

ACCEPTED AGRICULTURAL PRACTICE REGULATIONS

Effective Date: April 24, 2006

INTRODUCTION

This introduction is intended to provide a general explanation of the Accepted Agricultural Practice Rules and is not part of the rules.

i. General

Agriculture has been identified as a contributor to surface and ground water pollution in Vermont. In 1986, the St. Albans Bay Rural Clean Water Program Annual Report estimated that agriculture is responsible for 48 percent of the total phosphorus load entering the St. Albans Bay. Of this, they estimated 41.6 percent comes from cropland erosion, 16.9 percent from barnyards, 3.4 percent from stacked manure, 7.6 percent from milkhouse wastes, 27.1 percent from spread manure and 3.5 percent from other sources. The study also estimated that biologically available phosphorus or the phosphorus that directly contributes to eutrophication comes from the following agricultural sources: barnyards, 26.4 percent; milkhouses, 11.9 percent; crop erosion, 13 percent; manure spreading, 42.3 percent; stacked manure, 5.3 percent; other practices, 1.1 percent. According to the Lake Champlain Phosphorous TMDL published in 2002, agriculture accounts for 56% of the phosphorous loading to Lake Champlain.

While significant strides have been made to reduce agricultural nonpoint source pollution through the voluntary implementation of soil, manure, and fertilizer management practices, agriculture remains one of the most significant potential sources of nonpoint source pollution. Inadequate animal waste, soil and nutrient management results in nutrient loading to surface waters and ground waters and is the major source of agricultural nonpoint source pollution in the State. For example, manure applied to frozen or snow covered ground creates the potential for nutrients and organic matter to run off during snowmelt, floods or other runoff-producing events. A large fraction of non point source pollution is a result of cropland erosion. Soil erosion is often the result of poor soil quality. Efforts to improve soil quality reduce soil loss from farm fields, protect water quality and improve farm productivity. Organic matter is a critical component of soil quality effecting soil structure, biological activity and soil chemistry. Efforts to build soil organic matter and otherwise enhance soil health are important components in improving agricultural soils and protecting water quality.

Recognizing the need to protect and improve water quality through improved agricultural practices, the Vermont legislature charged the Agency of Agriculture, Food and Markets with creating a comprehensive Agricultural Nonpoint Source Pollution Reduction Program including Accepted Agricultural Practices and Best Management Practices. The legislature also recognized the need to balance water quality improvements with the need to sustain a healthy, economically viable agricultural industry. To achieve this, the

Legislature has directed the Agency to promulgate regulations governing Accepted Agricultural Practices and Best Management Practices.

Accepted Agricultural Practices and Best Management Practices are two different levels of practices to reduce agricultural nonpoint source pollution. Accepted Agricultural Practices are statewide restrictions designed to reduce nonpoint pollutant discharges through implementation of improved farming techniques rather than investments in structures and equipment. The law requires that these practices must be technically feasible as well as cost effective for farmers to implement without governmental financial assistance. Best management practices are more restrictive than Accepted Agricultural Practices and will be site specific practices prescribed to correct a problem on a specific farm. Best Management Practices typically require installation of structures, such as manure storage systems, to reduce agricultural nonpoint source pollution. While farmers may realize an economic benefit from Best Management Practices, it is unlikely that they will be affordable without governmental cost sharing.

Accepted Agricultural Practices are intended to reduce, not eliminate, pollutants associated with nonpoint sources such as sediments, nutrients and agricultural chemicals that can enter surface water, groundwater and State Significant Wetlands that would degrade water quality. Accepted Agricultural Practices are a group of farmland management activities which will conserve and protect natural resources. These practices will maintain the health and long-term productivity of the soils, water, and related plant and animal resources and reduce the potential for water pollution from agricultural nonpoint sources. Accepted Agricultural Practices include these practices among others: erosion and sediment control, animal waste management, fertilizer management, and pesticide management. Accepted Agricultural Practices are basic practices that all farm operators must follow as a part of their normal operations.

