

To: Senate Committee on Natural Resources and Energy
From: David Mears, Commissioner, Environmental Conservation
Date: April 9, 2015
Re: DEC proposed changes to H. 35/S.49

The following section addresses two concerns the Department has with the bill as passed the House:

First: The Department and RCPs have collaborated to improve the language that allows the basin planning process. The proposed changes would require, dependent on funding, contract with the RPCs to perform certain aspects of the basin planning process;

Second: The Department proposes to require as a part of the basin planning process the identification of certain high quality water features: class A waters, outstanding resource waters, and class I wetlands.

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

§ 1253. CLASSIFICATION OF WATERS DESIGNATED,
RECLASSIFICATION

* * *

(d)(1) ~~The~~ Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and natural resource conservation districts, shall revise all ~~47~~ 15 basin plans ~~by January 1, 2006, and update them every five years thereafter~~ the basin plans on a five-year rotating basis. On or before January ~~4~~ 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forest Products, on Natural Resources and Energy, and on Fish, Wildlife and Water Resources, and to the Senate Committees on Agriculture and on Natural

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

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

(A) identify waters that should be reclassified as class A waters or outstanding resource waters;

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

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

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

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

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

(G) develop, in consultation with the applicable regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans; and

(H) provide public notice of a draft basin plan and the opportunity for public comment for no less than 30 days.

(3) The Secretary shall, contingent upon the availability of funds, contract with a regional planning commission to provide support in the development of a basin plan under the schedule set forth in subdivision (1) of this subsection. When contracting with a regional planning commission to assist in or produce a basin plan, the Secretary may require the regional planning commission to:

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

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

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

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

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

(1) existing and obtainable water qualities;

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

(3) natural sources of pollution;

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

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

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

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

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

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

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

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

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

II. Changes to 10 V.S.A. § 1386

The Department requests that 10 V.S.A. § 1386 be added to S.49 and that the following changes be made to more accurately reflect the process that the Department plans to undertake when updating the phase I TMDL implementation plan as well as the elements that the Department must include in the plan.

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

§ 1386. IMPLEMENTATION PLAN FOR THE LAKE CHAMPLAIN TOTAL MAXIMUM DAILY LOAD ~~PLAN~~

(a) Within ~~12~~ three months after the issuance of a phosphorus total maximum daily load ~~plan~~ (TMDL) for Lake Champlain by the U.S. Environmental Protection Agency, the Secretary of Natural Resources shall update the State of Vermont's phase I TMDL implementation plan to reflect the elements that the State determines are necessary to meet the allocations established in the final TMDL. The update to the phase I implementation plan shall explain how basin plans will be used to implement the updated phase I plan at a watershed level and include a schedule for the adoption of basin plans within the Lake Champlain basin. In addition to the requirements of section 1253(d), a basin plan within the Lake Champlain basin shall include the following:

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(1) phosphorus reduction strategies within the basin that will achieve the State's obligations under the phase I implementation plan;

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

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

(4) wetland and river corridor restoration and protection projects that will achieve the State's obligations under the phase I implementation plan;

(5) a table of non-point source activities that will achieve the State's obligations under the phase I implementation plan; and

(6) other strategies and activities that the Secretary determines to be necessary to achieve the State's obligations under the phase I implementation plan.

~~issue a Vermont-specific implementation plan for the Lake Champlain TMDL. Every four years after issuance of the Lake Champlain TMDL by the U.S. Environmental Protection Agency, the Secretary of Natural Resources shall amend and update the Vermont-specific implementation plan for the Lake Champlain TMDL. Prior to issuing, amending, or updating the implementation plan, the Secretary shall consult with the Agency of Agriculture, Food and Markets, all statewide environmental organizations that express an interest in the plan, the Vermont League of Cities and Towns, all business organizations that express an interest in the plan, the University of Vermont Rubenstein Ecosystem Science Laboratory, and other interested parties. The implementation plan shall include a comprehensive strategy for implementing the Lake Champlain TMDL plan and for~~

