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H.259

Introduced by Representatives Deen of Westminster, Head of South Burlington
and Pugh of South Burlington

Referred to Committee on

Date:

Subject: Conservation; water pollution; stormwater

Statement of purpose: This bill proposes to amend the permitting requirements
for discharges to stormwater-impaired waters of the state.

An act relating to stormwater discharges to impaired waters

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. § 1264(f)(1) is amended to read:

(f)(1) In a stormwater-impaired water, the secretary may issue:

* * *

(C) ~~A general~~ General or individual ~~permit~~ permits that is
~~implementing~~ implement a TMDL or water quality remediation plan; or

* * *

Sec. 2. 10 V.S.A. § 1264a is amended to read:

§ 1264a. INTERIM STORMWATER PERMITTING AUTHORITY

* * *

1 (b)(1) ~~Prior to adopting a rule pursuant to subsection 1264(d) of this title,~~
2 No later than December 31, 2012, the secretary may issue a permit in a
3 stormwater impaired water for authorize discharges of regulated stormwater
4 runoff from an impervious surface equal to or greater than one acre to an urban
5 stormwater-impaired water in the following manner:

6 (1) ~~A discharge of regulated stormwater runoff from an impervious~~
7 ~~surface equal to or greater than one acre if:~~

8 (A) ~~A~~ For a new discharge or the expanded portion of an existing
9 ~~discharge meets,~~ the permittee shall pay into the stormwater-impaired waters
10 restoration fund a stormwater impact fee based on impervious surface acreage
11 in order to implement stormwater treatment and control projects the secretary
12 determines necessary to implement the TMDL. The discharge shall meet the
13 requirements of the 2002 stormwater management manual ~~and does not~~
14 ~~increase the sediment load in the receiving stormwater impaired water; or~~

15 (B) ~~A~~ For a discharge from redevelopment; from an existing
16 ~~discharge operating under an expired stormwater discharge permit where the~~
17 ~~property owner applies for a new permit; or from any combination of~~
18 development, redevelopment, and expansion ~~meets,~~ the discharge shall meet
19 on-site the water quality, recharge, and channel protection criteria set forth in
20 Table 1.1 of the 2002 stormwater management manual that are determined to
21 be technically feasible by an engineering feasibility analysis conducted under

1 the agency procedure provided for in subsection ~~(g)~~(f) of this section and ~~if the~~
2 ~~sediment load from the discharge approximates the natural runoff from an~~
3 ~~undeveloped field or open meadow that is not used for agricultural activity~~ the
4 permittee shall pay a stormwater impact fee based on impervious surface
5 acreage into the stormwater-impaired waters restoration fund to implement
6 stormwater treatment and control projects the secretary determines necessary
7 to implement the TMDL.

8 (C) For a discharge with a stormwater discharge permit or an expired
9 stormwater discharge permit where the property owner applies for a permit; or
10 for a discharge from an impervious surface constructed prior to 1978 where the
11 property owner applies for a permit, the discharge shall meet on-site water
12 quality, recharge, and channel protection criteria set forth in Table 1.1 of the
13 2002 stormwater management manual that are determined to be technically
14 feasible by an engineering feasibility analysis conducted under the agency
15 procedure provided for in subsection (f) of this section. The secretary shall not
16 require additional stormwater treatment and controls for discharges of
17 regulated stormwater runoff authorized pursuant to this subsection for a period
18 of 10 years following such authorization, unless site conditions change (i.e.,
19 expansion, redevelopment of impervious surfaces), and the secretary
20 determines that additional treatment and control requirements are necessary to
21 protect water quality.

1 (2) ~~A~~ For a discharge of regulated stormwater runoff from any size of
2 impervious surface if the secretary determines that treatment is necessary to
3 reduce the adverse impacts of the discharge due to the size of the impervious
4 surface, drainage pattern, hydraulic connectivity, existing stormwater
5 treatment, or other factors identified by the secretary. ~~In order to receive a~~
6 ~~permit under this subdivision, a,~~ the discharge ~~must~~ shall meet the applicable
7 discharge standard in ~~subdivision (1b)~~ of this subsection.

8 ~~(c) If after completion of the on-site stormwater management requirements~~
9 ~~of the 2002 stormwater management manual a discharger does not meet the~~
10 ~~discharge standard for a discharge permitted under subdivision (b)(1)(A) of~~
11 ~~this section or if after completion of the water quality, recharge, and channel~~
12 ~~protection criteria set forth in Table 1.1 of the 2002 stormwater management~~
13 ~~manual that are determined to be technically feasible by the engineering~~
14 ~~feasibility analysis required under the agency procedure set forth in subsection~~
15 ~~(g) of this section a discharger does not meet the discharge standard for a~~
16 ~~discharge permitted under subdivision (b)(1)(B) of this section, the discharger~~
17 ~~may meet the relevant discharge standard by mitigating any uncontrolled~~
18 ~~sediment load or hydrologic impact. Mitigation of the uncontrolled sediment~~
19 ~~load or hydrologic impact may be achieved by:~~

