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October 25, 2024

TO: Legislative Committee on Administrative Rules
FROM: Laura DiPietro, Director – Water Quality Division, and Steven Collier, General Counsel
Vermont Agency of Agriculture, Food and Markets
RE: 24-P28 Best Management Practices Rule

On September 24, 2024, the Vermont Agency of Agriculture, Food and Markets submitted the final proposed Best Management Practices Rule for review to the Legislative Committee on Administrative Rules.

The final proposed Best Management Practices (BMP) Rule is a revision of the 1996 version of the rule. This rulemaking process corrects findings from a 2018 audit by the state auditor that found the rule misaligned with current statute and practice. The final proposed rule, authorized under 6 V.S.A. § 4821, primarily concerns the establishment of and process for providing technical and financial assistance under the Best Management Practice (BMP) program to Vermont farmers to construct on-farm improvements designed to abate water pollution risks from agricultural waste. Updates reflect current terminology, statutes, process and procedures for project prioritization, operation and maintenance requirements, and a revised petition process that have evolved since the last filing in 1996.

Based on State Fiscal 2016-2023 data, an average of 40 Vermont farm operations receive on average \$73,000 each year in financial assistance toward implementation of best management practices to reduce agricultural runoff and water pollution from agricultural operations. The types of practices commonly supported under this program include farm production area improvements to resolve water quality resource concerns such as Clean Water Diversions (e.g. capturing and diverting clean water from roofs and moving them away from farm nutrient and waste storage), Waste Storage Facilities (e.g. manure pits, woodchip barnyards), and Heavy Use Area(s) (e.g. concrete areas for high traffic and high impact areas that can more easily be scraped and managed).

The Agency invited public comments from July 17 through September 9, 2024, and held a hybrid public hearing with both in person and remote attendance options on August 29th in Montpelier, VT. While we shared information about the proposed rule and the associated public comment opportunity, the Agency did not receive any public comment. Efforts to encourage and facilitate public engagement included the following:

- Agriview article released in August 2024 issue outlining this rule revision process and the opportunity for public comment. Agriview is a print and online newspaper the Agency manages to share information with the agricultural community. This publication has roughly 4,800 online subscribers, and 4,280 print subscribers.
- Direct email outreach was shared with the following partner agencies and organizations – Agency of Natural Resources Department of Environmental Conservation, Champlain Valley Farmers Coalition, Farmers Watershed Alliance of Franklin and Grand Isle Counties, Connecticut River



Watershed Farmers Alliance, Friends of Northern Lake Champlain, Center for an Agricultural Economy, Vermont's 14 Conservation Districts, Vermont Association of Conservation Districts, Missisquoi River Basin Association, USDA NRCS, UVM Extension, Vermont Housing and Conservation Board, Northeast Organic Farming Association (NOFA), and all Technical Service Providers currently operating in Vermont. Some of these organizations chose to include information about the rule revision process and opportunity for public comment in their newsletters.

- Notice provided in the [Vermont Agricultural Water Quality Partnership \(VAWQP\)](#) monthly newsletter which has 369 subscribers, primarily staff and individuals who work within VAWQP organizations and agencies.

Since the end of the public comment period for the rules on September 9th, 2024, there have been a variety of minor changes to the proposed rule that are included in the final proposed filing. These changes are intended to improve the accuracy and formatting of language throughout the document and align certain sections with their statutory reference to ensure the rule is compatible with the requirements of 3 V.S.A. § 833. The changes to the updated and final proposed revised Best Management Practices rule are as follows:

- Section 1.3 –
 - References to enforcement authority were expanded to include 6 V.S.A Chapter 1 in addition to Chapter 215.
- Section 1.4 –
 - An interpretation of the rule was added to describe the intent of the rule.
- Section 2 –
 - Additions to definitions were included to cite the definitional source where definitions are derived from statute or rule for accuracy and clarity.
 - Definition of a “person” was added.
 - Definition of the “United States Department of Agriculture” was added.
 - Definition of “NRCS” was removed, because it was not used in the Rule.
- Language throughout the document was altered for accuracy, readability, and conciseness.
- Sections that repeated language used earlier in the document or language already established in law were removed.
- Sections 5 and 6 numbering was updated for accuracy.
- Section 7.3 was updated to include item (e), “A description of the cost of all requested BMPs and an analysis of whether each requested BMP will be practical and cost effective for the farmer(s) to implement...” to ensure a petitioner’s requests align with 6 V.S.A. § 4810(c).
- Section 8 was removed in entirety as this is written in law and considered duplicative to include in this proposed rule.

Thank you for the opportunity to testify regarding this proposed final rule. We appreciate your consideration and will be pleased to answer the Committee’s questions.

Laura DiPietro, Director – Water Quality Division
Steven Collier, General Counsel
Vermont Agency of Agriculture, Food and Markets



Enclosures:

1. Annotated Text – Final Proposed Rule
2. Clean Rule Text – Final Proposed Rule

Please note that a Responsiveness Summary was not included in the materials enclosed considering there were no public comments received.

