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1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on House Committee on Fish, Wildlife and Water
3 Resources to which was referred House Bill No. 35 entitled “An act relating to
4 improving the quality of State waters” respectfully reports that it has
5 considered the same and recommends that the bill be amended by striking out
6 all after the enacting clause and inserting in lieu thereof the following:

7 * * * Purpose * * *

8 Sec. 1. PURPOSE; IMPROVEMENT OF WATER QUALITY

9 It is the purpose of this act to:

10 (1) improve the quality of the waters of Vermont;

11 (2) authorize and prioritize proactive measures designed to implement
12 and meet the impending total maximum daily load (TMDL) plan for Lake
13 Champlain, meet impending TMDL plans for other State waters, and improve
14 water quality across the State;

15 (3) identify and prioritize cost-effective strategies for the State to
16 address water quality issues; and

17 (4) engage more municipalities, agricultural operations, businesses, and
18 other interested parties as part of the State’s efforts to improve the quality of
19 the waters of the State.

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1 (5) provide mechanisms, staffing, and financing necessary for State
2 waters to achieve and maintain compliance with the Vermont water quality
3 standards.

4 * * * Agricultural Water Quality;

5 Definitions * * *

6 Sec. 2. 6 V.S.A. § 4802 is amended to read:

7 § 4802. ~~DEFINITION~~ DEFINITIONS

8 ~~For purposes of As used in this chapter, the word “secretary,” when used by~~
9 ~~itself, means the secretary of agriculture, food and markets;~~

10 (1) “Agency” means the Agency of Agriculture, Food and Markets.

11 (2) “Farming” shall have the same meaning as used in 10 V.S.A.
12 § 6001(22).

13 (3) “Secretary” means the Secretary of Agriculture, Food and Markets.

14 (4) “Top of bank” means the point along the bank of a stream where an
15 abrupt change in slope is evident, and where the stream is generally able to
16 overflow the banks and enter the adjacent floodplain during an annual flood
17 event. Annual flood event shall be determined according to the Agency of
18 Natural Resources’ Flood Hazard Area and River Corridor Protection
19 Procedure.

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1 of compliance with the accepted agricultural practices at least once every five
2 years.

3 (b) Rulemaking; small farm certification. The Secretary of Agriculture,
4 Food and Markets shall adopt by rule requirements for a small farm
5 certification of compliance with the accepted agricultural practices. The rules
6 required by this subsection shall be adopted as part of the accepted agricultural
7 practices under section 4810 of this title.

8 (c) Small farm inspection. The Secretary may inspect a small farm in the
9 State at any time for the purposes of assessing compliance by the small farm
10 with the accepted agricultural practices and determining consistency with a
11 certification of compliance submitted by the person who owns or operates the
12 small farm. The Secretary may prioritize inspections of small farms in the
13 State based on identified water quality issues posed by a small farm.

14 (d) Notice of change of ownership or change of lease. A person who owns
15 or leases a small farm shall notify the Secretary of a change of ownership or
16 change of lessee of a small farm within 30 days of the change. The
17 notification shall include the certification of small farm compliance required
18 under subsection (a) of this section.

19 (e)(1) Identification; ranking of water quality needs. During an inspection
20 of a small farm under this section, the Secretary shall identify areas where the

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1 farm could benefit from capital, structural, or technical assistance in order to
2 improve or come into compliance with the accepted agricultural practices and
3 any applicable State water quality permit or certification required under this
4 chapter.

5 (2) Notwithstanding the priority system established under section 4823
6 of this title, the Secretary annually shall establish a priority ranking system for
7 small farms according to the water quality benefit associated with the capital,
8 structural, or technical improvements identified as needed by the Secretary
9 during an inspection of the farm.

10 (3) Notwithstanding the priority system established by subdivision (2) of
11 this subsection, the Secretary may provide financial assistance to a small farm
12 at any time, regardless of the priority ranking system, if the Secretary
13 determines that the farm needs assistance to address a water quality issue that
14 requires immediate abatement.

15 Sec. 4. 6 V.S.A. § 4810a is added to read:

16 § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

17 (a) On or before July 1, 2016 the Secretary of Agriculture, Food, and
18 Markets shall amend the accepted agricultural practices in order to improve
19 water quality in the State, assure practices on all farms eliminate adverse
20 impacts to water quality, and implement the small farm certification program

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1 required by section 4858a of this title. At a minimum, the amendments to the
2 accepted agricultural practices shall:

3 (1) Specify and define those farms that:

4 (A) shall be required to comply with the small certification
5 requirements under section 4858a of this title; and

6 (B) shall be subject to the accepted agricultural practices, but shall
7 not be required to comply with small farm certification requirements under
8 section 4858a of this title.

9 (2)(A) Prohibit a farm from stacking manure, storing fertilizer, or
10 storing other nutrients on the farm:

11 (i) in a manner and location that presents a threat of discharge to a
12 water of the State or presents a threat of contamination to groundwater;

13 (ii) on lands in a floodway or otherwise subject to regular
14 flooding.

15 (B) In no case shall manure stacking sites, fertilizer storage, or other
16 nutrient storage be located within 100 feet of a private well or within 100 feet
17 of a water of the State.

18 (3) Require the construction and management of barnyards, waste
19 management systems, animal holding areas, and production areas in a manner

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1 to prevent runoff of waste to a surface water, to groundwater, or across
2 property boundaries.

3 (4) Establish standards for nutrient management on farms, including
4 required nutrient management planning on all farms that manage agricultural
5 wastes.

6 (5) Require cropland on the farm to be cultivated in a manner that
7 results in an average soil loss of less than or equal to the soil loss tolerance for
8 the prevalent soil, known as 1T, as calculated through application of the
9 Revised Universal Soil Loss Equation, or through the application of similarly
10 accepted models.

11 (6) Require a farm to comply with standards established by the
12 Secretary for maintaining a vegetative buffer zone of perennial vegetation
13 between annual croplands and the top of the bank of an adjoining water of the
14 State. At a minimum the vegetative buffer standards established by the
15 Secretary shall prohibit the application of manure on the farm within 25 feet of
16 the top of the bank of an adjoining water of the State or within 10 feet of a
17 ditch.

18 (7) Prohibit the construction or siting of a farm structure for the storage
19 of manure, fertilizer, or pesticide storage within a floodway area identified on a
20 National Flood Insurance Program Map on file with a town clerk.

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1 (8) Regulate, in a manner consistent with the Agency of Natural
2 Resources' flood hazard area and river corridor rules, the construction or siting
3 of a farm structure or the storage of manure, fertilizer, or pesticides storage
4 within a river corridor designated by the Secretary of Natural Resources.

5 (9) Establish standards for the exclusion of livestock from the waters of
6 the State to prevent erosion and adverse water quality impacts.

7 (10) Establish standards for the management of subsurface agriculture
8 tile drainage consistent with subsection (b) of this section.

9 (b) On or before January 15, 2018, the Secretary of Agriculture, Food and
10 Markets shall amend the accepted agricultural practices in order to include
11 requirements for reducing nutrient contribution to waters of the State from
12 subsurface tile drainage. Upon adoption of requirements for subsurface tile
13 drainage, the Secretary may require an existing subsurface tile drain to comply
14 with the requirements of the AAPs for subsurface tile drainage upon a
15 determination that compliance is necessary to reduce adverse impacts to water
16 quality from the subsurface tile drain.

17 Sec. 5. AGENCY OF AGRICULTURE, FOOD AND MARKETS REPORT
18 ON SUBSURFACE TILE DRAINAGE

19 On or before January 15, 2017, the Secretary of Agriculture, Food and
20 Markets, after consultation with the Secretary of Natural Resources and the

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1 U.S. Department of Agriculture’s Natural Resource Conservation Service,
2 shall report to the House Committee on Fish, Wildlife and Water Resources,
3 the Senate Committee on Natural Resources and Energy, the House Committee
4 on Agriculture and Forest Products, and the Senate Committee on Agriculture
5 regarding the status of current, scientific research relating to the environmental
6 management of subsurface agriculture tile drainage and how subsurface
7 agriculture tile drainage contributes to nutrient loading of surface waters. The
8 report shall include a recommendation from the Secretary of Agriculture, Food
9 and Markets regarding how best to manage subsurface agriculture tile drainage
10 in the State in order to mitigate the contribution of tile drainage to waters of the
11 State.

12 * * * Agricultural Water Quality; Permit Fee Report* * *

13 Sec. 6. AGENCY OF AGRICULTURE, FOOD AND MARKETS REPORT

14 ON FEES FOR PERMITTED FARMS

15 On or before January 15, 2016, the Secretary of Agriculture, Food and
16 Markets shall submit to the House Committee on Agriculture and Forest
17 Products, the Senate Committee on Agriculture, the House Committee on Fish,
18 Wildlife and Water Resources, the Senate Committee on Natural Resources
19 and Energy, the House Committee on Ways and Means, and the Senate
20 Committee on Finance a report regarding the fees to be assessed farms for

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1 permits or certifications issued under 6 V.S.A. chapter 215. The report shall
2 include:

3 (1) a recommended fee amount to be assessed against large farms,
4 medium farms, and small farms permitted or certified by the Agency;

5 (2) a recommended fee for custom applicators and other entities
6 regulated under 6 V.S.A. chapter 215;

7 (3) a recommended schedule for implementation and collection of fees;
8 and

9 (4) a recommended use for collected fees, including whether the
10 collected fees should be deposited into a specific special fund.

11 * * * Agricultural Water Quality; Best Management Practices * * *

12 Sec. 7. 6 V.S.A. § 4810 is amended to read:

13 § 4810. AUTHORITY; COOPERATION; COORDINATION

14 (a) Agricultural land use practices. In accordance with 10 V.S.A.

15 § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A.

16 ~~chapter 25 of Title 3~~, and shall implement and enforce agricultural land use

17 practices in order to reduce the amount of agricultural pollutants entering the

18 waters of the state satisfy the requirements of 33 U.S.C. § 1329 that State

19 identify and implement best management practices to control nonpoint sources

20 of agricultural waste to waters of the State. These agricultural land use

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1 practices shall be created in two categories, pursuant to subdivisions (1) and
2 (2) of this subsection.

3 (1) “Accepted Agricultural Practices” (AAPs) shall be standards to be
4 followed in conducting agricultural activities in this ~~state~~ State. These
5 standards shall address activities which have a potential for causing pollutants
6 to enter the groundwater and waters of the ~~state~~ State, including dairy and
7 other livestock operations plus all forms of crop and nursery operations and
8 on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902,
9 livestock and poultry slaughter and processing activities. The AAPs shall
10 include, as well as promote and encourage, practices for farmers in preventing
11 pollutants from entering the groundwater and waters of the ~~state~~ State when
12 engaged in, ~~but not limited to~~, animal waste management and disposal, soil
13 amendment applications, plant fertilization, and pest and weed control.
14 Persons engaged in farming, as defined in 10 V.S.A. § 6001, who ~~follow~~ are in
15 compliance with these practices shall be presumed to be in compliance with
16 water quality standards. AAPs shall be practical and ~~cost-effective~~
17 cost-effective to implement, as determined by the Secretary. The AAPs for
18 groundwater shall include a process under which the ~~agency~~ Agency shall
19 receive, investigate, and respond to a complaint that a farm has contaminated
20 the drinking water or groundwater of a property owner.

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1 (2) “Best Management Practices” (BMPs) may be required by the
2 secretary Secretary on a ~~case-by-case~~ case-by-case basis. ~~Before requiring~~
3 ~~BMPs, the secretary shall determine that sufficient financial assistance is~~
4 ~~available to assist farmers in achieving compliance with applicable BMPs.~~
5 When requiring implementation of a BMP, the Secretary shall inform a farmer
6 of the resources available to assist the farmer in implementing BMPs and
7 complying with the requirements of this chapter. BMPs shall be practical and
8 cost effective to implement, as determined by the Secretary, and shall be
9 designed to achieve compliance with the requirements of this chapter.

10 (b) Cooperation and coordination. The ~~secretary of agriculture, food and~~
11 ~~markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the
12 ~~secretary of natural resources~~ Secretary of Natural Resources in implementing
13 and enforcing programs, plans, and practices developed for reducing and
14 eliminating agricultural non-point source pollutants and discharges from
15 concentrated animal feeding operations. The ~~secretary of agriculture, food and~~
16 ~~markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of~~
17 ~~natural resources~~ Secretary of Natural Resources shall develop a memorandum
18 of understanding for the non-point program describing program administration,
19 grant negotiation, grant sharing, and how they will coordinate watershed
20 planning activities to comply with Public Law 92-500. The ~~secretary of~~

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1 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and
2 the ~~secretary of the agency of natural resources~~ Secretary of Natural Resources
3 shall also develop a memorandum of understanding according to the public
4 notice and comment process of 10 V.S.A. § 1259(i) regarding the
5 implementation of the federal concentrated animal feeding operation program
6 and the relationship between the requirements of the federal program and the
7 ~~state~~ State agricultural water quality requirements for large, medium, and small
8 farms under this chapter ~~215 of this title~~. The memorandum of understanding
9 shall describe program administration, permit issuance, an appellate process,
10 and enforcement authority and implementation. The memorandum of
11 understanding shall be consistent with the federal National Pollutant Discharge
12 Elimination System permit regulations for discharges from concentrated
13 animal feeding operations. The allocation of duties under this chapter between
14 the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food
15 and Markets and the ~~secretary of natural resources~~ Secretary of Natural
16 Resources shall be consistent with the ~~secretary's~~ Secretary's duties,
17 established under the provisions of 10 V.S.A. § 1258(b), to comply with Public
18 Law 92-500. The ~~secretary of natural resources~~ Secretary of Natural
19 Resources shall be the ~~state~~ State lead person in applying for federal funds
20 under Public Law 92-500, but shall consult with the ~~secretary of agriculture,~~

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1 ~~food and markets~~ Secretary of Agriculture, Food and Markets during the
2 process. The agricultural non-point source program may compete with other
3 programs for competitive watershed projects funded from federal funds. The
4 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and
5 Markets shall be represented in reviewing these projects for funding. Actions
6 by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,
7 Food and Markets under this chapter concerning agricultural non-point source
8 pollution shall be consistent with the water quality standards and water
9 pollution control requirements of 10 V.S.A. chapter 47 ~~of Title 10~~ and the
10 federal Clean Water Act as amended. In addition, the ~~secretary of agriculture,~~
11 ~~food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate
12 with the ~~secretary of natural resources~~ Secretary of Natural Resources in
13 implementing and enforcing programs, plans, and practices developed for the
14 proper management of composting facilities when those facilities are located
15 on a farm.

