

1 § 1264. STORMWATER MANAGEMENT

2 (a) ~~The General Assembly finds that the management of stormwater runoff~~  
3 ~~is necessary to reduce stream channel instability, pollution, siltation,~~  
4 ~~sedimentation, and local flooding, all of which have adverse impacts on the~~  
5 ~~water and land resources of the State. The General Assembly intends, by~~  
6 ~~enactment of this section, to reduce the adverse effects of stormwater runoff.~~  
7 ~~The General Assembly determines that this intent may best be attained by a~~  
8 ~~process that: assures broad participation; focuses upon the prevention of~~  
9 ~~pollution; relies on structural treatment only when necessary; establishes and~~  
10 ~~maintains accountability; tailors strategies to the region and the locale; assures~~  
11 ~~an adequate funding source; builds broadbased programs; provides for the~~  
12 ~~evaluation and appropriate evolution of programs; is consistent with the federal~~  
13 ~~Clean Water Act and the State water quality standards; and accords appropriate~~  
14 ~~recognition to the importance of community benefits that accompany an~~  
15 ~~effective stormwater runoff management program. In furtherance of these~~  
16 ~~purposes, the Secretary shall implement two stormwater permitting programs.~~  
17 ~~The first program is based on the requirements of the federal National~~  
18 ~~Pollutant Discharge Elimination System (NPDES) permit program in~~  
19 ~~accordance with section 1258 of this title. The second program is a State~~  
20 ~~permit program based on the requirements of this section for the discharge of~~

**Comment [MOG1]:** Moved to findings section in new language, see new subdivision (a)(1)

**Comment [MOG2]:** Moved to intent section in new language, see new subdivision (a)(2)(B)

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.~~

**Comment [MOG3]:** Language regarding the two separate stormwater permits was deleted from new language.

**Comment [MOG4]:** Definition of stormwater management manual in new language deletes reference to “2002”. See subdivision (b)(14) of new language.

**Comment [MOG5]:** Same definition as used in subdivision (b)(1) of new language.

**Comment [MOG6]:** Same definition as used in subdivision (b)(2) of new language.

**Comment [MOG7]:** Same definition as used in subdivision (b)(3) of new language.

**Comment [MOG8]:** First sentence same as used in subdivision (b)(4) of new language. Second sentence moved to permit requirement/prohibition section see subdivision (c)(5) of new language.

**Comment [MOG9]:** Same definition as used in subdivision (b)(5) of new language.

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.~~

**Comment [MOG10]:** Same definition as used in subdivision (b)(6) of new language.

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.~~

**Comment [MOG11]:** Same definition as used on subdivision (b)(7) of new language.

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.~~

**Comment [MOG12]:** Definition of offset charge deleted from new language.

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,~~

**Comment [MOG13]:** Same definition as used in subdivision (8) of new language

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.~~

**Comment [MOG14]:** Same definition as used in subdivision (b)(9) of the new language.

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.~~

**Comment [MOG15]:** Same definition as used in subdivision (b)(10) of new language

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

**Comment [MOG16]:** Same definition as used in subdivision (b)(11) of new language.

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.~~

**Comment [MOG17]:** Same definition as used in subdivision (b)(13) of new language.

19 (15) ~~“Total maximum daily load” (TMDL) means the calculations and~~  
20 ~~plan for meeting water quality standards approved by the U.S. Environmental~~

1 Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and  
2 federal regulations adopted under that law.

**Comment [MOG18]:** Same definition as used in subdivision (b)(15) of new language.

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

**Comment [MOG19]:** Same definition as used in subdivision (b)(16) of new language.

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

**Comment [MOG20]:** Same definition as used on subdivision (b)(17) of the new language.

12 (18) “Stormwater system” means 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.

