

1 TO THE HOUSE OF REPRESENTATIVES:

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

7 * * * Purpose * * *

8 Sec. 1. FINDINGS AND PURPOSE; AGRICULTURAL WATER QUALITY

9 (a) Findings. The General Assembly finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 * * * Agricultural Water Quality;

14 Definitions * * *

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

16 § 4802. ~~DEFINITION~~ DEFINITIONS

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

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

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

21 § 6001(22).

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

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

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

16 (6) “Water” shall have the same meaning as used in 10 V.S.A.
17 § 1251(13).

18 * * * Agricultural Water Quality;

19 Small Farm Certification and Inspection * * *

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

21 Subchapter 5A. Small Farm Certification

1 § 4871. SMALL FARM CERTIFICATION

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

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

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

7 (3)(A) that house at least the number of adult animals that the Secretary
8 of Agriculture, Food and Markets designates by rule under the Accepted
9 Agricultural Practices; or

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

12 (b) Required small farm certification. A person who owns or operates a
13 small farm shall, on a form provided by the Secretary, certify compliance with
14 the accepted agricultural practices. The Secretary of Agriculture, Food and
15 Markets shall establish the requirements and manner of certification of
16 compliance with the accepted agricultural practices, provided that the
17 Secretary shall require an owner or operator of a farm to submit a certification
18 of compliance with the accepted agricultural practices at least once every five
19 years.

20 (c) Certification due to water quality threat. The Secretary may require any
21 person who owns or operates a farm to submit a small farm certification under
22 this section if the person is not required to obtain a permit or submit a

1 certification under this chapter and the Secretary determines that the farm
2 poses a threat of discharge to a water of the State or presents a threat of
3 contamination to groundwater.

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

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

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

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

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

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

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

15 (h) Fees.

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

18 (A) \$250.00 for farms that house less than 100 mature dairy
19 animals; and

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

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

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

4 § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

5 (a) On or before July 1, 2016, the Secretary of Agriculture, Food, and
6 Markets shall amend the accepted agricultural practices in order to improve
7 water quality in the State, assure practices on all farms eliminate adverse
8 impacts to water quality, and implement the small farm certification program
9 required by section 4858a of this title. At a minimum, the amendments to the
10 accepted agricultural practices shall:

11 (1) Specify the number and type of animals housed on a farm that are
12 subject to the small farm certification requirements under section 4871 of this
13 title. The Secretary shall establish the number and type of animals under this
14 subdivision based on the potential impact of the number and type of animals on
15 the quality of the waters of the State.

16 (2) Specify those farms that:

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

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

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

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

5 (ii) on lands in a floodway or otherwise subject to regular
6 flooding.

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

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

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

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

1 (7) Require a farm to comply with standards established by the
2 Secretary for maintaining a vegetative buffer zone of perennial vegetation
3 between annual croplands and the top of the bank of an adjoining water of the
4 State. At a minimum the vegetative buffer standards established by the
5 Secretary shall prohibit the application of manure on the farm within 25 feet of
6 the top of the bank of an adjoining water of the State or within 10 feet of a
7 ditch.

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

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

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

17 (b) On or before January 15, 2018, the Secretary of Agriculture, Food and
18 Markets shall amend the accepted agricultural practices in order to include
19 requirements for reducing nutrient contribution to waters of the State from
20 subsurface tile drainage. Upon adoption of requirements for subsurface tile
21 drainage, the Secretary may require an existing subsurface tile drain to comply

1 with the requirements of the AAPs for subsurface tile drainage upon a
2 determination that compliance is necessary to reduce adverse impacts to water
3 quality from the subsurface tile drain.

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

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

19 (b) On or before January 15, 2016, the Secretary of Agriculture, Food and
20 Markets and the Secretary of Natural Resources shall submit an interim report
21 that summarizes the progress of the Secretaries in preparing the report required

1 by this section. The Secretary of Agriculture, Food and Markets and the
2 Secretary of Natural Resources shall submit the final report required by this
3 section on or before January 15, 2017.

4 * * * Agricultural Water Quality; Permit Fees; Agency Staffing * * *

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

6 § 4803. AGRICULTURAL WATER QUALITY SPECIAL FUND

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

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

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

17 Sec. 7. 6 V.S.A. § 4851 is amended to read:

18 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

19 (a) No person shall, without a permit from the ~~secretary~~ Secretary,
20 construct a new barn, or expand an existing barn, designed to house more than
21 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves,

1 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55
2 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens
3 or broilers with a liquid manure handling system, 82,000 laying hens without a
4 liquid manure handling system, 125,000 chickens other than laying hens
5 without a liquid manure handling system, 5,000 ducks with a liquid manure
6 handling system, or 30,000 ducks without a liquid manure handling system.
7 No permit shall be required to replace an existing barn in use for livestock or
8 domestic fowl production at its existing capacity. The ~~secretary of agriculture,~~
9 ~~food and markets~~ Secretary of Agriculture, Food and Markets, in consultation
10 with the ~~secretary of natural resources~~ Secretary of Natural Resources, shall
11 review any application for a permit under this section with regard to water
12 quality impacts and, prior to approval of a permit under this subsection, shall
13 issue a written determination regarding whether the applicant has established
14 that there will be no unpermitted discharge to waters of the ~~state~~ State pursuant
15 to the federal regulations for concentrated animal feeding operations. If upon
16 review of an application for a permit under this subsection, the ~~secretary of~~
17 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets
18 determines that the permit applicant may be discharging to waters of the ~~state~~
19 State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,
20 Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural
21 Resources shall respond to the discharge in accordance with the memorandum

