

Annotated Text of Adopted RAP Rule Revision

Sec. 1. RAP Section 1.2 shall be amended to read:

- 1.2 Enabling Legislation: As defined in 6 V.S.A. §§ 4810 and 4810a, the Required Agricultural Practices (RAPs) shall be management standards to be followed by all persons engaged in farming in this State. These standards shall address activities which have a potential for causing agricultural pollutants to enter the groundwater and surface waters of the State, including dairy and other livestock operations, all forms of crop and nursery operations and on-farm or agricultural fairground registered pursuant to 20 V.S.A. § 3902, and livestock and poultry slaughter and processing activities. The RAPs shall include, as well as promote and encourage, practices for farmers in preventing agricultural pollutants from entering the groundwater and surface waters of the State when engaged in animal waste management and disposal, soil amendment applications, plant fertilization, and pest and weed control. Persons engaged in farming who are in compliance with these practices shall be presumed to not have a discharge of agricultural pollutants to surface water or groundwater. The RAPs shall be designed to protect water quality and shall be practical and cost-effective to implement, as determined by the Secretary.

Sec. 2. RAP Section 1.4 shall be amended to read:

- 1.4 Authority: 6 V.S.A. Chapter 215 (Agricultural Water Quality), including §§ 4802 (2), 4810, 4810a, and 4811, Act 64 of the Vermont General Assembly (2015 session), Act 105 of the Vermont General Assembly (2016 session), Act 64 of the Vermont General Assembly (2019 session), and 10 V.S.A. § 902 (5).

Sec. 3. RAP Section 1.6 shall be amended to read:

- 1.6 Further considerations under the RAPs: ~~6 V.S.A. § 4810a(b) requires that on or before January 15, 2018, the Secretary of Agriculture, Food and Markets shall amend by rule the Required Agricultural Practices in order to include requirements for reducing nutrient contribution to waters of the State from subsurface tile drainage. As part of the rule amendment process, the Secretary may also evaluate the current status of effectiveness of the Required Agricultural Practices, the implementation of additional best management practices, and the current water quality condition of waters of the State.~~ The Secretary may consider additional changes to the Required Agricultural Practices, as appropriate, to meet the water quality goals of the State.

Sec 4. RAP Section 2.04 shall be amended to read:

- 2.04 ANR means the Vermont Agency of Natural Resources, and the Secretary of the Vermont Agency of Natural Resources and ~~her or his~~ their designees.

Sec. 5. RAP Section 2.12 shall be amended to read:

2.12 Discharge means the placing, depositing, or emission of any wastes, directly or indirectly, into an injection well or into groundwater or surface waters of the State.

Sec. 6. RAP Section 2.16 shall be amended to read:

2.16 Farming 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; or
- (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:
 - (1) the compost is principally used on the farm where it is produced; or
 - (2) the compost is produced on a small farm that raises or manages poultry.

Sec. 7. RAP Section 2.22 shall be added to read:

2.22 Food residual means source separated and uncontaminated material that is derived from processing or discarding of food and that is recyclable, in a manner consistent with 10 V.S.A. §6605K. Food residual may include preconsumer and postconsumer food scraps. "Food residual" does not mean meat and meat-related products when the food residuals are composted by a resident on site.

Sec. 8. RAP Sections 2.22 through 2.43 shall be renumbered 2.23 through 2.44.

Sec. 9. RAP Section 2.30 shall be added to read:

2.30 Potable Water Source means a component of a potable water source that withdraws or collects water from soil or bedrock. Potable water sources include springs; drilled, driven, or dug wells; and surface water.

Sec. 10. RAP Sections 2.29 through 2.43 shall be renumbered 2.30 through 2.44.

Sec. 11. RAP Section 2.32 shall be added to read:

2.32 Principally Used means that more than 50 percent, either by volume or weight, of the compost produced on the farm is physically and permanently incorporated into the native soils on the farm as a soil enhancement and is not removed or sold at any time thereafter.

Sec. 12. RAP Sections 2.31 through 2.43 shall be renumbered 2.32 through 2.44.

Sec. 13. RAP Section 2.35 shall be amended to read:

2.35 Secretary means the Secretary of the Agency of Agriculture, Food and Markets and ~~her or his~~ their designees.

Sec. 14. RAP Section 2.39 shall be amended to read:

2.39 Surface Water or 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 the state or any portion of it.

Sec. 15. RAP Section 2.42 shall be amended to read:

2.42 Waste or Agricultural Waste means material originating or emanating from a farm that is determined by the Secretary or the Secretary of ~~ANR Natural Resources~~ to be harmful to the groundwater or surface 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).