BEST MANAGEMENT PRACTICE RULES

Effective Date: _____, 2024

SECTION 1: GENERAL

- 1.1 Purpose: It is a policy of the State of Vermont to assist farmers with the implementation of Best Management Practices that will protect and maintain water quality by reducing agricultural pollution. The implementation of Best Management Practices (BMPs) is subsequent to the implementation of Required Agricultural Practices.
- 1.2 Authorities: 6 V.S.A. Chapter 215 (Agricultural Water Quality), including §§ 4810, 4810a, 4811, 4813, 4815, 4820-4826, and 4991-4996.
- 1.3 Enforcement: The Secretary of the Vermont Agency of Agriculture, Food and Markets (VAAFMM) has the authority to enforce and/or solicit remedies for any violation of this Rule pursuant to 6 V.S.A. Chapter 1 and Chapter 215 §§ 4991 - 4996, and any other applicable Vermont law.
- 1.4 Interpretation: This Rule is created to meet the legislative intent in 6 V.S.A. § 4810(a) to create two distinct categories of land use regulations to meet the water quality requirements of 33 U.S.C. § 1329 for agricultural non-point source pollution. The Required Agricultural Practices (RAP) Rule is the first category of land use regulations which includes management standards applicable to all farms. This BMP Rule is the second category of land use regulations intended to exceed the management standards required by the RAP Rule that the Secretary mandates for a specific site as warranted. The two rules are intended to work together to create an effective framework. If the RAP Rule is amended, this Rule will be construed to align with pertinent changes and interpreted to form a congruent part of the broader comprehensive legal framework.

SECTION 2: DEFINITIONS

When indicated, the following definitions are derived from statute or rule. The definitional language that existed upon Rule adoption is repeated here for convenience, but all definitions that are defined by another statute or rule shall be automatically amended to conform to any statutory and/or rule amendments.

- 2.1 Agency means the Vermont Agency of Agriculture, Food and Markets.
- 2.2 Agricultural Nonpoint Source Waste means agricultural waste that reaches surface water or groundwater indirectly or in a diffuse manner as a result of farming.

- 2.3 Best Management Practices or (BMPs) mean site specific on-farm conservation practices implemented to address the potential for agricultural pollutants to enter the waters of the State.
- 2.4 Farmer means a person engaged in farming as defined by the Required Agricultural Practice Rule.
- 2.5 Farming has the same meaning as defined in the Required Agricultural Practices Rule, and means:
- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops; or
 - (b) the raising, feeding, or management of livestock, poultry, fish, or bees; or
 - (c) the operation of greenhouses; or
 - (d) the production of maple syrup; or
 - (e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or
 - (f) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or
 - (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.
 - (h) the importation of 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for the production of compost, provided that:
 - (i) the compost is principally used on the farm where it is produced; or
 - (ii) the compost is produced on a small farm that raises or manages poultry.
- 2.6 Good Standing has the same meaning as defined in 6 V.S.A. § 4802, and means the water quality program participant:
- (a) does not have an active enforcement violation that has reached a final order with the Secretary; and
 - (b) is in compliance with all terms of a current grant agreement or contract with the Agency.

- 2.7 Groundwater has the same meaning as defined in the Required Agricultural Practices Rule, and means water below the land surface in a zone of saturation, but does not include surface waters.
- 2.8 Person has the same meaning as defined in the Required Agricultural Practices Rule, and means:
- (a) an individual, partnership, corporation, association, unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership; or
 - (b) a municipality or state agency; or
 - (c) individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from agricultural management, including lessors and lessees.
- 2.9 RAPs means “Required Agricultural Practices” as defined in the Required Agricultural Practices Rule pursuant to 6 V.S.A. Chapter 215.
- 2.10 Secretary means the Secretary of the Vermont Agency of Agriculture, Food and Markets.
- 2.11 Surface Waters has the same meaning as defined in the Required Agricultural Practices Rule, and means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the State or any portion of it.
- 2.12 United States Department of Agriculture means the United States Department of Agriculture Natural Resources Conservation Service.
- 2.13 Waste or Agricultural Waste has the same meaning as defined in the Required Agricultural Practices Rule, and means material originating or emanating from a farm or imported onto a farm that is determined by the Secretary or the Secretary of Natural Resources to be harmful to the waters of the State, including: sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste, animal mortalities, compost, feed and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; untreated milkhouse waste; and any other farm waste as the term “waste” is defined in 10 V.S.A. § 1251(12)
- 2.14 Waters of the State has the same meaning as defined in the Required Agricultural Practices Rule, and means surface water and groundwater as applied.

SECTION 3: PRIORITIES FOR BMP IMPLEMENTATION

- 3.1 The Secretary shall develop BMP financial assistance awards that incorporate priorities established by the Secretary and 6 V.S.A. Chapter 215.

3.2 Exceptions

The Secretary may award financial assistance under this section for BMPs on a farm that otherwise would not receive assistance under the priorities established in this section when the Secretary determines a severe condition of agricultural pollution exists that requires immediate abatement.

SECTION 4: ELIGIBILITY FOR STATE ASSISTANCE

4.1 Vermont farmers that are in good standing with the Secretary on all grant agreements, contract awards, or enforcement proceedings at the time of the BMP grant agreement may be eligible to receive available State financial assistance with the installation of on-farm improvements designed to abate water quality risks from agricultural pollution, provided that:

(a) when farmers also seek federal financial assistance for this purpose, the improvements are eligible for federal assistance through programs of the United States Department of Agriculture; or

(b) when farmers decline to request or accept federal financial assistance for this purpose, the improvements:

(1) are determined by the Secretary to be equivalent to those eligible for federal assistance through programs of the United States Department of Agriculture; or

(2) are practices that meet the purpose of this rule and are not otherwise addressed within this Section but are determined eligible by the Secretary.