**Comment [MOG21]:** Same definition as used in subdivision (b)(14) of new language.

17 (19) “Net zero standard” means:

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

1           ~~(B) A discharge from redevelopment; from an existing discharge~~  
2 ~~operating under an expired stormwater discharge permit where the property~~  
3 ~~owner applies for a new permit; or from any combination of development,~~  
4 ~~redevelopment, and expansion meets on-site the water quality, recharge, and~~  
5 ~~channel protection criteria set forth in Table 1.1 of the 2002 Stormwater~~  
6 ~~Management Manual that are determined to be technically feasible by an~~  
7 ~~engineering feasibility analysis conducted by the Agency and if the sediment~~  
8 ~~load from the discharge approximates the natural runoff from an undeveloped~~  
9 ~~field or open meadow that is not used for agricultural activity.~~

10           ~~(b) The Secretary shall prepare a plan for the management of collected~~  
11 ~~stormwater runoff found by the Secretary to be deleterious to receiving waters.~~  
12 ~~The plan shall recognize that the runoff of stormwater is different from the~~  
13 ~~discharge of sanitary and industrial wastes because of the influence of natural~~  
14 ~~events of stormwater runoff, the variations in characteristics of those runoffs,~~  
15 ~~and the increased stream flows and natural degradation of the receiving water~~  
16 ~~quality at the time of discharge. The plan shall be cost effective and designed~~  
17 ~~to minimize any adverse impact of stormwater runoff to waters of the State.~~  
18 ~~By no later than February 1, 2001, the Secretary shall prepare an enhanced~~  
19 ~~stormwater management program and report on the content of that program to~~  
20 ~~the House Committees on Fish, Wildlife and Water Resources and on Natural~~  
21 ~~Resources and Energy and to the Senate Committee on Natural Resources and~~

**Comment [MOG22]:** Definition of “net zero standard” amended and moved to permit requirements subsection in new language, see subdivision (h)(2) of new language.

1 ~~Energy. In developing the program, the Secretary shall consult with the Board,~~  
2 ~~affected municipalities, regional entities, other State and federal agencies, and~~  
3 ~~members of the public. The Secretary shall be responsible for implementation~~  
4 ~~of the program. The Secretary's stormwater management program shall~~  
5 ~~include, at a minimum, provisions that:~~

**Comment [MOG23]:** Stormwater runoff management plan requirement deleted from the new language.

6 (1) ~~Indicate that the primary goals of the State program will be to assure~~  
7 ~~compliance with the Vermont Water Quality Standards and to maintain after~~  
8 ~~development, as nearly as possible, the predevelopment runoff characteristics.~~

**Comment [MOG24]:** Included in new language as part of rulemaking section, subdivision (f)(1) of new language

9 (2) ~~Allow for differences in hydrologic characteristics in different parts~~  
10 ~~of the State.~~

**Comment [MOG25]:** Deleted from new language.

11 (3) ~~Incorporate stormwater management into the basin planning process~~  
12 ~~conducted under section 1253 of this title.~~

**Comment [MOG26]:** New language states that the stormwater rules shall use the basin planning process to establish watershed specific priorities. See subdivision (f)(2) of new language

13 (4) ~~Assure consistency with applicable requirements of the federal Clean~~  
14 ~~Water Act.~~

**Comment [MOG27]:** Included in new language as part of rulemaking section, subdivision (f)(3) of new language

15 (5) ~~Address stormwater management in new development and~~  
16 ~~redevelopment.~~

**Comment [MOG28]:** Included in new language as part of rulemaking section, subdivision (f)(4) of new language—i.e. “Include technical standards and BMPs to address stormwater discharges from existing development t, new development, and redevelopment.”

17 (6) ~~Control stormwater runoff from construction sites and other land~~  
18 ~~disturbing activities.~~

**Comment [MOG29]:** Included in new language as part of rulemaking section, see subdivision (f)(6) of new language

19 (7) ~~Indicate that water quality mitigation practices may be required for~~  
20 ~~any redevelopment of previously developed sites, even when~~  
21 ~~preredevelopment runoff characteristics are proposed to be maintained.~~

**Comment [MOG30]:** Water quality mitigation practices language deleted from new language. New rulemaking language authorizes ANR to adopt technical standards and BMPs for stormwater management. BMPs are water quality mitigation practices.

