

## SENATE PROPOSAL OF AMENDMENT

### H. 35

An act relating to improving the quality of State waters

The Senate proposes to the House to amend the bill by striking out all after the enacting clause and inserting in lieu thereof the following:

\* \* \* Findings and Purpose \* \* \*

#### Sec. 1. FINDINGS AND PURPOSE

(a) Findings. The General Assembly finds that:

(1) Within the borders of Vermont there are 7,100 miles of rivers and streams and 812 lakes and ponds of at least five acres in size.

(2) Vermont's surface waters are vital assets that provide the citizens of the State with clean water, recreation, and economic opportunity.

(3) The federal Clean Water Act and the Vermont Water Quality Standards require that waters in the State shall not be degraded.

(4) To prevent degradation of waters and to preserve the uses, benefits, and values of the lakes, rivers, and streams of Vermont, the Vermont Water Quality Standards provide that it is the policy of the State to prevent, abate, or control all activities harmful to water.

(5) Despite the State and federal mandates to maintain and prevent degradation of State waters, multiple lakes, rivers, and streams in all regions of the State are impaired, at risk of impairment, or subject to water quality stressors, as indicated by the fact that:

(A) there are 81 waters or segments of waters in the State that are impaired and require a total maximum daily load (TMDL) plan;

(B) there are 114 waters or segments of waters in the State that are impaired and that have been issued a TMDL;

(C) there are at least 115 waters or water segments in the State that are stressed, meaning that there is one or more factor or influence that prohibits the water from maintaining a higher quality; and

(D) there are at least 56 waters in the State that are altered due to aquatic nuisance species, meaning that one or more of the designated uses of the water is prohibited due to the presence of aquatic nuisance species.

(6) Impairments and other alterations of water can significantly limit how a water is used and whether it can maintained for traditional uses. For example:

(A) aquatic life is only fully supported in 59 percent of the State's inland lakes; and

(B) swimming is only fully supported on 76 percent of the State's inland lakes.

(7) Without State action to improve the quality of State waters and prevent further degradation of the quality of existing waters, the State of Vermont will be at risk of losing the valuable, if not necessary functions and uses that the State's waters provide;

(8) Sufficiently addressing, improving, and forestalling degradation of water quality in the State in a sustainable and effective manner will be expensive and the burden of the expense will be felt by all citizens of the State, but without action the economic, cultural, and environmental losses to the State will be immeasurable;

(9) To protect the waters of the State and preserve the quality of life of the citizens of Vermont, the State of Vermont should:

(A) fully implement the antidegradation implementation policy in the Vermont Water Quality Standards;

(B) enhance, implement, and enforce regulatory requirements for water quality, and

(C) sufficiently and sustainably finance all water quality programs within the State.

(b) Purpose. It is the purpose of this act to:

(1) manage and regulate the waters of the State so that water quality is improved and not degraded;

(2) manage and plan for the use of State waters and development in proximity to State waters in manner that minimizes damage from and allows for rapid recovery from flooding events;

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

(4) identify and prioritize areas in the State where there is the greatest need to act in order to protect, maintain, or improve water quality;

(5) engage all municipalities, agricultural operations, businesses, and other interested parties as part of the State's efforts to improve the quality of the waters of the State; and

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

\* \* \* Agricultural Water Quality;  
Definitions \* \* \*

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

§ 4802. ~~DEFINITION~~ DEFINITIONS

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

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

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

(3) “Healthy soil” means soil that has a well-developed, porous structure, is chemically balanced, supports diverse microbial communities, and has abundant organic matter.

(4) “Manure” means livestock waste in solid or liquid form that may also contain bedding, spilled feed, water, or soil.

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

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

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

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

\* \* \* Agricultural Water Quality; Small Farm Certification \* \* \*

Sec. 3. 6 V.S.A. subchapter 5a is added to read:

Subchapter 5a. Small Farm Certification

§ 4871. SMALL FARM CERTIFICATION

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

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

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

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

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

(b) Required small farm certification. Beginning on July 1, 2017, a person who owns or operates a small farm shall, on a form provided by the Secretary, certify compliance with the required agricultural practices. The Secretary of Agriculture, Food and Markets shall establish the requirements and manner of certification of compliance with the required agricultural practices, provided that the Secretary shall require an owner or operator of a farm to submit an annual certification of compliance with the required agricultural practices.

(c) Certification due to water quality threat. The Secretary may require any person who owns or operates a farm to submit a small farm certification under this section if the person is not required to obtain a permit or submit a certification under this chapter and the Secretary determines that the farm poses a threat of discharge to a water of the State or presents a threat of contamination to groundwater. The Secretary may waive a small farm certification required under this subsection upon a determination that the farm no longer poses a threat of discharge to a water of the State or no longer presents a threat of contamination to groundwater.

(d) Rulemaking; small farm certification. On or before July 1, 2016, the Secretary of Agriculture, Food and Markets shall adopt by rule requirements for a small farm certification of compliance with the required agricultural practices. The rules required by this subsection shall be adopted as part of the required agricultural practices under section 4810 of this title.

(e) Small farm inspection. The Secretary may inspect a small farm in the State at any time for the purposes of assessing compliance by the small farm with the required agricultural practices and determining consistency with a certification of compliance submitted by the person who owns or operates the small farm. The Secretary may prioritize inspections of small farms in the State based on identified water quality issues posed by a small farm. The Secretary shall adopt by rule, as part of the required agricultural practices, the required frequency of inspection of small farms.

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

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

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

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

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

§ 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION

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

(1) Specify those farms that:

(A) are required to comply with the small certification requirements under section 4871 of this title due to the potential impact of the farm or type of farm on water quality as a result of livestock managed on the farm, agricultural inputs used by the farm, or tillage practices on the farm; and

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

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

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

(ii) on lands in a floodway or otherwise subject to annual flooding.

(B) In no case shall manure stacking or piling sites, fertilizer storage, or other nutrient storage be located within 200 feet of a private well or within 200 feet of a water of the State, provided that the Secretary may authorize siting within 200 feet, but not less than 100 feet, of a private well or surface water if the Secretary determines that a manure stacking or piling site, fertilizer storage, or other nutrient storage will not have an adverse impact on groundwater quality or a surface water quality.

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

(4) Establish standards for nutrient management on farms, including:

(A) required nutrient management planning on all farms that manage agricultural wastes; and

(B) recommended practices for improving and maintaining soil quality and healthy soils in order to increase the capacity of soil to retain water, improve flood resiliency, reduce sedimentation, reduce reliance on fertilizers and pesticides, and prevent agricultural stormwater runoff.

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

(6)(A) Require a farm to comply with standards established by the Secretary for maintaining a vegetative buffer zone of perennial vegetation between annual croplands and the top of the bank of an adjoining water of the State. At a minimum the vegetative buffer standards established by the Secretary shall prohibit the application of manure on the farm within 25 feet of the top of the bank of an adjoining water of the State or within 10 feet of a ditch that is not a surface water under State law and that is not a water of the United States under federal law.

(B) Establish standards for site-specific vegetative buffers that adequately address water quality needs based on consideration of soil type, slope, crop type, proximity to water, and other relevant factors.

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

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

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

(10) Establish standards for soil conservation practices such as cover cropping.

(11) Allow for alternative techniques or practices, approved by the Secretary, for compliance by an owner or operator of a farm when the owner or operator cannot comply with the requirements of the required agricultural practices due to site-specific conditions. Approved alternative techniques or practices shall meet State requirements to reduce adverse impacts to water quality.

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

#### Sec. 5. REPORT ON MANAGEMENT OF SUBSURFACE TILE DRAINAGE

(a) The Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources, after consultation with the U.S. Department of Agriculture's Natural Resource Conservation Service, shall submit a joint report to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, the House Committee on Agriculture and Forest Products, and the Senate Committee on Agriculture regarding the status of current, scientific research relating to the environmental management of subsurface agriculture tile drainage and how subsurface agriculture tile drainage contributes to nutrient loading of surface waters. The report shall include a recommendation from the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources regarding how best to manage subsurface agriculture tile drainage in the State in order to mitigate and prevent the contribution of tile drainage to waters of the State.

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

Secretary of Natural Resources shall submit the final report required by this section on or before January 15, 2017.

\* \* \* Agricultural Water Quality; Permit Fees \* \* \*

Sec. 5a. 6 V.S.A. § 4803 is added to read:

§ 4803. AGRICULTURAL WATER QUALITY SPECIAL FUND

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

(b) The Secretary may use monies deposited in the Fund for the Secretary's implementation and administration of agricultural water quality programs or requirements established by this chapter, including to pay salaries of Agency staff necessary to implement the programs and requirements of this chapter.

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

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

§ 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

(a) No person shall, without a permit from the ~~secretary~~ Secretary, construct a new barn, or expand an existing barn, designed to house more than 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves, 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens or broilers with a liquid manure handling system, 82,000 laying hens without a liquid manure handling system, 125,000 chickens other than laying hens without a liquid manure handling system, 5,000 ducks with a liquid manure handling system, or 30,000 ducks without a liquid manure handling system. No permit shall be required to replace an existing barn in use for livestock or domestic fowl production at its existing capacity. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets, in consultation with the ~~secretary of natural resources~~ Secretary of Natural Resources, shall review any application for a permit under this section with regard to water quality impacts and, prior to approval of a permit under this subsection, shall issue a written determination regarding whether the applicant has established that there will be no unpermitted discharge to waters of the ~~state~~ State pursuant to the federal regulations for concentrated animal feeding operations. If upon review of an application for a permit under this subsection, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets determines that the permit applicant may be discharging to waters of the ~~state~~ State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural



Resources shall respond to the discharge in accordance with the memorandum of understanding regarding concentrated animal feeding operations under ~~subsection 4810(b)~~ section 4810 of this title. ~~The secretary of natural resources~~ Secretary of Natural Resources may require a large farm to obtain a permit under 10 V.S.A. § 1263 pursuant to federal regulations for concentrated animal feeding operations.

