Appendix G

House Bill 35

(aka Vermont Clean Water Act of 2015)

Section by Section Summary

H.35: An Act Relating to Improving the Quality of State Waters
Section by Section Summary of Bill as Passed the House and Senate

Sec. 1. Findings and Purpose Section

- The purpose of the bill is to manage and regulate waters of the State to improve and not degrade the quality of State waters; implement the Lake Champlain TMDL; meet impending TMDLs for other waters; identify areas in the State where there is the greatest need to act; and engage interested parties in water quality efforts.
- Sec. 1 provides findings regarding the state of Vermont's surface waters

Sec. 2. Agricultural Water Quality Definitions

- Adds definitions of "farming," "healthy soil," "manure," "top of bank," "waste," and "waters" to 6 V.S.A. chapter 215.

Secs. 3-5. Small Farm Certification; Required Agricultural Practices (RAPs); Small Farm Fee

- Sec. 3 enacts 6 V.S.A. § 4871 to require small farms to certify compliance with the RAPs annually.
- Sec. 3 defines "small farm" as a parcel of land on which 10 or more acres are used for farming and that:
  - Houses no more than the maximum number of animals for a small farm (e.g. 199 dairy cows); and
  - Delegates to the Agency of Agriculture (AAFM); or produces crops for sale.
  - AAFM shall inspect small farms on a frequency established by the AAFM by rule. During inspection, AAFM shall identify areas that could use assistance to improve compliance with the RAPs. Identified areas will be ranked and receive priority assistance to achieve RAP compliance.
- Sec. 4 requires AAFM to amend the RAPs by rule to establish requirements for small farm certification, including requirements for stacking or storing nutrients, soil health and loss tolerance, vegetative buffer zones, livestock exclusion, nutrient management planning, and tile drainage or other dewatering technology.
- Sec. 5 requires AAFM to report to the General Assembly by Jan. 15, 2017 with recommendations regarding how subsurface tile drainage or other dewatering technology should be managed.

Secs. 6-11. Agricultural Water Quality Funding--Fees and Agency Positions

- Sec. 6 establishes a $2,500 annual registration fee for large farms. AAFM shall inspect large farms at least once a year.
- Sec. 7 establishes a $1,500 annual registration fee for medium farms. AAFM shall inspect medium farms at least once every five years.
- Sec. 9 requires commercial feed distributors to report tonnage of feed distributed in state in 2016 and 2017.
- Sec. 10 establishes a $30 a ton fee on non-agricultural fertilizer distributed in the State, in addition to an existing $0.25 fee per year on all fertilizer. The minimum annual fee to be paid shall be $150.
- Sec. 11. Increases the annual product registration fee on pesticide products from $110 to $125.

Secs. 12-14. Agricultural Water Quality; Best Management Practices (BMPs)

- Sec. 12 changes the term from "Accepted Agriculture Practices" to "Required Agriculture Practices."
- Sec. 12 provides that if AAFM determines a farm is meeting RAPs, but there still exists potential for agriculture pollutants to enter the waters of the State, AAFM shall require a farm to implement a site specific conservation practice designed to prevent agriculture pollutants from entering the waters of the State.
- Sec. 12 provides that the AAFM may require a farmer to implement a BMP when the farm is in compliance with RAPs and there still exists potential for agriculture pollutants to enter the waters of the State.
- Secs. 12 and 14 deletes requirement that AAFM determine sufficient financial assistance is available before requiring a BMP. AAFM instead will inform farmers of available resources to assist implementing BMPs.
- Sec. 12 requires the AAFM and ANR to revise their memorandum of understanding (MOU) for nonpoint agricultural pollutants. The MOU shall include how the agencies will implement the antidegradation implementation policy. The MOU shall develop three separate measures of performance for the agencies.
- Sec. 13 directs the Office of Legislative Council, through statutory revision authority, to change the terms "accepted agriculture practices" to "required agriculture practices."

Sec. 15. Agricultural Water Quality Training for Farmers

- Sec. 15 requires AAFM to adopt, as part of the revisions to the RAPs, requirements for training owners or operators of small, medium, and large farms regarding: prevention of discharges to waters; mitigation of stormwater runoff; land application of manure or nutrients; and nutrient management planning.
- AAFM shall require training as a condition of a LFO permit, MFO permit, and SFO certification.
- AAFM may phase in training requirements based on farm size, permit type, or available staffing and may authorize third parties to conduct the required training.
- AAFM shall not charge the owner or operator of a large, medium, or small farm for the required training but shall pay for the training from funds available for water quality initiatives.

