

# BEST MANAGEMENT PRACTICE RULES

Effective Date: \_\_\_\_\_, 2024

## SECTION 1: GENERAL

### 1.1 Purpose

It is a policy of the State of Vermont to assist farmers with the implementation of Best Management Practices that will protect and maintain water quality by reducing agricultural pollution. The implementation of Best Management Practices 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, 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 215 §§ 4991 - 4996, and any other applicable Vermont law.

## SECTION 2: DEFINITIONS

2.1 Agency means the 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 (BMPs) mean site specific on-farm conservation practices implemented to address the potential for agricultural pollutants to enter the waters of the State.

2.4 Farmer means a person engaged in farming as defined by the Required Agricultural Practice Rule.

2.5 Farming 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.

2.8 Natural Resources Conservation Service (NRCS) means 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.

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

2.11 Surface Waters 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: PRIORITIES FOR BMP IMPLEMENTATION**

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

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

### **SECTION 4: ELIGIBILITY FOR STATE ASSISTANCE**

- 4.1 Vermont farmers that are in good standing with the Secretary 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 shall be in the form of a grant.

(b) State financial assistance grants shall follow the priorities established by the Secretary and 6 V.S.A. Chapter 215.

(c) Farmers who request funding under this program shall file an application on a form provided by the Agency.

(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 REQUIREMENTS**

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.

(c) Failure to operate and maintain the BMP as specified in the grant agreement may expose the recipient to State penalties including the obligation to repay all or a portion of the grant funding expended if the Secretary that the grant agreement was 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.

## **SECTION 7: PROCESS FOR PETITIONING TO REQUIRE BMPs**

### **7.1 General**

The Secretary, 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), may require BMPs beyond practices required in the RAPs Rule 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, 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.

## 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) 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, including a detailed description of the evidence 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; and

e) Copies of all documents that the petitioner may rely upon to support the petition.

#### 7.4 Determination of Complete Petition

Upon 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 the required information. At the same time, the Secretary shall notify the petitioner of persons who shall receive the petition as provided by Section 7.5 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, at their own expense, certify by affidavit that a complete copy of the petition and documentation has been filed using first class mail with:

- (a) each farmer who is a subject of the petition;
- (b) the Secretary of the Vermont Agency of Natural Resources; and
- (c) other persons that 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 of the petition is/are located within 60 days of the Secretary's receipt of an affidavit that a complete petition has been served upon all individuals who are required to be served. The Secretary shall provide notice of the petition and the public hearing to all persons required to be served by Section 7.5 as well as to such other persons as they deem 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 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.

#### 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 subsection (e).

#### 7.8 Appeal

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

## **SECTION 8: REPORTS**

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

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