Sec. 16. RAP Section 2.45 shall be deleted:

2.45 ~~Waters of the State include, for the purposes of this rule, surface water and groundwater as applied.~~

Sec. 17. RAP Section 2.46 shall be deleted:

2.46 ~~Water Supply means a drinking water source that intersects the water table and provides water through pipes or other conveyances and includes drilled wells, dug wells, driven point wells, and natural springs.~~

Sec. 18. RAP Section 3.1 shall be amended to read:

3.1 Persons engaged in farming and the agricultural practices as defined in Section 3.2 of this rule and who meet the minimum threshold criteria for applicability of this rule as found in Section 3.1(a) – (g) must meet all applicable Required Agricultural Practices conditions, restrictions, and operating standards, and may be required to submit documentation to the Agency to confirm that they meet the minimum threshold criteria. Persons engaged in farming who are in compliance with these conditions, restrictions, and operating standards, as applicable, shall be presumed to not have a discharge of agricultural wastes to groundwater or surface waters of the State.

Sec. 19. RAP Section 3.1(c) shall be amended to read:

(c) is preparing, tilling, fertilizing, planting, protecting, irrigating, ~~and or~~ harvesting crops for sale on a farm that is no less than 4.0 contiguous acres in size; or.

Sec. 20. RAP Section 4.1(a)(3) shall be amended to read:

(3) that house at least the following numbers and types of livestock:

(A) 50 mature dairy cows;

(B) 75 veal calves;

~~(B)~~ (C) 75 youngstock and/or heifers; cattle other than mature dairy cows or veal calves (cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs);

~~(D) 75 cattle or cow/calf pairs;~~

(D)~~(E)~~ 188 swine weighing over 55 pounds;

(E)~~(F)~~ 750 swine weighing less than 55 pounds;

(E)~~(G)~~ 40 equines;

(G)~~(H)~~ 750 sheep or goats;

(H)~~(I)~~ 4,125 turkeys;

(I)~~(J)~~ 2,250 laying hens or broilers with a liquid manure handling system;

~~(J)-(K)~~ 6,250 laying hens or broilers without a liquid manure handling system;

~~(K)-(L)~~ 375 ducks with a liquid manure handling system;

~~(L)-(M)~~ 2,500 ducks without a liquid manure handling system;

~~(M)-(N)~~ any other animal type, number, or combination of animals as designated by the Secretary that is having an adverse impact on water quality; or

~~(N)-(O)~~ any combination of more than one animal type exceeding 90,000 pounds of total live animal weight (animal units); or

Sec. 21. RAP Section 5(a)(4) and 5(a)(5) shall be amended to read:

(4) the mechanical application of manure or nutrients and methods or techniques used to minimize the runoff of applied manure or nutrients to groundwater and surface waters of the State;

(5) weather and soil conditions that increase the risk of runoff of manure or nutrients to groundwater and surface waters of the State; and

Sec. 22. RAP Section 6.01(a) shall be amended to read:

(a) Farms shall not create any discharge of agricultural wastes to groundwater or surface waters of the State through a discrete conveyance such as, but not limited to, a pipe, ditch, or conduit without a permit from the Secretary of ANR.

Sec. 23. RAP Section 6.02(a) shall be amended to read:

(a) All agricultural wastes shall be managed in a manner to prevent runoff or leaching of wastes to groundwater or surface waters of the State or across property boundaries.

Sec. 24. RAP Section 6.02(b) shall be added to read:

(b) All components of a waste management system shall be managed and maintained so as to prevent runoff or leaching of wastes to groundwater or surface waters of the State or across property boundaries.

Sec. 25. RAP Sections 6.02(b) through 6.02(i) shall be renumbered 6.02(c) through 6.02(j)

Sec. 26. RAP Section 6.02(f) shall be amended to read:

(f) Field stacking of manure or other agricultural wastes at locations outside of the farm's production area and on sites not approved consistent with USDA NRCS standards, or otherwise approved by the Secretary:

Sec. 27. RAP Section 6.02(f)(4) shall be amended to read:

(4) shall not be sited within:

- (A) 200 feet ~~of~~ from the top of bank of surface water;
- (B) 200 feet ~~of~~ from a public or private water supply potable water source;
- (C) 100 feet from a property line;
- (D) 100 feet from a ditch or conveyance to surface water;
- (E) areas subject to concentrated runoff; or
- (F) 100 feet ~~of~~ from subsurface tile drainage;

Sec. 28. RAP Section 6.02(g) shall be amended to read:

(g) The Secretary may authorize site-specific standards other than those listed in Section 6.02(~~ef~~)(4)(A)-(F) when the Secretary determines that a manure stacking or piling site, fertilizer storage, or other nutrient storage will not have an adverse impact on groundwater quality or surface water quality but in no case shall unimproved manure stacking sites be located less than 100 feet from a potable water source ~~private water supply~~ or the top of the bank of surface water.

