

Required Agricultural Practices

Statute, Scope, and Application

Current Statute—6 V.S.A. §4810(b)

(b) Required Agricultural Practices. Required Agricultural Practices (RAPs) shall be management standards to be followed by all persons engaged in farming in this State. These standards shall address activities that have a potential for causing agricultural pollutants to enter the groundwater and waters of the State, including dairy and other livestock operations plus all forms of crop and nursery operations and on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities. The RAPs shall include, as well as promote and encourage, practices for farmers in preventing agricultural pollutants from entering the groundwater and waters of the State when engaged in animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control.

As Originally
Enacted in
1991:
6 V.S.A.
§4810(a)

¶
Sec. 4. 6 V.S.A. chapter 215 is added to read: ¶
→ CHAPTER 215. AGRICULTURAL NON-POINT SOURCES ¶
→ POLLUTION REDUCTION PROGRAM ¶
§ 4810. AUTHORITY; COOPERATION; COORDINATION ¶
(a) In accordance with 10 V.S.A. § 1259(i) and to implement and enforce accepted agricultural practices as defined under 10 V.S.A. § 1259(f), the commissioner of agriculture, food and markets shall develop by rule and shall implement and enforce agricultural land use practices in order to reduce the amount of agricultural pollutants entering waters of the state. These agricultural land use practices shall be created in two categories. One category shall consist of accepted agricultural practices as defined under subsection 1259(f) of Title 10. These practices shall be standards to be followed in the conducting of farming activities. Persons engaged in farming, as defined in 10 V.S.A. § 6001, who follow these practices shall be presumed to be in compliance with water quality standards. The second category of agricultural land use practices shall consist of best management practices, which may be required by the commissioner on a case by case basis. Before requiring best management practices, the commissioner shall determine that sufficient financial assistance is available to assist farmers in achieving compliance with applicable best management practices. Both categories of agricultural land use practices shall be practical and cost effective to implement. ¶

Municipal Exemption from Zoning Predated AAPs and RAPs

T.24 § 4494

MUNICIPAL AND COUNTY GOVT.

Ch. 117

under this chapter after two years following the day on which it would have taken effect if no defect had occurred.—Added 1981, No. 132 (Adj. Sess.), § 17, eff. Oct. 1, 1982.

ANNOTATIONS

Cited. Cited in *In re McCormick Management Co.* (1988) 149 Vt. 585, 547 A.2d 1319.

§ 4495. Accepted agricultural and silvicultural practices

No plan or bylaw adopted under this chapter shall restrict accepted agricultural or silvicultural practices as defined by the commissioner of agriculture, food and markets or the commissioner of forests, parks, and recreation, respectively, under 10 V.S.A. §§ 1021(f) and 1259(f).—Added 1987, No. 200 (Adj. Sess.), § 31, eff. May 19, 1988.

HISTORY

Revision note. This section, which was originally enacted as section 4494 of this title, was redesignated as section 4495 to avoid conflict with existing section 4494.

Substituted “commissioner of agriculture, food and markets” for “commissioner of agriculture” for purposes of conformity with 1989, No. 256 (Adj. Sess.), § 10(a).

2015 Acts & Resolves No. 64: When Accepted Became Required

*** Agricultural Water Quality; Required Agricultural Practices; Best

Management Practices ***

Sec. 12. 6 V.S.A. § 4810 is amended to read:

§ 4810. AUTHORITY; COOPERATION; COORDINATION

(a) Agricultural land use practices. In accordance with 10 V.S.A.

§ 1259(i), the secretary Secretary shall adopt by rule, pursuant to 3 V.S.A. chapter 25 of Title 3, and shall implement and enforce agricultural land use practices in order to reduce the amount of agricultural pollutants entering the waters of the state satisfy the requirements of 33 U.S.C. § 1329 that the State identify and implement best management practices to control nonpoint sources of agricultural waste to waters of the State. These agricultural land use practices shall be created in two categories, pursuant to subdivisions (1) and (2) of this subsection subsections (b) and (c) of this section.

(1)(b) Required Agricultural Practices. “Accepted Agricultural Practices” (AAPs) Required Agricultural Practices (RAPs) shall be management standards to be followed in conducting agricultural activities by all persons engaged in farming in this state State. These standards shall address activities which have a potential for causing agricultural pollutants to

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enter the groundwater and waters of the state State, including dairy and other livestock operations plus all forms of crop and nursery operations and on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities. The AAPs RAPs shall include, as well as promote and encourage, practices for farmers in preventing agricultural pollutants from entering the groundwater and waters of the state State when engaged in, but not limited to, animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control. Persons engaged in farming, as defined in 10 V.S.A. § 6001, who follow are in compliance with these practices shall be presumed to be in compliance with water quality standards to not have a discharge of agricultural pollutants to waters of the State. AAPs RAPs shall be designed to protect water quality and shall be practical and cost-effective cost-effective to implement, as determined by the Secretary. Where the Secretary determines, after inspection of a farm, that a person engaged in farming is complying with the RAPs but there still exists the potential for agricultural pollutants to enter the waters of the State, the Secretary shall require the person to implement additional, site-specific on-farm conservation practices designed to prevent agricultural pollutants from entering the waters of the State. When requiring implementation of a conservation practice under this subsection, the Secretary shall inform the person engaged in farming of the resources available to assist the person in implementing the conservation practice and complying with the

