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1 TO THE HOUSE OF REPRESENTATIVES:

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

7 * * * Purpose * * *

8 Sec. 1. PURPOSE; IMPROVEMENT OF WATER QUALITY

9 It is the purpose of this act to:

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

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

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

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

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

4 * * * Agricultural Water Quality;

5 Definitions * * *

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

7 § 4802. ~~DEFINITION~~ DEFINITIONS

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

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

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

12 § 6001(22).

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

14 (4) “Top of bank” means the point along the bank of a stream where an

15 abrupt change in slope is evident, and where the stream is generally able to

16 overflow the banks and enter the adjacent floodplain during flows at or

17 exceeding the average annual high water stage.

18 (5) “Waste” or “agricultural waste” means material originating or

19 emanating from a farm that is determined by the Secretary or the Secretary of

20 Natural Resources to be harmful to the waters of the State, including:

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1 sediments; minerals, including heavy metals; plant nutrients; pesticides;
2 organic wastes, including livestock waste, animal mortalities, compost, feed
3 and crop debris; waste oils; pathogenic bacteria and viruses; thermal pollution;
4 silage runoff; untreated milkhouse waste; and any other farm waste as the term
5 “waste” is defined in 10 V.S.A. § 1251 (12).

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

7 * * * Agricultural Water Quality;

8 Small Farm Certification and Inspection * * *

9 Sec. 3. 6 V.S.A. § 4858a is added to read:

10 § 4858a. SMALL FARM CERTIFICATION

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

18 (b) Rulemaking; small farm certification. The Secretary of Agriculture,
19 Food and Markets shall adopt by rule requirements for a small farm
20 certification of compliance with the accepted agricultural practices. The rules

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1 required by this subsection shall be adopted as part of the accepted agricultural
2 practices under section 4810 of this title.

3 (c) Small farm inspection. The Secretary may inspect a small farm in the
4 State at any time for the purposes of assessing compliance by the small farm
5 with the accepted agricultural practices and determining consistency with a
6 certification of compliance submitted by the person who owns or operates the
7 small farm. The Secretary may prioritize inspections of small farms in the
8 State based on identified water quality issues posed by a small farm.

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

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

19 (2) Notwithstanding the priority system established under section 4823
20 of this title, the Secretary annually shall establish a priority ranking system for

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1 small farms according to the water quality benefit associated with the capital,
2 structural, or technical improvements identified as needed by the Secretary
3 during an inspection of the farm.

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

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

10 § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

11 (a) On or before July 1, 2016 the Secretary of Agriculture, Food, and
12 Markets shall amend the accepted agricultural practices to improve water
13 quality in the State, ensure practices on all farms eliminate adverse impacts to
14 water quality, and implement the small farm certification program required by
15 section 4858a of this title. At a minimum, the amendments to the accepted
16 agricultural practices shall:

17 (1) Specify those farms that:

18 (A) shall be required to comply with the small certification
19 requirements under section 4858a of this title; and

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1 (B) shall not be required to comply with a permit or certification
2 under this chapter, but are required to comply with the accepted agricultural
3 practices.

4 (2) Require farms to stack manure, store fertilizer, and store other
5 nutrients on the farm in a manner and location that prevents contamination of
6 groundwater used by a private well. In no case shall manure stacking sites,
7 fertilizer storage, and other nutrient storage be located within 100 feet of a
8 private well.

9 (3) Prohibit a farm from stacking or storing manure on lands in a
10 floodway or otherwise subject to regular flooding.

11 (4) Prohibit a farm from stacking of manure in a manner that presents a
12 threat of discharge to a surface water. In no case shall manure be field stacked
13 on an unimproved site within 100 feet of a surface water.

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

18 (6) Establish standards for nutrient management on farms, including
19 required nutrient management planning on all farms that manage agricultural
20 wastes.

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

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

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

15 (10) Prohibit the construction or siting of a farm structure or the storage
16 or manure, fertilizer, or pesticides storage within a river corridor designated by
17 the Secretary of Natural Resources.

18 (11) Establish standards for the exclusion of livestock from surface
19 waters to prevent erosion and adverse water quality impacts.

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1 (12) Establish standards for the management of subsurface agriculture
2 tile drainage consistent with subsection (b) of this section.

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

11 Sec. 5. AGENCY OF AGRICULTURE, FOOD AND MARKETS REPORT
12 ON SUBSURFACE TILE DRAINAGE

13 On or before January 15, 2017, the Secretary of Agriculture, Food and
14 Markets, after consultation with the Secretary of Natural Resources and the
15 U.S. Department of Agriculture’s Natural Resource Conservation Service,
16 shall report to the House Committee on Fish, Wildlife and Water Resources,
17 the Senate Committee on Natural Resources and Energy, the House Committee
18 on Agriculture and Forest Products, and the Senate Committee on Agriculture
19 regarding the status of current, scientific research relating to the environmental
20 management of subsurface agriculture tile drainage and how subsurface

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1 agriculture tile drainage contributes to nutrient loading of surface waters. The
2 report shall include a recommendation from the Secretary of Agriculture, Food
3 and Markets regarding how best to manage subsurface agriculture tile drainage
4 in the State in order to mitigate the contribution of tile drainage to waters of the
5 State.

6 * * * Agricultural Water Quality;

7 Best Management Practices * * *

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

9 § 4810. AUTHORITY; COOPERATION; COORDINATION

10 (a) Agricultural land use practices. In accordance with 10 V.S.A.
11 § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A.
12 chapter 25 of Title 3, and shall implement and enforce agricultural land use
13 practices in order to reduce the amount of agricultural pollutants entering the
14 waters of the ~~state~~ State. These agricultural land use practices shall be created
15 in two categories, pursuant to subdivisions (1) and (2) of this subsection.

16 (1) “Accepted Agricultural Practices” (AAPs) shall be standards to be
17 followed in conducting agricultural activities in this ~~state~~ State. These
18 standards shall address activities which have a potential for causing pollutants
19 to enter the groundwater and waters of the ~~state~~ State, including dairy and
20 other livestock operations plus all forms of crop and nursery operations and

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1 on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902,
2 livestock and poultry slaughter and processing activities. The AAPs shall
3 include, as well as promote and encourage, practices for farmers in preventing
4 pollutants from entering the groundwater and waters of the ~~state~~ State when
5 engaged in, ~~but not limited to~~, animal waste management and disposal, soil
6 amendment applications, plant fertilization, and pest and weed control.
7 Persons engaged in farming, as defined in 10 V.S.A. § 6001, who ~~follow~~ are in
8 compliance with these practices shall be presumed to be in compliance with
9 water quality standards. AAPs shall be practical and ~~cost-effective~~
10 cost-effective to implement. The AAPs for groundwater shall include a
11 process under which the ~~agency~~ Agency shall receive, investigate, and respond
12 to a complaint that a farm has contaminated the drinking water or groundwater
13 of a property owner.