16 Sec. ~~8~~. 6 V.S.A. § 4813 is amended to read:

17 § 4813. ~~BASIN MANAGEMENT; APPEALS TO THE WATER~~

18 ~~RESOURCES BOARD~~ ENVIRONMENTAL DIVISION

19 (a) The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,
20 Food and Markets shall cooperate with the ~~secretary of natural resources~~

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1 Secretary of Natural Resources in the basin planning process with regard to the
2 agricultural non-point source waste component of each basin plan. Any person
3 with an interest in the agricultural non-point source component of the basin
4 planning process may petition the ~~secretary of agriculture, food and markets~~
5 Secretary of Agriculture, Food and Markets to require, and the ~~secretary~~
6 Secretary may require, best management practices in the individual basin
7 beyond accepted agricultural practices adopted by rule, in order to achieve
8 compliance with the water quality goals in 10 V.S.A. § 1250 and any duly
9 adopted basin plan. The ~~secretary of agriculture, food and markets~~ Secretary
10 of Agriculture, Food and Markets shall hold a public hearing within 60 days
11 and shall issue a timely written decision that sets forth the facts and reasons
12 supporting the decision.

13 (b) Any person engaged in farming that has been required by the ~~secretary~~
14 ~~of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets to
15 implement best management practices or any person who has petitioned the
16 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and
17 Markets under subsection (a) of this section may appeal the ~~secretary of~~
18 ~~agriculture, food and market's~~ Secretary of Agriculture, Food and Markets'
19 decision to the ~~environmental division~~ Environmental Division de novo.

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1 (c) ~~Before requiring best management practices under this section, the~~
2 ~~secretary of agriculture, food and markets or the board shall determine that~~
3 ~~sufficient financial assistance is available to assist farmers in achieving~~
4 ~~compliance with applicable best management practices~~ When requiring
5 implementation of a best management practice, the Secretary shall inform a
6 farmer of the resources available to assist the farmer in implementing the best
7 management practice and complying with the requirements of this chapter.

8 * * * Agricultural Water Quality; Training * * *

9 Sec. ~~9~~. 6 V.S.A. chapter 215, subchapter 8 is added to read:

10 Subchapter 8. Agricultural Water Quality Training

11 § 4981. AGRICULTURAL WATER QUALITY CERTIFICATION

12 TRAINING

13 (a) The Secretary of Agriculture, Food and Markets shall adopt by
14 procedure requirements for training classes or programs for owners or
15 operators of small farms, medium farms, or large farms certified or permitted
16 under this chapter regarding:

17 (1) the prevention of discharges, as that term is defined in 10 V.S.A.
18 § 1251(3); and

19 (2) the mitigation and management of stormwater runoff, as that term is
20 defined in 10 V.S.A. § 1264, from farms.

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1 § 4988. CERTIFICATION OF CUSTOM APPLICATOR

2 (a) The Secretary of Agriculture, Food and Markets shall adopt by rule a
3 process by which a custom applicator shall be certified to operate within the
4 State. The certification process shall require a custom applicator to complete
5 eight hours of training over each five-year period regarding:

6 (1) application methods or techniques to minimize the runoff of
7 land-applied manure, nutrients, septage, or sludge to waters of the State; and

8 (2) identification of weather or soil conditions that increase the risk of
9 runoff of land-applied manure, nutrients, septage, or sludge to waters of the
10 State.

11 (b) A custom applicator shall not apply manure, nutrients, septage, or
12 sludge unless certified by the Secretary of Agriculture, Food and Markets.

13 (c) The requirements of this section shall not apply to an owner or operator
14 of a farm applying manure, nutrients, septage, or sludge to a field that he or she
15 owns or controls.

16 * * * Agricultural Water Quality; Enforcement; Corrective Actions * * *

17 Sec. 11. 6 V.S.A. chapter 215, subchapter 10 is added to read:

18 Subchapter 10. Enforcement

19 § 4991. PURPOSE

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1 The purpose of this subchapter is to provide the Secretary of Agriculture,
2 Food and Markets with the necessary authority to enforce the agricultural
3 water quality requirements of this chapter. When the Secretary of Agriculture,
4 Food and Markets determines that a person subject to the requirements of the
5 chapter is violating a requirement of this chapter, the Secretary shall respond to
6 and require discontinuance of the violation. The Secretary may respond to a
7 violation of the requirements of this chapter by:
8 (1) issuing a corrective action order under section 4992 of this title;
9 (2) issuing a cease and desist order under section 4993 of this title;
10 (3) issuing an emergency order under section 4993 of this title;
11 (4) revoking or conditioning coverage under a permit or certification
12 under section 4994 of this title;
13 (4) bringing a civil enforcement action under section 4995 of this title;
14 (5) referring the violation to the Secretary of Natural Resources for
15 enforcement under 10 V.S.A. chapter 201; or
16 (6) pursuing other action, such as consulting with a farmer, within the
17 authority of the Secretary to assure discontinuance of the violation and
18 remediation of any harm caused by the violation.
19 § 4992. CORRECTIVE ACTIONS; ADMINISTRATIVE ENFORCEMENT

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1 (a) When the Secretary of Agriculture, Food and Markets determines that a
2 person is violating the requirements of this chapter, rules adopted under this
3 chapter, or a permit or certification issued under this chapter, the Secretary
4 may issue a written warning that shall be served in person or by certified mail,
5 return receipt requested. A warning issued under this subsection shall include:

6 (1) a description of the alleged violation;

7 (2) identification of this section;

8 (3) identification of the applicable statute, rule, or permit condition
9 violated;

10 (4) the required corrective actions that the person shall take to correct
11 the violation; and

12 (5) a summary of federal and State assistance programs that may be
13 utilized by the person to assist in correcting the violation.

14 (b) A person issued a warning under this section shall have 30 days to
15 respond to the written warning and shall provide an abatement schedule for
16 curing the violation and a description of the corrective action to be taken to
17 cure the violation.

18 (c) If a person who receives a warning under this subsection fails to
19 respond in a timely manner to the written warning or to take corrective action,

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1 the Secretary may act pursuant to section 4993 or section 4995 of this section
2 in order to protect water quality.

3 § 4993. ADMINISTRATIVE ENFORCEMENT; CEASE AND DESIST
4 ORDERS; EMERGENCY ORDERS

5 (a) Notwithstanding the requirements of section 4992 of this title, the
6 Secretary at any time may pursue one or more of the following enforcement
7 actions:

8 (1) Issue a cease and desist order in accordance with the requirements of
9 subsection (b) of this section to a person the Secretary believes to be in
10 violation of the requirements of this chapter.

11 (2) Issue emergency administrative orders to protect water quality when
12 an alleged violation, activity, or farm practice:

13 (A) presents an immediate threat of substantial harm to the
14 environment or immediate threat to the public health or welfare;

15 (B) is likely to result in an immediate threat of substantial harm to the
16 environment or immediate threat to the public health or welfare; or

17 (C) requires a permit or amendment to a permit issued under this
18 chapter and a farm owner or operator has commenced an activity or is
19 continuing an activity without a permit or permit amendment.

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1 (3) Institute appropriate proceedings on behalf of the Agency of
2 Agriculture, Food and Markets to enforce the requirements of this chapter,
3 rules adopted under this chapter, or a permit or certification issued under this
4 chapter.

5 (4) Order mandatory corrective actions, including a requirement to
6 remove livestock from a farm or production area when the volume of waste
7 produced by livestock on the farm exceeds the infrastructure capacity of the
8 farm or the production area to manage the waste or waste leachate and prevent
9 runoff or leaching of wastes to waters of the State or groundwater, as required
10 by this chapter.

11 (5) Seek administrative or civil penalties in accordance with the
12 requirements of section 15, 16, 17, or 4993 of this title. Notwithstanding the
13 requirements of section 15 of this title to the contrary, the maximum
14 administrative penalty issued by the Secretary under this section shall not
15 exceed \$5,000.00 for each violation, and the maximum amount of any penalty
16 assessed for separate and distinct violations of this chapter shall not exceed
17 \$50,000.00.

18 (b) A person may request that the Secretary hold a hearing on a cease and
19 desist order or an emergency order issued under this section within five days of
20 receipt of the order. Upon receipt of a request for a hearing, the Secretary

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1 promptly shall set a date and time for a hearing. A request for a hearing on a
2 cease and desist order or emergency order issued under this section shall not
3 stay the order.

4 § 4994. PERMIT OR CERTIFICATION; REVOCATION; ENFORCEMENT

5 The Secretary may, after due notice and hearing, revoke or condition
6 coverage under a general permit, an individual permit, a small farm
7 certification, or other permit or certification issued under this chapter or rules
8 adopted under this chapter when the person subject to the permit or
9 certification fails to comply with a requirement of this chapter or any term,
10 provision, or requirements of a permit or certification required by this chapter.

11 The Secretary may also seek enforcement remedies and penalties under this
12 subchapter against any person who fails to comply with any term, provision, or
13 requirements of a permit or certification required by this chapter or who
14 violates the terms or conditions of coverage under any general permit, any
15 individual permit, or any certification issued under this chapter.

16 § 4995. CIVIL ENFORCEMENT

17 (a) The Secretary may bring an action in the Civil Division of the Superior
18 Court to enforce the requirements of this chapter, or rules adopted under this
19 chapter, or any permit or certification issued under this chapter, to assure
20 compliance, and to obtain penalties in the amounts described in subsection (b)

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1 of this section. The action shall be brought by the Attorney General in the
2 name of the State.

3 (b) The court may grant temporary and permanent injunctive relief,
4 and may:

5 (1) Enjoin future activities.

6 (2) Order corrective actions to be taken to mitigate or curtail any
7 violation and to protect human health or the environment, including the
8 removal of livestock from the farm or production area when the volume of
9 wastes produced by livestock exceeds the infrastructure capacity of the farm or
10 its production area to manage the waste or waste leachate to prevent runoff or
11 leaching of wastes to waters of the State or groundwater as required by the
12 standards in this chapter.

13 (3) Order the design, construction, installation, operation, or
14 maintenance of facilities designed to mitigate or prevent a violation of this
15 chapter or to protect human health or the environment or designed to assure
16 compliance.

17 (4) Fix and order compensation for any public or private property
18 destroyed or damaged.

19 (5) Revoke coverage under any permit or certification issued under this
20 chapter.

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1 (6) Order reimbursement from any person who caused governmental
2 expenditures for the investigation, abatement, mitigation, or removal of a
3 hazard to human health or the environment.

4 (7) Levy a civil penalty as provided in this subdivision. A civil penalty
5 of not more than \$85,000.00 may be imposed for each violation. In addition,
6 in the case of a continuing violation, a penalty of not more than \$42,500.00
7 may be imposed for each day the violation continues. In fixing the amount of
8 the penalty, the court shall apply the criteria set forth in subsections (e) and (f)
9 of this section. The cost of collection of penalties or other monetary awards
10 shall be assessed against and added to a penalty assessed against a respondent.

11 (c)(1) In any civil action brought under this section in which a temporary
12 restraining order or preliminary injunction is sought, relief shall be obtained
13 upon a showing that there is the probability of success on the merits and that:

14 (A) a violation exists; or

15 (B) a violation is imminent and substantial harm is likely to result.

16 (2) In a civil action brought under this section in which a temporary
17 restraining order or preliminary injunction is sought, the Secretary need not
18 demonstrate immediate and irreparable injury, loss, or damage.

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1 (d) Any balancing of the equities in actions under this section may affect
2 the time by which compliance shall be attained, but not the necessity of
3 compliance within a reasonable period of time.

4 (e) In determining the amount of the penalty provided in subsection (b) of
5 this section, the court shall consider the following:

6 (1) the degree of actual or potential impact on public health, safety,
7 welfare, and the environment resulting from the violation;

8 (2) the presence of mitigating circumstances, including unreasonable
9 delay by the Secretary in seeking enforcement;

10 (3) whether the respondent knew or had reason to know the violation
11 existed;

12 (4) the respondent's record of compliance;

13 (5) the deterrent effect of the penalty;

14 (6) the State's actual costs of enforcement; and

15 (7) the length of time the violation has existed.

16 (f) In addition to any penalty assessed under subsection (b) of this section,
17 the Secretary may also recapture economic benefit resulting from a violation.

18 § 4996. APPEALS; ENFORCEMENT

19 (a) Any person subject, under this subchapter, to an enforcement order, an
20 administrative penalty, or revocation of a permit or certification who is

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1 aggrieved by a final decision of the Secretary may appeal to the Superior Court
2 within 30 days of the decision. The administrative judge may specially assign
3 an environmental judge to Superior Court for the purpose of hearing an appeal.

4 (b) If the Secretary issues an emergency order under this chapter, the
5 person subject to the order may request a hearing before the Superior Court.
6 Notice of the request for hearing under this subdivision shall be filed with the
7 Superior Court and the Secretary within five days of receipt of the order. A
8 hearing on the emergency order shall be held at the earliest possible time and
9 shall take precedence over all other hearings. The hearing shall be held within
10 five days of receipt of the notice of the request for hearing. A request for
11 hearing on an emergency order shall not stay the order. The Superior Court
12 shall issue a decision within five days from the conclusion of the hearing, and
13 no later than 30 days from the date the notice of request for hearing was
14 received by the person subject to the order.