\* \* \*

(h) The Secretary may inspect a farm permitted under this section at any time, but no less frequently than once per year.

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

Sec. 7. 6 V.S.A. § 4858 is amended to read:

§ 4858. ANIMAL WASTE PERMITS MEDIUM FARM OPERATION PERMITS

(a) No person shall operate a medium farm without authorization from the ~~secretary~~ Secretary pursuant to this section. Under exceptional conditions, specified in subsection ~~(e)~~(d) of this section, authorization from the ~~secretary~~ Secretary may be required to operate a small farm.

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

\* \* \*

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

(3) Each general permit issued pursuant to this section shall have a term of no more than five years. Prior to the expiration of each general permit, the ~~secretary~~ Secretary shall review the terms and conditions of the general permit and may issue subsequent general permits with the same or different conditions as necessary to carry out the purposes of this subchapter. Each general permit shall include provisions that require public notice of the fact that a medium farm has sought coverage under a general permit adopted pursuant to this section. Each general permit shall provide a process by which interested persons can obtain detailed information about the nature and extent of the activity proposed to receive coverage under the general permit. The Secretary

may inspect each farm seeking coverage under the general permit at any time, but no less frequently than once every three years.

(c)(1) Medium farm general permit. The owner or operator of a medium farm seeking coverage under a general permit adopted pursuant to this section shall certify to the ~~secretary~~ Secretary within a period specified in the permit, and in a manner specified by the ~~secretary~~ Secretary, that the medium farm does comply with permit requirements regarding an adequately sized and designed manure management system to accommodate the wastes generated and a nutrient management plan to dispose of wastes in accordance with ~~accepted~~ required agricultural practices adopted under this chapter. Any certification or notice of intent to comply submitted under this subdivision shall be kept on file at the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food and Markets. The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets, in consultation with the ~~secretary of natural resources~~ Secretary of Natural Resources, shall review any certification or notice of intent to comply submitted under this subdivision with regard to the water quality impacts of the medium farm for which the owner or operator is seeking coverage, and, within 18 months of receiving the certification or notice of intent to comply, shall verify whether the owner or operator of the medium farm has established that there will be no unpermitted discharge to waters of the ~~state~~ State pursuant to the federal regulations for concentrated animal feeding operations. If upon review of a medium farm granted coverage under the general permit adopted pursuant to this subsection, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets determines that the permit applicant may be discharging to waters of the ~~state~~ State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall respond to the discharge in accordance with the memorandum of understanding regarding concentrated animal feeding operations under ~~subsection 4810(b)~~ section 4810 of this title.

\* \* \*

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

Sec. 8. [Deleted.]

Sec. 9. 6 V.S.A. § 328 is amended to read:

§ 328. TONNAGE REPORTING

(a) Every person who registers a commercial feed pursuant to the provisions of this chapter shall report to the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food and Markets annually the total amount of

combined feed which is distributed within the ~~state~~ State and which is intended for use within the ~~state~~ State. The report shall be made on forms and in a manner to be prescribed ~~by rules~~ by the ~~secretary~~ Secretary for calendar years ~~1986~~ 2016 and ~~1987~~ 2017.

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

Sec. 10. 6 V.S.A. § 366 is amended to read:

§ 366. TONNAGE FEES

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

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

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

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

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

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

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

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

(1) Persons distributing any fertilizer in the State shall report annually on or before January 15 for the previous year ending December 31 to the Secretary revealing the amounts of each grade of fertilizer and the form in

which the fertilizer was distributed within this State. Each report shall be accompanied with payment of the fees under this section and written permission allowing the Secretary to examine the person's books for the purpose of verifying tonnage reports.

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

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

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

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

Sec. 11. 6 V.S.A. § 918 is amended to read:

#### § 918. REGISTRATION

(a) Every economic poison which is distributed, sold, or offered for sale within this State or delivered for transportation or transported in intrastate commerce or between points within this State through any point outside this State shall be registered in the Office of the Secretary, and such registration shall be renewed annually; provided, that products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements during the current period of registration. It is further provided that any economic poison imported into this State, which is subject to the provisions of any federal act providing for the registration of economic poisons and which has been duly registered under the provisions of this chapter, may, in the discretion of the Secretary, be exempted from registration under this chapter, when sold or distributed in the unbroken immediate container in which it was originally shipped. The registrant shall file with the Secretary a statement including:

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

(2) The name of the economic poison.

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

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

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

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

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

§ 4810. AUTHORITY; COOPERATION; COORDINATION

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

~~(1)(b) "Accepted Agricultural Practices"~~ (b) Required Agricultural Practices (RAPs) shall be management standards to be followed in conducting agricultural activities by all persons engaged in farming in this state ~~State~~. These standards shall address activities which have a potential for causing agricultural pollutants to enter the groundwater and waters of the ~~state~~ State, including dairy and other livestock operations plus all forms of crop and nursery operations and on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock and poultry slaughter and processing activities. The ~~AAPs~~ RAPs shall include, as well as promote and encourage, practices for farmers in preventing agricultural pollutants from entering the groundwater and waters of the ~~state~~ State when engaged in, ~~but not limited to,~~ animal waste management and

disposal, soil amendment applications, plant fertilization, and pest and weed control. Persons engaged in farming, ~~as defined in 10 V.S.A. § 6001,~~ who ~~follow~~ are in compliance with these practices shall be presumed to be in compliance with water quality standards to not have a discharge of agricultural pollutants to waters of the State. AAPs ~~RAPs~~ shall be designed to protect water quality and shall be practical and ~~cost-effective~~ cost-effective to implement, as determined by the Secretary. Where the Secretary determines, after inspection of a farm, that a person engaged in farming is complying with the RAPs but there still exists the potential for agricultural pollutants to enter the waters of the State, the Secretary shall require the person to implement additional, site-specific on-farm conservation practices designed to prevent agricultural pollutants from entering the waters of the State. When requiring implementation of a conservation practice under this subsection, the Secretary shall inform the person engaged in farming of the resources available to assist the person in implementing the conservation practice and complying with the requirements of this chapter. The AAPs ~~RAPs~~ for groundwater shall include a process under which the agency Agency shall receive, investigate, and respond to a complaint that a farm has contaminated the drinking water or groundwater of a property owner. A farmer may petition the Secretary to reduce the size of a perennial buffer or change the perennial buffer type based on site-specific conditions.

~~(2)(c) Best Management Practices. “Best Management Practices” (BMPs) may be required by the secretary on a case by case basis. Before requiring BMPs, the secretary shall determine that sufficient financial assistance is available to assist farmers in achieving compliance with applicable BMPs. Best management practices (BMPs) are site-specific on-farm conservation practices implemented in order to address the potential for agricultural pollutants to enter the waters of the State. The Secretary may require any person engaged in farming to implement a BMP. When requiring implementation of a BMP, the Secretary shall inform a farmer of financial resources available from State or federal sources, private foundations, public charities, or other sources, including funding from the Clean Water Fund established under 10 V.S.A. § 1388, to assist the person in implementing BMPs and complying with the requirements of this chapter. BMPs shall be practical and cost effective to implement, as determined by the Secretary, and shall be designed to achieve compliance with the requirements of this chapter. The Secretary may require soil monitoring or innovative manure management as a BMP under this subsection. Soil monitoring or innovative manure management implemented as a BMP shall be eligible for State assistance under the Clean Water Fund established under 10 V.S.A. chapter 47, subchapter 7. If a perennial buffer of trees or other woody vegetation is required as a BMP, the Secretary shall pay the farmer for a first priority easement on the land on which the buffer is located.~~

~~(b)~~(e) Cooperation and coordination. ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the ~~secretary of natural resources~~ Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for reducing and eliminating agricultural non-point source pollutants and discharges from concentrated animal feeding operations. ~~The secretary of agriculture, food and markets~~ On or before July 1, 2016, the Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall ~~develop a~~ revise the memorandum of understanding for the non-point program describing program administration, grant negotiation, grant sharing, and how they will coordinate watershed planning activities to comply with Public Law 92-500. The memorandum of understanding shall describe how the agencies will implement the antidegradation implementation policy, including how the agencies will apply the antidegradation implementation policy to new sources of agricultural non-point source pollutants. ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of the agency of natural resources~~ Secretary of Natural Resources shall also develop a memorandum of understanding according to the public notice and comment process of 10 V.S.A. § 1259(i) regarding the implementation of the federal concentrated animal feeding operation program and the relationship between the requirements of the federal program and the ~~state~~ State agricultural water quality requirements for large, medium, and small farms under this chapter ~~215 of this title~~. The memorandum of understanding shall describe program administration, permit issuance, an appellate process, and enforcement authority and implementation. The memorandum of understanding shall be consistent with the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. The allocation of duties under this chapter between the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall be consistent with the ~~secretary's~~ Secretary's duties, established under the provisions of 10 V.S.A. § 1258(b), to comply with Public Law 92-500. ~~The secretary of natural resources~~ Secretary of Natural Resources shall be the ~~state~~ State lead person in applying for federal funds under Public Law 92-500, but shall consult with the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets during the process. The agricultural non-point source program may compete with other programs for competitive watershed projects funded from federal funds. ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall be represented in reviewing these projects for funding. Actions by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets under this chapter concerning agricultural non-point source pollution shall be consistent with the water quality standards and water pollution control requirements of 10 V.S.A.

chapter 47 of Title 10 and the federal Clean Water Act as amended. In addition, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the ~~secretary of natural resources~~ Secretary of Natural Resources in implementing and enforcing programs, plans, and practices developed for the proper management of composting facilities when those facilities are located on a farm. On or before January 15, 2016, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall each develop three separate measures of the performance of the agencies under the memorandum of understanding required by this subsection. Beginning on January 15, 2017, and annually thereafter, the Secretary of Agriculture, Food and Markets and the Secretary of Natural Resources shall submit separate reports to the Senate Committee on Agriculture, the House Committee on Agriculture and Forest Products, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources regarding the success of each agency in meeting the performance measures for the memorandum of understanding.