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the remediation of Lake Champlain. The implementation plan shall be issued as a document separate from the Lake Champlain TMDL. The implementation plan shall:

(1) Include or reference the elements set forth in 40 C.F.R. § 130.6(c) for water quality management plans;

(2) Comply with the requirements of section 1258 of this title and administer a permit program to manage discharges to Lake Champlain consistent with the federal Clean Water Act;

(3) Develop a process for identifying critical source areas for non-point source pollution in each subwatershed. As used in this subdivision, "critical source area" means an area in a watershed with high potential for the release, discharge, or runoff of phosphorus to the waters of the State;

(4) Develop site-specific plans to reduce point source and non-point source load discharges in critical source areas identified under subdivision (3) of this subsection;

(5) Develop a method for identifying and prioritizing on public and private land pollution control projects with the potential to provide the greatest water quality benefits to Lake Champlain;

(6) Develop a method of accounting for changes in phosphorus loading to Lake Champlain due to implementation of the TMDL and other factors;

(7) Develop phosphorus reduction targets related to phosphorus reduction for each water quality program and for each segment of Lake Champlain, including benchmarks for phosphorus reduction that shall be achieved. The implementation plan shall explain the methodology used to develop phosphorus reduction targets under this subdivision;

(8) Establish a method for the coordination and collaboration of water quality programs within the State;

(9) Develop a method for offering incentives or disincentives to wastewater treatment plants for maintaining the 2006 levels of phosphorus discharge to Lake Champlain;

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~~(10) Develop a method of offering incentives or disincentives for reducing the phosphorus contribution of stormwater discharges within the Lake Champlain basin.~~

~~(b) The Secretary shall develop and implement a method of tracking and accounting for actions implemented to achieve the Lake Champlain TMDL.~~

~~(c) Prior to finalizing the update to the phase I implementation plan, the Secretary shall provide notice to the public of the proposed revisions and a comment period of no less than 30 days. ~~In~~ amending the Vermont specific implementation plan of the Lake Champlain TMDL under this section, the Secretary of Natural Resources shall comply with the public participation requirements of 40 C.F.R. § 130.7(c)(1)(ii).~~

~~(e)~~ (d) On or before January 15 in the year following issuance of the updated phase I implementation plan under subsection (a) of this section and every five ~~four~~ years thereafter, the Secretary shall report to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, the House Committee on Agriculture and Forest Products, and the Senate Committee on Agriculture regarding the execution of the updated phase I implementation plan. The report shall include:

(1) ~~The amendments or revisions to the implementation plan for the Lake Champlain TMDL required by subsection (a) of this section. Prior to submitting a report required by this subsection that includes amendments to revisions to the implementation plan, the Secretary shall hold at least three public hearings in the Lake Champlain watershed to describe the amendments and revisions to the implementation plan for the Lake Champlain TMDL. The Secretary shall prepare a responsiveness summary for each public hearing. A summary of the efforts undertaken to implement the phase I implementation plan, including the status of efforts being taken through the basin planning process; and~~

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

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

~~(d)~~ (e) Beginning February 1, ~~2014~~ 2016 and annually thereafter, the Secretary, after consultation with the ~~Secretary~~ Secretaries of Agriculture, Food and Markets and Transportation, shall submit to the House Committee on Fish, Wildlife and Water Resources, the Senate Committee on Natural Resources and Energy, the House Committee on Agriculture and Forest Products, and the Senate Committee on Agriculture a summary of activities and measures of progress of water quality ecosystem restoration programs.

III. Changes to 10 V.S.A. § 1264

To keep this section to a minimum, the Department has excerpted the specific changes it requests to 10 V.S.A. § 1264, rather than including the entire section in this memo.

A. Changes to 10 V.S.A. § 1264(b)(6)

The Department requests these changes to ensure that offsets may be used in the Lake Champlain basin to ensure no net increase in phosphorus from stormwater discharges.