Sec. 29. RAP Section 6.02(i) shall be amended to read:

(i) Fertilizer shall be stored consistent with the Vermont Fertilizer and Lime Regulations Section XIII. Fertigation and chemigation equipment shall be operated with an adequate anti-siphon device between the system and the potable water source.

Sec. 30. RAP Section 6.03(d) shall be amended to read:

(d) Owners and operators of annual cropland, perennial grass land, or hay land who are required to implement a USDA 590 standard nutrient management plan and who have soil analyses demonstrating greater than 20 parts per million (ppm) ~~phosphorous~~ phosphorus shall:

Sec. 31. RAP Section 6.03(f) shall be amended to read:

(f) The following records of all applications and imports of manure or other agricultural wastes application, and fertilizer, soil amendments and/or lime shall be maintained by all farms for a period of five years and shall be provided to the Secretary upon request:

- (1) date of application;
- (2) field location;
- (3) application method and rate;
- (4) source of nutrients applied; and
- (5) weather and field conditions at the time of application.

Sec. 32. RAP Section 6.04(d) shall be amended to read:

~~(d) Annual croplands subject to frequent flooding from adjacent surface waters, as described in the USDA Soil Survey Flooding Frequency Class, shall be required to be planted to cover crops. Broadcast seeding must be completed by October 1 of each year. Seed planted with drill seeders or otherwise incorporated shall be completed by October 15 of each year. The Secretary may, on a case-by-case basis, approve alternative planting dates due to unusual soil or weather conditions or other specific crop management needs and upon request of the owner or operator of a farm managing annual croplands subject to frequent flooding from adjacent surface waters, as described in the USDA Soil Survey Flooding Frequency Class. If annual crops cannot be harvested prior to October 15, then, or maintain 30% crop residue, growing directly in the soil, must remain in order to limit soil loss.~~

Sec. 33. RAP Section 6.05(a) shall be amended to read:

(a) Manure or other agricultural wastes shall not be applied between December 15 and April 1. The Secretary may prohibit the application of manure to land in the State following adequate notice to the agricultural community between December 1 and December 15 and between April 1 and April 30 of any calendar year when the Secretary determines that due to weather conditions, soil conditions, or other limitations, application of manure to land would pose a significant potential of runoff to groundwater or surface waters of the State.

Sec. 34. RAP Section 6.05(b) and 6.05(c) shall be amended to read:

~~(b) Manure or other agricultural wastes shall not be applied to cropland, perennial grass land, small grain cropland, or hay land subject to frequent flooding from adjacent surface waters, as described in the USDA Soil Survey Flooding Frequency Class, after October 16 or before April 14.~~

~~(c)~~ (b) Manure or other agricultural wastes applied to annual cropland subject to frequent flooding, as described in the USDA Soil Survey Flooding Frequency Class, shall be injected or otherwise incorporated within 48 hours of application. This requirement shall not apply to land in no-till management.

Sec. 35. RAP Sections 6.05(d) through 6.05(h) shall be renumbered 6.05(c) through 6.05(g)

Sec. 36. RAP Section 6.05(f) shall be amended to read:

(f) Manure or other agricultural wastes shall not be mechanically applied within 50 ~~100~~ feet of a potable ~~private~~ water source ~~supply~~ or 200 feet of a public water supply. This prohibition shall not apply to private water supplies that have been established inconsistent with the Department of Environmental Conservation Water Supply Rules existing at the time that the water supply was established, unless there is a legal document which provides for a different isolation distance or when a potable water source is in a location that is inconsistent with state law or regulation.

Sec. 37. RAP Section 6.06(b)(3) is amended to read:

(3) the location of nearest surface water, mapped wetlands, mapped floodplains, potable water sources ~~supply~~, tile drains, surface inlets or open drains, property boundaries, and ditches;

Sec. 38. RAP Section 6.06(c)(3) is amended to read:

(3) to wetlands, ~~as that term is defined in 10 V.S.A. § 902(5);~~

Sec. 39. RAP Section 6.06(d) is amended to read:

(d) Approvals for seasonal exemptions to the winter spreading ban shall establish requirements and conditions for the application of manure when frozen or snow-covered soils prevent effective incorporation at the time of application, require manure to be applied according to a nutrient management plan, establish the maximum amounts of manure that may be applied per acre during any one application, and establish required manure spreading setbacks from surface water, potable water sources ~~water supplies~~, and other water conveyances. Seasonal exemptions to the winter spreading ban may be renewed annually upon request and submission of winter spreading records of application.