Implementation of Accepted Agricultural Practices by Vermont agricultural operators creates a rebuttable presumption of compliance with Vermont Water Quality Standards and the Vermont Wetland Rules. The presumption that the use of Accepted Agricultural Practices complies with Vermont Water Quality Standards may be overcome by water quality data or results from a water quality study deemed conclusive by the Secretary of ANR. These rules, however, do not exempt farmers from the obligation to comply fully with the Vermont Surface and Ground Water Quality Standards, the Vermont Wetland Rules and the applicable provisions of the Federal Clean Water Act.

ii. Vegetative buffer strips

Vegetative buffer strips shall be maintained between annual cropland and adjoining surface waters. Buffer strips help to filter out sediments, agricultural chemicals, and nutrients such as phosphorus from surface runoff. Nutrients and sediments contained in runoff adversely affect fish, natural plant growth, water turbidity, as well as other water quality values, and promote nuisance aquatic plant growth. Buffer strips also help to stabilize stream banks reducing the amount of cropland lost to natural stream bank erosion as well as land lost due to excessive tillage. Vegetative buffer strips also help to

prevent activities on or over the tops of stream and river banks that can negatively affect water quality.

iii. Roles of the State agencies

The Agency of Agriculture is authorized by statute to manage the State's Agricultural Nonpoint Source Pollution Reduction Program planning, implementation and regulation. The Vermont Agency of Natural Resources, which is the designated lead State water quality agency, is responsible for the management and enforcement of all other water quality/ water pollution control and wetland protection statutes and rules of the State. The Agriculture Agency is required to cooperate with the Agency of Natural Resources in developing and implementing the Agricultural Nonpoint Source Pollution Reduction Program. The two agencies have entered into a Memorandum of Understanding describing the procedures to be used while coordinating their respective efforts.

There is a need for continued cooperation and communication between the Secretary of Agriculture, Food and Markets and the Secretary of the Agency of Natural Resources in implementing and enforcing the Accepted Agricultural Practice Rules and determining their effectiveness in reducing nonpoint source pollution.

Public Drinking Water Supplies: Nutrients, sediment, organic matter and microorganisms may also impact drinking water supplies derived from surface waters. Agricultural operations should be aware of the locations of surface drinking water source intakes and appropriately manage agricultural activities to reduce potential negative impacts.

Wetlands: Although wetlands are not mentioned in the AAPs, landowners need to 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/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 802-241-3760 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 that disturb one or more acres of land must obtain authorization from the ANR before commencing with land disturbance or construction activities. Approval will be issued by ANR upon receipt of a Notice of Intent (NOI) 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 General Permit/NOI concerning one or more acres of land disturbance are advised to contact the Water Quality Division of the Department of Environmental Conservation at 802-241-3770 or visit the web site at www.vtwaterquality.org/stormwater. Authorization by ANR is not needed for construction or land disturbance related to cultivation, irrigation, drainage and fencing.

Solid and Hazardous Waste Management: Agricultural operations are advised to manage all wastes generated on the farm consistent with all applicable solid waste rules and hazardous waste rules. Information regarding the proper storage and disposal of waste oil, petroleum products and empty containers can be obtained from the Vermont Waste Management Division at 802-241-3888.

iv. Enforcement

Accepted Agricultural Practices are considered a fundamental part of agricultural nonpoint source pollution management and shall be followed by all farm operators. When the Secretary determines that a farmer is using practices inconsistent with the Accepted Agricultural Practice Rules, the Secretary may issue a written warning which includes a brief description of the alleged violation, recommendations for corrective actions, and a summary of federal and state assistance programs available to assist the farmer in remedying the violation, and a proposed abatement schedule. The farmer has 30 days to respond to the warning.

If the farmer either fails to respond to the warning or take the indicated corrective action(s), the Secretary must hold a hearing on the violation. The Secretary may issue cease and desist orders and begin appropriate actions including seeking a temporary or permanent injunction of the violation. The Secretary may also assess administrative penalties against a farmer who violates a cease and desist order or other order issued. Administrative penalties of \$1,000 per day per continuing violation up to a total of \$25,000 may be assessed. At that time, the Secretary may reassess the administrative penalties.