1 of understanding regarding concentrated animal feeding operations under
2 ~~subsection 4810(b)~~ section 4810 of this title. The ~~secretary of natural~~
3 ~~resources~~ Secretary of Natural Resources may require a large farm to obtain a
4 permit under 10 V.S.A. § 1263 pursuant to federal regulations for concentrated
5 animal feeding operations.

6 * * *

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

11 Sec. 8. 6 V.S.A. § 4858 is amended to read:

12 § 4858. ~~ANIMAL WASTE PERMITS~~ MEDIUM FARM OPERATION
13 PERMITS

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

18 (b) Rules; general and individual permits. The ~~secretary~~ Secretary shall
19 establish by rule, pursuant to 3 V.S.A. chapter 25 of Title 3, requirements for a
20 “general permit” and “individual permit” to ~~ensure~~ assure that medium and

1 small farms generating animal waste comply with the water quality standards
2 of the ~~state~~ State.

3 * * *

4 (2) The rules adopted under this section shall also address permit
5 administration, public notice and hearing, permit enforcement, permit
6 transition, revocation, and appeals consistent with provisions of sections 4859,
7 ~~4860~~, and 4861 of this title and subchapter 10 of this chapter.

8 * * *

9 (c)(1) Medium farm general permit. The owner or operator of a medium
10 farm seeking coverage under a general permit adopted pursuant to this section
11 shall certify to the ~~secretary~~ Secretary within a period specified in the permit,
12 and in a manner specified by the ~~secretary~~ Secretary, that the medium farm
13 does comply with permit requirements regarding an adequately sized and
14 designed manure management system to accommodate the wastes generated
15 and a nutrient management plan to dispose of wastes in accordance with
16 accepted agricultural practices adopted under this chapter. Any certification or
17 notice of intent to comply submitted under this subdivision shall be kept on file
18 at the ~~agency of agriculture, food and markets~~ Agency of Agriculture, Food
19 and Markets. The ~~secretary of agriculture, food and markets~~ Secretary of
20 Agriculture, Food and Markets, in consultation with the ~~secretary of natural~~
21 ~~resources~~ Secretary of Natural Resources, shall review any certification or

1 notice of intent to comply submitted under this subdivision with regard to the
2 water quality impacts of the medium farm for which the owner or operator is
3 seeking coverage, and, within 18 months of receiving the certification or notice
4 of intent to comply, shall verify whether the owner or operator of the medium
5 farm has established that there will be no unpermitted discharge to waters of
6 the ~~state~~ State pursuant to the federal regulations for concentrated animal
7 feeding operations. If upon review of a medium farm granted coverage under
8 the general permit adopted pursuant to this subsection, the ~~secretary of~~
9 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets
10 determines that the permit applicant may be discharging to waters of the ~~state~~
11 State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,
12 Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural
13 Resources shall respond to the discharge in accordance with the memorandum
14 of understanding regarding concentrated animal feeding operations under
15 ~~subsection 4810(b)~~ section 4810 of this title.

16 * * *

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

1 Sec. 9. 6 V.S.A. § 324 is amended to read:

2 § 324. REGISTRATION AND FEES

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

6 (1) the name of the manufacturer;

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

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

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

10 (b) A person shall not distribute in this State a commercial feed that has not
11 been registered pursuant to the provisions of this chapter. Application shall be
12 in a form and manner to be prescribed by rule of the Secretary. The
13 application for registration of a commercial feed shall be accompanied by a
14 registration fee of ~~\$85.00~~ \$100.00 per product. ~~The~~ Of the registration fees
15 collected, \$85.00 of each collected fee, along with any surcharges collected
16 under subsection (c) of this section, shall be deposited in the special fund
17 created by subsection 364(e) of this title. Funds deposited in this account shall
18 be restricted to implementing and administering the provisions of this title and
19 any other provisions of the law relating to fertilizer, lime, or seeds. Of the
20 registration fees collected, \$15.00 of each collected fee shall be deposited in
21 the Agricultural Water Quality Special Fund created under section 4803 of this

1 title. If the Secretary so requests, the application for registration shall be
2 accompanied by a label or other printed matter describing the product.

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

11 Sec. 10. 6 V.S.A. § 328 is amended to read:

12 § 328. TONNAGE REPORTING

13 (a) Every person who registers a commercial feed pursuant to the
14 provisions of this chapter shall report to the ~~agency of agriculture, food and~~
15 ~~markets~~ Agency of Agriculture, Food and Markets annually the total amount of
16 combined feed which is distributed within the state and which is intended for
17 use within the ~~state~~ State. The report shall be made on forms and in a manner
18 to be prescribed ~~by rules~~ by the ~~secretary~~ Secretary for calendar years ~~1986~~
19 2016 and ~~1987~~ 2017.