Sec. 13. LEGISLATIVE COUNCIL STATUTORY REVISION  
AUTHORITY; REQUIRED AGRICULTURAL PRACTICES

The Office of Legislative Council, in its statutory revision capacity, is directed to make amendments to the cumulative supplements of the Vermont Statutes Annotated to change the terms “accepted agricultural practices” to “required agricultural practices” and “AAPs” to “RAPs” where appropriate. These changes shall also be made when new legislation is proposed or when there is a republication of the Vermont Statutes Annotated.

Sec. 14. 6 V.S.A. § 4813 is amended to read:

§ 4813. BASIN MANAGEMENT; APPEALS TO THE ~~WATER RESOURCES BOARD~~ ENVIRONMENTAL DIVISION

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



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

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

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

Sec. 15. 6 V.S.A. chapter 215, subchapter 8 is added to read:

Subchapter 8. Agricultural Water Quality Training

§ 4981. AGRICULTURAL WATER QUALITY TRAINING

(a) On or before July 1, 2016, as part of the revisions of the required agricultural practices, the Secretary of Agriculture, Food and Markets shall adopt by rule requirements for training classes or programs for owners or operators of small farms, medium farms, or large farms certified or permitted under this chapter regarding:

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

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

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

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

(2) the management practices and technical and financial resources available to assist in compliance with statutory or regulatory agricultural requirements;

(3) the land application of manure or nutrients, methods or techniques to minimize the runoff of land-applied manure or nutrients to waters of the State; and identification of weather or soil conditions that increase the risk of runoff of land-applied manure or nutrients to waters of the State; and

(4) standards required for nutrient management, including nutrient management planning.

(c) The Secretary shall include the training required by this section as a condition of a large farm permit, medium farm permit, or small farm certification required under this chapter. The Secretary may phase in training requirements under this section based on farm size, permit or certification category, or available staffing. On or before July 1, 2017, the Secretary shall establish a schedule by which all owners or operators of small farms, medium farms, or large farms shall complete the training required by this section.

(d) The Secretary may approve or authorize the training required by this section to be conducted by other entities, including the University of Vermont Extension Service and the natural resources conservation districts.

(e) The Secretary shall not charge the owner or operator of a large, medium, or small farm for the training required by this section. The Secretary shall pay for the training required under this section from funds available to the Agency of Agriculture, Food and Markets for water quality initiatives.

\* \* \* Agricultural Water Quality;  
Certification of Custom Applicators \* \* \*

Sec. 16. 6 V.S.A. chapter 215, subchapter 9 is added to read:

Subchapter 9. Certification of Custom Applicators of Manure or Nutrients

§ 4987. DEFINITIONS

As used in this subchapter, “custom applicator” means a person who is engaged in the business of applying manure or nutrients to land and who charges or collects other consideration for the service. Custom applicator shall include full-time employees of a person engaged in the business of applying manure or nutrients to land, when the employees apply manure or nutrients to land.

§ 4988. CERTIFICATION OF CUSTOM APPLICATOR

(a) On or before July 1, 2016, as part of the revision of the required agricultural practices, the Secretary of Agriculture, Food and Markets shall adopt by rule a process by which a custom applicator shall be certified to operate within the State. The certification process shall require a custom applicator to complete eight hours of training over each five-year period regarding:

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

(2) identification of weather or soil conditions that increase the risk of runoff of land-applied manure or nutrients to waters of the State.

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

(c) A custom applicator certified under this section shall train seasonal employees in methods or techniques to minimize runoff to surface waters and to identify weather or soil conditions that increase the risk of runoff. A custom applicator that trains a seasonal employee under this subsection shall be liable for damages done and liabilities incurred by a seasonal employee who improperly applies manure or nutrients.

(d) The requirements of this section shall not apply to an owner or operator of a farm applying manure or nutrients to a field that he or she owns or controls, provided that the owner or operator has completed the agricultural water quality training required under section 4981 of this title.

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

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

#### Subchapter 10. Enforcement

##### § 4991. PURPOSE

The purpose of this subchapter is to provide the Secretary of Agriculture, Food and Markets with the necessary authority to enforce the agricultural water quality requirements of this chapter. When the Secretary of Agriculture, Food and Markets determines that a person subject to the requirements of the chapter is violating a requirement of this chapter, the Secretary shall respond to and require discontinuance of the violation. The Secretary may respond to a violation of the requirements of this chapter by:

- (1) issuing a corrective action order under section 4992 of this title;
- (2) issuing a cease and desist order under section 4993 of this title;
- (3) issuing an emergency order under section 4993 of this title;
- (4) revoking or conditioning coverage under a permit or certification under section 4994 of this title;
- (5) bringing a civil enforcement action under section 4995 of this title;
- (6) referring the violation to the Secretary of Natural Resources for enforcement under 10 V.S.A. chapter 201; or
- (7) pursuing other action, such as consulting with a farmer, within the authority of the Secretary to assure discontinuance of the violation and remediation of any harm caused by the violation.

##### § 4992. CORRECTIVE ACTIONS; ADMINISTRATIVE ENFORCEMENT

(a) When the Secretary of Agriculture, Food and Markets receives a complaint and determines that a farmer is in violation of the requirements of

this chapter, rules adopted under this chapter, or a permit or certification issued under this chapter, the Secretary shall notify the farmer of the complaint, including the alleged violation. The Secretary shall not be required to identify the source of the complaint.

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

(1) a description of the alleged violation;

(2) identification of this section;

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

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

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

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

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

#### § 4993. ADMINISTRATIVE ENFORCEMENT; CEASE AND DESIST ORDERS; EMERGENCY ORDERS

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

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

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

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

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

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

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

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

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

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

#### § 4994. PERMIT OR CERTIFICATION; REVOCATION; ENFORCEMENT

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

§ 4995. CIVIL ENFORCEMENT

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

(b) The Court may grant temporary and permanent injunctive relief, and may:

(1) Enjoin future activities.

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

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

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

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

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

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

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

(A) a violation exists; or

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

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

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

(e)(1) In determining the amount of the penalty provided in subsection (b) of this section, the Court shall consider the following:

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

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

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

(D) the respondent's record of compliance;

(E) the deterrent effect of the penalty;

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

(G) the length of time the violation has existed.

(2) In determining the amount of the penalty provided in subsection (b) of this section, the Court may consider additional relevant factors.

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

#### § 4996. APPEALS; ENFORCEMENT

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

(b) If the Secretary issues an emergency order under this chapter, the person subject to the order may request a hearing before the Civil Division of Superior Court. Notice of the request for hearing under this subdivision shall be filed with the Civil Division of Superior Court and the Secretary within five days of receipt of the order. A hearing on the emergency order shall be held at the earliest possible time and shall take precedence over all other hearings.

The hearing shall be held within five days of receipt of the notice of the request for hearing. A request for hearing on an emergency order shall not stay the order. The Civil Division of the Superior Court shall issue a decision within five days from the conclusion of the hearing, and no later than 30 days from the date the notice of request for hearing was received by the person subject to the order.

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

Sec. 18. 6 V.S.A. § 4812 is amended to read:

§ 4812. ~~CORRECTIVE ACTIONS~~

~~(a) When the Secretary of Agriculture, Food and Markets determines that a person engaged in farming is managing a farm using practices which are inconsistent with the requirements of this chapter or rules adopted under this subchapter, the Secretary may issue a written warning which shall be served in person or by certified mail, return receipt requested. The warning shall include a brief description of the alleged violation, identification of this statute and applicable rules, a recommendation for corrective actions that may be taken by the person, along with a summary of federal and State assistance programs which may be utilized by the person to remedy the violation. The person shall have 30 days to respond to the written warning and shall provide an abatement schedule for curing the violation and a description of the corrective action to be taken to cure the violation. If the person fails to respond to the written warning within this period or to take corrective action to change the practices, the Secretary may act pursuant to subsection (b) of this section in order to protect water quality.~~

~~(b) The Secretary may:~~

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

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

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

~~(d) [Repealed.]~~

~~(e) Any person subject to an enforcement order or an administrative penalty who is aggrieved by the final decision of the Secretary may appeal to~~



~~the Superior Court within 30 days of the decision. The administrative judge may specially assign an Environmental judge to Superior Court for the purpose of hearing an appeal. [Repealed.]~~

Sec. 19. 6 V.S.A. § 4854 is amended to read:

§ 4854. ~~REVOCATION; ENFORCEMENT~~

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

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

§ 4860. ~~REVOCATION; ENFORCEMENT~~

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

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

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

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

Sec. 21. 10 V.S.A. § 8003 is amended to read:

(d) Upon the request of the Secretary of Agriculture, Food and Markets, the Secretary may take action under this chapter to enforce the agricultural water quality requirements of, rules adopted under, and permits and certifications issued under 6 V.S.A. chapter 215. The Secretary of Natural Resources and the Secretary of Agriculture, Food and Markets shall enter into a memorandum of understanding to implement this subsection.

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

Sec. 22. 10 V.S.A. § 1021 is amended to read:

#### § 1021. ALTERATION PROHIBITED; EXCEPTIONS

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

\* \* \*

~~(f) This subchapter shall not apply to accepted agricultural or silvicultural practices, as defined by the Secretary of Agriculture, Food and Markets, or the Commissioner of Forests, Parks and Recreation, respectively:~~

(1) accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; or

(2) a farm that is implementing an approved U.S. Department of Agriculture Natural Resource Conservation Service streambank stabilization project or a streambank stabilization project approved by the Secretary of Agriculture, Food and Markets that is consistent with policies adopted by the Secretary of Natural Resources to reduce fluvial erosion hazards.

