

1 TO THE HOUSE OF REPRESENTATIVES:

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

7 \* \* \* Purpose \* \* \*

8 Sec. 1. PURPOSE; IMPROVEMENT OF THE QUALITY OF STATE  
9 WATERS

10 It is the purpose of this act to:

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

12 (2) authorize and prioritize proactive measures designed to implement  
13 and meet the impending Total Maximum Daily Load (TMDL) plan for Lake  
14 Champlain, meet impending TMDL plans for other State waters, and improve  
15 water quality across the State;

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

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

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

4                           \* \* \* Agricultural Water Quality; Findings;

5   Definitions \* \* \*

6           Sec. 2. AGRICULTURAL WATER QUALITY FINDINGS

7           For the purposes of the agricultural water quality sections of this act set  
8           forth in Sections 2 through 23, the General Assembly finds and declares that:

9           (1) The U.S. Environmental Protection Agency (EPA) has worked with  
10           the State of Vermont to improve the water quality in the Lake Champlain  
11           Basin and the waters of Vermont; however, insufficient progress has  
12           been made.

13           (2) Vermont has recently received approximately \$60,000,000.00 from  
14           federal sources to be used over the next five years. These funds are dedicated  
15           to improving the water quality of the Lake Champlain Basin area.

16           (3) Although Accepted Agricultural Practices (AAPs) were adopted in  
17           1995, there is a continued need for increased awareness in the small farms  
18           community about the AAPs, and the Agency of Agriculture, Food and Markets  
19           should enlist partners to educate small farm operators concerning these  
20           requirements.

1           (4) There are 27 Large Farm Operations (LFOs) and 139 Medium Farm  
2           Operations (MFOs) that have been identified to date. Accurate data do not  
3           exist to identify the number of Small Farm Operations (SFOs) in Vermont, but  
4           estimates indicate approximately 6,500 SFOs exist in the State.

5           (5) Vermont agriculture has been identified as contributing 40 percent of  
6           the phosphorus loading to Lake Champlain. Although 60 percent of  
7           phosphorus loading to Lake Champlain comes from other sources, agricultural  
8           enterprises account for the largest single source. The other sources of  
9           phosphorus loading to Lake Champlain are stream instability at 22 percent,  
10          forestlands at 15 percent, developed lands and paved roads at 14 percent,  
11          unpaved roads at six percent, and wastewater treatment facilities at three  
12          percent.

13          (6) If EPA fails to accept Vermont's water quality implementation plan,  
14          much of the responsibility and cost for meeting a new Total Maximum Daily  
15          Load (TDML) plan will likely fall on municipalities and their wastewater  
16          treatment plants, which contribute only three percent to the phosphorus load in  
17          Lake Champlain. More effective leverage points are agricultural runoff and  
18          other nonpoint sources, and these should be an integral part of Vermont's  
19          water quality plan. Addressing agriculture's contribution to the problem will  
20          subject Vermont's farmers to additional requirements under the AAPs and  
21          other agricultural water quality rules.

1           (7) The Vermont agricultural community recognizes that it has a role to  
2           play in continuing efforts to reduce nutrient loading and improve water quality  
3           in the State, but additional State and federal assistance is necessary to fulfill  
4           this role successfully, including technical and financial assistance to encourage  
5           small farms to adopt and implement nutrient management plans.

6           (8) Many drivers impact water quality in the State, including agriculture,  
7           stormwater management, river channel stability, forest management, watershed  
8           and wetland protection and restoration, shoreland management, and internal  
9           phosphorus loading. In an effort to understand more fully the interconnections  
10           between these drivers and their relative impacts on water quality in the State, a  
11           six-month systems mapping process could lead to the identification of key  
12           leverage points, which, if addressed, could lead to high impact change as  
13           required in Vermont’s impending TMDL agreement with EPA.

14           (9) Numerous stakeholder organizations have been working for many  
15           years to improve water quality in Vermont’s watersheds, each in their own  
16           way. Given the complexity of the challenge we face in improving water  
17           quality as well as the complexity of natural systems in general, the General  
18           Assembly recognizes that a collaborative approach will be critical to  
19           addressing these challenges.

20           Sec. 3. 6 V.S.A. § 4802 is amended to read:

21           § 4802. ~~DEFINITION~~ DEFINITIONS

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

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

4           (2) “Farming” shall have the same meaning as used in 10 V.S.A.  
5 § 6001(22).

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

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

13           (5) “Waste” or “agricultural waste” means material originating or  
14 emanating from a farm that is determined by the Secretary or the Secretary of  
15 Natural Resources to be harmful to the waters of the State, including:  
16 sediments; minerals, including heavy metals; plant nutrients; pesticides;  
17 organic wastes, including livestock waste, animal mortalities, compost, feed  
18 and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution;  
19 silage runoff; untreated milkhouse waste; and any other farm waste as the term  
20 “waste” is defined in 10 V.S.A. § 1251 (12).

1           (6) “Water” shall have the same meaning as used in 10 V.S.A.  
2           § 1251(13).

3                           \* \* \* Agricultural Water Quality;  
4                           Small Farm Certification and Inspection \* \* \*

5           Sec. 4. 6 V.S.A. subchapter 5A is added to read:

6                           Subchapter 5A. Small Farm Certification

7           § 4871. SMALL FARM CERTIFICATION

8           (a) Small farm definition. As used in this section, “small farm” means a  
9           parcel or parcels of land:

10                   (1) on which 10 or more acres are used for farming;

11                   (2) that house no more than the number of animals specified under  
12           section 4857 of this title; and

13                   (3)(A) that house at least the number of mature animals that the  
14           Secretary of Agriculture, Food and Markets designates by rule under the  
15           Accepted Agricultural Practices; or

16                   (B) are used for the preparation, tilling, fertilization, planting,  
17           protection, irrigation, and harvesting of crops for sale.

18           (b) Required small farm certification. A person who owns or operates a  
19           small farm shall, on a form provided by the Secretary, certify compliance with  
20           the accepted agricultural practices. The Secretary of Agriculture, Food and  
21           Markets shall establish the requirements and manner of certification of  
22           compliance with the accepted agricultural practices, provided that the

1 Secretary shall require an owner or operator of a farm to submit a certification  
2 of compliance with the accepted agricultural practices at least once every five  
3 years.

4 (c) Certification due to water quality threat. The Secretary may require any  
5 person who owns or operates a farm to submit a small farm certification under  
6 this section if the person is not required to obtain a permit or submit a  
7 certification under this chapter and the Secretary determines that the farm  
8 poses a threat of discharge to a water of the State or presents a threat of  
9 contamination to groundwater.

10 (d) Rulemaking; small farm certification. The Secretary of Agriculture,  
11 Food and Markets shall adopt by rule requirements for a small farm  
12 certification of compliance with the accepted agricultural practices. The rules  
13 required by this subsection shall be adopted as part of the accepted agricultural  
14 practices under section 4810 of this title.

15 (e) Small farm inspection. The Secretary may inspect a small farm in the  
16 State at any time for the purposes of assessing compliance by the small farm  
17 with the accepted agricultural practices and determining consistency with a  
18 certification of compliance submitted by the person who owns or operates the  
19 small farm. The Secretary may prioritize inspections of small farms in the  
20 State based on identified water quality issues posed by a small farm.

1        (f) Notice of change of ownership or change of lease. A person who owns  
2        or leases a small farm shall notify the Secretary of a change of ownership or  
3        change of lessee of a small farm within 30 days of the change. The  
4        notification shall include the certification of small farm compliance required  
5        under subsection (a) of this section.

6        (g)(1) Identification; ranking of water quality needs. During an inspection  
7        of a small farm under this section, the Secretary shall identify areas where the  
8        farm could benefit from capital, structural, or technical assistance in order to  
9        improve or come into compliance with the accepted agricultural practices and  
10       any applicable State water quality permit or certification required under this  
11       chapter.

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

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

1        (h) Fees.

2            (1) A person required to submit a certification under this section shall  
3 submit to the Secretary the following annual operating fee:

4            (A) \$250.00 for farms that house fewer than 100 mature dairy  
5 animals; and

6            (B) \$500.00 for farms that house 100 to 199 mature dairy animals.

7            (2) The fees collected under this section shall be deposited in the  
8 Agricultural Water Quality Special Fund under section 4803 of this title.

9        Sec. 5. 6 V.S.A. § 4810a is added to read:

10        § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

11            (a) On or before July 1, 2016, the Secretary of Agriculture, Food, and  
12 Markets shall amend the accepted agricultural practices in order to improve  
13 water quality in the State, assure practices on all farms eliminate adverse  
14 impacts to water quality, and implement the small farm certification program  
15 required by section 4871 of this title. At a minimum, the amendments to the  
16 accepted agricultural practices shall:

17            (1) Specify the number and type of animals housed on a farm that are  
18 subject to the small farm certification requirements under section 4871 of this  
19 title. The Secretary shall establish the number and type of animals under this  
20 subdivision based on the potential impact of the number and type of animals on  
21 the quality of the waters of the State.

1           (2) Specify those farms that:

2                   (A) are required to comply with the small certification requirements  
3           under section 4871 of this title; and

4                   (B) shall be subject to the accepted agricultural practices, but shall  
5           not be required to comply with small farm certification requirements under  
6           section 4871 of this title.

7           (3)(A) Prohibit a farm from stacking manure, storing fertilizer, or  
8           storing other nutrients on the farm:

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

11                   (ii) on lands in a floodway or otherwise subject to regular  
12           flooding.

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

16           (4) Require the construction and management of barnyards, waste  
17           management systems, animal holding areas, and production areas in a manner  
18           to prevent runoff of waste to a surface water, to groundwater, or across  
19           property boundaries.

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

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

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

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

19          (9) Regulate, in a manner consistent with the Agency of Natural  
20          Resources' flood hazard area and river corridor rules, the construction or siting

1 of a farm structure or the storage of manure, fertilizer, or pesticides storage  
2 within a river corridor designated by the Secretary of Natural Resources.

3 (10) Establish standards for the exclusion of livestock from the waters of  
4 the State to prevent erosion and adverse water quality impacts.

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

15 Sec. 6. REPORT ON MANAGEMENT OF SUBSURFACE TILE

16 DRAINAGE

17 (a) The Secretary of Agriculture, Food and Markets and the Secretary of  
18 Natural Resources, after consultation with the U.S. Department of  
19 Agriculture's Natural Resource Conservation Service, shall submit a joint  
20 report to the House Committee on Fish, Wildlife and Water Resources, the  
21 Senate Committee on Natural Resources and Energy, the House Committee on

1 Agriculture and Forest Products, and the Senate Committee on Agriculture  
2 regarding the status of current, scientific research relating to the environmental  
3 management of subsurface agriculture tile drainage or other dewatering  
4 technology and how subsurface agriculture tile drainage or other dewatering  
5 technology contributes to nutrient loading of surface waters. The report shall  
6 include a recommendation from the Secretary of Agriculture, Food and  
7 Markets and the Secretary of Natural Resources regarding how best to manage  
8 subsurface agriculture tile drainage or other dewatering technology in the State  
9 in order to mitigate and prevent the contribution of tile drainage or similar  
10 dewatering technology to waters of the State.

11 (b) On or before January 15, 2016, the Secretary of Agriculture, Food and  
12 Markets and the Secretary of Natural Resources shall submit an interim report  
13 that summarizes the progress of the Secretaries in preparing the report required  
14 by this section. The Secretary of Agriculture, Food and Markets and the  
15 Secretary of Natural Resources shall submit the final report required by this  
16 section on or before January 15, 2017.

17 Sec. 7. SMALL FARM ANNUAL OPERATING FEE

18 (a) In fiscal years 2016 and 2017, an owner or operator of a small farm  
19 authorized under 6 V.S.A. chapter 151 to sell milk to a milk handler shall pay  
20 to the Secretary of Agriculture, Food and Markets the following operating fee:

1           (A) \$250.00 for farms that house fewer than 100 mature dairy  
2 animals; and

3           (B) \$500.00 for farms that house 100 to 199 mature dairy animals.

4           (b) The fees collected under this section shall be deposited in the  
5 Agricultural Water Quality Special Fund under 6 V.S.A. § 4803.

6           (c)(1) The definitions of 6 V.S.A. § 2672 shall apply to this section.

7           (2) As used in this section:

8           (A) “Animal feeding operation” shall have the same meaning as in 6  
9 V.S.A. § 4857.