15 Sec. 12. 6 V.S.A. § 4812 is amended to read:

16 § 4812. ~~CORRECTIVE ACTIONS~~

17 ~~(a) When the Secretary of Agriculture, Food and Markets determines that a~~
18 ~~person engaged in farming is managing a farm using practices which are~~
19 ~~inconsistent with the requirements of this chapter or rules adopted under this~~
20 ~~subchapter, the Secretary may issue a written warning which shall be served in~~

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1 ~~person or by certified mail, return receipt requested. The warning shall include~~
2 ~~a brief description of the alleged violation, identification of this statute and~~
3 ~~applicable rules, a recommendation for corrective actions that may be taken by~~
4 ~~the person, along with a summary of federal and State assistance programs~~
5 ~~which may be utilized by the person to remedy the violation. The person shall~~
6 ~~have 30 days to respond to the written warning and shall provide an abatement~~
7 ~~schedule for curing the violation and a description of the corrective action to be~~
8 ~~taken to cure the violation. If the person fails to respond to the written warning~~
9 ~~within this period or to take corrective action to change the practices, the~~
10 ~~Secretary may act pursuant to subsection (b) of this section in order to protect~~
11 ~~water quality.~~

12 ~~(b) The Secretary may:~~

13 ~~(1) issue cease and desist orders and administrative penalties in~~
14 ~~accordance with the requirements of sections 15, 16, and 17 of this title; and~~

15 ~~(2) institute appropriate proceedings on behalf of the Agency to enforce~~
16 ~~this subchapter.~~

17 ~~(c) Whenever the Secretary believes that any person engaged in farming is~~
18 ~~in violation of this subchapter or rules adopted thereunder, an action may be~~
19 ~~brought in the name of the Agency in a court of competent jurisdiction to~~
20 ~~restrain by temporary or permanent injunction the continuation or repetition of~~

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1 ~~the violation. The court may issue temporary or permanent injunctions, and~~
2 ~~other relief as may be necessary and appropriate to curtail any violations.~~

3 ~~(d) [Repealed.]~~

4 ~~(e) Any person subject to an enforcement order or an administrative~~
5 ~~penalty who is aggrieved by the final decision of the Secretary may appeal to~~
6 ~~the Superior Court within 30 days of the decision. The administrative judge~~
7 ~~may specially assign an Environmental judge to Superior Court for the purpose~~
8 ~~of hearing an appeal. [Repealed.]~~

9 Sec. ~~13~~. 6 V.S.A. § 4854 is amended to read:

10 § 4854. ~~REVOCATION; ENFORCEMENT~~

11 ~~The secretary may revoke a permit issued under this subchapter after~~
12 ~~following the same process prescribed by section 2705 of this title regarding~~
13 ~~the revocation of a handler's license. The secretary may also seek enforcement~~
14 ~~remedies under sections 1, 12, 13, 16, and 17 of this title as well as assess an~~
15 ~~administrative penalty under section 15 of this title to any person who fails to~~
16 ~~apply for a permit as required by this subchapter, or who violates the terms or~~
17 ~~conditions of a permit issued under this subchapter. However, notwithstanding~~
18 ~~the provisions of section 15 of this title to the contrary, the maximum~~
19 ~~administrative penalty assessed for a violation of this subchapter shall not~~
20 ~~exceed \$5,000.00 for each violation, and the maximum amount of any penalty~~

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1 ~~assessed for separate and distinct violations of this chapter shall not exceed~~
2 ~~\$50,000.00. [Repealed.]~~

3 Sec. 14. 6 V.S.A. § 4858(b) is amended to read:

4 (b) Rules; general and individual permits. The ~~secretary~~ Secretary shall
5 establish by rule, pursuant to 3 V.S.A. chapter 25 of ~~Title 3~~, requirements for a
6 “general permit” and “individual permit” to ~~ensure~~ assure that medium and
7 small farms generating animal waste comply with the water quality standards
8 of the ~~state~~ State.

9 * * *

10 (2) The rules adopted under this section shall also address permit
11 administration, public notice and hearing, permit enforcement, permit
12 transition, revocation, and appeals consistent with provisions of sections 4859,
13 ~~4860~~, and 4861 of this title and subchapter 10 of this chapter.

14 * * *

15 Sec. 15. 6 V.S.A. § 4860 is amended to read:

16 § 4860. ~~REVOCATION; ENFORCEMENT~~

17 ~~(a) The secretary may revoke coverage under a general permit or an~~
18 ~~individual permit issued under this subchapter after following the same process~~
19 ~~prescribed by section 2705 of this title regarding the revocation of a handler’s~~
20 ~~license. The secretary may also seek enforcement remedies under sections 1,~~

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1 ~~11, 12, 13, 16, and 17 of this title as well as assess an administrative penalty~~
2 ~~under section 15 of this title from any person who fails to comply with any~~
3 ~~permit provision as required by this subchapter or who violates the terms or~~
4 ~~conditions of coverage under any general permit or any individual permit~~
5 ~~issued under this subchapter. However, notwithstanding provisions of section~~
6 ~~15 of this title to the contrary, the maximum administrative penalty assessed~~
7 ~~for a violation of this subchapter shall not exceed \$5,000.00 for each violation,~~
8 ~~and the maximum amount of any penalty assessed for separate and distinct~~
9 ~~violations of this chapter shall not exceed \$50,000.00.~~

10 ~~(b) Any person who violates any provision of this subchapter or who fails~~
11 ~~to comply with any order or the terms of any permit issued in accordance with~~
12 ~~this subchapter shall be fined not more than \$10,000.00 for each violation.~~
13 ~~Each violation may be a separate offense and, in the case of a continuing~~
14 ~~violation, each day's continuance may be deemed a separate offense.~~

15 ~~(c) Any person who knowingly makes any false statement, representation,~~
16 ~~or certification in any application, record, report, plan, or other document filed~~
17 ~~or required to be maintained by this subchapter or by any permit, rule,~~
18 ~~regulation, or order issued under this subchapter, or who falsifies, tampers~~
19 ~~with, or knowingly renders inaccurate any monitoring device or method~~
20 ~~required to be maintained by this subchapter or by any permit, rule, regulation,~~

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1 ~~or order issued under this subchapter shall upon conviction be punished by a~~
2 ~~fine of not more than \$5,000.00 for each violation. Each violation may be a~~
3 ~~separate offense and, in the case of a continuing violation, each day's~~
4 ~~continuance may be deemed a separate offense. [Repealed.]~~

5 * * * Stream Alteration; Agricultural Activities * * *

6 Sec. 16. 10 V.S.A. § 1021 is amended to read:

7 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

8 (a) A person shall not change, alter, or modify the course, current, or cross
9 section of any watercourse or of designated outstanding resource waters,
10 within or along the boundaries of this State either by movement, fill, or
11 excavation of ten cubic yards or more of instream material in any year, unless
12 authorized by the Secretary. A person shall not establish or construct a berm in
13 a flood hazard area or river corridor, as those terms are defined in subdivisions
14 752(3) and (11) of this title, unless permitted by the Secretary or constructed as
15 an emergency protective measure under subsection (b) of this section.

16 * * *

17 (f) This subchapter shall not apply to:

18 (1) accepted agricultural or silvicultural practices, as defined by the
19 Secretary of Agriculture, Food and Markets, or timber harvesting activities in

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1 compliance with acceptable management practices adopted by the
2 Commissioner of Forests, Parks and Recreation, ~~respectively; or~~
3 (2) a farm that is implementing an approved U.S. Department of
4 Agriculture Natural Resource Conservation Service streambank stabilization
5 project or a streambank stabilization project approved by the Secretary of
6 Agriculture, Food and Markets that is consistent with policies adopted by the
7 Secretary of Natural Resources to reduce fluvial erosion hazards.

8 * * *

9 * * * Use Value Appraisal; Compliance with
10 Accepted Agricultural Practices * * *

11 Sec. 17. 32 V.S.A. § 3756(i) is amended to read:

12 (i)(1) The Director shall remove from use value appraisal an entire parcel
13 of managed ~~forest land~~ forestland and notify the owner ~~in accordance with the~~
14 ~~procedure in subsection (b) of this section~~ when the ~~Department~~ Commissioner
15 of Forests, Parks and Recreation has not received a management activity report
16 or has received an adverse inspection report, unless the lack of conformance
17 consists solely of the failure to make prescribed planned cutting. In that case,
18 the Director may delay removal from use value appraisal for a period of one
19 year at a time to allow time to bring the parcel into conformance with the plan.

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1 (2)(A) The Director shall remove from use value appraisal an entire
2 parcel or parcels of agricultural land and farm buildings identified by the
3 Secretary of Agriculture, Food and Markets as being used by a person:

4 (i) found, after hearing, to be out of compliance with water quality
5 requirements established under 6 V.S.A. chapter 215; or

6 (ii) who is not in compliance with the terms of an order issued
7 under 6 V.S.A. chapter 215, subchapter 10 to remedy a violation of water
8 quality requirements established under 6 V.S.A. chapter 215.

9 (B) The Director shall notify the owner that agricultural land or a
10 farm building has been removed from use value appraisal by mailing
11 notification of removal to the owner or operator's last and usual place of
12 abode. After removal of agricultural land or a farm building from use value
13 appraisal under this section, the Director shall not consider a new application
14 for use value appraisal for the agricultural land or farm building until the
15 Secretary of Agriculture, Food and Markets submits to the Director a
16 certification that the owner or operator of the agricultural land or farm building
17 is complying with the water quality requirements of 6 V.S.A. chapter 215 or an
18 order issued under 6 V.S.A. chapter 215. After submission of a certification by
19 the Secretary of Agriculture, Food and Markets, an owner or operator shall be

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1 eligible to apply for enrollment of the agricultural land or farm building
2 according to the requirements of section 3756 of this title.

3 Sec. 18. 32 V.S.A. § 3758 is amended to read:

4 § 3758. APPEALS

5 (a) Whenever the Director denies in whole or in part any application for
6 classification as agricultural land or managed forestland or farm buildings, or
7 grants a different classification than that applied for, or the Director or
8 assessing officials fix a use value appraisal or determine that previously
9 classified property is no longer eligible or that the property has undergone a
10 change in use, the aggrieved owner may appeal the decision of the Director to
11 the Commissioner within 30 days of the decision, and from there to Superior
12 Court in the county in which the property is located.

13 * * *

14 (e) When the Director removes agricultural land or a farm building
15 pursuant to notification from the Secretary of Agriculture, Food and Markets
16 under section 3756 of this title, the exclusive right of appeal shall be as
17 provided in 6 V.S.A. § 4991(d).

18 Sec. 19. 32 V.S.A. § 3752(5) is amended to read:

19 (5) “Development” means, for the purposes of determining whether a
20 land use change tax is to be assessed under section 3757 of this chapter, the

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1 construction of any building, road, or other structure, or any mining,
2 excavation, or landfill activity. “Development” also means the subdivision of
3 a parcel of land into two or more parcels, regardless of whether a change in use
4 actually occurs, where one or more of the resulting parcels contains less than
5 25 acres each; but if subdivision is solely the result of a transfer to one or more
6 of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of
7 the transferor, or to the surviving spouse of any of the foregoing, then
8 “development” shall not apply to any portion of the newly created parcel or
9 parcels which qualifies for enrollment and for which, within 30 days following
10 the transfer, each transferee or transferor applies for reenrollment in the use
11 value appraisal program. “Development” also means the cutting of timber on
12 property appraised under this chapter at use value in a manner contrary to a
13 forest or conservation management plan as provided for in subsection 3755(b)
14 of this title during the remaining term of the plan, or contrary to the minimum
15 acceptable standards for forest management if the plan has expired; or a
16 change in the parcel or use of the parcel in violation of the conservation
17 management standards established by the Commissioner of Forests, Parks and
18 Recreation. “Development” also means notification of the Director by the
19 Secretary of Agriculture, Food and Markets under section 3756 of this title that
20 the owner or operator of agricultural land or a farm building is violating the

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1 water quality requirements of 6 V.S.A. chapter 215 or is failing to comply with
2 the terms of an order issued under 6 V.S.A. chapter 215, subchapter 10. The
3 term “development” shall not include the construction, reconstruction,
4 structural alteration, relocation, or enlargement of any building, road, or other
5 structure for farming, logging, forestry, or conservation purposes, but shall
6 include the subsequent commencement of a use of that building, road, or
7 structure for other than farming, logging, or forestry purposes.

8 * * * Agency of Natural Resources Basin Planning * * *

9 Sec. 20. 10 V.S.A. § 1253 is amended to read:

10 § 1253. CLASSIFICATION OF WATERS DESIGNATED,

11 RECLASSIFICATION

12 * * *

13 (d)(1) ~~The~~ Through the process of basin planning, the Secretary shall
14 determine what degree of water quality and classification should be obtained
15 and maintained for those waters not classified by the Board before 1981
16 following the procedures in sections 1254 and 1258 of this title. Those waters
17 shall be classified in the public interest. The Secretary shall prepare and
18 maintain an overall surface water management plan to assure that the State
19 water quality standards are met in all State waters. The surface water
20 management plan shall include a schedule for updating the basin plans. The

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1 Secretary, in cooperation with regional planning commissions, shall revise all
2 ~~17 15~~ basin plans ~~by January 1, 2006~~, and update ~~them every five years~~
3 ~~thereafter~~ the basin plans on a five-year rotating basis. On or before January 1
4 15 of each year, the Secretary shall report to the House Committees on
5 Agriculture and Forest Products, on Natural Resources and Energy, and on
6 Fish, Wildlife and Water Resources, and to the Senate Committees on
7 Agriculture and on Natural Resources and Energy regarding the progress made
8 and difficulties encountered in revising basin plans. ~~By January 1, 1993, the~~
9 ~~Secretary shall prepare an overall management plan to ensure that the water~~
10 ~~quality standards are met in all State waters.~~ The report shall include a
11 schedule for the production of basin plans in the subsequent calendar year and
12 a summary of actions to be taken over the subsequent three years. The
13 provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply
14 to the report to be made under this subsection.

15 (2) In developing a basin plan under this subsection, the Secretary shall:

16 (A) assure that municipal officials, citizens, watershed groups, and
17 other interested groups and individuals are involved in the basin planning
18 process;

19 (B) assure regional and local input in State water quality policy
20 development and planning processes;

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1 (C) provide education to municipal officials and citizens regarding
2 the basin planning process; and

3 (D) develop, in cooperation with the applicable regional planning
4 commission, an analysis and formal recommendation on conformance with the
5 goals and objectives of applicable regional plans.

