

BEST MANAGEMENT PRACTICE RULES

Effective Date: January 27, 1996

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 Accepted Agricultural Practices.

1.2 Authorities: 6 V.S.A., Sections 4810, 4821, 4822, 4823, 4824

SECTION 2: DEFINITIONS

2.1 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 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 management practices are site specific on-farm 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 Accepted Agricultural Practice Rules.

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

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

- 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 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.

SECTION 3: WATERSHED TREATMENT PRIORITIES FOR 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.

3.8 Exceptions. The 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 Commissioner determines a severe condition of 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: 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.

SECTION 5: STATE FINANCIAL ASSISTANCE AWARDS AND APPLICATION PROCESS

5.1 State financial assistance awarded under this 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 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 seeking funding under this program shall file 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.

SECTION 6: OPERATION AND MAINTENANCE 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.

- 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.
- 6.4 Failure to operate and maintain the BMP as specified in the contract will expose the recipient to state 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.
- 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 Commissioner, upon receipt of a petition from a person with an interest in the agricultural nonpoint source component of the basin planning process, or on his or her own motion, shall determine whether to require BMPs beyond AAPs on farms or in a specific basin in order to achieve compliance with the water quality goals in Section 1250 of Title 10 and any duly adopted basin plan.

7.2 Sufficient Financial Assistance

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

Any petition shall be in writing and shall contain the following information unless waived in writing by the Commissioner:

- (1) The name and complete mailing address of the farmer(s) whose actions violate water quality standards;
- (2) Documentation of the 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 water quality violation and the farmer(s) practices.
- (3) A description of the specific action(s) sought by the petitioner citing the application provisions of these rules and state law;
- (4) A detailed narrative of why the corrective action(s) sought by the petition is consistent with these rules including a discussion of which AAP(s) is insufficient land treatment; and
- (5) Copies of all documents that the petitioner intends to rely upon in support of the petition.

7.4 Determination of Complete Petition

Upon the initial filing of the petition the Commissioner may determine that additional information is necessary. Within 15 days of receipt of the petition the Commissioner shall notify the petitioner of the required information. At the same time, the Commissioner shall notify the petitioner or persons who shall receive the petition as provided by Section 7.5 (d) of these 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, in addition to filing an original and three (3) copies with the Commissioner, certify by affidavit that a complete copy of the petition and documentation has been filed with:

- (a) the farmer(s) who are the subject of the petition;
- (b) the Secretary;
- (c) the water resources board; and
- (d) other persons as the Commissioner deems appropriate.

7.6 Review and Hearing Process

- (1) The Commissioner shall schedule a public hearing within 60 days of receipt of the complete petition. The Commissioner shall provide notice of the petition and the public hearing to all persons required to be served by Section 7.3 as well as to such other persons as he or she deems appropriate. The 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.
- (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 Commissioner shall make all practical efforts to issue a written decision in a timely manner. The decision shall set forth the facts and reasons supporting his or her decision. The Commissioner shall provide copies of the decision to all persons entitled to receive notice under subsections (5) and (6) above.

7.8 Appeal

Any person engaged in farming who has been required by the Commissioner to implement best management practices or any person who has petitioned the Commissioner under this section may appeal the Commissioner's decision to the 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.