

S.49 Summary of Amendments to Stormwater Section & Additional Issues

I. Overview

- Sec. 19 of S.49 proposes a comprehensive redraft of 10 V.S.A. § 1264, the statutory requirements for the permitting of stormwater in the State.
- This memo summarizes the proposed changes to § 1264 and notes additional issues in S.49.

II. Stormwater

A. Stormwater: Consolidation, Updating, or Improvement

- Many of the proposed changes to § 1264 are consolidation, updating, or improvement of language or structure of the existing section. For example:
 - Current statute does not clearly state the activities that require a permit. Subsection (c) in the proposed language now clearly sets forth the activities requiring a permit.
 - The exemptions in existing language were located illogically. See § 1264(e)(2)(A)-(C). The proposed language clearly sets forth the permit exemptions in § 1264(d).
 - The existing language authorized use of general permits with specific criteria. See existing § 1264(e)(2). The proposed language simply authorizes ANR use of general permits according to the default general permit authority under § 1263. See § 1264(g) of proposed language.
- Antiquated or achieved requirements of existing statutes were deleted. For example:
 - Current statute requires ANR to issue a permit to implement the TMDLs in the stormwater impaired waters.
 - ANR has issued a permit for the stormwater impaired water. Thus, the statutory language requiring the permit has been proposed for removal. See § 1264(f)(3) of struck language.
 - The discharge standards in statute have largely been supplanted by the requirements of the Stormwater management Manual, as was contemplated by Act 140 of 2004.
 - The proposed language would update the discharge standards for consistency and reference to the Stormwater Management Manual

B. Stormwater: Grants of Rulemaking Instead of Specific Statutory Requirements

- Several of the proposed changes to § 1264 consist of replacing specific, statutory requirements or authority with ANR rulemaking authority to address the issue. For example:
 - The existing § 1264(e)(1) includes specific requirements for use of best management practices (BMPs), and permit conditions and other requirements.
 - The proposed language replaces the existing language with a grant of rulemaking authority to adopt BMPs to address stormwater discharges. See § 1264(f)(4) of proposed language.
- Existing § 1264(f)(5) includes specific requirements for offsets and stormwater impact fees.
 - The proposed language would strike the subdivision and replace it with a grant of authority for ANR to adopt rules regarding use of offsets and stormwater impact fees.
- Existing § 1264(i) has specific language regarding transfer of a permit from a residential subdivision to a municipality.
 - The proposed language would strike this requirement and include rulemaking authority for the agency to allow municipalities to assume legal responsibility of permitted stormwater systems.

C. Stormwater: Omissions and Deletions

- The proposed language omits or deletes several provisions in the existing statute. For example:
 - A requirement for a model stormwater bylaw is struck. See subdivision (b)(12) of struck language.
 - A requirement for education and outreach was struck. See subdivision (b)13) of struck language.
 - A report to the General Assembly regarding the stormwater program is struck. See subsection (c) of struck language.
 - Requirements for a certain number of public hearings on proposed rules was deleted. See subdivision (d)(2) of struck language.
 - Requirements for ANR response to permit applications by telecommunications facilities was omitted. See subsection (j) of struck language. (this may have been an agency error).

D. Stormwater: Residual Designation Authority

- Existing § 1264(d)(1)(E) authorizes ANR to adopt by rule requirements for discharges from any size of impervious surface to stormwater impaired waters when necessary to reduce the adverse impact of the stormwater discharge.
 - This language is a form of residual designation authority—discretionary authority of EPA or ANR to require a permit when deemed necessary
- The proposed language also includes a Residual Designation Authority, but it is both broader in application and more specific as to how it may be exercised.
 - § 1264(e) of the proposed language provides that the Secretary shall require a permit for a discharge of stormwater from impervious surface upon a designation by the Secretary that the treatment of the stormwater is necessary to reduce the adverse impacts to water quality.
 - This proposed language is not limited to impaired waters, unlike existing statute
- The proposed language also provides that the Secretary may make a RDA permit decision on a case by case basis or during the basin planning process.
 - The use of RDA in the basin planning process would be new to Vermont.

E. Stormwater—Additional Considerations

- The Committee also may want to consider adding to § 1264 language that is not included in either the existing section or in the proposed new language.
- The requirements that ANR establish hydrology “credits” for renewable energy projects and telecommunications facilities located at high elevation was enacted as session law and not statute.
 - The Committee could consider including standards for high elevation facilities in statute under this revision of § 1264.
- Existing language and the proposed language does not explicitly state what the discharge standard will be for stormwater discharges/runoff in non-impaired waters.
 - The relevant standard could be included in or referenced in statute.

III. Additional Issues

A. Small Farm Certification

- What is a small farm?
- Should all persons with livestock or applying manure or nutrients be required to certify compliance?
- How does the requirement for nutrient management planning under Sec. 3, 6 V.S.A. § 4810a(a)(6) reconcile with the requirement for nutrient management plans on small farms under 4810a(a)(13)?

B. Agricultural Water Quality Training

- The training section for all farmers does not actually mandate that farmers complete training on any type of schedule or required hours.
- When should this requirement go into effect?

C. Custom Applicator Certification

- When should this requirement go into effect?

D. Agricultural Water Quality Enforcement Section

- There are 4 rights of appeal under 6 V.S.A. chapter 215, should these be consolidated? If not, why?

E. AAPS As a Condition of Use Value Appraisal

- Does the land use change tax apply to agricultural parcels or farm buildings that are removed from UVA due to noncompliance with the AAPS.
- The appeal right under 6 V.S.A. chapter 215 needs to be clarified.
- When a parcel or building is removed from UVA, does the owner pay taxes according to the assessed value of the parcel or building for the whole year, or is it prorated?
- What about overvalued buildings or land?

F. Municipal Roads Stormwater Permit

- When will these permit requirements go into effect? As drafted, the section--and the prohibition on road construction or redevelopment without a permit--would go into effect July 1, 2015.
- How will these permits be issued? As general permits—statewide applicability; or as individual permits.
- How will towns pay for compliance with these permit? Will there be state cost share?

G. Clean Water Fund

- Is the Clean Water Board the appropriate mechanism for oversight of fund. If so, who should be on the Board and who should appoint members of board.
- Should expenditures from the board be allocated according to the appropriations process?
- What does substantial deference to recommendations mean?

H. Impervious Surface Assessment

- Do the definitions of commercial and industrial property need revision to address properties with mixed uses