

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred

3 Senate Bill No. 49 entitled "An act relating to improving the quality of State

4 "waters" respectfully reports that it has considered the same and recommends

5 that the bill be amended by striking out all after the enacting clause and

6 inserting in lieu thereof the following:

2. *Final* The *Scallop* Δ

(1) $\text{H}_2\text{O} + \text{H}_2\text{O} \rightarrow 2\text{H}_2 + \text{O}_2$

streams and 812 lakes and ponds of at least five acres in size.

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

14 (3) The federal Clean Water Act and the Vermont Water Quality

15 Standards require that waters in the State shall not be degraded.

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

20 (5) Despite the State and federal mandates to maintain and prevent
21 degradation of State waters, multiple lakes, rivers, and streams in all regions of

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1 the State are impaired, at risk of impairment, or subject to water quality

2 stressors, as indicated by the fact that:

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

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

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

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

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

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

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

20 (7) Without State action to improve the quality of State waters and
21 prevent further degradation of the quality of existing waters, the State of

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1 Vermont will be at risk of losing the valuable, if not necessary functions and
2 uses that the State's waters provide;

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

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

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

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

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

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

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

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

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

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

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

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

13 * * * Agricultural Water Quality;

14 Definitions * * *

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

16 § 4802. **DEFINITION DEFINITIONS**

17 For purposes of As used in this chapter, the word "secretary," when used by

18 itself means the secretary of agriculture, food and markets:

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

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

21 § 6001(22).

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

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

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

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

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

21 (8) “Water” shall have the same meaning as used in 10 V.S.A.
22 § 1251(13).

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

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

3 Subchapter 5a. Small Farm Certification

4 § 4871. SMALL FARM CERTIFICATION

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

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

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

10 (3)(A) that houses:

11 (i) 25 or more cattle, mature cow/calf pairs, youngstock, heifers,
12 bulls, swine, sheep, goats, or horses;

13 (ii) 2,500 or more turkeys;

14 (iii) 1,250 or more laying hens or broilers with a liquid manure
15 handling system;

16 (iv) 3,500 or more laying hens without a liquid manure handling
17 system;

18 (v) 4,750 or more chickens other than laying hens without a liquid
19 manure handling system;

20 (vi) 200 or more ducks with a liquid manure handling system;
21 (vii) 1,500 or more ducks without a liquid manure handling

22 system; or

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

3 (b) Required small farm certification. A person who owns or operates a
4 small farm shall, on a form provided by the Secretary, certify compliance with
5 the required agricultural practices. The Secretary of Agriculture, Food and
6 Markets shall establish the requirements and manner of certification of
7 compliance with the required agricultural practices, provided that the Secretary
8 shall require an owner or operator of a farm to submit an annual certification of
9 compliance with the required agricultural practices.

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

19 (d) Rulemaking; small farm certification. On or before January 1, 2016,
20 the Secretary of Agriculture, Food and Markets shall adopt by rule
21 requirements for a small farm certification of compliance with the required

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

3 (e) Small farm inspection. The Secretary may inspect a small farm in the
4 State at any time, but no less frequently than once every five years, for the
5 purposes of assessing compliance by the small farm with the required
6 agricultural practices and determining consistency with a certification of
7 compliance submitted by the person who owns or operates the small farm. The
8 Secretary may prioritize inspections of small farms in the State based on
9 identified water quality issues posed by a small farm.

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

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

21 (2) Notwithstanding the priority system established under section 4823
22 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 (h) Fees. A person required to submit a certification under this section
10 shall submit an annual operating fee of \$250.00 to the Secretary. The fees
11 collected under this section shall be deposited in the Clean Water Fund under
12 section 4803 of this title.

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

14 § 4810a. REQUIRED AGRICULTURAL PRACTICES; REVISION

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

21 (1) Specify those farms that:

1 (A) are required to comply with the small certification requirements
2 under section 4871 of this title due to the potential impact of the farm or type
3 of farm on water quality as a result of livestock managed on the farm,
4 agricultural inputs used by the farm, or tillage practices on the farm; and
5 (B) shall be subject to the required agricultural practices, but shall not
6 be required to comply with small farm certification requirements under section
7 4871 of this title.

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

10 (i) in a manner and location that presents a threat of discharge to a
11 water of the State or presents a threat of contamination to groundwater; or
12 (ii) on lands in a floodway or otherwise subject to annual flooding.

13 (B) In no case shall manure stacking or piling sites, fertilizer storage,
14 or other nutrient storage be located within 200 feet of a private well or within
15 200 feet of a water of the State.

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

20 (4) Establish standards for nutrient management on farms, including:
21 (A) required nutrient management planning on all farms that manage
22 agricultural wastes; and

1 (B) recommended practices for improving and maintaining soil

2 quality and healthy soils.

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

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

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

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

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

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

7 (10) Establish standards for improving and managing healthy soils in
8 order to improve the capacity of soil to retain water, improve flood resiliency,
9 reduce sedimentation, reduce reliance on fertilizers and pesticides, and prevent
10 agricultural stormwater runoff.

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

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

19 (b) On or before January 15, 2018, the Secretary of Agriculture, Food and
20 Markets shall amend by rule the required agricultural practices in order to
21 include requirements for reducing nutrient contribution to waters of the State
22 from subsurface tile drainage. Upon adoption of requirements for subsurface

1 tile drainage, the Secretary may require an existing subsurface tile drain to
2 comply with the requirements of the RAPs for subsurface tile drainage upon a
3 determination that compliance is necessary to reduce adverse impacts to water
4 quality from the subsurface tile drain.

5 Sec. 5. REPORT ON MANAGEMENT OF SUBSURFACE TILE

6 DRAINAGE

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

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

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

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

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

6 § 4851. PERMIT REQUIREMENTS FOR LARGE FARM OPERATIONS

7 (a) No person shall, without a permit from the secretary Secretary

8 construct a new barn, or expand an existing barn, designed to house more than
9 700 mature dairy animals, 1,000 cattle or cow/calf pairs, 1,000 veal calves,
10 2,500 swine weighing over 55 pounds, 10,000 swine weighing less than 55
11 pounds, 500 horses, 10,000 sheep or lambs, 55,000 turkeys, 30,000 laying hens
12 or broilers with a liquid manure handling system, 82,000 laying hens without a
13 liquid manure handling system, 125,000 chickens other than laying hens
14 without a liquid manure handling system, 5,000 ducks with a liquid manure
15 handling system, or 30,000 ducks without a liquid manure handling system.

16 No permit shall be required to replace an existing barn in use for livestock or
17 domestic fowl production at its existing capacity. The ~~secretary of agriculture,~~
18 ~~food and markets~~ Secretary of Agriculture, Food and Markets, in consultation
19 with the ~~secretary of natural resources~~ Secretary of Natural Resources, shall
20 review any application for a permit under this section with regard to water
21 quality impacts and, prior to approval of a permit under this subsection, shall
22 issue a written determination regarding whether the applicant has established

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1 that there will be no unpermitted discharge to waters of the ~~state~~ State pursuant
2 to the federal regulations for concentrated animal feeding operations. If upon
3 review of an application for a permit under this subsection, the ~~secretary of~~
4 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets
5 determines that the permit applicant may be discharging to waters of the ~~state~~
6 ~~State, the secretary of agriculture, food and markets~~ Secretary of Agriculture,
7 Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural
8 Resources shall respond to the discharge in accordance with the memorandum
9 of understanding regarding concentrated animal feeding operations under
10 ~~subsection 4810(b) section 4810~~ of this title. The ~~secretary of natural~~
11 ~~resources~~ Secretary of Natural Resources may require a large farm to obtain a
12 permit under 10 V.S.A. § 1263 pursuant to federal regulations for concentrated
13 animal feeding operations.

14 * * *

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

17 (i) A person required to obtain a permit under this section shall submit an
18 annual operating fee of \$2,500.00 to the Secretary. The fees collected under
19 this section shall be deposited in the Clean Water Fund under 10 V.S.A.
20 § 1388.

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

22 § 4858. ANIMAL WASTE PERMITS MEDIUM FARM OPERATION

1

PERMITS

2

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

6

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

11

* * *

12

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

16

(3) Each general permit issued pursuant to this section shall have a term
of no more than five years. Prior to the expiration of each general permit, the
secretary Secretary shall review the terms and conditions of the general permit
and may issue subsequent general permits with the same or different conditions
as necessary to carry out the purposes of this subchapter. Each general permit
shall include provisions that require public notice of the fact that a medium
farm has sought coverage under a general permit adopted pursuant to this

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1 section. Each general permit shall provide a process by which interested
2 persons can obtain detailed information about the nature and extent of the
3 activity proposed to receive coverage under the general permit. The Secretary
4 may inspect each farm seeking coverage under the general permit at any time,
5 but no less frequently than once every three years.

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

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operator of the medium farm has established that there will be no unpermitted discharge to waters of the state State pursuant to the federal regulations for concentrated animal feeding operations. If upon review of a medium farm granted coverage under the general permit adopted pursuant to this subsection, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets determines that the permit applicant may be discharging to waters of the state State, the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of natural resources~~ Secretary of Natural Resources shall respond to the discharge in accordance with the memorandum of understanding regarding concentrated animal feeding operations under subsection 4810(b) section 4810 of this title.

* * *

13 (e) A person required to obtain a permit or coverage under this section shall
14 submit an annual operating fee of \$1,500.00 to the Secretary. The fees
15 collected under this section shall be deposited in the Clean Water Fund under
16 10 V.S.A. § 1388.

17 Sec. 8. 6 V.S.A. § 324 is amended to read:

§ 324. REGISTRATION AND FEES

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

22 (1) the name of the manufacturer;

- 1 (2) the manufacturer's place of business;
- 2 (3) the location of each manufacturing facility; and
- 3 (4) any other information which the Secretary considers to be necessary.
- 4 (b) A person shall not distribute in this State a commercial feed that has not
- 5 been registered pursuant to the provisions of this chapter. Application shall be
- 6 in a form and manner to be prescribed by rule of the Secretary. The
- 7 application for registration of a commercial feed shall be accompanied by a
- 8 registration fee of ~~\$85.00~~ \$100.00 per product. The Of the registration fees
- 9 collected, \$85.00 of each collected fee, along with any surcharges collected
- 10 under subsection (c) of this section, shall be deposited in the special fund
- 11 created by subsection 364(e) of this title. Funds deposited in this account shall
- 12 be restricted to implementing and administering the provisions of this title and
- 13 any other provisions of the law relating to fertilizer, lime, or seeds. Of the
- 14 registration fees collected, \$15.00 of each collected fee shall be deposited in
- 15 the Clean Water Fund under 10 V.S.A. § 1388. If the Secretary so requests,
- 16 the application for registration shall be accompanied by a label or other printed
- 17 matter describing the product.
- 18 (c) No person shall distribute in this State any feed required to be registered
- 19 under this chapter upon which the Secretary has placed a withdrawal from
- 20 distribution order because of nonregistration. A surcharge of \$10.00, in
- 21 addition to the registration fee required by subsection (b) of this section, shall
- 22 accompany the application for registration of each product upon which a

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1 withdrawal from distribution order has been placed for reason of
2 nonregistration, and must be received before removal of the withdrawal from
3 distribution order.