6 (3) The Secretary may contract with a regional planning commission to
7 assist in or to produce a basin plan under the schedule set forth in subdivision
8 (1) of this subsection. When contracting with a regional planning commission
9 to assist in or produce a basin plan, the Secretary may require the regional
10 planning commission to:

11 (A) conduct any of the activities required under subdivision (2) of
12 this subsection;

13 (B) provide technical assistance and data collection activities to
14 inform municipal officials and the State in making water quality investment
15 decisions;

16 (C) coordinate municipal planning and adoption or implementation of
17 municipal development regulations to better meet State water quality policies
18 and investment priorities;

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- 1 (D) assist the Secretary in implementing a project evaluation process
2 to prioritize water quality improvement projects within the region to assure
3 cost effective use of State and federal funds;
- 4 (e) In determining the question of public interest, the Secretary shall give due
5 consideration to, and explain his or her decision with respect to, the following:
- 6 (1) existing and obtainable water qualities;
- 7 (2) existing and potential use of waters for public water supply,
8 recreational, agricultural, industrial, and other legitimate purposes;
- 9 (3) natural sources of pollution;
- 10 (4) public and private pollution sources and the alternative means of
11 abating the same;
- 12 (5) consistency with the State water quality policy established in
13 10 V.S.A. § 1250;
- 14 (6) suitability of waters as habitat for fish, aquatic life, and wildlife;
- 15 (7) need for and use of minimum streamflow requirements;
- 16 (8) federal requirements for classification and management of waters;
- 17 (9) consistency with applicable municipal, regional, and State plans; and
18 (10) any other factors relevant to determine the maximum beneficial use
19 and enjoyment of waters.

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1 (f) Notwithstanding the provisions of subsection (c) of this section, when
2 reclassifying waters to Class A, the Secretary need find only that the
3 reclassification is in the public interest.

4 (g) The Secretary under the reclassification rule may grant permits for only
5 a portion of the assimilative capacity of the receiving waters, or may permit
6 only indirect discharges from on-site disposal systems, or both.

7 Sec. 21. 24 V.S.A. § 4302 is amended to read:

8 § 4302. PURPOSE; GOALS

9 * * *

10 (b) It is also the intent of the Legislature that municipalities, regional
11 planning commissions, and State agencies shall engage in a continuing
12 planning process that will further the following goals:

13 * * *

14 (c) In addition, this chapter shall be used to further the following specific
15 goals:

16 * * *

17 (6) To maintain and improve the quality of air, water, wildlife, and land
18 resources.

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1 (4) business, conservation, low income advocacy, and other community
2 or interest groups or organizations that have requested notice in writing prior to
3 the date the hearing is warned; and

4 (5) The Agency of Natural Resources and the Agency of Agriculture,
5 Food and Markets.

6 Sec. 23. 24 V.S.A. § 4348a(a) is amended to read:

7 (a) A regional plan shall be consistent with the goals established in section
8 4302 of this title and shall include the following:

9 * * *

10 (6) A statement of policies on the:

11 (A) preservation of rare and irreplaceable natural areas, scenic and
12 historic features and resources; and

13 (B) protection and improvement of the quality of State waters to be
14 used in the development and furtherance of the applicable basin plans

15 established by the Secretary of Natural Resources under 10 V.S.A. § 1253;

16 * * *

17 * * * Antidegradation Policy Implementation Rule * * *

18 Sec. 24. 10 V.S.A. § 1251a(c) is amended to read:

19 (c) On or before ~~January 15, 2008~~ July 1, 2016, the Secretary of Natural
20 Resources shall ~~propose draft rules for~~ adopt by rule an implementation

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1 process for the antidegradation policy in the water quality standards of the
2 State. The implementation process for the antidegradation policy shall be
3 consistent with the State water quality policy established in section 1250 of
4 this title, the Vermont Water Quality Standards, and any applicable
5 requirements of the federal Clean Water Act. ~~On or before July 1, 2008, a~~
6 ~~final proposal of the rules for an implementation process for the~~
7 ~~antidegradation policy shall be filed with the Secretary of State under 3 V.S.A.~~
8 ~~§ 841.~~

9 * * * Stormwater Management * * *

10 Sec. ~~25~~. 10 V.S.A. § 1264 is amended to read:

11 § 1264. STORMWATER MANAGEMENT

12 ~~(a) The General Assembly finds that the management of stormwater runoff~~
13 ~~is necessary to reduce stream channel instability, pollution, siltation,~~
14 ~~sedimentation, and local flooding, all of which have adverse impacts on the~~
15 ~~water and land resources of the State. The General Assembly intends, by~~
16 ~~enactment of this section, to reduce the adverse effects of stormwater runoff.~~
17 ~~The General Assembly determines that this intent may best be attained by a~~
18 ~~process that: assures broad participation; focuses upon the prevention of~~
19 ~~pollution; relies on structural treatment only when necessary; establishes and~~
20 ~~maintains accountability; tailors strategies to the region and the locale; assures~~

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1 ~~an adequate funding source; builds broadbased programs; provides for the~~
2 ~~evaluation and appropriate evolution of programs; is consistent with the federal~~
3 ~~Clean Water Act and the State water quality standards; and accords appropriate~~
4 ~~recognition to the importance of community benefits that accompany an~~
5 ~~effective stormwater runoff management program. In furtherance of these~~
6 ~~purposes, the Secretary shall implement two stormwater permitting programs.~~
7 ~~The first program is based on the requirements of the federal National~~
8 ~~Pollutant Discharge Elimination System (NPDES) permit program in~~
9 ~~accordance with section 1258 of this title. The second program is a State~~
10 ~~permit program based on the requirements of this section for the discharge of~~
11 ~~“regulated stormwater runoff” as that term is defined in subdivision (11) of this~~
12 ~~subsection. As used in this section:~~

13 ~~(1) “2002 Stormwater Management Manual” means the Agency of~~
14 ~~Natural Resources’ Stormwater Management Manual dated April 2002, as~~
15 ~~amended from time to time by rule.~~

16 ~~(2) “Best management practice” (BMP) means a schedule of activities,~~
17 ~~prohibitions of practices, maintenance procedures, and other management~~
18 ~~practices to prevent or reduce water pollution.~~

19 ~~(3) “Development” means the construction of impervious surface on a~~
20 ~~tract or tracts of land where no impervious surface previously existed.~~

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1 ~~(4) “Existing stormwater discharge” means a discharge of regulated~~
2 ~~stormwater runoff which first occurred prior to June 1, 2002 and that is subject~~
3 ~~to the permitting requirements of this chapter.~~

4 ~~(5) “Expansion” and “the expanded portion of an existing discharge”~~
5 ~~mean an increase or addition of impervious surface, such that the total resulting~~
6 ~~impervious area is greater than the minimum regulatory threshold. Expansion~~
7 ~~does not mean an increase or addition of impervious surface of less than 5,000~~
8 ~~square feet.~~

9 ~~(6) “Impervious surface” means those manmade surfaces, including~~
10 ~~paved and unpaved roads, parking areas, roofs, driveways, and walkways, from~~
11 ~~which precipitation runs off rather than infiltrates.~~

12 ~~(7) “New stormwater discharge” means a new or expanded discharge of~~
13 ~~regulated stormwater runoff, subject to the permitting requirements of this~~
14 ~~chapter, which first occurs after June 1, 2002 and has not been previously~~
15 ~~authorized pursuant to this chapter.~~

16 ~~(8) “Offset” means a State permitted or approved action or project~~
17 ~~within a stormwater impaired water that a discharger or a third person may~~
18 ~~complete to mitigate the impacts that a discharge of regulated stormwater~~
19 ~~runoff has on the stormwater impaired water.~~

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1 ~~(9) “Offset charge” means the amount of sediment load or hydrologic~~
2 ~~impact that an offset must reduce or control in the stormwater impaired water~~
3 ~~in which the offset is located.~~

4 ~~(10) “Redevelopment” means the construction or reconstruction of an~~
5 ~~impervious surface where an impervious surface already exists when such new~~
6 ~~construction involves substantial site grading, substantial subsurface~~
7 ~~excavation, or substantial modification of existing stormwater conveyance,~~
8 ~~such that the total of impervious surface to be constructed or reconstructed is~~
9 ~~greater than the minimum regulatory threshold. Redevelopment does not mean~~
10 ~~the construction or reconstruction of impervious surface where impervious~~
11 ~~surface already exists when the construction or reconstruction involves less~~
12 ~~than 5,000 square feet. Redevelopment does not mean public road~~
13 ~~management activities, including any crack sealing, patching, coldplaning,~~
14 ~~resurfacing, reclaiming, or grading treatments used to maintain pavement,~~
15 ~~bridges, and unpaved roads.~~

16 ~~(11) “Regulated stormwater runoff” means precipitation, snowmelt, and~~
17 ~~the material dissolved or suspended in precipitation and snowmelt that runs off~~
18 ~~impervious surfaces and discharges into surface waters or into groundwater via~~
19 ~~infiltration.~~

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1 ~~(12) “Stormwater impact fee” means the monetary charge assessed to a~~
2 ~~permit applicant for the discharge of regulated stormwater runoff to a~~
3 ~~stormwater impaired water that mitigates a sediment load level or hydrologic~~
4 ~~impact that the discharger is unable to control through on-site treatment or~~
5 ~~completion of an offset on a site owned or controlled by the permit applicant.~~

6 ~~(13) “Stormwater impaired water” means a State water that the~~
7 ~~Secretary determines is significantly impaired by discharges of regulated~~
8 ~~stormwater runoff.~~

9 ~~(14) “Stormwater runoff” means precipitation and snowmelt that does~~
10 ~~not infiltrate into the soil, including material dissolved or suspended in it, but~~
11 ~~does not include discharges from undisturbed natural terrain or wastes from~~
12 ~~combined sewer overflows.~~

13 ~~(15) “Total maximum daily load” (TMDL) means the calculations and~~
14 ~~plan for meeting water quality standards approved by the U.S. Environmental~~
15 ~~Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and~~
16 ~~federal regulations adopted under that law.~~

17 ~~(16) “Water quality remediation plan” means a plan, other than a TMDL~~
18 ~~or sediment load allocation, designed to bring an impaired water body into~~
19 ~~compliance with applicable water quality standards in accordance with 40~~
20 ~~C.F.R. § 130.7(b)(1)(ii) and (iii).~~

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1 ~~(17) “Watershed improvement permit” means a general permit specific~~
2 ~~to a stormwater impaired water that is designed to apply management~~
3 ~~strategies to existing and new discharges and that includes a schedule of~~
4 ~~compliance no longer than five years reasonably designed to assure attainment~~
5 ~~of the Vermont water quality standards in the receiving waters.~~

6 ~~(18) “Stormwater system” means the storm sewers; outfall sewers;~~
7 ~~surface drains; manmade wetlands; channels; ditches; wet and dry bottom~~
8 ~~basins; rain gardens; and other control equipment necessary and appurtenant to~~
9 ~~the collection, transportation, conveyance, pumping, treatment, disposal, and~~
10 ~~discharge of regulated stormwater runoff.~~

11 ~~(19) “Net zero standard” means:~~

12 ~~(A) A new discharge or the expanded portion of an existing discharge~~
13 ~~meets the requirements of the 2002 Stormwater Management Manual and does~~
14 ~~not increase the sediment load in the receiving stormwater impaired water; or~~

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

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1 ~~engineering feasibility analysis conducted by the Agency and if the sediment~~
2 ~~load from the discharge approximates the natural runoff from an undeveloped~~
3 ~~field or open meadow that is not used for agricultural activity.~~

4 (b) ~~The Secretary shall prepare a plan for the management of collected~~
5 ~~stormwater runoff found by the Secretary to be deleterious to receiving waters.~~

6 ~~The plan shall recognize that the runoff of stormwater is different from the~~
7 ~~discharge of sanitary and industrial wastes because of the influence of natural~~
8 ~~events of stormwater runoff, the variations in characteristics of those runoffs,~~
9 ~~and the increased stream flows and natural degradation of the receiving water~~
10 ~~quality at the time of discharge. The plan shall be cost effective and designed~~
11 ~~to minimize any adverse impact of stormwater runoff to waters of the State.~~

12 ~~By no later than February 1, 2001, the Secretary shall prepare an enhanced~~
13 ~~stormwater management program and report on the content of that program to~~
14 ~~the House Committees on Fish, Wildlife and Water Resources and on Natural~~
15 ~~Resources and Energy and to the Senate Committee on Natural Resources and~~
16 ~~Energy. In developing the program, the Secretary shall consult with the Board,~~
17 ~~affected municipalities, regional entities, other State and federal agencies, and~~
18 ~~members of the public. The Secretary shall be responsible for implementation~~
19 ~~of the program. The Secretary's stormwater management program shall~~
20 ~~include, at a minimum, provisions that:~~

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- 1 ~~(1) Indicate that the primary goals of the State program will be to assure~~
- 2 ~~compliance with the Vermont Water Quality Standards and to maintain after~~
- 3 ~~development, as nearly as possible, the predevelopment runoff characteristics.~~
- 4 ~~(2) Allow for differences in hydrologic characteristics in different parts~~
- 5 ~~of the State.~~
- 6 ~~(3) Incorporate stormwater management into the basin planning process~~
- 7 ~~conducted under section 1253 of this title.~~
- 8 ~~(4) Assure consistency with applicable requirements of the federal Clean~~
- 9 ~~Water Act.~~
- 10 ~~(5) Address stormwater management in new development and~~
- 11 ~~redevelopment.~~
- 12 ~~(6) Control stormwater runoff from construction sites and other land~~
- 13 ~~disturbing activities.~~
- 14 ~~(7) Indicate that water quality mitigation practices may be required for~~
- 15 ~~any redevelopment of previously developed sites, even when~~
- 16 ~~preredevelopment runoff characteristics are proposed to be maintained.~~
- 17 ~~(8) Specify minimum requirements for inspection and maintenance of~~
- 18 ~~stormwater management practices.~~
- 19 ~~(9) Promote detection and elimination of improper or illegal connections~~
- 20 ~~and discharges.~~

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1 ~~(10) Promote implementation of pollution prevention during the conduct~~
2 ~~of municipal operations.~~

3 ~~(11) Provide for a design manual that includes technical guidance for the~~
4 ~~management of stormwater runoff.~~

5 ~~(12) Encourage municipal governments to utilize existing regulatory and~~
6 ~~planning authority to implement improved stormwater management by~~
7 ~~providing technical assistance, training, research and coordination with respect~~
8 ~~to stormwater management technology, and by preparing and distributing a~~
9 ~~model local stormwater management ordinance.~~

10 ~~(13) Promote public education and participation among citizens and~~
11 ~~municipalities about cost-effective and innovative measures to reduce~~
12 ~~stormwater discharges to the waters of the State.~~

13 ~~(e) The Secretary shall submit the program report to the House Committees~~
14 ~~on Agriculture and Forest Products, on Transportation, and on Natural~~
15 ~~Resources and Energy and to the Senate Committees on Agriculture and on~~
16 ~~Natural Resources and Energy.~~