Sec. 16. Certification of Custom Applicators

- Sec. 16 requires AAFM to adopt, as part of the revisions to the RAPs, requirements for the certification of custom applicators.
- Custom applicator means a person engaged in the business of applying manure or nutrients to land for compensation.
- Custom applicators shall be required to complete 8 hours of training over each 5 year period.
- The training shall address application methods to minimize runoff and identification of weather or soil conditions that increase risk of runoff.

Secs. 17-21. AAFM Enforcement of Agricultural Water Quality Requirements

- Sec. 17 reorganizes AAFM water quality enforcement authority in 6 V.S.A. chapter. 215, subchapter. 10.
- The new enforcement subchapter streamlines and makes consistent the existing enforcement authority, while also providing new authority, including:
  - Emergency assistance orders to protect water quality;
  - Mandatory corrective actions; and
  - Authority to remove livestock when the volume of livestock waste exceeds farm capacity.
- Under Sec. 17, when AAFM identifies a farm in violation of the LFO, MFO, or AAP requirements, AAFM shall provide the farm with a "required corrective action" Under current law, AAFM "recommends" action.

- Sec. 17 also provides AAFM with civil enforcement authority to enjoin activities, order corrective actions, and levy civil penalties of up to $85,000 for violations.
- Secs. 18-20 are conforming changes, including repeal of sections incorporated in new subchapter.
- Sec. 21. Upon request from AAFM, ANR may enforce agricultural water quality requirements.

Sec. 22. Stream Alteration; Agricultural Activities

- ANR currently requires a stream alteration permit for the movement of 10 cubic yards or more of instream material in a watercourse. Instream material is rock, dirt, silt, large woody debris, etc.
- Current statute provides that a stream alteration permit is not required for AAPs.
- Sec. 22 requires a stream alteration permit for an agricultural practice that moves 10 cubic yards of instream material except for NRCS or AAFM approved streambank stabilization projects.

Secs. 23-25. Compliance with AAPs as Condition of Participation in Use Value Appraisal

- Under Sec. 23, Property Valuation and Review (PVR) shall remove agricultural land or a farm building from use value appraisal (UVA) if the owner/operator is identified by AAFM as:
  - Out of compliance with the water quality requirements of 6 V.S.A. ch. 215; or not in compliance with an enforcement order for an agricultural water quality violation.
- If land or a building is removed from UVA, a farmer may not apply for reenrollment until AAFM notifies PVR that the owner or operator is complying with: agricultural water quality requirements; or an enforcement order for an agricultural water quality violation.
  - Upon certification of compliance, the owner or operator can apply for enrollment at any time according to the existing requirements for application.
- Under Sec. 24, appeal of the removal of an agricultural parcel or farm building from UVA would be brought under the appeals process for agricultural water quality in 6 V.S.A. ch. 215.
- Sec. 25 redefines the term "development" under UVA to include AAFM notification of PVR to remove an agricultural parcel or farm building from UVA.
  - As "development," agricultural land or building removed from UVA is subject to land use change tax.

Sec. 26-29. ANR Basin Planning; Regional Planning

- Sec. 26 requires ANR to develop a schedule to update the basin plans for the 15 watersheds with plans. ANR shall report annually to the General Assembly regarding schedule implementation.
- Sec. 26 requires the Secretary to conduct certain activities in planning, including: identifying waters that should be reclassified; identify projects that will protect and enhance water quality; ensuring involvement by municipal officials and interested parties; ensuring local input in planning process; providing education to municipal officials regarding planning; developing a recommendation on conformance of basin plan with applicable regional plans; and providing public notice and opportunity to comment.
- Under Sec. 26, ANR shall, contingent upon available funding, contract with regional planning commissions to produce or assist in producing basin plans.
- Sec. 27 provides that regional planning shall be used to further the goal of maintaining water quality by following policies and actions developed in ANR basin plans.
- Under Sec. 28, ANR and AAFM shall receive notice of new or amended regional plans.
- Sec. 29 provides that a regional plan shall be consistent with water quality policies to protect and improve waters and shall be used in the development of applicable basin plans.

Sec. 30. Anti-degradation Policy Implementation Rule

- Sec. 30 requires ANR to adopt by rule an implementation process for the antidegradation policy in the Vermont water quality standards. Adds a requirement that ANR apply this policy to all new discharge permits and to the initial issuance of a permit or coverage under a general permit to farms.

