

Farm and Farming Definitions Applicable to Vermont - 08/08/08

I. Act 250 Definitions and case law:

1. **10 V.S.A. § 6001(22)**: Farming, for purposes of Act 250, 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; 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.

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=10&Chapter=151&Section=06001>

2. **10 VSA Section 6001(3)(E)**:

(E) When development is proposed to occur on a parcel or tract of land that is devoted to farming activity as defined in subdivision 6001(22) of this section, only those portions of the parcel or the tract that support the development shall be subject to regulation under this chapter. Permits issued under this chapter shall not impose conditions on other portions of the parcel or tract of land which do not support the development and that restrict or conflict with accepted agricultural practices adopted by the secretary of agriculture, food and markets.

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=10&Chapter=151&Section=06001>

3. Applicable rules are NRB Rules 2(C)(18) and (19):

(18) “*The farm*” For purposes of 10 V.S.A. §6001(22)(E), “*the farm*” means lands which are used for any purpose stated in 10 V.S.A. §6001(22), which are owned or leased by a person engaged in the activities stated in 10 V.S.A. §6001(22), if the lessee controls the leased lands to the extent that they would be considered to be the lessee’s own farm. Indicia of such control include whether the lessee makes the day-to-day decisions concerning the cultivation of the leased lands, subject to incidental conditions of the lessor, and whether the lessee works the leased lands during the lease period.

(19) “*Principally produced*” For purposes of 10 V.S.A. §6001(22)(E), “*principally produced*” means that more than 50% (by volume or weight) of the agricultural products, which result from the activities stated in 10 V.S.A. §6001(22)(A) - (D) and which are stored, prepared or sold at the farm, are grown or produced on the farm.

4. Scott Farm Declaratory Ruling #413, Findings of Fact, Conclusions of Law, and Order (1/16/03).

Discusses “principally produced” (51%) and “on the farm” ruling (see at link below):

<http://www.state.vt.us/nrb/lup/decisions/2003/dr413-fco.pdf>

5. Ochs, 2006 VT 112, ¶12 (Vt. Sup. Ct. 11/27/06), affirming Re: Peter and Carla Ochs, DR #437, Findings of Fact, Conclusions of Law, and Order (7/22/05)

Continues discussion of “principally produced” and “on the farm”.

<http://www.nrb.state.vt.us/lup/decisions/2005/dr437-fco.pdf>

<http://www.libraries.vermont.gov/sites/libraries/files/supct/current/eo2005-385.txt>

II. Vermont Municipal Law Statutes (Title 24):

24 VSA Sec 4413(d) and other statutes sited therein (language governs zoning and other municipal bylaws:

24 V.S.A. § 4413(d). Limitations on municipal bylaws:

(d) A bylaw under this chapter shall not regulate accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under subsections 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6.

(1) For purposes of this section, "farm structure" means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in subdivision 6001(22) of Title 10, but excludes a dwelling for human habitation.

(2) A person shall notify a municipality of the intent to build a farm structure and shall abide by setbacks approved by the secretary of agriculture, food and markets. No municipal permit for a farm structure shall be required.

(3) A municipality may enact a bylaw that imposes forest management practices resulting in a change in a forest management plan for land enrolled in the use value appraisal program pursuant to 32 V.S.A. chapter 124 only to the extent that those changes are silviculturally sound, as determined by the commissioner of forests, parks and recreation, and protect specific natural, conservation, aesthetic, or wildlife features in properly designated zoning districts. These changes also must be compatible with 32 V.S.A. § 3755.

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=24&Chapter=117&Section=04413>

III. Vermont Agency of Agriculture

1. ACCEPTED AGRICULTURAL PRACTICE REGULATIONS **Effective Date: April 24, 2006**

SECTION 2: DEFINITIONS

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.

<http://www.vermontagriculture.com/ARMES/awq/AAPs.htm>

2. 6 VSA § 251. Definitions

For the purposes of this chapter:

- (1) "**Agricultural commodity**" means any agricultural commodity, including: apples, horticultural crops, fruits and vegetables, poultry, maple syrup, Christmas

trees, livestock and honey either in their natural state or as processed by the producer. The term does not include milk, timber or timber products other than Christmas trees.

(2) **"Producer"** means any individual, partnership, corporation or other business entity engaged within this state in the business of producing an agricultural commodity or causing an agricultural commodity to be produced for any market. The term shall only apply to persons who are not exempt under a marketing rule which gives special consideration to exemptions for small producers.