17 ~~(d)(1) The Secretary shall initiate rulemaking by October 15, 2004, and~~
18 ~~shall adopt a rule for a stormwater management program by June 15, 2005.~~
19 ~~The rule shall be adopted in accordance with 3 V.S.A. chapter 25 and shall~~
20 ~~include:~~

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- 1 ~~(A) the regulatory elements of the program identified in subsection~~
2 ~~(b) of this section, including the development and use of offsets and the~~
3 ~~establishment and imposition of stormwater impact fees to apply when issuing~~
4 ~~permits that allow regulated stormwater runoff to stormwater impaired waters;~~
5 ~~(B) requirements concerning the contents of permit applications that~~
6 ~~include, at a minimum, for regulated stormwater runoff, the permit application~~
7 ~~requirements contained in the Agency's 1997 stormwater management~~
8 ~~procedures;~~
9 ~~(C) a system of notifying interested persons in a timely way of the~~
10 ~~Agency's receipt of stormwater discharge applications, provided any alleged~~
11 ~~failures with respect to such notice shall not be relevant in any Agency permit~~
12 ~~decision or any appeals brought pursuant to section 1269 of this chapter;~~
13 ~~(D) requirements concerning a permit for discharges of regulated~~
14 ~~stormwater runoff from the development, redevelopment, or expansion of~~
15 ~~impervious surfaces equal to or greater than one acre or any combination of~~
16 ~~development, redevelopment, and expansion of impervious surfaces equal to or~~
17 ~~greater than one acre; and~~
18 ~~(E) requirements concerning a permit for discharges of regulated~~
19 ~~stormwater runoff from an impervious surface of any size to~~
20 ~~stormwater impaired waters if the Secretary determines that treatment is~~

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1 ~~necessary to reduce the adverse impact of such stormwater discharges due to~~
2 ~~the size of the impervious surface, drainage patterns, hydraulic connectivity,~~
3 ~~existing stormwater treatment, or other factors identified by the Secretary.~~

4 ~~(2) Notwithstanding 3 V.S.A. § 840(a), the Secretary shall hold at least~~
5 ~~three public hearings in different areas of the State regarding the proposed rule.~~

6 ~~(e)(1) Except as otherwise may be provided in subsection (f) of this~~
7 ~~section, the Secretary shall, for new stormwater discharges, require a permit~~
8 ~~for discharge of, regulated stormwater runoff consistent with, at a minimum,~~
9 ~~the 2002 Stormwater Management Manual. The Secretary may issue,~~
10 ~~condition, modify, revoke, or deny discharge permits for regulated stormwater~~
11 ~~runoff, as necessary to assure achievement of the goals of the program and~~
12 ~~compliance with State law and the federal Clean Water Act. The permit shall~~
13 ~~specify the use of best management practices to control regulated stormwater~~
14 ~~runoff. The permit shall require as a condition of approval, proper operation,~~
15 ~~and maintenance of any stormwater management facility and submittal by the~~
16 ~~permittee of an annual inspection report on the operation, maintenance and~~
17 ~~condition of the stormwater management system. The permit shall contain~~
18 ~~additional conditions, requirements, and restrictions as the Secretary deems~~
19 ~~necessary to achieve and maintain compliance with the water quality standards,~~
20 ~~including requirements concerning recording, reporting, and monitoring the~~

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1 ~~effects on receiving waters due to operation and maintenance of stormwater~~
2 ~~management facilities.~~

3 ~~(2) As one of the principal means of administering an enhanced~~
4 ~~stormwater program, the Secretary may issue and enforce general permits. To~~
5 ~~the extent appropriate, such permits shall include the use of certifications of~~
6 ~~compliance by licensed professional engineers practicing within the scope of~~
7 ~~their engineering specialty. The Secretary may issue general permits for~~
8 ~~classes of regulated stormwater runoff permittees and may specify the period~~
9 ~~of time for which the permit is valid other than that specified in subdivision~~
10 ~~1263(d)(4) of this title when such is consistent with the provisions of this~~
11 ~~section. General permits shall be adopted and administered in accordance with~~
12 ~~the provisions of subsection 1263(b) of this title. No permit is required under~~
13 ~~this section for:~~

14 ~~(A) Stormwater runoff from farms subject to accepted agricultural~~
15 ~~practices adopted by the Secretary of Agriculture, Food and Markets;~~

16 ~~(B) Stormwater runoff from concentrated animal feeding operations~~
17 ~~that require a permit under subsection 1263(g) of this chapter; or~~

18 ~~(C) Stormwater runoff from silvicultural activities subject to accepted~~
19 ~~management practices adopted by the Commissioner of Forests, Parks and~~
20 ~~Recreation.~~

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1 ~~(3) Prior to issuing a permit under this subsection, the Secretary shall~~
2 ~~review the permit applicant's history of compliance with the requirements of~~
3 ~~this chapter. The Secretary may, at his or her discretion and as necessary to~~
4 ~~assure achievement of the goals of the program and compliance with State law~~
5 ~~and the federal Clean Water Act, deny an application for the discharge of~~
6 ~~regulated stormwater under this subsection if review of the applicant's~~
7 ~~compliance history indicates that the applicant is discharging regulated~~
8 ~~stormwater in violation of this chapter or is the holder of an expired permit for~~
9 ~~an existing discharge of regulated stormwater.~~

10 ~~(f)(1) In a stormwater impaired water, the Secretary may issue:~~

11 ~~(A) An individual permit in a stormwater impaired water for which~~
12 ~~no TMDL, water quality remediation plan, or watershed improvement permit~~
13 ~~has been established or issued, provided that the permitted discharge meets the~~
14 ~~following discharge standard: prior to the issuance of a general permit to~~
15 ~~implement a TMDL or a water quality remediation plan, the discharge meets~~
16 ~~the net-zero standard;~~

17 ~~(B) An individual permit or a general permit to implement a TMDL~~
18 ~~or water quality remediation plan in a stormwater impaired water, provided~~
19 ~~that the permitted discharge meets the following discharge standard:~~

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- 1 ~~(i) a new stormwater discharge or the expansion of an existing~~
2 ~~discharge shall meet the treatment standards for new development and~~
3 ~~expansion in the 2002 Stormwater Management Manual and any additional~~
4 ~~requirements deemed necessary by the Secretary to implement the TMDL or~~
5 ~~water quality remediation plan;~~
- 6 ~~(ii) for a discharge of regulated stormwater runoff from~~
7 ~~redeveloped impervious surfaces:~~
- 8 ~~(I) the existing impervious surface shall be reduced by 20~~
9 ~~percent, or a stormwater treatment practice shall be designed to capture and~~
10 ~~treat 20 percent of the water quality volume treatment standard of the 2002~~
11 ~~Stormwater Management Manual from the existing impervious surface; and~~
- 12 ~~(II) any additional requirements deemed necessary by the~~
13 ~~Secretary to implement the TMDL or the water quality remediation plan;~~
- 14 ~~(iii) an existing stormwater discharge shall meet the treatment~~
15 ~~standards deemed necessary by the Secretary to implement a TMDL or a water~~
16 ~~quality remediation plan;~~
- 17 ~~(iv) if a permit is required for an expansion of an existing~~
18 ~~impervious surface or for the redevelopment of an existing impervious surface,~~
19 ~~discharges from the expansion or from the redeveloped portion of the existing~~
20 ~~impervious surface shall meet the relevant treatment standard of the 2002~~

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1 ~~Stormwater Management Manual, and the existing impervious surface shall~~
2 ~~meet the treatment standards deemed necessary by the Secretary to implement~~
3 ~~a TMDL or the water quality remediation plan;~~

4 ~~(C) A watershed improvement permit, provided that the watershed~~
5 ~~improvement permit provides reasonable assurance of compliance with the~~
6 ~~Vermont water quality standards in five years;~~

7 ~~(D) A general or individual permit that is implementing a TMDL or~~
8 ~~water quality remediation plan; or~~

9 ~~(E) A statewide general permit for new discharges that the Secretary~~
10 ~~deems necessary to assure attainment of the Vermont Water Quality Standards.~~

11 ~~(2) An authorization to discharge regulated stormwater runoff pursuant~~
12 ~~to a permit issued under this subsection shall be valid for a time period not to~~
13 ~~exceed five years. A person seeking to discharge regulated stormwater runoff~~
14 ~~after the expiration of that period shall obtain an individual permit or coverage~~
15 ~~under a general permit, whichever is applicable, in accordance with subsection~~
16 ~~1263(e) of this title.~~

17 ~~(3) By January 15, 2010, the Secretary shall issue a watershed~~
18 ~~improvement permit, issue a general or individual permit implementing a~~
19 ~~TMDL approved by the EPA, or issue a general or individual permit~~
20 ~~implementing a water quality remediation plan for each of the~~

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1 ~~stormwater impaired waters on the Vermont Year 2004 Section 303(d) List of~~
2 ~~Waters required by 33 U.S.C. 1313(d). In developing a TMDL or a water~~
3 ~~quality remediation plan for a stormwater impaired water, the Secretary shall~~
4 ~~consult “A Scientifically Based Assessment and Adaptive Management~~
5 ~~Approach to Stormwater Management” and “Areas of Agreement about the~~
6 ~~Scientific Underpinnings of the Water Resources Board’s Original Seven~~
7 ~~Questions” set out in appendices A and B, respectively, of the final report of~~
8 ~~the Water Resources Board’s “Investigation Into Developing Cleanup Plans~~
9 ~~For Stormwater Impaired Waters, Docket No. Inv-03-01,” issued March 9,~~
10 ~~2004.~~

11 ~~(4) Discharge permits issued under this subsection shall require BMP-~~
12 ~~based stormwater treatment practices. Permit compliance shall be judged on~~
13 ~~the basis of performance of the terms and conditions of the discharge permit,~~
14 ~~including construction and maintenance in accordance with BMP~~
15 ~~specifications. Any permit issued for a new stormwater discharge or for the~~
16 ~~expanded portion of an existing discharge pursuant to this subsection shall~~
17 ~~require compliance with BMPs for stormwater collection and treatment~~
18 ~~established by the 2002 Stormwater Management Manual, and any additional~~
19 ~~requirements for stormwater treatment and control systems as the Secretary~~

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1 ~~determines to be necessary to ensure that the permitted discharge does not~~
2 ~~cause or contribute to a violation of the Vermont Water Quality Standards.~~

3 ~~(5) In addition to any permit condition otherwise authorized under~~
4 ~~subsection (e) of this section, in any permit issued pursuant to this subsection,~~
5 ~~the Secretary may require an offset or stormwater impact fee as necessary to~~
6 ~~ensure the discharge does not cause or contribute to a violation of the Vermont~~
7 ~~Water Quality Standards. Offsets and stormwater impact fees, where utilized,~~
8 ~~shall incorporate an appropriate margin of safety to account for the variability~~
9 ~~in quantifying the load of pollutants of concern. To facilitate utilization of~~
10 ~~offsets and stormwater impact fees, the Secretary shall identify by January 1,~~
11 ~~2005 a list of potential offsets in each of the waters listed as a~~
12 ~~stormwater impaired water under this subsection.~~

13 ~~(g)(1) The Secretary may issue a permit consistent with the requirements of~~
14 ~~subsection (f) of this section, even where a TMDL or wasteload allocation has~~
15 ~~not been prepared for the receiving water. In any appeal under this chapter an~~
16 ~~individual permit meeting the requirements of subsection (f) of this section~~
17 ~~shall have a rebuttable presumption in favor of the permittee that the discharge~~
18 ~~does not cause or contribute to a violation of the Vermont Water Quality~~
19 ~~Standards for the receiving waters with respect to the discharge of regulated~~
20 ~~stormwater runoff. This rebuttable presumption shall only apply to permitted~~

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1 ~~discharges into receiving waters that are principally impaired by sources other~~
2 ~~than regulated stormwater runoff.~~

3 ~~(2) This subsection shall apply to stormwater permits issued under the~~
4 ~~federally delegated NPDES program only to the extent allowed under federal~~
5 ~~law.~~

6 ~~(h) The rebuttable presumption specified in subdivision (g)(1) of this~~
7 ~~section shall also apply to permitted discharges into receiving waters that meet~~
8 ~~the water quality standards of the State, provided the discharge meets the~~
9 ~~requirements of subsection (e) of this section.~~

10 ~~(i) A residential subdivision may transfer a pretransition stormwater~~
11 ~~discharge permit or a stormwater discharge permit implementing a total~~
12 ~~maximum daily load plan to a municipality, provided that the municipality~~
13 ~~assumes responsibility for the permitting of the stormwater system that serves~~
14 ~~the residential subdivision. As used in this section:~~

15 ~~(1) “Pretransition stormwater discharge permit” means any permit~~
16 ~~issued by the Secretary of Natural Resources pursuant to this section on or~~
17 ~~before June 30, 2004 for a discharge of stormwater.~~

18 ~~(2) “Residential subdivision” means land identified and demarcated by~~
19 ~~recorded plat or other device that a municipality has authorized to be used~~
20 ~~primarily for residential construction.~~

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1 ~~(j) Notwithstanding any other provision of law, if an application to~~
2 ~~discharge stormwater runoff pertains to a telecommunications facility as~~
3 ~~defined in 30 V.S.A. § 248a and is filed before July 1, 2017 and the discharge~~
4 ~~will be to a water that is not principally impaired by stormwater runoff:~~

5 ~~(1) The Secretary shall issue a decision on the application within 40~~
6 ~~days of the date the Secretary determines the application to be complete, if the~~
7 ~~application seeks authorization under a general permit.~~

8 ~~(2) The Secretary shall issue a decision on the application within 60~~
9 ~~days of the date the Secretary determines the application to be complete, if the~~
10 ~~application seeks or requires authorization under an individual permit.~~

11 ~~(k) The Secretary may adopt rules regulating stormwater discharges and~~
12 ~~stormwater infrastructure repair or maintenance during a state of emergency~~
13 ~~declared under 20 V.S.A. chapter 1 or during flooding or other emergency~~
14 ~~conditions that pose an imminent risk to life or a risk of damage to public or~~
15 ~~private property. Any rule adopted under this subsection shall comply with~~
16 ~~National Flood Insurance Program requirements. A rule adopted under this~~
17 ~~subsection shall include a requirement that an activity receive an individual~~
18 ~~stormwater discharge emergency permit or receive coverage under a general~~
19 ~~stormwater discharge emergency permit.~~

20 ~~(1) A rule adopted under this subsection shall establish:~~

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- 1 ~~(A) criteria for coverage under an individual or general emergency~~
2 ~~permit;~~
- 3 ~~(B) criteria for different categories of activities covered under a~~
4 ~~general emergency permit;~~
- 5 ~~(C) requirements for public notification of permitted activities,~~
6 ~~including notification after initiation or completion of a permitted activity;~~
- 7 ~~(D) requirements for coordination with State and municipal~~
8 ~~authorities;~~
- 9 ~~(E) requirements that the Secretary document permitted activity,~~
10 ~~including, at a minimum, requirements for documenting permit terms,~~
11 ~~documenting permit duration, and documenting the nature of an activity when~~
12 ~~the rules authorize notification of the Secretary after initiation or completion of~~
13 ~~the activity.~~
- 14 ~~(2) A rule adopted under this section may:~~
- 15 ~~(A) establish reporting requirements for categories of activities;~~
- 16 ~~(B) authorize an activity that does not require reporting to the~~
17 ~~Secretary; or~~
- 18 ~~(C) authorize an activity that requires reporting to the Secretary after~~
19 ~~initiation or completion of an activity.~~

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1 (a) Findings and intent.

