



## South Burlington

### Stormwater Services

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Office  
Dept. of Public Works  
104 Landfill Road

January 30, 2014

Members of the Vermont House Fish, Wildlife and Water Resources Committee  
115 State Street  
Montpelier, VT 05633-5301

RE: Comments on H.29 and H.35

Members of the Committee,

The City of South Burlington supports efforts to improve water quality throughout Vermont. We are especially supportive of efforts to improve water quality in our local waterways including Lake Champlain and its tributaries. The City has demonstrated its ongoing commitment to this goal by establishing and managing Vermont's first Stormwater Utility. Since implementation of the utility in 2003 we have undertaken efforts to educate the public on the impacts of uncontrolled stormwater runoff, promote the thoughtful development of land in South Burlington, construct capital projects to address existing stormwater runoff issues, and maintain existing stormwater drainage and treatment infrastructure. The City plans to continue these efforts and we are pleased to see new legislation designed to support this work.

In general, the City of South Burlington supports the actions proposed in H.29 and H.35. We have over a decade's worth of experience running a program that is similar in many ways to what is proposed in this draft legislation. As such, we'd like to provide comment on certain aspects of these bills. Please accept the following comments on H.35:

1. Section 1264(d)4 of the draft bill exempts stormwater systems for which a municipality has assumed "full legal responsibility" from having to obtain the permits described previously in the section. Also, section 1264(f)7 allows municipal governments to assume "full legal responsibility" for a stormwater system permitted under these rules as a part of the municipality's MS4 permit.
  - a. This language will encourage permit holders to work with municipalities to address water quality and permit issues and we support its inclusion.
  - b. The term "full legal responsibility" is overly broad and not defined anywhere in the bill. Consider providing more detail on what is expected of municipalities. If section 1264(d)4 is referencing a system that is permitted under the municipality's MS4 permit simply state this instead of using the term "full legal responsibility".
  - c. What would occur if a municipality assumes responsibility for a permitted stormwater system and this property redevelops or expands? The City of South Burlington is currently contemplating a system by which we could provide State

permit holders with coverage under our MS4 permit. Under this system, it would be our expectation that properties undergoing expansion or redevelopment would need to apply to ANR, not the municipality, for approval. Otherwise, the municipality would be administering the State stormwater permit program.

2. Section 1264(h)(1) indicates that permits would be valid for a period of time not to exceed 10 years. We support this timetable and would suggest that 10 years be the minimum period of time for which a permit is issued. This allows additional time for permit holders to pay off investments in water quality systems before reissuance of the permit and potential requirements for additional investment (beyond ongoing operation and maintenance costs of the infrastructure).
3. Section 1284 discusses the collection, management, and use of water quality data by the Secretary. We support the goals of this section and the science based approach that it implies. We also support making this data available on the ANR web site for the use of others. This section also discusses the potential identification and collection of new data sources. We believe that monitoring waters of the State is a function best reserved and paid for at the State level by State Agencies. We request that additional language be added to this section that would prohibit the Secretary from pushing these costs and data collection programs down to the municipalities via new permit requirements.
4. Revisions to 10 VSA chapter 47, subchapter 7, Section 1387 proposes to create a Clean Water Fund. The City supports creation of this fund. Significant financial investment will be necessary if we are to see improvements in the State's impaired waterbodies and a clean water fund could prove to be an excellent source for this funding. South Burlington has over a decade's worth of experience managing a water quality program that is supported by stormwater utility fees based on impervious surface coverage. Based on that experience, we would like to make the following comments on the proposed Clean Water Fund:
  - a. Chapter 245 Section 10501 provides a definition for "Commercial Property". It does not appear that this definition would include condominiums and apartment buildings. It does not appear as if the intent was to charge these type of properties and we would recommend that this point be clarified in the definition.
  - b. Chapter 245 Section 10502 establishes a \$200.00 fee for all commercial and industrial properties in the Lake Champlain basin. One of the stated intents of the bill is to "engage more municipalities... and other interested parties as part of the State's efforts to improve the quality of the waters of the State". Therefore, careful consideration should be given so that this bill does not become an obstacle to those municipalities already engaged in this work. *Properties that pay into municipal water quality fee programs (e.g. stormwater utility fees) should be exempt from this fee.*
    - i. Communities with existing stormwater utility fees have these programs in place because they have taken steps to address an established and documented water quality problem (i.e. stormwater pollution to local streams and Lake Champlain). These communities have decided to deal with these problems at the local level and residents have committed to this goal by supporting local programs via payment of monthly fees. As proposed, H.35 would "double charge" commercial and industrial property owners in these communities for the same issue.

