



Three Acre Requirement Adjustment - Stormwater Retrofits Testimony

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As the largest statewide business organization, the Vermont Chamber represents about 1,500 members, covering all industries and sectors from tourism to manufacturing, retail to health care, and construction to technology. Our mission is to help our members grow their businesses *and* the Vermont economy. Thank you for the opportunity to submit testimony today. This testimony is based upon a review of the stormwater rule update and presentation conducted and not upon a review of the final proposed rule. If needed, we ask for the opportunity to provide additional testimony following its review.

As required under Vermont's Clean Water Act, [Act 64 of 2015](#), beginning in 2018 the Department of Environmental Conservation (DEC) will promulgate a rule regarding stormwater runoff which will require a general permit (GP) for existing sites with three or more acres of impervious surface. This rule is effective in the Lake Champlain basin by 2023 and statewide by 2028. These parcels will be required to retrofit to include stormwater controls for maximization of treatment on site following the DEC's 2017 Stormwater Management Manual for water quality treatment, groundwater recharge and channel protection, and stormwater discharges that were not previously permitted, or that were permitted under standards in place prior to the 2002 Stormwater Management Manual.

The DEC anticipates that there are roughly 1,000 sites statewide that will require retrofits. However, it is our understanding that no actual list of sites has been prepared so the true number of impacted businesses, municipalities, individuals, and other entities is unknown. Retrofit standards vary based on whether or not there is a total maximum daily load (TMDL) in place and adopted. Retrofit sites will need to undertake an engineering feasibility analysis as part of the application process. Projects that are not able to meet the standard on at least 75% of their site will be required to pay a stormwater-impact fee or implement an offset if located within stormwater-impaired water, waters that contribute, or the Lake Champlain watershed.

These retroactive permits will require significant work to reduce stormwater runoff and failure to complete this work as required may result in offset requirements or impact fee assessments. Impact fees can be as much as \$50,000 per acre. This includes up to \$15,000 for water quality treatment, \$10,000 for groundwater recharge and \$25,000 for channel protection. Prior impact fees imposed had been capped at \$30,000 and were applied in much more limited instances (for new or expanded developments). The Vermont Chamber would like to see these fees set at a lower amount. Moreover, we have concerns that many steps have already been taken to

improve water quality with these returns not yet fully realized, potentially imposing regulations that do not need to apply.

The new stormwater rule is a substantial change to the law. Previously, when new rules developed, owners of existing impervious surfaces were grandfathered in and only if they expanded or redeveloped those surfaces were they required to treat stormwater on that portion. Also, digressing from its prior practices, the DEC intends to limit offsets to the management of stormwater from developed lands, preventing its use for agriculture, roads, or streams. Moreover, it appears that the DEC is basically aggregating all of the existing impervious area on a parcel, and if the total is over three acres, a permit is required for everything which is not consistent with the original intent of Act 64 which is presented on a “discharge” basis (not a parcel basis).

Businesses are faced with paying for an expensive mitigation system regardless of whether they will conduct future development expansions. Failure to complete this retrofit, which can cost tens if not hundreds of thousands of dollars, may also result in penalties exceeding those costs. This places additional burdens on Vermont businesses to remain in business, profitable and competitive in regional, national and international marketplaces.

The Vermont Chamber has concerns regarding the enormous expense and burden this rule will place on existing developments to retrofit their properties. In addition to permit costs, businesses will be required to:

- Hire a stormwater engineer to assist in developing the project – of which there is a limited pool of consulting firms in Vermont to perform the work necessary to implement various TMDLs, with the scarcity of firms likely to drive up consulting costs.
- Conduct an environmental feasibility analysis (EFA) and natural resources study.
- Obtain other required local, state, and federal permits.
- Potentially relocate existing utilities.
- Pay for the project, which is anticipated to cost 1 ½ to 6 times as much as new project costs for stormwater controls, with phosphorous costs ranging from around \$8,000 – \$80,000 per pound and for ongoing inspections, operation and maintenance costs.
- Pay possible offset and impact fee assessments.

Landowners also face difficult implementation issues such as physical site constraints, utility conflicts, sensitive site conditions, interruption of site activity and difficulties in managing stormwater runoff to and run-on from properties over which they have limited control or access. Rather than requiring each property retrofit, we believe that those properties facing limited impact on existing infrastructure and which are primary contributors should retrofit and with the DEC reviewing the results to determine whether to require every site retrofit.

The high cost of stormwater system retrofits is well documented and these costs only increase over time, including fees associating with reporting and inspections in perpetuity.

The Vermont Chamber asks that the Legislature consider the importance of “fairness” in terms of who is required to implement and/or pay for TMDL implementation and who receives assistance regarding the costs imposed. Discharges to these watersheds include small businesses and owners that will likely not have ready money to plan and implement best management practices (BMPs). BMPs should be chosen and funded so that the costs and burdens of implementation are spread fairly, achieve the most pollution reduction and are not concentrated on only a small group of selected discharges, which have not been specifically identified as responsible for water pollution.

Stormwater flow does not follow individual property boundaries. For this reason, it is most effective and least costly to develop stormwater restoration practices for "catchments" (land areas that drain to a specific location) serving all the parcels in the catchment. This can be done through a cooperative program, but cannot be accomplished under individual permits. Shared systems will enhance parcel by parcel stormwater management, minimize disturbances, ease administrative burdens in process permits, provide more visible and substantial improvements, allow for greater economies of scale, and minimize costs.