(6) “Offset” means a State-permitted or -approved action or project within a stormwater-impaired water, Lake Champlain, or a water that contributes to the impairment of Lake Champlain that a discharger or a third person may complete to mitigate the impacts that a discharge of regulated stormwater runoff has on the stormwater-impaired water, or the impacts of phosphorous on Lake Champlain, or a water that contributes to the impairment of Lake Champlain.

B. Changes to 10 V.S.A. § 1264(b)(9)

The Department requests these changes to ensure that stormwater impact fees may be used in the Lake Champlain basin to mitigate impacts from phosphorus contained in stormwater.

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

C. Changes to 10 V.S.A. 1264(d)

The proposed changes in this subsection address two concerns:

First: As currently written, one could interpret section (d)(4) to exempt from all permitting requirements stormwater systems for which a municipality has assumed “full legal responsibility.” This was not the Department’s intent. Rather, such systems will require coverage under an MS4 or municipal roads permits and the MS4 permit or municipal roads permit will include all operational stormwater requirements. The proposed changes clarify that these systems are exempt from the requirement for additional individual operational permits.

Second: This section adds the 3-acre “legacy” stormwater permit program as a permit that can be assumed by a municipality as a part of their MS4 permit provided that the municipality takes “full legal responsibility” for the system

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

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

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

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

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

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~~(4)(2) Stormwater systems that were permitted under~~ No permit is required under subdivision (c)(1), (5), ~~or (8)~~ of this section ~~and for a stormwater system~~ for which a municipality has assumed full legal responsibility ~~for that stormwater system~~ as part of a permit issued to the municipality by the Secretary. As used in this subdivision, “full legal responsibility” means ~~a~~ legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

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

D. Changes to 10 V.S.A. § 1264(g)(3)(C)

The Department requests the following change to the subdivision applicable to the 3-acre impervious surface general permit to clarify the standard applicable to the section. As currently written, one could read the section to imply that the standard only applies when a landowner is proposing redevelopment of a 3-acre or larger parcel, whereas, the section is meant to require landowners to undertake necessary retrofits regardless of whether they are planning redevelopment or not.

(C) Require that a discharge of stormwater ~~from redeveloped or retrofitted~~ impervious surface ~~subject to this section~~ comply with the ~~applicable~~ standards of subsection (h) of this section ~~for redevelopment of or renewal of a permit for existing impervious surface.~~

E. Changes to 10 V.S.A. § 1264(h)(2)

The following changes are to clarify that the requirement for offsets in the stormwater program within the Lake Champlain Basin are limited to discharges of phosphorous.

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

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(2) For discharges of regulated stormwater to a stormwater impaired water, for discharges of phosphorous to Lake Champlain, or for discharges of phosphorus to a water that contributes to the impairment of Lake Champlain:

IV. Changes to 10 V.S.A. 2822(i)

The Department requests the following change to clarify which stormwater fees municipalities assuming responsibility for systems will be exempt from and to address a fee that was removed from the executive branch fee bill that our fees are dependent on.

Sec. 42. 3 V.S.A. § 2822 is amended to read:

§ 2822. BUDGET AND REPORT; POWERS

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

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~~under 10 V.S.A. § 1264e~~ for which a municipality has assumed full legal responsibility under 10 V.S.A. § 1264.

* * *

(12)(A) For dam permits issued under 10 V.S.A. chapter 43: 1.00 ~~0.525~~ percent of construction costs, minimum fee of \$1,000.00 ~~\$200.00~~.

(B) For all dams capable of impounding 500,000 or more cubic feet of water or other liquid, an annual fee:

(i) For dams classified as low risk: \$200.00 per year.

(ii) For dams classified as significant risk: \$350.00 per year.

(iii) For dams classified as high risk: \$1,000.00 per year.

(iv) For dams all other dams: \$200.00 per year.