SECTION 5: STATE FINANCIAL ASSISTANCE AWARDS AND APPLICATION PROCESS

5.1 State financial assistance awarded under this Rule shall be in the form of a grant agreement.

5.2 State financial assistance awards shall follow the priorities established by the Secretary, 6 V.S.A. Chapter 215, and all pertinent laws and State policies.

5.3 Farmers who request funding under this program shall file an application on the Agency's designated form.

5.4 The Secretary may adopt a schedule for prioritizing project funding based on application filing dates. Any priority deadlines established by the Secretary will be noticed in advance.

- 5.5 Approval for any BMP that exclusively uses State funding shall not be final until a grant agreement is fully executed.
- 5.6 Applicants seeking federal assistance for a BMP are not guaranteed related State funding unless an executed State grant agreement exists.

SECTION 6: OPERATION AND MAINTENANCE REQUIREMENTS

- 6.1 BMP grant recipients shall ensure ongoing operation and maintenance of the BMP in accordance with the applicable operation and maintenance standards for the eligible practices listed in Section 4 of this Rule, for the design life of the practice.
- 6.2 BMP grant recipients shall be responsible for compliant operation and maintenance of all funded BMPs as described in the grant agreement.
- 6.3 Failure to operate and maintain any BMP as specified in the grant agreement, or any other violation of the grant agreement, may result in penalties including the obligation to repay all or a portion of the grant award.
- 6.4 Grant recipients are responsible for maintaining the water quality benefit supported by the grant agreement. Should the use of a BMP change or the operation and maintenance requirements change or cease so that the abated water quality concern resurfaces, the Agency may recover any and all State funds expended pursuant to the grant agreement.
- 6.5 Failure to properly operate and maintain any BMP may impact the grant recipient's eligibility for additional and/or future Agency funding.

SECTION 7: PROCESS FOR PETITIONING TO REQUIRE BASIN MANAGEMENT BMPs

7.1 General

A person with an interest in the agricultural nonpoint source pollution component of the basin planning process (in accordance with 6 V.S.A. § 4813), may petition the Secretary to request BMPs, and the Secretary may require BMPs beyond practices required in the RAPs on farms or in a specific basin to achieve compliance with the water quality goals in 10 V.S.A. § 1250 and any duly adopted basin plan.

7.2 Financial Assistance

- (a) If the Secretary requires a BMP to correct a water quality violation or achieve compliance with water quality standards in adjoining waters, the Secretary shall inform a farmer of the resources available to assist the farmer in implementing the

BMP and complying with 6 V.S.A. Chapter 215. The BMP shall be practical and cost effective to implement, as determined by the Secretary.

- (b) A State grant agreement may be offered to a farmer when the Secretary requires BMP implementation. Any such grant agreement shall be based on the estimated total cost to install the BMP, the various funding streams available from federal, state and other sources, and shall follow the percentage contribution limits established for the program, except that the Secretary may consider the farmer's ability to pay and determine that the farmer's contribution be less than the usual minimum amount required in a standard State grant agreement.

7.3 Content of Petitions to Request BMP(s)

Any petition to request a BMP shall be in writing and shall be served upon the Secretary as an original and three copies, and shall contain the following information unless the Secretary waives any such requirement in writing:

- (a) The name and complete mailing address of the farmer(s) whose actions allegedly violate water quality standards;
- (b) All evidence and documentation of the alleged water quality violation including a study conducted in accordance with the Environmental Protection Agency's quality assurance quality control program standards for the Clean Water Act and research or evaluative studies. The data must reasonably demonstrate that there is a correlation between the alleged water quality violation and the farmer(s) practices, including specific evidence of the source of the alleged water quality violation.
- (c) A description of the specific action(s) the petitioner requests, including applicable citations to the Rule and State law;
- (d) A detailed narrative of why the requested corrective action(s) is/are consistent with this Rule and reason(s) why the RAPs are believed to be insufficient to achieve the water quality goals in 10 V.S.A. § 1250 and any duly adopted basin plan;
- (e) A description of the cost of all requested BMPs and an analysis of whether each requested BMP will be practical and cost effective for the farmer(s) to implement; and
- (f) Copies of all documents that the petitioner may rely upon to support the petition.

7.4 Determination of Complete Petition Filing

After the initial filing of the petition the Secretary may determine that additional information is necessary. Within 30 days of receipt of the petition the Secretary shall notify the petitioner of any additional required information and notify the petitioner of persons who petitioner shall serve in accordance with Section 7.5 of these Rules. Upon

receipt of that additional information and proof of service from Section 7.5 of these Rules to the satisfaction of the Secretary, the petition shall be deemed filed with the Secretary, and the review and hearing process described in Section 7.6 begins.

7.5 Petition Distribution

The petitioner shall, at their own expense, certify to the Secretary by written affidavit that a complete copy of the petition and documentation has been served by first class mail upon:

- (a) each farmer subject to any request in the petition;
- (b) the Secretary of the Vermont Agency of Natural Resources; and
- (c) other persons the Secretary determines should be notified of the petition.