2 (1) Findings. The General Assembly finds that the management of
3 stormwater runoff is necessary to reduce stream channel instability, pollution,
4 siltation, sedimentation, and flooding, all of which have adverse impacts on the
5 water and land resources of the State.

6 (2) Intent. The General Assembly intends, by enactment of this
7 section to:

8 (A) Reduce the adverse effects of stormwater runoff.

9 (B) Direct the Agency of Natural Resources to develop a process that
10 assures broad participation; focuses upon the prevention of pollution; relies on
11 structural treatment only when necessary; establishes and maintains
12 accountability; tailors strategies to the region and the locale; builds
13 broad-based programs; provides for the evaluation and appropriate evolution of
14 programs; is consistent with the federal Clean Water Act and the State water
15 quality standards; and accords appropriate recognition to the importance of
16 community benefits that accompany an effective stormwater runoff
17 management program. In furtherance of these purposes, the Secretary shall
18 implement a stormwater permitting program. The stormwater permitting
19 program developed by the Secretary shall recognize that stormwater runoff is
20 different from the discharge of sanitary and industrial wastes because of the

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1 influence of natural events of stormwater runoff, the variations in
2 characteristics of those runoffs, and the increased stream flows causing
3 degradation of the quality of the receiving water at the time of discharge.

4 (b) Definitions. As used in this section:

5 (1) “Best management practice” (BMP) means a schedule of activities,
6 prohibitions or practices, maintenance procedures, and other management
7 practices to prevent or reduce water pollution.

8 (2) “Development” means the construction of impervious surface on a
9 tract or tracts of land where no impervious surface previously existed.

10 (3) “Expansion” and “the expanded portion of an existing discharge”
11 mean an increase or addition of impervious surface, such that the total resulting
12 impervious area is greater than the minimum regulatory threshold.

13 (4) “Impervious surface” means those manmade surfaces, including
14 paved and unpaved roads, parking areas, roofs, driveways, and walkways, from
15 which precipitation runs off rather than infiltrates.

16 (5) “New stormwater discharge” means a new or expanded discharge of
17 regulated stormwater runoff, subject to the permitting requirements of this
18 chapter **that** has not been previously authorized pursuant to this chapter.

19 (6) “Offset” means a State-permitted or -approved action or project
20 within a stormwater-impaired water that a discharger or a third person may

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1 complete to mitigate the impacts that a discharge of regulated stormwater
2 runoff has on the stormwater-impaired water.

3 (7) “Redevelopment” or “redevelop” means the construction or
4 reconstruction of an impervious surface where an impervious surface already
5 exists when such new construction involves substantial site grading, substantial
6 subsurface excavation, or substantial modification of an existing stormwater
7 conveyance, such that the total of impervious surface to be constructed or
8 reconstructed is greater than the minimum regulatory threshold.

9 Redevelopment does not mean public road management activities, including
10 any crack sealing, patching, coldplaning, resurfacing, reclaiming, or grading
11 treatments used to maintain pavement, bridges, and unpaved roads.

12 (8) “Regulated stormwater runoff” means precipitation, snowmelt, and
13 the material dissolved or suspended in precipitation and snowmelt that runs off
14 impervious surfaces and discharges into surface waters or into groundwater via
15 infiltration.

16 (9) “Stormwater impact fee” means the monetary charge assessed to a
17 permit applicant for the discharge of regulated stormwater runoff to a
18 stormwater-impaired water that mitigates a sediment load level or hydrologic
19 impact that the discharger is unable to control through on-site treatment or
20 completion of an offset on a site owned or controlled by the permit applicant.

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1 (10) “Stormwater-impaired water” means a State water that the
2 Secretary determines is significantly impaired by discharges of regulated
3 stormwater runoff.

4 (11) “Stormwater Management Manual” means the Agency of Natural
5 Resources’ Stormwater Management Manual, as adopted and amended by rule.

6 (12) “Stormwater runoff” means precipitation and snowmelt that does
7 not infiltrate into the soil, including material dissolved or suspended in it, but
8 does not include discharges from undisturbed natural terrain or wastes from
9 combined sewer overflows.

10 (13) “Stormwater system” includes the storm sewers; outfall sewers;
11 surface drains; manmade wetlands; channels; ditches; wet and dry bottom
12 basins; rain gardens; and other control equipment necessary and appurtenant to
13 the collection, transportation, conveyance, pumping, treatment, disposal, and
14 discharge of regulated stormwater runoff.

15 (14) “Total maximum daily load” (TMDL) means the calculations and
16 plan for meeting water quality standards approved by the U.S. Environmental
17 Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and
18 federal regulations adopted under that law.

19 (15) “Water quality remediation plan” means a plan, other than a
20 TMDL, designed to bring an impaired water body into compliance with

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1 applicable water quality standards in accordance with 40 C.F.R.

2 § 130.7(b)(1)(ii) and (iii).

3 (16) “Watershed improvement permit” means a general permit specific
4 to a stormwater-impaired water that is designed to apply management
5 strategies to existing and new discharges and that includes a schedule of
6 compliance no longer than five years reasonably designed to assure attainment
7 of the Vermont water quality standards in the receiving waters.

8 (c) Prohibitions.

9 (1) A person shall not commence the construction or redevelopment of
10 one acre or more of new impervious surface without first obtaining a permit
11 from the Secretary.

12 (2) A person shall not discharge from a facility that has a standard
13 industrial classification identified in 40 C.F.R. § 122.26 without first obtaining
14 a permit from the Secretary.

15 (3) A person that has been designated by the Secretary as requiring
16 coverage for its municipal separate storm sewer system may not discharge
17 without first obtaining a permit from the Secretary.

18 (4) A person shall not commence a project that will result in an earth
19 disturbance of one acre or greater, or less than one acre if part of a common
20 plan of development, without first obtaining a permit from the Secretary.

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1 (5) A person shall not expand or redevelop existing impervious surface
2 by more than 5,000 square feet, such that the total resulting impervious area is
3 greater than one acre, without first obtaining a permit from the Secretary.

4 (6)(A) In accordance with the schedule established under subsection
5 (g)(2) of this section, a municipality shall not discharge stormwater from a
6 municipal road without first obtaining:

7 (i) an individual permit;

8 (ii) coverage under a municipal road general permit; or

9 (iii) coverage under a municipal separate stormsewer system

10 permit that implements the technical standards and criteria established by the
11 Secretary for stormwater improvements of municipal roads.

12 (B) As used in this subdivision, “municipality” means a city, town, or
13 village.

14 (d) Exemptions. No permit is required under this section for:

15 (1) Stormwater runoff from farms subject in compliance with
16 agricultural practices adopted by the Secretary of Agriculture, Food and
17 Markets.

18 (2) Stormwater runoff from concentrated animal feeding operations
19 permitted under subsection 1263(g) of this chapter.

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1 (3) Stormwater runoff from silvicultural activities subject to accepted
2 management practices adopted by the Commissioner of Forests, Parks and
3 Recreation.

4 (4) Stormwater systems that were permitted under subdivision (c)(1) or
5 (5) of this section and for which a municipality has assumed full legal
6 responsibility for that stormwater system. As used in this subdivision, “full
7 legal responsibility” means a legal control of the stormwater system, including
8 a legal right to access the stormwater system, a legal duty to properly maintain
9 the stormwater system, and a legal duty to repair and replace the stormwater
10 system when it no longer adequately protects waters of the State.

11 (5) Stormwater runoff permitted under section 1263 of this title.

12 (e) State designation. The Secretary shall require a permit under this
13 section for a discharge or stormwater runoff from impervious surfaces upon a
14 determination by the Secretary that the treatment of the discharge or
15 stormwater runoff is necessary to reduce the adverse impacts to water quality
16 of the discharge or stormwater runoff taking into consideration any of the
17 following factors: the size of the impervious surface, drainage patterns,
18 hydraulic connectivity, existing stormwater treatment, stormwater controls
19 necessary to implement the wasteload allocation of a TMDL, or other factors.
20 The Secretary may make this determination on a case-by-case basis or

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1 according to classes of activities, classes of runoff, or classes of discharge
2 identified during the basin planning process.

3 (f) Rulemaking. The Secretary shall adopt rules to manage regulated
4 stormwater runoff. At a minimum, the rules shall:

5 (1) Establish as the primary goals of the rules:

6 (A) assuring compliance with the Vermont Water Quality Standards;

7 and

8 (B) maintenance after development, as nearly as possible, of the
9 predevelopment runoff characteristics.

10 (2) Establish criteria for the use of the basin planning process to
11 establish watershed-specific priorities for the management of stormwater
12 runoff.

13 (3) Assure consistency with applicable requirements of the federal Clean
14 Water Act.

15 (4) Include technical standards and best management practices that
16 address stormwater discharges from existing development, new development,
17 and redevelopment.

18 (5) Specify minimum requirements for inspection and maintenance of
19 stormwater management practices.

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- 1 (6) Include standards for the management of stormwater runoff from
2 construction sites and other land disturbing activities.
- 3 (7) Allow municipal governments to assume the full legal responsibility
4 for a stormwater system permitted under these rules as a part of a permit issued
5 by the Secretary.
- 6 (8) Include standards with respect to the use of offsets and stormwater
7 impact fees.
- 8 (9) Include minimum standards for the issuance of stormwater permits
9 during emergencies for the repair or maintenance of stormwater infrastructure
10 during a state of emergency declared under 20 V.S.A. chapter 1 or during
11 flooding or other emergency conditions that pose an imminent risk to life or a
12 risk of damage to public or private property. Minimum standards adopted
13 under this subdivision shall comply with National Flood Insurance Program
14 requirements.
- 15 (10) To the extent appropriate, authorize in the permitting process use of
16 certifications of compliance by licensed professional engineers practicing
17 within the scope of their engineering specialty.
- 18 (g) General permits.

Gray highlighting = Change from HFWWR Amend 1.3

Red highlighting = Issues for Discussion

1 (1) The Secretary may issue general permits for classes of regulated
2 stormwater runoff that shall be adopted and administered in accordance with
3 the provisions of subsection 1263(b) of this title.

4 (2)(A) The Secretary shall issue by July 1, 2018, a general permit for
5 discharges of regulated stormwater from municipal roads. Under the
6 municipal roads stormwater general permit, the Secretary shall:

7 (i) Establish a schedule for implementation of the general permit
8 by each municipality in the State. Under the schedule, the Secretary shall
9 establish:

10 (I) the date by which each municipality shall apply for
11 coverage under the municipal roads general permit;

12 (II) the date by which each municipality shall inventory
13 necessary stormwater management projects on municipal roads;

14 (III) the date by which each municipality shall establish a plan
15 for implementation of stormwater improvements that prioritizes stormwater
16 improvements according to criteria established by the Secretary under the
17 general permit; and

18 (IV) the date by which each municipality shall implement
19 stormwater improvements of municipal roads according to a municipal
20 implementation plan.

Gray highlighting = Change from HFWWR Amend 1.3

Red highlighting = Issues for Discussion

1 (ii) Establish criteria and technical standards, such as best
2 management practices, for implementation of stormwater improvements of
3 municipal roads.

4 (iii) Establish criteria for municipal prioritization of stormwater
5 improvements of municipal roads. The Secretary shall base the criteria on the
6 water quality impacts of a stormwater discharge, the current state of a
7 municipal road, the priority of a municipal road or stormwater project in any
8 existing transportation capital plan developed by a municipality, and the
9 benefits of the stormwater improvement to the life of the municipal road.

10 (iv) Require each municipality to submit to the Secretary and
11 periodically update its implementation plan for stormwater improvements.

12 (B) The Secretary may require an individual permit for a stormwater
13 improvement at any time under subsection (e) of this section. An individual
14 permit shall include site-specific standards for the stormwater improvement.

15 (C) All municipalities shall apply for coverage under the municipal
16 road general permit by July 1, 2021.

17 (D) As used in this subdivision (g)(2), “municipality” means a city,
18 town, or village.

19 (h) Permit requirements. An individual or general stormwater permit shall:

20 (1) Be valid for a period of time, not to exceed ten years;

Gray highlighting = Change from HFWWR Amend 1.3

Red highlighting = Issues for Discussion

1 (2) For discharges of regulated stormwater to a stormwater impaired
2 water:

3 (A) In which no TMDL, watershed improvement permit, or water
4 quality remediation plan has been approved, require that the discharge shall
5 comply with the following discharge standards:

6 (i) A new discharge or the expanded portion of an existing
7 discharge shall satisfy the requirements of the Stormwater Management
8 Manual and shall not increase the pollutant load in the receiving water for
9 stormwater; or

10 (ii) For redevelopment of or renewal of a permit for existing
11 impervious surface, the discharge shall satisfy on-site the water quality,
12 recharge, and channel protection criteria set forth in the Stormwater
13 Management Manual that are determined to be technically feasible by an
14 engineering feasibility analysis conducted by the Agency and the discharge
15 shall not increase the pollutant load in the receiving water for stormwater.

16 (B) In which a TMDL or water quality remediation plan has been
17 adopted, the discharge shall satisfy the requirements of the Stormwater
18 Management Manual, and the Secretary shall determine that there is sufficient
19 pollutant load allocations for the discharge.

