

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 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, 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 (VAAFMM) has the authority to enforce and/or solicit remedies for any violation of this Rule pursuant to 6 V.S.A. Chapter 215 §§ 4991 - 4996, and any other applicable Vermont law.

SECTION 2: DEFINITIONS

2.1 Agency means the 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 (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.~~

2.6 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 person engaged in farming as defined by the Required-Accepted-Agricultural Practice Rule.~~

2.5 Farming means:

- (a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural, silvicultural, 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 means the 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 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 Natural Resources Conservation Service (NRCS) means the “Natural Resources Conservation Service” of the U.S. Department of Agriculture. the United States Department of Agriculture Natural Resources Conservation Service.
- 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 Agriculture, Food and Markets.
- ~~2.9~~ Secretary means the Secretary of the Vermont Agency of Natural Resources, or his or her designated representative.
- ~~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 Surface Waters ~~or Waters of the State~~ 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 Waste or Agricultural Waste 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)
- 2.13 Waters of the State include, for the purposes of this rule, surface water and groundwater as applied.

SECTION 3: ~~WATERSHED TREATMENT PRIORITIES FOR BMP~~VOLUNTARY IMPLEMATION 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 financial assistance awards that incorporates priorities established by the Secretary and 6 V.S.A. Chapter 215.~~

~~3.28 Exceptions.~~

~~The SecretaryCommissioner 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 SecretaryCommissioner 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 at the time of the award on all grant agreements, contract awards, or enforcement proceedings shall 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) for farmers who also seek federal financial assistance for this purpose, the improvements are eligible for federal assistance through programs of the U.S. Department of Agriculture; or

(b) for farmers who decline to seek 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 U.S. 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 ~~(a) State financial assistance awarded under this Rule section shall be in the form of a grant. 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 (b) State financial assistance grants shall follow the priorities established by the Secretary and 6 V.S.A. Chapter 215. Applications shall be considered by the Commissioner on the basis of the watershed treatment priorities established in Section 3 of these rules.

5.3 (c) Farmers who request seeking funding under this program shall file an application on a 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 (c) 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.~~

(d) 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 on an annual basis.

(e) Approval for any BMP that exclusively uses State funding shall only be realized once a grant agreement is fully executed.

(f) Applicants seeking federal assistance for a BMP are not guaranteed State funding unless an executed State grant agreement exists.

SECTION 6: OPERATION AND MAINTENANCE REQUIREMENTSCONTRACTS

~~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.~~

~~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.~~

6.1 (a) BMP grant awards shall require 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.

(b) BMP grant recipients shall be responsible for the appropriate and compliant operation and maintenance of a BMP system as described in the grant agreement.

~~6.4 (c) Failure to operate and maintain the BMP as specified in the grant agreement may contract will expose the recipient to Sstate penalties including the obligation to repay all or a portion of the grant funding expended if the Secretary the value of the grant remaining at such time as the Commissioner determines that the grant agreement was~~contract~~ has been violated.~~

(d) Grant recipients are responsible for preserving the water quality benefit obtained through grant funding. Should the use of an implemented practice change or the operation and maintenance requirements change or 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.

(e) Lack of compliance with operation and maintenance of a BMP may impact the eligibility of the grant recipient to receive future Agency funding.

~~6.5 Operation and maintenance of a BMP system for the term of the contract shall be the responsibility of the BMP grant recipient.~~

SECTION 7: PROCESS FOR PETITIONING TO REQUIRE BMPs

7.1 General

The ~~Secretary~~ ~~Commissioner~~, upon receipt of a petition from 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), ~~or on his or her own motion, shall determine whether to~~ may require BMPs beyond practices required in the RAPs Rule AAPs on farms or in a specific basin in order to achieve compliance with the water quality goals in 10 V.S.A. § 1250 ~~Section 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, and shall be designed to achieve compliance with the requirements of this Rule.
- (b) A State grant may be offered to a farmer when the Secretary requires BMP implementation. Any such grant 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.

~~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) 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) ~~sought by the petitioner~~ requests including applicable citations to the Rule ~~governing 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 detailed description of the evidence 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) Copies of all documents that the petitioner ~~may intend to~~ intends to rely upon ~~to~~ in support of the petition.

7.4 Determination of Complete Petition

Upon 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 the required information. At the same time, the ~~Secretary~~ Commissioner shall notify the petitioner ~~of~~ for persons who shall receive the petition as provided by Section 7.5 of these ~~R~~ rules. Upon receipt of that information, the petition shall be deemed to be complete, and the review and hearing process as contained in subsection 7.6 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 by affidavit that a complete copy of the petition and documentation has been filed using first class mail with:

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

~~(c)~~ (d) other persons that 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 of the petition is/are located within 60 days of the Secretary's receipt of an affidavit that the complete petition has been served upon all individuals who are required to be served. The Secretary/Commissioner shall provide notice of the petition and the public hearing to all persons required to be served by Section 7.35 as well as to such other persons as they/he or she deems 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 located not less than 30 days before the public hearing. Such notice shall provide not less than 30 days in which to file written comments on the petition following the hearing.
- ~~(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 subsection (e), 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~~ to implement best management practices 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 89: REPORTS

9.18.1 Annually by January 15 of each year, the ~~Secretary~~Commissioner shall report to the ~~General Assembly~~General Assembly regarding activities in support of the objectives articulated in 6 V.S.A § 4825~~of this rule~~, including use of ~~S~~state, federal and private funds:

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

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