14 (2) “Best Management Practices” (BMPs) may be required by the
15 ~~secretary~~ Secretary on a ~~case-by-case~~ case-by-case basis. ~~Before requiring~~
16 ~~BMPs, the secretary shall determine that sufficient financial assistance is~~
17 ~~available to assist farmers in achieving compliance with applicable BMPs.~~
18 When requiring implementation of a BMP, the Secretary shall inform a farmer
19 of the resources available to assist the farmer in implementing BMPs and
20 complying with the requirements of this chapter. BMPs shall be practical and

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1 cost effective to implement and shall be designed to achieve compliance with
2 the requirements of this chapter.

3 (b) Cooperation and coordination. The ~~secretary of agriculture, food and~~
4 ~~markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the
5 ~~secretary of natural resources~~ Secretary of Natural Resources in implementing
6 and enforcing programs, plans, and practices developed for reducing and
7 eliminating agricultural non-point source pollutants and discharges from
8 concentrated animal feeding operations. The ~~secretary of agriculture, food and~~
9 ~~markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of~~
10 ~~natural resources~~ Secretary of Natural Resources shall develop a memorandum
11 of understanding for the non-point program describing program administration,
12 grant negotiation, grant sharing, and how they will coordinate watershed
13 planning activities to comply with Public Law 92-500. The ~~secretary of~~
14 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and
15 the ~~secretary of the agency of natural resources~~ Secretary of Natural Resources
16 shall also develop a memorandum of understanding according to the public
17 notice and comment process of 10 V.S.A. § 1259(i) regarding the
18 implementation of the federal concentrated animal feeding operation program
19 and the relationship between the requirements of the federal program and the
20 ~~state~~ State agricultural water quality requirements for large, medium, and small

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1 farms under this chapter ~~215 of this title~~. The memorandum of understanding
2 shall describe program administration, permit issuance, an appellate process,
3 and enforcement authority and implementation. The memorandum of
4 understanding shall be consistent with the federal National Pollutant Discharge
5 Elimination System permit regulations for discharges from concentrated
6 animal feeding operations. The allocation of duties under this chapter between
7 the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food
8 and Markets and the ~~secretary of natural resources~~ Secretary of Natural
9 Resources shall be consistent with the ~~secretary's~~ Secretary's duties,
10 established under the provisions of 10 V.S.A. § 1258(b), to comply with Public
11 Law 92-500. The ~~secretary of natural resources~~ Secretary of Natural
12 Resources shall be the ~~state~~ State lead person in applying for federal funds
13 under Public Law 92-500, but shall consult with the ~~secretary of agriculture,~~
14 ~~food and markets~~ Secretary of Agriculture, Food and Markets during the
15 process. The agricultural non-point source program may compete with other
16 programs for competitive watershed projects funded from federal funds. The
17 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and
18 Markets shall be represented in reviewing these projects for funding. Actions
19 by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,
20 Food and Markets under this chapter concerning agricultural non-point source

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1 pollution shall be consistent with the water quality standards and water
2 pollution control requirements of 10 V.S.A. chapter 47 ~~of Title 10~~ and the
3 federal Clean Water Act as amended. In addition, the ~~secretary of agriculture,~~
4 ~~food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate
5 with the ~~secretary of natural resources~~ Secretary of Natural Resources in
6 implementing and enforcing programs, plans, and practices developed for the
7 proper management of composting facilities when those facilities are located
8 on a farm.

9 Sec. ~~7~~. 6 V.S.A. § 4813 is amended to read:

10 § 4813. BASIN MANAGEMENT; APPEALS TO THE ~~WATER~~

11 ~~RESOURCES BOARD~~ ENVIRONMENTAL DIVISION

12 (a) The ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,
13 Food and Markets shall cooperate with the ~~secretary of natural resources~~
14 Secretary of Natural Resources in the basin planning process with regard to the
15 agricultural non-point source waste component of each basin plan. Any person
16 with an interest in the agricultural non-point source component of the basin
17 planning process may petition the ~~secretary of agriculture, food and markets~~
18 Secretary of Agriculture, Food and Markets to require, and the ~~secretary~~
19 Secretary may require, best management practices in the individual basin
20 beyond accepted agricultural practices adopted by rule, in order to achieve

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1 compliance with the water quality goals in 10 V.S.A. § 1250 and any duly
2 adopted basin plan. The ~~secretary of agriculture, food and markets~~ Secretary
3 of Agriculture, Food and Markets shall hold a public hearing within 60 days
4 and shall issue a timely written decision that sets forth the facts and reasons
5 supporting the decision.

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

13 (c) ~~Before requiring best management practices under this section, the~~
14 ~~secretary of agriculture, food and markets or the board shall determine that~~
15 ~~sufficient financial assistance is available to assist farmers in achieving~~
16 ~~compliance with applicable best management practices~~ When requiring
17 implementation of a best management practice, the Secretary shall inform a
18 farmer of the resources available to assist the farmer in implementing the best
19 management practice and complying with the Vermont water quality
20 standards.

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1 * * * Agricultural Water Quality; Training * * *

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

3 Subchapter 8. Agricultural Water Quality Training

4 § 4981. AGRICULTURAL WATER QUALITY CERTIFICATION

5 TRAINING; RULEMAKING

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

10 (1) the prevention of discharges, as that term is defined in 10 V.S.A.

11 § 1251(3); and

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

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

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

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

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1 (1) “Custom applicator” means a person who applies manure, nutrients,
2 or sludge to land and who charges or collects other consideration for the
3 service. “Custom applicator” shall include employees of a custom applicator,
4 when the employees apply manure, nutrients, or sludge to land.

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

7 (3) “Sludge” means any solid, semisolid, or liquid generated from a
8 municipal, commercial, or industrial wastewater treatment plant or process,
9 water supply treatment plant, air pollution control facility, or any other such
10 waste having similar characteristics and effects.

