

BEST MANAGEMENT PRACTICES RULES

Effective: December 20, 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 Practices 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 nonpoint source waste 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:
 - (i) are determined by the Secretary to be equivalent to those eligible for federal assistance through programs of the United States Department of Agriculture; or
 - (ii) 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.