10           (B) “Small farm” means an animal feeding operation that houses no  
11 more than 199 mature dairy animals.

12           \* \* \* Agricultural Water Quality; Permit Fees; Agency Staffing \* \* \*

13           Sec. 8. 6 V.S.A. § 4803 is added to read:

14           § 4803. AGRICULTURAL WATER QUALITY SPECIAL FUND

15           (a) There is created an Agricultural Water Quality Special Fund to be  
16 administered by the Secretary of Agriculture, Food and Markets. Fees  
17 collected under this chapter, including fees for permits or certifications issued  
18 under the chapter, shall be deposited in the Fund.

19           (b) The Secretary may use monies deposited in the Fund for the Secretary’s  
20 implementation and administration of agricultural water quality programs or

1 requirements established by this chapter, including to pay salaries of Agency  
2 staff necessary to implement the programs and requirements of this chapter.

3 (c) Notwithstanding the requirements of 32 V.S.A. § 588(3), interest earned  
4 by the Fund shall be retained in the Fund from year to year.

5 Sec. 9. 6 V.S.A. § 4851 is amended to read:

6 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

7 (a) No person shall, without a permit from the ~~secretary~~ Secretary,  
8 construct a new barn, or expand an existing barn, designed to house more than  
9 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves,  
10 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55  
11 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens  
12 or broilers with a liquid manure handling system, 82,000 laying hens without a  
13 liquid manure handling system, 125,000 chickens other than laying hens  
14 without a liquid manure handling system, 5,000 ducks with a liquid manure  
15 handling system, or 30,000 ducks without a liquid manure handling system.

16 No permit shall be required to replace an existing barn in use for livestock or  
17 domestic fowl production at its existing capacity. The ~~secretary of agriculture,~~  
18 ~~food and markets~~ Secretary of Agriculture, Food and Markets, in consultation  
19 with the ~~secretary of natural resources~~ Secretary of Natural Resources, shall  
20 review any application for a permit under this section with regard to water  
21 quality impacts and, prior to approval of a permit under this subsection, shall

1 issue a written determination regarding whether the applicant has established  
2 that there will be no unpermitted discharge to waters of the ~~state~~ State pursuant  
3 to the federal regulations for concentrated animal feeding operations. If upon  
4 review of an application for a permit under this subsection, the ~~secretary of~~  
5 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets  
6 determines that the permit applicant may be discharging to waters of the ~~state~~  
7 State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,  
8 Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural  
9 Resources shall respond to the discharge in accordance with the memorandum  
10 of understanding regarding concentrated animal feeding operations under  
11 ~~subsection 4810(b)~~ section 4810 of this title. The ~~secretary of natural~~  
12 ~~resources~~ Secretary of Natural Resources may require a large farm to obtain a  
13 permit under 10 V.S.A. § 1263 pursuant to federal regulations for concentrated  
14 animal feeding operations.

15 \* \* \*

16 (h) A person required to obtain a permit under this section shall submit an  
17 annual operating fee of \$2,500.00 to the Secretary. The fees collected under  
18 this section shall be deposited in the Agricultural Water Quality Special Fund  
19 under section 4803 of this title.

20 Sec. 10. 6 V.S.A. § 4858 is amended to read:

21 § 4858. ~~ANIMAL WASTE PERMITS~~ MEDIUM FARM OPERATION



1 designed manure management system to accommodate the wastes generated  
2 and a nutrient management plan to dispose of wastes in accordance with  
3 accepted agricultural practices adopted under this chapter. Any certification or  
4 notice of intent to comply submitted under this subdivision shall be kept on file  
5 at the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food  
6 and Markets. The ~~secretary of agriculture, food and markets~~ Secretary of  
7 Agriculture, Food and Markets, in consultation with the ~~secretary of natural~~  
8 ~~resources~~ Secretary of Natural Resources, shall review any certification or  
9 notice of intent to comply submitted under this subdivision with regard to the  
10 water quality impacts of the medium farm for which the owner or operator is  
11 seeking coverage, and, within 18 months of receiving the certification or notice  
12 of intent to comply, shall verify whether the owner or operator of the medium  
13 farm has established that there will be no unpermitted discharge to waters of  
14 the ~~state~~ State pursuant to the federal regulations for concentrated animal  
15 feeding operations. If upon review of a medium farm granted coverage under  
16 the general permit adopted pursuant to this subsection, the ~~secretary of~~  
17 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets  
18 determines that the permit applicant may be discharging to waters of the ~~state~~  
19 State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,  
20 Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural  
21 Resources shall respond to the discharge in accordance with the memorandum

1 of understanding regarding concentrated animal feeding operations under  
2 ~~subsection 4810(b)~~ section 4810 of this title.

3 \* \* \*

4 (e) A person required to obtain a permit or coverage under this section shall  
5 submit an annual operating fee of \$1,500.00 to the Secretary. The fees  
6 collected under this section shall be deposited in the Agricultural Water  
7 Quality Special Fund under section 4803 of this title.

8 Sec. 11. 6 V.S.A. § 324 is amended to read:

9 § 324. REGISTRATION AND FEES

10 (a) No person shall manufacture a commercial feed in this State unless that  
11 person has first filed with the Vermont Agency of Agriculture, Food and  
12 Markets, in a form and manner to be prescribed by rules by the Secretary:

13 (1) the name of the manufacturer;

14 (2) the manufacturer's place of business;

15 (3) the location of each manufacturing facility; and

16 (4) any other information which the Secretary considers to be necessary.

17 (b) A person shall not distribute in this State a commercial feed that has not  
18 been registered pursuant to the provisions of this chapter. Application shall be  
19 in a form and manner to be prescribed by rule of the Secretary. The  
20 application for registration of a commercial feed shall be accompanied by a  
21 registration fee of ~~\$85.00~~ \$100.00 per product. ~~The~~ Of the registration fees

1 collected, \$85.00 of each collected fee, along with any surcharges collected  
2 under subsection (c) of this section, shall be deposited in the special fund  
3 created by subsection 364(e) of this title. Funds deposited in this account shall  
4 be restricted to implementing and administering the provisions of this title and  
5 any other provisions of the law relating to fertilizer, lime, or seeds. Of the  
6 registration fees collected, \$15.00 of each collected fee shall be deposited in  
7 the Agricultural Water Quality Special Fund created under section 4803 of this  
8 title. If the Secretary so requests, the application for registration shall be  
9 accompanied by a label or other printed matter describing the product.

10 (c) No person shall distribute in this State any feed required to be registered  
11 under this chapter upon which the Secretary has placed a withdrawal from  
12 distribution order because of nonregistration. A surcharge of \$10.00, in  
13 addition to the registration fee required by subsection (b) of this section, shall  
14 accompany the application for registration of each product upon which a  
15 withdrawal from distribution order has been placed for reason of  
16 nonregistration, and must be received before removal of the withdrawal from  
17 distribution order.

18 Sec. 12. 6 V.S.A. § 328 is amended to read:

19 § 328. TONNAGE REPORTING

20 (a) Every person who registers a commercial feed pursuant to the  
21 provisions of this chapter shall report to the ~~agency of agriculture, food and~~

1 ~~markets~~ Agency of Agriculture, Food and Markets annually the total amount of  
2 combined feed which is distributed within the state and which is intended for  
3 use within the ~~state~~ State. The report shall be made on forms and in a manner  
4 to be prescribed ~~by rules~~ by the ~~secretary~~ Secretary for calendar years ~~1986~~  
5 2016 and ~~1987~~ 2017.

6 (b) This reporting requirement shall not apply to pet foods, within the  
7 meaning of subdivisions 323(16) and (19) of this title, and shall not apply to  
8 feeds intended for use outside of the state.

9 Sec. 13. 6 V.S.A. § 366 is amended to read:

10 § 366. TONNAGE FEES

11 (a) There shall be paid annually to the ~~secretary~~ Secretary for all fertilizers  
12 distributed to a nonregistrant consumer in this ~~state~~ State an annual ~~inspection~~  
13 fee at a rate of \$0.25 cents per ton.

14 (b) Persons distributing fertilizer shall report annually by January 15 for the  
15 previous year ending December 31 to the ~~secretary~~ Secretary revealing the  
16 amounts of each grade of fertilizer and the form in which the fertilizer was  
17 distributed within this ~~state~~ State. Each report shall be accompanied with  
18 payment and written permission allowing the ~~secretary~~ Secretary to examine  
19 the person's books for the purpose of verifying tonnage reports.

20 (c) No information concerning tonnage sales furnished to the ~~secretary~~  
21 Secretary under this section shall be disclosed in such a way as to divulge the

1 details of the business operation to any person unless it is necessary for the  
2 enforcement of the provisions of this chapter.

3 (d) ~~A \$50.00 minimum tonnage fee shall be assessed on all distributors~~  
4 ~~who distribute fertilizers in this state. [Repealed.]~~

5 (e) Agricultural limes, including agricultural lime mixed with wood ash,  
6 are exempt from the tonnage fees required in this section.

7 (f) Lime and wood ash mixtures may be registered as agricultural liming  
8 materials and guaranteed for potassium or potash provided that the wood ash  
9 totals less than 50 percent of the mixture.

10 (g) All fees collected under subsection (a) of this section shall be deposited  
11 in the revolving fund created by section 364(e) of this title and used in  
12 accordance with its provisions.

13 (h) There shall be paid annually to the Secretary for all fertilizers  
14 distributed to a nonregistrant consumer in this State an annual fee at a rate of  
15 \$30.00 per ton on nonagricultural fertilizer for the purpose of supporting  
16 agricultural water quality programs in Vermont.

17 (1) Persons distributing fertilizer shall report annually on or before  
18 January 15 for the previous year ending December 31 to the Secretary  
19 revealing the amounts of each grade of fertilizer and the form in which the  
20 fertilizer was distributed within this State. Each report shall be accompanied  
21 with payment of the fees under this section and written permission allowing

1 the Secretary to examine the person's books for the purpose of verifying  
2 tonnage reports.

3 (2) No information concerning tonnage sales furnished to the Secretary  
4 under this section shall be disclosed in such a way as to divulge the details of  
5 the business operation to any person unless it is necessary for the enforcement  
6 of the provisions of this chapter.

7 (3) A \$150.00 minimum tonnage fee shall be assessed on all distributors  
8 who distribute nonagricultural fertilizers in this State.

9 (4) Agricultural limes, including agricultural lime mixed with wood ash,  
10 are exempt from the tonnage fees required under this subsection.

11 (5) All fees collected under this subsection shall be deposited in the  
12 Agricultural Water Quality Special Fund created under section 4803 of  
13 this title.

14 Sec. 14. 6 V.S.A. § 918 is amended to read:

15 § 918. REGISTRATION

16 (a) Every economic poison which is distributed, sold, or offered for sale  
17 within this State or delivered for transportation or transported in intrastate  
18 commerce or between points within this State through any point outside this  
19 State shall be registered in the Office of the Secretary, and such registration  
20 shall be renewed annually; provided, that products which have the same  
21 formula, are manufactured by the same person, the labeling of which contains

1 the same claims, and the labels of which bear a designation identifying the  
2 product as the same economic poison may be registered as a single economic  
3 poison; and additional names and labels shall be added by supplement  
4 statements during the current period of registration. It is further provided that  
5 any economic poison imported into this State, which is subject to the  
6 provisions of any federal act providing for the registration of economic poisons  
7 and which has been duly registered under the provisions of this chapter, may,  
8 in the discretion of the Secretary, be exempted from registration under this  
9 chapter, when sold or distributed in the unbroken immediate container in  
10 which it was originally shipped. The registrant shall file with the Secretary a  
11 statement including:

12 (1) The name and address of the registrant and the name and address of  
13 the person whose name will appear on the label, if other than the registrant.

14 (2) The name of the economic poison.

15 (3) A complete copy of the labeling accompanying the economic poison  
16 and a statement of all claims to be made for it, including directions for use.

17 (4) If requested by the Secretary, a full description of the tests made and  
18 the results thereof upon which the claims are based. In the case of renewal of  
19 registration, a statement shall be required only with respect to information  
20 which is different from that furnished when the economic poison was  
21 registered or last re-registered.

