

1 H.752

2 Introduced by Committee on Fish, Wildlife and Water Resources

3 Date:

4 Subject: Conservation and development; water resources; stormwater

5 Statement of purpose: This bill proposes to amend the state permit program
6 for discharges of “regulated stormwater runoff” to recodify the permitting
7 standard for discharges from impervious surfaces to stormwater-impaired
8 waters. The bill also would recodify the statutory section that provides that
9 failure to obtain a pretransition stormwater discharge permit is not an
10 encumbrance on title.

11 An act relating to permitting stormwater discharges in impaired watersheds

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

13 Sec. 1. 10 V.S.A. § 1264 is amended to read:

14 § 1264. STORMWATER MANAGEMENT

15 (a) The general assembly finds that the management of stormwater runoff
16 is necessary to reduce stream channel instability, pollution, siltation,
17 sedimentation, and local flooding, all of which have adverse impacts on the
18 water and land resources of the state. The general assembly intends, by
19 enactment of this section, to reduce the adverse effects of stormwater runoff.

20 The general assembly determines that this intent may best be attained by a

1 process that: assures broad participation; focuses upon the prevention of
2 pollution; relies on structural treatment only when necessary; establishes and
3 maintains accountability; tailors strategies to the region and the locale; assures
4 an adequate funding source; builds broadbased programs; provides for the
5 evaluation and appropriate evolution of programs; is consistent with the federal
6 Clean Water Act and the state water quality standards; and accords appropriate
7 recognition to the importance of community benefits that accompany an
8 effective stormwater runoff management program. In furtherance of these
9 purposes, the secretary shall implement two stormwater permitting programs.

10 The first program is based on the requirements of the federal National
11 Pollutant Discharge Elimination System (NPDES) permit program in
12 accordance with section 1258 of this title. The second program is a state
13 permit program based on the requirements of this section for the discharge of
14 “regulated stormwater runoff” as that term is defined in subdivision (11) of this
15 subsection. As used in this section:

16 (1) “2002 stormwater management manual” means the agency of natural
17 resources’ stormwater management manual dated April 2002, as amended
18 from time to time by rule.

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

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

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

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

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

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

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

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

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

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

20 (12) “Stormwater impact fee” means the monetary charge assessed to a
21 permit applicant for the discharge of regulated stormwater runoff to a

1 stormwater-impaired water that mitigates a sediment load level or hydrologic
2 impact that the discharger is unable to control through on-site treatment or
3 completion of an offset on a site owned or controlled by the permit applicant.

4 (13) “Stormwater-impaired water” means a state water that the secretary
5 determines is significantly impaired by discharges of regulated stormwater
6 runoff.

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

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

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

19 (17) “Watershed improvement permit” means a general permit specific
20 to a stormwater-impaired water that is designed to apply management
21 strategies to existing and new discharges and that includes a schedule of

1 compliance no longer than five years reasonably designed to assure attainment
2 of the Vermont water quality standards in the receiving waters.

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

8 (19) "Net zero standard" means:

9 (A) A new discharge or the expanded portion of an existing discharge
10 meets the requirements of the 2002 stormwater management manual and does
11 not increase the sediment load in the receiving stormwater-impaired water; or

12 (B) A discharge from redevelopment; from an existing discharge
13 operating under an expired stormwater discharge permit where the property
14 owner applies for a new permit; or from any combination of development,
15 redevelopment, and expansion meets on-site the water quality, recharge, and
16 channel protection criteria set forth in Table 1.1 of the 2002 stormwater
17 management manual that are determined to be technically feasible by an
18 engineering feasibility analysis conducted by the agency and if the sediment
19 load from the discharge approximates the natural runoff from an undeveloped
20 field or open meadow that is not used for agricultural activity.

21 * * *

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

2 (A) An individual permit in a stormwater-impaired water for which
3 no TMDL, water quality remediation plan, or watershed improvement permit
4 has been established or issued, provided that the permitted discharge meets the
5 following discharge standard set by rule; prior to the issuance of a general
6 permit to implement a TMDL or a water quality remediation plan, the
7 discharge meets the net-zero standard;

8 (B) An individual permit or a general permit to implement a TMDL
9 or water quality remediation plan in a stormwater-impaired water, provided
10 that the permitted discharge meets the following discharge standard:

11 (i) a new stormwater discharge or the expansion of an existing
12 discharge shall meet the treatment standards for new development and
13 expansion in the 2002 stormwater management manual and any additional
14 requirements deemed necessary by the secretary to implement the TMDL or
15 water quality remediation plan;

16 (ii) for a discharge of regulated stormwater runoff from
17 redeveloped impervious surfaces:

18 (I) the existing impervious surface shall be reduced by
19 20 percent, or a stormwater treatment practice shall be designed to capture and
20 treat 20 percent of the water quality volume treatment standard of the 2002
21 stormwater management manual from the existing impervious surface; and

1 (II) any additional requirements deemed necessary by the
2 secretary to implement the TMDL or the water quality remediation plan;

3 (iii) an existing stormwater discharge shall meet the treatment
4 standards deemed necessary by the secretary to implement a TMDL or a water
5 quality remediation plan;

6 (iv) if a permit is required for an expansion of an existing
7 impervious surface or for the redevelopment of an existing impervious surface,
8 discharges from the expansion or from the redeveloped portion of the existing
9 impervious surface shall meet the relevant treatment standard of the 2002
10 stormwater management manual, and the existing impervious surface shall
11 meet the treatment standards deemed necessary by the secretary to implement a
12 TMDL or the water quality remediation plan;

13 ~~(B)~~(C) A watershed improvement permit, provided that the
14 watershed improvement permit provides reasonable assurance of compliance
15 with the Vermont water quality standards in five years;

16 ~~(C)~~(D) A general or individual permit that is implementing a TMDL
17 or water quality remediation plan; or

18 ~~(D)~~(E) A statewide general permit for new discharges that the
19 secretary deems necessary to assure attainment of the Vermont water quality
20 standards.

1 (2) An authorization to discharge regulated stormwater runoff pursuant
2 to a permit issued under this subsection shall be valid for a time period not to
3 exceed five years. A person seeking to discharge regulated stormwater runoff
4 after the expiration of that period shall obtain an individual permit or coverage
5 under a general permit, whichever is applicable, in accordance with subsection
6 1263(e) of this title.

7 (3) By January 15, 2010, the secretary shall issue a watershed
8 improvement permit, issue a general or individual permit implementing a
9 TMDL approved by the EPA, or issue a general or individual permit
10 implementing a water quality remediation plan for each of the
11 stormwater-impaired waters on the Vermont Year 2004 Section 303(d) List of
12 Waters required by 33 U.S.C. 1313(d). In developing a TMDL or a water
13 quality remediation plan for a stormwater-impaired water, the secretary shall
14 consult “A Scientifically Based Assessment and Adaptive Management
15 Approach to Stormwater Management” and “Areas of Agreement about the
16 Scientific Underpinnings of the Water Resources Board’s Original Seven
17 Questions” set out in appendices A and B, respectively, of the final report of
18 the water resources board’s “Investigation Into Developing Cleanup Plans For
19 Stormwater Impaired Waters, Docket No. Inv-03-01,” issued March 9, 2004.
20 Beginning January 30, 2005 and until a watershed improvement permit,

1 a general or individual permit implementing a TMDL, or a general or
2 individual permit implementing a water quality remediation plan is set for each
3 of the stormwater-impaired waters on the Vermont Year 2004 Section 303(d)
4 List of Waters required by 33 U.S.C. § 1313(d), the secretary shall report
5 annually to the general assembly on agency progress in establishing the
6 watershed improvement permits, TMDLs, and water quality remediation plans
7 for the stormwater-impaired waters of the state; on the accuracy of assessment
8 and environmental efficacy of any stormwater impact fee paid to the state
9 stormwater-impaired waters restoration fund; and on the efforts by the
10 secretary to educate and inform owners of real estate in watersheds of
11 stormwater-impaired waters regarding the requirements of the state
12 stormwater law.

13 (4) Discharge permits issued under this subsection shall require
14 BMP-based stormwater treatment practices. Permit compliance shall be
15 judged on the basis of performance of the terms and conditions of the
16 discharge permit, including construction and maintenance in accordance with
17 BMP specifications. Any permit issued for a new stormwater discharge or for
18 the expanded portion of an existing discharge pursuant to this subsection shall
19 require compliance with BMPs for stormwater collection and treatment
20 established by the 2002 stormwater management manual, and any additional
21 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 * * *

14 Sec. 2. 27 V.S.A. § 613 is added to read:

15 § 613. STORMWATER DISCHARGE PERMITS DURING TRANSITION
16 PERIOD

17 (a) In addition to the following, the definitions found in 10 V.S.A. § 1264
18 apply to this section unless otherwise indicated. As used in this section:

19 (1) “Conveyance” means any conveyance of real property or an interest
20 or estate therein in which recording is required under this title and where the
21 real property is located within an impaired watershed.

1 (2) “Impaired watershed” means a watershed where the receiving water
2 or a segment of the receiving water is a stormwater-impaired water.

3 (3) “Pretransition stormwater discharge permit” means any permit
4 issued by the secretary of natural resources pursuant to 10 V.S.A. § 1264 on or
5 before June 30, 2004 for a discharge of stormwater.

