

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 and its failure to  
14 comply with statutory requirements is not accepted by the General Assembly  
15 and the citizens of Vermont.

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

17 § 1264. STORMWATER MANAGEMENT

18 \* \* \*

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

20 \* \* \*



1 (g) General permits.

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

5 \* \* \*

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

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

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

4 (ii) for impervious surface located within all other watersheds of  
5 the State, no later than ~~October 1, 2028~~ one year after the State adopts  
6 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) 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) Require that a discharge of stormwater from impervious surface  
13 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) Allow the use of stormwater impact fees, offsets, and phosphorus  
17 credit trading within the watershed of the water to which the stormwater  
18 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. 5. 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)  
14 provided 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;

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

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

10           (4) the construction, redevelopment, or expansion is a public  
11           transportation project, and as of July 1, 2022, the Agency of Transportation or  
12           the municipality principally responsible for the project has initiated right-of-  
13           way valuation activities or determined that right-of-way acquisition is not  
14           necessary, and substantial construction of the project commences within five  
15           years from July 1, 2022.

16                           \* \* \* Effective Dates \* \* \*

17           Sec. 6. EFFECTIVE DATES

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

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

1

2

3 (Committee vote: \_\_\_\_\_)

4

\_\_\_\_\_

5

Representative \_\_\_\_\_

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FOR THE COMMITTEE