11 § 4988. CERTIFICATION OF CUSTOM APPLICATOR

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

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

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

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

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

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

5 Subchapter 10. Enforcement

6 § 4991. CORRECTIVE ACTIONS; ADMINISTRATIVE ENFORCEMENT

7 (a)(1) When the Secretary of Agriculture, Food and Markets determines
8 that a person engaged in farming is managing a farm in violation of the
9 requirements of this chapter, rules adopted under this chapter, or a permit or
10 certification issued under this chapter, the Secretary may issue a written
11 warning that shall be served in person or by certified mail, return receipt
12 requested. A warning issued under this subsection shall include:

13 (A) a brief description of the alleged violation;

14 (B) identification of this statute;

15 (C) identification of the applicable statute, rule, or permit condition
16 violated;

17 (D) the required corrective actions that the person shall take to
18 correct the violation; and

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

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

5 (3) If a person who receives a warning under this subsection fails to
6 respond in a timely manner to the written warning or to take corrective action,
7 the Secretary may act pursuant to subsection (b) or (c) of this section in order
8 to protect water quality.

9 (b) Notwithstanding the requirements of subsection (a) of this section, the
10 Secretary may:

11 (1) Issue cease and desist orders in accordance with the requirements of
12 subsection (c) of this section.

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

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

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

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

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

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

14 (5) Seek administrative or civil penalties in accordance with the
15 requirements of section 15, 16, 17, or 4993 of this title. Notwithstanding the
16 requirements of section 15 of this title to the contrary, the maximum
17 administrative penalty issued by the Secretary under this section shall not
18 exceed \$5,000.00 for each violation, and the maximum amount of any penalty
19 assessed for separate and distinct violations of this chapter shall not exceed
20 \$50,000.00.

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

6 (d)(1) Any person subject to an enforcement order or an administrative
7 penalty who is aggrieved by a final decision of the Secretary may appeal to the
8 Superior Court within 30 days of the decision. The administrative judge may
9 specially assign an Environmental judge to Superior Court for the purpose of
10 hearing an appeal.

11 (2) If the Secretary issues an emergency order under this subchapter, the
12 person subject to the order may request a hearing before the Superior Court.
13 Notice of the request for hearing under this subdivision shall be filed with the
14 Superior Court and the Secretary within five days of receipt of the order. A
15 hearing on the emergency order shall be held at the earliest possible time and
16 shall take precedence over all other hearings. The hearing shall be held within
17 five days of receipt of the notice of the request for hearing. A request for
18 hearing on an emergency order shall not stay the order. The Superior Court
19 shall issue a decision within five days from the conclusion of the hearing, and

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1 no later than 30 days from the date the notice of request for hearing was
2 received.

3 § 4992. PERMIT OR CERTIFICATION; REVOCATION; ENFORCEMENT

4 The Secretary may revoke or condition coverage under a general permit, an
5 individual permit, a small farm certification, or other permit or certification
6 issued under this chapter or rules adopted under this chapter after following the
7 same process prescribed by section 2705 of this title regarding the revocation
8 of a handler's license. The Secretary may also seek enforcement remedies and
9 penalties under this subchapter against any person who fails to comply with
10 any term, provision, or requirements of a permit or certification required by
11 this chapter or who violates the terms or conditions of coverage under any
12 general permit, any individual permit, or any certification issued under this
13 chapter.

14 § 4993. CIVIL ENFORCEMENT

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

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1 (b) The court may grant temporary and permanent injunctive relief,

2 and may:

3 (1) Enjoin future activities.

4 (2) Order corrective actions to be taken to mitigate or curtail any

5 violation and to protect human health or the environment, including the

6 removal of livestock from the farm or production area when the volume of

7 wastes produced by livestock exceeds the infrastructure capacity of the farm or

8 its production area to manage the waste or waste leachate to prevent runoff or

9 leaching of wastes to waters of the State or groundwater as required by the

10 standards in this chapter.

11 (3) Order the design, construction, installation, operation, or

12 maintenance of facilities designed to mitigate or prevent a violation of this

13 chapter or to protect human health or the environment or designed to assure

14 compliance.

15 (4) Fix and order compensation for any public or private property

16 destroyed or damaged.

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

18 chapter.

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

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

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

14 (A) a violation exists; or

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

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

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

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

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

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

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

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

13 (5) the deterrent effect of the penalty;

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

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

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

18 Sec. 11. 6 V.S.A. § 4812 is amended to read:

19 § 4812. ~~CORRECTIVE ACTIONS~~

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

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

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

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

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

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

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

13 Sec. 12. 6 V.S.A. § 4854 is amended to read:

14 § 4854. **REVOCATION; ENFORCEMENT**

15 ~~The secretary may revoke a permit issued under this subchapter after~~
16 ~~following the same process prescribed by section 2705 of this title regarding~~
17 ~~the revocation of a handler's license. The secretary may also seek enforcement~~
18 ~~remedies under sections 1, 12, 13, 16, and 17 of this title as well as assess an~~
19 ~~administrative penalty under section 15 of this title to any person who fails to~~
20 ~~apply for a permit as required by this subchapter, or who violates the terms or~~

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1 ~~conditions of a permit issued under this subchapter. However, notwithstanding~~
2 ~~the provisions of section 15 of this title to the contrary, the maximum~~
3 ~~administrative penalty assessed for a violation of this subchapter shall not~~
4 ~~exceed \$5,000.00 for each violation, and the maximum amount of any penalty~~
5 ~~assessed for separate and distinct violations of this chapter shall not exceed~~
6 ~~\$50,000.00. [Repealed.]~~

7 Sec. ~~13~~. 6 V.S.A. § 4858(b) is amended to read:

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

13 * * *

14 (2) The rules adopted under this section shall also address permit
15 administration, public notice and hearing, permit enforcement, permit
16 transition, revocation, and appeals consistent with provisions of sections 4859,
17 ~~4860~~, and 4861 of this title and subchapter 10 of this chapter.