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

5 § 328. TONNAGE REPORTING

6 (a) Every person who registers a commercial feed pursuant to the
7 provisions of this chapter shall report to the ~~agency of agriculture, food and~~
8 ~~markets~~ Agency of Agriculture, Food and Markets annually the total amount of
9 combined feed which is distributed within the ~~state~~ State and which is intended
10 for use within the ~~state~~ State. The report shall be made on forms and in a
11 manner to be prescribed ~~by rules~~ by the ~~secretary~~ Secretary for calendar years
12 1986 2016 and 1987 2017.

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

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

17 § 366. TONNAGE FEES

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

21 (b) Persons distributing fertilizer shall report annually by January 15 for the
22 previous year ending December 31 to the ~~secretary~~ Secretary revealing the

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1 amounts of each grade of fertilizer and the form in which the fertilizer was
2 distributed within this ~~state~~ State. Each report shall be accompanied with
3 payment and written permission allowing the ~~secretary~~ Secretary to examine
4 the person's books for the purpose of verifying tonnage reports.

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

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

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

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

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

19 (h) There shall be paid annually to the Secretary for all fertilizers
20 distributed to a nonregister consumer in this State an annual fee at a rate of
21 \$15.00 per ton for the purpose of supporting agricultural water quality
22 programs in Vermont.

1 (1) Persons distributing fertilizer shall report annually on or before
2 January 15 for the previous year ending December 31 to the Secretary
3 revealing the amounts of each grade of fertilizer and the form in which the
4 fertilizer was distributed within this State. Each report shall be accompanied
5 with payment and written permission allowing the Secretary to examine the
6 person's books for the purpose of verifying tonnage reports.

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

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

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

15 (5) All fees collected under this subsection shall be deposited in the
16 deposited in the in the Clean Water Fund under 10 V.S.A. § 1388.

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

18 § 918. REGISTRATION

19 (a) Every economic poison which is distributed, sold, or offered for sale
20 within this State or delivered for transportation or transported in intrastate
21 commerce or between points within this State through any point outside this
22 State shall be registered in the Office of the Secretary, and such registration

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1 shall be renewed annually; provided, that products which have the same
2 formula, are manufactured by the same person, the labeling of which contains
3 the same claims, and the labels of which bear a designation identifying the
4 product as the same economic poison may be registered as a single economic
5 poison; and additional names and labels shall be added by supplement
6 statements during the current period of registration. It is further provided that
7 any economic poison imported into this State, which is subject to the
8 provisions of any federal act providing for the registration of economic poisons
9 and which has been duly registered under the provisions of this chapter, may,
10 in the discretion of the Secretary, be exempted from registration under this
11 chapter, when sold or distributed in the unbroken immediate container in
12 which it was originally shipped. The registrant shall file with the Secretary a
13 statement including:

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

16 (2) The name of the economic poison.

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

19 (4) If requested by the Secretary, a full description of the tests made and
20 the results thereof upon which the claims are based. In the case of renewal of
21 registration, a statement shall be required only with respect to information

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which is different from that furnished when the economic poison was

2 registered or last re-registered reregistered.

(b) The registrant shall pay an annual fee of \$110.00 \$125.00 for each product registered, and \$110.00 of that amount shall be deposited in the special fund created in section 929 of this title, of which \$5.00 from each product registration shall be used for an educational program related to the proper purchase, application, and disposal of household pesticides, and \$5.00 from each product registration shall be used to collect and dispose of obsolete and unwanted pesticides. Of the registration fees collected under this subsection, \$15.00 of the amount collected shall be deposited in the Clean Water Fund under 10 V.S.A. § 1388. The annual registration year shall be from December 1 to November 30 of the following year.

* * *

14 * * * Agricultural Water Quality; Required Agricultural Practices; Best
15 Management Practices * * *

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

17 § 4810. AUTHORITY; COOPERATION; COORDINATION

18 (a) Agricultural land use practices. In accordance with 10 V.S.A.

19 § 1259(i), the secretary Secretary shall adopt by rule, pursuant to 3 V

20 chapter 25 of ~~Title 3~~, and shall implement and enforce agricultural land use
21 practices in order to ~~reduce the amount of agricultural pollutants entering the~~
22 ~~waters of the state~~ satisfy the requirements of 33 U.S.C. § 1329 that the State

1 identify and implement best management practices to control nonpoint sources
2 of agricultural waste to waters of the State. These agricultural land use
3 practices shall be created in ~~two~~ three categories, pursuant to ~~subdivisions (1)~~
4 and ~~(2)~~ of this subsection subsections (b), (c), and (d) of this section.

5 (1)(b) Required Agricultural Practices. “~~Accepted Agricultural~~
6 Practices” (AAPs) Required Agricultural Practices (RAPs) shall be
7 management standards to be followed in conducting agricultural activities by
8 all persons engaged in farming in this state State. These standards shall
9 address activities which have a potential for causing agricultural pollutants to
10 enter the groundwater and waters of the ~~state~~ State, including dairy and other
11 livestock operations plus all forms of crop and nursery operations and on-farm
12 or agricultural fairground, registered pursuant to 20 V.S.A. § 3902, livestock
13 and poultry slaughter and processing activities. The ~~AAPs~~ RAPs shall include,
14 as well as promote and encourage, practices for farmers in preventing
15 agricultural pollutants from entering the groundwater and waters of the ~~state~~
16 State when engaged in, ~~but not limited to,~~ animal waste management and
17 disposal, soil amendment applications, plant fertilization, and pest and weed
18 control. Persons engaged in farming, ~~as defined in 10 V.S.A. § 6001~~, who
19 follow are in compliance with these practices shall be presumed ~~to be in~~
20 compliance with water quality standards to not have a discharge of agricultural
21 pollutants to waters of the State. AAPs RAPs shall be designed to protect
22 water quality and shall be practical and ~~cost effective~~ cost-effective to

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1 implement, as determined by the Secretary. Where the Secretary determines,
2 after inspection of a farm, that a person engaged in farming is complying with
3 the RAPs but there still exists the potential for agricultural pollutants to enter
4 the waters of the State, the Secretary shall require the person to implement
5 additional, site-specific on-farm conservation practices designed to prevent
6 agricultural pollutants from entering the waters of the State. When requiring
7 implementation of a conservation practice under this subsection, the Secretary
8 shall inform the person engaged in farming of the resources available to assist
9 the person in implementing the conservation practice and complying with the
10 requirements of this chapter. The AAPs RAPs 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. A farmer may petition the Secretary to reduce the size of
14 a perennial buffer or change the perennial buffer type based on site-specific
15 conditions.

16 (2)(c) Best Management Practices. “Best Management Practices” (BMPs)
17 may be required by the secretary on a case by case basis. Before requiring
18 BMPs, the secretary shall determine that sufficient financial assistance is
19 available to assist farmers in achieving compliance with applicable BMPs.
20 Best management practices (BMPs) are site-specific on-farm conservation
21 practices implemented in order to address the potential for agricultural
22 pollutants to enter the waters of the State. The Secretary may require any

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1 person engaged in farming to implement a BMP. When requiring
2 implementation of a BMP, the Secretary shall inform a farmer of financial
3 resources available from State or federal sources, private foundations, public
4 charities, or other sources, including funding from the Clean Water Fund
5 established under 10 V.S.A. § 1388, to assist the person in implementing
6 BMPs and complying with the requirements of this chapter. BMPs shall be
7 practical and cost effective to implement, as determined by the Secretary, and
8 shall be designed to achieve compliance with the requirements of this chapter.
9 The Secretary may require soil monitoring or innovative manure management
10 as a BMP under this subsection. Soil monitoring or innovative manure
11 management implemented as a BMP shall be eligible for State assistance under
12 section 2822 of this title. If a perennial buffer of trees or other woody
13 vegetation is required as a BMP, the Secretary shall pay the farmer for a first
14 priority easement on the land on which the buffer is located.

15 ~~(b)(e) Cooperation and coordination. The secretary of agriculture, food and~~
16 ~~markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the
17 ~~secretary of natural resources~~ Secretary of Natural Resources in implementing
18 and enforcing programs, plans, and practices developed for reducing and
19 eliminating agricultural non-point source pollutants and discharges from
20 concentrated animal feeding operations. ~~The secretary of agriculture, food and~~
21 ~~markets~~ On or before July 1, 2016, the Secretary of Agriculture, Food and
22 Markets and the secretary of natural resources Secretary of Natural Resources

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

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1 natural resources Secretary of Natural Resources shall be consistent with the
2 secretary's Secretary's duties, established under the provisions of 10 V.S.A.
3 § 1258(b), to comply with Public Law 92-500. The secretary of natural
4 resources Secretary of Natural Resources shall be the state State lead person in
5 applying for federal funds under Public Law 92-500, but shall consult with the
6 secretary of agriculture, food and markets Secretary of Agriculture, Food and
7 Markets during the process. The agricultural non-point source program may
8 compete with other programs for competitive watershed projects funded from
9 federal funds. The secretary of agriculture, food and markets Secretary of
10 Agriculture, Food and Markets shall be represented in reviewing these projects
11 for funding. Actions by the secretary of agriculture, food and markets
12 Secretary of Agriculture, Food and Markets under this chapter concerning
13 agricultural non-point source pollution shall be consistent with the water
14 quality standards and water pollution control requirements of 10 V.S.A.
15 chapter 47 of Title 10 and the federal Clean Water Act as amended. In
16 addition, the secretary of agriculture, food and markets Secretary of
17 Agriculture, Food and Markets shall coordinate with the secretary of natural
18 resources Secretary of Natural Resources in implementing and enforcing
19 programs, plans, and practices developed for the proper management of
20 composting facilities when those facilities are located on a farm. On or before
21 January 15, 2016, the Secretary of Agriculture, Food and Markets and the
22 Secretary of Natural Resources shall each develop three separate measures of

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1 the performance of the agencies under the memorandum of understanding
2 required by this subsection. Beginning on January 15, 2017, and annually
3 thereafter, the Secretary of Agriculture, Food and Markets and the Secretary of
4 Natural Resources shall submit separate reports to the Senate Committee on
5 Agriculture, the House Committee on Agriculture and Forest Products, the
6 Senate Committee on Natural Resources and Energy, and the House
7 Committee on Fish, Wildlife and Water Resources regarding the success of
8 each agency in meeting the performance measures for the memorandum of
9 understanding.

10 Sec. 13. LEGISLATIVE COUNCIL STATUTORY REVISION

11 AUTHORITY; REQUIRED AGRICULTURAL PRACTICES

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

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

19 § 4813. BASIN MANAGEMENT; APPEALS TO THE ~~WATER~~

20 ~~RESOURCES BOARD~~ ENVIRONMENTAL DIVISION

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

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

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

20 (c) ~~Before requiring best management practices under this section, the~~
21 ~~secretary of agriculture, food and markets or the board shall determine that~~
22 ~~sufficient financial assistance is available to assist farmers in achieving~~

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

5 * * * Agricultural Water Quality; Training * * *

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

7 Subchapter 8. Agricultural Water Quality Training

8 § 4981. AGRICULTURAL WATER QUALITY TRAINING

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

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

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

18 (b) Any training required under this section shall address:
19 (1) the existing statutory and regulatory requirements for operation of a
20 large, medium, or small farm in the State;

1 (2) the management practices and technical and financial resources

2 available to assist in compliance with statutory or regulatory agricultural
3 requirements:

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

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

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

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

21 (e) The Secretary shall not charge the owner or operator of a large,
22 medium, or small farm for the training required by this section. The Secretary

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1 shall pay for the training required under this section from funds available to the
2 Agency of Agriculture, Food and Markets for water quality initiatives.