An enforcement order or administrative penalty may be appealed to the superior court within 30 days of the decision.

In circumstances where the Secretary wishes to terminate an enforcement action, short of having achieved compliance, the Secretary must notify the Secretary of ANR. The Secretary of ANR may then initiate a separate enforcement action, but only after it has been determined that the violation has or will cause water quality to fail to meet Vermont water quality criteria or Vermont Water Quality Standards.

v. Information

Questions regarding these regulations should be directed to the Vermont Agency of Agriculture, Food and Markets, 116 State Street, Drawer 20, Montpelier, Vermont 05620-2901, (802) 828-2431.

SECTION 1: GENERAL

1.1 Purpose

It is a policy of the State of Vermont to protect and maintain water quality by reducing agricultural nonpoint source pollution through implementation of Accepted Agricultural Practices.

1.2 Authority: 6 V.S.A. §4810, 10 V.S.A. §1021(f), and 10 V.S.A. §1259(f) and (i).

SECTION 2: DEFINITIONS

2.00 Agency means the Vermont Agency of Agriculture, Food and Markets the Secretary of the Vermont Agency of Agriculture, Food and Markets and his or her designees.

2.01 ANR means the Vermont Agency of Natural Resources, the Secretary of the Vermont Agency of Natural Resources and his or her designees.

2.02 Buffer Zone means an area of perennial vegetation between the edge of annual cropland and the top of the bank of the adjoining surface water.

2.03 Cropland means land devoted to row crop, perennial production, or pasture production.

2.04 Discharge means the placing, depositing, or emission of any wastes directly or indirectly, into an injection well or into waters of the state.

2.05 Farming means:

(a) the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural 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 production of fuel or power from agricultural products or wastes produced on the farm.

(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.

2.06 Farm Structure means a structure or structures as defined herein that is used by a person for agricultural production that meets one or more of the following:

(a) is used in connection with the sale of \$1000 or more of agricultural products in a normal year; or

(b) is used in connection with the raising, feeding, and management of at least the following number of adult animals: four equines; five cattle or American bison; fifteen swine; fifteen goats; fifteen sheep; fifteen fallow deer; fifteen red deer; fifty turkeys; fifty geese; one-hundred laying hens; two-hundred and fifty broilers, pheasant, Chukar partridge, or Coturnix quail; three camelids; four ratites (ostriches, rheas, and emus); thirty rabbits; one hundred ducks; or one-thousand pounds of cultured trout; or

(c) is used by a farmer filing with the Internal Revenue Service a 1040 (F) income tax statement in at least one of the past two years; or

(d) is on a farm with a business and farm management plan approved by the Secretary.

2.07 Floodplain means the land in the community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the National Flood Insurance Program maps.

2.08 Floodway means the channel of a watercourse and adjacent land areas which are required to carry and discharge a one-hundred year flood within a regulated flood hazard area without substantially increasing the flood heights. Floodways are depicted on the National Flood Insurance Maps on file with the Town Clerk.

2.09 Fluvial Erosion Hazard (FEH) Zone means a corridor within which structures and investments are most likely to be at a high to extreme risk of loss due to the erosion associated with channel slope adjustments. FEH Zones are derived by the Agency of Natural Resources through stream geomorphic assessments, mapped as part of the FEMA flood hazard program, and adopted through municipal plans and zoning ordinances pursuant to 24 V.S.A. §4424.

2.10 Groundwater means water below the land surface in a zone of saturation but does not include surface waters.

2.11 Groundwater Quality Standards means the primary and secondary groundwater quality standards listed in Appendix One of the Groundwater Protection Rule and Strategy in accordance with 10 V.S.A. Chapter 48.

2.12 Intermittent Waters means waters of the state where the presence of water is not continuous and may occur periodically and infrequently such as during and immediately following a rain or snowmelt event.

2.13 Livestock, for purposes of this regulation means: cattle, sheep, goats, equines, fallow deer, red deer, American bison, swine, water buffalo, poultry, pheasant, Chukar partridge, Coturnix quail, camelids, ratites (ostriches, rheas, and emus), and cultured trout propagated by commercial trout farms.