18 * * *

19 Sec. ~~14~~. 6 V.S.A. § 4860 is amended to read:

20 § 4860. ~~REVOCATION; ENFORCEMENT~~

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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~~

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

9 * * * Stream Alteration; Agricultural Activities * * *

10 Sec. 15. 10 V.S.A. § 1021 is amended to read:

11 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

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

20 * * *

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1 (f) This subchapter shall not apply to:

2 (1) ~~accepted agricultural or silvicultural practices, as defined by the~~
3 ~~Secretary of Agriculture, Food and Markets, or~~ timber harvesting ~~activities~~
4 subject to accepted management practices adopted by the Commissioner of
5 Forests, Parks and Recreation, respectively; or

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

11 * * *

12 * * * Use Value Appraisal; Compliance with
13 Accepted Agricultural Practices * * *

14 Sec. 16. 32 V.S.A. § 3756(i) is amended to read:

15 (i)(1) The Director shall remove from use value appraisal an entire parcel
16 of managed ~~forest land~~ forestland and notify the owner ~~in accordance with the~~
17 ~~procedure in subsection (b) of this section~~ when the ~~Department~~ Commissioner
18 of Forests, Parks and Recreation has not received a management activity report
19 or has received an adverse inspection report, unless the lack of conformance
20 consists solely of the failure to make prescribed planned cutting. In that case,

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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 hearing, to be out of compliance with water quality
7 requirements established under 6 V.S.A. chapter 215; or

8 (ii) who is not in compliance with the terms of an order issued
9 under 6 V.S.A. chapter 215, subchapter 10 to remedy a violation of water
10 quality requirements established under 6 V.S.A. chapter 215.

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

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1 the Secretary of Agriculture, Food and Markets, an owner or operator shall be
2 eligible to apply for enrollment of the agricultural land or farm building
3 according to the requirements of section 3756 of this title.

4 Sec. 17. 32 V.S.A. § 3758 is amended to read:

5 § 3758. APPEALS

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

14 * * *

15 (e) When the Director removes agricultural land or a farm building
16 pursuant to notification from the Secretary of Agriculture, Food and Markets
17 under section 3756 of this title, the exclusive right of appeal shall be as
18 provided in 6 V.S.A. § 4991(d).

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1 Sec. 18. 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

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

11 * * * Agency of Natural Resources Basin Planning * * *

12 Sec. 19. 10 V.S.A. § 1253 is amended to read:

13 § 1253. CLASSIFICATION OF WATERS DESIGNATED,
14 RECLASSIFICATION

15 * * *

16 (d)(1) The Through the process of basin planning, the Secretary shall
17 determine what degree of water quality and classification should be obtained
18 and maintained for those waters not classified by the Board before 1981
19 following the procedures in sections 1254 and 1258 of this title. Those waters
20 shall be classified in the public interest. The Secretary shall prepare and

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1 maintain an overall surface water management plan to ensure that the State
2 water quality standards are met in all State waters. The surface water
3 management plan shall include a schedule for updating the basin plans. The
4 Secretary, in consultation with regional planning commissions, shall revise all
5 17 15 basin plans by January 1, 2006, and update them every five years
6 thereafter the basin plans on a five-year rotating basis. On or before January 1
7 15 of each year, the Secretary shall report to the House Committees on
8 Agriculture and Forest Products, on Natural Resources and Energy, and on
9 Fish, Wildlife and Water Resources, and to the Senate Committees on
10 Agriculture and on Natural Resources and Energy regarding the progress made
11 and difficulties encountered in revising basin plans. By January 1, 1993, the
12 Secretary shall prepare an overall management plan to ensure that the water
13 quality standards are met in all State waters. The report shall include a
14 schedule for the production of basin plans in the subsequent calendar year and
15 a summary of actions to be taken over the subsequent three years. The
16 provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply
17 to the report to be made under this subsection.

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

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1 (A) ensure that municipal officials, citizens, watershed groups, and
2 other interested groups and individuals are involved in the basin planning
3 process;

4 (B) ensure regional and local input in State water quality policy
5 development and planning processes;

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

8 (D) develop an analysis and formal recommendation on conformance
9 with the goals and objectives of applicable regional plans.

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

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

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

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

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

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

9 (1) existing and obtainable water qualities;

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

12 (3) natural sources of pollution;

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

15 (5) consistency with the State water quality policy established in
16 10 V.S.A. § 1250;

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

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

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

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

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1 process for the antidegradation policy in the water quality standards of the
2 State. The implementation process for the antidegradation policy shall be
3 consistent with the State water quality policy established in section 1250 of
4 this title, the Vermont Water Quality Standards, and any applicable
5 requirements of the federal Clean Water Act. ~~On or before July 1, 2008, a~~
6 ~~final proposal of the rules for an implementation process for the~~
7 ~~antidegradation policy shall be filed with the Secretary of State under 3 V.S.A.~~
8 ~~§ 841.~~

9 * * * Stormwater Management * * *

10 Sec. 24. 10 V.S.A. § 1264 is amended to read:

11 § 1264. STORMWATER MANAGEMENT

12 ~~(a) The General Assembly finds that the management of stormwater runoff~~
13 ~~is necessary to reduce stream channel instability, pollution, siltation,~~
14 ~~sedimentation, and local flooding, all of which have adverse impacts on the~~
15 ~~water and land resources of the State. The General Assembly intends, by~~
16 ~~enactment of this section, to reduce the adverse effects of stormwater runoff.~~
17 ~~The General Assembly determines that this intent may best be attained by a~~
18 ~~process that: assures broad participation; focuses upon the prevention of~~
19 ~~pollution; relies on structural treatment only when necessary; establishes and~~
20 ~~maintains accountability; tailors strategies to the region and the locale; assures~~

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1 ~~an adequate funding source; builds broadbased programs; provides for the~~
2 ~~evaluation and appropriate evolution of programs; is consistent with the federal~~
3 ~~Clean Water Act and the State water quality standards; and accords appropriate~~
4 ~~recognition to the importance of community benefits that accompany an~~
5 ~~effective stormwater runoff management program. In furtherance of these~~
6 ~~purposes, the Secretary shall implement two stormwater permitting programs.~~
7 ~~The first program is based on the requirements of the federal National~~
8 ~~Pollutant Discharge Elimination System (NPDES) permit program in~~
9 ~~accordance with section 1258 of this title. The second program is a State~~
10 ~~permit program based on the requirements of this section for the discharge of~~
11 ~~“regulated stormwater runoff” as that term is defined in subdivision (11) of this~~
12 ~~subsection. As used in this section:~~