1 (b) The registrant shall pay an annual fee of ~~\$110.00~~ \$125.00 for each  
2 product registered, and \$110.00 of that amount shall be deposited in the special  
3 fund created in section 929 of this title, of which \$5.00 from each product  
4 registration shall be used for an educational program related to the proper  
5 purchase, application, and disposal of household pesticides, and \$5.00 from  
6 each product registration shall be used to collect and dispose of obsolete and  
7 unwanted pesticides. Of the registration fees collected under this subsection,  
8 \$15.00 of the amount collected shall be deposited in the Agricultural Water  
9 Quality Special Fund created under section 4803 of this title. The annual  
10 registration year shall be from December 1 to November 30 of the following  
11 year.

12 \* \* \*

13 Sec. 15. APPROPRIATIONS FOR AGENCY OF AGRICULTURE, FOOD  
14 AND MARKETS STAFF

15 In addition to any other funds appropriated to the Agency of Agriculture,  
16 Food and Markets in fiscal year 2016, there is appropriated from the  
17 Agricultural Water Quality Special Fund created under 6 V.S.A § 4803 to the  
18 Agency \$1,056,000.00 in fiscal year 2016 for the purpose of hiring 7 positions  
19 for implementation and administration of agricultural water quality programs  
20 in the State.

21 \* \* \* Agricultural Water Quality; Best Management Practices \* \* \*

1 Sec. 16. 6 V.S.A. § 4810 is amended to read:

2 § 4810. AUTHORITY; COOPERATION; COORDINATION

3 (a) Agricultural land use practices. In accordance with 10 V.S.A.  
4 § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A.  
5 ~~chapter 25 of Title 3~~, and shall implement and enforce agricultural land use  
6 practices in order to ~~reduce the amount of agricultural pollutants entering the~~  
7 ~~waters of the state~~ satisfy the requirements of 33 U.S.C. § 1329 that the State  
8 identify and manage nonpoint sources of agricultural waste to waters of the  
9 State. These agricultural land use practices shall be created in two categories,  
10 pursuant to ~~subdivisions (1) and (2) of this subsection~~ subsections (b) and (c)  
11 of this section.

12 ~~(1)(b)~~ (b) Accepted Agricultural Practices. “Accepted Agricultural  
13 Practices” (AAPs) shall be management standards to be followed ~~in~~  
14 ~~conducting agricultural activities by all persons engaged in farming in this state~~  
15 State. These standards shall address activities which have a potential for  
16 causing pollutants to enter the groundwater and waters of the ~~state~~ State,  
17 including dairy and other livestock operations plus all forms of crop and  
18 nursery operations and on-farm or agricultural ~~fairground~~ fairgrounds,  
19 registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and  
20 processing activities. The AAPs shall include, as well as promote and  
21 encourage, practices for farmers in preventing pollutants from entering the

1 groundwater and waters of the state State when engaged in, ~~but not limited to,~~  
2 animal waste management and disposal, soil amendment applications, plant  
3 fertilization, and pest and weed control. Persons engaged in farming, ~~as~~  
4 ~~defined in 10 V.S.A. § 6001,~~ who ~~follow~~ are in compliance with these  
5 practices shall be presumed to be in compliance with water quality standards.

6 AAPs shall be practical and ~~cost-effective~~ cost-effective to implement, as  
7 determined by the Secretary. Where the Secretary determines, after inspection  
8 of a farm, that a person engaged in farming is complying with the AAPs but is  
9 not complying with the requirements of the State water quality standards, the  
10 Secretary shall require the person to implement additional, site-specific on  
11 farm conservation practices designed to meet the State water quality standards.

12 When requiring implementation of a conservation practice under this  
13 subsection, the Secretary shall inform the person engaged in farming of the  
14 resources available to assist the person in implementing the conservation  
15 practice and complying with the requirements of this chapter. The AAPs for  
16 groundwater shall include a process under which the ~~agency~~ Agency shall  
17 receive, investigate, and respond to a complaint that a farm has contaminated  
18 the drinking water or groundwater of a property owner.

19 ~~(2)(c) Best Management Practices. “Best Management Practices”~~  
20 ~~(BMPs) may be required by the secretary on a case by case basis. Before~~  
21 ~~requiring BMPs, the secretary shall determine that sufficient financial~~

1 ~~assistance is available to assist farmers in achieving compliance with~~  
2 ~~applicable BMPs.~~ “Best management practices” (BMPs) are site-specific  
3 on-farm conservation practices implemented in order to address water quality  
4 problems and in order to achieve compliance with the requirements of this  
5 chapter or State water quality standards. The Secretary may require any person  
6 engaged in farming to implement a BMP. When requiring implementation of a  
7 BMP, the Secretary shall inform a person engaged in farming of the resources  
8 available to assist the person in implementing BMPs and complying with the  
9 requirements of this chapter. BMPs shall be practical and ~~cost-effective~~  
10 cost-effective to implement, as determined by the Secretary, and shall be  
11 designed to achieve compliance with the requirements of this chapter.

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

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

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

16 Sec. 17. 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~~  
21 Secretary of Natural Resources in the basin planning process with regard to the

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

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

19 (c) ~~Before requiring best management practices under this section, the~~  
20 ~~secretary of agriculture, food and markets or the board shall determine that~~  
21 ~~sufficient financial assistance is available to assist farmers in achieving~~

1 ~~compliance with applicable best management practices~~ When requiring  
2 implementation of a best management practice, the Secretary shall inform a  
3 farmer of the resources available to assist the farmer in implementing the best  
4 management practice and complying with the requirements of this chapter.

5 \* \* \* Agricultural Water Quality; Training \* \* \*

6 Sec. 18. 6 V.S.A. chapter 215, subchapter 8 is added to read:

7 Subchapter 8. Agricultural Water Quality Training

8 § 4981. AGRICULTURAL WATER QUALITY TRAINING

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

13 (1) the prevention of discharges, as that term is defined in 10 V.S.A.  
14 § 1251(3); and

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

17 (b) Any training required by procedure under this section shall address:

18 (1) the existing statutory and regulatory requirements for operation of a  
19 large, medium, or small farm in the State;



1     § 4987. DEFINITIONS

2             As used in this subchapter:

3             (1) “Custom applicator” means the owner of a company engaged in the  
4 business of applying manure, nutrients, septage, or sludge to land and who  
5 charges or collects other consideration for the service. “Custom applicator”  
6 shall include employees of a custom applicator, when the employees apply  
7 manure, nutrients, septage, or sludge to land.

8             (2) “Manure” means livestock waste that may also contain bedding,  
9 spilled feed, water, or soil.

10            (3) “Septage” means the liquid and solid materials pumped from a septic  
11 tank or cesspool during cleaning.

12            (4) “Sludge” means any solid, semisolid, or liquid generated from a  
13 municipal, commercial, or industrial wastewater treatment plant or process,  
14 water supply treatment plant, air pollution control facility, or any other such  
15 waste having similar characteristics and effects.

16     § 4988. CERTIFICATION OF CUSTOM APPLICATOR

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



1 and require discontinuance of the violation. The Secretary may respond to a  
2 violation of the requirements of this chapter by:

3 (1) consulting with a farmer or pursuing other nonregulatory action  
4 within the authority of the Secretary to assure discontinuance of the violation  
5 and remediation of any harm caused by the violation;

6 (2) issuing a corrective action order under section 4992 of this title;

7 (3) issuing a cease and desist order under section 4993 of this title;

8 (4) issuing an emergency order under section 4993 of this title;

9 (5) revoking or conditioning coverage under a permit or certification  
10 under section 4994 of this title;

11 (6) bringing a civil enforcement action under section 4995 of  
12 this title; or

13 (7) referring the violation to the Secretary of Natural Resources for  
14 enforcement under 10 V.S.A. chapter 201.

15 § 4992. WARNINGS OF VIOLATIONS; CORRECTIVE ACTIONS;

16 ADMINISTRATIVE ENFORCEMENT

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

1           (1) a description of the alleged violation;

2           (2) identification of this section;

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

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

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

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

13           (c) If a person who receives a warning under this subsection fails to  
14 respond in a timely manner to the written warning or to take corrective action,  
15 the Secretary may act pursuant to section 4993 or section 4995 of this section  
16 in order to protect water quality.

17           (d) A person who receives a warning under this subsection may, within five  
18 days of receipt of the warning, request that the Secretary hold a hearing on the  
19 corrective action required under this section. Upon receipt of a request for a  
20 hearing, the Secretary promptly shall set a date and time for a hearing.

1     § 4993. ADMINISTRATIVE ENFORCEMENT; CEASE AND DESIST

2             ORDERS; EMERGENCY ORDERS

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

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

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

11            (A) presents or is likely to result in an immediate threat of substantial  
12    harm to the environment or immediate threat to the public health or welfare; or

13            (B) requires a permit or amendment to a permit issued under this  
14    chapter and a farm owner or operator has commenced an activity or is  
15    continuing an activity without a permit or permit amendment.

16            (3) Institute appropriate proceedings to enforce the requirements of this  
17    chapter, rules adopted under this chapter, or a permit or certification issued  
18    under this chapter.

19            (4) Order mandatory corrective actions, including a requirement that the  
20    owner or operator of a farm sell or otherwise remove livestock from a farm or  
21    production area when the volume of waste produced by livestock on the farm

1 exceeds the infrastructure capacity of the farm or the production area to  
2 manage the waste or waste leachate and prevent runoff or leaching of wastes to  
3 waters of the State or groundwater, as required by this chapter. When the  
4 Secretary issues a corrective action order under this subdivision, the Secretary  
5 shall inform the owner or operator of the farm of the opportunity to request a  
6 hearing under subsection (b) of this section within five days of receipt of the  
7 corrective action order.

8 (5) Seek administrative or civil penalties in accordance with the  
9 requirements of section 15, 16, 17, or 4995 of this title. Notwithstanding the  
10 requirements of section 15 of this title to the contrary, the maximum  
11 administrative penalty issued by the Secretary under this section shall not  
12 exceed \$5,000.00 for each violation, and the maximum amount of any  
13 administrative penalty assessed for separate and distinct violations of this  
14 chapter shall not exceed \$50,000.00.

15 (b) A person may request that the Secretary hold a hearing on a cease and  
16 desist order or an emergency order issued under this section within five days of  
17 receipt of the order. Upon receipt of a request for a hearing, the Secretary  
18 promptly shall set a date and time for a hearing. A request for a hearing on a  
19 cease and desist order or emergency order issued under this section shall not  
20 stay the order.

21 § 4994. PERMIT OR CERTIFICATION; REVOCATION; ENFORCEMENT

1       The Secretary may, after due notice and hearing, revoke or condition  
2       coverage under a general permit, an individual permit, a small farm  
3       certification, or other permit or certification issued under this chapter or rules  
4       adopted under this chapter when the person subject to the permit or  
5       certification fails to comply with a requirement of this chapter or any term,  
6       provision, or requirements of a permit or certification required by this chapter.  
7       The Secretary may also seek enforcement remedies and penalties under this  
8       subchapter against any person who fails to comply with any term, provision, or  
9       requirements of a permit or certification required by this chapter or who  
10       violates the terms or conditions of coverage under any general permit, any  
11       individual permit, or any certification issued under this chapter.

12       § 4995. CIVIL ENFORCEMENT

13       (a) The Secretary may bring an action in the Civil Division of the Superior  
14       Court to enforce the requirements of this chapter, or rules adopted under this  
15       chapter, or any permit or certification issued under this chapter, to assure  
16       compliance, and to obtain penalties in the amounts described in subsection (b)  
17       of this section. The action shall be brought by the Attorney General in the  
18       name of the State.

19       (b) The court may grant temporary and permanent injunctive relief,  
20       and may:

21               (1) Enjoin future activities.

1           (2) Order corrective actions to be taken to mitigate or curtail any  
2           violation and to protect human health or the environment, including a  
3           requirement that the owner or operator of a farm sell or otherwise remove  
4           livestock from a farm or production area when the volume of waste produced  
5           by livestock on the farm exceeds the infrastructure capacity of the farm or the  
6           production area to manage the waste or waste leachate and prevent runoff or  
7           leaching of wastes to waters of the State or groundwater, as required by this  
8           chapter.

9           (3) Order the design, construction, installation, operation, or  
10           maintenance of facilities designed to mitigate or prevent a violation of this  
11           chapter or to protect human health or the environment or designed to assure  
12           compliance.