7.6 Review and Hearing Process

The Secretary shall schedule a public hearing in the community where the farm(s) subject to the petition is/are located within 60 days of the Secretary's determination that the petitioner filed and served a complete petition. The Secretary shall provide notice of the public hearing on the petition to all persons the petitioner was required to serve as well as to any other persons deemed appropriate. The Secretary shall also publish notice at the petitioner's expense of the petition and hearing in a local newspaper generally circulating in the area where the farm(s) is/are located at least 30 days before the public hearing. Such notice shall also invite written comments about the petition to be filed with the Secretary within 30 days after the hearing.

7.7 Notice of Decision

The Secretary shall issue a timely written decision. The decision shall set forth the facts and reasons supporting his or her decision. The Secretary shall provide copies of the decision to all persons served with the petition pursuant to Section 7.5.

7.8 Appeal

Any person engaged in farming who the Secretary requires to implement BMPs under this section or any person who petitioned the Secretary under this section may appeal the Secretary's decision to the Environmental Division de novo.

BEST MANAGEMENT PRACTICE RULES

Effective Date: ~~January 27, 1996~~ _____, 2024

SECTION 1: GENERAL

- 1.1 Purpose: It is a policy of the State of Vermont to assist farmers with the implementation of Best Management Practices that will protect and maintain water quality by reducing agricultural ~~nonpoint source~~ pollution. The implementation of Best Management Practices (BMPs) is subsequent to the implementation of Required ~~Accepted~~ Agricultural Practices.
- 1.2 Authorities: 6 V.S.A. Chapter 215 (Agricultural Water Quality), including §§ 4810, 4810a, 4811, 4813, 4815, 4820-4826, and 4991-4996., ~~Sections 4810, 4821, 4822, 4823, 4824~~
- 1.3 Enforcement: The Secretary of the Vermont Agency of Agriculture, Food and Markets (VAAFM) has the authority to enforce and/or solicit remedies for any violation of this Rule pursuant to 6 V.S.A. Chapter 1 and Chapter 215 §§ 4991 - 4996, and any other applicable Vermont law.
- 1.4 Interpretation: This Rule is created to meet the legislative intent in 6 V.S.A. § 4810(a) to create two distinct categories of land use regulations to meet the water quality requirements of 33 U.S.C. § 1329 for agricultural non-point source pollution. The Required Agricultural Practices (RAP) Rule is the first category of land use regulations which includes management standards applicable to all farms. This BMP Rule is the second category of land use regulations intended to exceed the management standards required by the RAP Rule that the Secretary mandates for a specific site as warranted. The two rules are intended to work together to create an effective framework. If the RAP Rule is amended, this Rule will be construed to align with pertinent changes and interpreted to form a congruent part of the broader comprehensive legal framework.

SECTION 2: DEFINITIONS

When indicated, the following definitions are derived from statute or rule. The definitional language that existed upon Rule adoption is repeated here for convenience, but all definitions that are defined by another statute or rule shall be automatically amended to conform to any statutory and/or rule amendments.

- 2.1 Agency means the Vermont Agency of Agriculture, Food and Markets.
~~AAPs means “Accepted Agricultural Practices” as defined in rule by the Secretary of Agriculture, Food and Markets pursuant to 6 V.S.A., Chapter 215.~~
- 2.2 Agricultural Nonpoint Source Waste means agricultural waste that reaches surface water or groundwater indirectly or in a diffuse manner as a result of farming. ~~means wastes that~~

~~reach the waters of the state via indirect discharge in a diffuse manner as a result of agricultural practices.~~

~~2.3 BMPs means “Best Management Practices.” Best mManagement pPractices or (BMPs) are mean site specific on-farm conservation practices implemented to address the potential for agricultural pollutants to enter the waters of the State. remedies implemented either voluntarily or as required in order to address water quality problems and in order to achieve compliance with state water quality standards.~~

~~2.4 Commissioner means the Commissioner of Agriculture, Food and Markets.~~

~~2.5 Department means the Department of Agriculture, Food and Markets.~~

~~2.64 Farmer means~~

~~(a) An agricultural producer eligible for federal agricultural conservation program or Public Law 83-566 cost share assistance or programs that succeed those programs; or~~

~~(b) A a person engaged in farming as defined by the Required-Accepted Agricultural Practice Rule.~~

~~2.5 Farming has the same meaning as defined in the Required Agricultural Practices Rule, and means:~~

~~(a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, viticultural, and orchard crops; or~~

~~(b) the raising, feeding, or management of livestock, poultry, fish, or bees; or~~

~~(c) the operation of greenhouses; or~~

~~(d) the production of maple syrup; or~~

~~(e) the on-site storage, preparation, and sale of agricultural products principally produced on the farm; or~~

~~(f) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or~~

~~(g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.~~

~~(h) the importation of 2,000 cubic yards per year or less of food residuals or food processing residuals onto a farm for the production of compost, provided that:~~

- (i) the compost is principally used on the farm where it is produced; or
- (ii) the compost is produced on a small farm that raises or manages poultry.

2.6 Good Standing has the same meaning as defined in 6 V.S.A. § 4802, and means the water quality program participant:

- (a) does not have an active enforcement violation that has reached a final order with the Secretary; and
- (b) is in compliance with all terms of a current grant agreement or contract with the Agency.

2.7 Groundwater has the same meaning as defined in the Required Agricultural Practices Rule, and means water below the land surface in a zone of saturation, but does not include surface waters.