\* \* \*

\* \* \* Use Value Appraisal; Compliance with Agricultural Water Quality Requirements \* \* \*

Sec. 23. 32 V.S.A. § 3756(i) is amended to read:

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

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

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

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

(B) The Director shall notify the owner that agricultural land or a farm building has been removed from use value appraisal by mailing notification of removal to the owner or operator's last and usual place of abode. After removal of agricultural land or a farm building from use value appraisal under this section, the Director shall not consider a new application for use value appraisal for the agricultural land or farm building until the Secretary of Agriculture, Food and Markets submits to the Director a certification that the owner or operator of the agricultural land or farm building is complying with the water quality requirements of 6 V.S.A. chapter 215 or an order issued under 6 V.S.A. chapter 215. After submission of a certification by the Secretary of Agriculture, Food and Markets, an owner or operator shall be eligible to apply for enrollment of the agricultural land or farm building according to the requirements of section 3756 of this title.

Sec. 24. 32 V.S.A. § 3758 is amended to read:

§ 3758. APPEALS

(a) Whenever the Director denies in whole or in part any application for classification as agricultural land or managed forestland or farm buildings, or

grants a different classification than that applied for, or the Director or assessing officials fix a use value appraisal or determine that previously classified property is no longer eligible or that the property has undergone a change in use, the aggrieved owner may appeal the decision of the Director to the Commissioner within 30 days of the decision, and from there to Superior Court in the county in which the property is located.

\* \* \*

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

Sec. 25. 32 V.S.A. § 3752(5) is amended to read:

(5) “Development” means, for the purposes of determining whether a land use change tax is to be assessed under section 3757 of this chapter, the construction of any building, road, or other structure, or any mining, excavation, or landfill activity. “Development” also means the subdivision of a parcel of land into two or more parcels, regardless of whether a change in use actually occurs, where one or more of the resulting parcels contains less than 25 acres each; but if subdivision is solely the result of a transfer to one or more of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of the transferor, or to the surviving spouse of any of the foregoing, then “development” shall not apply to any portion of the newly created parcel or parcels which qualifies for enrollment and for which, within 30 days following the transfer, each transferee or transferor applies for reenrollment in the use value appraisal program. “Development” also means the cutting of timber on property appraised under this chapter at use value in a manner contrary to a forest or conservation management plan as provided for in subsection 3755(b) of this title during the remaining term of the plan, or contrary to the minimum acceptable standards for forest management if the plan has expired; or a change in the parcel or use of the parcel in violation of the conservation management standards established by the Commissioner of Forests, Parks and Recreation. “Development” also means notification of the Director by the Secretary of Agriculture, Food and Markets under section 3756 of this title that the owner or operator of agricultural land or a farm building is violating the water quality requirements of 6 V.S.A. chapter 215 or is failing to comply with the terms of an order issued under 6 V.S.A. chapter 215, subchapter 10. The term “development” shall not include the construction, reconstruction, structural alteration, relocation, or enlargement of any building, road, or other structure for farming, logging, forestry, or conservation purposes, but shall include the subsequent commencement of a use of that building, road, or structure for other than farming, logging, or forestry purposes.

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

Sec. 26. 10 V.S.A. § 1253 is amended to read:

§ 1253. CLASSIFICATION OF WATERS DESIGNATED,  
RECLASSIFICATION

\* \* \*

(d)(1) ~~The~~ Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and natural resource conservation districts, shall revise all 47 15 basin plans by January 1, 2006, and update them every five years thereafter the basin plans on a five-year rotating basis. On or before January 1 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forest Products, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. By January 1, 1993, the Secretary shall prepare an overall management plan to ensure that the water quality standards are met in all State waters. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

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

(A) identify waters that should be reclassified as Class A waters or outstanding resource waters;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

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

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

(F) provide education to municipal officials and citizens regarding the basin planning process;

(G) develop, in consultation with the applicable regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

(H) provide for public notice of a draft basin plan; and

(I) provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, contract with a regional planning commission to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection. When contracting with a regional planning commission to assist in or produce a basin plan, the Secretary may require the regional planning commission to:

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

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

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

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

(e) In determining the question of public interest, the Secretary shall give due consideration to, and explain his or her decision with respect to, the following:

(1) existing and obtainable water qualities;

(2) existing and potential use of waters for public water supply, recreational, agricultural, industrial, and other legitimate purposes;

(3) natural sources of pollution;

(4) public and private pollution sources and the alternative means of abating the same;

(5) consistency with the State water quality policy established in 10 V.S.A. § 1250;

(6) suitability of waters as habitat for fish, aquatic life, and wildlife;

(7) need for and use of minimum streamflow requirements;

(8) federal requirements for classification and management of waters;

(9) consistency with applicable municipal, regional, and State plans; and

(10) any other factors relevant to determine the maximum beneficial use and enjoyment of waters.

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

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

Sec. 27. 24 V.S.A. § 4302 is amended to read:

§ 4302. PURPOSE; GOALS

\* \* \*

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

\* \* \*

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

\* \* \*

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

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

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

\* \* \*

Sec. 28. 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~~ 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. 29. 24 V.S.A. § 4348a(a) is amended to read:

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

\* \* \*

(6) A statement of policies on the:

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

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

\* \* \*

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

Sec. 30. 10 V.S.A. § 1251a(c) is amended to read:

(c) On or before ~~January 15, 2008~~ July 1, 2016, the Secretary of Natural Resources shall ~~propose draft rules for~~ adopt by rule an implementation process for the antidegradation policy in the water quality standards of the State. The implementation process for the antidegradation policy shall be consistent with the State water quality policy established in section 1250 of this title, the Vermont Water Quality Standards, and any applicable requirements of the federal Clean Water Act. ~~On or before July 1, 2008, a final proposal of the rules for an implementation process for the antidegradation policy shall be filed with the Secretary of State under 3 V.S.A. § 841~~ The Secretary of Natural Resources shall apply the antidegradation implementation policy to all new discharges that require a permit under this chapter.

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

Sec. 31. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT



~~(a) The General Assembly finds that the management of stormwater runoff is necessary to reduce stream channel instability, pollution, siltation, sedimentation, and local flooding, all of which have adverse impacts on the water and land resources of the State. The General Assembly intends, by enactment of this section, to reduce the adverse effects of stormwater runoff. The General Assembly determines that this intent may best be attained by a process that: assures broad participation; focuses upon the prevention of pollution; relies on structural treatment only when necessary; establishes and maintains accountability; tailors strategies to the region and the locale; assures an adequate funding source; builds broadbased programs; provides for the evaluation and appropriate evolution of programs; is consistent with the federal Clean Water Act and the State water quality standards; and accords appropriate recognition to the importance of community benefits that accompany an effective stormwater runoff management program. In furtherance of these purposes, the Secretary shall implement two stormwater permitting programs. The first program is based on the requirements of the federal National Pollutant Discharge Elimination System (NPDES) permit program in accordance with section 1258 of this title. The second program is a State permit program based on the requirements of this section for the discharge of “regulated stormwater runoff” as that term is defined in subdivision (11) of this subsection. As used in this section:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(19) “Net zero standard” means:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(e)(1) Except as otherwise may be provided in subsection (f) of this section, the Secretary shall, for new stormwater discharges, require a permit for discharge of, regulated stormwater runoff consistent with, at a minimum, the 2002 Stormwater Management Manual. The Secretary may issue,~~

~~condition, modify, revoke, or deny discharge permits for regulated stormwater runoff, as necessary to assure achievement of the goals of the program and compliance with State law and the federal Clean Water Act. The permit shall specify the use of best management practices to control regulated stormwater runoff. The permit shall require as a condition of approval, proper operation, and maintenance of any stormwater management facility and submittal by the permittee of an annual inspection report on the operation, maintenance and condition of the stormwater management system. The permit shall contain additional conditions, requirements, and restrictions as the Secretary deems necessary to achieve and maintain compliance with the water quality standards, including requirements concerning recording, reporting, and monitoring the effects on receiving waters due to operation and maintenance of stormwater management facilities.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(iv) if a permit is required for an expansion of an existing impervious surface or for the redevelopment of an existing impervious surface, discharges from the expansion or from the redeveloped portion of the existing impervious surface shall meet the relevant treatment standard of the 2002 Stormwater Management Manual, and the existing impervious surface shall meet the treatment standards deemed necessary by the Secretary to implement a TMDL or the water quality remediation plan;~~

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

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

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

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

~~(3) By January 15, 2010, the Secretary shall issue a watershed improvement permit, issue a general or individual permit implementing a TMDL approved by the EPA, or issue a general or individual permit implementing a water quality remediation plan for each of the stormwater impaired waters on the Vermont Year 2004 Section 303(d) List of Waters required by 33 U.S.C. 1313(d). In developing a TMDL or a water quality remediation plan for a stormwater impaired water, the Secretary shall consult "A Scientifically Based Assessment and Adaptive Management Approach to Stormwater Management" and "Areas of Agreement about the Scientific Underpinnings of the Water Resources Board's Original Seven Questions" set out in appendices A and B, respectively, of the final report of the Water Resources Board's "Investigation Into Developing Cleanup Plans For Stormwater Impaired Waters, Docket No. Inv-03-01," issued March 9, 2004.~~

~~(4) Discharge permits issued under this subsection shall require BMP-based stormwater treatment practices. Permit compliance shall be judged on the basis of performance of the terms and conditions of the discharge permit, including construction and maintenance in accordance with BMP specifications. Any permit issued for a new stormwater discharge or for the expanded portion of an existing discharge pursuant to this subsection shall require compliance with BMPs for stormwater collection and treatment established by the 2002 Stormwater Management Manual, and any additional requirements for stormwater treatment and control systems as the Secretary determines to be necessary to ensure that the permitted discharge does not cause or contribute to a violation of the Vermont Water Quality Standards.~~

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



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

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

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

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

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

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

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

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

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

~~(k) The Secretary may adopt rules regulating stormwater discharges and stormwater infrastructure repair or maintenance during a state of emergency~~

~~declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Any rule adopted under this subsection shall comply with National Flood Insurance Program requirements. A rule adopted under this subsection shall include a requirement that an activity receive an individual stormwater discharge emergency permit or receive coverage under a general stormwater discharge emergency permit.~~

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

~~(A) criteria for coverage under an individual or general emergency permit;~~

~~(B) criteria for different categories of activities covered under a general emergency permit;~~

~~(C) requirements for public notification of permitted activities, including notification after initiation or completion of a permitted activity;~~

~~(D) requirements for coordination with State and municipal authorities;~~

~~(E) requirements that the Secretary document permitted activity, including, at a minimum, requirements for documenting permit terms, documenting permit duration, and documenting the nature of an activity when the rules authorize notification of the Secretary after initiation or completion of the activity.~~

~~(2) A rule adopted under this section may:~~

~~(A) establish reporting requirements for categories of activities;~~

~~(B) authorize an activity that does not require reporting to the Secretary; or~~

~~(C) authorize an activity that requires reporting to the Secretary after initiation or completion of an activity.~~

(a) Findings and intent.