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

15           (5) Revoke coverage under any permit or certification issued under this  
16           chapter.

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

20           (7) Levy a civil penalty as provided in this subdivision. A civil penalty  
21           of not more than \$85,000.00 may be imposed for each violation. In addition,

1 in the case of a continuing violation, a penalty of not more than \$42,500.00  
2 may be imposed for each day the violation continues. In fixing the amount of  
3 the penalty, the court shall apply the criteria set forth in subsections (e) and (f)  
4 of this section. The cost of collection of penalties or other monetary awards  
5 shall be assessed against and added to a penalty assessed against a respondent.

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

9 (A) a violation exists; or

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

11 (2) When the Attorney General brings a civil action under this section  
12 seeking a temporary restraining order or preliminary injunction, the Secretary  
13 need not demonstrate immediate and irreparable injury, loss, or damage.

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

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

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

1           (2) the presence of mitigating circumstances, including unreasonable  
2           delay by the Secretary in seeking enforcement after discovery of the violation;

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

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

6           (5) the deterrent effect of the penalty;

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

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

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

11           § 4996. APPEALS; ENFORCEMENT

12           (a) Any person subject, under this subchapter, to an administrative  
13           enforcement order, an administrative penalty, or revocation of a permit or  
14           certification who is aggrieved by a final decision of the Secretary may appeal  
15           to the Civil Division of the Superior Court within 30 days of the decision. The  
16           Chief Superior judge may specially assign an environmental judge to the Civil  
17           Division of the Superior Court for the purpose of hearing an appeal.

18           (b) If the Secretary issues an emergency order under this chapter, the  
19           Secretary shall inform the person subject to the order of the ability to request a  
20           hearing before the Civil Division of the Superior Court and the date by which a  
21           request for a hearing must be made. Notice of the request for hearing under

1 this subsection shall be filed with the Civil Division of the Superior Court and  
2 the Secretary within five days of receipt of the order. A hearing on the  
3 emergency order shall be held at the earliest possible time and shall take  
4 precedence over all other hearings. The hearing shall be held within five days  
5 of receipt of the notice of the request for hearing. A request for hearing on an  
6 emergency order shall not stay the order. The Civil Division of the Superior  
7 Court shall issue a decision within five days from the conclusion of the  
8 hearing, and not later than 30 days from the date the notice of request for  
9 hearing was received by the Court.

10 (c) The Civil Division of the Superior Court shall review appeals under this  
11 section on the record pursuant to Rule 74 of the Vermont Rules of Civil  
12 Procedure.

13 Sec. 21. 6 V.S.A. § 4812 is amended to read:

14 § 4812. ~~CORRECTIVE ACTIONS~~

15 ~~(a) When the Secretary of Agriculture, Food and Markets determines that a~~  
16 ~~person engaged in farming is managing a farm using practices which are~~  
17 ~~inconsistent with the requirements of this chapter or rules adopted under this~~  
18 ~~subchapter, the Secretary may issue a written warning which shall be served in~~  
19 ~~person or by certified mail, return receipt requested. The warning shall include~~  
20 ~~a brief description of the alleged violation, identification of this statute and~~  
21 ~~applicable rules, a recommendation for corrective actions that may be taken by~~

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

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

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

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

14 ~~(c) Whenever the Secretary believes that any person engaged in farming is~~  
15 ~~in violation of this subchapter or rules adopted thereunder, an action may be~~  
16 ~~brought in the name of the Agency in a court of competent jurisdiction to~~  
17 ~~restrain by temporary or permanent injunction the continuation or repetition of~~  
18 ~~the violation. The court may issue temporary or permanent injunctions, and~~  
19 ~~other relief as may be necessary and appropriate to curtail any violations.~~

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

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

6       Sec. 22. 6 V.S.A. § 4854 is amended to read:

7       § 4854. ~~REVOCATION; ENFORCEMENT~~

8       ~~The secretary may revoke a permit issued under this subchapter after~~  
9       ~~following the same process prescribed by section 2705 of this title regarding~~  
10       ~~the revocation of a handler's license. The secretary may also seek enforcement~~  
11       ~~remedies under sections 1, 12, 13, 16, and 17 of this title as well as assess an~~  
12       ~~administrative penalty under section 15 of this title to any person who fails to~~  
13       ~~apply for a permit as required by this subchapter, or who violates the terms or~~  
14       ~~conditions of a permit issued under this subchapter. However, notwithstanding~~  
15       ~~the provisions of section 15 of this title to the contrary, the maximum~~  
16       ~~administrative penalty assessed for a violation of this subchapter shall not~~  
17       ~~exceed \$5,000.00 for each violation, and the maximum amount of any penalty~~  
18       ~~assessed for separate and distinct violations of this chapter shall not exceed~~  
19       ~~\$50,000.00. [Repealed.]~~

20       Sec. 23. 6 V.S.A. § 4860 is amended to read:

21       § 4860. ~~REVOCATION; ENFORCEMENT~~

1           ~~(a) The secretary may revoke coverage under a general permit or an~~  
2           ~~individual permit issued under this subchapter after following the same process~~  
3           ~~prescribed by section 2705 of this title regarding the revocation of a handler's~~  
4           ~~license. The secretary may also seek enforcement remedies under sections 1,~~  
5           ~~11, 12, 13, 16, and 17 of this title as well as assess an administrative penalty~~  
6           ~~under section 15 of this title from any person who fails to comply with any~~  
7           ~~permit provision as required by this subchapter or who violates the terms or~~  
8           ~~conditions of coverage under any general permit or any individual permit~~  
9           ~~issued under this subchapter. However, notwithstanding provisions of section~~  
10           ~~15 of this title to the contrary, the maximum administrative penalty assessed~~  
11           ~~for a violation of this subchapter shall not exceed \$5,000.00 for each violation,~~  
12           ~~and the maximum amount of any penalty assessed for separate and distinct~~  
13           ~~violations of this chapter shall not exceed \$50,000.00.~~

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

19           ~~(c) Any person who knowingly makes any false statement, representation,~~  
20           ~~or certification in any application, record, report, plan, or other document filed~~  
21           ~~or required to be maintained by this subchapter or by any permit, rule,~~

1 ~~regulation, or order issued under this subchapter, or who falsifies, tampers~~  
2 ~~with, or knowingly renders inaccurate any monitoring device or method~~  
3 ~~required to be maintained by this subchapter or by any permit, rule, regulation,~~  
4 ~~or order issued under this subchapter shall upon conviction be punished by a~~  
5 ~~fine of not more than \$5,000.00 for each violation. Each violation may be a~~  
6 ~~separate offense and, in the case of a continuing violation, each day's~~  
7 ~~continuance may be deemed a separate offense. [Repealed.]~~

8 \* \* \* Stream Alteration; Agricultural Activities \* \* \*

9 Sec. 24. 10 V.S.A. § 1021 is amended to read:

10 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

11 (a) A person shall not change, alter, or modify the course, current, or cross  
12 section of any watercourse or of designated outstanding resource waters,  
13 within or along the boundaries of this State either by movement, fill, or  
14 excavation of ten cubic yards or more of instream material in any year, unless  
15 authorized by the Secretary. A person shall not establish or construct a berm in  
16 a flood hazard area or river corridor, as those terms are defined in subdivisions  
17 752(3) and (11) of this title, unless permitted by the Secretary or constructed as  
18 an emergency protective measure under subsection (b) of this section.

19 \* \* \*

20 (f) This subchapter shall not apply to:



1 the Director may delay removal from use value appraisal for a period of one  
2 year at a time to allow time to bring the parcel into conformance with the plan.

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

6 (i) found, after administrative hearing, or contested judicial  
7 hearing or motion, to be in violation of water quality requirements established  
8 under 6 V.S.A. chapter 215, or any rules adopted or any permit or certification  
9 issued under 6 V.S.A. chapter 215; or

10 (ii) who is not in compliance with the terms of an administrative  
11 or court order issued under 6 V.S.A. chapter 215, subchapter 10 to remedy a  
12 violation of the requirements of 6 V.S.A. chapter 215 or any rules adopted or  
13 any permit or certification issued under 6 V.S.A. chapter 215.

14 (B) The Director shall notify the owner that agricultural land or a  
15 farm building has been removed from use value appraisal by mailing  
16 notification of removal to the owner or operator's last and usual place of  
17 abode. After removal of agricultural land or a farm building from use value  
18 appraisal under this section, the Director shall not consider a new application  
19 for use value appraisal for the agricultural land or farm building until the  
20 Secretary of Agriculture, Food and Markets submits to the Director a  
21 certification that the owner or operator of the agricultural land or farm building

1 is complying with the water quality requirements of 6 V.S.A. chapter 215 or an  
2 order issued under 6 V.S.A. chapter 215. After submission of a certification by  
3 the Secretary of Agriculture, Food and Markets, an owner or operator shall be  
4 eligible to apply for enrollment of the agricultural land or farm building  
5 according to the requirements of this section.

6 Sec. 26. 32 V.S.A. § 3758 is amended to read:

7 § 3758. APPEALS

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

16 \* \* \*

17 (e) When the Director removes agricultural land or a farm building  
18 pursuant to notification from the Secretary of Agriculture, Food and Markets  
19 under 3756 of this title, the exclusive right of appeal shall be as provided in 6  
20 V.S.A. § 4996(a).

1 Sec. 27. 32 V.S.A. § 3752(5) is amended to read:

2 (5) “Development” means, for the purposes of determining whether a  
3 land use change tax is to be assessed under section 3757 of this chapter, the  
4 construction of any building, road, or other structure, or any mining,  
5 excavation, or landfill activity. “Development” also means the subdivision of  
6 a parcel of land into two or more parcels, regardless of whether a change in use  
7 actually occurs, where one or more of the resulting parcels contains less than  
8 25 acres each; but if subdivision is solely the result of a transfer to one or more  
9 of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of  
10 the transferor, or to the surviving spouse of any of the foregoing, then  
11 “development” shall not apply to any portion of the newly created parcel or  
12 parcels which qualifies for enrollment and for which, within 30 days following  
13 the transfer, each transferee or transferor applies for reenrollment in the use  
14 value appraisal program. “Development” also means the cutting of timber on  
15 property appraised under this chapter at use value in a manner contrary to a  
16 forest or conservation management plan as provided for in subsection 3755(b)  
17 of this title during the remaining term of the plan, or contrary to the minimum  
18 acceptable standards for forest management if the plan has expired; or a  
19 change in the parcel or use of the parcel in violation of the conservation  
20 management standards established by the Commissioner of Forests, Parks and  
21 Recreation. “Development” also means notification of the Director by the

1 Secretary of Agriculture, Food and Markets under section 3756 of this title that  
2 the owner or operator of agricultural land or a farm building is violating the  
3 water quality requirements of 6 V.S.A. chapter 215 or is failing to comply with  
4 the terms of an order issued under 6 V.S.A. chapter 215, subchapter 10. The  
5 term “development” shall not include the construction, reconstruction,  
6 structural alteration, relocation, or enlargement of any building, road, or other  
7 structure for farming, logging, forestry, or conservation purposes, but shall  
8 include the subsequent commencement of a use of that building, road, or  
9 structure for other than farming, logging, or forestry purposes.

10 \* \* \* Agency of Natural Resources Basin Planning \* \* \*

11 Sec. 28. 10 V.S.A. § 1253 is amended to read:

12 § 1253. CLASSIFICATION OF WATERS DESIGNATED,  
13 RECLASSIFICATION

14 \* \* \*

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

1 management plan shall include a schedule for updating the basin plans. The  
2 Secretary, in consultation with regional planning commissions and natural  
3 resource conservation districts, shall revise all ~~47~~ 15 basin plans ~~by January 1,~~  
4 ~~2006,~~ and update ~~them every five years thereafter~~ the basin plans on a  
5 five-year rotating basis. On or before January ~~4~~ 15 of each year, the Secretary  
6 shall report to the House Committees on Agriculture and Forest Products, on  
7 Natural Resources and Energy, and on Fish, Wildlife and Water Resources,  
8 and to the Senate Committees on Agriculture and on Natural Resources and  
9 Energy regarding the progress made and difficulties encountered in revising  
10 basin plans. ~~By January 1, 1993, the Secretary shall prepare an overall~~  
11 ~~management plan to ensure that the water quality standards are met in all State~~  
12 ~~waters.~~ The report shall include a schedule for the production of basin plans in  
13 the subsequent calendar year and a summary of actions to be taken over the  
14 subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of  
15 required reports) shall not apply to the report to be made under this subsection.

