VERMONT
Agency of Agriculture Food & Markets

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Representative Patsy French, Chair
Legislative Committee on Administrative Rules

October 31, 2016

Dear Representative French,

At the October 20, 2016 meeting, LCAR suggested that the Agency meet with and respond to the concerns expressed by those providing comments to LCAR. On October 26, 2016 the Agency held a meeting to which it invited all persons and organizations that provided oral or written comments to LCAR. Please see attached invitation. At the meeting, I presented the Agency's rationale for the RAPs, and Agency staff also listened and responded to the comments of those present.

The Agency has prepared a document to provide further information to LCAR. It is attached, and it is structured based upon the written comments commissioned by the Vermont Dairy Producers Alliance and provided to LCAR on October 11, 2016, which were the most detailed of the written comments submitted to LCAR.

After consideration of the comments received by LCAR and by the Agency at the October 26, 2016 meeting, the Agency submits germane changes to the Final Proposed Rule in accordance with 3 V.S.A. § 843. The changes are:

1. Section 2.13 - Revision of the definition of "ditch."

2. Section 2.34 - Clarification of what constitutes an open drain or surface inlet.

3. Section 8(e) - Amendment of language to change "agricultural contaminant" to "waste".

4. Section 11 – Amendment of language to change "agricultural pollutants" to "agricultural wastes".

Also, please find attached a memo from the Agency to Legislative Council, which addresses questions regarding farm size and the applicability of the rule.

Thank you for your consideration.

Sincerely,

Chuck Ross
Secretary of Agriculture, Food and Markets

The State of Vermont is an Equal Opportunity / Affirmative Action Employer and Provider

To: LCAR

From: Agency of Agriculture, Food and Markets

Date: October 27, 2016

Re: Comments received by LCAR and by the Agency at the October 26, 2016 meeting

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Comment 1

RAPs Should Be Focused on Environmental Benefit & Eliminate Restrictions that Are Inconsistent with Act 64's Directive.

The Agency's approach in the rule is to balance the requirements of the rule with the potential water quality benefit realized while recognizing the unique characteristics of a diverse agricultural community. Comments provided to the Agency over the last year were clear in stating that "one size does not fit all." The rule as written, applies to over 7,000 farms. The small farm certification requirements are estimated to apply to approximately 1,200 farms. The 50-acre threshold that will trigger certification will capture 93% of all corn grown for silage. In addition, it is estimated that 50 vegetable farms will be required to certify representing 2,500 acres of the total estimated 3,699 acres of vegetable production in the state. Total vegetable production acres represent less than 1% of the total harvested cropland in Vermont. Farm operations below the 50-acre threshold will still be required to follow the RAPs as applicable. Standards for annual cropland in the final proposed rule will require that vegetable and small grain cropland meet the requirements for extended buffers on greater than 10% sloped fields and manure application restrictions on frequently flooded fields.

The Agency believes that the appropriate balance has been struck given the potential impacts to water quality from these types of farms. The rationale for the approach taken in defining the applicability of the rule is explained in the Responsiveness Summary. The Agency firmly believes that the rule is consistent with the intent of Chapter 215 of Title 6.

Please refer to page 9 of the Responsiveness Summary for the Agency's detailed response related to RAP Section 2.03 Annual Cropland definition and the Agency's reasoning for this definition.

Comment 1.a

Use of the USDA Soil Survey Flooding Frequency Class to Restrict Planting and Harvesting Timelines is Overly Inclusive, Will Result in Economic Harm and it Imposes Unnecessary Restrictions (Section 6.04)

The USDA Soil Survey data layer referenced was placed in the rule in response to the farming community's comments regarding the vagueness of language previously used in the

draft rule. This soils layer offers farmers and their planners an opportunity to identify those fields that will be required to be managed to a higher standard. The layer also offers farmers and their planners the opportunity to identify those fields that are mapped as frequently flooded but that do not actually flood.

The farming community commented through the public comment process that some baseline standard that would trigger cover crop and manure application restrictions was required to provide clarity. The Agency responded, and believes that this map layer provides that baseline standard. In addition, the Agency has provided the opportunity for farmers to seek exemptions from this requirement, see Section 6.06(b). Thus, the Agency has provided both clarity and flexibility.