2.7 FSA means the “Farm Service Agency” of the U.S. Department of Agriculture.

2.8 Person has the same meaning as defined in the Required Agricultural Practices Rule, and means:

- (a) an individual, partnership, corporation, association, unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership; or
- (b) a municipality or state agency; or
- (c) individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from agricultural management, including lessors and lessees.

~~2.8 NRCS means the “Natural Resources Conservation Service” of the U.S. Department of Agriculture.~~

2.9 RAPs means “Required Agricultural Practices” as defined in the Required Agricultural Practices Rule pursuant to 6 V.S.A. Chapter 215.

~~2.9 Secretary means the Secretary of the Vermont Agency of Natural Resources, or his or her designated representative.~~

2.10 Secretary means the Secretary of the Vermont Agency of Agriculture, Food and Markets.

~~2.10 Vermont Phosphorus Models means models developed by the Natural Resources Conservation Service to predict phosphorus loading to waters of the State from agricultural nonpoint sources.~~

- 2.11 Waters or Waters of the State Surface Waters has the same meaning as defined in the Required Agricultural Practices Rule, and means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through or border upon the State or any portion of it.
- 2.12 United States Department of Agriculture means the United States Department of Agriculture Natural Resources Conservation Service.
- 2.13 Waste or Agricultural Waste has the same meaning as defined in the Required Agricultural Practices Rule, and means material originating or emanating from a farm or imported onto a farm that is determined by the Secretary or the Secretary of Natural Resources to be harmful to the waters of the State, including: sediments; minerals, including heavy metals; plant nutrients; pesticides; organic wastes, including livestock waste, animal mortalities, compost, feed and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution; silage runoff; untreated milkhouse waste; and any other farm waste as the term “waste” is defined in 10 V.S.A. § 1251(12)
- 2.14 Waters of the State has the same meaning as defined in the Required Agricultural Practices Rule, and means surface water and groundwater as applied.

SECTION 3: ~~WATERSHED TREATMENT PRIORITIES FOR BMP~~VOLUNTARY IMPLEMENTATION OF BMPs

- 3.1 ~~State financial assistance available under this rule shall be allocated in each fiscal year according to the following priorities, except as provided by subsection 3.8.~~
- 3.2 ~~The boundaries of the Lake Champlain Basin and the Lake Memphremagog Basin are those defined by the state water quality plan prepared by the Vermont Agency of Natural Resources.~~
- 3.3 ~~First priority shall be given to funding BMP implementation on individual farms:~~
- ~~(a) in the Lake Champlain Basin or the Lake Memphremagog Basin; and~~
 - ~~(b) that cannot implement AAPs because of physical constraints on the farm; and~~
 - ~~(c) for which contracts or agreements for animal waste management systems have been approved by the NRCS or the FSA; and~~
 - ~~(d) in descending order of magnitude of their potential to load phosphorus to Waters of the State based on models such as the Vermont Phosphorus Models developed by the NRCS; or~~

~~(e) in descending order of magnitude of their potential to load agricultural nonpoint source wastes other than phosphorus to Waters of the State.~~

~~3.4 — Second priority shall be given to funding BMP implementation on individual farms:~~

~~(a) outside the Lake Champlain Basin or the Lake Memphremagog Basin; and~~

~~(b) that cannot implement AAPs because of physical constraints on the farm; and~~

~~(c) for which contracts or agreements for animal waste management systems have been approved by the NRCS or the FSA; and~~

~~(d) in descending order of magnitude of their potential to load agricultural nonpoint source wastes to Waters of the State.~~

~~3.5 — Third priority shall be given to funding BMP implementation on individual farms:~~

~~(a) located within the boundaries of the Lake Champlain Basin or the Lake Memphremagog Basin; and~~

~~(b) that wish to make improvements to control nonpoint source pollution on the farm; and~~

~~(c) for which contracts or agreements for animal waste management systems have been approved by the NRCS or the FSA; and~~

~~(d) in descending order of magnitude of their potential to load phosphorus to Waters of the State based on models such as the Vermont Phosphorus Models developed by the NRCS; or~~

~~(e) in descending order of magnitude of their potential to load agricultural nonpoint source wastes other than phosphorus to Waters of the State.~~

~~3.6 — Fourth priority shall be given to funding BMP implementation on all other individual farms:~~

~~(a) that are located outside the boundaries of the Lake Champlain Basin or the Lake Memphremagog Basin; and~~

~~(b) that wish to make improvements to control nonpoint source pollution on the farm; and~~

~~(c) for which contracts or agreements for animal waste management systems have been approved by the NRCS or the FSA; and~~

~~(d) in descending order of magnitude of their potential to load agricultural nonpoint source wastes other than phosphorus to Waters of the State.~~

~~3.7~~ Fifth priority shall be given to funding BMP implementation on other individual farms located anywhere in the state:

~~(a) for animal waste management systems which have not been approved for cost sharing by the NRCS or the FSA and where these animal waste management systems have been designed and certified by a professional engineer licensed in the State of Vermont to be equivalent to the performance standards contained in Sections 4.1 (a) or (b) of these rules; and~~

~~(b) in descending order of magnitude of their potential to load agricultural nonpoint source wastes other than phosphorus to Waters of the State.~~

3.1 The Secretary shall develop BMP financial assistance awards that incorporate priorities established by the Secretary and 6 V.S.A. Chapter 215.