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

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

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

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

3           (D) develop, in consultation 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;

19           (D) assist the Secretary in implementing a project evaluation process  
20           to prioritize water quality improvement projects within the region to assure  
21           cost effective use of State and federal funds.

- 1           (e) In determining the question of public interest, the Secretary shall give  
2           due consideration to, and explain his or her decision with respect to, the  
3           following:
- 4           (1) existing and obtainable water qualities;
  - 5           (2) existing and potential use of waters for public water supply,  
6           recreational, agricultural, industrial, and other legitimate purposes;
  - 7           (3) natural sources of pollution;
  - 8           (4) public and private pollution sources and the alternative means of  
9           abating the same;
  - 10          (5) consistency with the State water quality policy established in  
11          10 V.S.A. § 1250;
  - 12          (6) suitability of waters as habitat for fish, aquatic life, and wildlife;
  - 13          (7) need for and use of minimum streamflow requirements;
  - 14          (8) federal requirements for classification and management of waters;
  - 15          (9) consistency with applicable municipal, regional, and State plans; and
  - 16          (10) any other factors relevant to determine the maximum beneficial use  
17          and enjoyment of waters.
- 18           (f) Notwithstanding the provisions of subsection (c) of this section, when  
19           reclassifying waters to Class A, the Secretary need find only that the  
20           reclassification is in the public interest.

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

4 Sec. 29. 24 V.S.A. § 4302 is amended to read:

5 § 4302. PURPOSE; GOALS

6 \* \* \*

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

10 \* \* \*

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

13 \* \* \*

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

16 (A) Vermont's air, water, wildlife, mineral and land resources should  
17 be planned for use and development according to the principles set forth in  
18 10 V.S.A. § 6086(a).

19 (B) Vermont's water quality should be maintained and improved  
20 according to the policies and actions developed in the basin plans established  
21 by the Secretary of Natural Resources under 10 V.S.A. § 1253.

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Sec. 30. 24 V.S.A. § 4348(c) is amended to read:

(c) At least 30 days prior to the first hearing, a copy of the proposed plan or amendment, with a request for general comments and for specific comments with respect to the extent to which the plan or amendment is consistent with the goals established in section 4302 of this title, shall be delivered with proof of receipt, or sent by certified mail, return receipt requested, to each of the following:

(1) the chair of the legislative body of each municipality within the region;

(2) the executive director of each abutting regional planning commission;

(3) the Department of Housing and Community Development within the Agency of Commerce and Community Development; ~~and~~

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

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

Sec. 31. 24 V.S.A. § 4348a(a) is amended to read:

1 (a) A regional plan shall be consistent with the goals established in section  
2 4302 of this title and shall include the following:

3 \* \* \*

4 (6) A statement of policies on the:

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

7 (B) protection and improvement of the quality of waters of the State  
8 to be used in the development and furtherance of the applicable basin plans  
9 established by the Secretary of Natural Resources under 10 V.S.A. § 1253;

10 \* \* \*

11 \* \* \* Antidegradation Policy Implementation Rule \* \* \*

12 Sec. 32. 10 V.S.A. § 1251a(c) is amended to read:

13 (c) On or before ~~January 15, 2008~~ July 1, 2016, the Secretary of Natural  
14 Resources shall ~~propose draft rules for~~ adopt by rule an implementation  
15 process for the antidegradation policy in the water quality standards of the  
16 State. The implementation process for the antidegradation policy shall be  
17 consistent with the State water quality policy established in section 1250 of  
18 this title, the Vermont Water Quality Standards, and any applicable  
19 requirements of the federal Clean Water Act. ~~On or before July 1, 2008, a~~  
20 ~~final proposal of the rules for an implementation process for the~~

1 ~~antidegradation policy shall be filed with the Secretary of State under 3 V.S.A.~~  
2 ~~§ 841.~~

3 \* \* \* Stormwater Management \* \* \*

4 Sec. 33. 10 V.S.A. § 1264 is amended to read:

5 § 1264. STORMWATER MANAGEMENT

6 ~~(a) The General Assembly finds that the management of stormwater runoff~~  
7 ~~is necessary to reduce stream channel instability, pollution, siltation,~~  
8 ~~sedimentation, and local flooding, all of which have adverse impacts on the~~  
9 ~~water and land resources of the State. The General Assembly intends, by~~  
10 ~~enactment of this section, to reduce the adverse effects of stormwater runoff.~~  
11 ~~The General Assembly determines that this intent may best be attained by a~~  
12 ~~process that: assures broad participation; focuses upon the prevention of~~  
13 ~~pollution; relies on structural treatment only when necessary; establishes and~~  
14 ~~maintains accountability; tailors strategies to the region and the locale; assures~~  
15 ~~an adequate funding source; builds broadbased programs; provides for the~~  
16 ~~evaluation and appropriate evolution of programs; is consistent with the federal~~  
17 ~~Clean Water Act and the State water quality standards; and accords appropriate~~  
18 ~~recognition to the importance of community benefits that accompany an~~  
19 ~~effective stormwater runoff management program. In furtherance of these~~  
20 ~~purposes, the Secretary shall implement two stormwater permitting programs.~~  
21 ~~The first program is based on the requirements of the federal National~~

1 ~~Pollutant Discharge Elimination System (NPDES) permit program in~~  
2 ~~accordance with section 1258 of this title. The second program is a State~~  
3 ~~permit program based on the requirements of this section for the discharge of~~  
4 ~~“regulated stormwater runoff” as that term is defined in subdivision (11) of this~~  
5 ~~subsection. As used in this section:~~

6 (1) ~~“2002 Stormwater Management Manual” means the Agency of~~  
7 ~~Natural Resources’ Stormwater Management Manual dated April 2002, as~~  
8 ~~amended from time to time by rule.~~

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

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

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

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

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

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

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

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

15           ~~(10) “Redevelopment” means the construction or reconstruction of an~~  
16           ~~impervious surface where an impervious surface already exists when such new~~  
17           ~~construction involves substantial site grading, substantial subsurface~~  
18           ~~excavation, or substantial modification of existing stormwater conveyance,~~  
19           ~~such that the total of impervious surface to be constructed or reconstructed is~~  
20           ~~greater than the minimum regulatory threshold. Redevelopment does not mean~~  
21           ~~the construction or reconstruction of impervious surface where impervious~~

1 ~~surface already exists when the construction or reconstruction involves less~~  
2 ~~than 5,000 square feet. Redevelopment does not mean public road~~  
3 ~~management activities, including any crack sealing, patching, coldplaning,~~  
4 ~~resurfacing, reclaiming, or grading treatments used to maintain pavement,~~  
5 ~~bridges, and unpaved roads.~~

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

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

15 ~~(13) “Stormwater-impaired water” means a State water that the~~  
16 ~~Secretary determines is significantly impaired by discharges of regulated~~  
17 ~~stormwater runoff.~~

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

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

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

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

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

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

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

4           ~~(B) A discharge from redevelopment; from an existing discharge~~  
5           ~~operating under an expired stormwater discharge permit where the property~~  
6           ~~owner applies for a new permit; or from any combination of development,~~  
7           ~~redevelopment, and expansion meets on-site the water quality, recharge, and~~  
8           ~~channel protection criteria set forth in Table 1.1 of the 2002 Stormwater~~  
9           ~~Management Manual that are determined to be technically feasible by an~~  
10           ~~engineering feasibility analysis conducted by the Agency and if the sediment~~  
11           ~~load from the discharge approximates the natural runoff from an undeveloped~~  
12           ~~field or open meadow that is not used for agricultural activity.~~

13           ~~(b) The Secretary shall prepare a plan for the management of collected~~  
14           ~~stormwater runoff found by the Secretary to be deleterious to receiving waters.~~  
15           ~~The plan shall recognize that the runoff of stormwater is different from the~~  
16           ~~discharge of sanitary and industrial wastes because of the influence of natural~~  
17           ~~events of stormwater runoff, the variations in characteristics of those runoffs,~~  
18           ~~and the increased stream flows and natural degradation of the receiving water~~  
19           ~~quality at the time of discharge. The plan shall be cost effective and designed~~  
20           ~~to minimize any adverse impact of stormwater runoff to waters of the State.~~  
21           ~~By no later than February 1, 2001, the Secretary shall prepare an enhanced~~

1 ~~stormwater management program and report on the content of that program to~~  
2 ~~the House Committees on Fish, Wildlife and Water Resources and on Natural~~  
3 ~~Resources and Energy and to the Senate Committee on Natural Resources and~~  
4 ~~Energy. In developing the program, the Secretary shall consult with the Board,~~  
5 ~~affected municipalities, regional entities, other State and federal agencies, and~~  
6 ~~members of the public. The Secretary shall be responsible for implementation~~  
7 ~~of the program. The Secretary's stormwater management program shall~~  
8 ~~include, at a minimum, provisions that:~~

9 (1) ~~Indicate that the primary goals of the State program will be to assure~~  
10 ~~compliance with the Vermont Water Quality Standards and to maintain after~~  
11 ~~development, as nearly as possible, the predevelopment runoff characteristics.~~

12 (2) ~~Allow for differences in hydrologic characteristics in different parts~~  
13 ~~of the State.~~

14 (3) ~~Incorporate stormwater management into the basin planning process~~  
15 ~~conducted under section 1253 of this title.~~

16 (4) ~~Assure consistency with applicable requirements of the federal Clean~~  
17 ~~Water Act.~~

18 (5) ~~Address stormwater management in new development and~~  
19 ~~redevelopment.~~

20 (6) ~~Control stormwater runoff from construction sites and other land~~  
21 ~~disturbing activities.~~

1           ~~(7) Indicate that water quality mitigation practices may be required for~~  
2           ~~any redevelopment of previously developed sites, even when~~  
3           ~~preredevelopment runoff characteristics are proposed to be maintained.~~

4           ~~(8) Specify minimum requirements for inspection and maintenance of~~  
5           ~~stormwater management practices.~~

6           ~~(9) Promote detection and elimination of improper or illegal connections~~  
7           ~~and discharges.~~

8           ~~(10) Promote implementation of pollution prevention during the conduct~~  
9           ~~of municipal operations.~~

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

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

17           ~~(13) Promote public education and participation among citizens and~~  
18           ~~municipalities about cost effective and innovative measures to reduce~~  
19           ~~stormwater discharges to the waters of the State.~~

20           ~~(e) The Secretary shall submit the program report to the House Committees~~  
21           ~~on Agriculture and Forest Products, on Transportation, and on Natural~~

1 ~~Resources and Energy and to the Senate Committees on Agriculture and on~~  
2 ~~Natural Resources and Energy.~~

3 ~~(d)(1) The Secretary shall initiate rulemaking by October 15, 2004, and~~  
4 ~~shall adopt a rule for a stormwater management program by June 15, 2005.~~

5 ~~The rule shall be adopted in accordance with 3 V.S.A. chapter 25 and shall~~  
6 ~~include:~~

7 ~~(A) the regulatory elements of the program identified in subsection~~  
8 ~~(b) of this section, including the development and use of offsets and the~~  
9 ~~establishment and imposition of stormwater impact fees to apply when issuing~~  
10 ~~permits that allow regulated stormwater runoff to stormwater-impaired waters;~~

11 ~~(B) requirements concerning the contents of permit applications that~~  
12 ~~include, at a minimum, for regulated stormwater runoff, the permit application~~  
13 ~~requirements contained in the Agency's 1997 stormwater management~~  
14 ~~procedures;~~

15 ~~(C) a system of notifying interested persons in a timely way of the~~  
16 ~~Agency's receipt of stormwater discharge applications, provided any alleged~~  
17 ~~failures with respect to such notice shall not be relevant in any Agency permit~~  
18 ~~decision or any appeals brought pursuant to section 1269 of this chapter;~~

19 ~~(D) requirements concerning a permit for discharges of regulated~~  
20 ~~stormwater runoff from the development, redevelopment, or expansion of~~  
21 ~~impervious surfaces equal to or greater than one acre or any combination of~~

1 development, redevelopment, and expansion of impervious surfaces equal to or  
2 greater than one acre; and