If the Agency were to follow the recommendation to use the Flood Hazard Area map layer as determined by the Agency of Natural Resources, the Agency would be forced to consider field management restrictions within the entirety of the 100-year floodplain which would vastly increase the number of acres subject to cover crop requirements and manure application restrictions.

Ease of access to information was also a consideration. The USDA data is available digitally while the flood hazard area mapping has not been completed digitally.

The Agency has chosen the USDA Soil Survey data layer in order to appropriately strike the balance between "eliminating adverse impacts to water quality" and being "practical and cost effective to implement."

Please refer to pages 39 through 42 of the Responsiveness Summary for the Agency's detailed response related to RAP Section 6.04.

Comment 1.b

Requirement to Leave 30% Crop Residue Will Result in Economic Harm and No Recognized Environmental Benefit (Section 6.04)

The interpretation that the 30% crop residue requirement will result in a 1/3 loss of crop and that farmers will be prohibited from harvesting after October 15th is incorrect. The 30% residue requirement can be met with leaving stubble and other post-harvest residues. Harvesting may continue after October 15th provided adequate crop residues remain to hold the soil in place where, and when, cover crops cannot be established. The reason for this requirement is to enhance soil retention in areas subject to regular flooding either through crop residue management or cover crop establishment.

The 30% requirement provides flexibility and an alternative to the October 15th cover crop requirement. The scientific basis for leaving residue cover or establishing cover crops in areas that flood has been well established for many years. If harvesting an annual crop after October 15th, the standard is that there must be 30% surface coverage in the field which must consist of rooted plant that was at one point in time living. In providing guidance on this

standard, the Agency believes that corn stubble and chaff is satisfactory from the harvesting of corn for snaplage or high moisture ear corn, as this would likely meet the standard. If the corn is harvested and it is found that significant weed pressure exists in the understory, this would also meet the standard. The commenter has concluded a result of economic harm where there is none.

Please refer to the pages 39 through 42 of the Responsiveness Summary for the Agency's detailed response related to RAP rule Section 6.04.

Comment 1.c

Manure and Waste Application Standards and Restrictions Are More Restrictive and Offer Less Flexibility than Similar Restrictions in Other States

The Agency does not believe that other states' standards relative to manure application are germane to the review of the RAPs. The Agency has sought to provide the opportunity for alternative management techniques for farms that believe the restrictions cited in Section 6.05(f) would be inappropriate for their specific situations. The process and procedure for submitting and reviewing alternative plans will be established as part of the rule's implementation and will be widely shared with the effected farming community. The Agency has been sensitive to and responsive to the concept that "one size does not fit all" while promulgating the RAPs.

Please refer to pages 48 through 49 of the Responsiveness Summary for the Agency's detailed responses related to RAP Section 6.05(f).

Comment 2

Farmers Need Regulatory Clarity and Certainty in Order to Effectively Implement the RAPs

The Agency believes that the rule, as written, provides appropriate clarity. The Agency will perform substantial education and outreach to further explain the requirements of the rule during the implementation stage. This is an important function that the Agency typically performs when it implements a rule.

It has been suggested that many terms in the rule have not been defined or have been defined poorly such as "ditch," "discharge," "emission," and others. Several of these terms such as "emission," "detectable," "prevent," and "eliminate" have commonly understood meanings and therefore the Agency has not defined them in the rule.

<u>As for the term "agricultural contaminants" the Agency proposes to amend the rule to change this term to "wastes" when used in the rule.</u>

Comment 2.a

Farms in Compliance with the RAPs Should, By Definition, Be Presumed to Not Have a Discharge of "Agricultural Pollutants" or "Agricultural Wastes" to Waters of the State

This presumption is correct. The Agency believes that the language found in 6 V.S.A. § 4810(b) is clear and unambiguous. It is the same language used in the rule.

Comment 2.b

The Term "Discharge" Must Be Better Defined and Used Consistently Throughout the RAPs

The term "discharge" is defined by statute in 10 V.S.A. § 1251. The Agency utilizes terms as defined in statute for consistency. The definition of discharge has been in place in the Accepted Agricultural Practices Rules since 1995. The Agency has been engaged in compliance activities related to "discharges" since the inception of the Agricultural non-point source pollution control program and believes that the term is well understood in practice. Farms in Vermont have been prohibited from creating discharges to surface waters or groundwater since 1995. The Agency has used the term consistently throughout the RAPs.