13 (1) ~~“2002 Stormwater Management Manual” means the Agency of~~
14 ~~Natural Resources’ Stormwater Management Manual dated April 2002, as~~
15 ~~amended from time to time by rule.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 ~~(B) A discharge from redevelopment; from an existing discharge~~
16 ~~operating under an expired stormwater discharge permit where the property~~
17 ~~owner applies for a new permit; or from any combination of development,~~
18 ~~redevelopment, and expansion meets on site the water quality, recharge, and~~
19 ~~channel protection criteria set forth in Table 1.1 of the 2002 Stormwater~~
20 ~~Management Manual that are determined to be technically feasible by an~~

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1 ~~engineering feasibility analysis conducted by the Agency and if the sediment~~
2 ~~load from the discharge approximates the natural runoff from an undeveloped~~
3 ~~field or open meadow that is not used for agricultural activity.~~

4 (b) ~~The Secretary shall prepare a plan for the management of collected~~
5 ~~stormwater runoff found by the Secretary to be deleterious to receiving waters.~~

6 ~~The plan shall recognize that the runoff of stormwater is different from the~~
7 ~~discharge of sanitary and industrial wastes because of the influence of natural~~
8 ~~events of stormwater runoff, the variations in characteristics of those runoffs,~~
9 ~~and the increased stream flows and natural degradation of the receiving water~~
10 ~~quality at the time of discharge. The plan shall be cost effective and designed~~
11 ~~to minimize any adverse impact of stormwater runoff to waters of the State.~~

12 ~~By no later than February 1, 2001, the Secretary shall prepare an enhanced~~
13 ~~stormwater management program and report on the content of that program to~~
14 ~~the House Committees on Fish, Wildlife and Water Resources and on Natural~~
15 ~~Resources and Energy and to the Senate Committee on Natural Resources and~~
16 ~~Energy. In developing the program, the Secretary shall consult with the Board,~~
17 ~~affected municipalities, regional entities, other State and federal agencies, and~~
18 ~~members of the public. The Secretary shall be responsible for implementation~~
19 ~~of the program. The Secretary's stormwater management program shall~~
20 ~~include, at a minimum, provisions that:~~

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- 1 ~~(1) Indicate that the primary goals of the State program will be to assure~~
- 2 ~~compliance with the Vermont Water Quality Standards and to maintain after~~
- 3 ~~development, as nearly as possible, the predevelopment runoff characteristics.~~
- 4 ~~(2) Allow for differences in hydrologic characteristics in different parts~~
- 5 ~~of the State.~~
- 6 ~~(3) Incorporate stormwater management into the basin planning process~~
- 7 ~~conducted under section 1253 of this title.~~
- 8 ~~(4) Assure consistency with applicable requirements of the federal Clean~~
- 9 ~~Water Act.~~
- 10 ~~(5) Address stormwater management in new development and~~
- 11 ~~redevelopment.~~
- 12 ~~(6) Control stormwater runoff from construction sites and other land~~
- 13 ~~disturbing activities.~~
- 14 ~~(7) Indicate that water quality mitigation practices may be required for~~
- 15 ~~any redevelopment of previously developed sites, even when~~
- 16 ~~preredevlopment runoff characteristics are proposed to be maintained.~~
- 17 ~~(8) Specify minimum requirements for inspection and maintenance of~~
- 18 ~~stormwater management practices.~~
- 19 ~~(9) Promote detection and elimination of improper or illegal connections~~
- 20 ~~and discharges.~~

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

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

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

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

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

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

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

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

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

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

18 ~~(E) requirements concerning a permit for discharges of regulated~~
19 ~~stormwater runoff from an impervious surface of any size to~~
20 ~~stormwater impaired waters if the Secretary determines that treatment is~~

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1 ~~necessary to reduce the adverse impact of such stormwater discharges due to~~
2 ~~the size of the impervious surface, drainage patterns, hydraulic connectivity,~~
3 ~~existing stormwater treatment, or other factors identified by the Secretary.~~

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

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

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1 ~~effects on receiving waters due to operation and maintenance of stormwater~~
2 ~~management facilities.~~

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

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

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

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

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

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

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

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

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- 1 ~~(i) a new stormwater discharge or the expansion of an existing~~
2 ~~discharge shall meet the treatment standards for new development and~~
3 ~~expansion in the 2002 Stormwater Management Manual and any additional~~
4 ~~requirements deemed necessary by the Secretary to implement the TMDL or~~
5 ~~water quality remediation plan;~~
- 6 ~~(ii) for a discharge of regulated stormwater runoff from~~
7 ~~redeveloped impervious surfaces:~~
- 8 ~~(I) the existing impervious surface shall be reduced by 20~~
9 ~~percent, or a stormwater treatment practice shall be designed to capture and~~
10 ~~treat 20 percent of the water quality volume treatment standard of the 2002~~
11 ~~Stormwater Management Manual from the existing impervious surface; and~~
- 12 ~~(II) any additional requirements deemed necessary by the~~
13 ~~Secretary to implement the TMDL or the water quality remediation plan;~~
- 14 ~~(iii) an existing stormwater discharge shall meet the treatment~~
15 ~~standards deemed necessary by the Secretary to implement a TMDL or a water~~
16 ~~quality remediation plan;~~
- 17 ~~(iv) if a permit is required for an expansion of an existing~~
18 ~~impervious surface or for the redevelopment of an existing impervious surface,~~
19 ~~discharges from the expansion or from the redeveloped portion of the existing~~
20 ~~impervious surface shall meet the relevant treatment standard of the 2002~~

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1 ~~Stormwater Management Manual, and the existing impervious surface shall~~
2 ~~meet the treatment standards deemed necessary by the Secretary to implement~~
3 ~~a TMDL or the water quality remediation plan;~~

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

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

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

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

17 ~~(3) By January 15, 2010, the Secretary shall issue a watershed~~
18 ~~improvement permit, issue a general or individual permit implementing a~~
19 ~~TMDL approved by the EPA, or issue a general or individual permit~~
20 ~~implementing a water quality remediation plan for each of the~~

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

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

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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~~

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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.~~

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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:~~

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- 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.~~

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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 the stormwater runoff
20 is different from the discharge of sanitary and industrial wastes because of the

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1 influence of natural events of stormwater runoff, the variations in
2 characteristics of those runoffs, and the increased stream flows and natural
3 degradation of the quality of the receiving water at the time of discharge.

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

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

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

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

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

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

19 (6) “New stormwater discharge” means a new or expanded discharge of
20 regulated stormwater runoff, subject to the permitting requirements of this

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1 chapter, that first occurs after June 1, 2002 and that has not been previously
2 authorized pursuant to this chapter.