Sec. 40 RAP Section 6.07(b) shall be amended to read:

(b) Adjacent ditches shall be buffered from croplands by 10 feet of perennial vegetation ~~unless determined to potentially transport significant waste or nutrients to surface water consistent with the USDA 590 standard nutrient management requirements.~~

Sec. 41. RAP Section 6.08(b) shall be amended to read:

(b) Animal mortalities buried on farm property located outside of the farm's production area, shall be sited so as to be:

Sec. 42. RAP Section 6.08(b)(4) and 6.08(b)(5) shall be amended to read:

(4) a minimum of 200 feet from a potable water source ~~public or private drinking water supplies~~; and

(5) not located on lands in a floodway or subject to annual flooding-; and

Sec. 43. RAP Section 6.08(b)(6) shall be added to read:

(6) a minimum of 100 feet from a ditch or conveyance to surface water.

Sec. 44. RAP Section 6.08(c) shall be amended to read:

(c) Animal mortalities composted or otherwise disposed of on farm property located outside of the farm's production area and on unimproved sites shall be prohibited on lands in a floodway or subject to annual flooding, and shall be sited so as to be:

Sec. 45. RAP Section 6.08(c)(3) shall be amended to read:

(3) a minimum of 200 feet from a potable water source ~~public or private drinking water supplies~~ not owned by the farm;

Sec. 46. RAP Section 6.08(d) shall be amended to read:

(d) Other site-specific standards may be authorized by the Secretary, but in no case shall unimproved sites outside of the farm's production area be located less than 100 feet from a potable water source ~~private water supply~~, property boundary, or the top of the bank of surface water.

Sec. 47. RAP Section 6.09(a)(2) shall be amended to read:

(2) 200 feet from a potable water source ~~public or private water supply~~ not owned by the farm;

Sec. 48. RAP Section 6.09(b) shall be amended to read:

(b) Other site-specific standards may be authorized by the Secretary, but in no case shall unimproved sites be located less than 100 feet from a potable water source ~~private water supply~~, property boundary, or the top of the bank of surface water.

Sec. 49. RAP Section 7 Title shall be amended to read:

Section 7. Exclusion of Livestock from Groundwater and Surface ~~the~~ Waters of the State

Sec. 50. RAP Section 7(e) shall be amended to read:

(e) Livestock shall not be pastured within 50 feet of a potable water source ~~private water supply~~ without the permission of the potable water source ~~water supply~~ owner. This prohibition shall not apply to potable water sources ~~private water supplies~~ that have been established inconsistent with the Department of Environmental Conservation Wastewater System and Potable Water Source ~~Water Supply~~ Rules existing at the time that the potable water source ~~water supply~~ was established.

Sec. 51. RAP Section 8(a) and 8(b) shall be amended to read:

(a) Farm operations shall be conducted so that the concentration of wastes in groundwater originating from agricultural operations do not reach or exceed ~~the primary or secondary~~ groundwater quality enforcement standards identified by Appendix One of the Groundwater Protection Rule and Strategy in accordance with 10 V.S.A. Chapter 48 (Groundwater Protection).

(b) Farm operations shall be conducted with the goal of reducing the concentration of wastes in groundwater to the preventive action levels (PALs) of ~~the primary or secondary~~ groundwater quality enforcement standards identified by Appendix One of the Groundwater Protection Rule and Strategy when monitoring indicates the presence of these wastes in groundwater that exceed the enforcement standard.

Sec. 52. RAP Section 8(c)(1) and 8(c)(2) shall be amended to read:

(1) selected by the Secretary where potable water source ~~water supply~~ owners or tenants have volunteered or agreed to participate in the sampling program;

(2) upon the request of a potable water source ~~water supply~~ owner or tenant;

Sec. 53. RAP Section 8(d) shall be amended to read:

(d) The Secretary shall conduct a groundwater investigation where the Secretary has received a complaint from a potable water source ~~water supply~~ owner in the vicinity of a farm that the farm or its agricultural practices has contaminated the drinking water or groundwater of the potable water source ~~water supply~~ owner.

Sec. 54. RAP Section 8(f)(1)-(3) shall be amended to read:

(1) written notification of testing results to each individual potable water source ~~water supply~~ owner and tenant, if known, that participates in the sampling program.

(2) property owners in the vicinity of farm operations and agricultural lands with the test results for each potable water source ~~water supply~~ owned by them that is sampled by the Secretary.