Commenters' assumptions regarding precipitation driven events fail to account for the full scope of language within the enabling legislation. If a farm is operating consistent with the requirements of the RAPs there is a presumption of no discharge from such events.

Comment 2.c

Farms That Are in "Full Compliance" with the RAPs May Be Subject to Even More Oversight if the State Thinks There Is a "Potential" for Agricultural Pollutants to Enter the Waters of the State

The language used in Section 11 of the RAPs mirrors the language found in 6 V.S.A. § 4810(b). These statutory citations clearly state the Agency's charge to "to address the potential for agricultural pollutants to enter the waters of the state." Section 11 of the rule simply states existing Agency authority to require Best Management Practices where RAPs are not adequate to "address the potential for agricultural pollutants to enter waters of the state." See 6 V.S.A. § 4810(b) and (c).

Please refer to pages 64 through 65 of the Responsiveness Summary for the Agency's detailed response.

Comment 2.d

The RAPs Do Not Include the Concept of "Background Concentrations" and, Instead, Ask Farmers to Rely on Agency Discretion When Evaluating Groundwater Quality Impacts

The Agency considered this comment and provided a response as part of the formal rulemaking process. The Agency's response, found on pages 60 through 61 of its Responsiveness Summary, is as follows:

The language in Section 8(a) has been in the current rule since 2006. The current draft of the Required Agricultural Practices Rules is not proposing any significant changes from the existing rule (AAP). The Agency, through investigations and groundwater monitoring efforts, utilizes the current groundwater quality standards as established in Appendix One of the Groundwater Protection Rule and Strategy pursuant to 10 Vermont Statutes Annotated Chapter 48. Through monitoring and the use of established standards and protocols the Agency is able to determine when specific agricultural activities are impacting groundwater. Background levels of common agricultural contaminants such as nitrates are well documented throughout the state and do not approach regulatory standards established for the protection of drinking water. The Agency's experience, investigation protocols and data collection over the past 30 years of groundwater monitoring has established a clear record of being able to discern the differences between existing levels of contaminants and levels that may be influenced by agricultural activities. The Agency uses its discretion in responding to cases of agricultural impacts to groundwater and the resolution of those impacts through technical assistance, management changes and, if appropriate, enforcement. The range of approaches the Agency may take is clearly demonstrated throughout Section 8.

Comment 3

The RAPs' Lack of Flexibility is Impractical and Overly Burdensome Without Necessarily Providing Environmental Benefit

The Agency has sought to balance the needs of "clarity and certainty" with the need for "flexibility" throughout the rule. Upon considering the comments, the Agency believes that the commenters' real concern is not with the concept of alternative approaches (flexibility) but with the lack of processes spelled out in the rule to approve such alternatives. In other words, the concern seems to be about how the rule will be implemented.

The Agency firmly believes that the development of processes for the implementation of the rule where alternatives will be considered is best accomplished through a procedure and not within a rule. As conditions change, alternative approaches may change. In deference to the "once size does not fit all" concept, alternatives should be able to be considered that are as unique as the farm requesting them. The Agency envisions these alternative approaches to be part of the overall nutrient management planning process currently required of all MFO and LFO farms.

Once the rule is finalized, the Agency can begin to develop processes and procedures, with the assistance and input of the agricultural community, to provide clear paths to management alternatives.

Comment 3.a

Blanket Calendar Prohibitions for Planting, Harvesting, and Manure Applications Are Impractical and Could Do More Harm Than Good

Calendar dates for manure application prohibitions and cover cropping requirements have been established to provide the regulated community with clarity and certainty. Calendar dates for manure application have been in place since 1995. In addition, there exists a process, clearly described in the rule, to obtain seasonal exemptions to manure application prohibitions. This concept was included in the rule at the request of the agricultural community and codified in law through Act 64 (6 V.S.A. § 4816). The Agency has attempted to line up cover crop dates with existing calendar requirements established by USDA so that requirements for cover cropping cost share programs would not be impacted by the rule. The rule contains no restrictions relative to planting or harvesting. The only calendar restrictions exist for manure application and cover crop seeding dates. Should cover crop establishment not be possible by the dates established in the rule due to weather or soil conditions a farm may request alternative dates or leave the 30% crop residue. These two options have been included in the rule to provide flexibility to the date-based restrictions. The process for granting or denying these types of requests will be developed with the assistance and input of the agricultural community once the rule has been promulgated.