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

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

19 (9) “Regulated stormwater runoff” means precipitation, snowmelt, and
20 the material dissolved or suspended in precipitation and snowmelt that runs off

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1 impervious surfaces and discharges into surface waters or into groundwater via
2 infiltration.

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

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

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

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

17 (14) “Stormwater system” means the storm sewers; outfall sewers;
18 surface drains; manmade wetlands; channels; ditches; wet and dry bottom
19 basins; rain gardens; and other control equipment necessary and appurtenant to

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1 the collection, transportation, conveyance, pumping, treatment, disposal, and
2 discharge of regulated stormwater runoff.

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

7 (16) “Water quality remediation plan” means a plan, other than a
8 TMDL, designed to bring an impaired water body into compliance with
9 applicable water quality standards in accordance with 40 C.F.R.
10 § 130.7(b)(1)(ii) and (iii).

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

16 (c) Prohibitions.

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

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

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

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

10 (5) A person shall not expand existing impervious surface by more than
11 5,000 square feet, such that the total resulting impervious area is greater than
12 one acre, without first obtaining a permit from the Secretary.

13 (6)(A) Beginning July 1, 2021, a municipality shall not discharge
14 stormwater from a municipal road without first obtaining:

15 (i) an individual permit;

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

17 (iii) coverage under a municipal separate stormsewer system

18 permit that implements the technical standards and criteria established by the

19 Secretary for stormwater improvements of municipal roads.

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

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

4 (1) Stormwater runoff from farms subject to accepted agricultural
5 practices adopted by the Secretary of Agriculture, Food and Markets.

6 (2) Stormwater runoff from concentrated animal feeding operations that
7 require a permit under subsection 1263(g) of this chapter.

8 (3) Stormwater runoff from silvicultural activities subject to accepted
9 management practices adopted by the Commissioner of Forests, Parks and
10 Recreation.

11 (4) Stormwater systems that were permitted under subdivision (c)(1) or
12 (2) of this section and for which a municipality has assumed full legal
13 responsibility for that stormwater system. As used in this subdivision, “full
14 legal responsibility” means a legal control of the stormwater system, including
15 a legal right to access the stormwater system, a legal duty to ensure proper
16 maintenance of the stormwater system, a legal duty to repair the stormwater
17 system when damaged, and a legal duty to replace the stormwater system when
18 it no longer operates according to its design.

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

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

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

14 (1) Establish as the primary goals of the rules assuring compliance with
15 the Vermont Water Quality Standards and maintenance after development, as
16 nearly as possible, of the predevelopment runoff characteristics.

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

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

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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.

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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 July 1, 2018, a general permit for
9 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

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1 improvements according to criteria established by the Secretary under the
2 general permit; and

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

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

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

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

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

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

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

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

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

7 (2) For discharges of regulated stormwater to a stormwater impaired
8 water:

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

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

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

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

3 (B) In which a TMDL or water quality remediation plan has been
4 adopted, the discharge shall satisfy the requirements of the Stormwater
5 Management Manual, and the Secretary shall determine that there is sufficient
6 pollutant load allocations for the discharge.

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

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

17 (j) Presumption. In any appeal under this chapter, an individual permit
18 issued under this section shall have a rebuttable presumption in favor of the
19 permittee that the discharge does not cause or contribute to a violation of the

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1 Vermont Water Quality Standards for the receiving waters with respect to the
2 discharge of regulated stormwater runoff.

3 * * * Water Quality Data Coordination * * *

4 Sec. 25. 10 V.S.A. § 1284 is added to read:

5 § 1284. WATER QUALITY DATA COORDINATION

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

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

10 (2) stream gauge data;

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

12 (4) water quality monitoring or sampling data;

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

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

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

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

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

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

6 * * * Water Quality Funding; Clean Water Fund* * *

7 Sec. 26. 10 V.S.A. chapter 47, subchapter 7 is added to read:

8 Subchapter 7. Vermont Clean Water Fund

9 § 1387. PURPOSE

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

12 The Clean Water Fund shall be used to:

13 (1) support the Agency of Natural Resources, the Agency of Agriculture,
14 Food and Markets, the Agency of Transportation, and other State agencies in
15 implementation and administration of water quality programs and projects in the
16 State;

17 (2) assist municipalities in complying with water quality requirements and
18 construction or implementation of water quality projects;

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

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1 § 1388. CLEAN WATER FUND

2 (a) There is created a special fund to be known as the “Clean Water Fund.”

3 Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5:

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

6 (2) the Fund shall consist of:

7 (A) revenues dedicated for deposit into the Fund by the General
8 Assembly, including [to be determined]; and

9 (B) other gifts, donations, and impact fees received from any source,
10 public or private, dedicated for deposit into the Fund and approved by the
11 Board.

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

14 (1) to provide funding to programs and projects that address sources of
15 water pollution in waters listed as impaired on the list of waters established by
16 33 U.S.C. § 1313(d);

17 (2) to provide funding to projects that address water pollution identified
18 as a critical source of water quality pollution;

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

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

7 (c) Unexpended balances and any earnings shall remain in the Fund from
8 year to year.

9 § 1389. CLEAN WATER FUND BOARD

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

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

14 (1) the Secretary of Administration or designee;

15 (2) the Secretary of Natural Resources or designee;

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

17 (4) the Secretary of Commerce and Community Development or

18 designee;

19 (5) the Secretary of Transportation or designee;

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1 (6) two members of the public or the House of Representatives

2 appointed by the Speaker of the House;

3 (7) two members of the public or the Senate appointed by the

4 Committee on Committees; and

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. Public members of the Clean Water Fund Board may

20 receive compensation according to 32 V.S.A. § 1010(b).

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

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

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

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

10 (C) to pursue and accept grants or other funding from any public or
11 private source and to administer such grants or funding consistent with their
12 terms.

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

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

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

18 (C) the annual Clean Water Investment Report required under section
19 1389 of this title.

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1 (3) The Clean Water Fund Board shall solicit public comment and
2 consult with existing organizations and advisory committees interested in
3 improving water quality in Vermont.