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

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

(A) Reduce the adverse effects of stormwater runoff.

(B) Direct the Agency of Natural Resources to develop a process that assures broad participation; focuses upon the prevention of pollution; relies on

structural treatment only when necessary; establishes and maintains accountability; tailors strategies to the region and the locale; builds broad-based programs; provides for the evaluation and appropriate evolution of programs; is consistent with the federal Clean Water Act and the State water quality standards; and accords appropriate recognition to the importance of community benefits that accompany an effective stormwater runoff management program. In furtherance of these purposes, the Secretary shall implement a stormwater permitting program. The stormwater permitting program developed by the Secretary shall recognize that stormwater runoff is different from the discharge of sanitary and industrial wastes because of the influence of natural events of stormwater runoff, the variations in characteristics of those runoffs, and the increased stream flows causing degradation of the quality of the receiving water at the time of discharge.

(b) Definitions. As used in this section:

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

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

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

(4) “Green infrastructure” means a wide range of multi-functional, natural and semi-natural landscape elements that are located within, around, and between developed areas, that are applicable at all spatial scales, and that are designed to control or collect stormwater runoff.

(5) “Healthy soil” means soil that has a well-developed, porous structure, is chemically balanced, supports diverse microbial communities, and has abundant organic matter.

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

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

(8) “Offset” means a State-permitted or -approved action or project within a stormwater-impaired water, Lake Champlain, or a water that contributes to the impairment of Lake Champlain that a discharger or a third person may complete to mitigate the impacts that a discharge of regulated stormwater runoff has on the stormwater-impaired water, or the impacts of

phosphorus on Lake Champlain, or a water that contributes to the impairment of Lake Champlain.

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

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

(11) “Stormwater impact fee” means the monetary charge assessed to a permit applicant for the discharge of regulated stormwater runoff to a stormwater-impaired water or for the discharge of phosphorus to Lake Champlain or a water that contributes to the impairment of Lake Champlain in order to mitigate a sediment load level, hydrologic impact, or other impact that the discharger is unable to control through on-site treatment or completion of an offset on a site owned or controlled by the permit applicant.

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

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

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

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

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

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

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

(c) Prohibitions.

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

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

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

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

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

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

(i) an individual permit;

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

(iii) coverage under a municipal separate storm sewer system permit that implements the technical standards and criteria established by the Secretary for stormwater improvements of municipal roads.

(B) As used in this subdivision (6), “municipality” means a city, town, or village.

(7) In accordance with the schedule established under subdivision (g)(3), a person shall not discharge stormwater from impervious surface of three or more acres in size without first obtaining an individual permit or

coverage under a general permit issued under this section if the discharge was never previously permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual.

(d) Exemptions.

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

(A) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, provided that this exemption shall not apply to construction stormwater permits required by subdivision (c)(4) of this section.

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

(C) Stormwater runoff from accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

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

(2) No permit is required under subdivision (c)(1), (5), or (7) of this section and for which a municipality has assumed full legal responsibility as part of a permit issued to the municipality by the Secretary. As used in this subdivision, “full legal responsibility” means legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

(e) State designation. The Secretary shall require a permit under this section for a discharge or stormwater runoff from any size of impervious surfaces upon a determination by the Secretary that the treatment of the discharge or stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge or stormwater runoff taking into consideration any of the following factors: the size of the impervious surface, drainage patterns, hydraulic connectivity, existing stormwater treatment, stormwater controls necessary to implement the wasteload allocation of a TMDL, or other factors. The Secretary may make this determination on a case-by-case basis or according to classes of activities, classes of runoff, or classes of discharge. The Secretary may make a determination under this subsection based on activities, runoff, discharges, or other information identified during the basin planning process.

(f) Rulemaking. On or before December 31, 2017, the Secretary shall adopt rules to manage stormwater runoff. At a minimum, the rules shall:

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

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

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

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

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

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

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

(6) Include standards for the management of stormwater runoff from construction sites and other land disturbing activities.

(7) Allow municipal governments to assume the full legal responsibility for a stormwater system permitted under these rules as a part of a permit issued by the Secretary.

(8) Include standards with respect to the use of offsets and stormwater impact fees.

(9) Include minimum standards for the issuance of stormwater permits during emergencies for the repair or maintenance of stormwater infrastructure during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Minimum standards adopted under this subdivision shall comply with National Flood Insurance Program requirements.

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

(11) Include standards for alternative best management practices for stormwater permitting of renewable energy projects and telecommunication facilities located in high-elevation settings, provided that the alternative best management practices shall be designed to:

(A) minimize the extent and footprint of stormwater-treatment practices in order to preserve vegetation and trees;

(B) adapt to and minimize impact to ecosystems, shallow soils, and sensitive streams found in high-elevation settings;

(C) account for the temporary nature and infrequent use of construction and access roads for high-elevation projects; and

(D) maintain the predevelopment runoff characteristics, as nearly as possible, after development.

(12) Establish best management practices for improving healthy soils in order to improve the capacity of soil to retain water, improve flood resiliency, reduce sedimentation, and prevent stormwater runoff.

(g) General permits.

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

(2)(A) The Secretary shall issue on or before December 31, 2017, a general permit for discharges of regulated stormwater from municipal roads. Under the municipal roads stormwater general permit, the Secretary shall:

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

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

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

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

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

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

(iii) Establish criteria for municipal prioritization of stormwater improvements of municipal roads. The Secretary shall base the criteria on the water quality impacts of a stormwater discharge, the current state of a



municipal road, the priority of a municipal road or stormwater project in any existing transportation capital plan developed by a municipality, and the benefits of the stormwater improvement to the life of the municipal road.

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

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

(C) All municipalities shall apply for coverage under the municipal road general permit on or before July 1, 2021.

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

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

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

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

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

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

(C) Require that a discharge of stormwater from impervious surface subject to the requirements of this section comply with the standards of subsection (h) of this section for redevelopment of or renewal of a permit for existing impervious surface.

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 32. ANR REPORT ON REGULATORY THRESHOLD FOR  
PERMITTING STORMWATER RUNOFF FROM IMPERVIOUS  
SURFACES

(a) On or before January 15, 2016, the Secretary of Natural Resources shall submit to the House Committee on Fish, Wildlife and Water Resources and the Senate Committee on Natural Resources and Energy a report regarding whether and how the State should lower from one acre to one-half acre of impervious surface the regulatory permitting threshold for an operating permit for stormwater runoff from new development, redevelopment, or expansion. The report shall include:

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

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

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

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

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

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

Sec. 33. STORMWATER MANAGEMENT PRACTICES HANDBOOK

On or before January 1, 2016, the Secretary of Natural Resources shall publish as a handbook a suite of practical and cost-effective best management practices for the control of stormwater runoff and reduction of adverse water quality effects from the construction, redevelopment, or expansion of impervious surface that does not require a permit under 10 V.S.A. § 1264. The

best management practices shall address activities that control, mitigate, or eliminate stormwater runoff to waters of the State. The stormwater management practices handbook shall be advisory and shall not be mandatory.

Sec. 34. AGENCY OF NATURAL RESOURCES REPORT ON THE LAND APPLICATION OF SEPTAGE AND SLUDGE

(a) As used in this section:

(1) "Septage" means the liquid and solid materials pumped from a septic tank or cesspool during cleaning.

(2) "Sludge" means any solid, semisolid, or liquid generated from a municipal, commercial, or industrial wastewater treatment plant or process, water supply treatment plant, air pollution control facility, or any other such waste having similar characteristics and effects.

(b) On or before January 15, 2016, the Secretary of Natural Resources shall submit to the Senate Committee on Natural Resources and Energy and the House Committee on Fish, Wildlife, and Water Resources a report regarding the land application of septage and sludge in the State. The report shall include:

(1) a summary of the current law regarding the land application of septage or sludge, including any permit requirements;

(2) a summary of how current law for the land application of septage and sludge is designed to protect groundwater or water quality;

(3) an analysis of the feasibility of treating or disposing of septage or sludge in a manner other than land application that is at least as protective of groundwater or water quality as land application; and

(4) an estimate of the cost of treating or disposing of septage or sludge in a manner other than land application.

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

Sec. 35. 10 V.S.A. § 1284 is added to read:

§ 1284. WATER QUALITY DATA COORDINATION

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

(1) light detection and ranging information data (LIDAR);

(2) stream gauge data;

(3) stream mapping, including fluvial erosion hazard maps;

(4) water quality monitoring or sampling data;

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

(6) any other data available to the Secretary.