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

4 Sec. 11. 6 V.S.A. § 366 is amended to read:

5 § 366. TONNAGE FEES

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

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

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

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

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

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

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

9 (h) There shall be paid annually to the Secretary for all fertilizers
10 distributed to a nonregistrant consumer in this State an annual fee at a rate of
11 \$30.00 per ton on nonagricultural fertilizer for the purpose of supporting
12 agricultural water quality programs in Vermont.

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

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

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

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

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

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

10 Sec. 12. 6 V.S.A. § 918 is amended to read:

11 § 918. REGISTRATION

12 (a) Every economic poison which is distributed, sold, or offered for sale
13 within this State or delivered for transportation or transported in intrastate
14 commerce or between points within this State through any point outside this
15 State shall be registered in the Office of the Secretary, and such registration
16 shall be renewed annually; provided, that products which have the same
17 formula, are manufactured by the same person, the labeling of which contains
18 the same claims, and the labels of which bear a designation identifying the
19 product as the same economic poison may be registered as a single economic
20 poison; and additional names and labels shall be added by supplement
21 statements during the current period of registration. It is further provided that

1 any economic poison imported into this State, which is subject to the
2 provisions of any federal act providing for the registration of economic poisons
3 and which has been duly registered under the provisions of this chapter, may,
4 in the discretion of the Secretary, be exempted from registration under this
5 chapter, when sold or distributed in the unbroken immediate container in
6 which it was originally shipped. The registrant shall file with the Secretary a
7 statement including:

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

10 (2) The name of the economic poison.

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

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

18 (b) The registrant shall pay an annual fee of ~~\$110.00~~ \$125.00 for each
19 product registered, and \$110.00 of that amount shall be deposited in the special
20 fund created in section 929 of this title, of which \$5.00 from each product
21 registration shall be used for an educational program related to the proper

1 purchase, application, and disposal of household pesticides, and \$5.00 from
2 each product registration shall be used to collect and dispose of obsolete and
3 unwanted pesticides. Of the registration fees collected under this subsection,
4 \$15.00 of the amount collected shall be deposited in the Agricultural Water
5 Quality Special Fund created under section 4803 of this title. The annual
6 registration year shall be from December 1 to November 30 of the following
7 year.

8 * * *

9 Sec. 13. APPROPRIATIONS FOR AGENCY OF AGRICULTURE, FOOD
10 AND MARKETS STAFF

11 In addition to any other funds appropriated to the Agency of Agriculture,
12 Food and Markets in fiscal year 2016, there is appropriated from the
13 Agricultural Water Quality Special Fund created under 6 V.S.A § 4803 to the
14 Agency \$1,056,000.00 in fiscal year 2016 for the purpose of hiring:

15 (1) one water quality permitting and project manager;

16 (2) two small farm water quality specialists;

17 (3) one agriculture systems specialist;

18 (4) one financial administrator;

19 (5) one GIS project supervisor; and

20 (6) one senior agricultural development coordinator.

21

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

2 Sec. 14. 6 V.S.A. § 4810 is amended to read:

3 § 4810. AUTHORITY; COOPERATION; COORDINATION

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

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

1 encourage, practices for farmers in preventing pollutants from entering the
2 groundwater and waters of the ~~state~~ State when engaged in, ~~but not limited to,~~
3 animal waste management and disposal, soil amendment applications, plant
4 fertilization, and pest and weed control. Persons engaged in farming, ~~as~~
5 ~~defined in 10 V.S.A. § 6001,~~ who follow are in compliance with these
6 practices shall be presumed to be in compliance with water quality standards.
7 AAPs shall be practical and ~~cost-effective~~ cost-effective to implement, as
8 determined by the Secretary. Where the Secretary determines, after inspection
9 of a farm, that a person engaged in farming is complying with the AAPs but is
10 not complying with the requirements of the State water quality standards, the
11 Secretary shall require the person to implement additional, site-specific
12 conservation practices designed to meet the State water quality standards.
13 When requiring implementation of a conservation practice under this
14 subsection, the Secretary shall inform the person engaged in farming of the
15 resources available to assist the person in implementing the conservation
16 practice and complying with the requirements of this chapter. The AAPs for
17 groundwater shall include a process under which the ~~agency~~ Agency shall
18 receive, investigate, and respond to a complaint that a farm has contaminated
19 the drinking water or groundwater of a property owner.

20 ~~(2)(c) Best Management Practices. “Best Management Practices”~~
21 ~~(BMPs) may be required by the secretary on a case by case basis. Before~~

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

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

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

1 applying for federal funds under Public Law 92-500, but shall consult with the
2 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and
3 Markets during the process. The agricultural non-point source program may
4 compete with other programs for competitive watershed projects funded from
5 federal funds. The ~~secretary of agriculture, food and markets~~ Secretary of
6 Agriculture, Food and Markets shall be represented in reviewing these projects
7 for funding. Actions by the ~~secretary of agriculture, food and markets~~
8 Secretary of Agriculture, Food and Markets under this chapter concerning
9 agricultural non-point source pollution shall be consistent with the water
10 quality standards and water pollution control requirements of 10 V.S.A.
11 chapter 47 of ~~Title 10~~ and the federal Clean Water Act as amended. In
12 addition, the ~~secretary of agriculture, food and markets~~ Secretary of
13 Agriculture, Food and Markets shall coordinate with the ~~secretary of natural~~
14 ~~resources~~ Secretary of Natural Resources in implementing and enforcing
15 programs, plans, and practices developed for the proper management of
16 composting facilities when those facilities are located on a farm.

