

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 developed lands and nonpoint sources of 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 point source and nonpoint source controls of phosphorus agreed  
18 to by ANR and 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 point source and nonpoint source control measures that would be  
22 implemented in order to provide reasonable assurances, as required by EPA

1 guidance, that the plan will achieve the load reductions necessary to clean up  
2 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 standards in place prior to 2002.

8 (5) ANR did not issue the three-acre permit by January 1, 2018.

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

12 (7) ANR’s failure to adopt the three-acre permit and its failure to  
13 comply with statutory requirements are not accepted by the General Assembly  
14 and the citizens of Vermont.

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

16 § 1264. STORMWATER MANAGEMENT

17 \* \* \*

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

19 \* \* \*

20 (8) “Offset” means a State-permitted or ~~approved~~ State-approved action  
21 or project ~~within a stormwater impaired water, Lake Champlain, or a water~~  
22 ~~that contributes to the impairment of Lake Champlain that a discharger or a~~

1 ~~third person may complete to mitigate~~ that mitigates the impacts that a  
2 discharge of regulated stormwater runoff has on ~~the stormwater-impaired~~  
3 ~~water, or the impacts of phosphorus on Lake Champlain, or a water that~~  
4 ~~contributes to the impairment of Lake Champlain~~ receiving waters.

5 \* \* \*

6 (11) “Stormwater impact fee” means the monetary charge assessed to a  
7 permit applicant for the discharge of regulated stormwater runoff ~~to a~~  
8 ~~stormwater-impaired water or for the discharge of phosphorus to Lake~~  
9 ~~Champlain, or a water that contributes to the impairment of Lake Champlain in~~  
10 order to mitigate a ~~sediment load level, hydrologic impact, or other impact~~  
11 impacts that the discharger is unable to control through on-site treatment or  
12 completion of an offset on a site owned or controlled by the permit applicant.

13 \* \* \*

14 (f) Rulemaking. On or before ~~December 31, 2017~~ April 1, 2018, the  
15 Secretary shall ~~adopt~~ prefile rules to manage stormwater runoff with the  
16 Interagency Committee on Administrative Rules under 3 V.S.A. § 8378. At a  
17 minimum, the rules shall:

18 \* \* \*

19 (g) General permits.

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

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(3) ~~On or before January 1, 2018,~~ Within 120 days after the adoption by the Secretary of the rules required under subsection (f) of this section, the Secretary shall issue a general permit under this section for discharges of stormwater from impervious surface of three or more acres in size, when the stormwater discharge previously was not permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual. Under the general permit, the Secretary shall:

(A) Establish a schedule for implementation of the general permit by geographic area of the State. The schedule shall establish the date by which an owner of impervious surface shall apply for coverage under this subdivision (3) ~~of this section~~. The schedule established by the Secretary shall require an owner of impervious surface subject to permitting under this subdivision to obtain coverage by the following dates:

(i) for impervious surface located within the Lake Champlain watershed, the Lake Memphremagog watershed, ~~no later than~~ or the watershed of a stormwater impaired water on or before October 1, 2023; and

(ii) for impervious surface located within all other watersheds of the State, no later than October 1, ~~2028~~ 2033.

1 (B) Establish criteria and technical standards, such as best  
2 management practices, for implementation of stormwater improvements  
3 for the retrofitting of impervious surface subject to permitting under this  
4 subdivision (3).

5 (C) Require that a discharge of stormwater from impervious surface  
6 subject to the requirements of this section comply with the standards of  
7 subsection (h) of this section for redevelopment of or renewal of a permit for  
8 existing impervious surface.

9 (D) Allow the use of stormwater impact fees, offsets, and phosphorus  
10 credit trading within the watershed of the water to which the stormwater  
11 discharges or runs off.