* * * Agricultural Water Quality;

4 Certification of Custom Applicators * * *

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

Subchapter 9. Certification of Custom Applicators of Manure or Nutrients

7 § 4987. DEFINITIONS

As used in this subchapter, “custom applicator” means a person who is

9 engaged in the business of applying manure or nutrients to land and who

charges or collects other consideration for the service. Custom applicator shall

11 include full-time employees of a person engaged in the business of applying

manure or nutrients to land, when the employees apply manure or nutrients to

13 land.

14 § 4988. CERTIFICATION OF CUSTOM APPLICATOR

15 (a) On or before July 1, 2016, as part of the revision of the required

16 agricultural practices, the Secretary of Agriculture, Food and Markets shall

17 adopt by rule a process by which a custom applicator shall be certified to

18 operate within the State. The certification process shall require a custom

19 applicator to complete eight hours of training over each five-year period

20 regarding:

21 (1) application methods or techniques to minimize th

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

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

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

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

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

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

Subchapter 10. Enforcement

§ 4991. PURPOSE

19 The purpose of this subchapter is to provide the Secretary of Agriculture,
20 Food and Markets with the necessary authority to enforce the agricultural
21 water quality requirements of this chapter. When the Secretary of Agricultur
22 Food and Markets determines that a person subject to the requirements of the

1 chapter is violating a requirement of this chapter, the Secretary shall respond to
2 and require discontinuance of the violation. The Secretary may respond to a
3 violation of the requirements of this chapter by:

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

15 § 4992. CORRECTIVE ACTIONS; ADMINISTRATIVE ENFORCEMENT

16 (a) When the Secretary of Agriculture, Food and Markets receives a
17 complaint and determines that a farmer is in violation of the requirements of
18 this chapter, rules adopted under this chapter, or a permit or certification issued
19 under this chapter, the Secretary shall notify the farmer as soon as is
20 practicable during the initial investigation response. The Secretary shall
21 include the alleged violation in the notice of complaint provided to a farmer

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1 under this subsection. The Secretary shall not be required to identify the
2 source of the complaint.

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

8 (1) a description of the alleged violation;
9 (2) identification of this section;
10 (3) identification of the applicable statute, rule, or permit condition
11 violated;
12 (4) the required corrective actions that the person shall take to correct
13 the violation; and
14 (5) a summary of federal and State assistance programs that may be
15 utilized by the person to assist in correcting the violation.

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

20 (d) If a person who receives a warning under this subsection fails to
21 respond in a timely manner to the written warning or to take corrective action,

1 the Secretary may act pursuant to section 4993 or section 4995 of this section
2 in order to protect water quality.

3 § 4993. ADMINISTRATIVE ENFORCEMENT; CEASE AND DESIST

4 ORDERS; EMERGENCY ORDERS

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

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

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

13 (A) presents an immediate threat of substantial harm to the
14 environment or immediate threat to the public health or welfare;
15 (B) is likely to result in an immediate threat of substantial harm to the
16 environment or immediate threat to the public health or welfare; or
17 (C) requires a permit or amendment to a permit issued under this
18 chapter and a farm owner or operator has commenced an activity or is
19 continuing an activity without a permit or permit amendment.

20 (3) Institute appropriate proceedings on behalf of the Agency of
21 Agriculture, Food and Markets to enforce the requirements of this chapter,

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1 rules adopted under this chapter, or a permit or certification issued under this
2 chapter.

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

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

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

22 § 4994. PERMIT OR CERTIFICATION; REVOCATION; ENFORCEMENT

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

12 § 4995. CIVIL ENFORCEMENT

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

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

21 (1) Enjoin future activities.

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

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

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

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

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

20 (7) Levy a civil penalty as provided in this subdivision. A civil penalty
21 of not more than \$85,000.00 may be imposed for each violation. In addition,
22 in the case of a continuing violation, a penalty of not more than \$42,500.00

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1 may be imposed for each day the violation continues. In fixing the amount of
2 the penalty, the Court shall apply the criteria set forth in subsections (e) and (f)
3 of this section. The cost of collection of penalties or other monetary awards
4 shall be assessed against and added to a penalty assessed against a respondent.

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

8 (A) a violation exists; or
9 (B) a violation is imminent and substantial harm is likely to result.

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

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

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

18 (A) the degree of actual or potential impact on public health, safety,
19 welfare, and the environment resulting from the violation;
20 (B) the presence of mitigating circumstances, including unreasonable
21 delay by the Secretary in seeking enforcement;

1 (C) whether the respondent knew or had reason to know the violation
2 existed;
3 (D) the respondent's record of compliance;
4 (E) the deterrent effect of the penalty;
5 (F) the State's actual costs of enforcement; and
6 (G) the length of time the violation has existed.

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

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

11 § 4996. APPEALS; ENFORCEMENT

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

18 (b) If the Secretary issues an emergency order under this chapter, the
19 person subject to the order may request a hearing before the Civil Division of
20 Superior Court. Notice of the request for hearing under this subdivision shall
21 be filed with the Civil Division of Superior Court and the Secretary within five
22 days of receipt of the order. A hearing on the emergency order shall be held at

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1 the earliest possible time and shall take precedence over all other hearings.

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

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

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

12 **§ 4812. CORRECTIVE ACTIONS**

13 (a) When the Secretary of Agriculture, Food and Markets determines that a
14 person engaged in farming is managing a farm using practices which are
15 inconsistent with the requirements of this chapter or rules adopted under this
16 subchapter, the Secretary may issue a written warning which shall be served in
17 person or by certified mail, return receipt requested. The warning shall include
18 a brief description of the alleged violation, identification of this statute and
19 applicable rules, a recommendation for corrective actions that may be taken by
20 the person, along with a summary of federal and State assistance programs
21 which may be utilized by the person to remedy the violation. The person shall
22 have 30 days to respond to the written warning and shall provide an abatement

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1 schedule for curing the violation and a description of the corrective action to be
2 taken to cure the violation. If the person fails to respond to the written warning
3 within this period or to take corrective action to change the practices, the
4 Secretary may act pursuant to subsection (b) of this section in order to protect
5 water quality.

6 (b) The Secretary may:

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

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

17 (d) [Repealed.]

18 (e) Any person subject to an enforcement order or an administrative
19 penalty who is aggrieved by the final decision of the Secretary may appeal to
20 the Superior Court within 30 days of the decision. The administrative judge
21 may specially assign an Environmental judge to Superior Court for the purpose
22 of hearing an appeal. [Repealed.]

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

2 § 4854. ~~REVOCATION; ENFORCEMENT~~

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

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

16 § 4860. ~~REVOCATION; ENFORCEMENT~~

17 (a) ~~The secretary may revoke coverage under a general permit or an~~
18 ~~individual permit issued under this subchapter after following the same process~~
19 ~~prescribed by section 2705 of this title regarding the revocation of a handler's~~
20 ~~license. The secretary may also seek enforcement remedies under sections 1,~~
21 ~~11, 12, 13, 16, and 17 of this title as well as assess an administrative penalty~~
22 ~~under section 15 of this title from any person who fails to comply with any~~

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1 ~~permit provision as required by this subchapter or who violates the terms or~~
2 ~~conditions of coverage under any general permit or any individual permit~~
3 ~~issued under this subchapter. However, notwithstanding provisions of section~~
4 ~~15 of this title to the contrary, the maximum administrative penalty assessed~~
5 ~~for a violation of this subchapter shall not exceed \$5,000.00 for each violation,~~
6 ~~and the maximum amount of any penalty assessed for separate and distinct~~
7 ~~violations of this chapter shall not exceed \$50,000.00.~~

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

13 (c) ~~Any person who knowingly makes any false statement, representation,~~
14 ~~or certification in any application, record, report, plan, or other document filed~~
15 ~~or required to be maintained by this subchapter or by any permit, rule,~~
16 ~~regulation, or order issued under this subchapter, or who falsifies, tampers~~
17 ~~with, or knowingly renders inaccurate any monitoring device or method~~
18 ~~required to be maintained by this subchapter or by any permit, rule, regulation,~~
19 ~~or order issued under this subchapter shall upon conviction be punished by a~~
20 ~~fine of not more than \$5,000.00 for each violation. Each violation may be a~~
21 ~~separate offense and, in the case of a continuing violation, each day's~~
22 ~~continuance may be deemed a separate offense. [Repealed.]~~

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

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

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

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

10 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

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

* * *

20 (f) This subchapter shall not apply to:

(1) accepted agricultural or silvicultural practices, as defined by the Secretary of Agriculture, Food and Markets, or silvicultural practices,

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1 including the Acceptable Management Practices for Maintaining Water

Quality on Logging Jobs in Vermont, as adopted by the Commissioner of

3 Forests, Parks and Recreation,~~respectively~~; or

4 (2) a farm that is implementing an approved U.S. Department of

Agriculture Natural Resource Conservation Service streambank stabilization

project or a streambank stabilization project approved by the Secretary of

7 Agriculture, Food and Markets that is consistent with policies adopted by the

Secretary of Natural Resources to reduce fluvial erosion hazards.

9

* * *

10 * * * Use Value Appraisal; Compliance with Agricultural Water Quality

11 Requirements * * *

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

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

1 (2)(A) The Director shall remove from use value appraisal an entire

2 parcel or parcels of agricultural land and farm buildings identified by the

3 Secretary of Agriculture, Food and Markets as being used by a person:

4 (i) found, after administrative hearing, or contested judicial

5 hearing or motion, to be in violation of water quality requirements established

6 under 6 V.S.A. chapter 215, or any rules adopted or any permit or certification

7 issued under 6 V.S.A. chapter 215; or

8 (ii) who is not in compliance with the terms of an administrative

9 or court order issued under 6 V.S.A. chapter 215, subchapter 10 to remedy a

10 violation of the requirements of 6 V.S.A. chapter 215 or any rules adopted or

11 any permit or certification issued under 6 V.S.A. chapter 215.

12 (B) The Director shall notify the owner that agricultural land or a

13 farm building has been removed from use value appraisal by mailing

14 notification of removal to the owner or operator's last and usual place of

15 abode. After removal of agricultural land or a farm building from use value

16 appraisal under this section, the Director shall not consider a new application

17 for use value appraisal for the agricultural land or farm building until the

18 Secretary of Agriculture, Food and Markets submits to the Director a

19 certification that the owner or operator of the agricultural land or farm building

20 is complying with the water quality requirements of 6 V.S.A. chapter 215 or an

21 order issued under 6 V.S.A. chapter 215. After submission of a certification by

22 the Secretary of Agriculture, Food and Markets, an owner or operator shall be

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1 eligible to apply for enrollment of the agricultural land or farm building

2 according to the requirements of section 3756 of this title.