3.28 Exceptions:

The ~~Secretary~~ Commissioner may award financial assistance under this section for BMPs on a farm that otherwise would not receive assistance under the priorities established in this section when the ~~Secretary~~ Commissioner determines a severe condition of agricultural pollution nonpoint source waste discharge exists that requires immediate abatement. ~~Financial assistance will be awarded only if the farmer has not been notified in writing by either the state or the federal government that a specific practice must be performed to avoid enforcement actions being taken against the farmer.~~

SECTION 4: ELIGIBILITY FOR STATE ASSISTANCE~~**BMPS ELIGIBLE FOR COST SHARING**~~

~~4.1~~ BMPs shall be eligible for cost sharing provided that they meet one of the following:

~~(a) are components of the following BMP Systems contained in the NRCS's National Handbook of Conservation Practices that are eligible for cost share funding including, but not limited to: permanent vegetative cover; animal waste management; stripcropping; terraces; diversions; pasture and hayland management; waterways; cropland protection; conservation tillage; stream protection; permanent vegetative cover on critical areas; sediment retention, erosion or water control structures; tree planting; nutrient management; or conservation cropping; or~~

~~(b) are the FSA Agricultural Conservation Program eligible practices that are defined in the FSA's handbook "1 ACP (Rev. 3) Amend. 3" or as subsequently amended; or~~

~~(c) are integrated crop management systems designed to achieve the source reduction of nonpoint source agricultural wastes that are developed by certified crop advisors or~~

other agricultural professionals such as, but not limited to, the University Extension Specialists; and

~~(d) are consistent with a “nutrient management plan” prepared by the Vermont field office of the NRCS, or with an animal waste management plan based on standards equivalent to those of the NRCS.~~

4.1 Vermont farmers that are in good standing with the Secretary on all grant agreements, contract awards, or enforcement proceedings at the time of the BMP grant agreement shall may be eligible to receive available State financial assistance with the installation of on-farm improvements designed to abate water quality risks from agricultural pollution, provided that:

(a) when farmers also seek federal financial assistance for this purpose, the improvements are eligible for federal assistance through programs of the United States Department of Agriculture; or

(b) when farmers decline to request or accept federal financial assistance for this purpose, the improvements:

(1) are determined by the Secretary to be equivalent to those eligible for federal assistance through programs of the United States Department of Agriculture; or

(2) are practices that meet the purpose of this rule and are not otherwise addressed within this Section but are determined eligible by the Secretary.

SECTION 5: STATE FINANCIAL ASSISTANCE AWARDS AND APPLICATION PROCESS

5.1 ~~State financial assistance awarded under this Rule section shall be in the form of a grant agreement. When a state grant is intended to match federal financial assistance for the same on-farm improvement project, the state grant shall be awarded only when the available federal financial assistance has also been approved or awarded and where the applicant has agreed to accept the maximum federal financial assistance available. An applicant for a state grant shall pay at least 15 percent of the total eligible project cost. The dollar amount of a state grant shall be equal to the total eligible project cost, less 15 percent of the total as paid by the applicant, and less the amount of any federal assistance awarded or awards from other sources, except that a state grant shall not exceed 35 percent of the total eligible project cost where federal funds will be matched with the state grant. When there will be no federal funds to match the state grant, the state grant shall not exceed 50 percent of the total eligible project cost.~~

5.2 State financial assistance awards shall follow the priorities established by the Secretary, 6 V.S.A. Chapter 215 and all pertinent laws and State policies. Applications shall be

considered by the Commissioner on the basis of the watershed treatment priorities established in Section 3 of these rules.

5.3 Farmers who request seeking funding under this program shall file an application on the Agency's designated form provided by the Agency. the following information:

(a) ~~For those farmers who also seek federal financial assistance for this purpose:~~

(1) ~~a photocopy of the completed USDA form or forms for BMP cost share assistance; and~~

(2) ~~the department's BMP Grant Application Form 1.~~

(b) ~~For those farmers who decline federal financial assistance for implementation of BMPs:~~

(1) ~~the department's BMP Grant Application Form 2.~~

~~5.4 The BMP Grant Application Form 1 shall contain the following information: FSA farm number, farmer name, location, statement of need. The BMP Grant Application Form 2 shall contain the following information: farm number, farmer name, location, description of the practice according to the standards set out in Section 4.1 (e) of these rules, statement of need, estimated practice cost, cost share amount requested, and expected construction date.~~

~~5.5 Applications that are filed on or before October 1 of each year shall be given priority for funding in the next calendar year pursuant to the priorities contained in Section 3 of these rules.~~

~~5.6 Approval for State cost sharing for BMPs under these rules shall be obtained prior to commencement of construction of the BMP for which cost sharing is requested, except that between the effective date of these rules and March 30, 1996, the Commissioner may award grants according to the priorities established in Section 3 for eligible BMPs on which construction was started on or after April 26, 1995.~~

5.4 The Secretary may adopt a schedule for prioritizing project funding based on application filing dates. Any priority deadlines established by the Secretary will be noticed in advance.

5.5 Approval for any BMP that exclusively uses State funding shall not be final until a grant agreement is fully executed.

5.6 Applicants seeking federal assistance for a BMP are not guaranteed related State funding unless an executed State grant agreement exists.