17 Sec. 15. 6 V.S.A. § 4813 is amended to read:

18 § 4813. ~~BASIN MANAGEMENT; APPEALS TO THE WATER~~

19 ~~RESOURCES BOARD~~ ENVIRONMENTAL DIVISION

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

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

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

20 (c) ~~Before requiring best management practices under this section, the~~
21 ~~secretary of agriculture, food and markets or the board shall determine that~~

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

6 * * * Agricultural Water Quality; Training * * *

7 Sec. 16. 6 V.S.A. chapter 215, subchapter 8 is added to read:

8 Subchapter 8. Agricultural Water Quality Training

9 § 4981. AGRICULTURAL WATER QUALITY TRAINING

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

14 (1) the prevention of discharges, as that term is defined in 10 V.S.A.
15 § 1251(3); and

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

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

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

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

4 (3) the land application of manure, nutrients, septage, or sludge;
5 methods or techniques to minimize the runoff of land-applied manure,
6 nutrients, septage, or sludge to waters of the State; and identification of
7 weather or soil conditions that increase the risk of runoff of land-applied
8 manure, nutrients, septage, or sludge to waters of the State.

9 (c) The Secretary shall include the training required by this section as a
10 condition of a large farm permit, medium farm permit, or small farm
11 certification required under this chapter. The Secretary may phase in training
12 requirements under this section based on farm size, permit or certification
13 category, or available staffing. On or before January 1, 2016 the Secretary
14 shall establish a schedule by which all owners or operators of small farms,
15 medium farms, or large farms shall complete the training required by this
16 section.

17 * * * Agricultural Water Quality;

18 Certification of Custom Applicators * * *

19 Sec. 17. 6 V.S.A. chapter 215, subchapter 9 is added to read:

20 Subchapter 9. Certification of Custom Applicators of Manure,
21 Nutrients, Septage, or Sludge

1 § 4987. DEFINITIONS

2 As used in this subchapter:

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

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

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

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

16 § 4988. CERTIFICATION OF CUSTOM APPLICATOR

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

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

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

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

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

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

13 Sec. 18. 6 V.S.A. chapter 215, subchapter 10 is added to read:

14 Subchapter 10. Enforcement

15 § 4991. PURPOSE

16 The purpose of this subchapter is to provide the Secretary of Agriculture,
17 Food and Markets with the necessary authority to enforce the agricultural
18 water quality requirements of this chapter. When the Secretary of Agriculture,
19 Food and Markets determines that a person subject to the requirements of the
20 chapter is violating a requirement of this chapter, the Secretary shall respond to

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

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

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

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

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

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

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

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

15 § 4992. WARNINGS OF VIOLATIONS; CORRECTIVE ACTIONS;

16 ADMINISTRATIVE ENFORCEMENT

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

1 (1) a description of the alleged violation;

2 (2) identification of this section;

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

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

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

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

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

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

1 § 4993. ADMINISTRATIVE ENFORCEMENT; CEASE AND DESIST

2 ORDERS; EMERGENCY ORDERS

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

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

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

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

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

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

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

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

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

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

21 § 4994. PERMIT OR CERTIFICATION; REVOCATION; ENFORCEMENT

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

12 § 4995. CIVIL ENFORCEMENT

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

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

21 (1) Enjoin future activities.

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

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

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

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

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

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

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

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

9 (A) a violation exists; or

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

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

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

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

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

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

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

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

6 (5) the deterrent effect of the penalty;

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

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

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

11 § 4996. APPEALS; ENFORCEMENT

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

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

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

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

13 Sec. 19. 6 V.S.A. § 4812 is amended to read:

14 § 4812. ~~CORRECTIVE ACTIONS~~

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

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

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

10 ~~(1) issue cease and desist orders and administrative penalties in~~
11 ~~accordance with the requirements of sections 15, 16, and 17 of this title; and~~
12 ~~(2) institute appropriate proceedings on behalf of the Agency to enforce~~
13 ~~this subchapter.~~

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

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

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

6 Sec. 20. 6 V.S.A. § 4854 is amended to read:

7 § 4854. ~~REVOCATION; ENFORCEMENT~~

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

20 Sec. 21. 6 V.S.A. § 4860 is amended to read:

21 § 4860. ~~REVOCATION; ENFORCEMENT~~

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

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

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

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

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

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

10 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

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

19 * * *

20 (f) This subchapter shall not apply to:

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

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

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

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

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

1 is complying with the water quality requirements of 6 V.S.A. chapter 215 or an
2 order issued under 6 V.S.A. chapter 215. After submission of a certification by
3 the Secretary of Agriculture, Food and Markets, an owner or operator shall be
4 eligible to apply for enrollment of the agricultural land or farm building
5 according to the requirements of section 3756 of this title.

