

Act No. 64 (H.35). Conservation and land development; agriculture; water quality; stormwater; basin planning; use value appraisal; property transfer tax surcharge
An act relating to improving the quality of State waters

This act amends or enacts multiple statutes related to water quality in the State. The act amends several provisions regarding agricultural water quality. The “accepted agricultural practices” are renamed the “required agricultural practices (RAPs).” The Agency of Agriculture, Food and Markets (AAFM) shall revise the RAPs by rule by July 1, 2016. The revised RAPs shall include requirements for: small farm certification, nutrient storage, soil health, buffer zones, livestock exclusion, nutrient management, and tile drainage.

Beginning on July 1, 2017, small farms shall certify compliance with the RAPs. Small farms are a parcel of land on which 10 or more acres are used for farming and that: (1) houses no more than the maximum number of animals for a small farm; and (2) houses at least the number of animals set by rule; or produces crops for sale. AAFM may specify in rule those small farms that are not required to submit a certification, but to which RAPs still apply. AAFM may inspect small farms, and shall adopt in rule the frequency of small farm inspection. AAFM shall inspect large farms at least once a year and medium farms at least once every three years.

The act establishes or amends certain agricultural fees. Large farms shall pay an annual \$2,500.00 registration fee, and medium farms shall pay an annual \$1,500.00 registration fee. The act establishes a \$30.00 per ton fee on nonagricultural fertilizer distributed in the State. The annual registration fee on pesticide products is increased from \$110.00 to \$125.00. The agricultural fees shall be deposited in a special fund to pay for new AAFM water quality staff positions.

The act provides that if a farm meets RAPs, but there is potential for pollutants to enter waters, AAFM shall require a site-specific conservation practice on the farm. The requirement that financial assistance be available before AAFM requires a BMP is deleted. AAFM and the Agency of Natural Resources (ANR) shall revise a memorandum of understanding (MOU) for agricultural nonpoint pollutants, and the MOU shall address how to apply the antidegradation implementation policy to new sources of nonpoint pollutants.

The act requires AAFM to adopt, as part of the RAP revisions, requirements for training owners or operators of small, medium, and large farms regarding: prevention of discharges to waters; mitigation of stormwater runoff; land application of manure or nutrients; and nutrient management planning. AAFM shall require training as a condition of a large farm permit, medium farm permit, or small farm certification. AAFM may phase in training requirements based on farm size, permit type, or available staffing and may authorize third parties to conduct the training. AAFM shall not charge the owner or operator of a farm for the required training but shall pay for the training from funds available for water quality initiatives.

AAFM shall adopt by rule requirements for certification of custom applicators. A custom applicator is a person engaged in the business of land-applying manure or nutrients for compensation. Custom applicators shall complete eight hours of training over each five-year period. The training shall address methods to minimize runoff and identify weather or soil conditions that increase runoff. The act clarifies that agricultural activities that displace 10 or more cubic yards of instream material need a stream alteration permit.

The act reorganizes and enhances AAFM's water quality enforcement authority. AAFM may: issue emergency orders to protect water quality; issue mandatory corrective actions; or require a farmer to sell or remove livestock from a farm when the volume of animal waste exceeds farm capacity. The Attorney General is authorized to pursue civil enforcement for agricultural water quality violations. Upon request of the AAFM, ANR may enforce agricultural water quality violations under ANR enforcement authority.

Under the act, the Division of Property Valuation and Review shall remove agricultural land or a farm building from use value appraisal (UVA) if AAFM identifies the owner or operator as out of compliance with agricultural water quality requirements or out of compliance with a water quality enforcement order. A farmer may not apply for reenrollment of unenrolled land or farm building until AAFM certifies that the owner or operator is complying with water quality requirements or an enforcement order. Upon certification of compliance, the owner or operator may apply for enrollment according to existing requirements. If agricultural land or a farm building is removed from UVA, the removal is considered "development" subject to the land use change tax.

The act also amends or establishes water quality requirements to be implemented by ANR. ANR shall develop a schedule to update the 15 watershed basin plans. ANR shall conduct certain activities for each basin plan, including: identifying waters for reclassification; identifying projects to protect and enhance water quality; and interacting with municipal officials and the public. If funding is available, ANR shall contract with regional planning commissions to produce or assist in producing basin plans.