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

4 § 3758. APPEALS

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

13 * * *

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

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

19 (5) "Development" means, for the purposes of determining whether a
20 land use change tax is to be assessed under section 3757 of this chapter, the
21 construction of any building, road, or other structure, or any mining,
22 excavation, or landfill activity. "Development" also means the subdivision of

1 a parcel of land into two or more parcels, regardless of whether a change in use
2 actually occurs, where one or more of the resulting parcels contains less than
3 25 acres each; but if subdivision is solely the result of a transfer to one or more
4 of a spouse, parent, grandparent, child, grandchild, niece, nephew, or sibling of
5 the transferor, or to the surviving spouse of any of the foregoing, then
6 “development” shall not apply to any portion of the newly created parcel or
7 parcels which qualifies for enrollment and for which, within 30 days following
8 the transfer, each transferee or transferor applies for reenrollment in the use
9 value appraisal program. “Development” also means the cutting of timber on
10 property appraised under this chapter at use value in a manner contrary to a
11 forest or conservation management plan as provided for in subsection 3755(b)
12 of this title during the remaining term of the plan, or contrary to the minimum
13 acceptable standards for forest management if the plan has expired; or a
14 change in the parcel or use of the parcel in violation of the conservation
15 management standards established by the Commissioner of Forests, Parks and
16 Recreation. “Development” also means notification of the Director by the
17 Secretary of Agriculture, Food and Markets under section 3756 of this title that
18 the owner or operator of agricultural land or a farm building is violating the
19 water quality requirements of 6 V.S.A. chapter 215 or is failing to comply with
20 the terms of an order issued under 6 V.S.A. chapter 215, subchapter 10. The
21 term “development” shall not include the construction, reconstruction,
22 structural alteration, relocation, or enlargement of any building, road, or other

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1 structure for farming, logging, forestry, or conservation purposes, but shall
2 include the subsequent commencement of a use of that building, road, or
3 structure for other than farming, logging, or forestry purposes.

4 * * * Agency of Natural Resources Basin Planning * * *

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

6 § 1253. CLASSIFICATION OF WATERS DESIGNATED,

7 RECLASSIFICATION

8 * * *

9 (d)(1) The Through the process of basin planning, the Secretary shall
10 determine what degree of water quality and classification should be obtained
11 and maintained for those waters not classified by the Board before 1981
12 following the procedures in sections 1254 and 1258 of this title. Those waters
13 shall be classified in the public interest. The Secretary shall prepare and
14 Maintain an overall surface water management plan to assure that the State
15 water quality standards are met in all State waters. The surface water
16 management plan shall include a schedule for updating the basin plans. The
17 Secretary, in consultation with regional planning commissions and natural
18 resource conservation districts, shall revise all 47 15 basin plans by January 1,
19 2006, and update them every five years thereafter the basin plans on a
20 five-year rotating basis. On or before January 15 of each year, the Secretary
21 shall report to the House Committees on Agriculture and Forest Products, on
22 Natural Resources and Energy, and on Fish, Wildlife and Water Resources,

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1 and to the Senate Committees on Agriculture and on Natural Resources and
2 Energy regarding the progress made and difficulties encountered in revising
3 basin plans. ~~By January 1, 1993, the Secretary shall prepare an overall~~
4 ~~management plan to ensure that the water quality standards are met in all State~~
5 ~~waters. The report shall include a summary of basin planning activities in the~~
6 ~~previous calendar year, a schedule for the production of basin plans in the~~
7 ~~subsequent calendar year, and a summary of actions to be taken over the~~
8 ~~subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of~~
9 ~~required reports) shall not apply to the report to be made under this subsection.~~

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

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

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

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

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

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

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

1 (G) develop, in consultation with the applicable regional planning
2 commission, an analysis and formal recommendation on conformance with the
3 goals and objectives of applicable regional plans;
4 (H) provide for public notice of a draft basin plan; and
5 (I) provide for the opportunity of public comment on a draft basin
6 plan.

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

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

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

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

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

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

3 (1) existing and obtainable water qualities;

4 (2) existing and potential use of waters for public water supply,

5 recreational, agricultural, industrial, and other legitimate purposes;

6 (3) natural sources of pollution;

7 (4) public and private pollution sources and the alternative means of

8 abating the same;

9 (5) consistency with the State water quality policy established in

10 10 V.S.A. § 1250;

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

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

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

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

15 (10) any other factors relevant to determine the maximum beneficial use

16 and enjoyment of waters.

17 (f) Notwithstanding the provisions of subsection (c) of this section, when

18 reclassifying waters to Class A, the Secretary need find only that the

19 reclassification is in the public interest.

20 (g) The Secretary under the reclassification rule may grant permits for only

21 a portion of the assimilative capacity of the receiving waters, or may permit

22 only indirect discharges from on-site disposal systems, or both.

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

2 § 4302. PURPOSE; GOALS

3 * * *

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

7 * * *

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

10 * * *

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

13 (A) Vermont's air, water, wildlife, mineral and land resources should
14 be planned for use and development according to the principles set forth in
15 10 V.S.A. § 6086(a).

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

19 * * *

20 Sec. 28. 24 V.S.A. § 4348(c) is amended to read:

21 (c) At least 30 days prior to the first hearing, a copy of the proposed plan or
22 amendment, with a request for general comments and for specific comments

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1 with respect to the extent to which the plan or amendment is consistent with
2 the goals established in section 4302 of this title, shall be delivered with proof
3 of receipt, or sent by certified mail, return receipt requested, to each of the
4 following:

5 (1) the chair of the legislative body of each municipality within the
6 region;

7 (2) the executive director of each abutting regional planning
8 commission;

9 (3) the Department of Housing and Community Development within the
10 Agency of Commerce and Community Development; ~~and~~

11 (4) business, conservation, ~~low income~~ low-income advocacy, and other
12 community or interest groups or organizations that have requested notice in
13 writing prior to the date the hearing is warned; ~~and~~

14 (5) the Agency of Natural Resources and the Agency of Agriculture,
15 Food and Markets.

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

17 (a) A regional plan shall be consistent with the goals established in section
18 4302 of this title and shall include the following:

19 * * *

20 (6) A statement of policies on the:

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

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

* * *

5 * * * Antidegradation Policy Implementation Rule * * *

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

(c) On or before ~~January 15, 2008~~ July 1, 2016, the Secretary of Natural Resources shall ~~propose draft rules for adopt by rule~~ an implementation process for the antidegradation policy in the water quality standards of the State. The implementation process for the antidegradation policy shall be consistent with the State water quality policy established in section 1250 of this title, the Vermont Water Quality Standards, and any applicable requirements of the federal Clean Water Act. ~~On or before July 1, 2008, a final proposal of the rules for an implementation process for the antidegradation policy shall be filed with the Seeretary of State under 3 V.S. § 841~~ The Secretary of Natural Resources shall apply the antidegradation implementation policy to all new discharges that require a permit under this chapter and to a permit or coverage under a general permit issued a farm und 6 V.S.A. chapter 215 when the farm has the potential to discharge to State waters.

1

* * * Stormwater Management * * *

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

3 § 1264. STORMWATER MANAGEMENT

4 (a) ~~The General Assembly finds that the management of stormwater runoff~~
5 ~~is necessary to reduce stream channel instability, pollution, siltation,~~
6 ~~sedimentation, and local flooding, all of which have adverse impacts on the~~
7 ~~water and land resources of the State. The General Assembly intends, by~~
8 ~~enactment of this section, to reduce the adverse effects of stormwater runoff.~~

9 ~~The General Assembly determines that this intent may best be attained by a~~
10 ~~process that: assures broad participation; focuses upon the prevention of~~
11 ~~pollution; relies on structural treatment only when necessary; establishes and~~
12 ~~maintains accountability; tailors strategies to the region and the locale; assures~~
13 ~~an adequate funding source; builds broadbased programs; provides for the~~
14 ~~evaluation and appropriate evolution of programs; is consistent with the federal~~
15 ~~Clean Water Act and the State water quality standards; and accords appropriate~~
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1 “~~regulated stormwater runoff~~” as that term is defined in subdivision (11) of this
2 subsection. As used in this section:

3 (1) “~~2002 Stormwater Management Manual~~” means the Agency of
4 Natural Resources’ ~~Stormwater Management Manual dated April 2002~~, as
5 amended from time to time by rule.

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

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

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

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

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

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

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

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

12 (10) “~~Redevelopment~~” means the construction or reconstruction of an
13 ~~impervious surface where an impervious surface already exists when such new~~
14 ~~construction involves substantial site grading, substantial subsurface~~
15 ~~excavation, or substantial modification of existing stormwater conveyance,~~
16 ~~such that the total of impervious surface to be constructed or reconstructed is~~
17 ~~greater than the minimum regulatory threshold. Redevelopment does not mean~~
18 ~~the construction or reconstruction of impervious surface where impervious~~
19 ~~surface already exists when the construction or reconstruction involves less~~
20 ~~than 5,000 square feet. Redevelopment does not mean public road~~
21 ~~management activities, including any crack sealing, patching, coldplaning,~~

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1 ~~resurfacing, reclaiming, or grading treatments used to maintain pavement,~~
2 ~~bridges, and unpaved roads.~~

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

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

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

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

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

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

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

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

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

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

19 (B) A discharge from redevelopment; from an existing discharge
20 operating under an expired stormwater discharge permit where the property
21 owner applies for a new permit; or from any combination of development,
22 redevelopment, and expansion meets on site the water quality, recharge, and

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1 channel protection criteria set forth in ~~Table 1.1 of the 2002 Stormwater~~
2 Management Manual that are determined to be technically feasible by an
3 engineering feasibility analysis conducted by the Agency and if the sediment
4 load from the discharge approximates the natural runoff from an undeveloped
5 field or open meadow that is not used for agricultural activity.

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

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

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

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 prerevelopment 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) As one of the principal means of administering an enhanced
19 stormwater program, the Secretary may issue and enforce general permits. To
20 the extent appropriate, such permits shall include the use of certifications of
21 compliance by licensed professional engineers practicing within the scope of
22 their engineering specialty. The Secretary may issue general permits for

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1 classes of regulated stormwater runoff permittees and may specify the period
2 of time for which the permit is valid other than that specified in subdivision
3 1263(d)(4) of this title when such is consistent with the provisions of this
4 section. General permits shall be adopted and administered in accordance with
5 the provisions of subsection 1263(b) of this title. No permit is required under
6 this section for:

7 (A) Stormwater runoff from farms subject to accepted agricultural
8 practices adopted by the Secretary of Agriculture, Food and Markets;
9 (B) Stormwater runoff from concentrated animal feeding operations
10 that require a permit under subsection 1263(g) of this chapter; or
11 (C) Stormwater runoff from silvicultural activities subject to accepted
12 management practices adopted by the Commissioner of Forests, Parks and
13 Recreation.