2.14 Nonpoint Source Pollution means wastes that reach surface water or groundwater indirectly or in a diffuse manner as a result of agricultural practices.

2.15 Person means:

(a) an individual, partnership, corporation, association, unincorporated organization, trust or other legal or commercial entity, including a joint venture or affiliated ownership; or

(b) a municipality or state agency; or

(c) individuals and entities affiliated with each other for profit, consideration or any other beneficial interest derived from agricultural land management.

2.16 Pesticides are any substance produced, distributed or used for preventing, destroying, or repelling any insects, rodents, nematodes, fungi, weeds, or other forms of plant or animal life or viruses, except viruses on or in living humans or other animals, which the Secretary shall declare to be a pest or any substance produced, distributed or used as a plant regulator, defoliant or desiccant.

2.17 Production Area means the part of a farm that includes the animal confinement area, the manure storage area, the feed storage area, the waste containment areas, washing or processing areas, the fertilizer and pesticide storage areas and areas used for the storage, handling, treatment or disposal of mortalities.

2.18 Structure means a silo, a building for housing livestock, raising horticultural or agronomic plants, or for carrying out other accepted agricultural practices as defined in Section 3.2 of these rules. It also means a barnyard or waste management system, either of which is created from an assembly of materials, but excludes a dwelling for human habitation.

2.19 Surface water means all rivers, streams, 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.

2.20 Wastes includes but is not limited to sediments, minerals (including heavy metals), plant nutrients, pesticides, organic wastes (including livestock waste, mortalities, compost, feed and crop debris), waste oils, pathogenic bacteria and viruses, thermal pollution, silage runoff, untreated milkhouse waste and any other waste compound or material which is determined by the Secretary or the Secretary of ANR to be harmful to the waters of the State, or other wastes as defined in 10 V.S.A. Section 1251 (12).

2.21 Waters of the State, for the purposes of this rule, include surface waters and groundwater as applied.

2.22 Well 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.

SECTION 3: ACCEPTED AGRICULTURAL PRACTICES

3.1 Persons engaged in agricultural operations who follow the agricultural practices as defined in Section 3.2 of these rules and who comply with the conditions and restrictions contained in Section 4 shall be presumed to be pursuing Accepted Agricultural Practices.

3.2 Agricultural practices that are governed by these regulations include, but are not limited to, the following:

- (a) The confinement, feeding, fencing, and watering of livestock.
- (b) The storage and handling of livestock wastes and by-products.
- (c) The collection of maple sap and production of maple syrup.
- (d) The preparation, tilling, fertilization, planting, protection, irrigation and harvesting of crops.
- (e) The ditching and subsurface drainage of farm fields and the construction of farm ponds.
- (f) The stabilization of farm field streambanks..
- (g) The construction and maintenance of farm structures and farm roads.
- (h) The on-site production of fuel or power from agricultural products or wastes produced on the farm.
- (i) The on-site storage, preparation and sale of agricultural products principally produced on the farm.
- (j) The on-site storage of agricultural inputs including, but not limited to, lime, fertilizer and pesticides.
- (k) The handling of livestock mortalities.

SECTION 4: ACCEPTED AGRICULTURAL PRACTICE CONDITIONS AND RESTRICTIONS

4.01 Discharges

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

(b) Barnyards, manure storage areas, animal holding areas and production areas shall be managed or controlled to prevent runoff of wastes to adjoining waters, groundwater or across property boundaries.

(c) Adequate vegetative cover shall be maintained on streambanks by limiting livestock trampling and equipment damage (except at defined crossings) to protect streambanks from excessive erosion.

(d) The areas from the top of a bank of surface water to the edge of the surface water shall be left in their natural state except as provided for by State statute including but not limited to 10 V.S.A. Chapter 41 §1021; and for the pasturing of livestock consistent with section 4.01(c).