(3) farm operations with the test results for potable water sources ~~water supplies~~ owned by the farm operation and, upon request, for ~~water supplies~~ potable water supplies adjacent to or impacted by the crop land or facilities managed by the farm operation.

Sec. 55. RAP Section 8(h) shall be amended to read:

(h) The Secretary may require the owner or operator of a waste storage facility to modify the facility to meet the USDA NRCS or an equivalent standard for the facility or to implement additional management measures if the facility poses a threat to human health or the environment as established by an exceedance of the State's Groundwater-Quality Enforcement Standards.

Sec. 56. RAP Section 8(i) shall be amended to read:

(i) For the purpose of assessing whether a waste storage facility is violating the State's Groundwater-Quality Enforcement Standards, the Secretary shall pay for the initial costs to conduct groundwater monitoring. When the Secretary has made a determination that a waste storage facility is violating the State's Groundwater-Quality Enforcement Standards, the Secretary shall provide notification to the Department of Health and the ~~Agency of Natural Resources~~ ANR. This notification shall occur within 21 days and include the location of the facility and the name of the owner or operator. When the Secretary makes a determination that a waste storage facility no longer poses a threat to human health or the environment, the Secretary shall provide notification of the revised determination to the Department of Health and the ANR.

Sec. 57. RAP Section 9(a)(1) shall be amended to read:

(1) Prior to construction of farm structures, the farmer must notify the zoning administrator or the town clerk of the town in which the farm structure is proposed, in writing, of the proposed construction activity. The notification must contain a sketch of the proposed structure including the setback distances from adjoining property lines, centerline of a public road and road rights-of way, adjacent surface water, ditches and conveyances to surface water, and potable water sources.

Sec. 58. RAP Section 9(a)(3) shall be amended to read:

(3) Construction of ~~farm~~ agricultural structures as defined in 44 C.F.R. §59.1, in Flood Hazard Areas and River Corridors are required to obtain a Flood Hazard Area and River Corridor permit from the ANR or its designee unless otherwise exempt (refer to Appendix A). Fences through which floodwater may flow are not structures which represent an encroachment in a floodway area.

Sec. 59. RAP Section 9(a)(6)(A) shall be amended to read:

(A) Farm structures, excluding waste storage facilities and feed storage structures, shall be constructed so that a minimum distance of 50 feet is maintained between the top of the bank of adjoining surface waters and the farm structure.

Sec. 60. RAP Section 9(a)(6)(B) shall be amended to read:

(B) The following setbacks shall apply to all new waste storage facilities and feed storage structures proposed on sites where no waste storage facility or production area previously existed:

- (i) 100 feet from the centerline of a public road;
- (ii) 100 feet from any abutting property line;
- (iii) 200 feet from the top of the bank of any surface water; ~~and~~
- (iv) 200 feet from potable water sources ~~public or private water supplies;~~ and
- (v) 100 feet from a ditch or conveyance to surface water.

Sec. 61. RAP Section 9(b) shall be amended to read:

Local setbacks or no build areas for wetlands, ~~River Corridors~~, and other setbacks applicable to all development in a local zoning bylaw established by the municipality shall be maintained, unless upon written request of the person, consistent with the procedures found in Appendix A, the Secretary has approved other reasonable setbacks for the specific farm structure being constructed. The Secretary may authorize the siting of a waste storage facility or feed storage structure within 200 feet of a surface water or potable water source ~~private water supply~~ if the site is the best available site on the farm for the purposes of protecting ground water quality or surface water quality and the waste storage facility or feed storage structure is designed by a licensed engineer to meet USDA NRCS standards and specifications or an equivalent standard. If an equivalent design standard is used, the design and construction shall be certified by the Secretary, or a licensed professional engineer operating within the scope of ~~his or her~~ their expertise. The Secretary may consider the following in rendering a decision regarding alternative setbacks:

Sec. 62. RAP Section 9(b)(1) shall be amended to read:

(1) unique existing physical conditions or exceptional ~~topographical, stratigraphic, geologic,~~ topographical, stratigraphic, geologic, or other physical constraints peculiar to the particular property that would prevent development in accordance with this rule;

Sec. 63. RAP Section 10(a) shall be amended to read:

(a) Custom applicators of manure or other agricultural wastes shall be certified by the Secretary in order to operate within the State and shall comply with all applicable requirements of ~~the Required Agricultural Practices Rule, Medium Farm Operations Rule and Permits, and Large Farm Operations Rule and Permits.~~ RAPs, the Medium and Small Farm Operation Rules for Issuance of General and Individual Permits (the MFO Rule), the Large Farm Operations (LFO) Rule and Permits (the LFO Rule), the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm.