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

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

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

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

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

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

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

- 1 ~~(II) any additional requirements deemed necessary by the~~
- 2 ~~Secretary to implement the TMDL or the water quality remediation plan;~~
- 3 ~~(iii) an existing stormwater discharge shall meet the treatment~~
- 4 ~~standards deemed necessary by the Secretary to implement a TMDL or a water~~
- 5 ~~quality remediation plan;~~
- 6 ~~(iv) if a permit is required for an expansion of an existing~~
- 7 ~~impervious surface or for the redevelopment of an existing impervious surface,~~
- 8 ~~discharges from the expansion or from the redeveloped portion of the existing~~
- 9 ~~impervious surface shall meet the relevant treatment standard of the 2002~~
- 10 ~~Stormwater Management Manual, and the existing impervious surface shall~~
- 11 ~~meet the treatment standards deemed necessary by the Secretary to implement~~
- 12 ~~a TMDL or the water quality remediation plan;~~
- 13 ~~(C) A watershed improvement permit, provided that the watershed~~
- 14 ~~improvement permit provides reasonable assurance of compliance with the~~
- 15 ~~Vermont water quality standards in five years;~~
- 16 ~~(D) A general or individual permit that is implementing a TMDL or~~
- 17 ~~water quality remediation plan; or~~
- 18 ~~(E) A statewide general permit for new discharges that the Secretary~~
- 19 ~~deems necessary to assure attainment of the Vermont Water Quality Standards.~~
- 20 ~~(2) An authorization to discharge regulated stormwater runoff pursuant~~
- 21 ~~to a permit issued under this subsection shall be valid for a time period not to~~
- 22 ~~exceed five years. A person seeking to discharge regulated stormwater runoff~~

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1 after the expiration of that period shall obtain an individual permit or coverage
2 under a general permit, whichever is applicable, in accordance with subsection
3 1263(e) of this title.

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

18 (4) Discharge permits issued under this subsection shall require BMP-
19 based stormwater treatment practices. Permit compliance shall be judged on
20 the basis of performance of the terms and conditions of the discharge permit,
21 including construction and maintenance in accordance with BMP
22 specifications. Any permit issued for a new stormwater discharge or for the

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1 expanded portion of an existing discharge pursuant to this subsection shall
2 require compliance with BMPs for stormwater collection and treatment
3 established by the 2002 Stormwater Management Manual, and any additional
4 requirements for stormwater treatment and control systems as the Secretary
5 determines to be necessary to ensure that the permitted discharge does not
6 cause or contribute to a violation of the Vermont Water Quality Standards.

7 (5) In addition to any permit condition otherwise authorized under
8 subsection (e) of this section, in any permit issued pursuant to this subsection,
9 the Secretary may require an offset or stormwater impact fee as necessary to
10 ensure the discharge does not cause or contribute to a violation of the Vermont
11 Water Quality Standards. Offsets and stormwater impact fees, where utilized,
12 shall incorporate an appropriate margin of safety to account for the variability
13 in quantifying the load of pollutants of concern. To facilitate utilization of
14 offsets and stormwater impact fees, the Secretary shall identify by January 1,
15 2005 a list of potential offsets in each of the waters listed as a
16 stormwater impaired water under this subsection.

17 (g)(1) The Secretary may issue a permit consistent with the requirements of
18 subsection (f) of this section, even where a TMDL or wasteload allocation has
19 not been prepared for the receiving water. In any appeal under this chapter an
20 individual permit meeting the requirements of subsection (f) of this section
21 shall have a rebuttable presumption in favor of the permittee that the discharge
22 does not cause or contribute to a violation of the Vermont Water Quality

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1 Standards for the receiving waters with respect to the discharge of regulated
2 stormwater runoff. This rebuttable presumption shall only apply to permitted
3 discharges into receiving waters that are principally impaired by sources other
4 than regulated stormwater runoff.

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

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

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

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

20 (2) "Residential subdivision" means land identified and demarcated by
21 recorded plat or other device that a municipality has authorized to be used
22 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:

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

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1 (B) criteria for different categories of activities covered under a

2 general emergency permit;

3 (C) requirements for public notification of permitted activities,

4 including notification after initiation or completion of a permitted activity;

5 (D) requirements for coordination with State and municipal

6 authorities;

7 (E) requirements that the Secretary document permitted activity,

8 including, at a minimum, requirements for documenting permit terms,

9 documenting permit duration, and documenting the nature of an activity when

10 the rules authorize notification of the Secretary after initiation or completion of

11 the activity.

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

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

14 (B) authorize an activity that does not require reporting to the

15 Secretary; or

16 (C) authorize an activity that requires reporting to the Secretary after

17 initiation or completion of an activity.

18 (a) Findings and intent.

19 (1) Findings. The General Assembly finds that the management of

20 stormwater runoff is necessary to reduce stream channel instability, pollution,

21 siltation, sedimentation, and flooding, all of which have adverse impacts on the

22 water and land resources of the State.

1 (2) Intent. The General Assembly intends, by enactment of this

2 section to:

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

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

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

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

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

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

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

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

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

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

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

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1 stormwater runoff has on the stormwater-impaired water, or the impacts of
2 phosphorus on Lake Champlain, or a water that contributes to the impairment
3 of Lake Champlain.

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

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

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

17 (11) “Stormwater impact fee” means the monetary charge assessed to a
18 permit applicant for the discharge of regulated stormwater runoff to a
19 stormwater-impaired water or for the discharge of phosphorus to Lake
20 Champlain or a water that contributes to the impairment of Lake Champlain in
21 order to mitigate a sediment load level, hydrologic impact, or other impact that

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1 the discharger is unable to control through on-site treatment or completion of
2 an offset on a site owned or controlled by the permit applicant.

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

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

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

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

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

21 (17) “Water quality remediation plan” means a plan, other than a
22 TMDL, designed to bring an impaired water body into compliance with

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1 applicable water quality standards in accordance with 40 C.F.R.

2 § 130.7(b)(1)(ii) and (iii).

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

8 (c) Prohibitions.

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

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

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

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

1 (5) A person shall not expand existing impervious surface by more than
2 5,000 square feet, such that the total resulting impervious area is greater than
3 one acre, without first obtaining a permit from the Secretary.

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

7 (i) an individual permit;
8 (ii) coverage under a municipal road general permit; or
9 (iii) coverage under a municipal separate storm sewer system
10 permit that implements the technical standards and criteria established by the
11 Secretary for stormwater improvements of municipal roads.

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

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

22 (d) Exemptions.

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

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

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

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

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

11 (2) No permit is required under subdivision (c)(1), (5), or (8) of this
12 section and for which a municipality has assumed full legal as part of a permit
13 issued to the municipality by the Secretary. As used in this subdivision, “full
14 legal responsibility” means legal control of the stormwater system, including a
15 legal right to access the stormwater system, a legal duty to properly maintain
16 the stormwater system, and a legal duty to repair and replace the stormwater
17 system when it no longer adequately protects waters of the State.

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

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

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

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

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

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

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

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

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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.

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

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

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

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

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

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

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

16 (g) General permits.

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

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

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1 (i) Establish a schedule for implementation of the general permit

2 by each municipality in the State. Under the schedule, the Secretary shall
3 establish:

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

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

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

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

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

18 (iii) Establish criteria for municipal prioritization of stormwater
19 improvements of municipal roads. The Secretary shall base the criteria on the
20 water quality impacts of a stormwater discharge, the current state of a
21 municipal road, the priority of a municipal road or stormwater project in any

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1 existing transportation capital plan developed by a municipality, and the
2 benefits of the stormwater improvement to the life of the municipal road.

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

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

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

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

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

19 (A) Establish a schedule for implementation of the general permit by
20 geographic area of the State. The schedule shall establish the date by which an
21 owner of impervious surface shall apply for coverage under subdivision (g)(3)
22 of this section. The schedule established by the Secretary shall require an

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1 owner of impervious surface subject to permitting under this subdivision to

2 obtain coverage by the following dates:

3 (i) for impervious surface located within the Lake Champlain

4 watershed, no later than October 1, 2023; and

5 (ii) for impervious surface located within all other watersheds of

6 the State, no later than October 1, 2028.

7 (B) Establish criteria and technical standards, such as best

8 management practices, for implementation of stormwater improvements for the

9 retrofitting of impervious surface subject to permitting under this subdivision.

10 (C) Require that a discharge of stormwater from impervious surface

11 subject to the requirements of this section comply with the standards of

12 subsection (h) of this section for redevelopment of or renewal of a permit for

13 existing impervious surface.

14 (D) Allow the use of stormwater impact fees, offsets, and phosphorus

15 credit trading within the watershed of the water to which the stormwater

16 discharges or runs off.

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

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

19 (2) For discharges of regulated stormwater to a stormwater impaired

20 water, for discharges of phosphorus to Lake Champlain, or for discharges of

21 phosphorus to a water that contributes to the impairment of Lake Champlain:

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

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

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

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

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

21 (ii) For redevelopment of or renewal of a permit for existing
22 impervious surface, the Secretary shall determine that there is sufficient

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1 pollutant load allocations for the discharge and the Secretary shall include any
2 requirements that the Secretary deems necessary to implement the TMDL or
3 water quality remediation plan.

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

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

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

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

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

10 The report shall include:

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

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

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

20 (4) an estimate of the number of staff that would be needed by the
21 Agency of Natural Resources to effectively implement a stormwater operating

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1 permit program with a regulatory permitting threshold of one-half acre of
2 impervious surface; and

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

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

7 Sec. 33. STORMWATER MANAGEMENT PRACTICES HANDBOOK

8 On or before January 1, 2016, the Secretary of Natural Resources shall
9 publish as a handbook a suite of practical and cost-effective best management
10 practices for the control of stormwater runoff and reduction of adverse water
11 quality effects from the construction, redevelopment, or expansion of
12 impervious surface that does not require a permit under 10 V.S.A. § 1264. The
13 best management practices shall address activities that control, mitigate, or
14 eliminate stormwater runoff to waters of the State. The stormwater
15 management practices handbook shall be advisory and shall not be mandatory.

16 * * * Water Quality Data Coordination * * *

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

18 § 1284. WATER QUALITY DATA COORDINATION

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

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

1 (2) stream gauge data;

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

(4) water quality monitoring or sampling data;

4 (5) cumulative stressors on a watershed, such as the frequency and

5 activity is conducted within a watershed or the number of stormwater or other

6 permits issued in a watershed; and

(6) any other data available to the Secretary.

8 (b) After coordination of the data required under subsection (a) of this

9 section, the Secretary shall:

(1) assess where additional data are needed and the best methods for

11 collection of such data;

12 (2) identify and map on a watershed basis areas of the State that are

13 significant contributors to water quality problems or are in critical need of

14 water quality remediation or response.

15 (c) The Secretary shall post all data compiled under this section on the

16 website of the Agency of Natural Resources.

17 * * * Lake Champlain TMDL Implementation Plan* * *

18 Sec. 35. 10 V.S.A. § 1386 is amended to read:

§ 1386. IMPLEMENTATION PLAN FOR THE LAKE CHAMPLAIN

TOTAL MAXIMUM DAILY LOAD PLAN

21 (a) Within ~~12~~ three months after the issuance of a phosphorus total

22 maximum daily load plan (TMDL) for Lake Champlain by the U.S.