Act 64 Does Not Limit the Availability of Site-Specific Alternatives to Circumstances Involving "Unusual Soil or Weather Conditions" (However That is Defined)

The reference in the rule to unusual soil or weather conditions, that the commenters critique, is specific to providing alternative planting dates for cover crops. The Agency believes that the farm is best suited to make the case that cover crops could not be established due to unusual soil or weather conditions. In requesting alternative planting dates, the farm bears the burden to make the case that unusual conditions exist or existed that prevent planting by the dates established in the rule. This provides the farm with more flexibility.

Section 6.06(b) Addresses Seasonal Exemptions to Manure Spreading…A Farm Must Provide Considerable Information for an Exemption Request Submittal Especially Given That a Time Critical Issue Likely Necessitated the Request

The seasonal exemption request is envisioned by the Agency to be part of the overall nutrient management planning process and thus, not time sensitive. Seasonal exemptions should be requested well in advance of their need as part of the planning process. The opportunity exists within the rule, as it always has, to obtain an emergency exemption for those times when weather, operational emergencies, or other circumstances require an operator to apply manure outside of the prohibition dates. The process for requesting emergency exemptions has been in place for many years. The Agency generally responds to these requests within 48 hours.

Please refer to pages 50 through 51 of the Responsiveness Summary for the Agency's detailed response.

Comment 3.b

The RAPs Must Include an Approval Process for Alternative Techniques, Practices, and Timelines

The Agency believes that the agricultural community is best served by providing the flexibility to demonstrate that alternative techniques, practices, and timelines will meet the requirement to reduce adverse impacts to water quality. Prescriptively delineating a process in a rule will not provide the agricultural community with the needed management flexibility. An application, review, and approval process will be developed by the Agency, in consultation with the agricultural community, once the rule is promulgated.

The Agency Should Consider Allowing Farmers to Identify Fields in the Farm's NMP That Would Be Used for Winter Spreading if Necessary

The rule clearly spells out the requirements for obtaining a seasonal manure spreading exemption in Section 6.06(b).

The VAAFM's Response to Comments Document Specifically Concludes that the Policy by Which the Secretary Reviews and Makes Determinations Regarding Manure Spreading and Stacking Variances "Should Not Be Included in the Rule" But the Agency Would Provide "Appropriate Technical Assistance to Farmers Are Required." This Approach Fails to Meet the Requirement Identified in Act 64 That Requires VAAFM to Allow for Alternative Techniques or Practices When Site-Specific Conditions Dictate

The enabling legislation states "[a]llow for alternative techniques or practices, approved by the Secretary, for compliance by an owner or operator of a farm when the owner or operator cannot comply with the requirement of the Required Agricultural Practices due to site specific conditions." 6 V.S.A. § 4810a(a)(11). The review and approval process will not begin until it has been determined that a farm is unable to comply with the RAPs due to site-specific conditions. This is typically an outcome of technical assistance visits or inspections and is farm specific. The enabling legislation does not require a blanket approval process but rather provides the Agency the authority and discretion to allow alternatives on a case-by-case basis.

Comment 4 and 4.a

Inconsistent Use and Undefined Terminology Creates Ambiguity Within the RAPs

What is a "Ditch"?

The Term Ditch as Used in Section 2.05 [sic] Defining Buffers Zones and in Section 7 (Livestock Exclusion) is Confusing

The Definition of a Ditch Does Not Clearly Define What Features Constitute Surface Inlets or Open Drains [sic]

NRCS Has Long Standing Conservation Practices Standards for Ditch-Related Features; the Definition of Ditch in Section 2.12 [sic] Makes None of These Distinctions

The Definition of Ditch Could Conceivably Incorporate Almost Any Landscape Feature That, At Any Point in Time, Conveys Some Water on a Property to Another Location

The Agency has considered these comments and has proposed a new definition of a "ditch".

The use of the term "ditch" in Section 2.06 (definition of a buffer zone) is meant to establish how the term buffer zone is used within the rule.