Sec. 64. RAP Section 10(g) shall be amended to read:

(g) Certified custom applicators shall maintain the following records of the amount of manure or other agricultural waste applied by farm and field for a period of five years and provide those records to the Secretary Agency upon reasonable request:

- (1) date of application;
- (2) field location;
- (3) application method and rate;
- (4) source of nutrients applied; and
- (5) weather and field conditions at the time of application.

Sec. 65. RAP Section 11 shall be amended to read:

When the Secretary determines, after inspection of a farm, that a person engaged in farming is complying with the Required Agricultural Practices Rule but there still exists the potential for agricultural wastes to enter groundwater or surface ~~the~~ waters of the State, the Secretary shall require the person to implement additional, site-specific, on-farm conservation practices designed to prevent agricultural wastes from entering groundwater or surface ~~the~~ waters of the State. When requiring implementation of a conservation practice, the Secretary shall inform the person engaged in farming of the resources available to assist the person in implementing the conservation practices to comply with the requirements of this rule.

Sec. 66. RAP Section 12.1(a) through 12.1(d) shall be renumbered as 12.1(a) through 12.1(c):

Sec. 67. RAP Sections 13 and 14 shall be renumbered RAP Sections 14 and 15.

Sec. 68. RAP Section 13 shall be added to read:

Section 13. Technical Service Provider (TSP) Certification

(a) Definitions

(1) Technical Service Provider (TSP) means a person who engages in the business of preparing a NMP required by Section 6.03(a) of this rule or provides other consulting services for a farm they do not own, lease, or manage (the client farm) to satisfy the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm. A TSP may or may not receive compensation for their services.

(2) For the purposes of this section, a NMP, means a written plan which satisfies the requirements of Section 6.03(a) of this rule.

(b) Certification

(1) A TSP shall be certified by the Secretary in order to operate within the State. Beginning 45 days after the effective date of this rule, a TSP shall not create a NMP nor provide other consulting services for the purpose of ensuring compliance with 6 V.S.A. Chapter 215 to a client farm, unless the TSP is certified by the Secretary.

(2) To be certified by the Secretary, a TSP shall:

(A) pass an exam administered by the Secretary that demonstrates the following:

i. knowledge of the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm.

ii. competency in methods and techniques used to develop a NMP and/or permit application materials, as applicable, that meet the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm.

(B) submit for review and approval two NMPs to ensure that the NMPs satisfy the requirements of the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any associated 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm, depending on the size of the farm; and

(C) submit to the Agency a signed VAAFM Certified Technical Service Provider Code of Responsibility.

(3) Prior to taking a certification exam with the Secretary, a TSP shall be certified to provide technical services for Nutrient Management Practice Code 590 by the USDA NRCS.

(4) TSP certification shall be valid for five years from the date of issuance.

(A) A candidate shall have a minimum of three opportunities to achieve a passing score on the certification examination during a twelve (12) month period. This twelve (12) month period shall begin on the date the candidate takes the first examination. After an initial failing score, a candidate must wait at least seven (7) days to retake the

examination. If a candidate fails twice, there shall be at least a twenty-eight (28) day waiting period before retaking the exam for the third time.

(B) The certification year will extend from July 1 through June 30.

(5) TSP certification shall require eight hours of training as approved by the Secretary in each five-year period of certification. Records of training shall be maintained in a manner prescribed by the Secretary. Completion of five-year training requirements will serve as meeting the requirements for recertification.

(6) TSP certification shall require training in the methods, techniques, or tools used to help client farms plan, design, and implement NMPs to improve agricultural operations, water quality, and soil health and comply with the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm.

Trainings shall provide information regarding:

(A) calculating manure and agricultural waste generation,

(B) taking soil and manure samples,

(C) identifying and creating maps of all natural resource features,

(D) use of erosion calculation tools,

(E) reconciling plans using records,

(F) use of nutrient index tools, and

(G) requirements within the RAPs, the MFO Rule, the LFO Rule.

(c) Regulatory Requirements

(1) Certified TSPs shall prepare and furnish NMPs for client farms which satisfy all requirements of the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm This includes taking professional responsibility for any data or analysis in the NMP.

(2) Certified TSPs who prepare annual reports and/or application forms, create documentation, or submit information to the Agency as part of the NMP components of permitting or certification programs, must ensure submitted information and records satisfy all requirements of the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm

(3) Certified TSPs shall maintain records for a period of five years and provide those records to the Agency upon request. The records shall include individual farm records and customer information such as field management activities provided by the farm including crop type and nutrient applications, imports and exports across the farm of nutrients and agricultural waste, or any records provided by the farm to the TSP that were utilized to develop a NMP or to submit application materials or records to the Agency.