1 Environmental Protection Agency, the Secretary of Natural Resources shall
2 ~~issue a Vermont specific implementation plan for the Lake Champlain TMDL.~~
3 ~~Every four years after issuance of the Lake Champlain TMDL by the U.S.~~
4 ~~Environmental Protection Agency, the Secretary of Natural Resources shall~~
5 ~~amend and update the Vermont specific implementation plan for the Lake~~
6 ~~Champlain TMDL. Prior to issuing, amending, or updating the implementation~~
7 ~~plan, the Secretary shall consult with the Agency of Agriculture, Food and~~
8 ~~Markets, all statewide environmental organizations that express an interest in~~
9 ~~the plan, the Vermont League of Cities and Towns, all business organizations~~
10 ~~that express an interest in the plan, the University of Vermont Rubenstein~~
11 ~~Ecosystem Science Laboratory, and other interested parties. The~~
12 ~~implementation plan shall include a comprehensive strategy for implementing~~
13 ~~the Lake Champlain TMDL plan and for the remediation of Lake Champlain.~~
14 ~~The implementation plan shall be issued as a document separate from the Lake~~
15 ~~Champlain TMDL. The implementation plan shall:~~

16 (1) ~~Include or reference the elements set forth in 40 C.F.R. § 130.6(e)~~
17 ~~for water quality management plans;~~
18 (2) ~~Comply with the requirements of section 1258 of this title and~~
19 ~~administer a permit program to manage discharges to Lake Champlain~~
20 ~~consistent with the federal Clean Water Act;~~
21 (3) ~~Develop a process for identifying critical source areas for non point~~
22 ~~source pollution in each subwatershed. As used in this subdivision, “critical~~

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1 ~~source area~~” means an area in a watershed with high potential for the release,

2 ~~discharge, or runoff of phosphorus to the waters of the State;~~

3 (4) Develop site specific plans to reduce point source and non point

4 ~~source load discharges in critical source areas identified under subdivision (3)~~

5 ~~of this subsection;~~

6 (5) Develop a method for identifying and prioritizing on public and

7 ~~private land pollution control projects with the potential to provide the greatest~~

8 ~~water quality benefits to Lake Champlain;~~

9 (6) Develop a method of accounting for changes in phosphorus loading

10 ~~to Lake Champlain due to implementation of the TMDL and other factors;~~

11 (7) Develop phosphorus reduction targets related to phosphorus

12 ~~reduction for each water quality program and for each segment of Lake~~

13 ~~Champlain, including benchmarks for phosphorus reduction that shall be~~

14 ~~achieved. The implementation plan shall explain the methodology used to~~

15 ~~develop phosphorus reduction targets under this subdivision;~~

16 (8) Establish a method for the coordination and collaboration of water

17 ~~quality programs within the State;~~

18 (9) Develop a method for offering incentives or disincentives to

19 ~~wastewater treatment plants for maintaining the 2006 levels of phosphorus~~

20 ~~discharge to Lake Champlain;~~

21 (10) Develop a method of offering incentives or disincentives for

22 ~~reducing the phosphorus contribution of stormwater discharges within the Lake~~

1 Champlain basin update the State of Vermont's phase I TMDL implementation
2 plan to reflect the elements that the State determines are necessary to meet the
3 allocations established in the final TMDL for Lake Champlain. The update of
4 the phase I TMDL implementation plan for Lake Champlain shall explain how
5 basin plans will be used to implement the updated phase I TMDL
6 implementation plan, and shall include a schedule for the adoption of basin
7 plans within the Lake Champlain basin. In addition to the requirements of
8 subsection 1253(d) of this title, a basin plan for a basin within the Lake
9 Champlain basin shall include the following:

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

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

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

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

1 (5) a table of non-point source activities that will achieve the State's

2 obligations under the phase I TMDL implementation plan for Lake

3 Champlain; and

4 (6) other strategies and activities that the Secretary determines to be

5 necessary to achieve the State's obligations under the phase I TMDL

6 implementation plan for Lake Champlain.

7 (b) ~~In amending the Vermont specific implementation plan of the Lake~~

8 ~~Champlain TMDL under this section, the Secretary of Natural Resources shall~~

9 ~~comply with the public participation requirements of 40 C.F.R.~~

10 § 130.7(e)(4)(ii) The Secretary shall develop and implement a method of

11 tracking and accounting for actions implemented to achieve the Lake

12 Champlain TMDL.

13 (c) Prior to finalizing the update to the phase I TMDL implementation plan

14 for Lake Champlain, the Secretary shall provide notice to the public of the

15 proposed revisions and a comment period of no less than 30 days.

16 (d) On or before January 15 in the year following issuance of the updated

17 phase I TMDL implementation plan for Lake Champlain under subsection (a)

18 of this section and every four years thereafter, the Secretary shall report to the

19 House Committee on Fish, Wildlife and Water Resources, the Senate

20 Committee on Natural Resources and Energy, the House Committee on

21 Agriculture and Forest Products, and the Senate Committee on Agriculture

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1 regarding the execution of the updated phase I TMDL implementation plan for

2 Lake Champlain. The report shall include:

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

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

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

17 ~~(d)(e) Beginning on February 1, 2014 2016, and annually thereafter, the~~
18 Secretary, after consultation with the Secretary of Agriculture, Food and
19 Markets and the Secretary of Transportation, shall submit to the House
20 Committee on Fish, Wildlife and Water Resources, the Senate Committee on
21 Natural Resources and Energy, the House Committee on Agriculture and
22 Forest Products, and the Senate Committee on Agriculture a summary of

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1 activities and measures of progress of water quality ecosystem restoration
2 programs.

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

4 Audit * * *

5 Sec. 36. 10 V.S.A. chapter 47, subchapter 7 is added to read:

6 Subchapter 7. Vermont Clean Water Fund

7 § 1387. PURPOSE

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

10 The Clean Water Fund shall be used to:

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

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

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

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 1389 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 the Clean Water Fund per parcel fee established under

9 32 V.S.A. § 10502.

10 (B) other gifts, donations, and impact fees received from any source,

11 public or private, dedicated for deposit into the Fund and approved by the

12 Board.

13 (b) The Clean Water Fund Board shall make recommendations on

14 expenditures from the Fund consistent with the following priorities:

15 (1) to provide funding to programs and projects to address sources of

16 water pollution in waters listed as impaired under 33 U.S.C. § 1313(d) or

17 waters contributing to a listed impairment;

18 (2) to provide funding to address water pollution identified as a critical

19 source of water quality pollution;

20 (3) to provide funding to address or repair conditions that increase the

21 risk of flooding or pose a threat to life or property; and

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

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

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

10 § 1389. CLEAN WATER FUND BOARD

11 (a) Creation. There is created a clean water fund board which shall be
12 attached to the Agency of Administration for administrative purposes.

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

15 (1) the Secretary of Administration or designee;
16 (2) the Secretary of Natural Resources or designee;
17 (3) the Secretary of Agriculture, Food and Markets or designee;
18 (4) the Secretary of Commerce and Community Development or
19 designee; and
20 (5) the Secretary of Transportation or designee.

21 (c) Officers; committees; rules. The Clean Water Fund Board shall
22 annually elect a chair from its members. The Clean Water Fund Board may

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1 elect additional officers from its members, establish committees or
2 subcommittees, and adopt procedural rules as necessary and appropriate to
3 perform its work.

4 (d) Powers and duties of the Clean Water Fund Board.

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

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

10 (B) to make recommendations to the Secretary of Administration
11 regarding the appropriate allocation of funds from the Clean Water Fund for
12 the purposes of developing the State budget. All recommendations from the
13 Board should be intended to achieve the greatest water quality gain for the
14 investment.

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

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

19 (A) A protocol for how an administrative agency in the State shall
20 submit a proposed recommendation of award from the Fund.

21 (B) an annual revenue estimate and proposed budget for the Clean
22 Water Fund:

1 (C) measures for determining progress and effectiveness of

2 expenditures for clean water restoration efforts; and

3 (D) the annual clean water investment report required under section
4 1389 of this title.

5 (3) The Clean Water Fund Board shall solicit public comment and
6 consult with organizations interested in improving water quality in Vermont
7 regarding recommendations under this subsection for the allocation of funds
8 from the Clean Water Fund.

9 (e) Priorities.

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

13 (A) funding to maintain seven staff positions at the Agency of
14 Agriculture, Food and Markets related to improving State water quality;
15 (B) funding to programs and projects that address sources of water
16 pollution in waters listed as impaired on the list of waters established by 33
17 U.S.C. § 1313(d);

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

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

1 (E) assistance required for State and municipal compliance with

2 stormwater requirements for highways and roads; and

3 (F) funding for education, outreach, demonstration and access to

4 tools for the implementation of the Acceptable Management Practices for

5 Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the

6 Commissioner of Forests, Parks and Recreation.

7 (2) In making recommendations under subsection (d) of this section

8 regarding the appropriate allocation of funds from the Clean Water Fund, the

9 Board may prioritize:

10 (A) funding for education and outreach regarding the implementation
11 of water quality requirements;

12 (B) funding for innovative or alternative technologies or practices
13 designed to improve water quality or reduce sources of pollution to surface
14 waters; and

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

18 (3) In developing its recommendations under subsection (d) of this
19 section regarding the appropriate allocation of funds from the Clean Water
20 Fund, the Board shall, after satisfaction of the priorities established under
21 subdivisions (d)(1) and (2), attempt to provide for equitable apportionment of

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1 awards from the Fund to all regions of the State and for control of all sources

2 of point and non-point sources of pollution in the State; and

3 (f) The Clean Water Fund Board shall have the administrative, technical,
4 and legal assistance of the Agency of Administration, the Agency of Natural
5 Resources, the Agency of Agriculture, Food and Markets, the Agency of
6 Transportation, and the Agency of Commerce and Community Development
7 for those issues or services within the jurisdiction of the respective agency.

8 The cost of the services provided by agency staff shall be paid from the budget
9 of the agency providing the staff services.

10 **§ 1389a. CLEAN WATER INVESTMENT REPORT**

11 (a) Beginning on January 15, 2017, and annually thereafter, the Clean
12 Water Fund Board shall publish a clean water investment report. The report
13 shall summarize all investments, including their cost-effectiveness, made by
14 the Clean Water Fund Board and other State agencies for clean water
15 restoration over the past calendar year. The report shall include expenditures
16 from the Clean Water Fund, the General Fund, the Transportation Fund, and
17 any other State expenditures for clean water restoration, regardless of funding
18 source. The report shall document progress or shortcomings in meeting
19 established indicators for clean water restoration. The report shall include a
20 summary of additional funding sources pursued by the Board, including
21 whether those funding sources were attained, if it was not attained, why it was
22 not attained, and where the money was allocated from the Fund. The report

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

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

8 § 1389b. CLEAN WATER FUND AUDIT

9 (a) On or before January 15, 2020, the Secretary of Administration shall
10 submit to the House and Senate Committees on Appropriations, the Senate
11 Committee on Agriculture, the House Committee on Agriculture and Forest
12 Products, the Senate Committee on Natural Resources and Energy, and the
13 House Committee on Fish, Wildlife and Water Resources a program audit of
14 the Clean Water Fund. The report shall include:

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

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

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

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

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

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

12 (c) Notwithstanding provisions of 10 V.S.A. § 1388 to the contrary, the
13 Secretary of Administration shall pay for the costs of the audit required under
14 this section from the Clean Water Fund, established under section 1388 of this
15 title.

16 * * * Clean Water Fund Per Parcel Fee * * *

17 Sec. 37. 32 V.S.A. § 10502 is added to read:

§ 10502. CLEAN WATER FUND PER PARCEL FEE

(a) Per parcel fee. An annual Clean Water Fund per parcel fee of \$25.00 shall be assessed on every parcel in the State.

(b) Exemption. A municipality shall not assess the fee established under subsection (a) of this section to:

1 (1) a parcel exempt from taxation under State or federal law;
2 (2) a parcel composed entirely of a railroad track right-of-way, provided
3 that the Commissioner shall assess the fee on parcels on which railroad
4 stations, maintenance buildings, or other developed land used for railroad
5 purposes is located; or
6 (3) a parcel of land for which the State lacks authority to impose the fee
7 established by this section.