1           ~~(8) Specify minimum requirements for inspection and maintenance of~~  
2 ~~stormwater management practices.~~

**Comment [MOG31]:** Included in new language as part of rulemaking section, see subdivision (f)(5) of new language.

3           ~~(9) Promote detection and elimination of improper or illegal connections~~  
4 ~~and discharges.~~

**Comment [MOG32]:** Language regarding illegal connection was deleted from new language

5           ~~(10) Promote implementation of pollution prevention during the conduct~~  
6 ~~of municipal operations.~~

**Comment [MOG33]:** This specific language regarding pollution prevention in municipal operations was deleted from new language. However, subdivision (f)(8) of the new language would direct ANR to adopt rules allowing municipal governments to assume full legal responsibility for stormwater system permitted by the agency.

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

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

**Comment [MOG34]:** This subdivision and the requirement for a model bylaw were deleted from new language.

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

**Comment [MOG35]:** Education and outreach requirements were largely deleted from the new language.

17           ~~(c) The Secretary shall submit the program report to the House Committees~~  
18 ~~on Agriculture and Forest Products, on Transportation, and on Natural~~  
19 ~~Resources and Energy and to the Senate Committees on Agriculture and on~~  
20 ~~Natural Resources and Energy.~~

**Comment [MOG36]:** The report to the General Assembly was deleted from the new language.



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

**Comment [MOG37]:** Rulemaking was moved to subsection (f) of the new language

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

**Comment [MOG38]:** As referenced above, the regulatory elements in subsection (b) of existing law largely were incorporated in the new rulemaking section, subsection (f) of the new language.

**Comment [MOG39]:** Offsets and stormwater impact fees are included under the new rulemaking language at subdivision (f)(8) of new language

9               ~~(B) requirements concerning the contents of permit applications that~~  
10       ~~include, at a minimum, for regulated stormwater runoff, the permit application~~  
11       ~~requirements contained in the Agency's 1997 stormwater management~~  
12       ~~procedures;~~

**Comment [MOG40]:** Not included in the new language

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

**Comment [MOG41]:** Requirement for system of notifying interested persons were included in the new language, but ANR has an Environmental Notice Bulletin which provides notice of all active permit applications.

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

**Comment [MOG42]:** New language is not as detailed, and instead authorizes ANR to adopt technical standards and BMPs for stormwater discharges from existing development, new development, and redevelopment. See subdivision (f)(4) of the new language.

1           ~~(E) requirements concerning a permit for discharges of regulated~~  
2 ~~stormwater runoff from an impervious surface of any size to~~  
3 ~~stormwater impaired waters if the Secretary determines that treatment is~~  
4 ~~necessary to reduce the adverse impact of such stormwater discharges due to~~  
5 ~~the size of the impervious surface, drainage patterns, hydraulic connectivity,~~  
6 ~~existing stormwater treatment, or other factors identified by the Secretary.~~

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

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

**Comment [MOG43]:** This is ANR's existing residual designation authority for stormwater. This language was rewritten and included in the new language as subsection (e) of the new language.

**Comment [MOG44]:** This language regarding at least 3 public hearings was deleted from the new language.

**Comment [MOG45]:** The requirement to meet the stormwater manual was moved to the permit requirements section in subsection (h) of the new language.

**Comment [MOG46]:** Reference to BMPs and technical standards were moved to the rulemaking section in the new language, see subdivision (f)(4) of the new language.

1 ~~necessary to achieve and maintain compliance with the water quality standards,~~  
2 ~~including requirements concerning recording, reporting, and monitoring the~~  
3 ~~effects on receiving waters due to operation and maintenance of stormwater~~  
4 ~~management facilities.~~

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

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

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

**Comment [MOG47]:** Language on permit conditions was not included in the new language. Permit conditions, such as monitoring, are still required under the ANR rules and the stormwater manual.

**Comment [MOG48]:** The general permit authority was rewritten and condensed and is included in the new language as subsection (g).

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

**Comment [MOG49]:** These 3 exemptions were included in the new exemptions subsection (d) in the new language.

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

**Comment [MOG50]:** ANR's authority to review compliance history and deny a permit based on compliance history is included in the new language at subsection (i)

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

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

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

4           ~~(i) a new stormwater discharge or the expansion of an existing~~  
5 ~~discharge shall meet the treatment standards for new development and~~  
6 ~~expansion in the 2002 Stormwater Management Manual and any additional~~  
7 ~~requirements deemed necessary by the Secretary to implement the TMDL or~~  
8 ~~water quality remediation plan;~~

9           ~~(ii) for a discharge of regulated stormwater runoff from~~  
10 ~~redeveloped impervious surfaces:~~

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

15           ~~(II) any additional requirements deemed necessary by the~~  
16 ~~Secretary to implement the TMDL or the water quality remediation plan;~~

17           ~~(iii) an existing stormwater discharge shall meet the treatment~~  
18 ~~standards deemed necessary by the Secretary to implement a TMDL or a water~~  
19 ~~quality remediation plan;~~

20           ~~(iv) if a permit is required for an expansion of an existing~~  
21 ~~impervious surface or for the redevelopment of an existing impervious surface;~~

1 ~~discharges from the expansion or from the redeveloped portion of the existing~~  
2 ~~impervious surface shall meet the relevant treatment standard of the 2002~~  
3 ~~Stormwater Management Manual, and the existing impervious surface shall~~  
4 ~~meet the treatment standards deemed necessary by the Secretary to implement~~  
5 ~~a TMDL or the water quality remediation plan;~~

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

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

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

13 ~~(2) An authorization to discharge regulated stormwater runoff pursuant~~  
14 ~~to a permit issued under this subsection shall be valid for a time period not to~~  
15 ~~exceed five years. A person seeking to discharge regulated stormwater runoff~~  
16 ~~after the expiration of that period shall obtain an individual permit or coverage~~  
17 ~~under a general permit, whichever is applicable, in accordance with subsection~~  
18 ~~1263(e) of this title.~~

19 ~~(3) By January 15, 2010, the Secretary shall issue a watershed~~  
20 ~~improvement permit, issue a general or individual permit implementing a~~  
21 ~~TMDL approved by the EPA, or issue a general or individual permit~~

**Comment [MOG51]:** The permit standard language in subsection (f) of existing language was rewritten to reflect evolution of program and reliance on stormwater manual, see subsection (h) in new language

**Comment [MOG52]:** New language authorizes issuance of permits for 10 year terms, see subdivision (h)(1) of new language, however, permits required by the Clean Water Act, would still require 5 year terms. Permits for purely State programs could be issued for 10 years.

1 implementing a water quality remediation plan for each of the  
2 stormwater impaired waters on the Vermont Year 2004 Section 303(d) List of  
3 Waters required by 33 U.S.C. 1313(d). In developing a TMDL or a water  
4 quality remediation plan for a stormwater impaired water, the Secretary shall  
5 consult “A Scientifically Based Assessment and Adaptive Management  
6 Approach to Stormwater Management” and “Areas of Agreement about the  
7 Scientific Underpinnings of the Water Resources Board’s Original Seven  
8 Questions” set out in appendices A and B, respectively, of the final report of  
9 the Water Resources Board’s “Investigation Into Developing Cleanup Plans  
10 For Stormwater Impaired Waters, Docket No. Inv-03-01,” issued March 9,  
11 2004.

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

**Comment [MOG53]:** This language regarding issuance of a permit for the stormwater impaired waters was not included in the new language. ANR met the requirement with issuance of the MS4 permit for all towns with stormwater impaired waters.

1 ~~determines to be necessary to ensure that the permitted discharge does not~~  
2 ~~cause or contribute to a violation of the Vermont Water Quality Standards.~~

**Comment [MOG54]:** New permitting standards language replaces this language see subdivision (h)(2) of new language

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

**Comment [MOG55]:** Specific offset and stormwater fee language deleted from new language. However, the rulemaking section in the new language would allow ANR to adopt rules for offsets and stormwater impact fees. See subdivision (f)(8) of new language

13 ~~(g)(1) The Secretary may issue a permit consistent with the requirements of~~  
14 ~~subsection (f) of this section, even where a TMDL or wasteload allocation has~~  
15 ~~not been prepared for the receiving water. In any appeal under this chapter an~~  
16 ~~individual permit meeting the requirements of subsection (f) of this section~~  
17 ~~shall have a rebuttable presumption in favor of the permittee that the discharge~~  
18 ~~does not cause or contribute to a violation of the Vermont Water Quality~~  
19 ~~Standards for the receiving waters with respect to the discharge of regulated~~  
20 ~~stormwater runoff. This rebuttable presumption shall only apply to permitted~~



1 ~~discharges into receiving waters that are principally impaired by sources other~~  
2 ~~than regulated stormwater runoff.~~

**Comment [MOG56]:** Rebuttable presumption not in new language in Senate bill, but ANR would like to reinstate it as a stand-alone subsection in new language.

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

**Comment [MOG57]:** Deleted from new language

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

**Comment [MOG58]:** Rebuttable presumption not in new language in Senate bill, but ANR would like to reinstate it as a stand-alone subsection in new language.

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

15 ~~(1) “Pretransition stormwater discharge permit” means any permit~~  
16 ~~issued by the Secretary of Natural Resources pursuant to this section on or~~  
17 ~~before June 30, 2004 for a discharge of stormwater.~~

18 ~~(2) “Residential subdivision” means land identified and demarcated by~~  
19 ~~recorded plat or other device that a municipality has authorized to be used~~  
20 ~~primarily for residential construction.~~

**Comment [MOG59]:** This language regarding residential subdivision transfer to municipalities was not exactly reproduced in the new language, but the new language contemplates this authority under rulemaking subdivision (f)(7) and under the permit exemptions in subdivision (d)(4)—regarding municipal assumption of permitted systems.

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:~~

**Comment [MOG60]:** This language regarding the permitting of telecommunications facilities was deleted from new language. It may have been an omission or oversight on part of ANR.

- 1           ~~(A) criteria for coverage under an individual or general emergency~~  
2 ~~permit;~~
- 3           ~~(B) criteria for different categories of activities covered under a~~  
4 ~~general emergency permit;~~
- 5           ~~(C) requirements for public notification of permitted activities,~~  
6 ~~including notification after initiation or completion of a permitted activity;~~
- 7           ~~(D) requirements for coordination with State and municipal~~  
8 ~~authorities;~~
- 9           ~~(E) requirements that the Secretary document permitted activity,~~  
10 ~~including, at a minimum, requirements for documenting permit terms,~~  
11 ~~documenting permit duration, and documenting the nature of an activity when~~  
12 ~~the rules authorize notification of the Secretary after initiation or completion of~~  
13 ~~the activity.~~
- 14         ~~(2) A rule adopted under this section may:~~
- 15           ~~(A) establish reporting requirements for categories of activities;~~
- 16           ~~(B) authorize an activity that does not require reporting to the~~  
17 ~~Secretary; or~~
- 18           ~~(C) authorize an activity that requires reporting to the Secretary after~~  
19 ~~initiation or completion of an activity.~~

**Comment [MOG61]:** Language regarding the issuance of emergency permits was consolidated and included under rulemaking authority as subdivision (f) (9). Requirements for emergency permits—such as compliance with NFIP program—were struck. ANR has broad authority for emergency permits in new language.

1        (a) Findings and intent.

2            (1) Findings. The General Assembly finds that the management of  
3 stormwater runoff is necessary to reduce stream channel instability, pollution,  
4 siltation, sedimentation, and local flooding, all of which have adverse impacts  
5 on the water and land resources of the State.

**Comment [MOG62]:** Same as findings in subsection (a) of struck language

6            (2) Intent. The General Assembly intends, by enactment of this  
7 section to:

**Comment [MOG63]:** Similar to findings in subsection (a) of struck language

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

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

1 in characteristics of those runoffs, and the increased stream flows and natural  
2 degradation of the receiving water quality at the time of discharge.

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

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

**Comment [MOG64]:** Same as definition (a)(2)  
in struck language

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

**Comment [MOG65]:** Same as definition (a)(3)  
in struck language

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

**Comment [MOG66]:** Same as definition (a)(4)  
in struck language

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

**Comment [MOG67]:** Same as definition (a)(5)  
in struck language

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

**Comment [MOG68]:** Same as definition (a)(6)  
in struck language

18 (6) “New stormwater discharge” means a new or expanded discharge of  
19 regulated stormwater runoff, subject to the permitting requirements of this  
20 chapter, that first occurs after June 1, 2002 and that has not been previously  
21 authorized pursuant to this chapter.

**Comment [MOG69]:** Same as definition (a)(7)  
in struck language

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

**Comment [MOG70]:** Same as definition (a)(8)  
in struck language

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

**Comment [MOG71]:** Same as definition (a)(10)  
in struck language

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

**Comment [MOG72]:** Same as definition (a)(11)  
in struck language

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

**Comment [MOG73]:** Same as definition (a)(10) in struck language

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

**Comment [MOG74]:** Same as definition (a)(13) in struck language

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

**Comment [MOG75]:** Struck reference to “2002” manual in subdivision (a)(1) of struck language

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

**Comment [MOG76]:** Same as definition (a)(14) in struck language

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

**Comment [MOG77]:** Same as definition (a)(18) in struck language

20           (15) “Total maximum daily load” (TMDL) means the calculations and  
21 plan for meeting water quality standards approved by the U.S. Environmental

1 Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and  
2 federal regulations adopted under that law.

**Comment [MOG78]:** Same as definition (a)(15) in struck language

3 (16) “Water quality remediation plan” means a plan, other than a  
4 TMDL, designed to bring an impaired water body into compliance with  
5 applicable water quality standards in accordance with 40 C.F.R.  
6 § 130.7(b)(1)(ii) and (iii).

**Comment [MOG79]:** Same as definition (a)(16) in struck language

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

**Comment [MOG80]:** Same as definition (a)(17) in struck language

12 (c) Prohibitions.

**Comment [MOG81]:** Subsection (c) is new. It is intended to clarify what activities require a permit under this section.

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

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

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



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

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

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

8           (1) stormwater runoff from farms subject to accepted agricultural  
9 practices adopted by the Secretary of Agriculture, Food and Markets;

10           (2) stormwater runoff from concentrated animal feeding operations that  
11 require a permit under subsection 1263(g) of this chapter;

12           (3) stormwater runoff from silvicultural activities subject to accepted  
13 management practices adopted by the Commissioner of Forests, Parks and  
14 Recreation;

15           (4) stormwater systems that were permitted under this section and for  
16 which a municipality has assumed full legal responsibility for that stormwater  
17 system; or

18           (5) stormwater runoff permitted under section 1263 of this title.

19           (e) State designation. The Secretary shall require a permit under this  
20 section for a discharge or stormwater runoff from impervious surfaces upon a  
21 designation by the Secretary that the treatment of the discharge or stormwater

**Comment [MOG82]:** These exemptions are the same as those exemptions in subdivision (e)(2) of the struck language

**Comment [MOG83]:** This exemption is new, but the intent for the exemption is reflected in the struck language authorizing municipal adoption of transferred systems, see subsection (i) of struck language

**Comment [MOG84]:** This is a new exemption. A permit issued under section 1263 is a direct discharge permit. Activity with a direct discharge permit should not be required to obtain a stormwater permit also.

**Comment [MOG85]:** This is the state residual designation authority. It is located in the struck language at subdivision (d)(1)(E), but it has been rewritten and is more specific as to how ANR will use the designation authority, including use of RDA in the basin planning process.

1 runoff is necessary to reduce the adverse impacts to water quality of the  
2 discharge or stormwater runoff taking into consideration any of the following  
3 factors: the size of the impervious surface, drainage patterns, hydraulic  
4 connectivity, existing stormwater treatment, stormwater controls necessary to  
5 implement the wasteload allocation of a TMDL, or other factors. The  
6 Secretary may make this designation through the basin planning process or on  
7 a case-by-case basis.

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

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

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

15 (3) Assure consistency with applicable requirements of the federal Clean  
16 Water Act.

17 (4) Include technical standards and best management practices that  
18 address stormwater discharges from existing development, new development,  
19 and redevelopment.

20 (5) Specify minimum requirements for inspection and maintenance of  
21 stormwater management practices.

**Comment [MOG86]:** Under subsection (d) of struck language, ANR's rulemaking is required to incorporate the regulatory elements of subsection (b) in the struck language. This subsection is intended to consolidate the subsection (b) and (d) in the struck language as one rulemaking section.

**Comment [MOG87]:** See subdivision (b)(1) in struck language.

**Comment [MOG88]:** See subdivision (b)(3) in struck language.

**Comment [MOG89]:** See subdivision (b)(4) in struck language.

**Comment [MOG90]:** The struck language includes required use of BMPs and technical standards in subdivision (e)(1).

**Comment [MOG91]:** See subdivision (b)(8) in struck language.

1           (6) Include standards for the management of stormwater runoff from  
2 construction sites and other land disturbing activities.

**Comment [MOG92]:** See subdivision (b)(6) in struck language.

3           (7) Allow municipal governments to assume the full legal responsibility  
4 for a stormwater system permitted under these rules as a part of that  
5 municipality’s separate storm sewer system permit.

**Comment [MOG93]:** See subdivision (i) in struck language.

6           (8) Include standards with respect to the use of offsets and stormwater  
7 impact fees.

**Comment [MOG94]:** Subdivision (d)(1)(A) of the struck language authorizes use of offsets and stormwater impact fees. This language would eliminate the statutory conditions and requirements for use and allow ANR rulemaking authority to implement.

8           (9) Include minimum standards for the issuance of emergency permits  
9 for the repair or maintenance of stormwater infrastructure during a state of  
10 emergency declared under 20 V.S.A. chapter 1 or during flooding or other  
11 emergency conditions that pose an imminent risk to life or a risk of damage to  
12 public or private property. Minimum standards adopted under this subdivision  
13 shall comply with National Flood Insurance Program requirements.

**Comment [MOG95]:** See subsection (k) in struck language.

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

**Comment [MOG96]:** Subdivision (f)(10) regarding use of professional certifications in the permitting process is new language.

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

**Comment [MOG97]:** See subdivision (e)(2) of struck language for ANR general permit authority.

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

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

**Comment [MOG98]:** Permit term is 5 years in struck language. CWA required permits will still have 5 year term.

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

**Comment [MOG99]:** These standards are only for discharges to impaired waters. Should there be reference to discharges to unimpaired waters?

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

**Comment [MOG100]:** The struck language includes discharge standards and other permit requirements in subsection (f). These standards were rewritten for clarity and to reflect the requirements of the stormwater management manual.

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

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

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

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

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

**Comment [MOG101]:** Subdivision (e)(3) of struck language authorizes ANR to review compliance history of applicant and allows agency to deny permit based on history.