(4) Certified TSPs shall certify whether the NMP prepared for a farm has the required land base and waste storage to adequately meet the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any associated 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm, depending on the size of the farm. Certified TSPs can write a NMP for a client farm with inadequate storage or land base, as long as the NMP requires export of agricultural wastes to meet the required land base and waste storage for the NMP.

(5) Certified TSPs shall prepare NMPs and Permit and Certification materials in a manner and format as prescribed by the Secretary.

(6) Certified TSPs are subject to audits by the Agency to validate accuracy of NMPs.

(d) Annual Reporting

Certified TSPs shall submit a report to the Agency annually, no later than June 30, identifying client farms for whom they performed consulting services related to RAPs, MFO Rule and Permits, LFO Rule and Permits, and the 590 Standard.

(e) Professional Responsibility

A Certified TSP shall certify whether the NMP, permit or certification documents, annual reports, or other related documents that they develop for a client farm meet the requirements of the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm.

(f) Enforcement

(1) Violations of this section are subject to enforcement by the Secretary and the Attorney General under the provisions of 6 V.S.A. §§ 4991 - 4996 and additional remedies available to the State under Vermont law.

(2) Violations of this section include:

(A) Preparation of a NMP or provision of other consulting services requiring certification of a TSP, pursuant to RAP Section 13(b), to a client farm by a TSP without the TSP becoming certified under this section.

(B) Preparation of a NMP that does not satisfy all requirements of the RAPs, the MFO Rule, the LFO Rule, the USDA NRCS Nutrient Management Practice Code 590, and any 6 V.S.A. Chapter 215 permit or certification applied for and/or held by the client farm.

(C) Preparation and submittal of a NMP or other permit documentation materials to the Agency by a certified TSP which include false or inaccurate information deemed by the Agency to have been intentionally and knowingly included.

(3) Violations of this section by a TSP can result in monetary penalties and can also result in the Agency's revocation of a TSP's certification

Sec. 69. RAP Appendix A(C)(1) shall be amended to read:

(1) there are unique existing physical conditions or exceptional topographical, stratigraphic, geologic, or other physical constraints peculiar to the particular property that would create a hardship for the farm operation;

Sec. 70. RAP Appendix A shall be amended to read:

* The Agency cannot approve alternate setbacks from State wetland regulations and Flood Hazard Area and River Corridor (FHARC) regulations in FHARC Rule, nor approve construction within Highway rights-of-way.

Sec. 71. RAP Roles of Other State Agencies: Information shall be amended to read:

Concentrated Animal Feeding Operations: Farms with point source discharges may be required to obtain a Concentrated Animal Feeding Operation (CAFO) permit from the ANR. AAFM is required to refer point source discharges to ANR for evaluation and ANR may follow up with the farm regarding the potential presence of a point source discharge. For additional information on the Department of Environmental Conservation's CAFO program visit their website.

Public Drinking Potable Water Sources Water Supplies and Wastewater Management: Nutrients, sediment, organic matter, and microorganisms may also impact potable water sources ~~drinking water supplies~~ derived from surface waters. Farm operations should be aware of the locations of groundwater and surface drinking water source intakes and appropriately manage agricultural activities to reduce potential negative impacts. In 2008, the Legislature made Groundwater a Public Trust resource under 10 V.S.A. Chapter 48. Information regarding public potable water sources ~~water supplies~~ as well as information pertaining to wastewater systems requirements may be obtained at (802) 828- 1535.

Wetlands: Farm operations should be aware of existing rules pertaining to wetlands under state and federal jurisdiction. The Natural Resources Conservation Service, U.S. Army Corps of Engineers, and the Vermont Department of Environmental Conservation coordinate all agriculture and wetland issues in Vermont. It is strongly suggested that landowners contact the U.S. Army Corps of Engineers at (802) 872-2893 and the Vermont Department of Environmental Conservation at (802) 490-6195 or <https://dec.vermont.gov/watershed/wetlands/contact> 828-1535 before initiating farm-related projects in or near wetlands.