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Red highlighting = Issues for Discussion

- 1 (a) To facilitate attainment or accomplishment of the purposes of this
2 chapter, the Secretary shall coordinate and assess all available data and science
3 regarding the quality of the waters of the State, including:
- 4 (1) light detection and ranging information data (LIDAR);
5 (2) stream gauge data;
6 (3) stream mapping, including fluvial erosion hazard maps;
7 (4) water quality monitoring or sampling data;
8 (5) cumulative stressors on a watershed, such as the frequency an
9 activity is conducted within a watershed or the number of stormwater or other
10 permits issued in a watershed; and
- 11 (6) any other data available to the Secretary.
- 12 (b) After coordination of the data required under subsection (a) of this
13 section, the Secretary shall:
- 14 (1) assess where additional data are needed and the best methods for
15 collection of such data;
- 16 (2) identify and map on a watershed basis areas of the State that are
17 significant contributors to water quality problems or are in critical need of
18 water quality remediation or response.
- 19 (c) The Secretary shall post all data compiled under this section on the
20 website of the Agency of Natural Resources.

Gray highlighting = Change from HFWWR Amend 1.3

Red highlighting = Issues for Discussion

1 * * * Water Quality Funding; Clean Water Fund* * *

2 Sec. 28. 10 V.S.A. chapter 47, subchapter 7 is added to read:

3 Subchapter 7. Vermont Clean Water Fund

4 § 1387. PURPOSE

5 The General Assembly establishes in this subchapter a Vermont Clean Water
6 Fund as a mechanism for financing the improvement of water quality in the State.

7 The Clean Water Fund shall be used to:

8 (1) support the Agency of Natural Resources, the Agency of Agriculture,
9 Food and Markets, the Agency of Transportation, and other State agencies in
10 implementation and administration of water quality programs and projects in the
11 State;

12 (2) assist municipalities in complying with water quality requirements and
13 construction or implementation of water quality projects;

14 (3) provide funding to nonprofit organizations, regional associations, and
15 other entities for implementation and administration of community-based water
16 quality programs or projects.

17 § 1388. CLEAN WATER FUND

18 (a) There is created a special fund to be known as the “Clean Water Fund.”
19 Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5:

20 (1) the Fund shall be administered by the Clean Water Fund Board
21 established under section 1388 of this title;

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1 (2) the Fund shall consist of:

2 (A) revenues dedicated for deposit into the Fund by the General
3 Assembly, including [to be determined]; and

4 (B) other gifts, donations, and impact fees received from any source,
5 public or private, dedicated for deposit into the Fund and approved by the
6 Board.

7 (b) The Clean Water Fund Board shall make recommendations on
8 expenditures from the Fund consistent with the following priorities:

9 (1) to provide funding to programs and projects that address sources of
10 water pollution in waters listed as impaired on the list of waters established by
11 33 U.S.C. § 1313(d);

12 (2) to provide funding to projects that address water pollution identified
13 as a critical source of water quality pollution;

14 (3) to provide funding to programs or projects that address or repair
15 conditions that increase the risk of flooding or pose a threat to life or
16 property; and

17 (4) to provide funding to innovative nutrient removal technologies,
18 including community-based methane digesters that utilize manure, wastewater,
19 and food residuals to produce energy.

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Red highlighting = Issues for Discussion

1 (c) Unexpended balances and any earnings shall remain in the Fund from
2 year to year.

3 § 1389. CLEAN WATER FUND BOARD

4 (a) Creation. There is created a Clean Water Fund Board which shall be
5 attached to the Agency of Administration for administrative purposes.

6 (b) Organization of the Board. The Clean Water Fund Board shall be
7 composed of:

8 (1) the Secretary of Administration or designee;

9 (2) the Secretary of Natural Resources or designee;

10 (3) the Secretary of Agriculture, Food and Markets or designee;

11 (4) the Secretary of Commerce and Community Development or
12 designee;

13 (5) the Secretary of Transportation or designee;

14 (6) two members of the public or the House of Representatives
15 appointed by the Speaker of the House;

16 (7) two members of the public or the Senate appointed by the
17 Committee on Committees; and

18 (8) two members of the public appointed by the Governor.

19 (c) Officers; committees; rules. The Clean Water Fund Board shall
20 annually elect a chair from its members. The Clean Water Fund Board may

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Red highlighting = Issues for Discussion

1 elect additional officers from its members, establish committees or
2 subcommittees, and adopt procedural rules as necessary and appropriate to
3 perform its work.

4 (d) Member terms. Members of the Clean Water Fund Board appointed by
5 the Governor shall serve initial terms of three years, members appointed by the
6 Speaker of the House shall serve initial terms of two years, and members
7 appointed by the Committee on Committees shall serve initial terms of one
8 year. Thereafter, each of the above appointed members shall serve a term of
9 three years. A vacancy shall be filled by the appointing authority for the
10 remainder of the unexpired term. An appointed member shall not serve more
11 than three consecutive three-year terms.

12 (e) Compensation. Public members of the Clean Water Fund Board may
13 receive compensation according to 32 V.S.A. § 1010(b).

14 (f) Powers and duties of the Clean Water Fund Board.

15 (1) The Clean Water Fund Board shall have the following powers and
16 authority:

17 (A) to receive proposals from the Secretaries of Agriculture, Food,
18 and Markets, of Commerce and Community Development, of Natural
19 Resources, and of Transportation on the expenditures of the Fund;

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1 (B) to make recommendations to the Secretary of Administration
2 regarding the appropriate allocation of funds from the Clean Water Fund for
3 the purposes of developing the State budget; and

4 (C) to pursue and accept grants or other funding from any public or
5 private source and to administer such grants or funding consistent with their
6 terms.

7 (2) The Clean Water Fund Board shall develop:

8 (A) an annual revenue estimate and proposed budget for the Clean
9 Water Fund;

10 (B) measures for determining progress and effectiveness of
11 expenditures for clean water restoration efforts; and

12 (C) the annual Clean Water Investment Report required under section
13 1389 of this title.

14 (3) The Clean Water Fund Board shall solicit public comment and
15 consult with existing organizations and advisory committees interested in
16 improving water quality in Vermont.

17 § 1390. CLEAN WATER INVESTMENT REPORT

18 Beginning on January 15, 2017, and annually thereafter, the Clean Water
19 Fund Board shall publish a Clean Water Investment Report. The report shall
20 summarize all investments made by the Clean Water Fund Board and other

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1 State agencies for clean water restoration over the past calendar year. The
2 report shall include expenditures from the Clean Water Fund, the General
3 Fund, the Transportation Fund, and any other State expenditures for clean
4 water restoration, regardless of funding source. The report shall document
5 progress or shortcomings in meeting established indicators for clean water
6 restoration. The report may also provide an overview of additional funding
7 necessary to meet objectives established for clean water restoration and
8 recommendations for additional revenue to meet those restoration objectives.
9 The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not
10 apply to the report required by this section.

11 Sec. 29. [Reserved]

12 Sec. 30. [Reserved]

13 * * * Department of Environmental Conservation Water Quality Fees * * *

14 Sec. 31. 3 V.S.A. § 2822 is amended to read:

15 § 2822. BUDGET AND REPORT; POWERS

16 * * *

17 (i) The Secretary shall not process an application for which the applicable
18 fee has not been paid unless the Secretary specifies that the fee may be paid at
19 a different time or unless the person applying for the permit is exempt from the
20 permit fee requirements pursuant to 32 V.S.A. § 710. ~~In addition, the persons~~

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1 who are exempt under ~~32 V.S.A. § 710~~ are also exempt from the application
2 fees for stormwater operating permits specified in subdivisions (j)(2)(A)(iii)(I)
3 and (II) of this section if they otherwise meet the requirements of ~~32 V.S.A.~~
4 ~~§ 710~~. Municipalities shall be exempt from the payment of fees under this
5 section except for those fees prescribed in subdivisions (j)(1), ~~(2)~~, (7), (8), (14),
6 and (15) of this section for which a municipality may recover its costs by
7 charging a user fee to those who use the permitted services. Municipalities
8 shall pay fees prescribed in subdivisions (j)(2), (10), (11), and (26), except that
9 a municipality shall also be exempt from those fees for ~~orphan~~ stormwater
10 systems ~~prescribed in subdivisions (j)(2)(A)(iii) and (2)(B)(iv)(I) or (II) of this~~
11 ~~section when the municipality agrees to become an applicant or co-applicant~~
12 ~~for an orphan stormwater system under 10 V.S.A. § 1264e~~ for which a
13 municipality has assumed full legal responsibility under 10 V.S.A. § 1264.

14 (j) In accordance with subsection (i) of this section, the following fees are
15 established for permits, licenses, certifications, approvals, registrations, orders,
16 and other actions taken by the Agency of Natural Resources.

17 * * *

18 (2) For discharge permits issued under 10 V.S.A. chapter 47 and orders
19 issued under 10 V.S.A. § 1272, an administrative processing fee of ~~\$120.00~~
20 \$240.00 shall be paid at the time of application for a discharge permit in

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1 addition to any application review fee and any annual operating fee, except for
2 permit applications under subdivisions (2)(A)(iii)(III) and (V) of this
3 subsection:

4 (A) Application review fee.

5 (i) Municipal, industrial,
6 noncontact cooling water, and
7 thermal discharges.

8 (I) Individual permit: original ~~\$0.0023~~ \$0.003 per gallon
9 application; amendment for design flow; minimum
10 increased flows; amendment ~~\$50.00~~ \$100.00 per
11 for change in treatment process; outfall; maximum
12 30,000.00 per application.

13 (II) Renewal, transfer, or minor ~~\$0.00~~ \$0.002 per gallon
14 amendment of individual permit; design flow; minimum
15 \$50.00 per outfall;
16 maximum \$5,000.00 per
17 application.

18 (III) General permit; \$0.00.

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- 1 (ii) Pretreatment discharges.
- 2 (I) Individual permit: original ~~\$0.12~~ \$0.20 per gallon
- 3 application; amendment for design flow; minimum
- 4 increased flows; amendment for ~~\$50.00~~ \$100.00 per
- 5 change in treatment process; outfall.
- 6 (II) Renewal, transfer, or minor ~~\$0.00~~ \$0.002 per gallon
- 7 amendment of individual permit; design flow; minimum
- 8 \$50.00 per outfall.
- 9 (iii) Stormwater discharges.
- 10 (I) Individual operating permit ~~\$430.00~~ \$860.00 per acre
- 11 or application to operate under impervious area;
- 12 general operating permit for minimum ~~\$220.00~~
- 13 collected stormwater runoff \$440.00 per application.
- 14 which is discharged to Class B
- 15 waters: original application;
- 16 amendment for increased flows;
- 17 amendment for change in
- 18 treatment process;
- 19 (II) Individual operating permit \$1,400.00 per acre
- 20 or application to operate under impervious area;

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1 general operating permit for minimum \$1,400.00
2 collected stormwater runoff which per application.
3 is discharged to Class A waters;
4 original application; amendment
5 for increased flows; amendment
6 for change in treatment process.
7 (III) Individual permit or
8 application to operate under
9 general permit for construction
10 activities; original application;
11 amendment for increased acreage.
12 (aa) Projects with low risk to ~~\$50.00~~ five acres or
13 waters of the State-; less: \$100.00 per project;
14 original application.
15 (bb) Projects with low risk to \$220.00 per project.
16 waters of the State; greater than
17 five acres:
18 (cc) Projects with moderate risk ~~\$360.00~~; five acres
19 to waters of the State-; or less: \$480.00 per
20 project original

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1 application.

2 ~~(cc) Projects that require an~~ ~~\$720.00 per project~~

3 ~~individual permit.~~ ~~original application.~~

4 (dd) Projects with moderate risk \$640.00.

5 to waters of the State; greater

6 than five acres:

7 (ee) Projects that require an \$1,200.00.

8 individual permit; ten acres

9 or less:

10 (ff) Projects that require an \$1,800.00.

11 individual permit; greater than

12 10 acres:

13 (IV) Individual permit or ~~\$220.00~~ \$440.00 per

14 application to operate under facility.

15 general permit for stormwater

16 runoff associated with industrial

17 activities with specified SIC

18 codes; original application;

19 amendment for change in activities-;

20 (V) Individual permit or ~~\$1,200.00~~ \$2,400.00

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1 application to operate under per system.
2 general permit for stormwater
3 runoff associated with
4 municipal separate storm sewer
5 systems; original application; amendment
6 for change in activities;:
7 (VI) Individual operating permit or application to operate under
8 a general permit for a residually designated stormwater discharge original
9 application; amendment; for increased flows amendment; for change in
10 treatment process.
11 (aa) For discharges to Class B water; ~~\$430.00~~ \$860.00 per
12 acre of impervious area, minimum ~~\$220.00~~ \$280.00.
13 (bb) For discharges to Class A water; ~~\$1,400.00~~ \$1,700.00
14 per acre of impervious area, minimum ~~\$1,400.00~~ \$1,700.00.
15 (VII) Renewal, transfer, or \$0.00;
16 minor amendment of individual
17 permit ~~or approval under~~
18 ~~general permit~~;
19 (VIII) Application for coverage \$400.00 per application.
20 under the municipal roads

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1 or approval under general operating impervious area; ~~\$235.00~~
2 permit for collected stormwater \$310.00 minimum.
3 runoff which is discharged to
4 class A waters.;

5 (II) Individual operating permit ~~\$80.00~~ \$160.00 per acre
6 or approval under general operating impervious area; ~~\$80.00~~
7 permit for collected stormwater \$160.00 minimum.
8 runoff which is discharged to
9 Class B waters.;

10 (III) Individual permit or ~~\$80.00~~ \$160.00
11 approval under general permit per facility.
12 for stormwater runoff from
13 industrial facilities with
14 specified SIC codes.;

15 (IV) Individual permit or ~~\$80.00~~ per system
16 application to operate under \$10.00 per acre of
17 general permit for stormwater impervious surface within
18 runoff associated with municipal the municipality; annually.
19 separate storm sewer systems.;

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1 (V) Individual permit or approval under general permit for
2 residually designated stormwater discharges.

3 (aa) For discharges to Class A water; ~~\$255.00~~ \$310.00 per
4 acre of impervious area, minimum ~~\$255.00~~ \$310.00.

5 (bb) For discharges to Class B water; ~~\$80.00~~ \$160.00 per
6 acre of impervious area, minimum ~~\$80.00~~ \$160.00.

7 (VI) Application to operate under a general permit for
8 stormwater runoff associated with municipal roads: \$2,000.00 per
9 authorization annually.