SECTION 6: OPERATION AND MAINTENANCE REQUIREMENTS ~~CONTRACTS~~

- 6.1 ~~Awards of funding for BMP implementation shall require that the BMP be operated and maintained under contract or agreement for the design life of the practice under contract or agreement, but not to exceed 10 years. BMP recipients shall ensure ongoing operation and maintenance of the BMP in accordance with the applicable operation and maintenance standards for the eligible practices listed in Section 4 of this Rule, for the design life of the practice.~~
- 6.2 ~~Contracts for state grants awarded to an applicant shall be awarded in accordance with a state contract containing terms substantially the same as those required for receipt of a federal award for the same purpose from the U.S. Department of Agriculture.~~
- 6.3 ~~The contract will include provisions relating to Departmental oversight of the BMP's construction, certification of its construction as designed, and compliance monitoring of its operation. In cases where the federal government has also cost shared the BMP, the contract will establish responsibility of the involved agencies for these activities.~~
- 6.2 BMP grant recipients shall be responsible for compliant operation and maintenance of all funded BMPs as described in the grant agreement.
- 6.4.3 Failure to operate and maintain the any BMP as specified in the grant agreement, or any other violation of the grant agreement, may contract will expose the recipient to state result in penalties including the obligation to repay the value of the grant remaining at such time as the Commissioner determines that the contract has been violated. all or a portion of the grant award.
- 6.4 Grant recipients are responsible for ~~preserving~~ maintaining the water quality benefit supported by the grant agreement. Should the use of a BMP change or the operation and maintenance requirements change or cease ~~fail to be continued and maintained~~ so that the abated water quality concern resurfaces, the Agency may recover any and all State funds expended pursuant to the grant agreement.
- 6.5 Operation and maintenance of a BMP system for the term of the contract shall be the responsibility of the BMP grant recipient. Failure to properly operate and maintain any BMP may impact the grant recipient's eligibility for additional and/or future Agency funding.

SECTION 7: PROCESS FOR PETITIONING TO REQUIRE BASIN MANAGEMENT BMPs

7.1 General

~~The Commissioner, upon receipt of a petition from a A person with an interest in the agricultural nonpoint source pollution component of the basin planning process (in~~

accordance with 6 V.S.A. § 4813), may petition the Secretary to request BMPs, and the Secretary, or on his or her own motion, shall determine whether to may require BMPs beyond practices required in the RAPs-AAPs on farms or in a specific basin in order to achieve compliance with the water quality goals in 10 V.S.A. § 1250Section 1250 of Title 10 and any duly adopted basin plan.

7.2 ~~Sufficient~~ Financial Assistance

- (a) If the Secretary requires a BMP to correct a water quality violation or achieve compliance with water quality standards in adjoining waters, the Secretary shall inform a farmer of the resources available to assist the farmer in implementing the BMP and complying with 6 V.S.A. Chapter 215. The BMP shall be practical and cost effective to implement, as determined by the Secretary.
- (b) A State grant agreement may be offered to a farmer when the Secretary requires BMP implementation. Any such grant agreement shall be based on the estimated total cost to install the BMP, the various funding streams available from federal, state and other sources, and shall follow the percentage contribution limits established for the program, except that the Secretary may consider the farmer's ability to pay and determine that the farmer's contribution be less than the usual minimum amount required in a standard State grant agreement.

~~If at any time implementation of a BMP is required by the Commissioner in order to correct a water quality violation or to achieve compliance with water quality standards in adjoining reaches of waters, receipt by a farmer of a grant of 85 percent of the total cost of a BMP's design, construction and the auxiliary equipment necessary to operate the system(s) from federal, state, or other sources shall be considered by the Commissioner to constitute sufficient financial assistance as required by 6 V.S.A. Section 4810. The Commissioner may consider the farmer's ability to pay and determine that a contribution of less than 15 percent of the total BMP cost by the farmer is allowed in some circumstances.~~

7.3 Content of Petitions to Request BMP(s)

Any petition to request a BMP shall be in writing and shall be served upon the Secretary as an original and three copies, and shall contain the following information unless the Secretary waives any such requirement in writing: by the Commissioner:

- a) The name and complete mailing address of the farmer(s) whose actions allegedly violate water quality standards;
- b) All evidence and dDocumentation of the alleged water quality violation including a study conducted in accordance with the Environmental Protection Agency's quality assurance quality control program standards for the Clean Water Act and research or evaluative studies. The data must reasonably demonstrate that there is a correlation

between the alleged water quality violation and the farmer(s) practices-, including specific evidence of the source of the alleged water quality violation.

- c) A description of the specific action(s) sought by the petitioner requests, including applicable citations to the Rule citing the application provisions of these rules and State law;
- d) A detailed narrative of why the requested corrective action(s) is/are sought by the petitioner is consistent with this Rule, these rules including a and reason(s) why the RAPs are believed to be discussion of which AAP(s) is insufficient to achieve the water quality goals in 10 V.S.A. § 1250 and any duly adopted basin plan and treatment; and
- e) A description of the cost of all requested BMPs and an analysis of whether each requested BMP will be practical and cost effective for the farmer(s) to implement; and
- f) Copies of all documents that the petitioner may intends to rely upon to in support of the petition.