The use of the term in Section 7 clearly establishes standards for livestock exclusion relative to ditches and is not a buffer zone. The language in Section 7(c)(2) states that livestock shall not have access to surface water in production areas or immediately adjacent to production areas, except "…in areas prescribed by a rotational grazing plan consistent with NRCS standards or an equivalent standard, and approved by the Secretary. Approved grazing plan areas shall maintain at least an average of three inches of vegetative growth within 25 feet of the top of bank of surface water, and within 10 feet of the top of bank of ditches."

The distinction between a "surface water" and a "ditch" is clear as used in the rule. Surface inlets or open drains are collection points for field runoff water drainage. The Agency has considered comments as to what are "surface inlets" and "open drains", and has proposed a definition in the rule.

The NRCS practice standards, while helpful as a technical assistance guide, do not meet the needs of the rule whereby all ditches are required to maintain a 10-foot vegetated buffer.

The Agency will propose additional language in the definition of "ditch" for the sake of clarity.

Comment 4.b

Agricultural Contaminant vs. Agricultural Pollutant

The use of "agricultural pollutant" is directly from statutory language, see 6 V.S.A. § 4810(b), within the enabling legislation and is used in the rule in Section 1, where the introductory section where the Agency's general authority is stated, and in Section 11, where the authority to require Best Management Practices is stated. As stated in the Responsiveness Summary, "agricultural contaminant" has the same meaning as "wastes" or "agricultural wastes" as defined in the rule.

To provide further clarity the Agency proposes to change the term "agricultural contaminant" to "wastes'" in Section 8(e) of the rule and replace "pollutant" with "wastes" in Section 11 of the rule.

Other Comments

Soil Health Practices Can Only Be Recommendations by Law but Are Requirements Within the Rule

The enabling legislation requires the Agency to amend by rule the RAPs and that, at a minimum, the amendments shall "recommend practices for improving and maintaining soil quality. . ." 6 V.S.A. § 4810a(4)(B). The Agency balanced the requirement to amend the rule

with a recommendation by choosing the explicit language used in Section 6.04(a) in that the practices listed promote healthy soils and that the operator is "required" to "consider and implement as practicable" such practices. The Agency believes that providing the recommendation and associated practices is valuable but has also provided enormous flexibility in whether or not an operator chooses to implement them.

Act 64 Authorizes the Agency to Issue Emergency Orders to Protect Water Quality, Issue Corrective Actions, and Even Require a Farmer to Sell or Remove Livestock . . . It Is Nearly Impossible for a Farm to Have Any Certainty Regarding the Status of Their Compliance with RAPs and, Given the Severity of the Agency's Enforcement Authority, These Issues Must Be Resolved

The Legislature specifically gave the Agency the cited authority to issue emergency orders and order corrective actions in 6 V.S.A. § 4993. The Agency has a long record of pursuing education, technical assistance, and compliance prior to engaging in any such enforcement.

TO: **Mike O'Grady, Legislative Counsel, Legislative Council**

FROM: **Agency of Agriculture, Food and Markets**

DATE: **October 27, 2016**

RE: **LCAR questions regarding farm size**

A member of LCAR would like to know the answers to the following questions:

1. How many "farms" or parcels where farming occurs are below the RAPs applicability threshold under Sec. 3.1?

The Agency of Agriculture, Food & Markets has spent substantial time in considering, developing, and drafting the regulatory model found in the rule. The Agency believes the threshold criteria in Section 3 and the definition of "Certified Small Farm" in Section 4 are part of a regulatory model that is consistent with both the intent of Acts 64 of 2015 and 105 of 2016, as well as the plain language of the law. The threshold criteria appropriately and clearly establish the requirements for applicability.

Although 6 V.S.A. § 4810 states that the "Required Agricultural Practices shall be management standards to be followed by all persons engaged in farming" the Legislature further directed the Agency to amend the Required Agricultural Practices and, in so doing, to "specify" those farms that are required to comply with the small farm certification requirements and to also "specify" those farms that are subject to the Required Agricultural Practices Rules but that do not need to comply with the small farm certification requirements. The legislature's directive is found in 6 V.S.A. § 4810(a):

> (*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.*

The Agency believes that a logical conclusion resulting from the Legislature's directive to the Agency to determine those farms that are required to certify and those farms that are not required to certify but are required to comply with the rule is that there are other operations that involve the growing of crops or raising of livestock that may not be required to comply as they may not be a farm for the purposes of Act 64.