<http://www.leg.state.vt.us/statutes/fullsection.cfm?Title=06&Chapter=024&Section=00251>

IV. USDA Definition of a farm:

A farm, which includes ranches, is "any operation that sells a least one thousand dollars of agricultural commodities or that would have sold that amount of produce under normal circumstances," according to the United States Department of Agriculture (USDA).

<http://www.ers.usda.gov/data/FarmIncome/Sizedefinition.htm>

V. Vermont Right to Farm Law:

Defines "Agricultural activities" as generally protected from nuisance complaints by providing agriculture a rebuttable presumption that these activities do not constitute a nuisance.

Chapter 195: Nuisance Suits Against Agricultural Activities

5753. Agricultural activities; protection from nuisance lawsuits

12 V.S.A. § 5753. Agricultural activities; protection from nuisance lawsuits

(a)(1) Agricultural activities shall be entitled to a rebuttable presumption that the activity does not constitute a nuisance if the agricultural activity meets all of the following conditions:

(A) it is conducted in conformity with federal, state, and local laws and regulations (including accepted agricultural practices);

(B) it is consistent with good agricultural practices;

(C) it is established prior to surrounding nonagricultural activities; and

(D) it has not significantly changed since the commencement of the prior surrounding nonagricultural activity.

(2) The presumption that the agricultural activity does not constitute a nuisance may be rebutted by a showing that the activity has a substantial adverse effect on health, safety, or welfare, or has a noxious and significant interference with the use and enjoyment of the neighboring property.

(b) Nothing in this section shall be construed to limit the authority of state or local boards of health to abate nuisances affecting the public health. (Added 1981, No. 68, eff. May 1, 1981; amended 2003, No. 149 (Adj. Sess.), § 12, eff. June 3, 2004.)

VI. Stormwater

According to ANR Stormwater program staff member Chisty Witters, they rely on agricultural definitions that exist in the VT AAPs and elsewhere. 10 V.S.A. § 1264(e) addresses stormwater runoff from agricultural activities and generally defers to VT AAPs:

10 V.S.A. § 1264(e):

(e)(1) Except as otherwise may be provided in subsection (f) of this section, the secretary shall, for new stormwater discharges, require a permit for discharge of, regulated stormwater runoff consistent with, at a minimum, the 2002 stormwater management manual. The secretary may issue, condition, modify, revoke, or deny discharge permits for regulated stormwater runoff, as necessary to assure achievement of the goals of the program and compliance with state law and the federal Clean Water Act. The permit shall specify the use of best management practices to control regulated stormwater runoff. The permit shall require as a condition of approval, proper operation, and maintenance of any stormwater management facility and submittal by the permittee of an annual inspection report on the operation, maintenance and condition of the stormwater management system. The permit shall contain additional conditions, requirements, and restrictions as the secretary deems necessary to achieve and maintain compliance with the water quality standards, including but not limited to requirements concerning recording, reporting, and monitoring the effects on receiving waters due to operation and maintenance of stormwater management facilities.

(2) As one of the principal means of administering an enhanced stormwater program, the secretary may issue and enforce general permits. To the extent appropriate, such permits shall include the use of certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty. The secretary may issue general permits for classes of regulated stormwater runoff permittees and may specify the period of time for which the permit is valid other than that specified in subdivision 1263(d)(4) of this title

when such is consistent with the provisions of this section. General permits shall be adopted and administered in accordance with the provisions of subsection 1263(b) of this title. No permit is required under this section for:

- (A) Stormwater runoff from farms subject to accepted agricultural practices adopted by the secretary of agriculture, food and markets;
- (B) Stormwater runoff from concentrated animal feeding operations that require a permit under subsection 1263(g) of this chapter; or
- (C) Stormwater runoff from silvicultural activities subject to accepted management practices adopted by the commissioner of forests, parks and recreation.

VII. Solid Waste Management

Vermont Solid Waste Management Rules contain the following relevant definition, largely derived from the definition contained in the VT AAPs and the **10 V.S.A. § 6001(22)**:

6-1102(7) "Farm" means a place used for agricultural, horticultural or silvicultural use and/or cultivation or management of land for orchard crops or food, fiber, Christmas trees, maple sap and maple syrup products, animal husbandry, fish or bees or a greenhouse operation, on-site storage of agriculture products produced on the farm or the on-site production of fuel or power from agriculture products or waste produced on the farm.

<http://www.anr.state.vt.us/dec/wastediv/solid/pubs/SWMRules.pdf>