8 (c) Assessment and collection of fee.

9 (1) Beginning on July 1, 2015, the Clean Water Fund per parcel fee shall
10 be assessed and collected as part of the tax bill issued under subsection 5402(b)
11 of this title, and may be prorated according to the number of tax bills assessed
12 by a municipality. A municipality shall list the fee assessed under this section
13 on a tax bill as the “Clean Water Fund Per Parcel Fee.” The Clean Water Fund
14 per parcel fee shall be listed separately from the tax collected under subsection
15 5402(b) of this title, provided that the payment for both the tax and fee shall be
16 made in one form of payment.

17 (2) The treasurer of each municipality shall remit the collected Clean
18 Water Fund per parcel fee to the State Treasurer:

19 (A) in one payment due on December 1 of each year; or
20 (B) as authorized by the Department procedure adopted under
21 subsection (e) of this section.

1 (3) Municipalities may use all authority under chapter 133 of this title
2 for the assessment and collection of the Clean Water Fund fee, including
3 collection of fees and costs under section 5288 of this title.

4 (4) In case of insufficient payment of the per parcel fee by a taxpayer to
5 a municipality, the municipality shall not be required to remit to the State the
6 amount of full liability for all parcels within the municipality.

7 (5) In the case of a taxpayer who pays only a portion of the full tax
8 under subsection 5402(b) and the full amount of the Clean Water Fund per
9 parcel fee, a municipal treasurer shall credit all payment made by the taxpayer
10 to the tax liability under subsection 5402(b) of this title before remitting
11 monies to the Clean Water Fund under subsection (d) of this section.

12 (d) Disposition. The Commissioner of Taxes shall deposit all fees
13 collected under this section in the Clean Water Fund, established under
14 10 V.S.A. § 1388, for the authorized uses of that Fund.

15 (e) Department procedure. The Department of Taxes shall, after
16 consultation with municipal officials or representatives of municipal officials,
17 issue a procedure regarding the process for collection of the Clean Water Fund
18 per parcel fee as part of the tax bill issued under subsection 5402(b) of this
19 title. In the procedure, the Department shall address how parcels are assessed,
20 remittance, and enforcement of the Clean Water Fund per parcel fee, including
21 how frequently a municipality may remit to the Department fees collected
22 under this section. The Department also shall include in the procedure

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1 guidance for municipalities regarding whether a fee paid under this section is
2 tax deductible.

3 (f) Abatement. A person may seek and a municipality may grant
4 abatement under 24 V.S.A. § 1535 of a fee assessed under this section.

5 (g) Education and outreach. The Department shall hold educational
6 meetings or prepare educational materials for municipal officials regarding the
7 requirements of this section.

8 Sec. 38. 32 V.S.A. § 5258 is amended to read:

9 § 5258. FEES AND COSTS ALLOWED AFTER WARRANT AND LEVY

10 RECORDED

11 The fees and costs allowed after the warrant and levy for delinquent taxes
12 have been recorded shall be as follows: Levy and extending of warrant,
13 \$10.00; recording levy and extending of warrant in town clerk's office, \$10.00,
14 to be paid the town clerk; notices and publication of notice, actual costs
15 incurred; and expenses actually and reasonably incurred by the tax collector for
16 legal assistance in the preparation for or conduct of said sale when authorized
17 by the selectboard, provided that such expenses shall not exceed 15 percent of
18 the uncollected tax; travel, reimbursement at the rate established by the
19 contract governing State employees; attending and holding sale, \$10.00;
20 making return \$10.00 and recording same in town clerk's office, to be paid the
21 town clerk \$10.00; \$10.00 for collection of a delinquent Clean Water per
22 parcel fee assessed under section 10502 of this title; collector's deed, \$30.00;

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1 which fees and costs, together with the collector's fee of eight percent shall be
2 in lieu of any or all other fees and costs permitted or allowed by law.

3 Sec. 39. REPEAL OF CLEAN WATER FUND PER PARCEL FEE

4 32 V.S.A. § 10502 (Clean Water Fund per parcel fee) shall be repealed on
5 July 1, 2021.

6 * * * Appropriations of Agency Staff * * *

7 Sec. 40. APPROPRIATIONS FOR AGENCY OF AGRICULTURE, FOOD

8 AND MARKETS STAFF

9 Notwithstanding provisions of 10 V.S.A. § 1388 to the contrary, in addition
10 to any other funds appropriated to the Agency of Agriculture, Food and
11 Markets in fiscal year 2016, there is appropriated from the Clean Water Fund
12 created under 10 V.S.A § 1388 to the Agency of Agriculture, Food and
13 Markets \$952,000.00 in fiscal year 2016 for the purpose of hiring seven
14 positions for implementation and administration of agricultural water quality
15 programs in the State.

16 Sec. 41. APPROPRIATIONS FOR DEPARTMENT OF ENVIRONMENTAL
17 CONSERVATION STAFF

18 In addition to any other funds appropriated to the Department of
19 Environmental Conservation in fiscal year 2016, there is appropriated from the
20 Environmental Permit Fund created under 3 V.S.A § 2805 to the Department
21 of Environmental Conservation \$1,312,556.00 in fiscal year 2016 for the
22 purpose of hiring 13 positions for implementation and administration of water

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1 quality programs in the State and for contracting with regional planning

2 commissions as authorized by 10 V.S.A. § 1253.

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

4 Sec. 42. SECRETARY OF ADMINISTRATION REPORT ON

5 IMPERVIOUS SURFACE WATER QUALITY FEE

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

15 (1) An impervious surface fee that provides for equitable apportionment
16 among all parcel owners, including owners of industrial property, commercial
17 property, residential property, or agricultural lands. The recommendation shall
18 consider establishing a fee structure that creates incentives or rewards for
19 owners of impervious surface, including municipal and state roads, who
20 provide treatment that exceeds the minimum regulatory requirement or utilizes
21 innovative approaches to the management of stormwater.

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(2) An estimate of the amount of revenue to be generated from the proposed impervious surface fee.

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

5 (4) a legislative proposal to implement the proposed impervious surface
6 fee program.

7 (b) As used in this section, "parcel" shall have the same meaning as defined
8 in section 4152 of this title.

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

10 Sec. 43. 3 V.S.A. § 2822 is amended to read:

11 § 2822. BUDGET AND REPORT; POWERS

* * *

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1 charging a user fee to those who use the permitted services. Municipalities

2 shall pay fees prescribed in subdivisions (j)(2), (10), (11), (12), and (26),

3 except that a municipality shall also be exempt from those fees for ~~orphan~~

4 stormwater systems prescribed in subdivisions (j)(2)(A)(iii) and (2)(B)(iv)(I)

5 or (II) of this section ~~when the municipality agrees to become an applicant or~~

6 ~~co-applicant for an orphan stormwater system under 10 V.S.A. § 1264e for~~

7 which a municipality has assumed full legal responsibility under 10 V.S.A.

8 § 1264.

9 (j) In accordance with subsection (i) of this section, the following fees are

10 established for permits, licenses, certifications, approvals, registrations, orders,

11 and other actions taken by the Agency of Natural Resources.

12 * * *

13 (2) For discharge permits issued under 10 V.S.A. chapter 47 and orders

14 issued under 10 V.S.A. § 1272, an administrative processing fee of \$120.00

15 \$240.00 shall be paid at the time of application for a discharge permit in

16 addition to any application review fee and any annual operating fee, except for

17 permit applications under subdivisions (2)(A)(iii)(III) and (V) of this

18 subsection:

19 (A) Application review fee.

20 (i) Municipal, industrial,

21 noncontact cooling water, and

22 thermal discharges.

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- 1 (I) Individual permit: original \$0.0023 \$0.003 per gallon
- 2 application; amendment for design flow; minimum
- 3 increased flows; amendment \$50.00 \$100.00 per
- 4 for change in treatment process:- outfall; maximum
- 5 \$30,000.00 per
- 6 application.
- 7 (II) Renewal, transfer, or minor \$0.00 \$0.002 per gallon
- 8 amendment of individual permit:- design flow; minimum
- 9 \$50.00 per outfall;
- 10 maximum \$5,000.00 per
- 11 application.
- 12 (III) General permit:- \$0.00
- 13 (ii) Pretreatment discharges.
- 14 (I) Individual permit: original \$0.12 \$0.20 per gallon
- 15 application; amendment for design flow; minimum
- 16 increased flows; amendment for \$50.00 \$100.00 per
- 17 change in treatment process:- outfall.
- 18 (II) Renewal, transfer, or minor \$0.00 \$0.002 per gallon
- 19 amendment of individual permit:- design flow; minimum
- 20 \$50.00 per outfall.
- 21 (iii) Stormwater discharges.
- 22 (I) Individual operating permit \$430.00 \$860.00 per acre

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1 or application to operate under impervious area;

2 general operating permit for minimum \$220.00

3 collected stormwater runoff \$440.00 per application.

4 which is discharged to Class B

5 waters: original application;

6 amendment for increased flows;

7 amendment for change in

8 treatment process.:

9 (II) Individual operating permit \$1,400.00 per acre

10 or application to operate under impervious area;

11 general operating permit for minimum \$1,400.00

12 collected stormwater runoff which per application.

13 is discharged to Class A waters;

14 original application; amendment

15 for increased flows; amendment

16 for change in treatment process.

17 (III) Individual permit or

18 application to operate under

19 general permit for construction

20 activities; original application;

21 amendment for increased acreage.

22 (aa) Projects with low risk to \$50.00 five acres or

1 waters of the State; less: \$100.00 per project;

² original application.

3 (bb) Projects with low risk to \$220.00 per project.

4 waters of the State; greater than

5 five acres:

7 to waters of the State.: or less: \$480.00 per

project original

⁹ application.

10 (ee) Projects that require an \$720.00 per project

11 individual permit. original application.

(dd) Projects with moderate risk \$640.00.

13 to waters of the State; greater

(ee) Projects that require an \$1,200.00.

16 individual permit; ten acres

18 (ff) Pr

19 individual permit; greater than

20 10 acres:

21 (IV) Individual permit or \$220.00

application to operate under facility.

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1 general permit for stormwater

2 runoff associated with industrial

3 activities with specified SIC

4 codes; original application;

5 amendment for change in activities::

6 (V) Individual permit or \$1,200.00 \$2,400.00

7 application to operate under per system.

8 general permit for stormwater

9 runoff associated with

10 municipal separate storm sewer

11 systems; original application; amendment

12 for change in activities::

13 (VI) Individual operating permit or application to operate under

14 a general permit for a residually designated stormwater discharge original

15 application; amendment; for increased flows amendment; for change in

16 treatment process.

17 (aa) For discharges to Class B water; \$430.00 \$860.00 per

18 acre of impervious area, minimum \$220.00 \$280.00.

19 (bb) For discharges to Class A water; \$1,400.00 \$1,700.00

20 per acre of impervious area, minimum \$1,400.00 \$1,700.00.

21 (VII) Renewal, transfer, or \$0.00

22 minor amendment of individual

1 permit or approval under

2 general permit:

3 (VIII) Application for coverage \$400.00 per application.

4 under the municipal roads

5 stormwater general permit:

6 (IX) Application for coverage \$1,200.00.

7 under the State roads stormwater

8 general permit:

9 * * *

10 (B) Annual operating fee.