6 (4) “Refinancing” means the refinancing of an existing loan on real
7 property located within an impaired watershed.

8 (5) “Stormwater discharge permit” means any permit or approval issued
9 by the secretary pursuant to 10 V.S.A. § 1264 and rules adopted thereunder on
10 or after July 1, 2004, and includes coverage under any general permit covering
11 stormwater runoff into stormwater-impaired waters.

12 (b) Beginning on July 1, 2004, and notwithstanding any law to the
13 contrary, no encumbrance on record title to real property or effect on
14 marketability of title shall be created by the failure of the holder of real
15 property from which regulated stormwater runoff discharges to an impaired
16 watershed to obtain, renew, or comply with the terms and conditions of a
17 pretransition stormwater discharge permit for a conveyance or refinancing,
18 provided that such holder:

19 (1) Provides a notice of deferral of permit to the secretary of natural
20 resources with a property description, the identity of the impaired watershed,
21 the permit number of any expired pretransition stormwater discharge permit

1 covering the property, and such other information as the secretary may
2 require; and

3 (2) Records in the land records a notice indicating, in an appropriate
4 form to be determined by the secretary of natural resources, that at the time of
5 establishment of a general permit in the impaired watershed where the real
6 property is located, but not later than ~~January 15, 2016~~ *June 30, 2016*, the
7 mortgagor (in the case of a refinancing) or the grantee (in the case of a
8 conveyance) shall be subject to all applicable requirements of the water quality
9 remediation plan, TMDL, or watershed improvement permit established under
10 10 V.S.A. chapter 47.

11 (c) Subsection (b) of this section shall not apply in cases in which, on or
12 after July 1, 2004, the owner of the real property from which regulated
13 stormwater runoff discharges to an impaired watershed to be conveyed or
14 refinanced engages, contracts to engage, or assists the engagement by others in
15 expansion or redevelopment without first obtaining a stormwater discharge
16 permit from the secretary of natural resources pursuant to 10 V.S.A. § 1264
17 and rules adopted thereunder.

18 (d)(1) After July 1, 2004, a purchaser of real property shall have the right to
19 terminate a binding contract for the sale of real property from which regulated
20 stormwater runoff discharges to an impaired watershed if, after a contract for

1 sale has been signed but prior to closing, the purchaser determines and gives
2 written notice to the seller within 30 days of discovery of any of the following:

3 (A) That “expansion” or “redevelopment” as defined in 10 V.S.A.
4 § 1264 occurred on the subject property on or after July 1, 2004 without the
5 seller or other party first obtaining a stormwater discharge permit required
6 pursuant to 10 V.S.A. § 1264 and rules adopted thereunder; or

7 (B) That the seller has failed to renew or comply with the material
8 terms and conditions of any pretransition stormwater discharge permit or
9 stormwater discharge permit; or

10 (C) That the seller has failed to comply with the notice requirements
11 of subsection (b) of this section.

12 (2) Following the receipt of written notice, the seller shall have 30 days,
13 unless the parties agree to a shorter or longer period, either to obtain a
14 stormwater discharge permit or to take reasonable steps to demonstrate
15 compliance with the terms and conditions of a stormwater discharge permit. If
16 the seller does not obtain the required stormwater discharge permit or comply
17 with the terms of a stormwater discharge permit, the purchaser may terminate
18 the contract if, as an owner or occupant of the property, the purchaser may be
19 subject to an enforcement action under 10 V.S.A. § 1274.

20 (e) This section shall not apply to any impaired watershed for which the
21 secretary of natural resources has issued a watershed improvement permit,

1 issued an individual permit under a total maximum daily load approved by the
2 U.S. Environmental Protection Agency, issued a general permit implementing
3 a total maximum daily load approved by the U.S. Environmental Protection
4 Agency, or issued a general or individual permit implementing a water quality
5 remediation plan.

6 Sec. 3. REPEAL

7 27 V.S.A. § 613 (stormwater discharges during transition period;
8 encumbrance on title) shall be repealed on June 30, 2016.

9 Sec. 4. AGENCY OF NATURAL RESOURCES REPORT; INTERIM

10 STORMWATER PERMITTING AUTHORITY

11 On or before January 15, 2016, the secretary of natural resources shall
12 report to the house committee on fish, wildlife and water resources and the
13 senate committee on natural resources and energy with a recommendation as to
14 whether 27 V.S.A. § 613 (encumbrance on title; failure to obtain a
15 pretransition stormwater discharge permit) and other statutory authority
16 regarding the regulation of stormwater should be amended, repealed, or the
17 date of repeal extended. The report shall include a summary of the basis for
18 the secretary's recommendation.

19 Sec. 5. EFFECTIVE DATE

20 This act shall take effect on January 15, 2012.