4.02 Nutrient and Pesticide Storage

(a) Manure stacking sites, fertilizer storage and other nutrient source storage shall not be located within 100 feet of private wells unless it can be demonstrated to the Secretary that there is no suitable alternative site or if the private well is in a location that is inconsistent with state law or regulation. Fertilizer may be stored within 100 feet of private wells provided it is stored in a structure that minimizes leaching and runoff potential. Manure shall not be stored within 100 feet of property boundaries unless it can be demonstrated to the Secretary that there is no suitable alternative site.

(b) Stacking or storage of manure shall not occur on lands subject to annual overflow from adjacent waters unless it can be demonstrated to the Secretary that no suitable alternative sites exist.

(c) Manure shall not be field stacked on unimproved sites within 100 feet of surface water unless it can be demonstrated to the Secretary that there is no suitable alternative site.

(d) Waste management systems shall be managed and maintained so as to prevent discharges or structural failures.

4.03 Nutrient and Pesticide Application

(a) All sources of nutrients shall be accounted for when determining recommended application rates for crops. Nutrient applications shall be based on soil testing by field. All fields receiving mechanical application of manure shall be soil tested at least once every five years. Records of soil tests shall be maintained for five years. Recommendations and applications may be adjusted based on manure testing and/or leaf analysis. Nutrient applications shall be consistent with university recommendations, standard agricultural practices or a nutrient management plan for the farm approved by the Secretary.

(b) Manure spread on annual crop land that is subject to annual overflow from adjacent surface waters shall be incorporated within 48 hours. This regulation shall not apply to no-till land and land planted to cover crop.

(c) Manure shall not be spread between December 15 and April 1 unless the Secretary grants an exemption because of an emergency situation, such as, but not limited to, the structural failure of a manure storage system or for other specific management needs. In granting an exemption, the Secretary shall determine that the manure will be spread on fields with the least likelihood of generating runoff to the adjoining surface waters. Being granted an exemption does not relieve persons from complying with the Vermont Water Quality Standards.

(d) Manure shall not be applied within 10 feet of adjoining surface water or within 25 feet of adjoining surface water at points of runoff, or applied in such a manner as to enter surface water.

(e) Pesticides shall be used in accordance with Title 6 V.S.A. Chapter 87 Control of Pesticides and all regulations promulgated there under.

(f) Fertigation and chemigation equipment shall be operated only with an adequate anti-siphon device between the system and the water source.

(g) Livestock shall not be pastured within 50 feet of a private well without the permission of the well owner nor shall application of manure occur within 50 feet of a private well unless there is a legal document which provides for a different isolation distance or when a private well is in a location that is inconsistent with state law or regulation.

4.04 Soil Cultivation

Cropland shall be cultivated in such a manner that results in an average soil loss less than or equal to two times the soil loss tolerance for the prevalent soil as calculated through application of the Revised Universal Soil Loss Equation, or through the application of similarly accepted models.

4.05 Agricultural Waste Management

- (a) All agricultural wastes including, but not limited to, chemicals, petroleum products, containers, and carcasses shall be properly stored, handled and disposed of, so as to minimize adverse water quality impacts.
- (b) Animal mortalities buried on farm property shall be sited so as to be:
 - (i) at least 150 feet from property lines, wells and surface waters.
 - (ii) at least 3 feet above the seasonal high water table.
 - (iii) covered with a minimum of 24 inches of soil
- (c) Animal mortalities composted on farm property shall be sited so as to be:
 - (i) at least 100 feet from property lines, wells and surface waters.
 - (ii) not on land subject to annual overflow from adjoining surface waters.
 - (iii) at least 300 feet from neighboring domiciles.

4.06 Buffer Zones

A vegetative buffer zone of perennial vegetation shall be maintained between annual croplands and the top of the bank of adjoining surface waters consistent with (a) through (f) below, in order to filter out sediments, nutrients, and agricultural chemicals and to protect the surface waters from erosion of streambanks due to excessive tillage. Vegetative buffer zones are not required along intermittent stream channels such as those occurring in annual croplands or along drainage ditches.