11 (i) Industrial, noncontact cooling \$0.001 \$0.0015 per gallon

12 water and thermal discharges: design capacity. \$150.00

13 \$200.00 minimum;

14 maximum \$210,000.00.

15 (ii) Municipal: \$0.003 per gallon of actual

16 design flows. \$150.00

17 \$200.00 minimum;

18 maximum \$12,500.00.

19 (iii) Pretreatment discharges: \$0.0385 \$0.04 per gallon

20 design capacity. \$150.00

21 \$200.00 minimum;

22 maximum \$27,500.00.

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1 (iv) Stormwater.

3 or approval under general operating impervious area; \$235.00

4 permit for collected stormwater \$310.00 minimum.

runoff which is discharged to

7 (II) Individual operating permit \$80.00 \$160.00 per acre

or approval under general operating impervious area; \$80.00

9 permit for collected stormwater \$160.00 minimum.

runoff which is discharged to

11 Class B waters:-

12 (III) Individual permit or \$80.00 \$160.00

13 approval under general permit per facility.

for stormwater runoff from

15 industrial facilities with

16 specified SIC codes.:

(IV) Individual perm

18 application to operate under \$10.00 per acre of

19 general permit for stormwater impervious surface

20 runoff associated with municipal the municipality; annually

separate storm sewer systems:-

1 (V) Individual permit or approval under general permit for

2 residually designated stormwater discharges.

3 (aa) For discharges to Class A water; \$255.00 \$310.00 per

4 acre of impervious area, minimum \$255.00 \$310.00.

5 (bb) For discharges to Class B water; \$80.00 \$160.00 per

6 acre of impervious area, minimum \$80.00 \$160.00.

7 (VI) Application to operate under a general permit for

8 stormwater runoff associated with municipal roads: \$2,000.00 per

9 authorization annually.

10 (VII) Application to operate under a general permit for stormwater

11 runoff associated with State roads: \$90,000.00 per authorization annually.

12 * * *

13 (11) For stream alteration and flood hazard area permits issued under

14 10 V.S.A. chapter chapters 41 and 32: \$225.00 per application.

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

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

17 (C) Stream alteration; individual permit; municipal bridge, culvert,

18 and unimproved property protection: \$350.00.

19 (D) Stream alteration; general permit; municipal bridge, culvert, and

20 unimproved property protection: \$200.00.

21 (E) Stream alteration; Agency of Transportation reviews; bridge,

22 culvert, and high risk projects: \$350.00.

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(F) Flood hazard area; individual permit; State facilities; hydraulic

and hydrologic modeling required: \$350.00.

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

(H) Flood hazard area; municipal reviews; reviews requiring

hydraulic and hydrologic modeling, compensatory storage volumetric analysis, or river corridor equilibrium: \$350.00.

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

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

(12) For dam permits issued under 10 V.S.A. chapter 43: 0.525 1.00

percent of construction costs, minimum fee of \$200.00 \$1,000.00.

* * *

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

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

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

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

chapter 159:

(A) land application sites; facilities that further reduce pathogens:

disposal facilities:- \$950.00 \$1,000.00 per

application.

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1 (B) all other types of facilities: \$110.00 \$125.00 per

² application.

* * *

4 (26) For individual conditional use determinations, for individual

wetland permits, for general conditional use determinations issued under

6 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit,

7 an administrative processing fee assessed under subdivision (2) of this

8 subsection (j) and an application fee of:

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

10 wetlands;

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

12 buffers;

13 (C) maximum fee, for the conversion of Class II wetlands or wetland

14 buffers to cropland use, \$200.00 per application. ~~For purposes of~~ As used in

15 this subdivision, “cropland” means land that is used for the production of

16 agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing

17 bushes, trees, or vines and the production of Christmas trees;

18 (D) \$0.25 per square foot of proposed impact to Clas

19 or Class I or II wetland buffer for utility line, pipeline, and ski trail projects

when the proposed impact is limited to clearing forested wetlands in a corridor

and maintaining a cleared condition in that corridor for the project life;

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- 1 (E) \$1.50 per square foot of impact to Class I or II wetlands when the
- 2 permit is sought after the impact has taken place;
- 3 (F) \$100.00 per revision to an application for an individual wetland
- 4 permit or authorization under a general permit when the supplement is due to a
- 5 change to the project that was not requested by the Secretary; and
- 6 (G) minimum fee, \$50.00 per application.

7 * * *

8 (33) \$10.00 per 1,000 gallons based on the rated capacity of the tank

9 being pumped rounded to the nearest 1,000 gallon.

10 * * *

11 Sec. 44. 32 V.S.A. § 710 is amended to read:

12 **§ 710. PAYMENT OF STATE AGENCY FEES**

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

14 Transportation, any cooperating municipalities, and their contractors or agents

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

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

17 Environmental Commission, and the Agency of Natural Resources for any

18 projects undertaken by or for the Agency and any cooperating municipalities

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

20 approved transportation construction, rehabilitation, or paving program within

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

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

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

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

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

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

6 Natural Resources for:

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

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

9 which is authorized or funded in whole or in part by the capital construction

10 act introduced pursuant to section 701a of this title except for those fees

11 established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(10), (j)(11), and (j)(26).

12 (2) Any project undertaken by a municipality, which is funded in whole

13 or in part by a grant or loan from the Agency of Natural Resources or the

14 Agency of Transportation financed by an appropriation of a capital

15 construction act introduced pursuant to section 701a of this title except for

16 those fees established under 3 V.S.A. § 2822(j)(2)(A)(iii), (j)(7)(A) and (B),

17 (j)(10), (j)(11), and (j)(26). However, all such fees shall be paid for reviews,

18 inspections, or permits required by municipal solid waste facilities developed

19 by a solid waste district which serves, or is expected to serve, in whole or in

20 part, parties located outside its own district boundaries pursuant to 10 V.S.A.

21 chapter 159.

22

1 Sec. 45. ASSESSMENT OF DEC FEES ON STATE AGENCIES AND

2 MUNICIPALITIES

3 The Agency of Natural Resources shall assess fees established under 3

4 V.S.A. § 2822(j)(2)(A)(iii), (j)(7)(A) and (B), (j)(10), (j)(11), and (j)(26) on

5 municipalities at the end of the most recent applicable municipal fiscal year in

6 order to avoid potential effects on approved municipal budgets.

7 * * * Wastewater Treatment Plants; Financial Assistance for

8 Phosphorus Reduction * * *

9 Sec. 46. 10 V.S.A. § 1266a is amended to read:

10 § 1266a. DISCHARGES OF PHOSPHORUS

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

21 (b) Notwithstanding any provision of subsection (a) of this section to the
22 contrary, the Secretary shall establish effluent phosphorus wasteload

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1 allocations or concentration limits within any drainage basin in Vermont, as
2 needed to achieve wasteload allocations in a total maximum daily load
3 document approved by the U.S. Environmental Protection Agency, or as
4 needed to attain compliance with water quality standards adopted by the
5 Secretary pursuant to chapter 47 of this title.

6 (c) ~~The Secretary of Natural Resources shall establish a schedule for~~
7 ~~municipalities that requires compliance with this section at a rate that~~
8 ~~corresponds to the rate at which funds are provided under subsection 1625(e)~~
9 ~~of this title. To the extent that funds are not provided to municipalities eligible~~
10 ~~under that subsection, municipal compliance with this section shall not be~~
11 ~~required.~~ [Repealed.]

12 Sec. 47. 10 V.S.A. § 1625 is amended to read:

13 § 1625. AWARDS FOR POLLUTION ABATEMENT PROJECTS TO

14 ABATE DRY WEATHER SEWAGE FLOWS

15 (a) When the Department finds that a proposed water pollution abatement
16 project is necessary to maintain water quality standards during dry weather
17 sewage flows, and that the proposed type, kind, quality, size, and estimated
18 cost, including operation cost and sewage disposal charges, of the project are
19 suitable for abatement of pollution, and the project or the prescribed project
20 phases are necessary to meet the intent of the water quality classifications
21 established by the Secretary or by statute under chapter 47 of this title, the
22 Department may award to municipalities a State assistance grant of up to

1 25 percent of the eligible project cost, provided that in no case shall the total of
2 the State and federal grants exceed 90 percent of the eligible project costs:

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

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

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

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

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

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

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

19 Sec. 48. 10 V.S.A. § 2622 is amended to read:

20 § 2622. RULES; HARVESTING TIMBER; FORESTS; ACCEPTABLE
21 MANAGEMENT PRACTICES FOR MAINTAINING WATER
22 QUALITY

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

14 (b) Acceptable management practices. On or before July 1, 2016, the
15 Commissioner shall revise by rule the Acceptable Management Practices for
16 Maintaining Water Quality on Logging Jobs in Vermont. The revised
17 acceptable management practices shall ensure that all logging operations, on
18 both public and private forestland, are designed to: prevent or minimize
19 discharges of sediment, petroleum products, and woody debris (logging slash)
20 from entering streams and other bodies of water; improve soil health of
21 forestland; protect aquatic habitat and aquatic wildlife; and prevent erosion and
22 maintain natural water temperature. The purpose of the acceptable

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1 management practices is to provide measures for loggers, foresters, and
2 landowners to utilize, before, during, and after logging operations to comply
3 with the Vermont Water Quality Standards and minimize the potential for a
4 discharge from logging operations in Vermont in accordance with section 1259
5 of this title. The rules adopted under this subsection shall be advisory and not
6 mandatory.

7 Sec. 49. DEPARTMENT OF FORESTS, PARKS AND RECREATION

8 REPORT; ACCEPTABLE MANAGEMENT PRACTICES;

9 MAPLE SYRUP PRODUCTION UNDER USE VALUE

10 APPRAISAL

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

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

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

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

4 Sec. 50. 10 V.S.A. § 1259(f) is amended to read:

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

16 Sec. 51. 24 V.S.A. § 4413(d) is amended to read:

17 (d) A bylaw under this chapter shall not regulate ~~accepted~~ required
18 agricultural ~~and~~ silvicultural practices, including the construction of farm
19 structures, as those practices are defined by the ~~secretary of agriculture, food~~
20 ~~and markets~~ Secretary of Agriculture, Food and Markets or ~~the commissioner~~
21 of forests, parks and recreation Acceptable Management Practices for
22 Maintaining Water Quality on Logging Jobs in Vermont as adopted by the

Commissioner of Forests, Parks and Recreation, respectively, under 10 V.S.A.

2 ~~§§ 1021(f) and 1259(f)~~ § 2622 and 6 V.S.A. § 4810.

3 * * *

4 * * * Eligibility for Ecosystem Restoration Program Assistance * * *

5 Sec. 52. ECOSYSTEM RESTORATION PROGRAM; CLEAN WATER

6 FUND; ELIGIBILITY FOR FINANCIAL ASSISTANCE

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

15 Sec. 53. EFFECTIVE DATES

16 (a) This section and Secs. 36 (Clean Water Fund) and 37 (Clean Water
17 Fund per parcel fee) shall take effect on passage.

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

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

20 (2) 6 V.S.A. § 4988(b) of Sec. 16 (custom applicator certification) shall
21 take effect 45 days after the effective date of rules adopted under 6 V.S.A.
22 § 4988(a).

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

5

6

7 (Committee vote: _____)

8

9

Senator _____

10