3 ~~(E) requirements concerning a permit for discharges of regulated~~  
4 ~~stormwater runoff from an impervious surface of any size to~~  
5 ~~stormwater impaired waters if the Secretary determines that treatment is~~  
6 ~~necessary to reduce the adverse impact of such stormwater discharges due to~~  
7 ~~the size of the impervious surface, drainage patterns, hydraulic connectivity,~~  
8 ~~existing stormwater treatment, or other factors identified by the Secretary.~~

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

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

1 ~~condition of the stormwater management system. The permit shall contain~~  
2 ~~additional conditions, requirements, and restrictions as the Secretary deems~~  
3 ~~necessary to achieve and maintain compliance with the water quality standards,~~  
4 ~~including requirements concerning recording, reporting, and monitoring the~~  
5 ~~effects on receiving waters due to operation and maintenance of stormwater~~  
6 ~~management facilities.~~

7 ~~(2) As one of the principal means of administering an enhanced~~  
8 ~~stormwater program, the Secretary may issue and enforce general permits. To~~  
9 ~~the extent appropriate, such permits shall include the use of certifications of~~  
10 ~~compliance by licensed professional engineers practicing within the scope of~~  
11 ~~their engineering specialty. The Secretary may issue general permits for~~  
12 ~~classes of regulated stormwater runoff permittees and may specify the period~~  
13 ~~of time for which the permit is valid other than that specified in subdivision~~  
14 ~~1263(d)(4) of this title when such is consistent with the provisions of this~~  
15 ~~section. General permits shall be adopted and administered in accordance with~~  
16 ~~the provisions of subsection 1263(b) of this title. No permit is required under~~  
17 ~~this section for:~~

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

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

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

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

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

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

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

4                     ~~(i) a new stormwater discharge or the expansion of an existing~~  
5                     ~~discharge shall meet the treatment standards for new development and~~  
6                     ~~expansion in the 2002 Stormwater Management Manual and any additional~~  
7                     ~~requirements deemed necessary by the Secretary to implement the TMDL or~~  
8                     ~~water quality remediation plan;~~

9                     ~~(ii) for a discharge of regulated stormwater runoff from~~  
10                    ~~redeveloped impervious surfaces:~~

11                    ~~(I) the existing impervious surface shall be reduced by 20~~  
12                    ~~percent, or a stormwater treatment practice shall be designed to capture and~~  
13                    ~~treat 20 percent of the water quality volume treatment standard of the 2002~~  
14                    ~~Stormwater Management Manual from the existing impervious surface; and~~

15                    ~~(II) any additional requirements deemed necessary by the~~  
16                    ~~Secretary to implement the TMDL or the water quality remediation plan;~~

17                    ~~(iii) an existing stormwater discharge shall meet the treatment~~  
18                    ~~standards deemed necessary by the Secretary to implement a TMDL or a water~~  
19                    ~~quality remediation plan;~~

20                    ~~(iv) if a permit is required for an expansion of an existing~~  
21                    ~~impervious surface or for the redevelopment of an existing impervious surface,~~

1 ~~discharges from the expansion or from the redeveloped portion of the existing~~  
2 ~~impervious surface shall meet the relevant treatment standard of the 2002~~  
3 ~~Stormwater Management Manual, and the existing impervious surface shall~~  
4 ~~meet the treatment standards deemed necessary by the Secretary to implement~~  
5 ~~a TMDL or the water quality remediation plan;~~

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

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

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

13 ~~(2) An authorization to discharge regulated stormwater runoff pursuant~~  
14 ~~to a permit issued under this subsection shall be valid for a time period not to~~  
15 ~~exceed five years. A person seeking to discharge regulated stormwater runoff~~  
16 ~~after the expiration of that period shall obtain an individual permit or coverage~~  
17 ~~under a general permit, whichever is applicable, in accordance with subsection~~  
18 ~~1263(e) of this title.~~

19 ~~(3) By January 15, 2010, the Secretary shall issue a watershed~~  
20 ~~improvement permit, issue a general or individual permit implementing a~~  
21 ~~TMDL approved by the EPA, or issue a general or individual permit~~

1 ~~implementing a water quality remediation plan for each of the~~  
2 ~~stormwater impaired waters on the Vermont Year 2004 Section 303(d) List of~~  
3 ~~Waters required by 33 U.S.C. 1313(d). In developing a TMDL or a water~~  
4 ~~quality remediation plan for a stormwater impaired water, the Secretary shall~~  
5 ~~consult “A Scientifically Based Assessment and Adaptive Management~~  
6 ~~Approach to Stormwater Management” and “Areas of Agreement about the~~  
7 ~~Scientific Underpinnings of the Water Resources Board’s Original Seven~~  
8 ~~Questions” set out in appendices A and B, respectively, of the final report of~~  
9 ~~the Water Resources Board’s “Investigation Into Developing Cleanup Plans~~  
10 ~~For Stormwater Impaired Waters, Docket No. Inv-03-01,” issued March 9,~~  
11 ~~2004.~~

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

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~~

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.~~

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:~~

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.~~

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  
21        influence of natural events of stormwater runoff, the variations in

1 characteristics of those runoffs, and the increased stream flows causing  
2 degradation of the quality of the receiving water at the time of discharge.

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

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

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

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

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

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

18 (6) “Offset” means a State-permitted or -approved action or project  
19 within a stormwater-impaired water or within a water that contributes to the  
20 impairment of Lake Champlain that a discharger or a third person may

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 or a water that contributes to the impairment of  
19 Lake Champlain that mitigates a sediment load level or hydrologic impact that  
20 the discharger is unable to control through on-site treatment or completion of  
21 an offset on a site owned or controlled by the permit applicant.

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

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 impervious surface without first obtaining a permit from  
11 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.

1           (5) A person shall not expand existing impervious surface by more than  
2           5,000 square feet, such that the total resulting impervious area is greater than  
3           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           (7) In accordance with the schedule established under subsection (g)(3),  
15           a person shall not discharge stormwater from impervious surface of three or  
16           more acres in size without first obtaining an individual permit or coverage  
17           under a general permit issued under this section if the discharge was never  
18           previously permitted or was permitted under an individual permit or general  
19           permit that did not incorporate the requirements of the 2002 Stormwater  
20           Management Manual or any subsequently adopted Stormwater Management  
21           Manual.

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

2            (1) Stormwater runoff from farms in compliance with agricultural  
3 practices adopted by the Secretary of Agriculture, Food and Markets.

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

6            (3) Stormwater runoff from silvicultural activities in compliance with  
7 the Acceptable Management Practices for Maintaining Water Quality on  
8 Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks  
9 and Recreation.

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

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

18        (e) State designation. The Secretary shall require a permit under this  
19 section for a discharge or stormwater runoff from any size of impervious  
20 surfaces upon a determination by the Secretary that the treatment of the  
21 discharge or stormwater runoff is necessary to reduce the adverse impacts to

1 water quality of the discharge or stormwater runoff taking into consideration  
2 any of the following factors: the size of the impervious surface, drainage  
3 patterns, hydraulic connectivity, existing stormwater treatment, stormwater  
4 controls necessary to implement the wasteload allocation of a TMDL, or other  
5 factors. The Secretary may make this determination on a case-by-case basis or  
6 according to classes of activities, classes of runoff, or classes of discharge.  
7 The Secretary may make a determination under this subsection based on  
8 activities, runoff, discharges, or other information identified during the basin  
9 planning process.

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

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

13 (A) assuring compliance with the Vermont Water Quality  
14 Standards; and

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

17 (2) Establish criteria for the use of the basin planning process to  
18 establish watershed-specific priorities for the management of stormwater  
19 runoff.

20 (3) Assure consistency with applicable requirements of the federal Clean  
21 Water Act.

- 1           (4) Include technical standards and best management practices that  
2           address stormwater discharges from existing development, new development,  
3           and redevelopment.
- 4           (5) Specify minimum requirements for inspection and maintenance of  
5           stormwater management practices.
- 6           (6) Include standards for the management of stormwater runoff from  
7           construction sites and other land disturbing activities.
- 8           (7) Allow municipal governments to assume the full legal responsibility  
9           for a stormwater system permitted under these rules as a part of a permit issued  
10          by the Secretary.
- 11          (8) Include standards with respect to the use of offsets and stormwater  
12          impact fees.
- 13          (9) Include minimum standards for the issuance of stormwater permits  
14          during emergencies for the repair or maintenance of stormwater infrastructure  
15          during a state of emergency declared under 20 V.S.A. chapter 1 or during  
16          flooding or other emergency conditions that pose an imminent risk to life or a  
17          risk of damage to public or private property. Minimum standards adopted  
18          under this subdivision shall comply with National Flood Insurance Program  
19          requirements.

1           (10) To the extent appropriate, authorize in the permitting process use of  
2           certifications of compliance by licensed professional engineers practicing  
3           within the scope of their engineering specialty.

4           (g) General permits.

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

8           (2)(A) The Secretary shall issue by December 31, 2017, a general permit  
9           for discharges of regulated stormwater from municipal roads. Under the  
10           municipal roads stormwater general permit, the Secretary shall:

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

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

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

18           (III) the date by which each municipality shall establish a plan  
19           for implementation of stormwater improvements that prioritizes stormwater  
20           improvements according to criteria established by the Secretary under the  
21           general permit; and

1                    (IV) the date by which each municipality shall implement  
2                    stormwater improvements of municipal roads according to a municipal  
3                    implementation plan.

4                    (ii) Establish criteria and technical standards, such as best  
5                    management practices, for implementation of stormwater improvements of  
6                    municipal roads.

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

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

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

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

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

1           (3) On or before January 1, 2018, the Secretary shall issue a general  
2           permit under this section for discharges of stormwater from impervious surface  
3           of three or more acres in size, when the stormwater discharge previously was  
4           not permitted or was permitted under an individual permit or general permit  
5           that did not incorporate the requirements of the 2002 Stormwater Management  
6           Manual or any subsequently adopted Stormwater Management Manual. Under  
7           the general permit, the Secretary shall:

8                   (A) Establish a schedule for implementation of the general permit by  
9                   geographic area of the State. The schedule shall establish the date by which an  
10                  owner of impervious surface shall apply for coverage under subdivision (g)(3)  
11                  of this section. The schedule established by the Secretary shall require an  
12                  owner of impervious surface subject to permitting under this subdivision to  
13                  obtain coverage by the following dates:

14                           (i) for impervious surface located within the Lake Champlain  
15                           watershed, no later than October 1, 2023; and

16                           (ii) for impervious surface located within all other watersheds of  
17                           the State, no later than October 1, 2028.

18                           (B) Establish criteria and technical standards, such as best  
19                           management practices, for implementation of stormwater improvements for the  
20                           retrofitting of impervious surface subject to permitting under this subdivision.

1           (C) Require that a discharge of stormwater from redeveloped or  
2           retrofitted impervious surface comply with the applicable standards under  
3           subsection (h) of this section related to redevelopment or renewal of  
4           impervious surface.

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

6           (1) Be valid for a period of time not to exceed ten years.

7           (2) For discharges of regulated stormwater to a stormwater impaired  
8           water, to Lake Champlain, or to a water that contributes to the impairment of  
9           Lake Champlain:

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

13           (i) A new discharge or the expanded portion of an existing  
14           discharge shall satisfy the requirements of the Stormwater Management  
15           Manual and shall not increase the pollutant load in the receiving water for  
16           stormwater.

17           (ii) For redevelopment of or renewal of a permit for existing  
18           impervious surface, the discharge shall satisfy on-site the water quality,  
19           recharge, and channel protection criteria set forth in the Stormwater  
20           Management Manual that are determined to be technically feasible by an

1 engineering feasibility analysis conducted by the Agency and the discharge  
2 shall not increase the pollutant load in the receiving water for stormwater.

3 (B) In which a TMDL or water quality remediation plan has been  
4 adopted, require that the discharge shall comply with the following discharge  
5 standards:

6 (i) For a new discharge or the expanded portion of an existing  
7 discharge, the discharge shall satisfy the requirements of the Stormwater  
8 Management Manual, and the Secretary shall determine that there is sufficient  
9 pollutant load allocations for the discharge.

10 (ii) For redevelopment of or renewal of a permit for existing  
11 impervious surface, the Secretary shall determine that there is sufficient  
12 pollutant load allocations for the discharge and the Secretary shall include any  
13 requirements that the Secretary deems necessary to implement the TMDL or  
14 water quality remediation plan.

