

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Natural Resources, Fish and Wildlife to which was  
3 referred House Bill No. 576 entitled “An act relating to stormwater  
4 management” respectfully reports that it has considered the same and  
5 recommends that the bill be amended by striking out all after the enacting  
6 clause and inserting in lieu thereof the following:

7 \* \* \* Three-Acre Stormwater Permit \* \* \*

8 Sec. 1. FINDINGS

9 For the purposes of Secs. 1–3 of this act, the General Assembly finds that:

10 (1) As part of the total maximum daily load (TMDL) plan for Lake  
11 Champlain and the implementation plan for the TMDL, the Agency of Natural  
12 Resources (ANR) and the U.S. Environmental Protection Agency (EPA)  
13 agreed to obtain most of the required pollutant reduction for Lake Champlain  
14 from nonpoint sources of the phosphorus.

15 (2) In 2015, the General Assembly enacted 2015 Acts and Resolves  
16 No. 64 (Act 64) to provide ANR with the statutory authority needed to  
17 implement the nonpoint source controls of phosphorus agreed to by ANR and  
18 EPA.

19 (3) After enactment of Act 64, EPA finalized the TMDL for Lake  
20 Champlain and listed within the accountability framework for the plan all of  
21 the nonpoint source control measures that would be implemented in order to

1 provide reasonable assurances, as required by EPA guidance, that the plan will  
2 achieve the load reductions necessary to clean up Lake Champlain.

3 (4) One provision of Act 64 included in the accountability framework  
4 for the Lake Champlain TMDL is the requirement that ANR issue by  
5 January 1, 2018 a general permit for discharges of stormwater from impervious  
6 surface of three or more acres in size when the discharge previously was not  
7 permitted or was permitted under antiquated standards (three-acre permit).

8 (5) ANR failed to comply with State law and did not issue the three-acre  
9 permit by January 1, 2018.

10 (6) As a result, private property owners who would be subject to the  
11 three-acre permit lack any certainty as to when their property will be required  
12 to be permitted and what the permit will require.

13 (7) ANR's failure to comply with State law to adopt the three-acre  
14 permit and its failure to comply with other statutory requirements should cease  
15 to be a practice accepted by the General Assembly and the citizens of  
16 Vermont.

17 (8) To provide property owners with regulatory certainty and to provide  
18 the reasonable assurances on which part of the Lake Champlain TMDL is  
19 based, ANR should cease violating the law and issue the three-acre permit as  
20 soon as possible but no later than April 1, 2018.

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

2 § 1264. STORMWATER MANAGEMENT

3 \* \* \*

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

5 \* \* \*

6 (8) “Offset” means a State-permitted or -approved action or project  
7 within a stormwater-impaired water, Lake Champlain, Lake Memphremagog,  
8 or a water that contributes to the impairment of Lake Champlain or the  
9 impairment of Lake Memphremagog that a discharger or a third person may  
10 complete to mitigate the impacts that a discharge of regulated stormwater  
11 runoff has on the stormwater-impaired water, or the impacts of phosphorus on  
12 Lake Champlain; or on a water that contributes to the impairment of Lake  
13 Champlain.

14 \* \* \*

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

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

3 \* \* \*

4 (g) General permits.

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

8 \* \* \*

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

16 (A) Establish criteria by which the Secretary shall prioritize the  
17 permitting of parcels under this subdivision (3). The Secretary shall base the  
18 criteria on the water quality impacts of the stormwater discharge from the  
19 parcel; the location of the parcel, including whether it is located in an impaired  
20 watershed; whether the permitting will occur as part of planned

1 redevelopment; and other factors the Secretary deems relevant in order to  
2 improve water quality.

3 (B) Establish a schedule for implementation of the general permit by  
4 geographic area of the State according to the priority criteria under subdivision  
5 (A) of this subdivision (3). The schedule shall establish the date by which an  
6 owner of impervious surface shall apply for coverage under this subdivision  
7 (3) of this section. The schedule established by the Secretary shall require an  
8 owner of impervious surface subject to permitting under this subdivision to  
9 obtain coverage by the following dates:

10 (i) for impervious surface located within the Lake Champlain  
11 watershed or the Lake Memphremagog watershed, no later than on or before  
12 October 1, 2023; and

13 (ii) for impervious surface located within all other watersheds of  
14 the State, no later than on or before October 1, 2028.

15 ~~(B)~~(C) Establish criteria and technical standards, such as best  
16 management practices, for implementation of stormwater improvements  
17 for the retrofitting of impervious surface subject to permitting under this  
18 subdivision (3).

19 ~~(C)~~(D) Require that a discharge of stormwater from impervious  
20 surface subject to the requirements of this section comply with the standards of

1 subsection (h) of this section for redevelopment of or renewal of a permit for  
2 existing impervious surface.

3 ~~(D)~~(E) Allow the use of stormwater impact fees, offsets, and  
4 phosphorus credit trading within the watershed of the water to which the  
5 stormwater discharges or runs off.

6 \* \* \*

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

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

9 (2) For discharges of regulated stormwater to a ~~stormwater impaired~~  
10 stormwater-impaired water, for discharges of phosphorus to Lake Champlain  
11 or Lake Memphremagog, or for discharges of phosphorus to a water that  
12 contributes to the impairment of Lake Champlain or Lake Memphremagog:

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

16 (i) A new discharge or the expanded portion of an existing  
17 discharge shall satisfy the requirements of the Stormwater Management  
18 Manual and shall not increase the pollutant load in the receiving water for  
19 stormwater.

20 (ii) For redevelopment of or renewal of a permit for existing  
21 impervious surface, the discharge shall satisfy on-site the water quality,

1 recharge, and channel protection criteria set forth in the Stormwater  
2 Management Manual that are determined to be technically feasible by an  
3 engineering feasibility analysis conducted by the Agency, and the discharge  
4 shall not increase the pollutant load in the receiving water for stormwater.

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

8 (i) For a new discharge or the expanded portion of an existing  
9 discharge, the discharge shall satisfy the requirements of the Stormwater  
10 Management Manual, and the Secretary shall determine that there are  
11 sufficient pollutant load allocations for the discharge.

12 (ii) For redevelopment of or renewal of a permit for existing  
13 impervious surface, the Secretary shall determine that there are sufficient  
14 pollutant load allocations for the discharge, and the Secretary shall include any  
15 requirements that the Secretary deems necessary to implement the TMDL or  
16 water quality remediation plan.

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

1       Sec. 3. AGENCY OF NATURAL RESOURCES; THREE-ACRE  
2                    STORMWATER PERMIT; ISSUANCE

3           The Secretary of Natural Resources shall issue the general permit required  
4           under 10 V.S.A. § 1264(g)(3) as soon as possible, but no later than April 1,  
5           2018.

6           \* \* \* Half-Acre Permitting Threshold for Stormwater Discharges \* \* \*

7       Sec. 4. 10 V.S.A. § 1264(c) is amended to read:

8           (c) Prohibitions.

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

12          (B) A person shall not commence the redevelopment of one acre or  
13          more of impervious surface without first obtaining a permit from the Secretary.

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

17          (3) A person that has been designated by the Secretary as requiring  
18          coverage for its municipal separate storm sewer system ~~may~~ shall not  
19          discharge 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 of 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           (6)(A) In accordance with the schedule established under subdivision  
8 (g)(2) of this section, a municipality shall not discharge stormwater from a  
9 municipal road without first obtaining:

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

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

17           (7) In accordance with the schedule established under subdivision (g)(3)  
18 of this section, a person shall not discharge stormwater from impervious  
19 surface of three or more acres in size without first obtaining an individual  
20 permit or coverage under a general permit issued under this section if the  
21 discharge was never previously permitted or was permitted under an individual

1 permit or general permit that did not incorporate the requirements of the 2002  
2 Stormwater Management Manual or any subsequently adopted Stormwater  
3 Management Manual.

4 Sec. 5. APPLICABILITY OF AGENCY RULES

5 All Agency of Natural Resources rules applicable to the construction of one  
6 acre or more of impervious surface shall be applicable to the construction of  
7 one-half of an acre or more of impervious surface.

8 Sec. 6. TRANSITION

9 The construction of less than one acre of impervious surface shall not  
10 require a permit under 10 V.S.A. § 1264(c)(1)(A) provided that:

11 (1) except for applications for permits issued pursuant to 10 V.S.A.  
12 § 1264(c)(4), complete applications for all local, State, and federal permits  
13 related to the regulation of land use or a discharge to waters of the State have  
14 been submitted as of July 1, 2019, the applicant does not subsequently file an  
15 application for a permit amendment that would have an adverse impact on  
16 water quality, and substantial construction of the project commences within  
17 two years from July 1, 2019;

18 (2) except for permits issued pursuant to 10 V.S.A. § 1264(c)(4), all  
19 local, State, and federal permits related to the regulation of land use or a  
20 discharge to waters of the State have been obtained as of July 1, 2019, and

1 substantial construction of the project commences within two years from

2 July 1, 2019;

3 (3) except for permits issued pursuant to 10 V.S.A. § 1264(c)(4), no  
4 local, State, or federal permits related to the regulation of land use or a  
5 discharge to waters of the State are required, and substantial construction of the  
6 project commences within two years from July 1, 2019; or

7 (4) the construction, redevelopment, or expansion is a public  
8 transportation project, and as of July 1, 2019, the Agency of Transportation or  
9 the municipality principally responsible for the project has initiated right-of-  
10 way valuation activities or determined that right-of-way acquisition is not  
11 necessary, and substantial construction of the project commences within five  
12 years from July 1, 2019.

13 \* \* \* Effective Dates \* \* \*

14 Sec. 7. EFFECTIVE DATES

15 This section and Secs. 1–3 (three-acre stormwater permit) shall take effect  
16 on passage.

17 Secs. 4–6 (half-acre operational threshold) act shall take effect on July 1,  
18 2019.

19

20

1 (Committee vote: \_\_\_\_\_)

2

\_\_\_\_\_

3

Representative \_\_\_\_\_

4

FOR THE COMMITTEE