Sec. 31. ANR Stormwater Management Authority

- Sec. 31 rewrites ANR's statutory stormwater authority in 10 V.S.A. § 1264.
  - The existing section is in need of reorganization. Much of the underlined language is existing authority.
- Clarifies activities that require an ANR stormwater permit--construction of 1 acre or more of new impervious surface; discharge from a facility with a standard industrial classification; municipal separate storm sewer systems; earth disturbance of 1 acre or greater; expansion of existing impervious surface by more than 5,000 sq. feet if the total resulting impervious area is greater than 1 acre; discharges of stormwater from municipal roads; and retrofitting of old impervious surface.
- Clarifies the exemptions from permitting, including: stormwater runoff from farms subject to AAPs; stormwater runoff from CAFOs with a discharge permit; stormwater runoff from silvicultural activities subject to AMPs; and stormwater systems for which a municipality assumes legal responsibility.
- ANR will have rulemaking authority to implement the stormwater program, including use of basin planning to establish watershed specific priorities for stormwater management.
- ANR may issue general permits for classes of regulated stormwater runoff.
- § 1264(g)(2): ANR shall issue a general permit for stormwater discharges from municipal roads.
  - The permit shall establish a schedule for implementation, including the inventory of roads, prioritization of projects, and implementation.
  - All cities, towns, and villages shall apply for the permit by July 1, 2021.
- § 1264(g)(3): On or before Jan. 1, 2018, ANR shall issue a general permit for discharges of stormwater from impervious surface of 3 or more acres in size that previously were never permitted or were permitted under a pre-2002 permit standard.
  - The general permit shall require retrofitting or redevelopment of old impervious surface.
  - The general permit shall establish a schedule for implementation, provided that it will be implemented in the Lake Champlain watershed no later than Oct. 1, 2023, and no later than Oct. 1, 2028 for the rest of the State.
  - The general permit shall allow for the use of stormwater impact fees, offsets, and phosphorus credit trading within the watershed of the water to which the stormwater discharges or runs off.
- Establishes permit requirements for regulated stormwater runoff permits, including:
  - A stormwater permit may be issued for a term of up to 10 years, but any permit required under the federal CWA must have a permit term of up to 5 years.
  - Regulated stormwater runoff must meet discharge standards based on type of discharge.
  - Discharge standards will apply to discharges of regulated stormwater to stormwater impaired waters, Lake Champlain, and waters contributing to Lake Champlain's impairment.
- ANR may deny an application for a stormwater permit due to an applicant's compliance history.

Sec. 32. ANR Report on Regulatory Threshold for Stormwater Permitting

- ANR shall report to General Assembly regarding whether and how the State should lower from 1 acre to 1/2 acre of impervious surface, the permitting threshold for an operating permit for stormwater runoff.

Sec. 33. ANR Stormwater Management Practices Handbook

- ANR shall publish practical and cost-effective BMPs for control of stormwater and adverse water quality effects from construction, redevelopment, or expansion of impervious surface that does not require a permit.

Sec. 34. ANR Report on Land Application of Septage or Sludge

- ANR shall report to General Assembly regarding feasibility of treating or disposing of septage or sludge in a manner other than land application.

Sec. 35. Water Quality Data Coordination

- ANR shall be required to coordinate and assess all available water quality data and identify on a map the areas of the State that are significant contributors to water quality issues.

Sec. 36. Lake Champlain TMDL Implementation Plan

- Sec. 36 updates 10 V.S.A. § 1386 regarding the implementation plan for the lake Champlain TMDL.
- This Sec. requires that ANR update the Phase I TMDL Implementation Plan within three months after the issuance of a phosphorus TMDL for Lake Champlain.
    - The update shall include how basin plans will be used to implement Phase I.
    - The update has additional requirements for a basin plan within the Lake Champlain basin including: strategies that will achieve Phase I implementation; a schedule of issuance of permits to control phosphorus and stormwater; and other projects that are necessary to achieve State obligations under Phase I.
- The ANR shall report to the General Assembly on or before January 15 in the year following the updated Phase I and every four years thereafter regarding the execution of the Phase I TMDL Implementation Plan.

Sec. 37. Vermont Clean Water Fund

- Sec. 37 establishes a Clean Water Fund Special Fund to provide funding to:
    - Assist the State in complying with water quality requirements and construction or implementation of water quality projects or programs;
    - Fund staff positions at ANR, AAFM, and AOT when they are necessary to achieve or maintain compliance with water quality requirements and existing revenue sources are inadequate; and
    - Provide funding to non-profit organizations, regional associations, and other entities for implementation and administration of community-based water quality programs.
- The Fund shall consist of revenue dedicated to it including the annual farm registration fee, new fertilizer fee, new economic poison fee, and the per parcel fee.
- A Clean Water Fund Board shall administer the Fund. The Board shall consist of the Secretaries of ANR, AAFM, AOT, ACCD, and Administration.
- The Clean Water Fund Board shall make recommendations to the Secretary of Administration regarding how funds from the Clean Water Fund shall be included in the State budget.
    - The Secretary of Administration shall give deference to the Board's recommendations.
- The Clean Water Fund Board shall publish an annual report summarizing all Fund investments.
- On or before January 2020, the Secretary of Administration shall report a program audit of the Clean Water Fund. The audit must be conducted by a qualified, independent environmental consultant or organization and include a recommendation of whether the General Assembly should authorize the continuation of the Clean Water Fund.