The Agency notes that there are frequent references within Act 64 to "farm" without a corresponding definition. The Agency believes that the language contained in Act 64 establishes a concept that the Required Agricultural Practices apply to "farms" and as such has endeavored to define "farm" for the purposes of the rule. The Agency does not believe, and the law does not specify, that all activities associated with plant or animal husbandry on any given property define those properties as a farm. To assume otherwise leads to the illogical conclusion that the Agency should be actively regulating backyard gardening and backyard livestock husbandry as farming. Further, Act 64 outlined specific setback criteria for "farms" to meet when managing manure or other agricultural wastes, including compost. The common backyard farm and garden cannot reasonably meet these regulatory setbacks, which further provided direction to the Agency that the intention of Act 64 and the RAPs is to revise regulations that are suited to working farms.

a. Thresholds that define where municipal authority can apply to backyard operations:
    1. Parcels with less Than 4 Acres
    2. Parcels with less than 4 Horses, 5 Cows, 100 Chickens
    3. Less than $2,000 Gross Income from Farming

b. Utilizing the categories proposed in the RAP Final Proposed Rule, the Agency believes that no "farm" will fall below the RAP Applicability threshold under Section 3.1. Parcels that may fall below the applicability threshold include those households engaged in backyard gardening and backyard livestock husbandry and would therefore be subject to local municipal authority for the management of the activities on that property.
c. Currently these thresholds identified in (a) above align with existing regulatory authority at the municipal level for zoning structures on these parcels as they have been defined for more than 20 years as "non-farm structures" and have been required to follow local zoning regulations. By clearly defining this threshold, it allows the local municipality the authority to manage the activities associated with those structures.
d. No data currently exists to quantify the number of Vermont households below the RAP thresholds which keep backyard livestock or a backyard gardens. However, data can be used to extrapolate estimates:
    i. With 215,978 Rural Housing Units in Vermont (67% of total housing distributed in a 'Rural' categorization.
        1. Subtracting the 7,338 farms engaged in 'farming' in Vermont
            a. ~208,000 'Housing Units' in Vermont which could have 1 chicken or a vegetable garden. "Practicing backyard gardening and backyard livestock husbandry" below RAP thresholds.

b. There will be some portion of this group that makes more than $2,000 gross income from farming and therefore would fall under RAPs.
c. There is also some portion (maybe one-third) that do not actively participate in gardening or livestock husbandry, lowering the potential to roughly 70,000 housing units that would be managed under local zoning.
d. Where water quality issues exist on any of the 70,000 housing units, the Agency can require the site to be covered under the RAPs to address the issue where local zoning doesn't exist or the municipality and Agency have agreed to have the Agency as the lead.

Language regarding the applicability of the certification requirements in Section 4 was further clarified by Act 105 in 2016 with the following revision to § 4871(b):

> *Required Small Farm Certification. Beginning on July 1, 2017, a person who owns or operates a small farm, as designated by the Secretary consistent with subdivision 4810a(a)(1) of this title, shall, on a form provided by the Secretary, certify compliance with the required agricultural practices.*

The Agency believes that the clear language in § 4871(b) as revised in the 2016 session provides the Secretary with the authority to designate those small farms that would be required to certify compliance with the rule. It is presumed when interpreting a statute that when the Legislature used the term "small farm" as well as the term "farm" in the same statute (§ 4871) the Legislature used those distinct terms advisedly and intended to create two classes of agricultural operations.

The Agency also believes that the approach taken in the rules is consistent with the Legislature's intent that the Agency should prioritize its efforts related to water quality based on the identified water quality issues posed by a farm. In addition, the Legislature provided the authority to the Secretary to require any farm to be certified based on the threat that the farm may pose to water quality.

2. What percentage of "farming" in the State would be regulated by the RAPs as proposed by the Agency?

For the purposes of counting those "farms" engaged in 'farming' that will fall under the applicability of the RAPs, the Agency utilizes 2012 USDA NASS Ag Census information. The Agency believes that the following number of operations counted in the 2012 USDA NASS Ag Census would fall under applicability of the RAPs:

i. 100% of the 1.2 million acres counted as being used for farming in the 2012 Ag Census will fall under applicability of RAPs

ii. 100% of the 7,338 farms counted in the 2012 Ag Census will fall under applicability of the RAPs.