The act revises ANR's statutory authority to regulate stormwater. The act clarifies the activities that require an ANR stormwater permit, including: construction of one acre or more of impervious surface; discharge from industrial facilities; municipal separate storm sewer systems; earth disturbance of one or more acres; expansion of existing impervious surface by more than 5,000 square feet if the resulting impervious area is more than one acre; runoff from municipal roads; and retrofitting of old impervious surface. The act clarifies the stormwater permit exemptions, including: runoff from farms subject to RAPs, except for earth disturbance; runoff from silvicultural activities; and stormwater systems for which a municipality assumes legal responsibility. ANR has rulemaking authority for the stormwater program, and may use basin planning to establish watershed-specific priorities for stormwater management.

ANR shall issue a general permit for stormwater runoff from municipal roads. The permit shall include a schedule and requirements for the inventory of roads, prioritization

of projects, and project implementation. All cities, towns, and villages shall apply for the municipal roads stormwater permit by July 1, 2021.

On or before January 1, 2018, ANR shall issue a general permit for discharges of stormwater from impervious surface of three or more acres in size that previously were never permitted or were permitted under a pre-2002 permit standard. The general permit shall require retrofitting or redevelopment of old impervious surface. The permit shall establish an implementation schedule, provided that the permit will be implemented in the Lake Champlain basin by October 1, 2023, and by October 1, 2028 for the rest of the State.

ANR shall report to General Assembly regarding whether and how the State should lower from one acre to one-half acre of impervious surface the threshold for an operating permit for stormwater runoff. ANR shall publish practical and cost-effective management practices for stormwater control from construction, redevelopment, or expansion of impervious surface that does not require a permit. ANR shall submit to the General Assembly a report regarding the feasibility of treating or disposing of septage or sludge in a manner other than land application. ANR shall assess all available water quality data and map the areas that are significant contributors to water quality issues. ANR also shall adopt by rule an implementation process for the State antidegradation policy.

The act establishes a Vermont Clean Water Fund to provide funding for: State compliance with water quality requirements and implementation of water quality projects or programs; water quality staff positions when needed to maintain compliance with water quality requirements and existing revenue sources are inadequate; and organizations, associations, and other entities for community-based water quality programs. The Fund shall consist of revenue dedicated to it including a 0.2 percent property transfer tax surcharge. A Clean Water Fund Board shall administer the Fund. The Board consists of the Secretaries of ANR, AAFM, Agency of Transportation, Agency of Commerce and Community Development, and Administration.

The Clean Water Fund Board shall make recommendations to the Secretary of Administration regarding how funds from the Clean Water Fund shall be included in the State budget. Generally, funds will be appropriated to State-managed water quality programs—not individual projects. The Clean Water Fund Board shall publish an annual report summarizing all Fund investments. An independent audit shall be conducted of the Clean Water Fund in 2021.

The act creates a 0.2 percent surcharge on the value of property subject to the property transfer tax. No surcharge is assessed on: the first \$100,000.00 in value of property used as a transferee's principal residence; or the first \$200,000.00 in value of property transferred if a purchaser's mortgage is funded by the Vermont Housing Conservation Trust Fund, the Vermont Housing and Finance Agency, or U.S.D.A Rural Development. The surcharge is deposited in the Clean Water Fund. The surcharge is repealed on July 1, 2018.

The act establishes 13 ANR water quality positions and funds them through increased fees on water-related ANR permits. Similarly, eight new AAFM water quality positions are established and funded, in part, from new or increased agricultural water quality fees. The act requires the State Treasurer to recommend a long-term revenue source to fund water quality improvement.

The act eliminates the authority of a municipal wastewater treatment plan to not comply with an 0.80 milligram per liter phosphorus discharge standard if State funds are not provided to the municipality. Likewise, the act repeals the requirement that the State finance 100 percent of a wastewater treatment plant's project costs if the plant is required to reduce phosphorus levels in wastewater effluent below 0.80 milligrams per liter. The act also provides that municipalities shall not be denied funds from the Ecosystem Restoration Fund or the Clean Water Fund solely because the municipality is required to obtain a municipal separate storm sewer permit.

The act requires the Commissioner of Forests, Parks and Recreation (FPR) to revise the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs (AMPs) by rule by July 1, 2016 to ensure that logging jobs are designed to prevent water quality impacts. FPR shall report to the General Assembly regarding whether the AMPs should be mandatory and whether maple syrup production should enroll in UVA as forestland and not agricultural land.

Multiple effective dates, beginning on June 16, 2015