We support meeting our clean water goals, while supporting our businesses as we work to grow the economy. We prefer to see focus aimed at growing the economy and bringing in new development which complies with the stormwater standards, while allowing current business owners to forego these cost prohibitive retrofits. Retrofits will have more complications to business than has been considered, especially when tackled on an individual per parcel basis. Businesses want to partner on solutions to our clean water problems, but Vermont needs to come up with solutions that do not severely impact them, have good cost-benefit ratios, have minimal impact on existing infrastructure, and provides the most significant pollution reduction and improvement to our impaired waters. We must work to grow a stronger economy, which does more to generate the revenue needed to support necessary environmental programs to protect and conserve natural resources, maintaining Vermont’s unique environment and character, than does retrofitting pre-existing business properties.

We recognize that this rule is a step in the right direction to satisfy our clean water goals, with the DEC acknowledging that priority projects maximizing phosphorous reduction should be targeted first, before addressing all retrofits and that private landowners should receive funding assistance to comply with the rule. We also appreciate that the DEC will not require retrofits to occur in the Connecticut river watershed until the EPA establishes TMDL standards.

If retrofits are required, we offer the following suggestions to help ease the cost burdens imposed:

- Establish stormwater utilities either locally, regionally, or statewide, to collect fees from those in the affected watersheds to implement TMDLs. Local communities cannot bear the full financial burden of implementing the TMDLs. Stormwater utilities could play a critical role in implementation, by performing up front planning and BMP implementation, providing a stable funding source, and by sharing costs across the watershed, rather than placing the costs solely on the backs of a subset of dischargers, many of whom may not have the resources to perform the required work.
- Encourage, market and create collaborative public-private-partnerships (akin to the Restoration Project in Long Creek, Maine), among entities located within specific watersheds to join together under a Municipal Separate Storm Sewer System (MS4) or GP rather than seek individual permits for each parcel. Having a community-supported restoration plan will greatly enhance the ability to obtain grants to help pay for the overall effort, and reduce costs to municipalities and property owners over time. The Project has resulted in more effective stream restoration and pollution reduction, while being less costly to landowner's than parcel-by parcel regulation.
- Focus efforts on those industries and locations causing the most pollution and utilize funds to manage that stormwater first, before requiring every 3-acre site retrofit, utilizing limited money in its most beneficial use.
- Allow private landowners access to federal and state funding to conduct design and implementation phases, as well as assist in ongoing operation and maintenance costs.
- Enable access to state funds to assist private owners with compliance akin to the Underground Storage Tank replacement fund which is funded through a gasoline tax. A state stormwater tax could be used both for remediation of stormwater impaired waters and for taking preventative measures.
- Appropriate money to partially or entirely fund remediation efforts, akin to what was done for the stormwater "Orphans Program." That Program was initiated in 2006 as a pilot project in which notification was sent to homeowners in subdivisions with orphan permits (issued long ago and now expired) of their obligations to renew these permits. Grants were issued to the local municipality (which became a co-permittee), to cover costs associated with upgrading and maintaining the systems and the permit renewal process. The pilot project was intended to expand to the stormwater-impaired waters at a future date, but I am not aware of its current status.
- Enable business owners of existing properties to contribute to funding more cost-efficient projects off-site across the state, not just in the Lake Champlain basin, and

allow offsets to be made in different sectors of industry that are capable of achieving equivalent or greater phosphorous reductions.

- Allow exemptions for establishing advanced hydrologic modeling or existing site monitoring which demonstrates that the owner's existing stormwater treatment practices treat stormwater as effectively as any retrofitted system would achieve in phosphorous removal.
- Allow exemptions (including for subsurface storage and treatment devices) for portions of sites that are unable to be treated as documented in an EFA.
- Enable the use of more cost-efficient projects already utilized on the property, such as well-maintained vegetated grass strips, revegetation, and other non-structural projects.
- Exempt business owners with sales below a certain amount per year, or based upon their business size.

Questions

1. How will the cost burden be allocated when the property requiring the retrofit ties into a larger separated city, state, or private storm system or other combined sewer system in which many individuals contribute to the TMDLs?
2. What does the DEC consider to be "projects that maximize treatment and result in no increase in pollutant load?" How will the load levels be determined?
3. How will flow restoration retrofit standards (as imposed in Burlington) mesh with Act 64 standards? Will retrofits be required twice?
4. Does the DEC have in place a framework for stormwater credit trading? If not, when might that be anticipated?
5. How will the DEC allow private-public interests to collaborate to create more cost-effective and efficient solutions? What programs, initiatives, or efforts will be utilized?
6. Will private owners be able to receive federal and state funding and grants to help cover the costs of the retrofits, including the design phase?
7. How will the added expense and burden administratively to process the large increase in permit applications that would be generated be resolved?
8. What environmental impact will this legislation really have and at what expense? The cost to implement treatment and detention measures after the fact, as well as design and construction fees, ongoing operating fees and annual inspections will be astounding to those businesses or other properties impacted.

Thank you for the opportunity to testify on behalf of our members today. Please feel free to contact me with any questions or concerns at 802-262-2130 or aboles@vtchamber.com.