

From: Rebekah Weber [mailto:rweber@clf.org]
Sent: Tuesday, January 09, 2018 3:56 PM
To: Christy Ketchel
Subject: Testimony for 3 acre

Please add the following to my testimony.

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From: Borg, Mary
Sent: Tuesday, September 19, 2017 1:39 PM
To: Monks, Padraic
Cc: LaFlamme, Pete
Subject: stormwater bullets.docx
Attachments: stormwater bullets.docx

Hi Padraic. Some comments and edits.

Mary

Hi Pete. Here's my take. If you think it needs to go in a different direction, please let me know. Thanks.

- Addressing 3-acre sites is a requirement of 10 V.S.A. 1264 (via Act 64). The rule and implementing general permit are due 1/1/2018.
- The intent of this law is to address a portion of the existing dischargers that have no permit, or were permitted under old standards. Stormwater from developed lands contributes to water quality issues statewide, and is a major source of phosphorus to Lake Champlain. Less than 10% of developed lands have a stormwater permit.
- Permit coverage for these sites is required by 2023 in the Champlain basin, 2028 for the remainder of the state. Sites will have a permit term (5-years) to implement the upgrades.
- Addressing 3-acre sites is included in the Lake Champlain TMDL Accountability Framework, and the Phase I Plan. The Department's compliance with the implementation plan will be evaluated by EPA.
- The Department received a Residual Designation Authority (RDA) petition from CLF in 2015, which requested we require permit coverage for all commercial, industrial, and institutional projects in the Champlain Basin. This petition was withdrawn upon legislative adoption of the 3-acre requirements. Failure to implement the TMDL as required could result in other RDA petitions or lawsuits against individual projects as we experienced when implementation of the Multi-Sector General Permit was delayed in 2005.
- Under statute, the Department may only issue permits for new projects in the Lake Champlain watershed when there is an allocation under the TMDL for the discharge. Although the Department was able to work with EPA to ensure the Champlain TMDL has this "future growth allocation", delaying implementation of the 3-acre site requirements, and the associated pollutant reductions, might imperil this allocation and the ability to issue permits for new projects without requiring 100 offset of new stormwater discharges. Pollutant reductions must occur in order to create capacity for new projects.
- During the period of October 2015, through June 2016, due to EPA's delay in completing the TMDL, the Department was statutorily required to only grant permits that resulted in no increase in phosphorus. This resulted in a substantial delay for projects requiring a stormwater permit since they had to implement offset projects.
- Failure to implement the 3-acre requirements could compromise the TMDL.
- Because there is a statutory requirement for 3-acre sites to obtain permit coverage, if we do not have a rule and general permit in place these projects will have an uncertain path in obtaining permit coverage. This uncertainty, as experienced previously in the stormwater-impaired watersheds, significantly complicates real estate transactions. Failure to obtain permit coverage may create a defect on title.

Commented [BM1]: Might want to say we have the option to require permit coverage sooner as existing permits for 3 acre sites will be expiring sooner.

Commented [BM2]: Thought we should mention litigation potential sooner rather than later.

Commented [BM3]: If we gave up the future growth component in the TMDL and required offsets for all new projects, could we perhaps eliminate the 3 acre permit or lessen its requirements? This would put more burden on new development which might be able to better plan for the costs and less on existing development?

Commented [BM4]: What if they paid offset fees and we used it to fund existing site retrofits?

- Implementation of 3-acre requirements will require us to process roughly 1,000 projects over 10 years, or 100 projects permitted per year. This workload exceeds our existing workload for operational permits. The program increased staffing to meet this workload, and can implement additional efficiencies to accommodate the increase. We would not be able to meet the workload with existing staff levels if we were to phase permitting say, by size of project, connectivity of impervious surface, proximity to receiving waters or other criteria that would add require additional administrative and technical analysis to the permitting process. It is essential we proceed as efficiently as possible to avoid significant permitting delays - delays would impact all stormwater permitting.
- Vermont's largest municipalities, regulated under the MS4 Stormwater General Permit, currently face requirements to develop restoration plans for stormwater-impaired waters, and will face similar requirements to develop phosphorus control plans in the next version of the MS4 GP, due in December of 2017. These municipalities expect the Department to address the 3-acre sites. Delaying implementation of 3-acre requirements could adversely affect the municipalities' ability to implement their plans.
- Non-MS4 municipalities may object to complying with the Municipal Roads General Permit if we delay implementation of the 3-acre site requirements as a matter of **parity**.
- Impact Fees: We use impact fees today, and have for 10+ years, when a stormwater-impaired water lacks a TMDL. The rule would increase the fees from a max of \$30k/acre to \$50k/acre based on **inflation**. Although few watersheds still require use of offsets (because TMDLs are being implemented), they are an essential permitting tool in these watersheds.
- Impact Fees: Providing for use of impact fees in watersheds with a TMDL is arguably a discretionary element of the rule. However, absent an impact fee system, 3-acre sites will have less incentive to fully upgrade, there will be more inequity in terms of the financial impacts on otherwise similar projects, and we will not be able to incentivize projects to go "above and beyond." Incentivizing additional retrofits is an important strategy for reducing overall implementation costs.

Commented [BM5]: Can you explain this more. Why would they object? MS4s are under additional burdens anyway aren't they?

Commented [BM6]: Emily keeps asking where we got the information to raise it to \$50 k/acre. Can you please indicate the industry resources you consulted to get this new number.