15 (3) Contain requirements necessary to comply with the minimum  
16 requirements of the rules adopted under this section, the Vermont water quality  
17 standards, and any applicable provision of the Clean Water Act.

18 (4) Allow the use of stormwater impact fees, offsets, and phosphorus  
19 credit trading within the watershed of the water to which the stormwater  
20 discharges or runs off.

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

8        (j) Presumption. In any appeal under this chapter, an individual permit  
9        issued under subdivisions (c)(1) and (c)(5) of this section shall have a  
10       rebuttable presumption in favor of the permittee that the discharge does not  
11       cause or contribute to a violation of the Vermont Water Quality Standards for  
12       the receiving waters with respect to the discharge of regulated stormwater  
13       runoff, provided that the discharge is to a water that is not principally impaired  
14       due to stormwater.

15       Sec. 34. ANR REPORT ON REGULATORY THRESHOLD FOR

16                    PERMITTING STORMWATER RUNOFF FROM IMPERVIOUS

17                    SURFACES

18        (a) On or before January 15, 2016, the Secretary of Natural Resources shall  
19        submit to the House Committee on Fish, Wildlife and Water Resources and the  
20        Senate Committee on Natural Resources and Energy a report regarding  
21        whether and how the State should lower from one acre to one-half acre of

1 impervious surface the regulatory permitting threshold for an operating permit  
2 for stormwater runoff from new development, redevelopment, or expansion.

3 The report shall include:

4 (1) a recommendation as to whether the State should lower the  
5 regulatory permitting threshold from one acre to one-half acre of impervious  
6 surface;

7 (2) an estimate of the number of additional development projects that  
8 would require an operating permit for stormwater runoff if the regulatory  
9 permitting threshold were lowered from one acre to one-half acre of  
10 impervious surface;

11 (3) an estimate of the environmental benefit of reducing the regulatory  
12 permitting threshold from one acre to one-half acre of impervious surface;

13 (4) an estimate of the number of staff that would be needed by the  
14 Agency of Natural Resources to effectively implement a stormwater operating  
15 permit program with a regulatory permitting threshold of one-half acre of  
16 impervious surface; and

17 (5) a recommendation for regulating construction, redevelopment, or  
18 expansion of impervious surface based on a tiered system of acreage, square  
19 footage, or other measure.

20 (b) The definitions provided in 10 V.S.A. § 1264 shall apply to this section.

1       Sec. 35. STORMWATER MANAGEMENT PRACTICES HANDBOOK

2           On or before January 1, 2016, the Secretary of Natural Resources shall  
3       publish as a handbook a suite of practical and cost-effective best management  
4       practices for the control of stormwater runoff from the construction,  
5       redevelopment, or expansion of impervious surface that does not require a  
6       permit under 10 V.S.A. § 1264. The best management practices shall address  
7       activities that control, mitigate, or eliminate stormwater runoff to waters of the  
8       State. The stormwater management practices shall be voluntary and shall not  
9       be mandatory.

10                           \* \* \* Water Quality Data Coordination \* \* \*

11       Sec. 36. 10 V.S.A. § 1284 is added to read:

12       § 1284. WATER QUALITY DATA COORDINATION

13           (a) To facilitate attainment or accomplishment of the purposes of this  
14       chapter, the Secretary shall coordinate and assess all available data and science  
15       regarding the quality of the waters of the State, including:

- 16           (1) light detection and ranging information data (LIDAR);  
17           (2) stream gauge data;  
18           (3) stream mapping, including fluvial erosion hazard maps;  
19           (4) water quality monitoring or sampling data;

1           (5) cumulative stressors on a watershed, such as the frequency an  
2           activity is conducted within a watershed or the number of stormwater or other  
3           permits issued in a watershed; and

4           (6) any other data available to the Secretary.

5           (b) After coordination of the data required under subsection (a) of this  
6           section, the Secretary shall:

7           (1) assess where additional data are needed and the best methods for  
8           collection of such data;

9           (2) identify and map on a watershed basis areas of the State that are  
10           significant contributors to water quality problems or are in critical need of  
11           water quality remediation or response.

12           (c) The Secretary shall post all data compiled under this section on the  
13           website of the Agency of Natural Resources.

14           \*\*\* Water Quality Funding; Clean Water Fund; Clean Water Surcharge \*\*\*

15           Sec. 37. 10 V.S.A. chapter 47, subchapter 7 is added to read:

16                           Subchapter 7. Vermont Clean Water Fund

17           § 1387. PURPOSE

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

20           The Clean Water Fund shall be used to:

21           (1) assist the State in complying with water quality requirements and  
22           construction or implementation of water quality projects or programs; and

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

4           § 1388. CLEAN WATER FUND

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

7           (1) the Fund shall be administered by the Clean Water Fund Board  
8           established under section 1389 of this title;

9           (2) the Fund shall consist of:

10           (A) Revenues dedicated for deposit into the Fund by the General  
11           Assembly, including the surcharge assessed under 32 V.S.A. § 9602a; and

12           (B) Other gifts, donations, and impact fees received from any source,  
13           public or private, dedicated for deposit into the Fund and approved by the  
14           Board.

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

17           (1) to provide funding to programs and projects to address sources of  
18           water pollution in waters listed as impaired under 33 U.S.C. § 1313(d) or  
19           waters contributing to a listed impairment;

20           (2) to provide funding to address water pollution identified as a critical  
21           source of water quality pollution;

1           (3) to provide funding to address or repair conditions that increase the  
2           risk of flooding or pose a threat to life or property; and

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

6           (c) In the first three years of its existence, the Clean Water Fund Board  
7           shall prioritize under subsection (b) of this section recommendation of awards  
8           or assistance to municipalities for municipal compliance with the water quality  
9           requirements.

10          (d) Unexpended balances and any earnings shall remain in the Fund from  
11          year to year.

12          § 1389. CLEAN WATER FUND BOARD

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

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

17               (1) The Secretary of Administration or designee.

18               (2) The Secretary of Natural Resources or designee.

19               (3) The Secretary of Agriculture, Food and Markets or designee.

20               (4) The Secretary of Commerce and Community Development or  
21               designee.

1           (5) The Secretary of Transportation or designee.

2           (6) Three members of the public or the House of Representatives  
3           appointed by the Speaker of the House, each of whom shall be from separate  
4           watersheds of the State. At least one of the members appointed under this  
5           subdivision shall be a municipal official.

6           (7) Three members of the public or the Senate appointed by the  
7           Committee on Committees, each of whom shall be from separate watersheds of  
8           the State. At least one of the members appointed under this subdivision shall  
9           be a municipal official.

10           (8) Two members of the public appointed by the Governor.

11           (c) Officers; committees; rules. The Clean Water Fund Board shall  
12           annually elect a chair from its members. The Clean Water Fund Board may  
13           elect additional officers from its members, establish committees or  
14           subcommittees, and adopt procedural rules as necessary and appropriate to  
15           perform its work.

16           (d) Member terms. Members of the Clean Water Fund Board appointed by  
17           the Governor shall serve initial terms of three years, members appointed by the  
18           Speaker of the House shall serve initial terms of two years, and members  
19           appointed by the Committee on Committees shall serve initial terms of one  
20           year. Thereafter, each of the above appointed members shall serve a term of  
21           three years. A vacancy shall be filled by the appointing authority for the

1 remainder of the unexpired term. An appointed member shall not serve more  
2 than three consecutive three-year terms.

3 (e) Compensation and expense reimbursement.

4 (1) For attendance at meetings during adjournment of the General  
5 Assembly, any legislative members of the Clean Water Fund Board shall be  
6 entitled to per diem compensation and reimbursement of expenses pursuant to  
7 2 V.S.A. § 406.

8 (2) Other members of the Board who are not employees of the State of  
9 Vermont and who are not otherwise compensated or reimbursed for their  
10 attendance shall be entitled to per diem compensation and reimbursement of  
11 expenses pursuant to 32 V.S.A. § 1010, to be paid from the budget of the  
12 Agency of Administration.

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

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

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

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

1           (C) to pursue and accept grants, gifts, donations, or other funding  
2           from any public or private source and to administer such grants, gifts,  
3           donations, or funding consistent with the terms of the grant, gift, or donation.

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

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

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

9           (C) the annual Clean Water Investment Report required under section  
10          1389 of this title.

11          (3) The Clean Water Fund Board shall solicit public comment and  
12          consult with organizations interested in improving water quality in Vermont.

13          (g) The Clean Water Fund Board shall have the administrative, technical,  
14          and legal assistance of the Agency of Administration, the Agency of Natural  
15          Resources, the Agency of Agriculture, Food and Markets, the Agency of  
16          Transportation, and the Agency of Commerce and Community Development  
17          for those issues or services within the jurisdiction of the respective agency.

18          The cost of the services provided by agency staff shall be paid from the budget  
19          of the agency providing the staff services.

1        § 1390. CLEAN WATER INVESTMENT REPORT

2            Beginning on January 15, 2017, and annually thereafter, the Clean Water  
3        Fund Board shall publish a Clean Water Investment Report. The report shall  
4        summarize all investments made by the Clean Water Fund Board and other  
5        State agencies for clean water restoration over the past calendar year. The  
6        report shall include expenditures from the Clean Water Fund, the General  
7        Fund, the Transportation Fund, and any other State expenditures for clean  
8        water restoration, regardless of funding source. The report shall document  
9        progress or shortcomings in meeting established indicators for clean water  
10       restoration. The report may also provide an overview of additional funding  
11       necessary to meet objectives established for clean water restoration and  
12       recommendations for additional revenue to meet those restoration objectives.  
13       The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not  
14       apply to the report required by this section.

15       Sec. 38. 32 V.S.A. § 9602a is added to read:

16       § 9602a. CLEAN WATER SURCHARGE

17            There shall be a surcharge of 0.2 percent on the value of property subject to  
18        the property transfer tax under section 9602 of this title, except that there shall  
19        be no surcharge on the first \$100,000.00 in value of property to be used for the  
20        principal residence of the transferee. The surcharge shall be in addition to any  
21        tax assessed under section 9602 of this title. The surcharge assessed under this

1 section shall be paid, collected, and enforced under this chapter in the same  
2 manner as the tax assessed under section 9602 of this title. The Commissioner  
3 shall deposit the surcharge collected under this section in the Clean Water  
4 Fund under 10 V.S.A. § 1388.

5 Sec. 39. REPEAL OF CLEAN WATER SURCHARGE

6 32 V.S.A. § 9602a (Clean Water Surcharge) shall be repealed on July 1,  
7 2021.

8 \* \* \* Secretary of Administration; Report on Per Parcel Fee \* \* \*

9 Sec. 40. SECRETARY OF ADMINISTRATION REPORT ON A PER

10 PARCEL OR IMPERVIOUS SURFACE WATER QUALITY FEE

11 (a) On or before January 15, 2016, the Secretary of Administration, after  
12 consultation with the Department of Taxes, shall submit to the House  
13 Committee on Fish, Wildlife and Water Resources, the Senate Committee on  
14 Natural Resources and Energy, the House Committee on Agriculture and  
15 Forest Products, the Senate Committee on Agriculture, the House Committee  
16 on Ways and Means, and the Senate Committee on Finance a recommendation  
17 for establishing a fee on parcels of property or impervious surface in the State  
18 for the purpose of raising revenue to fund water quality improvement programs  
19 in the State. The recommendation shall include:

20 (1) a tiered per parcel fee or impervious surface fee that provides for  
21 equitable apportionment among all property owners, including owners of

1 industrial property, commercial property, residential property, or agricultural  
2 lands;

3 (2) an estimate of the amount of revenue to be generated from the  
4 proposed per parcel or impervious surface fee;

5 (3) a summary of how assessment of the proposed fee will be  
6 administered, collected, and enforced; and

7 (4) a legislative proposal to implement the proposed per parcel or  
8 impervious surface fee program.

9 (b) As used in this section, “parcel” shall have the same meaning as defined  
10 in section 4152 of this title.