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

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

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

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

\* \* \* Lake Champlain TMDL Implementation Plan\* \* \*

Sec. 36. 10 V.S.A. § 1386 is amended to read:

§ 1386. IMPLEMENTATION PLAN FOR THE LAKE CHAMPLAIN  
TOTAL MAXIMUM DAILY LOAD PLAN

(a) Within ~~42~~ three months after the issuance of a phosphorus total maximum daily load plan (TMDL) for Lake Champlain by the U.S. Environmental Protection Agency, the Secretary of Natural Resources shall ~~issue a Vermont specific implementation plan for the Lake Champlain TMDL. Every four years after issuance of the Lake Champlain TMDL by the U.S. Environmental Protection Agency, the Secretary of Natural Resources shall amend and update the Vermont specific implementation plan for the Lake Champlain TMDL. Prior to issuing, amending, or updating the implementation plan, the Secretary shall consult with the Agency of Agriculture, Food and Markets, all statewide environmental organizations that express an interest in the plan, the Vermont League of Cities and Towns, all business organizations that express an interest in the plan, the University of Vermont Rubenstein Ecosystem Science Laboratory, and other interested parties. The implementation plan shall include a comprehensive strategy for implementing the Lake Champlain TMDL plan and for the remediation of Lake Champlain. The implementation plan shall be issued as a document separate from the Lake Champlain TMDL. The implementation plan shall:~~

~~(1) Include or reference the elements set forth in 40 C.F.R. § 130.6(e) for water quality management plans;~~

~~(2) Comply with the requirements of section 1258 of this title and administer a permit program to manage discharges to Lake Champlain consistent with the federal Clean Water Act;~~

~~(3) Develop a process for identifying critical source areas for non point source pollution in each subwatershed. As used in this subdivision, "critical source area" means an area in a watershed with high potential for the release, discharge, or runoff of phosphorus to the waters of the State;~~

~~(4) Develop site specific plans to reduce point source and non point source load discharges in critical source areas identified under subdivision (3) of this subsection;~~

~~(5) Develop a method for identifying and prioritizing on public and private land pollution control projects with the potential to provide the greatest water quality benefits to Lake Champlain;~~

~~(6) Develop a method of accounting for changes in phosphorus loading to Lake Champlain due to implementation of the TMDL and other factors;~~

~~(7) Develop phosphorus reduction targets related to phosphorus reduction for each water quality program and for each segment of Lake Champlain, including benchmarks for phosphorus reduction that shall be achieved. The implementation plan shall explain the methodology used to develop phosphorus reduction targets under this subdivision;~~

~~(8) Establish a method for the coordination and collaboration of water quality programs within the State;~~

~~(9) Develop a method for offering incentives or disincentives to wastewater treatment plants for maintaining the 2006 levels of phosphorus discharge to Lake Champlain;~~

~~(10) Develop a method of offering incentives or disincentives for reducing the phosphorus contribution of stormwater discharges within the Lake Champlain basin update the State of Vermont's phase I TMDL implementation plan to reflect the elements that the State determines are necessary to meet the allocations established in the final TMDL for Lake Champlain. The update of the phase I TMDL implementation plan for Lake Champlain shall explain how basin plans will be used to implement the updated phase I TMDL implementation plan, and shall include a schedule for the adoption of basin plans within the Lake Champlain basin. In addition to the requirements of subsection 1253(d) of this title, a basin plan for a basin within the Lake Champlain basin shall include the following:~~

~~(1) phosphorus reduction strategies within the basin that will achieve the State's obligations under the phase I TMDL implementation plan for Lake Champlain;~~

~~(2) a schedule for the issuance of permits to control phosphorus discharges from wastewater treatment facilities as necessary to implement the State's obligations under the phase I TMDL implementation plan for Lake Champlain;~~

(3) a schedule for the issuance of permits to control stormwater discharges as necessary to implement the State's obligations under the phase I TMDL implementation plan for Lake Champlain;

(4) wetland and river corridor restoration and protection projects that will achieve the State's obligations under the phase I TMDL implementation plan for Lake Champlain;

(5) a table of non-point source activities that will achieve the State's obligations under the phase I TMDL implementation plan for Lake Champlain; and

(6) other strategies and activities that the Secretary determines to be necessary to achieve the State's obligations under the phase I TMDL implementation plan for Lake Champlain.

~~(b) In amending the Vermont-specific implementation plan of the Lake Champlain TMDL under this section, the Secretary of Natural Resources shall comply with the public participation requirements of 40 C.F.R. § 130.7(e)(1)(ii)~~ The Secretary shall develop and implement a method of tracking and accounting for actions implemented to achieve the Lake Champlain TMDL.

(c) Prior to finalizing the update to the phase I TMDL implementation plan for Lake Champlain, the Secretary shall provide notice to the public of the proposed revisions and a comment period of no less than 30 days.

(d) On or before January 15 in the year following issuance of the updated phase I TMDL implementation plan for Lake Champlain under subsection (a) of this section and every four years thereafter, the Secretary shall report to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, the House Committee on Agriculture and Forest Products, and the Senate Committee on Agriculture regarding the execution of the updated phase I TMDL implementation plan for Lake Champlain. The report shall include:

(1) The amendments or revisions to the implementation plan for the Lake Champlain TMDL required by subsection (a) of this section. Prior to submitting a report required by this subsection that includes amendments to revisions to the implementation plan, the Secretary shall hold at least three public hearings in the Lake Champlain watershed to describe the amendments and revisions to the implementation plan for the Lake Champlain TMDL. The Secretary shall prepare a responsiveness summary for each public hearing. A summary of the efforts undertaken to implement the phase I TMDL implementation plan for Lake Champlain.

(2) An assessment of the implementation plan for the Lake Champlain TMDL based on available data, including an evaluation of the efficacy of the phase I TMDL implementation plan for Lake Champlain.

~~(3) Recommendations, if any, for amending the implementation plan or for reopening the Lake Champlain TMDL.~~

~~(d)~~(e) Beginning on February 1, 2014 2016, and annually thereafter, the Secretary, after consultation with the Secretary of Agriculture, Food and Markets and the Secretary of Transportation, shall submit to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, the House Committee on Agriculture and Forest Products, and the Senate Committee on Agriculture a summary of activities and measures of progress of water quality ecosystem restoration programs.

\* \* \* Water Quality Funding; Clean Water Fund; Clean Water Board \* \* \*

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

Subchapter 7. Vermont Clean Water Fund

§ 1387. PURPOSE

The General Assembly establishes in this subchapter a Vermont Clean Water Fund as a mechanism for financing the improvement of water quality in the State. The Clean Water Fund shall be used to:

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

(2) fund staff positions at the Agency of Natural Resources, Agency of Agriculture, Food and Markets, or Agency of Transportation when the positions are necessary to achieve or maintain compliance with water quality requirements and existing revenue sources are inadequate to fund the necessary positions; and

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

§ 1388. CLEAN WATER FUND

(a) There is created a special fund to be known as the “Clean Water Fund” to be administered by the Secretary of Administration. The Fund shall consist of:

(1) revenues dedicated for deposit into the Fund by the General Assembly, including the Property Transfer Tax surcharge established under 32 V.S.A. § 9602a.



(2) other gifts, donations, and impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the Secretary of Administration.

(b) Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5, unexpended balances and any earnings shall remain in the Fund from year to year.

#### § 1389. CLEAN WATER FUND BOARD

(a) Creation. There is created a Clean Water Fund Board which shall recommend to the Secretary of Administration expenditures from the Clean Water Fund. The Clean Water Board shall be attached to the Agency of Administration for administrative purposes.

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

(1) the Secretary of Administration or designee;

(2) the Secretary of Natural Resources or designee;

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

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

(5) the Secretary of Transportation or designee.

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

(d) Powers and duties of the Clean Water Fund Board. The Clean Water Fund Board shall have the following powers and authority:

(1) The Clean Water Board shall recommend to the Secretary of Administration the appropriate allocation of funds from the Clean Water Fund for the purposes of developing the State budget required to be submitted to the General Assembly under 32 V.S.A. § 306. All recommendations from the Board should be intended to achieve the greatest water quality gain for the investment.

(2) The Clean Water Board may pursue and accept grants, gifts, donations, or other funding from any public or private source and may administer such grants, gifts, donations, or funding consistent with the terms of the grant, gift, or donation.

(3) The Clean Water Fund Board shall:

(A) establish a process by which watershed organizations, State agencies, and other interested parties may propose water quality projects or programs for financing from the Clean Water Fund;

(B) develop an annual revenue estimate and proposed budget for the Clean Water Fund;

(C) establish measures for determining progress and effectiveness of expenditures for clean water restoration efforts;

(D) issue the annual clean water investment report required under section 1389a of this title; and

(E) solicit, consult with, and accept public comment from organizations interested in improving water quality in Vermont regarding recommendations under this subsection for the allocation of funds from the Clean Water Fund.

(e) Priorities.

(1) In making recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall prioritize:

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

(B) funding to projects that address sources of water pollution identified as a significant contributor of water quality pollution, including financial assistance to grant recipients at the initiation of a funded project;

(C) funding to programs or projects that address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property;

(D) assistance required for State and municipal compliance with stormwater requirements for highways and roads;

(E) funding for education and outreach regarding the implementation of water quality requirements, including funding for education, outreach, demonstration, and access to tools for the implementation of the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; and

(F) funding for innovative or alternative technologies or practices designed to improve water quality or reduce sources of pollution to surface waters, including funding for innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy; and

(G) funding to purchase agricultural land in order to take that land out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices.

(2) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Clean Water Fund Board shall, during the first three years of its existence and within the priorities established under subdivision (1) of this subsection (e), prioritize awards or assistance to municipalities for municipal compliance with water quality requirements.

(3) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under subdivision (1) of this subsection (e), attempt to provide for equitable apportionment of awards from the Fund to all regions of the State and for control of all sources of point and non-point sources of pollution in the State.

(f) The Clean Water Fund Board shall have the administrative, technical, and legal assistance of the Agency of Administration, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, and the Agency of Commerce and Community Development for those issues or services within the jurisdiction of the respective agency. The cost of the services provided by agency staff shall be paid from the budget of the agency providing the staff services.

#### § 1389a. CLEAN WATER INVESTMENT REPORT

(a) Beginning on January 15, 2017, and annually thereafter, the Clean Water Fund Board shall publish a clean water investment report. The report shall summarize all investments, including their cost-effectiveness, made by the Clean Water Fund Board and other State agencies for clean water restoration over the past calendar year. The report shall include expenditures from the Clean Water Fund, the General Fund, the Transportation Fund, and any other State expenditures for clean water restoration, regardless of funding source. The report shall document progress or shortcomings in meeting established indicators for clean water restoration. The report shall include a summary of additional funding sources pursued by the Board, including whether those funding sources were attained; if it was not attained, why it was not attained; and where the money was allocated from the Fund. The report may also provide an overview of additional funding necessary to meet objectives established for clean water restoration and recommendations for additional revenue to meet those restoration objectives. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report required by this section.