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

7 § 3758. APPEALS

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

16 * * *

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

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

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

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

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

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

12 § 1253. CLASSIFICATION OF WATERS DESIGNATED,
13 RECLASSIFICATION

14 * * *

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (1) existing and obtainable water qualities;

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

7 (3) natural sources of pollution;

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

10 (5) consistency with the State water quality policy established in
11 10 V.S.A. § 1250;

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

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

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

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

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

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

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

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

5 § 4302. PURPOSE; GOALS

6 * * *

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

10 * * *

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

13 * * *

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

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

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

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Sec. 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 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:

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

3 * * *

4 (6) A statement of policies on the:

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

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

10 * * *

11 * * * Antidegradation Policy Implementation Rule * * *

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

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

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

3 * * * Stormwater Management * * *

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

5 § 1264. STORMWATER MANAGEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (a) Findings and intent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (16) “Watershed improvement permit” means a general permit specific
21 to a stormwater-impaired water that is designed to apply management

1 strategies to existing and new discharges and that includes a schedule of
2 compliance no longer than five years reasonably designed to assure attainment
3 of the Vermont water quality standards in the receiving waters.

4 (c) Prohibitions.

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

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

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

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

17 (5) A person shall not expand existing impervious surface by more than
18 5,000 square feet, such that the total resulting impervious area is greater than
19 one acre, without first obtaining a permit from the Secretary.

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

4 (i) an individual permit;

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

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

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

11 (7) In accordance with the schedule established under subsection (g)(3),
12 a person shall not discharge stormwater from impervious surface of three or
13 more acres in size without first obtaining an individual permit or coverage
14 under a general permit issued under this section if the discharge was never
15 previously permitted or was permitted under an individual permit or general
16 permit that did not incorporate the requirements of the 2002 Stormwater
17 Management Manual or any subsequently adopted Stormwater Management
18 Manual.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (g) General permits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (ii) For redevelopment of or renewal of a permit for existing
20 impervious surface, the discharge shall satisfy on-site the water quality,
21 recharge, and channel protection criteria set forth in the Stormwater

1 Management Manual that are determined to be technically feasible by an
2 engineering feasibility analysis conducted by the Agency and the discharge
3 shall not increase the pollutant load in the receiving water for stormwater.

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

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

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

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

19 (i) Disclosure of violations. The Secretary may, at his or her discretion and
20 as necessary to assure achievement of the goals of the program and compliance
21 with State law and the federal Clean Water Act, deny an application for the

1 discharge of regulated stormwater under this subsection if review of the
2 applicant's compliance history indicates that the applicant is discharging
3 regulated stormwater in violation of this chapter or is the holder of an expired
4 permit for an existing discharge of regulated stormwater.

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

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

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

21 The report shall include:

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

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

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

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

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

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

18 Sec. 33. STORMWATER MANAGEMENT PRACTICES HANDBOOK

19 On or before January 1, 2016, the Secretary of Natural Resources shall
20 publish as a handbook a suite of practical and cost-effective best management
21 practices for the control of stormwater runoff from the construction,

1 redevelopment, or expansion of impervious surface that does not require a
2 permit under 10 V.S.A. § 1264. The best management practices shall address
3 activities that control, mitigate, or eliminate stormwater runoff to waters of the
4 State. The stormwater management practices shall be voluntary and shall not
5 be mandatory.

6 * * * Water Quality Data Coordination * * *

7 Sec. 34. 10 V.S.A. § 1284 is added to read:

8 § 1284. WATER QUALITY DATA COORDINATION

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

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

13 (2) stream gauge data;

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

15 (4) water quality monitoring or sampling data;

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

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

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

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

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

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

8 * * * Water Quality Funding; Clean Water Fund; Clean Water Surcharge * * *

9 Sec. 35. 10 V.S.A. chapter 47, subchapter 7 is added to read:

10 Subchapter 7. Vermont Clean Water Fund

11 § 1387. PURPOSE

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

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

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

20 § 1388. CLEAN WATER FUND

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

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

3 (2) the Fund shall consist of:

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

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

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

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

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

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

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

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

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

7 § 1389. CLEAN WATER FUND BOARD

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

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

12 (1) The Secretary of Administration or designee.

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

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

15 (4) The Secretary of Commerce and Community Development or
16 designee.

17 (5) The Secretary of Transportation or designee.

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

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

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

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

11 (d) Member terms. Members of the Clean Water Fund Board appointed by
12 the Governor shall serve initial terms of three years, members appointed by the
13 Speaker of the House shall serve initial terms of two years, and members
14 appointed by the Committee on Committees shall serve initial terms of one
15 year. Thereafter, each of the above appointed members shall serve a term of
16 three years. A vacancy shall be filled by the appointing authority for the
17 remainder of the unexpired term. An appointed member shall not serve more
18 than three consecutive three-year terms.

19 (e) Compensation and expense reimbursement.

20 (1) For attendance at meetings during adjournment of the General
21 Assembly, any legislative members of the Clean Water Fund Board shall be

1 entitled to per diem compensation and reimbursement of expenses pursuant to
2 2 V.S.A. § 406.

