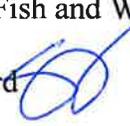


To: Senate Committee on Agriculture  
Senate Committee on Natural Resources  
House Committee on Agriculture and Forestry  
House Committee on Natural Resources, Fish and Wildlife

From: Susanne Young, Chair, Clean Water Board 

CC: Anson Tebbetts, Secretary, Agency of Agriculture Food & Markets  
Julie Moore, Secretary, Agency of Natural Resources

Date: January 15, 2020

Re: Act 76 of 2019 Report on Water Quality Projects on Farms

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## Introduction

In Act 76 of 2019 (“Act 76”), the Vermont General Assembly requested additional information about how water quality projects on farms are implemented and the role that these projects have in the newly created Clean Water Service Delivery (CWSD) model. As part of preparing this report, the Administration reviewed the final enacted version of Act 76, relevant statutes, and existing programming within State Agencies to understand how clean water projects have been managed historically, currently and then determined how they might best be managed going forward.

Act 76 seeks to achieve the State’s water quality goals expeditiously and cost-effectively, augmenting and building on current pollution control efforts, including the work being led by AAFM in the agricultural sector. Recognizing that the acres of agricultural land treated by conservation practices have increased significantly each year since the passage of Act 64 (2015), including a near-doubling in the phosphorus pollution reductions achieved by agricultural projects between 2018 to 2019, it is essential to ensure that the CWSD model does not interrupt this progress. The following report recommends an approach for pursuing targeted agricultural water quality projects and the CWSD model that recognizes and respects on-going agricultural clean water implementation efforts administered by AAFM.

## Definition of Clean Water Project

Act 76 defines a Clean Water Project (“CWP”) with specificity at 10 V.S.A. 921(a)(4). The definition excludes water quality projects required by a permit under 10 V.S.A. Chapter 47 or the requirements of Title 6 V.S.A. Chapter 215, and that are associated with developed lands, agriculture, or forestry. The Act includes the following as CWPs: sub-jurisdictional practices related to developed lands including municipal separate storm sewers, operational stormwater discharges, municipal roads, and other developed lands discharges; natural resource protection and restoration, including river corridor and floodplain restoration and protection, wetland protection and restoration, riparian and lakeshore corridor protection and restoration, and natural woody buffers associated with riparian, lakeshore, and wetland protection and restoration.

The definition of a CWP provided within Act 76 specifically excludes practices and projects that are subject to regulatory jurisdiction.

### **Purpose of Clean Water Service Delivery Model**

Act 76 prioritizes program delivery and funds for CWPs as defined above. These projects are essential to achieve the water quality goals spelled out in the Lake Champlain and Lake Memphremagog TMDLs. Act 76 further establishes new regional organizations called clean water service providers (CWSP). CWSPs will be established for each Tactical Basin Planning watershed in the Lake Champlain and Lake Memphremagog basins, and other basins as needed. CWSPs are responsible for partnering with Basin Water Quality Councils they empanel, to identify, implement, operate, and maintain CWPs to meet phosphorus reduction targets allocated to non-regulatory projects. Act 76 requires formula dispersal of funds for non-regulatory projects in the Lake Champlain and Lake Memphremagog basins to CWSPs. The formula is based on phosphorus reduction targets for the non-regulatory projects, and a standard cost per unit phosphorus reduced. Importantly for the purpose of this Report, the phosphorus reduction targets are to be developed based on the allocations published in the Lake Champlain and Lake Memphremagog TMDLs.

### **Agricultural Water Quality Projects and the Clean Water Service Delivery Model**

The agricultural water quality requirements established in 6 V.S.A. Chapter 215 are comprehensive in authorizing AAFM to regulate all agricultural land use practices for water quality conservation. Specifically, AAFM is required to maintain rules specific to BMPs for agricultural non-point source pollution and operation and management standards based on conservation practice standards. The Best Management Practice Rules outline how funding and technical assistance are provided to farms in order to achieve the highest and best use of resources for water quality protection, including prioritizing state-federal partnership. AAFM is also required to maintain the Required Agricultural Practices (RAP) Rule which regulates all agricultural land use management practices on a farm, requiring both performance metrics and specific conservation practices to achieve compliance.

Together these two sets of rules, along with the authorization for the Secretary of Agriculture to establish any necessary program to implement the Agricultural Nonpoint Source Pollution Control Program (ANSPCP) in 6 V.S.A. Chapter 215, covers all agricultural water quality conservation activities on farms. Since all agricultural land use practices are to be operated according to the rules and programs required by law, any agricultural land use practice on a jurisdictional RAP farm cannot – by definition – be considered an eligible CWP. Rather agricultural land use practice regulations and programming on jurisdictional RAP farms are administered by AAFM for the State with additional agricultural clean water implementation work supported by agricultural water quality partners and includes USDA-NRCS, the University of Vermont Extension Service and the Vermont Association of Conservation Districts.

This said, there are two categories of opportunity related to agriculture that are eligible for funding through CWSPs.