11 \* \* \* Department of Environmental Conservation Water Quality Fees \* \* \*

12 Sec. 41. 3 V.S.A. § 2822 is amended to read:

13 § 2822. BUDGET AND REPORT; POWERS

14 \* \* \*

15 (i) The Secretary shall not process an application for which the applicable  
16 fee has not been paid unless the Secretary specifies that the fee may be paid at  
17 a different time or unless the person applying for the permit is exempt from the  
18 permit fee requirements pursuant to 32 V.S.A. § 710. ~~In addition, the persons~~  
19 ~~who are exempt under 32 V.S.A. § 710 are also exempt from the application~~  
20 ~~fees for stormwater operating permits specified in subdivisions (j)(2)(A)(iii)(I)~~  
21 ~~and (II) of this section if they otherwise meet the requirements of 32 V.S.A.~~



- 1 (A) Application review fee.
- 2 (i) Municipal, industrial,
- 3 noncontact cooling water, and
- 4 thermal discharges.
- 5 (I) Individual permit: original ~~\$0.0023~~ \$0.003 per gallon
- 6 application; amendment for design flow; minimum
- 7 increased flows; amendment ~~\$50.00~~ \$100.00 per
- 8 for change in treatment process; outfall; maximum
- 9 30,000.00 per application.
- 10 (II) Renewal, transfer, or minor ~~\$0.00~~ \$0.002 per gallon
- 11 amendment of individual permit; design flow; minimum
- 12 \$50.00 per outfall;
- 13 maximum \$5,000.00 per
- 14 application.
- 15 (III) General permit; \$0.00.
- 16 (ii) Pretreatment discharges.
- 17 (I) Individual permit: original ~~\$0.12~~ \$0.20 per gallon
- 18 application; amendment for design flow; minimum
- 19 increased flows; amendment for ~~\$50.00~~ \$100.00 per
- 20 change in treatment process; outfall.

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

- 1 (III) Individual permit or  
2 application to operate under  
3 general permit for construction  
4 activities; original application;  
5 amendment for increased acreage.
- 6 (aa) Projects with low risk to ~~\$50.00~~ five acres or  
7 waters of the State; less: \$100.00 per project;  
8 original application.
- 9 (bb) Projects with low risk to \$220.00 per project.  
10 waters of the State; greater than  
11 five acres:
- 12 (cc) Projects with moderate risk ~~\$360.00~~ five acres  
13 to waters of the State; or less: \$480.00 per  
14 project original  
15 application.
- 16 (cc) ~~Projects that require an~~ ~~\$720.00 per project~~  
17 ~~individual permit.~~ ~~original application.~~
- 18 (dd) Projects with moderate risk \$640.00.  
19 to waters of the State; greater  
20 than five acres:

1                    (ee) Projects that require an            \$1,200.00.  
2                    individual permit; ten acres  
3                    or less:  
4                    (ff) Projects that require an            \$1,800.00.  
5                    individual permit; greater than  
6                    10 acres:  
7                    (IV) Individual permit or            ~~\$220.00~~ \$440.00 per  
8                    application to operate under            facility.  
9                    general permit for stormwater  
10                   runoff associated with industrial  
11                   activities with specified SIC  
12                   codes; original application;  
13                   amendment for change in activities-;  
14                   (V) Individual permit or            ~~\$1,200.00~~ \$2,400.00  
15                   application to operate under            per system.  
16                   general permit for stormwater  
17                   runoff associated with  
18                   municipal separate storm sewer  
19                   systems; original application; amendment  
20                   for change in activities-;

1 (VI) Individual operating permit or application to operate under  
2 a general permit for a residually designated stormwater discharge original  
3 application; amendment; for increased flows amendment; for change in  
4 treatment process.

5 (aa) For discharges to Class B water; ~~\$430.00~~ \$860.00 per  
6 acre of impervious area, minimum ~~\$220.00~~ \$280.00.

7 (bb) For discharges to Class A water; ~~\$1,400.00~~ \$1,700.00  
8 per acre of impervious area, minimum ~~\$1,400.00~~ \$1,700.00.

9 (VII) Renewal, transfer, or \$0.00;  
10 minor amendment of individual  
11 permit ~~or approval under~~  
12 ~~general permit:~~

13 (VIII) Application for coverage \$400.00 per application.  
14 under the municipal roads  
15 stormwater general permit:

16 (IX) Application for coverage \$1,200.00.  
17 under the State roads stormwater  
18 general permit:

19 \* \* \*

20 (B) Annual operating fee.

21 (i) Industrial, noncontact cooling ~~\$0.001~~ \$0.0015 per gallon



1                   Class B waters;:

2                   (III) Individual permit or                   ~~\$80.00~~ \$160.00

3                   approval under general permit                   per facility.

4                   for stormwater runoff from

5                   industrial facilities with

6                   specified SIC codes;:

7                   (IV) Individual permit or                   ~~\$80.00 per system~~

8                   application to operate under                   \$10.00 per acre of

9                   general permit for stormwater                   impervious surface within

10                  runoff associated with municipal                   the municipality; annually.

11                  separate storm sewer systems;:

12                  (V) Individual permit or approval under general permit for

13                  residually designated stormwater discharges.

14                         (aa) For discharges to Class A water; ~~\$255.00~~ \$310.00 per

15                         acre of impervious area, minimum ~~\$255.00~~ \$310.00.

16                         (bb) For discharges to Class B water; ~~\$80.00~~ \$160.00 per

17                         acre of impervious area, minimum ~~\$80.00~~ \$160.00.

18                         (VI) Application to operate under a general permit for

19                         stormwater runoff associated with municipal roads: \$2,000.00 per

20                         authorization annually.





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

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

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

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

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

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

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

20 \* \* \*



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

6           (2) Any project undertaken by a municipality, which is funded in whole  
7 or in part by a grant or loan from the Agency of Natural Resources or the  
8 Agency of Transportation financed by an appropriation of a capital  
9 construction act introduced pursuant to section 701a of this title except for  
10 those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(7)(A) and (B),  
11 (j)(10), (j)(11), and (j)(26). However, all such fees shall be paid for reviews,  
12 inspections, or permits required by municipal solid waste facilities developed  
13 by a solid waste district which serves, or is expected to serve, in whole or in  
14 part, parties located outside its own district boundaries pursuant to 10 V.S.A.  
15 chapter 159.

16       Sec. 43. APPROPRIATIONS FOR AGENCY OF NATURAL RESOURCES

17               STAFF

18           In addition to any other funds appropriated to the Agency of Natural  
19 Resources in fiscal year 2016, there is appropriated from the Environmental  
20 Permit Fund created under 3 V.S.A § 2805 to the Agency of Natural  
21 Resources \$1,312,556.00 in fiscal year 2016 for the purpose of hiring 13

1 positions for implementation of the State water quality initiative, including  
2 implementation of the total maximum daily load plan for Lake Champlain.

3 \* \* \* Wastewater Treatment Plants; Financial Assistance for  
4 Phosphorus Reduction \* \* \*

5 Sec. 44. 10 V.S.A. § 1266a is amended to read:

6 § 1266a. DISCHARGES OF PHOSPHORUS

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

17 (b) Notwithstanding any provision of subsection (a) of this section to the  
18 contrary, the Secretary shall establish effluent phosphorus wasteload  
19 allocations or concentration limits within any drainage basin in Vermont, as  
20 needed to achieve wasteload allocations in a total maximum daily load  
21 document approved by the U.S. Environmental Protection Agency, or as

1 needed to attain compliance with water quality standards adopted by the  
2 Secretary pursuant to chapter 47 of this title.

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

9 Sec. 45. 10 V.S.A. § 1625 is amended to read:

10 § 1625. AWARDS FOR POLLUTION ABATEMENT PROJECTS TO  
11 ABATE DRY WEATHER SEWAGE FLOWS

12 (a) When the Department finds that a proposed water pollution abatement  
13 project is necessary to maintain water quality standards during dry weather  
14 sewage flows, and that the proposed type, kind, quality, size, and estimated  
15 cost, including operation cost and sewage disposal charges, of the project are  
16 suitable for abatement of pollution, and the project or the prescribed project  
17 phases are necessary to meet the intent of the water quality classifications  
18 established by the Secretary or by statute under chapter 47 of this title, the  
19 Department may award to municipalities a State assistance grant of up to  
20 25 percent of the eligible project cost, provided that in no case shall the total of  
21 the State and federal grants exceed 90 percent of the eligible project costs:

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

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

8           (b) In carrying out the purposes of this subchapter, the Department shall  
9           define the purpose and scope of an eligible project, including a determination  
10          of the area to be served, type of treatment, effluent limitations, eligible  
11          construction costs, cost accounting procedures and methods and other such  
12          project construction, operation and fiscal elements necessary to meet federal  
13          aid requirements. The Department shall, as a part of the administration of this  
14          grant program, encourage municipalities to undertake capital development  
15          planning and to establish water and sewer charges along public utility  
16          concepts.

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

20          (d) The Department may award a State assistance grant of up to 50 percent  
21          of the eligible costs of an approved pollution abatement project or a portion



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

14        (b) Acceptable management practices. On or before March 1, 2016, the  
15 Commissioner shall revise by rule the acceptable management practices for  
16 maintaining water quality on logging jobs in Vermont. The revised acceptable  
17 management practices shall be designed to ensure that all logging operations,  
18 on both public and private forestland, are designed to: prevent or minimize  
19 discharges of sediment, petroleum products, and woody debris (logging slash)  
20 from entering streams and other bodies of water; protect aquatic habitat and  
21 aquatic wildlife; and prevent erosion and maintain natural water temperature.

1 The purpose of the acceptable management practices is to provide a guide for  
2 loggers, foresters, and landowners to design logging operations to comply with  
3 the Vermont Water Quality Standards and minimize the potential for a  
4 discharge from logging operations in Vermont in accordance with section 1259  
5 of this title.

6 Sec. 47. DEPARTMENT OF FORESTS, PARKS AND RECREATION  
7 REPORT; ACCEPTABLE MANAGEMENT PRACTICES;  
8 MAPLE SYRUP PRODUCTION UNDER USE VALUE  
9 APPRAISAL

10 On or before March 1, 2016, the Commissioner of Forests, Parks and  
11 Recreation shall submit to the House Committee on Fish, Wildlife and Water  
12 Resources, the Senate Committee on Natural Resources and Energy, and the  
13 House Committee on Natural Resources and Energy a recommendation and  
14 supporting basis as to whether:

15 (1) the acceptable management practices for maintaining water quality  
16 on logging jobs in Vermont should be mandatory for all logging operations on  
17 public and private forestland; and

18 (2) whether maple syrup production on forestland should be required to  
19 enroll in the use value appraisal program under 32 V.S.A. chapter 124 as  
20 managed forestland and not agricultural land.

21 Sec. 48. 10 V.S.A. § 1259(f) is amended to read:

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

12 Sec. 49. 24 V.S.A. § 4413(d) is amended to read:

13 (d) A bylaw under this chapter shall not regulate accepted agricultural ~~and~~  
14 ~~silvicultural~~ practices, including the construction of farm structures, as those  
15 practices are defined by the ~~secretary of agriculture, food and markets~~  
16 Secretary of Agriculture, Food and Markets or the commissioner of forests,  
17 parks and recreation accepted silvicultural activities, including acceptable  
18 management practices for maintaining water quality on logging jobs in  
19 Vermont as adopted by the Commissioner of Forests, Parks and Recreation,  
20 respectively, under 10 V.S.A. §§ ~~1021(f) and 1259(f)~~ § 2622 and 6 V.S.A. §  
21 4810.

1           \* \* \* Eligibility for Ecosystem Restoration Program Assistance \* \* \*

2           Sec. 50. ECOSYSTEM RESTORATION PROGRAM; CLEAN WATER  
3                           FUND; ELIGIBILITY FOR FINANCIAL ASSISTANCE

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

12   \* \* \* Effective Dates \* \* \*

13           Sec. 51. EFFECTIVE DATES

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

15                   (1) Sec. 4 (small farm certification) shall take effect on July 1, 2017;

16                   (2) 6 V.S.A. § 4988(b) of Sec. 19 shall take effect 45 days after the  
17           effective date of rules adopted under 6 V.S.A. § 4988(a).

18                   (3) In Sec. 33, the permit requirements under 10 V.S.A. § 1264(h)(2) for  
19           discharges of regulated stormwater to Lake Champlain or to a water that  
20           contributes to the impairment of Lake Champlain shall take effect on  
21           October 1, 2015.

1           (4) Sec. 37 (Clean Water Fund) shall take effect on passage.

2

3

4           (Committee vote: \_\_\_\_\_)

5

\_\_\_\_\_

6

Representative \_\_\_\_\_

7

FOR THE COMMITTEE