3 (2) Other members of the Board who are not employees of the State of
4 Vermont and who are not otherwise compensated or reimbursed for their
5 attendance shall be entitled to per diem compensation and reimbursement of
6 expenses pursuant to 32 V.S.A. § 1010.

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

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

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

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

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

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

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

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

3 (C) the annual Clean Water Investment Report required under section
4 1389 of this title.

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

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

14 § 1390. CLEAN WATER INVESTMENT REPORT

15 Beginning on January 15, 2017, and annually thereafter, the Clean Water
16 Fund Board shall publish a Clean Water Investment Report. The report shall
17 summarize all investments made by the Clean Water Fund Board and other
18 State agencies for clean water restoration over the past calendar year. The
19 report shall include expenditures from the Clean Water Fund, the General
20 Fund, the Transportation Fund, and any other State expenditures for clean
21 water restoration, regardless of funding source. The report shall document

1 progress or shortcomings in meeting established indicators for clean water
2 restoration. The report may also provide an overview of additional funding
3 necessary to meet objectives established for clean water restoration and
4 recommendations for additional revenue to meet those restoration objectives.
5 The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not
6 apply to the report required by this section.

7 Sec. 36. 32 V.S.A. § 9602a is added to read:

8 § 9602a. CLEAN WATER SURCHARGE

9 There shall be a surcharge of 0.2 percent on the value of property subject to
10 the property transfer tax under section 9602 of this title, except that there shall
11 be no surcharge on the first \$100,000.00 in value of property to be used for the
12 principal residence of the transferee. The surcharge shall be in addition to any
13 tax assessed under section 9602 of this title. The surcharge assessed under this
14 section shall be paid, collected, and enforced under this chapter in the same
15 manner as the tax assessed under section 9602 of this title. The Commissioner
16 shall deposit the surcharge collected under this section in the Clean Water
17 Fund under 10 V.S.A. § 1388.

18 Sec. 37. REPEAL OF CLEAN WATER SURCHARGE

19 32 V.S.A. § 9602a (Clean Water Surcharge) shall be repealed on July 1,
20 2021.

21 * * * Secretary of Administration; Report on Per Parcel Fee * * *

1 Sec. 38. SECRETARY OF ADMINISTRATION REPORT ON PER
2 PARCEL WATER QUALITY FEE

3 (a) On or before January 15, 2016, the Secretary of Administration, after
4 consultation with the Department of Taxes, shall submit to the House
5 Committee on Fish, Wildlife and Water Resources, the Senate Committee on
6 Natural Resources and Energy, the House Committee on Agriculture and
7 Forest Products, the Senate Committee on Agriculture, the House Committee
8 on Ways and Means, and the Senate Committee on Finance a recommendation
9 for establishing a fee on parcels of property in the State for the purpose of
10 raising revenue to fund water quality improvement programs in the State. The
11 recommendation shall include:

12 (1) a tiered per parcel fee that provides for equitable apportionment
13 among all parcel owners, including owners of industrial property, commercial
14 property, residential property, or agricultural lands;

15 (2) an estimate of the amount of revenue to be generated from the
16 proposed per parcel fee;

17 (3) a summary of how assessment of the fee will be administered,
18 collected, and enforced; and

19 (4) a legislative proposal to implement the proposed per parcel fee
20 program.

1 ~~for an orphan stormwater system under 10 V.S.A. § 1264e~~ for which a
2 municipality has assumed full legal responsibility under 10 V.S.A. § 1264.

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

6 * * *

7 (2) For discharge permits issued under 10 V.S.A. chapter 47 and orders
8 issued under 10 V.S.A. § 1272, an administrative processing fee of ~~\$120.00~~
9 \$240.00 shall be paid at the time of application for a discharge permit in
10 addition to any application review fee and any annual operating fee, except for
11 permit applications under subdivisions (2)(A)(iii)(III) and (V) of this
12 subsection:

13 (A) Application review fee.

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

17 (I) Individual permit: original	\$0.0023 <u>\$0.003</u> per gallon
18 application; amendment for	design flow; minimum
19 increased flows; amendment	\$50.00 <u>\$100.00</u> per
20 for change in treatment process;	outfall; maximum
21	30,000.00 per application.

1	(II) Renewal, transfer, or minor	\$0.00 <u>\$0.002 per gallon</u>
2	amendment of individual permit;	<u>design flow; minimum</u>
3		<u>\$50.00 per outfall;</u>
4		<u>maximum \$5,000.00 per</u>
5		<u>application.</u>
6	(III) General permit;	\$0.00.
7	(ii) Pretreatment discharges.	
8	(I) Individual permit: original	\$0.12 <u>\$0.20 per gallon</u>
9	application; amendment for	design flow; minimum
10	increased flows; amendment for	\$50.00 <u>\$100.00 per</u>
11	change in treatment process;	outfall.
12	(II) Renewal, transfer, or minor	\$0.00 <u>\$0.002 per gallon</u>
13	amendment of individual permit;	<u>design flow; minimum</u>
14		<u>\$50.00 per outfall.</u>
15	(iii) Stormwater discharges.	
16	(I) Individual operating permit	\$430.00 <u>\$860.00 per acre</u>
17	or application to operate under	impervious area;
18	general operating permit for	minimum \$220.00
19	collected stormwater runoff	<u>\$440.00 per application.</u>
20	which is discharged to Class B	
21	waters: original application;	

1 amendment for increased flows;
2 amendment for change in
3 treatment process-;

4 (II) Individual operating permit \$1,400.00 per acre
5 or application to operate under impervious area;
6 general operating permit for minimum \$1,400.00
7 collected stormwater runoff which per application.
8 is discharged to Class A waters;
9 original application; amendment
10 for increased flows; amendment
11 for change in treatment process.