4 § 1390. CLEAN WATER INVESTMENT REPORT

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

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1 Sec. 27. [Reserved]

2 Sec. 28. [Reserved]

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

4 Sec. 29. 3 V.S.A. § 2822 is amended to read:

5 § 2822. BUDGET AND REPORT; POWERS

6 * * *

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

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1 ~~section when the municipality agrees to become an applicant or co-applicant~~
2 ~~for an orphan stormwater system under 10 V.S.A. § 1264e for which a~~
3 ~~municipality has assumed full legal responsibility under 10 V.S.A. § 1264.~~

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

7 * * *

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

14 (A) Application review fee.

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

18 (I) Individual permit: original ~~\$0.0023~~ \$0.003 per gallon
19 application; amendment for design flow; minimum
20 increased flows; amendment ~~\$50.00~~ \$100.00 per

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- 1 for change in treatment process: outfall; maximum
- 2 30,000.00 per application.
- 3 (II) Renewal, transfer, or minor ~~\$0.00~~ \$0.002 per gallon
- 4 amendment of individual permit: design flow; minimum
- 5 \$50.00 per outfall;
- 6 maximum \$5,000.00 per
- 7 application.
- 8 (III) General permit: \$0.00.
- 9 (ii) Pretreatment discharges.
- 10 (I) Individual permit: original ~~\$0.12~~ \$0.20 per gallon
- 11 application; amendment for design flow; minimum
- 12 increased flows; amendment for ~~\$50.00~~ \$100.00 per
- 13 change in treatment process: outfall.
- 14 (II) Renewal, transfer, or minor ~~\$0.00~~ \$0.002 per gallon
- 15 amendment of individual permit: design flow; minimum
- 16 \$50.00 per outfall.
- 17 (iii) Stormwater discharges.
- 18 (I) Individual operating permit ~~\$430.00~~ \$860.00 per acre
- 19 or application to operate under impervious area;
- 20 general operating permit for minimum ~~\$220.00~~

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1 collected stormwater runoff \$440.00 per application.
2 which is discharged to Class B
3 waters: original application;
4 amendment for increased flows;
5 amendment for change in
6 treatment process-;
7 (II) Individual operating permit \$1,400.00 per acre
8 or application to operate under impervious area;
9 general operating permit for minimum \$1,400.00
10 collected stormwater runoff which per application.
11 is discharged to Class A waters;
12 original application; amendment
13 for increased flows; amendment
14 for change in treatment process.
15 (III) Individual permit or
16 application to operate under
17 general permit for construction
18 activities; original application;
19 amendment for increased acreage.
20 (aa) Projects with low risk to \$50.00 five acres or

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- 1 (IV) Individual permit or ~~\$220.00~~ \$440.00 per
2 application to operate under facility.
3 general permit for stormwater
4 runoff associated with industrial
5 activities with specified SIC
6 codes; original application;
7 amendment for change in activities-;
- 8 (V) Individual permit or ~~\$1,200.00~~ \$2,400.00
9 application to operate under per system.
10 general permit for stormwater
11 runoff associated with
12 municipal separate storm sewer
13 systems; original application; amendment
14 for change in activities-;
- 15 (VI) Individual operating permit or application to operate under
16 a general permit for a residually designated stormwater discharge original
17 application; amendment; for increased flows amendment; for change in
18 treatment process.
- 19 (aa) For discharges to Class B water; ~~\$430.00~~ \$860.00 per
20 acre of impervious area, minimum ~~\$220.00~~ \$280.00.

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- 1 (bb) For discharges to Class A water; ~~\$1,400.00~~ \$1,700.00
- 2 per acre of impervious area, minimum ~~\$1,400.00~~ \$1,700.00.
- 3 (VII) Renewal, transfer, or \$0.00
- 4 minor amendment of individual
- 5 permit or approval under
- 6 general permit:
- 7 (VIII) Application for coverage \$400.00 per application.
- 8 under the municipal roads
- 9 stormwater general permit:
- 10 (IX) Application for coverage \$1,200.00.
- 11 under the State roads stormwater
- 12 general permit:
- 13 * * *
- 14 (B) Annual operating fee.
- 15 (i) Industrial, noncontact cooling ~~\$0.001~~ \$0.0015 per gallon
- 16 water and thermal discharges: design capacity. ~~\$150.00~~
- 17 \$200.00 minimum;
- 18 maximum \$210,000.00.
- 19 (ii) Municipal: \$0.003 per gallon of actual
- 20 design flows. \$150.00

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- 1 industrial facilities with
- 2 specified SIC codes:;
- 3 (IV) Individual permit or ~~\$80.00~~ per system
- 4 application to operate under ~~\$10.00~~ per acre of
- 5 general permit for stormwater impervious surface within
- 6 runoff associated with municipal the municipality; annually.
- 7 separate storm sewer systems:;
- 8 (V) Individual permit or approval under general permit for
- 9 residually designated stormwater discharges.
- 10 (aa) For discharges to Class A water; ~~\$255.00~~ \$310.00 per
- 11 acre of impervious area, minimum ~~\$255.00~~ \$310.00.
- 12 (bb) For discharges to Class B water; ~~\$80.00~~ \$160.00 per
- 13 acre of impervious area, minimum ~~\$80.00~~ \$160.00.
- 14 (VI) Application to operate under a general permit for
- 15 stormwater runoff associated with municipal roads: \$2,000.00 per
- 16 authorization annually.
- 17 (VII) Application to operate under a general permit for stormwater
- 18 runoff associated with State roads: \$90,000.00 per authorization annually.
- 19 * * *

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- 1 (11) For stream alteration and flood hazard area permits issued under
2 10 V.S.A. ~~chapter chapters 41 and 32: \$225.00 per application.~~
- 3 (A) Stream alteration; individual permit: \$350.00.
- 4 (B) Stream alteration; general permit; reporting category: \$ 200.00.
- 5 (C) Stream alteration; individual permit; municipal bridge, culvert,
6 and unimproved property protection: \$350.00.
- 7 (D) Stream alteration; general permit; municipal bridge, culvert, and
8 unimproved property protection: \$200.00.
- 9 (E) Stream alteration; Agency of Transportation reviews; bridge,
10 culvert, and high risk projects: \$350.00.
- 11 (F) Flood hazard area; individual permit; State facilities; hydraulic
12 and hydrologic modeling required: \$350.00.
- 13 (G) Flood hazard area; individual permit; State facilities; hydraulic
14 and hydrologic modeling not required: \$200.00.
- 15 (H) Flood hazard area; municipal reviews; reviews requiring
16 hydraulic and hydrologic modeling, compensatory storage volumetric analysis,
17 or river corridor equilibrium: \$350.00.
- 18 (I) Flood hazard area; municipal review; projects not requiring
19 hydraulic or hydrologic modeling: \$200.00.
- 20 (J) River corridor; major map amendments: \$350.00.