Act 64--Specific Statutory Required Agricultural Practices

§ 4810a. Required Agricultural Practices; revision

(a) The Secretary of Agriculture, Food and Markets shall maintain the Required Agricultural Practices in order to improve water quality in the State, ensure practices on all farms eliminate adverse impacts to water quality, and implement the small farm certification program required by section 4871 of this title. At a minimum, the Required Agricultural Practices shall:

(1) Specify those farms that:

(A) are required to comply with the small farm certification requirements under section 4871 of this title due to the potential impact of the farm or type of farm on water quality as a result of livestock managed on the farm, agricultural inputs used by the farm, or tillage practices on the farm; and

(B) shall be subject to the Required Agricultural Practices but shall not be required to comply with small farm certification requirements under section 4871 of this title.

(2)(A) Except as authorized under subdivision (C) of this subdivision (2), prohibit a farm from stacking or piling manure, storing fertilizer, or storing other nutrients on the farm:

(i) in a manner and location that presents a threat of discharge to a water of the State or presents a threat of contamination to groundwater; or

(ii) on lands in a floodway or otherwise subject to annual flooding.

(B) Except as authorized under subdivision (C) of this subdivision (2), manure stacking or piling sites, fertilizer storage, or other nutrient storage shall not be located within 200 feet of a private well or within 200 feet of a water of the State.

(C) The Secretary may authorize one or more of the following:

(i) siting of manure stacking or piling sites, fertilizer storage, or other nutrient storage within 200 feet, but not less than 100 feet, of a private well or surface water if the Secretary determines that the site is the best available site on the farm for the purposes of protecting groundwater quality or surface water quality; and

(ii) siting of a waste storage facility within 200 feet of a surface water or private well if the site is the best available site on the farm for the purposes of protecting groundwater quality or surface water quality and the waste storage facility is designed by a licensed engineer to meet the requirements of section 4815 of this title.

(3) Require the construction and management of barnyards, waste management systems, animal holding areas, and production areas in a manner to prevent runoff of waste to a surface water, to groundwater, or across property boundaries.

(4) Establish standards for nutrient management on farms, including:

(A) required nutrient management planning on all farms that manage agricultural wastes; and

(B) recommended practices for improving and maintaining soil quality and healthy soils in order to increase the capacity of soil to retain water, improve flood resiliency, reduce sedimentation, reduce reliance on fertilizers and pesticides, and prevent agricultural stormwater runoff.

(5) Require cropland on the farm to be cultivated in a manner that results in an average soil loss of less than or equal to the soil loss tolerance for the prevalent soil, known as 1T, as calculated through application of the Revised Universal Soil Loss Equation or through the application of similarly accepted models.

(6)(A) Require a farm to comply with standards established by the Secretary for maintaining a vegetative buffer zone of perennial vegetation between annual croplands and the top of the bank of an adjoining water of the State. At a minimum the vegetative buffer standards established by the Secretary shall prohibit the application of manure on the farm within 25 feet of the top of the bank of an adjoining water of the State or within 10 feet of a ditch that is not a surface water under State law and that is not a water of the United States under federal law. The minimum vegetated buffer requirement required under this subdivision (A) shall not apply to a farm that is determined by the Secretary of Natural Resources to be a Concentrated Animal Feeding Operation and is required to obtain a CAFO permit as required under 10 V.S.A. § 1353. A farm determined to be a Concentrated Animal Feeding Operation that requires a CAFO permit shall instead comply with the setback and buffer requirements established in the federal CAFO regulations.

(B) Establish standards for site-specific vegetative buffers that adequately address water quality needs based on consideration of soil type, slope, crop type, proximity to water, and other relevant factors.

(7) [Repealed.]

(8) Regulate, in a manner consistent with the Agency of Natural Resources' flood hazard area and river corridor rules, the construction or siting of a farm structure or the storage of manure, fertilizer, or pesticides within a river corridor designated by the Secretary of Natural Resources.

(9) Establish standards for the exclusion of livestock from the waters of the State to prevent erosion and adverse water quality impacts.

(10) Establish standards for soil conservation practices such as cover cropping.

Yes, the RAPs Are Practices to Control Nonpoint Sources of Agricultural Waste to Waters

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VERMONT
REQUIRED AGRICULTURAL PRACTICES RULE
FOR
THE AGRICULTURAL NONPOINT SOURCE POLLUTION
CONTROL PROGRAM

But, the RAPs Are More Than Just Water

Section 9. Construction of Farm Structures

(a) Siting

(1) Prior to construction of farm structures, the farmer must notify the zoning administrator or the town clerk of the town in which the farm structure is proposed, in writing, of the proposed construction activity. The notification must contain a sketch of the proposed structure including the setback distances from adjoining property lines, road rights-of-way, and adjacent surface water.