20 (1) ~~Completing an offset on property that the permit applicant owns or~~
21 ~~controls within the watershed of the stormwater-impaired water prior to or~~

1 concurrently with the permitted discharge when an engineering feasibility
2 analysis required under the agency procedure set forth in subsection (g) of this
3 section determines that an offset is technically feasible. If in completing an
4 offset under this subdivision a permit applicant contracts for the construction
5 of an offset on property that the applicant does not own within the watershed
6 of the stormwater impaired water, the applicant shall submit to the secretary of
7 natural resources an access agreement or easement that demonstrates that the
8 permit applicant shall have access to the offset; or

9 (2) ~~Paying a stormwater impact fee under subsection (d) of this section~~
10 ~~when completion of an offset is not technically feasible as determined by an~~
11 ~~engineering feasibility analysis conducted under the procedure provided for in~~
12 ~~subsection (g) of this section or if the discharge standard required by~~
13 ~~subsection (b)(1) of this section is not met after completing an offset.~~

14 ~~(d)(c)(1)~~ A stormwater impact fee due under ~~subsection (e) subdivisions~~
15 ~~(b)(1) and (2) of this subsection section~~ shall be \$30,000.00 per acre of
16 impervious surface. An individual discharger can reduce the stormwater
17 impact fee through compliance with the engineering feasibility analysis under
18 the agency procedure provided for in subsection ~~(g)(f)~~ of this section. After an
19 individual discharger of regulated stormwater completes the relevant impact
20 fee and offset charge analysis under the agency procedure provided for in
21 subsection ~~(g)(f)~~ of this section, the discharger shall submit to the secretary of

1 natural resources a proposed stormwater impact fee, a proposed offset charge,
2 and documentation of the calculation of the fee and the offset charge. The
3 secretary shall approve or disapprove of the proposed stormwater impact fee
4 and offset charge.

5 (2) If the secretary of natural resources approves of a proposed
6 stormwater impact fee and offset charge under subdivision (1) of this
7 subsection, the secretary shall notify the applicant and shall:

8 * * *

9 (B) Assign the offset charge to an offset permitted under subsection
10 ~~(e)~~(d) of this section possessing sufficient offset charge capacity to
11 accommodate the offset charge. Offset charges for discharges allowed under
12 subdivision (b)(1)~~(A)~~ of this section shall be assigned only to an offset for
13 which a permit has been issued pursuant to subsection ~~(e)~~(d) of this section and
14 that will be completed prior to initiation of the discharge; and

15 * * *

16 ~~(e)~~(d)(1) The secretary of natural resources may issue a permit for an offset
17 project under this section. Application shall be made on a form prescribed by
18 the secretary of natural resources. An applicant shall pay an application fee in
19 accordance with section 2282 of Title 3. The secretary may issue such permits
20 for the following activities or projects:

1 (A) Stormwater treatment of any existing discharge of regulated
2 stormwater runoff ~~initiated prior to 1978~~;

3 (B) ~~Stormwater treatment of any discharge of regulated stormwater~~
4 ~~runoff initiated after 1978 when the secretary did not previously issue or~~
5 ~~require a stormwater discharge permit or temporary pollution permit for the~~
6 ~~discharge~~;

7 ~~(C)~~(i) Conversion of land use to reduce sediment load or hydrologic
8 impact, especially in riparian areas, provided that conversion of primary
9 agricultural soils as that term is defined in section 6001 of this title shall be
10 limited to establishing by easement a forested riparian buffer zone that meets
11 the requirements of the department of environmental conservation's guidance
12 for nonimpervious surface treatment offset projects within impaired
13 watersheds;

14 (ii) Prior to approval of an offset project to be implemented on
15 agricultural soils under this subdivision, the applicant for a stormwater
16 discharge permit shall conduct an analysis of the viability of implementing a
17 nonagricultural offset within the watershed of the proposed stormwater
18 discharge. To facilitate such an analysis, the secretary of natural resources will
19 identify any potential nonagricultural offsets in the watershed of the proposed
20 discharge and shall provide this information to the applicant;

1 Sec. 3. EXTENSION OF SUNSET

2 Sec. 10 of No. 140 of the Acts of the 2003 Adj. Sess. (2004), as amended by
3 Sec. 8 of No. 154 of the Acts of the 2005 Adj. Sess. (2006), as amended by
4 Sec. 3 of No. 43 of the Acts of 2007, is further amended to read:

5 Sec. 10. SUNSET

6 (a) Sec. 2 of this act (interim permitting authority for regulated stormwater
7 runoff), except for subsection 1264a(e) of Title 10, shall be repealed on
8 January 15, ~~2010~~ 2012.

9 (b) Sec. 4 of this act (local communities implementation fund) shall be
10 repealed on September 30, 2012.

11 (c) Sec. 6 of this act (stormwater discharge permits during transition
12 period) shall be repealed on January 15, ~~2010~~ 2012.