

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

* * *

(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 (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.

11

12

13 (Committee vote: _____)

14

15

Representative _____

16

FOR THE COMMITTEE