(2) Local setbacks and setbacks designed by this rule shall be observed unless the Secretary has approved a farmer's written request for other reasonable setbacks for the specific

farm structure being constructed or maintained in accordance with Section 9(b).

(3) Construction of farm structures in Flood Hazard Areas and River Corridors are required to obtain a Flood Hazard Area and River Corridor permit from the ANR or its designee unless otherwise exempt (refer to Appendix A). Fences through which floodwater may flow are not structures which represent an encroachment in a floodway area.

(4) Construction of new farm structures, specifically buildings and other farm structures that disturb one or more acres of land must obtain authorization from the ANR before commencing with land disturbance or construction activities.

In re 8 Taft Street DRB & NOV Appeals

“Accordingly, § 4413(d)(1)(A) does not prohibit all municipal regulation of farming if that farming is subject to the RAPs Rule, and landowner’s duck-raising operation is not exempt from municipal zoning solely because his activities are subject to the RAPs Rule. Rather, §4413(d)(1)(A) prohibits municipal regulation of “required agricultural practices,” or the agricultural land-management standards intended to protect Vermont’s waters established by the RAPs Rule and imposed on certain “agricultural practices.” We therefore reverse the Environmental Division’s decision granting summary judgment to landowner.”

But...

The Construction of Farm Structures is About More than
Protection of Vermont’s Waters



24 V.S.A.
§4813(d)

(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;
- (B) accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices that are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; or
- (C) forestry operations.

(2) As used in this section:

(A) "Farm structure" means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

(B) "Forestry operations" has the same meaning as in 10 V.S.A. § 2602.

(3) A person shall notify a municipality of the intent to build a farm structure and shall abide by setbacks approved by the Secretary of Agriculture, Food and Markets. No municipal permit for a farm structure shall be required.

Taft Supreme Court Acknowledged

- In Moore, we examined whether buildings used for timber processing were “farm structures” used to conduct practices related to farming and were therefore exempt from municipal regulation.
- We rejected the neighbors’ argument that cutting and planing wood was a manufacturing—not farming—activity while recognizing that lumber processing and harvesting “are practices long and intimately associated with farming in Vermont.”
- We further acknowledged that this conclusion was bolstered by the fact that § 4413 reflects recognition by the Legislature “that, in order to survive, Vermont farms must enjoy the freedom to ‘diversify’ and engage in ‘reasonable agricultural activities’ ”.
- We did not, however, address the meaning of “required agricultural practices,” and our interpretation of the term “farm structure”—a term specifically defined by the Legislature in 24 V.S.A. § 4413(d)(2)(A)—has no bearing on how the Secretary has defined “required agricultural practices.”

So Are Farm Structures Structures Regulated Under the RAPs Exempt from Municipal Bylaws, But the Rest of the RAPs Are Not? Does the RAP Variance Process Still Apply?



- The RAPs are used throughout statute to refer to the activity that the Agency of Agriculture will regulate as farming.
- The minimum animal thresholds or criteria for application of RAPs to an activity are intentional, not anomalous, so that the Agency of Agriculture is not required to regulate backyard farmers or allow backyard farmers to claim exemption from municipal zoning.

RAPs Define Scope of Farming

Barre Town roosters get to stay

Oct 29, 2009

The RAPs Also Define Scope of Other Statutes

- 10 V.S.A. §1259 (water discharge): Provided a CAFO permit is not required, “the following activities shall not require a VPDES permit under section 1263 of this title: (1) required agricultural practices, as adopted by rule by the Secretary of Agriculture, Food and Markets;”
- 10 V.S.A. 1266b (application of fertilizer): (d) Application of fertilizer to impervious surface; in proximity to water; and seasonal restriction. No person shall apply any fertilizer: (1) to an impervious surface. Fertilizer applied or released to an impervious surface shall be immediately collected and returned to a container for legal application. This subdivision shall not apply to activities regulated under the required agricultural practices as those practices are defined by the Secretary of Agriculture, Food and Markets under 6 V.S.A. § 4810;
- 24 V.S.A. §4414(9) (municipal 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. Municipalities shall not charge an impervious surface fee or other stormwater fee under this subdivision or under other provisions of this title on property regulated under the Required Agricultural Practices for discharges of agricultural waste or agricultural nonpoint source pollution.

Summary

- The General Assembly enacted the RAP requirements to address water quality.
- But, the RAPs have been used to define the scope of farming subject to regulation by the Agency of Agriculture.
- The agricultural exemption from municipal regulation has existed since 1987, 1987 Acts & Resolves No. 200, and was recodified and restructured within 24 V.S.A. §4413 by 2023 Acts & Resolves No. 115.

Was Taft Consistent with the Intent of the Legislature?