12 \* \* \*

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

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

15 (2) For discharges of regulated stormwater to a ~~stormwater impaired~~  
16 stormwater-impaired water, for discharges of phosphorus to Lake Champlain  
17 or Lake Memphremagog, or for discharges of phosphorus to a water that  
18 contributes to the impairment of Lake Champlain or Lake Memphremagog:

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

1                   (i) A new discharge or the expanded portion of an existing  
2 discharge shall satisfy the requirements of the Stormwater Management  
3 Manual and shall not increase the pollutant load in the receiving water for  
4 stormwater.

5                   (ii) For redevelopment of or renewal of a permit for existing  
6 impervious surface, the discharge shall satisfy on-site the water quality,  
7 recharge, and channel protection criteria set forth in the Stormwater  
8 Management Manual that are determined to be technically feasible by an  
9 engineering feasibility analysis conducted by the Agency, and the discharge  
10 shall not increase the pollutant load in the receiving water for stormwater.

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

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

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

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

5           Sec. 3. 10 V.S.A. § 1264(c) is amended to read:

6           (c) Prohibitions.

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

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

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

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

19           (5) A person shall not expand existing impervious surface by more than  
20 5,000 square feet, such that the total resulting impervious area is greater than  
21 one acre, without first obtaining a permit from the Secretary.

1           (6)(A) In accordance with the schedule established under subdivision  
2 (g)(2) of this section, a municipality shall not discharge stormwater from a  
3 municipal road without first obtaining:

4                   (i) an individual permit;

5                   (ii) coverage under a municipal road general permit; or

6                   (iii) coverage under a municipal separate storm sewer system

7 permit that implements the technical standards and criteria established by the  
8 Secretary for stormwater improvements of municipal roads.

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

11           (7) In accordance with the schedule established under subdivision (g)(3)  
12 of this section, a person shall not discharge stormwater from impervious  
13 surface of three or more acres in size without first obtaining an individual  
14 permit or coverage under a general permit issued under this section if the  
15 discharge was never previously permitted or was permitted under an individual  
16 permit or general permit that did not incorporate the requirements of the 2002  
17 Stormwater Management Manual or any subsequently adopted Stormwater  
18 Management Manual.

19       Sec. 4. APPLICABILITY OF AGENCY RULES

20           All Agency of Natural Resources rules applicable to the construction of one  
21 acre or more of impervious surface shall be applicable to the construction or  
22 redevelopment of one-half of an acre or more of impervious surface.



1       Sec. 5. TRANSITION

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

5           (1) except for applications for permits issued pursuant to 10 V.S.A.  
6       § 1264(c)(4), complete applications for all local, State, and federal permits  
7       related to the regulation of land use or a discharge to waters of the State have  
8       been submitted as of July 1, 2022, the applicant does not subsequently file an  
9       application for a permit amendment that would have an adverse impact on  
10       water quality, and substantial construction of the project commences within  
11       two years from July 1, 2022;

12           (2) except for permits issued pursuant to 10 V.S.A. § 1264(c)(4), all  
13       local, State, and federal permits related to the regulation of land use or a  
14       discharge to waters of the State have been obtained as of July 1, 2022, and  
15       substantial construction of the project commences within two years from  
16       July 1, 2022;

17           (3) except for permits issued pursuant to 10 V.S.A. § 1264(c)(4), no  
18       local, State, or federal permits related to the regulation of land use or a  
19       discharge to waters of the State are required, and substantial construction of the  
20       project commences within two years from July 1, 2022; or

21           (4) the construction, redevelopment, or expansion is a public  
22       transportation project, and as of July 1, 2022, the Agency of Transportation or

1 the municipality principally responsible for the project has initiated right-of-  
2 way valuation activities or determined that right-of-way acquisition is not  
3 necessary, and substantial construction of the project commences within five  
4 years from July 1, 2022.

5 \* \* \* Effective Dates \* \* \*

6 Sec. 6. EFFECTIVE DATES

7 (a) This section and Secs. 1–2 (three-acre stormwater permit) shall take  
8 effect on passage.

9 (b) Secs. 3–5 (half-acre operational threshold) act shall take effect on  
10 July 1, 2022.

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13 (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

15

Representative \_\_\_\_\_

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FOR THE COMMITTEE