

Senate Natural Resources
2015 Overview: Jan. 15, 2015

A. Areas of Coverage

- Water, including water quality, stormwater, TMDLs, wastewater, potable water supply, groundwater, rivers, lakes, stream alteration, and dam safety.
- Solid waste, including Act 148 recycling, solid waste certification, beverage containers, extended producer responsibility laws, hazardous waste, contaminated sites.
- Fish and wildlife, including hunting and fishing, endangered species, and invasives.
- Forests and Parks, forest health, forestry, use of state lands, biomass energy.
- Agriculture issues related to natural resources, including agricultural water quality, pesticides, fertilizers, composting, animal diseases, plant nurseries, and plant pests.

B. Water—Water Quality Generally

- The federal Clean Water Act (CWA) imposes multiple requirements on States and property owners to control pollution to waters and improve the quality of polluted waters.
- The CWA requires discharges to navigable waters to obtain a permit from U.S. EPA or from a delegated State agency.
- In 1974, EPA delegated ANR as the CWA permitting authority for Vermont. EPA retains oversight over permit issuance in the State and may make recommendations and require additional conditions for federally required permits such as wastewater permits.
- The CWA establishes effluent limits for discrete discharges, and the State can adopt more stringent standards under State law.
- CWA § 303 requires all states to adopt water quality standards, which are the limits, uses, or criteria to evaluate and protect water quality from pollutants.
- CWA § 303(d) requires States to review all waters every three years to determine if the water meets the State water quality standards.
- If a water does not meet the State water quality standards, it is listed as “impaired.”
- If a water is listed as impaired, the State is required to establish a cleanup goal, known as a total maximum daily load (TMDL) plan for the pollutants that caused the impairment.
 - A TMDL is a target or goal that, when reached, should result in the cleanup of the water so that it meets the State water quality standards and is no longer impaired.
 - A TMDL is not the actions that the State must take to clean up a water.
- Actions necessary to clean up a water are included in a separate implementation plan. An implementation plan can include a suite of activities to remediate the water.

C. Water Quality—Antidegradation

- The CWA requires state water quality standards to include an antidegradation policy.
- Vermont has adopted an antidegradation policy in its water quality standards. That policy requires the State to:
 - Protect and maintain existing uses and water quality supporting those uses;
 - Maintain the water quality of a water, unless necessary to accommodate important social or economic considerations;
 - Provide the highest level of protection to outstanding resource water.
- Questions have been raised as to how and whether ANR is implementing antidegradation.
- The Legislature required ANR to issue an antidegradation implementation rule in 2008.
- The Agency initiated a rulemaking process, but the process was never completed.
- Instead ANR adopted an interim antidegradation implementation procedure in 2010.

D. Water Quality Issues in 2015 Legislative Session

1. Lake Champlain TMDL Implementation

- Lake Champlain is impaired due to phosphorus—i.e. it does not meet the State water quality standards for use, recreation, etc. because of phosphorus pollution.
- In 2002, EPA approved a joint TMDL between Vermont and New York for the Lake.
- In 2008, CLF petitioned EPA to disapprove the Vermont portion of the Lake TMDL.
- CLF argued that the TMDL was flawed, most specifically because it included insufficiently stringent wasteload allocations, lacked reasonable assurances, and lacked an inadequate margin of safety.
- In 2011, EPA disapproved the Vermont portion of the Lake Champlain TMDL.
- When EPA disapproves a State TMDL, the CWA requires EPA to issue the new TMDL within 30 days of disapproval—i.e. EPA will issue the new TMDL, not ANR.
- Since 2011, EPA has been working with ANR to design the TMDL for the Lake—i.e. the target goal for bringing the Lake back into compliance.
- A target has been established, and now the State must develop an implementation plan—the actions to be taken to achieve the TMDL goal—see Phase I Implementation plan.
- Many of the proposed actions will or may require legislative action, including small farm certification, nutrient application, stormwater, impervious surface retrofits, and funding.