- (a) adjoining surface waters shall be buffered from annual crop lands by at least 10 feet of perennial vegetation.
- (b) an additional 15 feet of perennial vegetation shall be established at points of runoff to adjoining surface waters.
- (c) no manure shall be applied within vegetative buffers.
- (d) use of fertilizer for the establishment and maintenance of the vegetative buffer is allowed.
- (e) tillage shall not occur in a vegetative buffer except for the establishment or maintenance of the vegetative buffer.
- (f) harvesting the vegetative buffer as a perennial crop is allowed.

4.07 Construction of Farm Structures

(a) In addition to the requirements of Section 4.02(a), manure, fertilizer, pesticide storage structures, and farm structures shall not be constructed within a floodway area as presented on National Flood Insurance Maps on file with Town Clerks or within a Fluvial Erosion Hazard Zone as designated by municipal ordinance. Such structures may be constructed outside this area yet within the 100-year floodplain when adequately protected from inundation and floodwater damage. Fences through which floodwater may flow are not structures which represent an encroachment in a floodway area.

(b) All manure, fertilizer, and pesticide storage structures constructed within a floodplain must conform to National Flood Insurance Program Standards.

(c) Prior to construction of farm structures, the farmer must notify the zoning administrator or the town clerk in writing of the proposed construction activity. The notification must contain a sketch of the proposed structure including the setbacks from adjoining property lines and road rights-of-way.

(d) Local setbacks or no build areas within Fluvial Erosion Hazard Zones established by the municipality shall be maintained unless upon written petition of the farmer the Secretary has approved other reasonable setbacks for the specific farm structure being constructed or maintained.

(e) In addition to the provisions of 4.07 (a) and (b); new structures that are not additions to existing farm structures associated with farm operations shall be constructed so that a minimum distance of 50 feet is maintained between the top of the bank of the adjoining waters and the farm structure. Such structures do not include those for irrigation, drainage or fencing.

(f) All waste storage facilities constructed or expanded after July 1, 2006 shall be designed and constructed according to USDA Natural Resource Conservation Service standards and specifications or an equivalent standard certified by a professional engineer licensed in the State of Vermont.

4.08 Ground Water Quality:

(a) Farm operations shall be conducted so that the concentration of wastes in groundwater caused by 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.

(b) Farm operations shall be conducted with the goal to reduce the concentration of wastes in groundwater to the preventive action levels (PALs) of the primary or secondary groundwater quality 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.

(c) The Secretary may conduct groundwater quality monitoring to assess the impact of agricultural practices and farm operations on the quality of drinking water and groundwater.

(d) The Secretary may conduct groundwater sampling:

- i) at sites selected by the Secretary where well owners have volunteered or agreed to participate in the sampling program;
- ii) at sites upon the request of a well owner;

iii) at sites selected by the Secretary based on the results of other sampling data or the existence of vulnerable site characteristics;

iv) at sites with activities or operations permitted or regulated by the Secretary; and

v) at sites where the Secretary has received a complaint from a well owner in the vicinity of an agricultural operation that the operation has contaminated the drinking water or groundwater of the well owner.

e) The Secretary shall conduct a groundwater investigation where the Secretary has received a complaint from a well owner in the vicinity of an agricultural operation that the operation or its agricultural practices has contaminated the drinking water or groundwater of the well owner.

f) The Secretary shall investigate the occurrence of contamination where sampling indicates that drinking water or groundwater contain detectable concentrations of agricultural contaminants.

The approaches the Secretary may utilize to identify and remediate sources of drinking water and groundwater contamination include, but are not limited to:

i) Conduct site visits to interview property owners and farm operators, gain an understanding of the physical characteristics of the landscape and locate additional sites for water quality sampling;

ii) Communicate with farm operators and adjacent property owners to identify practices and activities that are potential sources of contamination;

iii) Conduct additional sampling to confirm the detection of contaminants and to determine the extent and scope of contamination at the site;

iv) Make recommendations for changes in activities, management practices, cropping patterns or structural revisions designed to reduce the contamination from current activities and prevent contamination from future activities;

v) Conduct follow up water quality sampling to determine the effectiveness of changes made or corrective actions taken;

vi) Seek additional investigative or consultation resources to evaluate and characterize the site to determine vulnerability to drinking water and groundwater contamination; and

vii) Review testing results and site evaluations to determine if changes in water quality data are the result of changes in activities or natural site conditions.

(g) The Secretary shall provide written notification of testing results to each individual well owner that participates in the sampling program.

i) Property owners in the vicinity of farm operations and agricultural lands shall receive the test results for each well owned by them that is sampled by the Secretary.

ii) Farm operations shall receive the test results for wells owned by the farm operation and for wells adjacent to or impacted by the crop land or facilities managed by the farm operation.

(h) The Secretary may require the owner or operator of a waste storage facility to modify the facility to meet the 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 a violation of the Groundwater Quality Standards.

(i) For the purpose of making a determination that a waste storage facility poses a threat to human health or the environment the Secretary shall pay for the initial costs to conduct groundwater monitoring. When the Secretary has made a determination that a waste storage facility poses a threat to human health or the environment, the Secretary shall provide notification to the Department of Health and the Agency of Natural Resources. This notification shall occur within twenty one (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 Agency of Natural Resources.

(j) The owner or operator of a farm operation required by the Secretary to design, construct or modify a waste storage facility may apply for cost share assistance. If the Secretary lacks adequate cost share assistance funds, the requirement to design, construct or modify a waste storage facility shall be suspended until adequate funding is available.

Suspension of the requirements to design, construct or modify a waste storage facility does not relieve an owner or operator of a farm subject to the Medium Farm Operations Permitting Program from the remaining requirements of the MFO Program.

Suspension of the requirements to design, construct or modify a waste storage facility does not apply to the owner or operator of a farm subject to the Large Farm Operations Permitting Program.

4.09 Streambank Stabilization

(a) Stabilization of farm field streambanks shall be constructed in accordance with the United States Department of Agriculture Natural Resources Conservation Service standards and specifications or other standards approved by the Natural Resources and Agriculture secretaries. Wherever feasible, stabilization of farm field streambanks shall recognize the need to reduce fluvial erosion hazards as defined by the Secretary of the Agency of Natural Resources.

SECTION 5: ENFORCEMENT

5.1 Authority

Violations of these rules are subject to enforcement under applicable Vermont law including, but not necessarily limited to, the provisions of 6 V.S.A. Section 4812. These rules do not in any way prevent the secretary from taking appropriate enforcement action for verifiable violations of the state's Water Pollution Control statutes and regulations.

5.2 Enforcement Procedure

(a)When the Secretary determines that a person engaged in farming is managing a farm using practices which are inconsistent with practices defined by rules under 6 V.S.A., Chapter 215, the Secretary may issue a written warning which shall be served in person or by certified mail, return receipt requested. The warning shall include a brief description of the alleged violation, identification of Title 6 and applicable rules, a recommendation for corrective actions that may be taken by the person, along with a summary of federal and state assistance programs which may be utilized by the person to remedy the violation and a request for an abatement schedule from the person according to which the practice shall be altered. The person shall have 30 days to respond to the written warning. If the person fails to respond to the written warning within this period or to take corrective action to change the practices in order to protect water quality, the Secretary may act pursuant to subsection (b) of this section in order to protect water quality.

(b)After an opportunity for a hearing, the Secretary may issue cease and desist orders and institute appropriate proceedings on behalf of the Agency to enforce this chapter. Whenever the Secretary believes that any person engaged in farming is in violation of these rules, an action may be brought by the Agency in a court of competent jurisdiction to restrain by temporary or permanent injunction the continuation or repetition of the violation. The court may issue temporary or permanent injunctions, and other relief as may be necessary and appropriate to curtail any violations.

(c)The Secretary may assess administrative penalties in accordance with sections 15, 16, and 17 of Title 6 against any farmer who violates a cease and desist order or other order issued under subsection (b) of this section.

(d)Any person subject to an enforcement order or an administrative penalty who is aggrieved by the final decision of the Secretary may appeal to the superior court within 30 days of the decision. The administrative judge may specially assign an environmental judge to superior court for the purpose of hearing the appeal.