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1 * * *

2 (14) For certification of sewage treatment plant operators issued under
3 10 V.S.A. chapter 47:

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

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

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

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

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

13 * * *

14 (26) For individual conditional use determinations, for individual
15 wetland permits, for general conditional use determinations issued under
16 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit,
17 an administrative processing fee assessed under subdivision (2) of this
18 subsection (j) and an application fee of:

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

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

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

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

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

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

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

18 * * *

19 (33) \$10.00 per 1000 gallons based on the rated capacity of the tank
20 being pumped rounded to the nearest 1000 gallon.

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* * *

2

Sec. 30. 32 V.S.A. § 710 is amended to read:

3

§ 710. PAYMENT OF STATE AGENCY FEES

4

(a) Notwithstanding any other provision of law, the Agency of

5

Transportation, any cooperating municipalities, and their contractors or agents

6

shall be exempt from the payment of fee charges for reviews, inspections, or

7

nonoperating permits issued by the Department of Public Safety, a District

8

Environmental Commission, and the Agency of Natural Resources for any

9

projects undertaken by or for the Agency and any cooperating municipalities

10

for which all or a portion of the funds are authorized by a legislatively

11

approved transportation construction, rehabilitation, or paving program within

12

a general appropriation act introduced pursuant to section 701 of this title

13

except for those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(10),

14

(j)(11), and (j)(26).

15

(b) Notwithstanding any other provision of law, no fees shall be charged

16

for reviews, inspections, or nonoperating permits issued by the Department of

17

Public Safety, a District Environmental Commission, and the Agency of

18

Natural Resources for:

19

(1) Any project undertaken by the Department of Buildings and General

20

Services, the Agency of Natural Resources or the Agency of Transportation

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

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

14 * * * Wastewater Treatment Plants; Financial Assistance for

15 Phosphorus Reduction * * *

16 Sec. 31. 10 V.S.A. § 1266a is amended to read:

17 § 1266a. DISCHARGES OF PHOSPHORUS

18 (a) No person directly discharging into the drainage basins of Lake
19 Champlain or Lake Memphremagog shall discharge any waste that contains a
20 phosphorus concentration in excess of 0.80 milligrams per liter on a monthly

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1 average basis. Discharges of less than 200,000 gallons per day, permitted on
2 or before July 1, 1991, shall not be subject to the requirements of this
3 subsection. Discharges from a municipally owned aerated lagoon type
4 secondary sewage treatment plant in the Lake Memphremagog drainage basin,
5 permitted on or before July 1, 1991 shall not be subject to the requirements of
6 this subsection unless the plant is modified to use a technology other than
7 aerated lagoons.

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

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

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1 Sec. 32. 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 25
12 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.

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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.

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

9 * * * Accepted Management Practices for Forestry * * *

10 Sec. 33. 10 V.S.A. § 2622 is amended to read:

11 § 2622. RULES; ACCEPTED MANAGEMENT PRACTICES FOR
12 HARVESTING TIMBER; FORESTS

13 The ~~commissioner~~ Commissioner shall adopt rules to establish ~~methods~~
14 accepted management practices by which the harvest and utilization of timber
15 in private and public ~~forest land~~ forestland will be consistent with continuous
16 forest growth, including reforestation, will prevent wasteful and dangerous
17 forestry practices, will regulate heavy cutting, will encourage good forestry
18 management, will enable and assist landowners to practice good forestry
19 management, and will conserve the natural resources consistent with the
20 purposes and policies of this chapter, giving due consideration to the need to

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1 assure continuous supplies of forest products and to the rights of the owner or
2 operator of the land. ~~Such~~ The rules shall be advisory, and not mandatory,
3 ~~except that~~ adopted under this section and the rules adopted under section 2625
4 of this title shall be mandatory as shall other rules specifically authorized to be
5 mandatory.

6 Sec. ~~34~~. 10 V.S.A. § 1259(f) is amended to read:

7 (f) The provisions of subsections (c), (d), and (e) of this section shall not
8 regulate accepted agricultural ~~or silvicultural~~ practices, as such are defined by
9 the ~~secretary of agriculture, food and markets and the commissioner of forests,~~
10 ~~parks and recreation, respectively,~~ Secretary of Agriculture, Food and Markets,
11 or the accepted management practices for the harvesting of timber, as such are
12 defined by the Commissioner of Forests, Parks and Recreation after an
13 opportunity for a public hearing; nor shall these provisions regulate discharges
14 from concentrated animal feeding operations that require a permit under
15 section 1263 of this title; nor shall those provisions prohibit stormwater runoff
16 or the discharge of nonpolluting wastes, as defined by the ~~secretary~~ Secretary.

17 Sec. ~~35~~. 10 V.S.A. § 8003(a) is amended to read:

18 (a) The Secretary may take action under this chapter to enforce the
19 following statutes and rules, permits, assurances, or orders implementing the

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1 following statutes, and the Board may take such action with respect to
2 subdivision (10) of this subsection:

3 * * *

4 (17) 10 V.S.A. § 2625, relating to heavy cutting of timber;

5 * * *

6 (25) 10 V.S.A. chapter 83, subchapter 8, relating to the importation of
7 firewood.

8 (26) 10 V.S.A. chapter 168, relating to the collection and disposal of
9 primary batteries.

10 (27) 10 V.S.A. § 2622, relating to the accepted management practices
11 for harvesting timber.

12 Sec. 36. 10 V.S.A. § 8503(a) is amended to read:

13 (a) This chapter shall govern all appeals of an act or decision of the
14 Secretary, excluding enforcement actions under chapters 201 and 211 of this
15 title and rulemaking, under the following authorities and under the rules
16 adopted under those authorities:

17 (1) The following provisions of this title:

18 * * *

19 (L) section 2625 (regulation of heavy cutting).

20 * * *

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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 Sec. 39. EFFECTIVE DATES

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

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

9 (2) Sec. 26 (Clean Water Fund) shall take effect on passage; and

10 (3) [Reserved].

11

12

13

14 (Committee vote: _____)

15

16

Representative _____

17

FOR THE COMMITTEE