- ii. If a statewide water quality fee is put in place the commercial and industrial property owners in municipalities with existing water quality fees will expect that local fees will be subsequently reduced. Unfortunately, this creates a situation where the opposite could occur and local fees would need to increase. Funding for water quality would be diverted from these communities and placed in a pot of money at the State level. Municipal staff would then have to spend their time and resources to compete for this funding. There is no guarantee that this funding would be returned to the community where it originated and is clearly needed. Furthermore, these communities are under significant regulatory requirements (i.e. MS4 permit, stormwater TMDLs, Lake Champlain Phosphorus TMDL, Combined Sewer Overflow abatement, etc.) to address water quality concerns and have no choice but to move forward with water quality projects and programs. Diverting funds out of the community for the same purpose will hamper local efforts and makes little sense if the goal is to improve water quality.
        - iii. If commercial and industrial properties in communities with established water quality fees and programs are not exempt from payment into the State program then projects in these communities must be given a higher priority when funding is allocated. We recommend that the priority for funding be allocated as outlined in the current draft of the H.29 bill. That is, first priority shall be given to municipalities in the Lake Champlain basin that have an established stormwater district, stormwater utility, or similar mechanism for the regulation of stormwater.
      - c. The proposed bill should not require communities with established municipal water quality fee programs to create or utilize a second system for collection and remittance of fees related to a State water quality program. The proposed bill must be written with enough flexibility so that these municipalities can use their existing systems to collect and remit State fees. Currently, fees for existing municipal stormwater programs are invoiced with other utility fees (wastewater and drinking water). These fees are not taxes (stormwater fees are assessed based on the amount of impervious surface on a property, which is directly related to the amount of stormwater generated) and therefore do not appear on the tax bills that properties receive.
  - 5. “Biosolids” are a wastewater treatment byproduct that have been treated in accordance with state and federal regulations and determined to be safe for recycling back into the environment as fertilizer. Biosolids and approved management sites are highly regulated and require State review and operator certification.
    - a. The draft bill refers to biosolids as “sludge”. We request that the terminology used to describe biosolids be revised to appropriately refer to these materials.
    - b. Inclusion of “biosolids” in the custom applicator certification program may be redundant with existing regulatory programs. The land application of biosolids is already strictly regulated.
    - c. Section 366 discusses tonnage fees on fertilizer. It should be clarified that does not apply to the sludge/biosolids generated from a wastewater treatment plant or

process. Also, will this fee be applied to commercial and residential lawn fertilizer/pesticide/herbicide applications?

6. Section 19 clarifies MS4 community eligibility for Ecosystem Restoration Program funding. We strongly support making these funds available to MS4's.
7. Section 21 discusses the effective date for the act and indicates that impervious surface assessment is to begin on bill passage. Municipalities should be given more time to put in place mechanisms to identify commercial and industrial properties and put in place mechanisms to collect fees.
8. Section 1264(f)(10) authorizes the use of certifications of compliance by licensed Professional Engineers (PEs) in the permitting process "to the extent appropriate". This language is overly broad and should be clarified. Also, under no circumstances should this section limit the ability of non PEs to design, inspect, or manage stormwater systems. Finally, legislators should be aware that PE certification in Vermont does not require continuing education in order to maintain a license. If certifications of compliance were to be allowed it would be reassuring for the public to know that these individuals are aware of and utilizing current best engineering practices (e.g. considering green stormwater infrastructure or low impact development techniques).
9. Section 1285 of the draft bill proposes to create a municipal roads permit. Many of the goals and requirements of this proposed permit program appear to be redundant with requirements in existing State regulation and implemented under existing permit programs. These permits/programs include the MS4 permit, stormwater TMDL Flow Restoration Plan (FRP) development and implementation, and operational stormwater permits (3-9015). MS4 communities should be made exempt from the new municipal roads permit program and any currently unmet requirements or goals of this program should instead be added to the next revision of the MS4 permit (scheduled for 2018). Failure to do this could result in reporting, inspection and assessment requirements for the same drainage infrastructure under three different permit programs.

We'd also like to provide the following comment on bill H.29:

1. We support the creation of a Water Quality Improvement Fund. Significant financial investment will be necessary if we are to see improvements in the State's impaired waterbodies and a Water Quality Improvement Fund could prove to be an excellent source for this funding.
2. We support a system for allocation of funding that prioritizes projects that will address areas of high risk or sediment loading and municipalities with established stormwater programs. A system of this type has the ability to address the biggest sources of pollution first and spend the State's limited dollars in a cost effective way. In addition, this system would support existing municipal water quality programs and encourage municipalities without these programs to consider creating them.
3. Section 3 repeals creation of the proposed Water Quality Improvement Fund on July 1, 2025, or 10 years from the date of passage. Consideration should be given to extending this time period. Many municipalities expect to work for the next 20 years to remediate the water quality problems associated with established TMDLs. We recommend modifying this language so that the Water Quality Improvement Fund is repealed on July 1, 2035.

4. Section 312 section 6 clarifies MS4 community eligibility for Ecosystem Restoration Program funding. We strongly support making these funds available to MS4's.

Thank you for the opportunity to comment on H.29 and H.35. Please do not hesitate to contact me if you would like additional information, or to plan a follow up discussion. I can be reached at (802) 658-7961 x108 or [tdipietro@sburl.com](mailto:tdipietro@sburl.com) .

Sincerely,

A handwritten signature in blue ink, appearing to read "Thomas DiPietro". The signature is fluid and cursive, with a long horizontal stroke at the end.

Thomas J. DiPietro Jr.  
Deputy Director of Public Works  
City of South Burlington

CC: Kevin Dorn, City Manager  
Justin Rabidoux, Director of Public Works  
Karen Horn, Vermont League of Cities and Towns  
Senator Tim Ashe  
Senator Philip Baruth  
Representative Helen Head  
Representative Martin LaLonde  
Senator Virginia "Ginny" Lyons  
Senator Diane Snelling  
Senator David Zuckerman  
Representative Ann Pugh  
Representative Maida Townsend  
Representative Michael Sirotkin