

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

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

4 (4) One provision of Act 64 included in the accountability framework
5 for the Lake Champlain TMDL is the requirement that ANR issue by
6 January 1, 2018 a general permit for discharges of stormwater from impervious
7 surface of three or more acres in size when the discharge previously was not
8 permitted or was permitted under standards in place prior to 2002.

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

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

13 (7) ANR's failure to adopt the three-acre permit is not a practice
14 accepted by the General Assembly 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 action or project
21 within a stormwater impaired water, Lake Champlain, or a water that

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

6 * * *

7 (11) “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 or for the discharge of phosphorus to Lake~~
10 ~~Champlain, or a water that contributes to the impairment of Lake Champlain in~~
11 ~~order to mitigate a sediment load level, hydrologic impact, or other impact~~
12 ~~impacts~~ that the discharger is unable to control through on-site treatment or
13 completion of an offset on a site owned or controlled by the permit applicant.

14 * * *

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

19 * * *

20 (g) General permits.

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

4 (ii) for impervious surface located within all other watersheds of
5 the State, no later than ~~on or before October 1, 2028~~ one year after the State
6 adopts standards pursuant to a wasteload allocation for stormwater runoff from
7 developed lands for a watershed in which the impervious surface is located.

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

12 ~~(C)~~(D) Require that a discharge of stormwater from impervious
13 surface subject to the requirements of this section comply with the standards of
14 subsection (h) of this section for redevelopment of or renewal of a permit for
15 existing impervious surface.

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

19 * * *

20 (h) Permit requirements. An individual or general stormwater permit shall:
21 (1) Be valid for a period of time not to exceed five years.

1 (2) For discharges of regulated stormwater to a ~~stormwater impaired~~
2 stormwater-impaired water, for discharges of phosphorus to Lake Champlain
3 or Lake Memphremagog, or for discharges of phosphorus to a water that
4 contributes to the impairment of Lake Champlain or Lake Memphremagog:

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

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

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

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

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

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

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

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

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

15 (c) Prohibitions.

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

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

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

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

7 (5) A person shall not expand existing impervious surface by more than
8 5,000 square feet, such that the total resulting impervious area is greater than
9 one acre, without first obtaining a permit from the Secretary.

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

13 (i) an individual permit;

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

15 (iii) coverage under a municipal separate storm sewer system
16 permit that implements the technical standards and criteria established by the
17 Secretary for stormwater improvements of municipal roads.

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

20 (7) In accordance with the schedule established under subdivision (g)(3)
21 of this section, a person shall not discharge stormwater from impervious

1 surface of three or more acres in size without first obtaining an individual
2 permit or coverage under a general permit issued under this section if the
3 discharge was never previously permitted or was permitted under an individual
4 permit or general permit that did not incorporate the requirements of the 2002
5 Stormwater Management Manual or any subsequently adopted Stormwater
6 Management Manual.

7 Sec. 4. APPLICABILITY OF AGENCY RULES

8 All Agency of Natural Resources rules applicable to the construction of one
9 acre or more of impervious surface shall be applicable to the construction **or**
10 **redevelopment** of one-half of an acre or more of impervious surface.

11 Sec. 7. TRANSITION

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

15 (1) except for applications for permits issued pursuant to 10 V.S.A.
16 § 1264(c)(4), complete applications for all local, State, and federal permits
17 related to the regulation of land use or a discharge to waters of the State have
18 been submitted as of July 1, **2022**, the applicant does not subsequently file an
19 application for a permit amendment that would have an adverse impact on
20 water quality, and substantial construction of the project commences within
21 two years from July 1, **2022**;

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(Committee vote: _____)

Representative _____

FOR THE COMMITTEE