing fees for farms based on mapping of the farms 'impervious surface'. The user fee is based on the parcels' impervious surface, not the entity's utilization of the ditch and road network as argued by municipalities. The stormwater utility fee is not a vehicle miles traveled tax, is not a road use tax, this is an impervious, stormwater service fee which by statute, farms do not have under ANR permitting for operational stormwater.

4. "All-In' meant in 2015 that every sector has to do their 'fair share.' **Municipal Wastewater Treatment Facilities are actually given an allocation for future growth and are permitted to increase their phosphorus loading over the life of the Lake Champlain Basin TMDL for Phosphorus**, with municipal WWTF being allowed to discharge from the base of 25 Metric Tons of phosphorus a year to 32 Metric Tons of phosphorus a year at the end of the TMDL.² Farms are contributing 41% of the phosphorus loading and responsible for 56% of the cleanup - to date, farms have been 95% of the reported P reductions from the state.³ Farm residences can pay a proportional municipal residence fee, but municipalities lack the authority to doubly charge farms for managing their farm's stormwater. Farmers are required to pay to build infrastructure and manage their stormwater and cannot use a municipal stormwater system. **Municipal revenue for the town to comply with its responsibility under Vermont's Clean Water Act should come from constituents who utilize the system. Not from farmers who often struggle financially and are already responsible for doing their part to help cleanup Lake Champlain.**

² EPA. Phosphorus TMDLs for Vermont Segments of Lake Champlain. June 17, 2016. Page 48. <https://attains.epa.gov/attains-public/api/documents/actions/1VTDECWQ/66080/104776>

³ Vermont Department of Environmental Conservation. Vermont Clean Water Initiative 2022 Performance Report. <https://dec.vermont.gov/sites/dec/files/WID/CWIP/Vermont%20Clean%20Water%20Initiative%202022%20Performance%20Report.pdf>