Sec. 38-39. Property Transfer Tax; Clean Water Surcharge

- Sec. 38 establishes surcharge on the property transfer tax of 0.2 percent on the value of the transferred property. The surcharge is not assessed on the first $100,000.00 in value of all properties and for properties financed with Vermont Housing Conservation Trust Fund, Vermont Housing and Finance Agency or USDA Rural Development funds, the surcharge is not assessed on the first $200,000.00 in value.
- This raises approximately $5,300,000 of which $450,000 will be transferred to the Agricultural WQ Fund to fund AAFM staff positions in FY16, leaving $4,850,000 available in the fund.
- The surcharge is repealed on July 1, 2018.

Sec. 40 Report from the Treasurer

- The Treasurer, in consultation with the Secretary of Administration and Commissioners of Environmental Conservation and Taxes, is required to report on funding sources that are more closely associated with water pollution, such as a tax on impervious surface.
- This report is due January 15, 2017

Sec. 41 Creation of Water Quality Staff

- Sec. 41 creates 8 positions within AAFM and 13 positions within ANR for the administration of the water quality initiatives.

Sec. 42. Appropriations for AAFM

- Sec. 42 appropriates $1,114,000 to the AAFM for WQ positions and for federal match funding.

Sec. 43. Appropriations to ANR

- Sec. 43 appropriates $1,543,116.00 to the ANR for WQ positions and contracting with RPCs.

Sec. 44-46. DEC Permit Fees

- Sec. 44 provides for increases in DEC fees for water quality related permits. The increase in fees would provide additional revenue of $1.5 million to be used for additional DEC water quality staff.
  - Fees deposited in the Environmental Permit Fund
- Sec. 45 removes permit fee exemption for municipalities, AOT and BGS.
- Sec. 46 requires ANR to assess new permit application fees on municipalities at end of applicable fiscal year in order to minimize effects on municipal budgets.

Sec. 47-48. State Assistance for Phosphorus Reduction at Wastewater Treatment Plants

- Current law provides that wastewater treatment plants shall not discharge waste with a phosphorus concentration in excess of 0.80 milligrams per liter on a monthly basis.
  - 10 V.S.A. § 1266a provides that a municipality does not need to comply with the 0.80 milligrams per liter standard if State funds are not provided to the municipality for compliance.
  - Sec. 47 repeals the provision allowing municipalities not to comply if assistance is not provided.
- Current law provides that if a municipality is required to reduce phosphorus concentration in wastewater effluent below 0.80 milligrams per liter on a monthly average basis, the State shall provide the municipality with a grant for 100% of the eligible project cost.
  - Sec. 48 repeals the requirement that the State finance the project cost.

Secs. 49-52. Acceptable Management Practices for Water Quality on Logging Jobs (AMPs)

- Sec. 49 requires the Commissioner of Forests, Parks and Recreation to revise the AMPs by rule by July 1, 2016 to ensure that all logging jobs are designed to prevent water quality impacts.
- Sec. 50 requires the Commissioner of Forests, Parks and Recreation to report to the General Assembly regarding whether the AMPs should be mandatory and whether maple syrup production should enroll in Use Value Appraisal as forestland and not agricultural land.
- Secs. 51-52 make conforming changes to ANR enforcement and appeals statutes. Also revises terms of reference to AMPs.

Sec. 53. MS4 Eligibility for Ecosystem Restoration Program (ERP) and Clean Water Funds

- Municipalities shall not be denied funds from the ERP or the Clean Water Fund solely because they are an MS4 community.

Sec. 54. Effective Dates

- Most of the bill goes into effect on July 1, 2015, except that:
  - Small farm certification shall take effect on July 1, 2017;
  - Required certification of custom applicators shall take effect 45 days after AAFM adoption of custom applicator rules;
  - The permit requirements for discharges of regulated stormwater to Lake Champlain or a water contributing to an impairment of Lake Champlain shall take effect on October 1, 2015.
  - The Clean Water Fund and Clean Water Per Parcel Fee shall take effect on passage.