The purpose of a census is to enumerate all objects with a defined characteristic. For the census of agriculture, that goal is to account for "any place from which $1,000 or more of agricultural products were produced and sold, or normally would have been sold, during the census year." As a benchmark for

counting ‘Farms’ in the State of Vermont, VAAFM has utilized the 2012 USDA NASS Census to stand-in as a placeholder for all ‘farming’ in the state of Vermont.

The Agency provides the following additional justifications for this approach:

- Regardless of size or whether or not an operation is considered a farm, discharges to waters of the State are not allowed.

- Should there be any operation impacting water quality that is below the RAP threshold and in a municipality that has no ordinance that could regulate the activity the Agency retains the authority to require compliance with the RAPs.

  As regards a mechanism to provide a role for the Agency of Natural Resources to designate a small farm as one that requires certification, the authority to make these designations rests with the Secretary of Agriculture, Food & Markets. The Agency of Natural Resources and the Agency of Agriculture share cooperative roles in the management of non-point source pollution and as such are in regular communication regarding enforcement and compliance activities. For clarity it should be noted that all decisions of the Secretary as part of a hearing process are subject to appeal.

- Agency experience over many years of responding to complaints regarding operations of the smallest size has been that there are seldom water quality issues associated with the complaint. Most often the complaints center around neighbor disputes and nuisances associated with backyard husbandry. It is the Agency’s belief that these types of issues are best managed locally and that the Legislature recognized this in tasking the Agency to specify which operations rise to the level of farming and must comply with the RAPs.

- Municipalities currently have the authority to regulate structures associated with these very small backyard operations. Municipalities have had the authority since the inception of the AAP rules in 1995 to regulate non-farm structures. It is therefore sensible that municipalities also have the opportunity to manage the activities associated with those non-farm structures.

- The certification thresholds alone, as proposed, will apply to over 76% of the livestock in Vermont (including 94% of the State’s dairy cows), 93% of the silage corn acreage and 68% of the vegetable crop acreage in Vermont. The applicability threshold is estimated to apply to over 7,000 farms in Vermont as well. The Agency believes that those operations not covered by the rule will represent a minimal impact to water quality.

Patch, Ryan

From: Smith, Terry
Sent: Tuesday, October 25, 2016 9:30 AM
To: briankemp@shoreham.net; timmagnant@gmail.com; ehowrigan@yahoo.com; maroney.james@gmail.com; josephtisbert@gmail.com; wbrowell1953@gmail.com; Bernie.Guillemette@DairyMarketingServices.com; jparent3@gmail.com; chill@gmavt.net; fairmontfarmvt@gmail.com; ddeen@leg.state.vt.us; cbray@leg.state.vt.us; mogrady@leg.state.vt.us; tmagnant@franklinvt.net
Cc: Ross, Chuck; Bothfeld, Diane; Leland, Jim; DiPietro, Laura; Patch, Ryan; Kosakowski, Alison; LaClair, Jolinda
Subject: Follow up meeting for Interested Parties from LCAR hearing on October 20, 2016
Attachments: LCAR invite October 2016.docx

Good morning,

Please find the attached meeting notification for interested parties to discuss issues raised through testimony, both oral and written to LCAR on Thursday, October 20, 2016.

If you decide to attend in person or take part by phone, please let me know before 4:30PM today.

Best regards,

Terry Smith
Executive Assistant
Vermont Agency of Agriculture, Food and Markets
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VERMONT

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Agency of Agriculture Food & Markets

TO: Interested Parties from LCAR hearing on October 20, 2016

FROM: Chuck Ross, Secretary, Agency of Agriculture, Food and Markets

DATE: October 25, 2016

REASON: Meeting Notification

At the LCAR Hearing on October 20, 2016, LCAR Committee recommended to the Agency that they meet with interested parties to discuss issues raised through testimony, both oral and written.

The Agency of Agriculture, Food and Markets will meet with all persons that provided oral and written as well as just written comments to LCAR on **October 26, 2016 from 7:30 to 9:00 a.m. at 94 Harvest Lane in Williston, VT.**

THE ISSUES TO BE DISCUSSED will be limited to those ISSUES RAISED in testimony and comments THAT WERE PROVIDED TO LCAR FOR ITS October 20, 2016 meeting.

Please respond to Terry Smith at terry.smith@vermont.gov if you will be attending or need to take part in the meeting through phone.

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