(b) The Board shall develop and use a results-based accountability process in publishing the annual report required by subsection (a) of this section.

§ 1389b. CLEAN WATER FUND AUDIT

(a) On or before January 15, 2021, the Secretary of Administration shall submit to the House and Senate Committees on Appropriations, the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Agriculture, the House Committee on Agriculture and Forest Products, the Senate Committee on Natural Resources and Energy, and the House Committee on Fish, Wildlife and Water Resources a program audit of the Clean Water Fund. The report shall include:

(1) a summary of the expenditures from the Clean Water Fund, including the water quality projects and programs that received funding;

(2) an analysis and summary of the efficacy of the water quality projects and programs funded from the Clean Water Fund or implemented by the State;

(3) an evaluation of whether water quality projects and programs funded or implemented by the State are achieving the intended water quality benefits;

(4) an assessment of the capacity of the Agency of Agriculture, Food and Markets to effectively administer and enforce agricultural water quality requirements on farms in the State; and

(5) a recommendation of whether the General Assembly should authorize the continuation of the Clean Water Fund and, if so, at what funding level.

(b) The audit required by this section shall be conducted by a qualified, independent environmental consultant or organization with knowledge of the federal Clean Water Act, State water quality requirements and programs, the Lake Champlain Total Maximum Daily Load plan, and the program elements of the State clean water initiative.

(c) Notwithstanding provisions of section 1389 of this title to the contrary, the Secretary of Administration shall pay for the costs of the audit required under this section from the Clean Water Fund, established under section 1388 of this title.

\* \* \* Property Transfer Tax Surcharge; Water Quality Long-Term  
Financing Report \* \* \*

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

§ 9602a. CLEAN WATER SURCHARGE

There shall be a surcharge of 0.2 percent on the value of property subject to the property transfer tax under section 9602 of this title, except that there shall be no surcharge on the first \$100,000.00 in value of property to be used for the

principal residence of the transferee or the first \$200,000.00 in value of property transferred if the purchaser obtains a purchase money mortgage funded in part with a homeland grant through the Vermont Housing and Conservation Trust Fund or which the Vermont Housing and Finance Agency or U.S. Department of Agriculture and Rural Development has committed to make or purchase. The surcharge shall be in addition to any tax assessed under section 9602 of this title. The surcharge assessed under this section shall be paid, collected, and enforced under this chapter in the same manner as the tax assessed under section 9602 of this title. The Commissioner shall deposit the surcharge collected under this section in the Clean Water Fund under 10 V.S.A. § 1388.

#### Sec. 39. REPEAL OF CLEAN WATER SURCHARGE

32 V.S.A. § 9602a (Clean Water Surcharge) shall be repealed on July 1, 2018.

#### Sec. 40. STATE TREASURER REPORT ON LONG-TERM FINANCING OF STATEWIDE WATER QUALITY IMPROVEMENT

On or before January 15, 2017, the State Treasurer, after consultation with the Secretary of Administration, the Commissioner of Environmental Conservation, and the Commissioner of Taxes, shall submit to the Senate and House Committees on Appropriations, the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, the House Committee on Agriculture and Forest Products, the Senate Committee on Agriculture, the House Committee on Ways and Means, and the Senate Committee on Finance a recommendation for financing water quality improvement programs in the State. The recommendation shall include:

(1) Proposed revenue sources for water quality improvement programs that will replace the Property Transfer Tax surcharge established under 32 V.S.A. § 9602a. The proposed revenue sources shall be designed to assess fees, taxes, or other revenue sources from a property, parcel use, parcel, type, or an activity in proportion to the negative impacts of property, parcel use, parcel type, or activity on the water quality in the State.

(2) A recommendation for rewarding or incentivizing best management practices for a property or activity that is subject to the proposed fee, tax, or revenue source.

(3) An estimate of the amount of revenue to be generated from each proposed revenue source.

(4) A summary of how assessment of the proposed revenue source will be administered, collected, and enforced.

(5) A recommendation of whether the State should bond for the purposes of financing water quality improvement programs, including whether

a proposed revenue source would be sufficient for issuance of water quality revenue bonds.

(6) A legislative proposal to implement each of the revenue sources proposed under this section.

\* \* \* Agency Staff; Establishment; Appropriation \* \* \*

#### Sec. 41. WATER QUALITY STAFF POSITIONS

(a) The establishment of the following new permanent classified positions is authorized in fiscal year 2016 as follows:

(1) In the Agency of Agriculture, Food and Markets—three (3) Water Quality Specialists, one (1) Chief Policy Enforcement Officer, one (1) Agriculture Systems Specialist, one (1) Financial Administrator II, one (1) GIS Project Supervisor, and one (1) Senior Agricultural Development Coordinator;

(2) In the Department of Environmental Conservation – thirteen (13) water quality and TMDL (water quality/Total Maximum Daily Load) positions.

(b) The positions established in this section shall be transferred and converted from existing vacant positions in the Executive Branch, and shall not increase the total number of authorized State positions.

#### Sec. 42. APPROPRIATIONS FOR AGENCY OF AGRICULTURE, FOOD AND MARKETS STAFF

In addition to any other funds appropriated to the Agency of Agriculture, Food and Markets in fiscal year 2016, there is appropriated from the Agricultural Water Quality Special Fund created under 6 V.S.A. § 4803 to the Agency of Agriculture, Food and Markets \$2,114,000.00 in fiscal year 2016 for the purpose of hiring eight employees for implementation and administration of agricultural water quality programs in the State.

#### Sec. 43. APPROPRIATIONS FOR DEPARTMENT OF ENVIRONMENTAL CONSERVATION STAFF

In addition to any other funds appropriated to the Department of Environmental Conservation in fiscal year 2016, there is appropriated from the Environmental Permit Fund created under 3 V.S.A § 2805 to the Department of Environmental Conservation \$1,545,116.00 in fiscal year 2016 for the purpose of hiring 13 employees for implementation and administration of water quality programs in the State and for contracting with regional planning commissions as authorized by 10 V.S.A. § 1253.

#### Sec. 43a. FUND TO FUND TRANSFER

In Fiscal Year 2016, \$450,000.00 is transferred from the Clean Water Fund established by 10 V.S.A. § 1388 to the Agricultural Water Quality Special Fund created under 6 V.S.A. § 4803.

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

Sec. 44. 3 V.S.A. § 2822 is amended to read:

§ 2822. BUDGET AND REPORT; POWERS

\* \* \*

(i) The Secretary shall not process an application for which the applicable fee has not been paid unless the Secretary specifies that the fee may be paid at a different time or unless the person applying for the permit is exempt from the permit fee requirements pursuant to 32 V.S.A. § 710. ~~In addition, the persons who are exempt under 32 V.S.A. § 710 are also exempt from the application fees for stormwater operating permits specified in subdivisions (j)(2)(A)(iii)(I) and (II) of this section if they otherwise meet the requirements of 32 V.S.A. § 710.~~ Municipalities shall be exempt from the payment of fees under this section except for those fees prescribed in subdivisions (j)(1), ~~(2)~~, (7), (8), (14), and (15) of this section for which a municipality may recover its costs by charging a user fee to those who use the permitted services. Municipalities shall pay fees prescribed in subdivisions (j)(2), (10), (11), (12), and (26), except that a municipality shall also be exempt from those fees for orphan stormwater systems prescribed in subdivision (j)(2)(A)(iii)(I, II, or IV) and (j)(2)(B)(iv)(I, II, or V) of this section when the municipality agrees to become an applicant or co-applicant for an orphan stormwater system under 10 V.S.A. § 1264e for which a municipality has assumed full legal responsibility under 10 V.S.A. § 1264.

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

\* \* \*

(2) For discharge permits issued under 10 V.S.A. chapter 47 and orders issued under 10 V.S.A. § 1272, an administrative processing fee of ~~\$120.00~~ \$240.00 shall be paid at the time of application for a discharge permit in addition to any application review fee and any annual operating fee, except for permit applications under subdivisions (2)(A)(iii)(III) and (V) of this subsection:

(A) Application review fee.

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

(I) Individual permit: original application; amendment for increased flows; amendment for change in treatment process-;	<del>\$0.0023</del> <u>\$0.003</u> per gallon design <del>permitted</del> flow; minimum <del>\$50.00</del> <u>\$100.00</u> per outfall; maximum <u>\$30,000.00</u> per application.
(II) Renewal, transfer, or minor amendment of individual permit-;	<del>\$0.00</del> <u>\$0.002</u> per gallon <del>permitted</del> flow; minimum <u>\$50.00</u> per outfall; maximum <u>\$5,000.00</u> per application.
(III) General permit-;	\$0.00.
(ii) Pretreatment discharges.	
(I) Individual permit: original application; amendment for increased flows; amendment for change in treatment process-;	<del>\$0.12</del> <u>\$0.20</u> per gallon design flow; minimum <del>\$50.00</del> <u>\$100.00</u> per outfall.
(II) Renewal, transfer, or minor amendment of individual permit-;	<del>\$0.00</del> <u>\$0.002</u> per gallon <del>design</del> flow; minimum <u>\$50.00</u> per outfall.
(iii) Stormwater discharges.	
(I) Individual operating permit or application to operate under general operating permit for collected stormwater runoff which is discharged to Class B waters: original application; amendment for increased flows; amendment for change in treatment process-;	<del>\$430.00</del> <u>\$860.00</u> per acre impervious area; minimum <del>\$220.00</del> <u>\$440.00</u> per application.
(II) Individual operating permit or application to operate under general operating permit for collected stormwater runoff which is discharged to Class A waters; original application; amendment for increased flows; amendment for change in treatment process.	\$1,400.00 per acre impervious area; minimum \$1,400.00 per application.
(III) Individual permit or application to operate under	



general permit for construction activities; original application; amendment for increased acreage.

(aa) Projects with low risk to waters of the State-; ~~\$50.00~~ five acres or less: \$100.00 per project; original application.