Construction of New Farm Structures: Construction of new farm structures, specifically buildings and other farm-related structures, or other construction on the farm that disturb one or more acres of land, must obtain authorization from the ANR before commencing with land disturbance or construction activities. Approval ~~may~~ will be issued by the ANR upon receipt of a Notice of Intent (NOI) and accompanying complete application materials which certifies that adequate measures for the control of erosion and sedimentation will be used during land disturbance and construction efforts. Persons needing additional information about ~~the~~ Construction stormwater General Permitting or NOI concerning one or more acres of land disturbance are advised to contact the ~~Watershed Management Division of the Vermont Department of Environmental Conservation's Environmental Assistance Hotline at 1-800-974-9559~~ Stormwater Program. Authorization by the ANR is not needed for construction or land disturbance related to cultivation, irrigation, drainage, and fencing.

Flood Hazard Area and River Corridor Rule General Permit: An ANR ~~General Permit~~ General Permit for activities, such as farm structures or other development that may impact flood flows, and that are exempt from municipal regulation, which are located within Flood Hazard Areas and River Corridors, may be required. The primary purpose for the General Permit is to fully implement the Vermont Flood Hazard Area & River Corridor Rule (effective 03/01/2015) which requires the Agency to regulate activities exempt from municipal regulation in Flood Hazard Areas and River Corridors. These activities include state-owned and operated institutions and facilities, required agricultural and silvicultural practices, and power generating and transmission facilities regulated under 30 V.S.A. §§ 248 and 248a. More information can be obtained by visiting the River Corridor & Floodplain Protection Program website at <https://dec.vermont.gov/watershed/rivers/river-corridor-and-floodplain-protection/state-permits>, or by calling (802) 828-111535.

Solid and Hazardous Waste Management: Farm operations are required to manage all wastes generated on the farm consistent with all applicable Vermont Solid Waste Rules and Hazardous Waste Rules. Information regarding the proper management, storage, and disposal of hazardous waste, universal waste, used oil, and petroleum products can be obtained from the Vermont Waste Management & Prevention Division by calling (802) 828-1138. Information regarding the proper management, storage, and disposal of pesticidal waste and empty pesticide containers can be obtained from the Vermont Agency of Agriculture, Food and Markets by calling (802) 828-2431. On-farm composting or anaerobic digestion of food residuals and food processing residuals may require registration or permitting by the Vermont Waste Management & Prevention Division. More information can be obtained by calling (802) 828-1138. Any release of hazardous waste/material to the environment above its reportable quantity (i.e. 2-gals for petroleum) must be reported immediately by calling by the Vermont Waste Management & Prevention Division during office hours at (802) 828-1138 or calling the Haz Mat Hotline 24/7 at 800-641-5005.

Wastewater Management and Residuals Management: Farm operations generating wastewater indirect discharges or discharges to underground injection wells are advised that permits may be required from the Department of Environmental Conservation ~~Watershed Waste Management Division or Drinking Water and Groundwater Protection and Management Division~~ Watershed Waste Management Division or Drinking Water and Groundwater Protection and Management Division. The management of sewage, biosolids, and or stabilized septage on a farm must be conducted consistent with the Vermont Solid Waste Management Rules and any Solid Waste Management Facility Certification authorizing these activities. Information regarding these requirements can be obtained by calling (802) 828- 1535.

Water Withdrawal and Irrigation: Farm operations utilizing surface waters for irrigation purposes are advised that water withdrawals above a de minimis rate are required to obtain authorization a permit from the Department of Environmental Conservation consistent with the Procedure for Determining Acceptable Minimum Stream Flows. More information regarding water withdrawals for irrigation purposes and permitting requirements can be obtained by calling the Watershed Management Division at (802) 828-1535.

Alteration of Streams: Stream alteration permits regulate activities that take place in or along streams. The permit program is intended to prevent the creation of flood hazards, protect against damage to aquatic life, and protect the rights of neighboring landowners. The types of activities that are regulated include, but are not limited to: streambank stabilization, road improvements that encroach on streams, bridge construction or repair, and utility crossings under streambeds. More information regarding stream alteration and permitting requirements can be obtained by calling the River Management Division at (802) 828-1535.

Spill Prevention, Control, and Countermeasure (SPCC): EPA's oil pollution prevention regulation requires facilities that are subject to regulation to prepare and implement a plan to prevent any discharge of oil into navigable waters or adjoining shorelines of the U.S. A farm must prepare a SPCC Plan if it has an aggregate aboveground storage capacity of greater than ~~1,320~~2,500 gallons. Only containers of oil with a capacity of 55-gallons or greater are counted toward this aggregate capacity threshold. The plan is referred to as a Spill Prevention, Control, and Countermeasure (SPCC) plan. More information regarding SPCC and permitting requirements can be obtained by calling the Environmental Assistance Office at 1(800) 974-9559. Any release of oil regardless of volume that produces a sheen on, or impacts, surface water must be reported to the National Response Center by calling 800-424-8802.