7.4 Determination of Complete Petition Filing

~~Upon~~ After the initial filing of the petition the ~~Secretary~~Commissioner may determine that additional information is necessary. Within ~~30~~15 days of receipt of the petition the ~~Secretary~~Commissioner shall notify the petitioner of any additional the required information and. ~~At the same time, the Commissioner shall notify the petitioner of persons who petitioner shall serve in accordance with receive the petition as provided by Section 7.5 (d) of these Rrules. Upon receipt of that additional information and proof of service from Section 7.5(d) of these Rules to the satisfaction of the Secretary, the petition shall be deemed to be complete filed with the Secretary, and the review and hearing process described as contained in subSection 7.6 begins shall start.~~

7.5 Petition Distribution

The petitioner shall, at their own expense, in addition to filing and original and three (3) copies with the Commissioner, certify to the Secretary by written affidavit that a complete copy of the petition and documentation has been filed-served by first class mail with upon:

- (a) ~~the each~~ farmer(s) who are the subject to any request in of the petition;
- (b) the Secretary of the Vermont Agency of Natural Resources; and
- (c) ~~the water resources board; and~~

~~(c)(d)~~ other persons the Secretary determines should be notified of the petition as the Commissioner deems appropriate.

7.6 Review and Hearing Process

~~(1)~~ The ~~Secretary~~Commissioner shall schedule a public hearing in the community where the farm(s) subject to the petition is/are located within 60 days of the Secretary's determination that the petitioner filed and served a complete petition receipt of complete petition. The ~~Secretary~~Commissioner shall provide notice of the ~~petition and the public hearing on the petition~~ to all persons the petitioner was required to be served by Section 7.3 as well as to such any other persons as he or she deems deemed appropriate. The ~~Secretary~~Commissioner shall also publish notice at the petitioner's expense of the petition and hearing in a local newspaper generally circulating in the area where the farm(s) is/are located not less than at least 30 days before the public hearing. Such notice shall also invite written comments about the petition to be filed with the Secretary within 30 days after the hearing provide not less than 30 days in which to file written comments on the petition.

~~(2)~~ The ~~Commissioner~~ shall hold a public hearing in the community in which the farm which is the subject of the petition is located within 60 days of the filing of the petition.

7.7 Notice of Decision

The ~~Secretary~~Commissioner shall ~~make all practical efforts to issue a timely written decision, in a timely manner.~~ The decision shall set forth the facts and reasons supporting his or her decision. The ~~Secretary~~Commissioner shall provide copies of the decision to all persons served with the petition pursuant to Section 7.5, entitled to receive notice under subsections (5) and (6) above.

7.8 Appeal

Any person engaged in farming who ~~has been required by the Secretary~~Commissioner requires to implement best management practices BMPs under this section or any person who has petitioned the ~~Secretary~~Commissioner under this section may appeal the ~~Secretary's~~Commissioner's decision to the Environmental Division ~~water resources board~~ de novo.

SECTION 8: PHOSPHORUS LOADING REDUCTION CREDITING

~~8.1~~ — The department's 1995 Vermont Dairy BMP Survey shall create the baseline data for determining phosphorus reduction credits for discontinuing winter spreading of manure with the Lake Champlain Basin.

~~8.2 — The following practices shall be used to determine environmental credits for phosphorus reduction measured at the edge of the field following BMP implementation as part of a lake phosphorus allocation process:~~

- ~~(a) Milk house waste treatment is the storage of the waste in an animal waste treatment system, treatment through a filter strip or other system designed and constructed for such treatment.~~
- ~~(b) Waste utilization is a planned system to manage liquid and solid wastes, including runoff from concentrated waste areas, with ultimate disposal in a manner that does not degrade soil or water resources.~~
- ~~(c) Barnyard runoff treatment is a system to collect, control, and treat agricultural wastes from barnyards, feedlots, and other outdoor livestock concentration areas for disposal in a non-polluting manner. Its purpose is to properly manage runoff from barnyards and related areas to minimize degradation of water quality and to conserve nutrients for use in crop production.~~
- ~~(d) Erosion control is a system to reduce soil erosion and water pollution on sloping cropland to reduce overland transport of pollutants.~~
- ~~(e) Grazing management is the exclusion of livestock from waters of the state other than from planned watering points.~~
- ~~(f) Nutrient management is handling the amount, placement and timing of plant nutrient application including a prohibition on winter spreading and is intended to supply adequate plant nutrients for crop production and plant growth; to minimize entry of nutrients and pathogens to surface and ground water; and to maintain or improve the chemical and biological conditions of the soils.~~
- ~~(g) A one-time phosphorus credit, because of a prohibition on winter spreading of animal manures (between December 15 and April 1) as required by the AAPs, shall be calculated at 0.15 pounds of phosphorus per animal unit for all farms identified as winter spreading in the department's 1995 Vermont Dairy BMP Survey.~~

~~8.3 — The numerical values and the basis for determining phosphorus reduction credits for practices identified in subsection 8.2 of these rules will be contained in a procedure adopted and periodically revised, as necessary, by the Commissioner in consultation with the Secretary. The credits shall be used to show progress towards attaining compliance with the phosphorus allocation plan necessary to meet in-lake standards for phosphorus within the Lake Champlain Basin.~~

SECTION 9: REPORTS

9.1 — ~~Annually by January 15 of each year, the Commissioner shall report to the general assembly regarding activities in support of the objectives of this rule, including use of state, federal and private funds:~~

- ~~(1) undertaken during the preceding fiscal year;~~
- ~~(2) in progress during the current fiscal year;~~
- ~~(3) projected for the following fiscal year; and~~
- ~~(4) remaining to be undertaken after the following fiscal year.~~

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