10 (VII) Application to operate under a general permit for stormwater
11 runoff associated with State roads: \$90,000.00 per authorization annually.

12 * * *

13 (11) For stream alteration and flood hazard area permits issued under
14 10 V.S.A. ~~chapter~~ chapters 41 and 32: ~~\$225.00 per application.~~

15 (A) Stream alteration; individual permit: \$350.00.

16 (B) Stream alteration; general permit; reporting category: \$ 200.00.

17 (C) Stream alteration; individual permit; municipal bridge, culvert,
18 and unimproved property protection: \$350.00.

19 (D) Stream alteration; general permit; municipal bridge, culvert, and
20 unimproved property protection: \$200.00.

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1 (A) land application sites; facilities that further reduce pathogens;
2 disposal facilities;: \$950.00 \$1,000.00 per
3 application.

4 (B) all other types of facilities; \$110.00 \$125.00 per
5 application.

6 * * *

7 (26) For individual conditional use determinations, for individual
8 wetland permits, for general conditional use determinations issued under
9 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit,
10 an administrative processing fee assessed under subdivision (2) of this
11 subsection (j) and an application fee of:

12 (A) \$0.75 per square foot of proposed impact to Class I or II
13 wetlands;

14 (B) \$0.25 per square foot of proposed impact to Class I or II wetland
15 buffers;

16 (C) maximum fee, for the conversion of Class II wetlands or wetland
17 buffers to cropland use, \$200.00 per application. ~~For purposes of~~ As used in
18 this subdivision, “cropland” means land that is used for the production of
19 agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing
20 bushes, trees, or vines and the production of Christmas trees;

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1 (D) \$0.25 per square foot of proposed impact to Class I or II wetlands
2 or Class I or II wetland buffer for utility line, pipeline, and ski trail projects
3 when the proposed impact is limited to clearing forested wetlands in a corridor
4 and maintaining a cleared condition in that corridor for the project life;

5 (E) \$1.50 per square foot of impact to Class I or II wetlands when the
6 permit is sought after the impact has taken place;

7 (F) \$100.00 per revision to an application for an individual wetland
8 permit or authorization under a general permit when the supplement is due to a
9 change to the project that was not requested by the Secretary; and

10 (G) minimum fee, \$50.00 per application.

11 * * *

12 (33) \$10.00 per 1000 gallons based on the rated capacity of the tank
13 being pumped rounded to the nearest 1000 gallon.

14 * * *

15 Sec. 32. 32 V.S.A. § 710 is amended to read:

16 § 710. PAYMENT OF STATE AGENCY FEES

17 (a) Notwithstanding any other provision of law, the Agency of
18 Transportation, any cooperating municipalities, and their contractors or agents
19 shall be exempt from the payment of fee charges for reviews, inspections, or
20 nonoperating permits issued by the Department of Public Safety, a District

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1 Environmental Commission, and the Agency of Natural Resources for any
2 projects undertaken by or for the Agency and any cooperating municipalities
3 for which all or a portion of the funds are authorized by a legislatively
4 approved transportation construction, rehabilitation, or paving program within
5 a general appropriation act introduced pursuant to section 701 of this title
6 except for those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(10),
7 (j)(11), and (j)(26).

8 (b) Notwithstanding any other provision of law, no fees shall be charged
9 for reviews, inspections, or nonoperating permits issued by the Department of
10 Public Safety, a District Environmental Commission, and the Agency of
11 Natural Resources for:

12 (1) Any project undertaken by the Department of Buildings and General
13 Services, the Agency of Natural Resources or the Agency of Transportation
14 which is authorized or funded in whole or in part by the capital construction
15 act introduced pursuant to section 701a of this title except for those fees
16 established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(10), (j)(11), and (j)(26).

17 (2) Any project undertaken by a municipality, which is funded in whole
18 or in part by a grant or loan from the Agency of Natural Resources or the
19 Agency of Transportation financed by an appropriation of a capital
20 construction act introduced pursuant to section 701a of this title except for

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1 those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(7)(A) and (B),
2 (j)(10), (j)(11), and (j)(26). However, all such fees shall be paid for reviews,
3 inspections, or permits required by municipal solid waste facilities developed
4 by a solid waste district which serves, or is expected to serve, in whole or in
5 part, parties located outside its own district boundaries pursuant to 10 V.S.A.
6 chapter 159.

7 * * * Wastewater Treatment Plants; Financial Assistance for

8 Phosphorus Reduction * * *

9 Sec. 33. 10 V.S.A. § 1266a is amended to read:

10 § 1266a. DISCHARGES OF PHOSPHORUS

11 (a) No person directly discharging into the drainage basins of Lake
12 Champlain or Lake Memphremagog shall discharge any waste that contains a
13 phosphorus concentration in excess of 0.80 milligrams per liter on a monthly
14 average basis. Discharges of less than 200,000 gallons per day, permitted on
15 or before July 1, 1991, shall not be subject to the requirements of this
16 subsection. Discharges from a municipally owned aerated lagoon type
17 secondary sewage treatment plant in the Lake Memphremagog drainage basin,
18 permitted on or before July 1, 1991 shall not be subject to the requirements of
19 this subsection unless the plant is modified to use a technology other than
20 aerated lagoons.

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1 (b) Notwithstanding any provision of subsection (a) of this section to the
2 contrary, the Secretary shall establish effluent phosphorus wasteload
3 allocations or concentration limits within any drainage basin in Vermont, as
4 needed to achieve wasteload allocations in a total maximum daily load
5 document approved by the U.S. Environmental Protection Agency, or as
6 needed to attain compliance with water quality standards adopted by the
7 Secretary pursuant to chapter 47 of this title.

8 (c) ~~The Secretary of Natural Resources shall establish a schedule for~~
9 ~~municipalities that requires compliance with this section at a rate that~~
10 ~~corresponds to the rate at which funds are provided under subsection 1625(e)~~
11 ~~of this title. To the extent that funds are not provided to municipalities eligible~~
12 ~~under that subsection, municipal compliance with this section shall not be~~
13 ~~required. [Repealed.]~~

14 Sec. 34. 10 V.S.A. § 1625 is amended to read:

15 § 1625. AWARDS FOR POLLUTION ABATEMENT PROJECTS TO
16 ABATE DRY WEATHER SEWAGE FLOWS

17 (a) When the Department finds that a proposed water pollution abatement
18 project is necessary to maintain water quality standards during dry weather
19 sewage flows, and that the proposed type, kind, quality, size, and estimated
20 cost, including operation cost and sewage disposal charges, of the project are

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1 suitable for abatement of pollution, and the project or the prescribed project
2 phases are necessary to meet the intent of the water quality classifications
3 established by the Secretary or by statute under chapter 47 of this title, the
4 Department may award to municipalities a State assistance grant of up to 25
5 percent of the eligible project cost, provided that in no case shall the total of
6 the State and federal grants exceed 90 percent of the eligible project costs:

7 (1) except that the 90 percent limitation shall not apply when the
8 municipality provides, as their local share, federal funds allocated to them for
9 the purpose of matching other federal grant programs having a matching
10 requirement; and

11 (2) except that the total of state and federal grants issued under
12 P.L. 92-500 section 202(a)(2) may equal up to 95 percent of the eligible costs
13 for innovative or alternative wastewater treatment processes and techniques.

14 (b) In carrying out the purposes of this subchapter, the Department shall
15 define the purpose and scope of an eligible project, including a determination
16 of the area to be served, type of treatment, effluent limitations, eligible
17 construction costs, cost accounting procedures and methods and other such
18 project construction, operation and fiscal elements necessary to meet federal
19 aid requirements. The Department shall, as a part of the administration of this
20 grant program, encourage municipalities to undertake capital development

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1 planning and to establish water and sewer charges along public utility
2 concepts.

3 (c) Any municipality having proceeded with construction of facilities with
4 a State grant of 25 percent since July 1, 1984 shall be eligible for an increase in
5 the State grant to a total of 35 percent of the eligible project costs.

6 (d) The Department may award a State assistance grant of up to 50 percent
7 of the eligible costs of an approved pollution abatement project or a portion
8 thereof not eligible for federal financial assistance in a municipality that is
9 certified by the Secretary of Commerce and Community Development to be
10 within the designated job development zone. To achieve the objectives of
11 chapter 29, subchapter 2 of this title, the eligibility and priority provisions of
12 this chapter do not apply to municipalities within a designated job development
13 zone.

14 ~~(e) If the Department finds that a proposed municipal water pollution~~
15 ~~control project is necessary to reduce effluent phosphorus concentration or~~
16 ~~mass loading to the level required in section 1266a of this title, the Department~~
17 ~~shall award to the municipality, subject to the availability of funds, a state~~
18 ~~assistance grant. Such grants shall be for 100 percent of the eligible project~~
19 ~~cost. This funding shall not be available for phosphorus removal projects~~

Gray highlighting = Change from HFWWR Amend 1.3

Red highlighting = Issues for Discussion

1 ~~where the effluent concentration must be reduced in order to maintain a~~
2 ~~previously permitted mass loading of phosphorus.~~

3 * * * Accepted Management Practices for Forestry * * *

4 Sec. 35. 10 V.S.A. § 2622 is amended to read:

5 § 2622. RULES; ACCEPTED MANAGEMENT PRACTICES FOR

6 HARVESTING TIMBER; FORESTS

7 The ~~commissioner~~ Commissioner shall adopt rules to establish ~~methods~~
8 accepted management practices by which the harvest and utilization of timber
9 in private and public ~~forest land~~ forestland will be consistent with continuous
10 forest growth, including reforestation, will prevent wasteful and dangerous
11 forestry practices, will regulate heavy cutting, will encourage good forestry
12 management, will enable and assist landowners to practice good forestry
13 management, and will conserve the natural resources consistent with the
14 purposes and policies of this chapter, giving due consideration to the need to
15 assure continuous supplies of forest products and to the rights of the owner or
16 operator of the land. ~~Such~~ The rules ~~shall be advisory, and not mandatory,~~
17 ~~except that~~ adopted under this section and the rules adopted under section 2625
18 of this title shall be mandatory as shall other rules specifically authorized to be
19 mandatory.

Gray highlighting = Change from HFWWR Amend 1.3

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1 Sec. 36. 10 V.S.A. § 1259(f) is amended to read:

2 (f) The provisions of subsections (c), (d), and (e) of this section shall not
3 regulate accepted agricultural ~~or silvicultural~~ practices, as such are defined by
4 the ~~secretary of agriculture, food and markets and the commissioner of forests,~~
5 ~~parks and recreation, respectively,~~ Secretary of Agriculture, Food and Markets,
6 or the accepted management practices for the harvesting of timber, as such are
7 defined by the Commissioner of Forests, Parks and Recreation after an
8 opportunity for a public hearing; nor shall these provisions regulate discharges
9 from concentrated animal feeding operations that require a permit under
10 section 1263 of this title; nor shall those provisions prohibit stormwater runoff
11 or the discharge of nonpolluting wastes, as defined by the ~~secretary~~ Secretary.

12 Sec. 37. 10 V.S.A. § 8003(a) is amended to read:

13 (a) The Secretary may take action under this chapter to enforce the
14 following statutes and rules, permits, assurances, or orders implementing the
15 following statutes, and the Board may take such action with respect to
16 subdivision (10) of this subsection:

17 * * *

18 (17) 10 V.S.A. § 2625, relating to heavy cutting of timber;

19 * * *

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1 (25) 10 V.S.A. chapter 83, subchapter 8, relating to the importation of
2 firewood.

3 (26) 10 V.S.A. chapter 168, relating to the collection and disposal of
4 primary batteries.

5 (27) 10 V.S.A. § 2622, relating to the accepted management practices
6 for harvesting timber.

7 Sec. 38. 10 V.S.A. § 8503(a) is amended to read:

8 (a) This chapter shall govern all appeals of an act or decision of the
9 Secretary, excluding enforcement actions under chapters 201 and 211 of this
10 title and rulemaking, under the following authorities and under the rules
11 adopted under those authorities:

12 (1) The following provisions of this title:

13 * * *

14 (L) section 2625 (regulation of heavy cutting).

15 * * *

16 (V) section 2622 (accepted management practices for harvesting
17 timber).

18 (2) 29 V.S.A. chapter 11 (management of lakes and ponds).

19 (3) 24 V.S.A. chapter 61, subchapter 10 (relating to salvage yards).

20 Sec. 39. 24 V.S.A. § 4413(d) is amended to read:

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1 (d) A bylaw under this chapter shall not regulate accepted agricultural ~~and~~
2 ~~silvicultural~~ practices, including the construction of farm structures, as those
3 practices are defined by the ~~secretary of agriculture, food and markets~~
4 Secretary of Agriculture, Food and Markets or the ~~commissioner of forests,~~
5 ~~parks and recreation~~ accepted management practices for the harvesting of
6 timber, as those practices are defined by the Commissioner of Forests, Parks
7 and Recreation, respectively, under 10 V.S.A. ~~§§ 1021(f) and 1259(f) § 2622~~
8 and 6 V.S.A. § 4810.

9 * * *

10 * * * Eligibility for Ecosystem Restoration Program Assistance * * *

11 Sec. 40. ECOSYSTEM RESTORATION PROGRAM; CLEAN WATER
12 FUND; ELIGIBILITY FOR FINANCIAL ASSISTANCE

13 It is the policy of the State of Vermont that all municipal separate storm
14 sewer system (MS4) communities in the State shall be eligible for grants and
15 other financial assistance from the Agency of Natural Resources' Ecosystem
16 Restoration Program, the Clean Water Fund, or any other State water quality
17 financing program. A project or proposal that is the subject of an application
18 for a grant or other assistance from the Agency of Natural Resources shall not
19 be denied solely on the basis that the project or proposal may be construed as a
20 regulatory requirement of the MS4 permit program.

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1 Sec. 41. EFFECTIVE DATES

2 This act shall take effect on July 1, 2015, except that:

3 (1) Sec. 3 (small farm certification) shall take effect on July 1, 2017;

4 (2) 6 V.S.A. § 4988(b) of Sec. 10 shall take effect 45 days after the
5 effective date of rules adopted under 6 V.S.A. § 4988(a).

6 (3) Sec. 28 (Clean Water Fund) shall take effect on passage; and

7 (4) [Reserved].

8

9

10

11 (Committee vote: _____)

12

13

Representative _____

14

FOR THE COMMITTEE