12 (III) Individual permit or
13 application to operate under
14 general permit for construction
15 activities; original application;
16 amendment for increased acreage.

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

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

1 codes; original application;
2 amendment for change in activities;:
3 (V) Individual permit or \$1,200.00 \$2,400.00
4 application to operate under per system.
5 general permit for stormwater
6 runoff associated with
7 municipal separate storm sewer
8 systems; original application; amendment
9 for change in activities;:
10 (VI) Individual operating permit or application to operate under
11 a general permit for a residually designated stormwater discharge original
12 application; amendment; for increased flows amendment; for change in
13 treatment process.
14 (aa) For discharges to Class B water; ~~\$430.00~~ \$860.00 per
15 acre of impervious area, minimum ~~\$220.00~~ \$280.00.
16 (bb) For discharges to Class A water; ~~\$1,400.00~~ \$1,700.00
17 per acre of impervious area, minimum ~~\$1,400.00~~ \$1,700.00.
18 (VII) Renewal, transfer, or \$0.00;
19 minor amendment of individual
20 permit or approval under
21 general permit;:

1	<u>(VIII) Application for coverage</u>	<u>\$400.00 per application.</u>
2	<u>under the municipal roads</u>	
3	<u>stormwater general permit:</u>	
4	<u>(IX) Application for coverage</u>	<u>\$1,200.00.</u>
5	<u>under the State roads stormwater</u>	
6	<u>general permit:</u>	
7	* * *	
8	(B) Annual operating fee.	
9	(i) Industrial, noncontact cooling	\$0.004 <u>\$0.0015</u> per gallon
10	water and thermal discharges:	design capacity. \$150.00
11		<u>\$200.00</u> minimum;
12		maximum \$210,000.00.
13	(ii) Municipal:	\$0.003 per gallon of actual
14		<u>design</u> flows. \$150.00
15		<u>\$200.00</u> minimum;
16		maximum \$12,500.00.
17	(iii) Pretreatment discharges:	\$0.0385 <u>\$0.04</u> per gallon
18		design capacity. \$150.00
19		<u>\$200.00</u> minimum;
20		maximum \$27,500.00.
21	(iv) Stormwater.	

1 (I) Individual operating permit ~~\$255.00~~ \$310.00 per acre
2 or approval under general operating impervious area; ~~\$235.00~~
3 permit for collected stormwater \$310.00 minimum.
4 runoff which is discharged to
5 class A waters;:
6 (II) Individual operating permit ~~\$80.00~~ \$120.00 per acre
7 or approval under general operating impervious area; ~~\$80.00~~
8 permit for collected stormwater \$120.00 minimum.
9 runoff which is discharged to
10 Class B waters;:
11 (III) Individual permit or ~~\$80.00~~ \$160.00
12 approval under general permit per facility.
13 for stormwater runoff from
14 industrial facilities with
15 specified SIC codes;:
16 (IV) Individual permit or ~~\$80.00~~ per system
17 application to operate under \$10.00 per acre of
18 general permit for stormwater impervious surface within
19 runoff associated with municipal the municipality; annually.
20 separate storm sewer systems;:

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

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

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

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

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

12 * * *

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

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

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

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

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

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

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

6 * * *

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

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

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

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

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

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

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

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

11 * * *

12 (33) \$10.00 per 1,000 gallons based on the rated capacity of the tank
13 being pumped rounded to the nearest 1,000 gallon.

14 * * *

15 Sec. 40. 32 V.S.A. § 710 is amended to read:

16 § 710. PAYMENT OF STATE AGENCY FEES

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

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

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

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

16 (2) Any project undertaken by a municipality, which is funded in whole
17 or in part by a grant or loan from the Agency of Natural Resources or the
18 Agency of Transportation financed by an appropriation of a capital
19 construction act introduced pursuant to section 701a of this title except for
20 those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(7)(A) and (B),
21 (j)(10), (j)(11), and (j)(26). However, all such fees shall be paid for reviews,

1 inspections, or permits required by municipal solid waste facilities developed
2 by a solid waste district which serves, or is expected to serve, in whole or in
3 part, parties located outside its own district boundaries pursuant to 10 V.S.A.
4 chapter 159.

5 Sec. 41. APPROPRIATIONS FOR AGENCY OF NATURAL RESOURCES

6 STAFF

7 In addition to any other funds appropriated to the Agency of Natural
8 Resources in fiscal year 2016, there is appropriated from the Environmental
9 Permit Fund created under 3 V.S.A § 2805 to the Agency of Natural
10 Resources \$1,312,556.00 in fiscal year 2016 for the purpose of hiring 13
11 positions for implementation of the State water quality initiative, including
12 implementation of the total maximum daily load plan for Lake Champlain.