2. Funding for MS4 Communities

- The CWA requires certain communities with municipal separate storm sewer systems (MS4s) to implement a permit for the control of stormwater and other potential water pollutants.
- Generally, MS4 are required for Urbanized Regional Areas, which are a densely settled core of census tracts and/or census blocks that have a population of at least 50,000.
- ANR can also use what is referred to as residual designation authority under the Clean Water Act to designate a town a MS4.
- There are 15 MS4 communities:

City of St. Albans	Town of Shelburne
Town of St. Albans	City of South Burlington
Town of Rutland	Town of Williston
City of Burlington	City of Winooski
Town of Colchester	Burlington Airport
Town of Essex	UVM
Village of Essex Junction	Vtrans
Town of Milton	

- Currently, ANR provides water quality funding from the Ecosystem Restoration Program (ERP) to towns, but will not provide MS4s with ERP monies because of an internal agency policy that prohibits providing funds for actions that are regulatorily required.

3. Synthetic Plastic Microbeads

- Many personal care products include synthetic plastic microbeads intended to exfoliate or provide other abrasive properties.
- The microbeads enter wastewater treatment systems through rinse water. However, wastewater treatment plants do not adequately filter microbeads.
- Microbeads, consequently, are discharged to waters and the environment, where they are ingested by fish, can attract other pollutants, and settle in sediment.
- H.4 would prohibit the manufacture and sale of microbeads in Vermont.

4. Other

- Other water quality or related bills could address dam safety, water and sewer rates, and revisions to the lake shoreland protection act.

E. Wastewater—Overshadowing Isolation Distances

- The ANR Wastewater and Potable Water Supply rules require certain, health based isolation distances around wells and wastewater systems.
- These isolation distances may extend onto and limit use on neighboring property.
- Although these “overshadowing” isolation distances have been required under the rules for decades, few property owners knew of the “overshadowing” until 2010 when the General Assembly required neighbors to receive notice of the overshadowing.
- Since 2010, overshadowing has been raised in some form during the legislative session.

F. Solid Waste—Act 148 and Universal Recycling

- In 2012, the General Assembly enacted Act 148, an Act relating to Establishing Universal Recycling of Solid Waste.
- Act 148 required the recycling of mandated recyclables (cans bottles, etc.), leaf and yard residuals, and food residuals on a phased in basis. See timeline.
- Haulers cannot charge a separate fee for the collection of residential recyclables. The costs of collecting recyclables from residents can be included in trash collection fees. Haulers can charge for the collection of leaf and yard debris, and food scraps.
- By July 2015, solid waste entities must implement unit based pricing—pay as you throw—for solid waste services.
- There have been questions about financing and implementation of Act 148, including its application to rural communities, solid waste districts, and small haulers.
- The new State materials management plan also required solid waste management entities have a permanent collection site for hazardous waste, or, by 2018, increase collection events from the current 2 events per year to 4 collection events per year.

G. Fish and Wildlife

- The Department of Fish and Wildlife (DFW) produces an omnibus bill each year.
- H.5, is the DFW bill for 2015, and it includes the following issues:
 - Potential establishment of a cross bow hunting season;
 - Annual registration for permanent and lifetime licenses;
 - Enforcement of endangered or threatened species violations;
 - Repeal of the felt soled wader ban; and
 - Repeal of Agency of Agriculture authority over fur bearing species.
- A bill may also be introduced to increase penalties on repeat or egregious offenders.

H. Forests and Forest Products

- As part of the overall water quality initiative, the accepted management practices (AMPs) for maintain water quality on logging jobs in Vermont will be updated and strengthened.
- In addition, ANR intends to clarify the mandatory nature of the AMPs.
- There may also be forestry health guidance issued by the Department.
- There may also be discussions about regulating the firewood industry as a whole, not just importation, to address quality and other consumer protection issues.

I. Agricultural Issues

- Agricultural water quality is a significant focus of the water quality initiative, including:
 - Small farm certification;
 - Certification and training requirements for custom applicators; and
 - Fertilizer fees.
- The Agency of Agriculture, Food and Markets has regulatory authority over pesticide use in the State. Usually, each biennium, several bills are introduced addressing pesticide issues, such as use of neonicotinoid pesticides, pesticide use in schools, pesticide use in rights or way, or pesticide use in proximity to water.