First, there is a sub-jurisdictional category of farms that was created when AAFM was required in Act 64 of 2015 to set threshold criteria by which a farm would be regulated under the RAPs. As part of that process, there was established a category of persons engaged in farming that are not regulated or eligible

for conservation programs by AAFM, unless designated by the Secretary of Agriculture as needing to comply with the RAPs. AAFM calls these sub-jurisdictional farming operations Non-RAP Operations or “NROs”. These sub-jurisdictional operations are now able to be regulated by local municipalities, however many local towns have not established regulatory frameworks, thereby leaving these sites eligible for the installation of CWPs under the CWSD model. Specifically, projects on lands where the person engaged in farming that does not meet the threshold criteria of Section 3.1 of the RAPs would be considered eligible as CWPs.

Second, for farms that meet the threshold criteria of Section 3.1 of the RAPS and are regulated by AAFM, there are CWP opportunities related to the implementation of natural resource practices. Specific examples of these practices from among those defined by Act 76 include wetland restoration, constructed wetlands for a “treatment train,” and river-corridor conservation easements that secure land and channel management rights. These types of projects are not regulated under 6 V.S.A Chapter 215 and therefore would be eligible for a CWSP to implement as a CWP on agricultural cropland. The types of projects on farms that are not eligible for a CWSP to implement as a CWP include: the treatment of agricultural wastes through constructed wetlands; tile drainage treatment practices and other treatment methods of regulated agricultural wastes.

### **Recommended Approach**

As noted above, there are a limited universe of CWPs in agricultural areas that would rightly be considered outside the scope of AAFM’s existing jurisdiction, and therefore truly “non-regulatory” and as a result eligible for implementation by CWSPs. These are noted above. In order to provide clarity around the work being done by AAFM and the work of the CWSPs, the following approach will be taken:

1. The required reductions within the wasteload allocation (WLA) for agricultural lands are considered entirely regulatory, and not eligible for work by CWSPs. 100% of the WLA for agriculture is in the jurisdiction of AAFM and will be addressed through AAFM’s comprehensive authorities established in 6 V.S.A. Chapter 215 that authorize AAFM to regulate all agricultural land use practices on farms subject to the RAPs.
2. The required reductions within the load allocation (LA) for agricultural lands were assigned to AAFM as part of the Lake Champlain Basin (LCB) TMDL establishment process approved in 2016 and was based on the legislative support from Act 64 of 2015, which ensured AAFM had the regulatory and statutory capabilities necessary to implement the TMDL. AAFM’s implementation of this charge has met every EPA milestone to date and the agricultural sector continues to supply the highest and most cost-effective implementation rates of any other sector in the fiscal year 2016 through 2019 Clean Water Investment Reports. Maintaining the agricultural LA to AAFM ensures regulatory certainty for the regulated community and a clear scope of work for CWSPs.

The required reductions within the load allocation (LA) for agricultural lands will also be assigned to AAFM for implementation, with 10% of the LA for each lake segment basin partitioned to CWSPs to support implementation of natural resources projects. CWSPs shall consult with AAFM quarterly on project selection and progress, and AAFM shall have the authority to determine whether a proposed project qualifies as a natural resource project eligible

for CWSP implementation. Expressed in metric tons (MT, which is equal to 1,000 kilograms), these partitions are shown in the table below.

Lake Segment	Total Agriculture LA	% to CWSP	MTs Assigned to CWSP for NR Projects in Ag lands	MTs assigned to AAFM
South Lake B	12.5	10%	1.3	11.3
South Lake A	15.0	10%	1.5	13.5
Port Henry	4.0	10%	0.4	3.6
Otter Creek	33.0	10%	3.3	29.7
Main Lake	16.1	10%	1.6	14.4
Shelburne Bay	1.3	10%	0.1	1.1
Burlington Bay	0.0	10%	0.0	0.0
Mallets Bay	7.4	10%	0.7	6.7
Northeast Arm	2.7	10%	0.3	2.4
St. Albans Bay	3.0	10%	0.3	2.7
Missisquoi Bay	47.6	10%	4.8	42.8
Isle LaMotte	0.7	10%	0.1	0.6
Lake Memphremagog	20.54	10%	2.05	18.5

3. Similar work by CWSPs:

- a. The required LA and WLA reductions from agricultural lands assigned to AAFM will be established by ANR based on a 5-year cycle of implementation with annual goals. Once the first 5-year cycle of implementation has elapsed the remaining LA for each sector (forestry, agriculture and streambank) should be re-evaluated for allocation based on levels of achievement reported in the annual *Clean Water Performance Report*.
- b. AAFM agrees to maintain an inspection plan for non-annual practices to ensure continued performance in accordance with their design.
- c. ANR will establish and provide pollutant accounting methods and an accompanying data standard that will be used to quantify the reductions individual clean water practices and projects will be credited with achieving as part of the TMDL. These reductions achieved will be reported by AAFM similar to how CWSP's will need to report so that Clean Water Board can make fiscal allocations based on reductions accomplished and cost-effectiveness of reductions achieved.

4. Innovative Projects. Innovative projects may be supported by AAFM or CWSPs, in consultation with AAFM, and will be coordinated under the tactical basin planning process in coordination with the agricultural water quality partnership group and relevant Basin Water Quality Council.

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