(bb) Projects with low risk to waters of the State; greater than five acres: \$220.00 per project.

(cc) Projects with moderate risk to waters of the State-; ~~\$360.00;~~ five acres or less: \$480.00 per project original application.

~~(ee) Projects that require an individual permit. \$720.00 per project original application.~~

(dd) Projects with moderate risk to waters of the State; greater than five acres: \$640.00.

(ee) Projects that require an individual permit; ten acres or less: \$1,200.00.

(ff) Projects that require an individual permit; greater than 10 acres: \$1,800.00.

(IV) Individual permit or application to operate under general permit for stormwater runoff associated with industrial activities with specified SIC codes; original application; amendment for change in activities-; ~~\$220.00~~ \$440.00 per facility.

(V) Individual permit or application to operate under general permit for stormwater runoff associated with municipal separate storm sewer systems; original application; amendment for change in activities-; ~~\$1,200.00~~ \$2,400.00 per system.

(VI) Individual operating permit or application to operate under a general permit for a residually designated stormwater discharge original

application; amendment; for increased flows amendment; for change in treatment process.

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

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

(VII) Renewal, transfer, or minor amendment of individual permit ~~or approval under general permit~~; \$0.00.

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

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

\* \* \*

(B) Annual operating fee.

(i) Industrial, noncontact cooling water and thermal discharges; ~~\$0.001~~ \$0.0015 per gallon design capacity. ~~\$150.00~~ \$200.00 minimum; maximum \$210,000.00.

(ii) Municipal; ~~\$0.003~~ \$0.003 per gallon of ~~actual~~ permitted flows. ~~\$150.00~~ \$200.00 minimum; maximum \$12,500.00.

(iii) Pretreatment discharges; ~~\$0.0385~~ \$0.04 per gallon design capacity. ~~\$150.00~~ \$200.00 minimum; maximum \$27,500.00.

(iv) Stormwater.

(I) Individual operating permit or approval under general operating permit for collected stormwater runoff which is discharged to class A waters; ~~\$255.00~~ \$310.00 per acre impervious area; ~~\$235.00~~ \$310.00 minimum.

(II) Individual operating permit or approval under general operating ~~\$80.00~~ \$160.00 per acre impervious area; ~~\$80.00~~

permit for collected stormwater runoff which is discharged to Class B waters:; \$160.00 minimum.

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

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

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

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

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

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

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

\* \* \*

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

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

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

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

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

(E) Stream alteration; Agency of Transportation reviews; bridge, culvert, and high risk projects: \$350.00.

(F) Flood hazard area; individual permit; State facilities; hydraulic and hydrologic modeling required: \$350.00.

(G) Flood hazard area; individual permit; State facilities; hydraulic and hydrologic modeling not required: \$200.00.

(H) Flood hazard area; municipal reviews; reviews requiring hydraulic and hydrologic modeling, compensatory storage volumetric analysis, or river corridor equilibrium: \$350.00.

(I) Flood hazard area; municipal review; projects not requiring hydraulic or hydrologic modeling: \$200.00.

(J) River corridor; major map amendments: \$350.00.

(12) For dam permits issued under 10 V.S.A. chapter 43: ~~0.525~~ 1.00 percent of construction costs, minimum fee of ~~\$200.00~~ \$1,000.00.

\* \* \*

(14) For certification of sewage treatment plant operators issued under 10 V.S.A. chapter 47:

(A) original application; ~~\$110.00~~ \$125.00.

(B) renewal application; ~~\$110.00~~ \$125.00.

(15) For sludge or septage facility certifications issued under 10 V.S.A. chapter 159:

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

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

\* \* \*

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

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

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

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

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

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

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

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

\* \* \*

(33) \$10.00 per 1,000 gallons based on the rated capacity of the tank being pumped rounded to the nearest 1,000 gallon.

\* \* \*

Sec. 45. 32 V.S.A. § 710 is amended to read:

#### § 710. PAYMENT OF STATE AGENCY FEES

(a) Notwithstanding any other provision of law, the Agency of Transportation, any cooperating municipalities, and their contractors or agents shall be exempt from the payment of fee charges for reviews, inspections, or nonoperating permits issued by the Department of Public Safety, a District Environmental Commission, and the Agency of Natural Resources for any projects undertaken by or for the Agency and any cooperating municipalities for which all or a portion of the funds are authorized by a legislatively approved transportation construction, rehabilitation, or paving program within a general appropriation act introduced pursuant to section 701 of this title except for those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(10), (j)(11), and (j)(26).

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

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

(2) Any project undertaken by a municipality, which is funded in whole or in part by a grant or loan from the Agency of Natural Resources or the Agency of Transportation financed by an appropriation of a capital

construction act introduced pursuant to section 701a of this title except for those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(7)(A) and (B), (j)(10), (j)(11), and (j)(26). However, all such fees shall be paid for reviews, inspections, or permits required by municipal solid waste facilities developed by a solid waste district which serves, or is expected to serve, in whole or in part, parties located outside its own district boundaries pursuant to 10 V.S.A. chapter 159.

Sec. 46. ASSESSMENT OF DEC FEES ON STATE AGENCIES AND MUNICIPALITIES

When applicable, the Agency of Natural Resources shall assess fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(7)(A) and (B), (j)(10), (j)(11), and (j)(26) on municipalities at the end of the most recent applicable municipal fiscal year in order to avoid potential effects on approved municipal budgets.

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

Sec. 47. 10 V.S.A. § 1266a is amended to read:

§ 1266a. DISCHARGES OF PHOSPHORUS

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

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

~~(c) The Secretary of Natural Resources shall establish a schedule for municipalities that requires compliance with this section at a rate that corresponds to the rate at which funds are provided under subsection 1625(e) of this title. To the extent that funds are not provided to municipalities eligible~~

~~under that subsection, municipal compliance with this section shall not be required. [Repealed.]~~

Sec. 48. 10 V.S.A. § 1625 is amended to read:

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

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

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

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

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

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

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

this chapter do not apply to municipalities within a designated job development zone.

~~(e) If the Department finds that a proposed municipal water pollution control project is necessary to reduce effluent phosphorus concentration or mass loading to the level required in section 1266a of this title, the Department shall award to the municipality, subject to the availability of funds, a state assistance grant. Such grants shall be for 100 percent of the eligible project cost. This funding shall not be available for phosphorus removal projects where the effluent concentration must be reduced in order to maintain a previously permitted mass loading of phosphorus. [Repealed.]~~

\* \* \* Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont \* \* \*

Sec. 49. 10 V.S.A. § 2622 is amended to read:

§ 2622. RULES; HARVESTING TIMBER; FORESTS; ACCEPTABLE MANAGEMENT PRACTICES FOR MAINTAINING WATER QUALITY

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

(b) Acceptable management practices. On or before July 1, 2016, the Commissioner shall revise by rule the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont. The revised acceptable management practices shall ensure that all logging operations, on both public and private forestland, are designed to: prevent or minimize discharges of sediment, petroleum products, and woody debris (logging slash) from entering streams and other bodies of water; improve soil health of forestland; protect aquatic habitat and aquatic wildlife; and prevent erosion and maintain natural water temperature. The purpose of the acceptable management practices is to provide measures for loggers, foresters, and landowners to utilize, before, during, and after logging operations to comply with the Vermont Water Quality Standards and minimize the potential for a



discharge from logging operations in Vermont in accordance with section 1259 of this title. The rules adopted under this subsection shall be advisory and not mandatory.

Sec. 50. DEPARTMENT OF FORESTS, PARKS AND RECREATION  
REPORT; ACCEPTABLE MANAGEMENT PRACTICES;  
MAPLE SYRUP PRODUCTION UNDER USE VALUE  
APPRAISAL

On or before January 15, 2016, the Commissioner of Forests, Parks and Recreation shall submit to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, and the House Committee on Natural Resources and Energy a recommendation and supporting basis as to how:

(1) to implement the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont as mandatory practices for all logging operations on public and private forestland;

(2) the Department of Forests, Parks and Recreation will enforce Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont; and

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

Sec. 51. 10 V.S.A. § 1259(f) is amended to read:

(f) The provisions of subsections (c), (d), and (e) of this section shall not regulate ~~accepted required~~ agricultural ~~or silvicultural~~ practices, as ~~such are defined adopted by rule~~ by the ~~secretary of agriculture, food and markets and the commissioner of forests, parks and recreation, respectively, after an opportunity for a public hearing~~ Secretary of Agriculture, Food and Markets, or accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; nor shall these provisions regulate discharges from concentrated animal feeding operations that require a permit under section 1263 of this title; nor shall those provisions prohibit stormwater runoff or the discharge of nonpolluting wastes, as defined by the ~~secretary~~ Secretary.

Sec. 52. 24 V.S.A. § 4413(d) is amended to read:

(d) A bylaw under this chapter shall not regulate ~~accepted required~~ agricultural ~~and silvicultural~~ practices, including the construction of farm structures, as those practices are defined by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets or ~~the commissioner~~

of forests, parks and recreation , respectively, under 10 V.S.A. §§ 1021(f) and 1259(f) ~~§ 2622~~ and 6 V.S.A. § 4810 accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

\* \* \*

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

Sec. 53. ECOSYSTEM RESTORATION PROGRAM; CLEAN WATER FUND; ELIGIBILITY FOR FINANCIAL ASSISTANCE

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

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

Sec. 54. EFFECTIVE DATES

(a) This section and Secs. 37 (Clean Water Fund) and 38 (Property Transfer Tax surcharge) shall take effect on passage.

(b) The remainder of the bill shall take effect on July 1, 2015, except that:

(1) In Sec. 16, 6 V.S.A. § 4988(b) (custom applicator certification) shall take effect 45 days after the effective date of rules adopted under 6 V.S.A. § 4988(a).

(2) In Sec. 31, the permit requirements under 10 V.S.A. § 1264(h)(2) for discharges of regulated stormwater to Lake Champlain or to a water that contributes to the impairment of Lake Champlain shall take effect on October 1, 2015.