13 * * * Wastewater Treatment Plants; Financial Assistance for
14 Phosphorus Reduction * * *

15 Sec. 42. 10 V.S.A. § 1266a is amended to read:

16 § 1266a. DISCHARGES OF PHOSPHORUS

17 (a) No person directly discharging into the drainage basins of Lake
18 Champlain or Lake Memphremagog shall discharge any waste that contains a
19 phosphorus concentration in excess of 0.80 milligrams per liter on a monthly
20 average basis. Discharges of less than 200,000 gallons per day, permitted on
21 or before July 1, 1991, shall not be subject to the requirements of this

1 subsection. Discharges from a municipally owned aerated lagoon type
2 secondary sewage treatment plant in the Lake Memphremagog drainage basin,
3 permitted on or before July 1, 1991 shall not be subject to the requirements of
4 this subsection unless the plant is modified to use a technology other than
5 aerated lagoons.

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

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

1 Sec. 43. 10 V.S.A. § 1625 is amended to read:

2 § 1625. AWARDS FOR POLLUTION ABATEMENT PROJECTS TO
3 ABATE DRY WEATHER SEWAGE FLOWS

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

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

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

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

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

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

1 purposes and policies of this chapter, giving due consideration to the need to
2 assure continuous supplies of forest products and to the rights of the owner or
3 operator of the land. Such rules adopted under this subsection shall be
4 advisory, and not mandatory except that the rules adopted under section 2625
5 of this title for the regulation of heavy cutting shall be mandatory as shall other
6 rules specifically authorized to be mandatory.

7 (b) Acceptable management practices. On or before March 1, 2016, the
8 Commissioner shall revise by rule the acceptable management practices for
9 maintaining water quality on logging jobs in Vermont. The revised acceptable
10 management practices shall ensure that all logging operations, on both public
11 and private forestland, are designed to: prevent or minimize discharges of
12 sediment, petroleum products, and woody debris (logging slash) from entering
13 streams and other bodies of water; protect aquatic habitat and aquatic wildlife;
14 and prevent erosion and maintain natural water temperature. The purpose of
15 the acceptable management practices is to provide a guide for loggers,
16 foresters, and landowners to design logging operations to comply with the
17 Vermont Water Quality Standards and minimize the potential for a discharge
18 from logging operations in Vermont in accordance with section 1259 of
19 this title.

1 Sec. 45. DEPARTMENT OF FORESTS, PARKS AND RECREATION
2 REPORT; ACCEPTABLE MANAGEMENT PRACTICES;
3 MAPLE SYRUP PRODUCTION UNDER USE VALUE
4 APPRAISAL

5 On or before March 1, 2016, the Commissioner of Forests, Parks and
6 Recreation shall submit to the House Committee on Fish, Wildlife and Water
7 Resources, the Senate Committee on Natural Resources and Energy, and the
8 House Committee on Natural Resources and Energy a recommendation and
9 supporting basis as to whether:

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

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

16 Sec. 46. 10 V.S.A. § 1259(f) is amended to read:

17 (f) The provisions of subsections (c), (d), and (e) of this section shall not
18 regulate accepted agricultural ~~or silvicultural~~ practices, as ~~such are defined~~
19 ~~adopted by rule by the secretary of agriculture, food and markets and the~~
20 ~~commissioner of forests, parks and recreation, respectively, after an~~
21 ~~opportunity for a public hearing~~ Secretary of Agriculture, Food and Markets,

1 or the acceptable management practices for maintaining water quality on
2 logging jobs in Vermont, as adopted by the Commissioner of Forests, Parks
3 and Recreation; nor shall these provisions regulate discharges from
4 concentrated animal feeding operations that require a permit under section
5 1263 of this title; nor shall those provisions prohibit stormwater runoff or the
6 discharge of nonpolluting wastes, as defined by the ~~secretary~~ Secretary.

7 Sec. 47. 24 V.S.A. § 4413(d) is amended to read:

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

16 * * * Eligibility for Ecosystem Restoration Program Assistance * * *

17 Sec. 48. ECOSYSTEM RESTORATION PROGRAM; CLEAN WATER
18 FUND; ELIGIBILITY FOR FINANCIAL ASSISTANCE

19 It is the policy of the State of Vermont that all municipal separate storm
20 sewer system (MS4) communities in the State shall be eligible for grants and
21 other financial assistance from the Agency of Natural Resources' Ecosystem

1 Restoration Program, the Clean Water Fund, or any other State water quality
2 financing program. A project or proposal that is the subject of an application
3 for a grant or other assistance from the Agency of Natural Resources shall not
4 be denied solely on the basis that the project or proposal may be construed as a
5 regulatory requirement of the MS4 permit program.

6 * * * Effective Dates * * *

7 Sec. 49. EFFECTIVE DATES

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

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

10 (2) 6 V.S.A. § 4988(b) of Sec. 17 shall take effect 45 days after the
11 effective date of rules adopted under 6 V.S.A. § 4988(a).

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

16 (4) Sec. 35 (Clean Water Fund) shall take effect on passage.

17
18
19 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE