From: Schilling, Elizabeth
Sent: Thursday, July 27, 2017 4:11 PM
To: Monks, Padraic
Subject: Stormwater Rule
Attachments: 2017_07_21; Stormwater Master Rule; PM and ES edits.docx

Padraic,

I still need to finish drafting the "projects eligible for stormwater impact fees" and the "offsets" sections, but here is the latest draft of the Rule for our meeting tomorrow morning.

-Elizabeth

VERMONT
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Subchapter 1. GENERAL PROGRAM PROVISIONS

§ XX-101. PURPOSE

(a) The purpose of this Rule is to reduce the adverse effects of stormwater runoff and enhance the management of stormwater runoff to ensure compliance with the Vermont Water Quality Standards and the federal Clean Water Act and to maintain after development, as nearly as possible, the predevelopment stormwater runoff characteristics.

(b) This Rule includes the minimum requirements for stormwater permits issued by the State of Vermont as the delegated authority to administer a permit program consistent with the federal National Pollution Discharge Elimination System. All permits issued under this Rule shall be issued pursuant to the State's delegated authority.

(c) This Rule:

(1) Includes technical standards, best management practices, and permitting requirements for the management of stormwater runoff from construction sites and other land disturbing activities;

(2) Includes technical standards, best management practices, and permitting requirements for the management of post-construction regulated stormwater runoff from existing development, new development, and redevelopment;

(3) Includes all permitting requirements necessary for the State to meet its obligations as the authority delegated to administer a permit program consistent with the federal National Pollution Discharge Elimination System;

(4) Specifies minimum requirements for monitoring, inspection, maintenance, and reporting;

(5) Provides for the issuance of individual and general permits;

(6) Specifies permit application requirements;

(7) Allows municipalities to assume the full legal responsibility for stormwater systems permitted under this Rule as a part of a permit issued by the Secretary;

(8) Includes standards with respect to the use of offsets and stormwater impact fees.

(9) Requires certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty to satisfy certain permit requirements;

(10) Establishes criteria for the use of the basin planning process to establish watershed-specific priorities for the management of stormwater runoff; and

(11) Includes minimum standards for the issuance of stormwater permits during emergencies for the repair or maintenance of stormwater infrastructure during a state of emergency declared under 20 V.S.A. Chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property.

§ XX-102. AUTHORITY

This Rule is adopted pursuant to the Vermont Water Pollution Control Statute, 10 V.S.A. Chapter 47, in particular §§ 1251a(a), 1258(b), 1263(g), and 1264(f).

§ XX-103. POLICY

(a) The management of stormwater runoff differs from the management of sanitary and industrial wastes because of the differences and variations in the characteristics of stormwater runoff and sanitary and industrial wastes, the influence of natural events on

stormwater runoff, and the increased stream flows and natural degradation of the receiving water quality at the time stormwater runoff may enter a receiving water.

(b) Permits issued pursuant to this Rule shall require, as necessary, implementation of best management practices and stormwater treatment practices, including proper operation and maintenance of such practices, and monitoring and reporting to ensure compliance with the Vermont Water Quality Standards.

§ XX-104. EFFECT

As of the effective date of this Rule, this Rule supersedes the Vermont Water Pollution Control Permit Regulations (Environmental Protection Rule, Chapter 13, as amended) for purposes of stormwater permitting only.

§ XX-105. GENERAL EXEMPTIONS

No permit is required under this Rule for:

(1) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, provided that this exemption shall not apply to construction stormwater permits required by of this Rule or discharges from concentrated animal feeding operations requiring permit coverage under this Rule;

(2) Stormwater runoff from accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;

(3) Stormwater runoff permitted under 10 V.S.A. § 1263 as part of a permit for the discharge of sanitary or industrial wastes; and

(4) Stormwater runoff from the portion of a bridge superstructure that spans the normal water level of a water.

§ XX-106. GENERAL PROHIBITIONS

No permit shall be issued:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the federal Clean Water Act and applicable regulations promulgated thereunder, and this Rule;

(2) By the Secretary when the Regional Administrator has objected to the issuance of the permit under 40 C.F.R. § 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

(4) When, in the judgment of the Secretary, anchorage and navigation in or on any waters would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under Section 208(b) of the federal Clean Water Act;

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by Sections 301(b)(1)(A) and 301(b)(1)(B) of federal Clean Water Act, and for which there is a

pollutant load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(A) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(B) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Secretary may waive the submission of information by the new source or new discharger required by subsection (7) of this section if the Secretary determines that the Secretary already has adequate information to evaluate the request.

§ XX-107. APPLICABILITY; PERMIT REQUIRED

(a) This Rule applies to stormwater runoff and establishes the permitting requirements for the management and control of stormwater runoff.

(b) A permit is required under this Rule for the following:

(1) To commence the development or redevelopment of one or more acres of impervious surface;

(2) To commence the expansion of existing impervious surface by more than 5,000 square feet, such that the total resulting impervious surface is equal to or greater than one acre;

(3) To commence any combination of redevelopment and expansion of existing impervious surface, such that the total resulting impervious surface is equal to or greater than one acre;

(4) In accordance with the schedule established under the three-acre general permit issued pursuant to this Rule, a discharge of regulated stormwater runoff from impervious

surface of three or more acres, which was never previously 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;

(5) In accordance with the schedule established under the municipal road general permit issued pursuant to this Rule, a municipality's discharge of regulated stormwater runoff from a municipal road. For purposes of this subsection "municipality" means a city, town, or village;

(6) To commence a project that will result in an earth disturbance of one acre or greater, or less than one acre if part of a common plan of development;

(7) Stormwater discharge associated with industrial activity;

(8) A discharge of stormwater runoff from a designated municipal separate storm sewer system; and

(9) A point source discharge from a concentrated animal feeding operation.

(c)(1) Permit required by designation.

(A) The Secretary shall require a permit under this Rule for a discharge of stormwater runoff from any size of impervious surface upon a determination by the Secretary that the treatment of the discharge of stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge of stormwater runoff taking into consideration any of the following factors: the size of the impervious surface, drainage patterns, hydraulic connectivity, existing stormwater treatment, stormwater controls necessary to implement the wasteload allocation of a TMDL, or other factors. The Secretary may make this determination on a case-by-case basis or according to classes of

activities, classes of runoff, or classes of discharge. The Secretary may make a determination under this subsection based on activities, runoff, discharges, or other information identified during the basin planning process.

(B) A permit is required under this Rule if, pursuant to 40 C.F.R. §§ 122.23(c) or 122.26(a)(9)(i)(C) or (D), the EPA Regional Administrator determines that permit coverage is necessary.

(2) A permit application shall be submitted to the Secretary within 180 days of designation, unless the Secretary specifies a later date.

§ XX-108. PHASED DEVELOPMENT AND CIRCUMVENTION

(a) If the development, redevelopment, or expansion of impervious surface or a proposed earth disturbance does not meet the permit thresholds under Section XX-107 of this Rule, but is part of a common plan of development that will meet such thresholds, then permit coverage for each phase of the development is required.

(b) If the Secretary determines that a person has separated a single project into components in order to avoid the regulatory minimum threshold or other requirements of this Rule, the person shall be required to submit a permit application for the component parts.

(c) This Section does not apply to the types of scattered or non-contiguous projects that are set forth as planned development in long-range transportation plans, regional plans, municipal plans, or housing authority plans.

§ XX-109. MUNICIPALITIES AND STORMWATER UTILITIES THAT HAVE ASSUMED FULL LEGAL RESPONSIBILITY FOR SPECIFIC IMPERVIOUS SURFACE

If a municipality or stormwater utility has assumed full legal responsibility for the discharge of stormwater runoff from an impervious surface and has permit coverage for such impervious surface pursuant to a permit issued under this Rule, the requirements for permit coverage under Section XX-107(b)(1), (2), (3), and (4) shall be satisfied. For purposes of this Rule, "full legal responsibility" means legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

§ XX-110. EFFECT OF A PERMIT

Except for any toxic effluent standards and prohibitions imposed under Section 307 of the federal Clean Water Act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, and 307 of the federal Clean Water Act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in Section XX-310 of this Rule.

Subchapter 2. DEFINITIONS

As used in this Rule, the following terms shall have the specified meaning, unless a different meaning is clearly intended by the context. If a term is not defined, it shall have its common meaning.

(X) "Agency" means the Vermont Agency of Natural Resources.

(X) "Animal feeding operation" is defined in Section XX-801(b)(1) of this Rule.

(X) "Applicant" means a person or persons applying for permit coverage.

(X) "Authorization" means approval issued by the Secretary.

(X) "Best management practice" or "BMP" means a schedule of activities, prohibitions or practices, maintenance procedures, green infrastructure, and other management practices to prevent or reduce water pollution.

(X) "Clean Water Act" or "CWA" means the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*

(X) "Common plan of development" means a development that is completed in phases or stages when such phases or stages share a common state or local permit related to the regulation of land use, the discharge or wastewater, or a discharge to surface waters or groundwater, or a development designed with common infrastructure. Common plans include subdivisions, industrial and commercial parks, university and other campuses, and ski areas.

(X) "Concentrated animal feeding operation" is defined in Section XX-801(b)(2) of this Rule.

(X) "Department" means the Vermont Department of Environmental Conservation.

(X) "Designated municipal separate storm sewer system" or "designated MS4" is defined in Section XX-601(b)(1) of this Rule.

(X) "Development" means the construction of impervious surface on a tract or tracts of land where no impervious surface previously existed.

(X) "Discharge" means the placing, depositing, or emission of any wastes, directly or indirectly, into an injection well or into the waters of the State.

(X) "Discharge monitoring report" or "DMR" means the form for reporting of self-monitoring results by permittees.

(X) "Discharge of a pollutant" or "discharge of pollutants" means any addition of any pollutant or combination of pollutants to waters of the State from any point source. This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

(X) "Earth disturbance" is defined in Section XX-501(b)(1) of this Rule.

(X) "Effluent limitation" means any restrictions or prohibitions established in accordance with the provisions of 10 V.S.A. Chapter 47 and this Rule or under federal law, including effluent limitations, standards of performance for new sources, and toxic effluent standards, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged to waters of the State, including schedules of compliance.

(X) "EPA" means the United States Environmental Protection Agency.

(X) "Existing development" or "existing impervious surface" means an impervious surface that is in existence, regardless of whether it ever required a stormwater permit.

(X) "Expansion" and "the expanded portion of an existing discharge" mean an increase or addition of impervious surface, such that the total resulting impervious area is greater than the minimum regulatory threshold.

(X) "Facility or activity" means any point source or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under this Rule.

(X) "Full legal responsibility" means legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

(X) "Green infrastructure" means a wide range of multi-functional, natural and semi-natural landscape elements that are located within, around, and between developed areas, that are applicable at all spatial scales, and that are designed to control or collect stormwater runoff.

(X) "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater runoff except discharges pursuant to a discharge permit (other than the permit for discharges from the municipal separate storm sewer) and discharges resulting from fire-fighting activities.

(X) "Impervious surface" means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(X) "Indirect discharger" means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(X) "Land application area" is defined in Section XX-801(b)(3) of this Rule.

(X) "Large concentrated animal feeding operation" or "Large CAFO" is defined in Section XX-801(b)(4) of this Rule.

(X) "Manure" is defined in Section XX-801(b)(5) of this Rule.

(X) "Medium concentrated animal feeding operation" or "Medium CAFO" is defined in Section XX-801(b)(6) of this Rule.

(X) "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(A) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater runoff, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State;

(B) Designed or used for collecting or conveying stormwater runoff;

(C) Which is not a combined sewer; and

(D) Which is not part of a publicly owned treatment works.

(X) "Municipality" means an incorporated city, town, village, or gore; a fire district established pursuant to state law; or any other duly authorized political subdivision of the State.

(X) "New development" or "new impervious surface" means the construction of impervious surface on a tract or tracts of land where no impervious surface previously existed.

(X) "New discharger" means any building, structure, facility, or installation:

(A) From which there is or may be a discharge of pollutants;

(B) That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(C) Which is not a new source; and

(D) Which has never received a finally effective permit for discharges at that site.

(X) "New source" means any building, structure, facility, or installation from which there is or may be a "discharge of pollutants," the construction of which commenced:

(A) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(B) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

(X) "New stormwater discharge" means a new or expanded discharge of regulated stormwater runoff, subject to the permitting requirements of this Rule that has not been previously authorized pursuant to this Rule.

(X) "Offset" means a State-permitted or -approved action or project within a stormwater-impaired water, Lake Champlain, or a water that contributes to the impairment of Lake Champlain that a discharger or a third person may complete to mitigate the impacts that a discharge of regulated stormwater runoff has on the stormwater-impaired water, or the impacts of phosphorus on Lake Champlain, or a water that contributes to the impairment of Lake Champlain.

(X) "Offset charge" means the amount of sediment load, nutrient load, or hydrologic impact that an offset must reduce or control.

(X) "Offset charge capacity" means the amount of reduction in sediment load, nutrient load, or hydrologic impact that an offset project generates.

(X) "Outfall" means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(X) "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(X) "Permittee" means a person who has received authorization pursuant to an individual permit or authorization under a general permit.

(X) "Person" means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State, any federal agency, or any other legal or commercial entity.

(X) "Point source" means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural stormwater runoff.

(X) "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological

materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(A) Sewage from vessels; or

(B) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(X) "Process wastewater" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(X) "Production area" is defined in Section XX-801(b)(8) of this Rule.

(X) "Publicly owned treatment works" means a treatment works as defined by section 212 of the CWA, which is owned by a state or municipality. This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a publicly owned treatment works treatment plant. The term also means the municipality, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

(X) "Redevelopment" or "redevelop" means the construction or reconstruction of an impervious surface where an impervious surface already exists when such new construction involves substantial site grading, substantial subsurface excavation, or substantial modification of an existing stormwater conveyance, such that the total of impervious surface to be constructed or reconstructed is greater than the minimum regulatory threshold. Redevelopment does not mean public road management activities, including any crack sealing, patching, coldplaning, resurfacing, reclaiming, or grading treatments used to maintain pavement, bridges, and unpaved roads.

(X) "Regulated stormwater runoff" means precipitation, snowmelt, and the material dissolved or suspended in precipitation and snowmelt that runs off impervious surfaces and discharges into surface waters or into groundwater via infiltration.

(X) "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

(X) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or any other limitation, prohibition, or standard, including any water quality standard.

(X) "Secretary" means the Secretary of the Vermont Agency of Natural Resources or the Secretary's duly authorized representative.

(X) "Significant materials" includes: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to

section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

(X) "Site" means either the drainage area that includes all portions of a project contributing stormwater runoff to one or more discharge points, or the area that includes all portions of disturbed area within a project contributing stormwater runoff to one or more discharge points. The choice of either of these two methods of calculating the site area shall be at the discretion of the designer. In cases where there are multiple discharges to one or more waters, "site" shall mean the total area of the sub-watersheds. For linear projects, including highways, roads, and streets, the term "site" includes the entire right of way within the limits of the proposed work, or all portions of disturbed area within the right of way associated with the project. The method of calculating the site area for linear projects shall be at the discretion of the designer. Calculations of site area are subject to the Secretary's review.

(X) "Small concentrated animal feeding operation" or "Small CAFO" is defined in Section XX-801(b)(9).

(X) "Small municipal separate storm sewer system" or "small MS4" is defined in Section XX-601(b)(2) of this Rule.

(X) "Stand-alone offset project" means an offset project that is implemented by a person independent of the permitting of a discharge of regulated stormwater runoff.

(X) "Stand-alone offset project permit" means a permit issued by the Secretary for a stand-alone offset project that is completed prior to the initiation of the first discharge to which the offset charge capacity is assigned.

(X) "Stormwater discharge associated with industrial activity" is defined in Section XX-701(b)(1) of this Rule.

(X) "Stormwater impact fee" means the monetary charge assessed to an applicant for the discharge of regulated stormwater runoff to a stormwater-impaired water or for the discharge of phosphorus to Lake Champlain or a water that contributes to the impairment of Lake Champlain in order to mitigate a sediment load level, hydrologic impact, or other impact that the discharger is unable to control through on-site treatment or completion of an offset on a site owned or controlled by the applicant.

(X) "Stormwater-impaired water" means a water of the State that the Secretary determines is significantly impaired by discharges of regulated stormwater runoff.

(X) "Stormwater Management Manual" or "Vermont Stormwater Management Manual" means the Agency of Natural Resources' Stormwater Management Manual, as adopted and amended by rule.

(X) "Stormwater runoff" means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

(X) "Stormwater system" includes the storm sewers; outfall sewers; surface drains; manmade wetlands; channels; ditches; wet and dry bottom basins; rain gardens; and other control equipment necessary and appurtenant to the collection, transportation, conveyance, pumping, treatment, disposal, and discharge of regulated stormwater runoff.

(X) "Stormwater utility" means a system adopted by a municipality or group of municipalities under 24 V.S.A. Chapter 97, 101, or 105 for the management of stormwater runoff.

(X) "Total maximum daily load" or "TMDL" means the calculations and plan for meeting water quality standards approved by EPA and prepared pursuant to 33 U.S.C. § 1313(d) and federal regulations adopted under that law.

(X) "Total resulting impervious surface" means the total impervious area resulting from redevelopment or expansion of impervious surface plus existing impervious surface and any impervious surface that is part of a common plan of development.

(X) "Tract or tracts of land" means a portion of land with defined boundaries created by a deed. A deed may describe one or more tracts.

(X) "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

(X) "Waste" means effluent, sewage, or any substance or material, liquid, gaseous, solid, or radioactive, including heated liquids, whether or not harmful or deleterious to waters; provided however, the term "sewage" as used in this Rule shall not include the rinse or process water from a cheese manufacturing process.

(X) "Water quality remediation plan" or "WQRP" means a plan, other than a TMDL, designed to bring an impaired water into compliance with applicable water quality standards in accordance with 40 C.F.R. § 130.7(b)(1)(ii) and (iii).

(X) "Waters" and "waters of the State" includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the State or any portion of it.

(X) "Watershed" means the total area of land contributing runoff to a specific point of interest within a receiving water.

(X) "Watershed improvement permit" means a general permit specific to a stormwater-impaired water that is designed to apply management strategies to existing and new discharges and that includes a schedule of compliance no longer than five years reasonably designed to assure attainment of the Vermont Water Quality Standards in the receiving waters.

Subchapter 3. GENERAL PROVISIONS REGARDING GENERAL AND INDIVIDUAL PERMITS AND AUTHORIZATIONS

§ XX-301. TYPES OF PERMITS AND AUTHORIZATIONS

The Secretary may issue the following types of permits and authorizations under this Rule:

(1) Individual permits;

(2) General permits for classes of stormwater runoff;

(3) Authorizations under general permits; and

(4) Watershed improvement permits.

§ XX-302. PERMIT APPLICATION REQUIREMENTS

(a) Completeness.

(1) The Secretary shall not issue an individual permit or authorization under a general permit before receiving a complete application, except when a general permit specifically authorizes a discharge without prior application. An application is complete when the Secretary receives an application form and all supplemental information completed to his or her satisfaction. The completeness of any application shall be judged independently of the status of any other permit application or permit for the same facility or activity.

(2) Additional information requested by the Secretary. The Secretary may require an applicant to submit additional information that the Secretary considers necessary to make a decision on the issuance or denial of an individual permit or authorization under a general permit. The Secretary may deny the application if the requested information is not provided within 60 days of the Secretary's request.

(3) Except as specified in subdivision (a)(3)(B) of this section, a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. Chapter I, Subchapter N.

(A) For the purposes of this requirement, a method approved under 40 C.F.R. Part 136 or required under 40 C.F.R. Chapter I, Subchapter N is "sufficiently sensitive" when:

(i) The method minimum level is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter;

(ii) The method minimum level is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(iii) The method has the lowest minimum level of the analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. Chapter I, Subchapter N for the measured pollutant or pollutant parameter.

(B) When there is no analytical method that has been approved under 40 C.F.R. Part 136, required under 40 C.F.R. Chapter I, Subchapter N, and is not otherwise required

by the Secretary, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method.

(b) Information requirements. In addition to the information required under other subchapters of this Rule, all applicants shall provide the following information to the Secretary, using the application form provided by the Secretary:

(1) The activities conducted by the applicant which require permit coverage.

(2) Name, mailing address, and location of the facility or activity for which the application is submitted.

(3) Contact information.

(A) For applications for permits issued under [Section X] of this Rule, the applicant's name, address, and telephone number.

(i) If the applicant does not own the impervious surface, the owner shall be a co-applicant, and the owner's name, address, and telephone number shall also be included.

(ii) If the application is for an existing housing or commercial development, the application shall include the owners' association, condominium association, or other common association as co-applicant. The Secretary may waive this requirement for existing developments on a case-by-case basis if a responsible party or parties accepts responsibility for the stormwater management system. If application is made for a new housing or commercial development, the developer and owners' association,

condominium association, other common association, or other legal entity accepting responsibility for the stormwater management system shall apply as co-applicants.

(iii) If the applicant is a municipality or stormwater utility that does not own the impervious surface, the owner is not required to be a co-applicant, if the municipality or stormwater utility has assumed full legal responsibility.

(B) For all other applications, the operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(4) A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the facility or activity, depicting, as applicable: the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface waters, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(5) All information specific to the type of authorization the applicant is applying for, as required under this Rule.

(c) Signature. All applications shall be signed in accordance with the requirements of Section XX-1201(b)(5) of this Rule. For applications for permits issued under [Section X] of this Rule, the application shall also be signed by a designer acceptable to the Secretary.

(d) Application fees. All applicants shall submit the applicable fees required for permit application under 3 V.S.A. § 2822.

(e) Recordkeeping. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this section for a period of at least five years from the date the application is signed.

§ XX-303. REQUIRING APPLICANT TO APPLY FOR COVERAGE UNDER INDIVIDUAL OR GENERAL PERMIT

(a) Requiring an individual permit.

(1) The Secretary may require any permittee authorized by a general permit or any person applying for coverage under a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include the following:

(A) The permittee is not in compliance with the conditions of the general permit;

(B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the facility or activity;

(C) Effluent limitation guidelines are promulgated for point sources covered by the general permit;

(D) A Water Quality Management plan containing requirements applicable to such point sources is approved;

(E) Circumstances have changed since the time of the request to be covered so that the permittee is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary;

(F) The discharge is a significant contributor of pollutants. In making this determination, the Secretary may consider the following factors:

(i) The location of the discharge with respect to waters of the State;

(ii) The size of the discharge;

(iii) The quantity and nature of the pollutants discharged to waters of the State; and

(iv) Other relevant factors;

(G) When necessary to implement an applicable TMDL or WQRP;

(H) If an applicant proposes to use an alternative stormwater treatment practice pursuant to the Vermont Stormwater Management Manual.

(2) If the Secretary determines that a permittee authorized by a general permit is required to apply for an individual permit, the Secretary shall so notify the permittee. The notice shall include a brief statement of the reasons for the decision, an application form, and the timeframe for the permittee to file the application.

(3) When an individual permit is issued to a person whose facility or activity would otherwise be subject to a general permit, the applicability of the general permit to the person's facility or activity is automatically terminated on the effective date of the individual permit.

(b) Requiring authorization under a general permit.

(1) The Secretary may require any person applying for an individual permit to apply for coverage under a general permit provided the Secretary finds the application complies with all conditions of the general permit and the facility or activity is more appropriately covered under the general permit.

(2) A person that already has an individual permit, but whose facility or activity qualifies for coverage under a general permit, may simultaneously apply for coverage

under the general permit and request that its individual permit be revoked. If the Secretary issues an authorization under the general permit to the person, the individual permit shall automatically terminate on the effective date of the authorization under the general permit.

§ XX-304. PROVISIONS SPECIFIC TO GENERAL PERMITS

(a) Except as provided in subsections (e) and (f) of this section, persons seeking coverage under a general permit shall submit to the Secretary an application, also referred to as a notice of intent, to be covered by the general permit. A person who fails to submit a notice of intent in accordance with the terms of the general permit is not authorized under the terms of the general permit unless the general permit, in accordance with subsection (e), contains a provision that a notice of intent is not required or the Secretary notifies a person that its facility or activity is covered by a general permit in accordance with subsection (f).

(b) The contents of the notice of intent shall be specified in the general permit.

(c) General permits shall specify the deadlines for submitting notices of intent to be covered, if applicable, and the permit's expiration date.

(d) General permits shall specify whether an applicant that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge in accordance with the permit either upon receipt of the notice of intent by the Secretary, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of authorization by the Secretary.

(e) Discharges, other than discharges from small municipal separate storm sewer systems, primary industrial facilities, stormwater discharges associated with industrial activity, and concentrated animal feeding operations, may, at the discretion of the Secretary, be authorized to discharge under a general permit without submitting a notice of intent where the Secretary finds that a notice of intent requirement would be inappropriate. In making such a finding, the Secretary shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Secretary shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(f) The Secretary may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered.

§ XX-305. FACT SHEETS

When the Secretary is required to create a fact sheet pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder, the fact sheet shall include the following:

(1) A brief statement of the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit;

(2) A brief description of the type of facility or activity which is the subject of the draft permit;

(3) If discharging more than just stormwater, the type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;

(4) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

(5) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed. When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:

(A) Limitations to control toxic pollutants under Section XX-401(e) of this Rule;

(B) Limitations set on a case-by-case basis under 40 C.F.R. § 125.3(c)(2) or (c)(3);

(C) Limitations to meet the criteria for permit issuance under Section XX-106(8) of this Rule; or

(D) Waivers from monitoring requirements granted under Section XX-401(b) of this Rule;

(6) A sketch or detailed description of the location of the discharge or regulated activity described in the application, if applicable;

(7) A description of the procedures for reaching a final decision on the draft permit including:

(A) The beginning and ending dates of the comment period and the address where comments will be received;

(B) Procedures for requesting a public meeting and the nature of that public meeting; and

(C) Any other procedures by which the public may participate in the final decision; and

(8) Name and contact information for a person to contact for additional information.

§ XX-306. PUBLIC NOTICE AND OPPORTUNITY TO PROVIDE COMMENT

In accordance with 10 V.S.A. Chapter 170 and the rules adopted thereunder, the Secretary shall provide public notice of and an opportunity for comment on:

(1) Draft and final general permits, and amendments to final general permits;

(2) Applications for individual permits, draft and final decisions on individual permits, and amendments to final individual permits; and

(3) Notices of intent for coverage under general permits, decisions on notices of intent, and amendments to such authorizations.

§ XX-307. CHANGES MADE TO AN APPLICATION AFTER THE PUBLIC COMMENT PERIOD AND PRIOR TO ISSUANCE OF AUTHORIZATION

If an application changes after the public comment period has ended, but before the Secretary issues an authorization, the Secretary does not need to provide notice of the changes if:

(1) The proposed changes do not reduce the quality of the stormwater discharge;

(2) The proposed changes do not substantially increase the quantity of the discharge or change the discharge location so as to adversely affect the instream hydrology or geomorphology;

(3) There is not a significant change in the type and nature of proposed treatment; and

(4) There is no change in the use of offsets, if any.

§ XX-308. ISSUANCE OR DENIAL OF AUTHORIZATION, AND RESPONSE TO COMMENTS

(a) If the Secretary determines that an application is complete and meets the terms and conditions of this Rule or, if the application is a notice of intent, the terms and conditions of the general permit, the Secretary shall issue an authorization, unless the Secretary denies the application pursuant to subsection (b) of this section or subsection (g) of Section XX-310 of this Rule.

(b) If the Secretary received public comments on an application or draft decision, the Secretary shall provide a response to comments, pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder, concurrent with issuance or denial of authorization.

(c) The Secretary may, at his or her discretion and as necessary to assure achievement of the goals of the program and compliance with state law and the CWA, deny an application for the discharge of regulated stormwater if review of the applicant's compliance history indicates that the applicant is discharging regulated stormwater in violation of 10 V.S.A. Chapter 47 or is the holder of an expired permit for an existing discharge of regulated stormwater.

(d) Denials of authorization shall:

(1) Be issued in writing;

(2) Include the reasons for denial;

(3) Be noticed pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder; and

(4) If denied for lack of technical or other information, include appropriate information to help the applicant correct the deficiencies and re-apply for authorization.

§ XX-309. ADMINISTRATIVE RECORD AND CONFIDENTIAL INFORMATION

(a) Administrative Record. The Secretary shall create an administrative record for each application under this Rule pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder.

(b) Confidential Information.

(1) Any records or information obtained pursuant to this Rule that constitute trade secrets under 1 V.S.A. § 317 shall be kept confidential, except that such records or information may be disclosed to authorized representatives of the State and the United States when relevant to any proceedings under 10 V.S.A. Chapter 47.

(2) The following information shall not qualify as trade secrets under 1 V.S.A. § 317:

(A) The name and address of any applicant or permittee;

(B) Permit applications, permits, and effluent data; and

(C) Information required by application forms provided by the Secretary, including information submitted on the forms themselves and any attachments used to supply information required by the forms.

(3) Claims that information constitutes a confidential trade secret must be asserted at the time the information is submitted. If no claim is made at the time of submission, the Secretary may make the information available to the public without

further notice. If a claim is asserted, the information will be reviewed by the Secretary to determine whether it constitutes trade secrets under 1 V.S.A. § 317.

§ XX-310. MODIFICATION, REVOCATION AND REISSUANCE, AND TERMINATION OF PERMITS

(a) Permits may be modified, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the Secretary's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request. If the Secretary decides a request is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification, revocation and reissuance, or termination are not subject to public notice requirements.

(b) Except for minor modifications under subsection (h) of this section, permits may only be modified, revoked and reissued, or terminated for cause as specified in this section.

(c) When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

(d) Permit modifications and reissuances are subject to the applicable requirements of 10 V.S.A. Chapter 170 and the rules adopted thereunder. When the Secretary initiates a permit revocation or termination, the provisions of 3 V.S.A. § 814 apply. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(e) Causes for modification. The following are causes for modification, but not for revocation and reissuance of permits except when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Secretary has received new information. Permits may be modified during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable. For new source or new discharger permits, this cause shall include any significant information derived from effluent testing required under 40 C.F.R. § 122.21(k)(5)(vi) after issuance of the permit.

(3) New standards or rules. The standards or rules on which the permit was based have been changed by adoption of amended standards or rules or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(A) For adoption of amended standards or rules, when:

(i) The permit condition requested to be modified was based on a promulgated effluent limitation guideline or EPA-approved water quality standards;

(ii) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(iii) A permittee requests modification in accordance with subsection (a) of this section and, if applicable, does so within 90 days after Federal Register notice of the action on which the request is based.

(B) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with subsection (a) of this section within 90 days of judicial remand.

(4) Compliance schedules. The Secretary determines good cause exists for modification of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy. However, in no case may any compliance schedule be modified to extend beyond an applicable CWA statutory deadline.

(5) When the permittee has filed a request for a variance under CWA sections 301(c), 301(g), 301(i), or 301(k), or for "fundamentally different factors" within the time specified in 40 C.F.R. § 122.21(m).

(6) 307(a) toxics. When required to incorporate an applicable 307(a) toxic effluent standard or prohibition.

(7) Reopener. When required by the "reopener" conditions in a permit.

(8) Failure to notify. Upon failure of an approved state to notify, as required by section 402(b)(3), another state whose waters may be affected by a discharge from the approved state.

(9) Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. § 125.3(c).

(10) Notification levels. To establish a "notification level" as provided in 40 C.F.R. § 122.44(f).

(11) Compliance schedules. To modify a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable CWA statutory deadline for compliance.

(12) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in Section XX-601(e)(2) of this Rule when:

(A) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

(B) The other entity fails to implement measure(s) that satisfy the requirement(s).

(13) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(14) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit

may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(15) Nutrient Management Plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit is not a cause for modification pursuant to the requirements of this section.

(f) Causes for modification or revocation and reissuance. The following are causes to modify or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under this section, and the Secretary determines that modification or revocation and reissuance is appropriate.

(2) The Secretary has received notification of a proposed transfer of the permit. A permit also may be modified to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(g) Causes for termination. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit modification or termination; or

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge.

(h) Minor modifications. Upon the consent of the permittee, the Secretary may modify a permit to make the corrections or allowances for changes in the permitted activity listed in this subsection. Minor modifications may only:

(1) Correct typographical errors;

(2) Require more frequent monitoring or reporting by the permittee;

(3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) Allow for a change in ownership or operational control of a facility where the Secretary determines that no other change in the permit is necessary;

(5)(A) Change the construction schedule for a discharger which is a new source.

(B) Delete a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

(6) Require compliance with electronic reporting requirements.

(7) Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 C.F.R. § 122.42(e)(6).

§ XX-311. PETITIONS RELATED TO PERMIT COVERAGE

(a) Any operator of a small municipal separate storm sewer system may petition the Secretary to require a separate permit for any discharge into the small municipal separate storm sewer system.

(b) Any person may petition the Secretary to require a permit for a discharge from a point source which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a small municipal separate storm sewer system may petition the Secretary to reduce the Census estimates of the population served by such separate system to account for stormwater discharged to combined sewers, meaning a sewer that is designed as a sanitary sewer and a storm sewer, that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the discharge permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Secretary for the designation of a small municipal separate storm sewer system.

(e) The Secretary shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small municipal separate storm sewer system in which case the Secretary shall make a final determination on the petition within 180 days after its receipt.

Subchapter 4. ESTABLISHING PERMIT LIMITATIONS AND STANDARDS

§ XX-401. ESTABLISHING PERMIT LIMITATIONS AND STANDARDS

(a) Permits shall include conditions meeting the requirements of this section when applicable.

(b) Technology-based effluent limitations.

(1) Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under section 301 of the CWA, or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with 40 C.F.R. § 125.3. For new sources or new dischargers, these technology-based limitations and standards are subject to the provisions of 40 C.F.R. § 122.29(d).

(2) Monitoring waivers for certain guideline-listed pollutants.

(A) The Secretary may authorize a discharger subject to technology-based effluent limitation guidelines and standards in a permit to forego sampling of a pollutant found at 40 C.F.R. Chapter I, Subchapter N if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(B) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(C) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at

background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(D) Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be documented in the permit's fact sheet or statement of basis.

(E) This provision does not supersede certification processes and requirements already established in existing effluent limitation guidelines and standards.

(c) Other effluent limitations and standards under sections 301, 302, 303, and 307 of CWA. If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under section 307(a) of CWA for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Secretary shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(d) Water quality standards and State requirements. Any requirements in addition to or more stringent than promulgated effluent limitation guidelines or standards under sections 301, 304, 306, and 307 of CWA necessary to:

(1) Achieve water quality standards established under section 303 of the CWA, including state narrative criteria for water quality.

(A) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Secretary determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or

contribute to an excursion above any state water quality standard, including state narrative criteria for water quality.

(B) When determining whether a discharge causes, has the reasonable potential to cause, or contribute to an in-stream excursion above a narrative or numeric criteria within a state water quality standard, the Secretary shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(C) When the Secretary determines, using the procedures in subdivision (d)(1)(B) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a state numeric criteria within a state water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(D) When the Secretary determines, using the procedures in subdivision (d)(1)(B) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(E) Except as provided in this subdivision, when the Secretary, using the procedures in subdivision (d)(1)(B) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable state water quality standard, the permit must contain effluent limits for whole effluent toxicity.

Limits on whole effluent toxicity are not necessary where the Secretary demonstrates in the fact sheet or statement of basis of the permit, using the procedures in subdivision (d)(1)(B) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative state water quality standards.

(F) If the Secretary has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state water quality standard, the Secretary must establish effluent limits using one or more of the following options:

(i) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Secretary demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed state criterion, or an explicit state policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents;

(ii) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information; or

(iii) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(I) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(II) The fact sheet sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(III) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(IV) The permit contains a reopener clause allowing the Secretary to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(G) When developing water quality-based effluent limits under this paragraph the Secretary shall ensure that:

(i) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(ii) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the State and approved by EPA pursuant to 40 C.F.R. § 130.7.

(2) Conform to applicable water quality requirements under section 401(a)(2) of CWA when the discharge affects a state other than the State of Vermont;

(3) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or state law or regulations in accordance with section 301(b)(1)(C) of CWA;

(4) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of CWA;

(5) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under 40 C.F.R. §§ 125.30-32;

(e) Technology–based controls for toxic pollutants. Limitations established under subsections (b), (c), or (d) of this section, to control pollutants meeting the criteria listed in subdivision (e)(1) of this section. Limitations will be established in accordance with subdivision (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet.

(1) Limitations must control all toxic pollutants which the Secretary determines (based on information reported in a permit application or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. § 125.3(c); or

(2) The requirement that the limitations control the pollutants meeting the criteria of subdivision (e)(1) of this section will be satisfied by:

(A) Limitations on those pollutants; or

(B) Limitations on other pollutants which, in the judgment of the Secretary, will provide treatment of the pollutants under subdivision (e)(1) of this section to the levels required by 40 C.F.R. § 125.3(c).

(f) Best management practices (BMPs) to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Authorized under section 402(p) of the CWA for the control of stormwater discharges;

(3) Numeric effluent limitations are infeasible; or

(4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

§ XX-402. ANTIBACKSLIDING

(a) Except as provided in subsection (b) of this section, when a permit is renewed or reissued, interim effluent limitations, standards, or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit, unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance.

(b) In the case of effluent limitations established on the basis of Section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under section 304(b) of the CWA after the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit.

(1) Exceptions. A permit with respect to which subsection (b) of this section applies may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if:

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) Information is available which was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) The Secretary determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b) of the CWA;

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit modification under section 301(c), 301(g), 301(i), 301(k), or 301(n); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or modified permit may reflect the

level of pollutant control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification.

(2) Limitations. In no event may a permit with respect to which subsection (b) of this section applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may a permit to discharge into waters be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 of the CWA applicable to such waters.

Subchapter 5. CONSTRUCTION STORMWATER PERMITS

§ XX-501. CONSTRUCTION STORMWATER PERMITS

(a) Applicability. This Subchapter applies to projects that will result in an earth disturbance of one acre or greater, or less than one acre if part of a common plan of development, requiring permit coverage under Section XX-107(b)(6) of this Rule.

(b) Definitions.

(1) "Earth disturbance" means construction activities including clearing, grading, and excavating, but does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(c) Application requirements. In addition to the application requirements under Section XX-302 of this Rule, an applicant for a permit under this Subchapter shall provide:

(1) The location (including a map) and the nature of the construction activity;

(2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

(3) Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;

(4) Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;

(5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material, and existing data describing the soil or the quality of the discharge; and

(6) The name of the receiving water.

(d) Permit conditions.

(1) Technology-based effluent limitations. Permits under this Subchapter shall include the technology-based effluent limitations under 40 C.F.R. §§ 450.21-450.24.

(2) The Secretary may include permit conditions that incorporate qualifying local erosion and sediment control program requirements by reference. Where a qualifying local program does not include one or more of the elements in this subdivision (d)(2), then the Secretary shall include those elements as conditions in the permit. A qualifying local erosion and sediment control program is one that includes:

(A) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(B) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(C) Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. (A stormwater pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved state or local requirements, maintenance procedures, inspection procedures, and identification of non-stormwater discharges); and

(D) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

Subchapter 6. DESIGNATED MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

§ XX-601. DESIGNATED MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) Applicability. This Subchapter applies to discharges of stormwater runoff from designated municipal separate storm sewer systems requiring permit coverage under Section XX-107(b)(8) of this Rule.

(b) Definitions.

(1) "Designated municipal separate storm sewer system" or "designated MS4" means a small MS4, except for a small MS4 granted a waiver under 40 C.F.R. § 122.32(d), that is:

(A) Located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

(B) Designated by the Secretary pursuant to the "Procedure for Designation of Small MS4s" (May 16, 2016).

(2) "Small municipal separate storm sewer system" or "small MS4" means all separate storm sewers that are:

(A) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State.

(B) Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to 40 C.F.R. § 122.26(b)(4) and (b)(7), or designated under 40 C.F.R. § 122.26(a)(1)(v).

(C) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(c) Two-step general permit. In addition to the general permit requirements applicable to all general permits issued under this Rule, the Secretary shall comply with the following requirements for general permits applicable to designated MS4s.

(1) The Secretary shall include all required permit terms and conditions in the general permit applicable to all designated MS4s and, during the process of authorizing designated MS4s to discharge, establish additional terms and conditions not included in the general permit to satisfy one or more of the permit requirements under subsection (e) of this section.

(2) All additional terms and conditions not included in the general permit, shall be subject to the applicable public notice requirements under 10 V.S.A. Chapter 170 and the rules adopted thereunder.

(d) Application requirements. In addition to the application requirements under Section XX-302 of this Rule, an applicant for a permit under this Subchapter shall comply with the following requirements.

(1) If a small MS4 is designated by the Secretary pursuant to subdivision (b)(1)(B) of this section, the small MS4 shall have 180 days from final notice of the designation to apply for permit coverage, unless the Secretary grants a later date.

(2) General permit. If seeking coverage under a general permit, the designated MS4 operator shall submit a notice of intent to the Secretary including all information the Secretary identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of subsection (e) of this section, such as the information required under subdivision (3) of this subsection.

(3) Individual permit. If seeking coverage under an individual permit, the designated MS4 operator shall submit an application including:

(A) The BMPs that the designated MS4 operator or another entity proposes to implement for each of the stormwater minimum control measures described under subsection (e)(2) of this section.

(B) The proposed measurable goals for each of the BMPs including, as appropriate, the months and years in which the designated MS4 operator proposes to undertake required actions, including interim milestones and the frequency of the action;

(C) The person or persons responsible for implementing or coordinating the stormwater management program;

(D) An estimate of square mileage served by the designated MS4;

(E) A storm sewer map that satisfies the requirement under subdivision (e)(2)(C) of this section satisfies the map requirement under Section XX-302(b)(4) of this Rule; and

(F) Any additional information that the Secretary requests.

(e) Permit conditions.

(1) General requirements. For any permit issued to a designated MS4, the Secretary shall include permit terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. Terms and conditions that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (e.g., implementation of specific tasks or BMPs, BMP design

requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).

(2) Minimum control measures. The permit must include requirements that ensure the permittee implements, or continues to implement, the minimum control measures in subdivisions (A) through (F) of this subsection during the permit term. The permit must also require a written stormwater management program document or documents that, at a minimum, describes in detail how the permittee intends to comply with the permit's requirements for each minimum control measure.

(A) Public education and outreach on stormwater impacts. The permit must identify the minimum elements and require implementation of a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on waters and the steps that the public can take to reduce pollutants in stormwater runoff.

(B) Public involvement and participation. The permit must identify the minimum elements and require implementation of a public involvement and participation program that complies with state and local public notice requirements.

(C) Illicit discharge detection and elimination.

(i) The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to detect and eliminate illicit discharges into the small MS4. At a minimum, the permit must require the permittee to:

(I) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all waters of the State that receive discharges from those outfalls;

(II) To the extent allowable under state or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

(III) Develop and implement a plan to detect and address non-stormwater discharges, including illegal dumping, to the system; and

(IV) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(ii) The permit must also require the permittee to address the following categories of non-stormwater discharges or flows (i.e., illicit discharges) only if the permittee identifies them as a significant contributor of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 C.F.R. § 35.2005(b)(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from firefighting activities are excluded from the effective prohibition against non-stormwater and need only be addressed where they are identified as significant sources of pollutants to waters of the State).

(D) Construction site stormwater runoff control. The permit shall identify the minimum elements and require the development, implementation, and enforcement of a program to reduce pollutants in any stormwater runoff to the designated MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. At a minimum, the permit must require the permittee to develop and implement:

(i) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under state or local law;

(ii) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(iii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iv) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(v) Procedures for receipt and consideration of information submitted by the public, and

(vi) Procedures for site inspection and enforcement of control measures.

(E) Post-construction stormwater management in new development and redevelopment. The permit must identify the minimum elements and require the

development, implementation, and enforcement of a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre and that are not subject to regulation under Section XX-901 of this Rule. The permit must ensure that controls are in place that would prevent or minimize water quality impacts. At a minimum, the permit must require the permittee to:

(i) Develop and implement strategies which include a combination of structural or non-structural BMPs appropriate for the community;

(ii) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state or local law; and

(iii) Ensure adequate long-term operation and maintenance of BMPs.

(F) Pollution prevention and good housekeeping for municipal operations. The permit must identify the minimum elements and require the development and implementation of an operation and maintenance program that includes a training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the State, or other organizations, the program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(3) Other applicable requirements. As appropriate, the permit will include:

(A) More stringent terms and conditions, including permit requirements that modify, or are in addition to, the minimum control measures based on a TMDL or

equivalent analysis, or where the Secretary determines such terms and conditions are needed to protect water quality.

(B) Other applicable permit requirements, standards, and conditions established pursuant to this Rule.

(4) Evaluation and assessment requirements.

(A) Evaluation. The permit shall require the permittee to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the components of its stormwater management program, and the status of achieving the measurable requirements in the permit.

(B) Recordkeeping. The permit shall require that the permittee keep records required by the permit for at least five years and submit such records to the Secretary when specifically asked to do so. The permit must require the permittee to make records, including a written description of the stormwater management program, available to the public at reasonable times during regular business hours.

(C) Reporting. Unless the permittee is relying on another entity to satisfy its permit obligations under subdivision (e)(6) of this section, the permittee shall submit annual reports to the Secretary for its first permit term. For subsequent permit terms, the permittee shall submit reports in year two and four unless the Secretary requires more frequent reports. The report shall include:

(A) The status of compliance with permit terms and conditions;

(B) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(C) A summary of the stormwater activities the permittee proposes to undertake to comply with the permit during the next reporting cycle;

(D) Any changes made during the reporting period to the permittee's stormwater management program; and

(E) Notice that the permittee is relying on another governmental entity to satisfy some of the permit obligations, if applicable, consistent with subdivision (e)(6) of this section.

(5) Qualifying local program. If an existing qualifying local program requires the permittee to implement one or more of the minimum control measures of subdivision (e)(2) of this section, the Secretary may include conditions in the permit that direct the permittee to follow that qualifying program's requirements rather than the requirements of subdivision (e)(2) of this section. A qualifying local program is a local or state municipal stormwater management program that imposes, at a minimum, the relevant requirements of subdivision (e)(2) of this section.

(6) Relying on another entity to satisfy permit requirements. The permittee may rely on another entity to satisfy its permit obligations to implement a minimum control measure if:

(A) The other entity, in fact, implements the control measure;

(B) The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirement; and

(C) The other entity agrees to implement the control measure on the permittee's behalf. In the reports, the permittee must submit under subdivision (e)(4)(C) of this section, the permittee must also specify that it is relying on another entity to satisfy some

of the permit obligations. If the permittee is relying on another governmental entity regulated under this Rule to satisfy all of the permit obligations, including the obligation to file periodic reports required by subdivision (e)(4)(C) of this section, the permittee must note that fact in its notice of intent, but the permittee is not required to file the periodic reports. The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or component thereof). Therefore, the Secretary encourages the permittee to enter into a legally binding agreement with that entity if the permittee wants to minimize any uncertainty about compliance with the permit.

(7) In some cases, the Secretary may recognize that another governmental entity is responsible for implementing one or more of the minimum control measures for a designated MS4 or designated MS4s or that the Secretary is responsible. Where the Secretary does so, the designated MS4 is not required to include such minimum control measure(s) in its stormwater management program. The permit may be reopened and modified to include the requirement to implement a minimum control measure if the entity fails to implement it.

Subchapter 7. INDUSTRIAL STORMWATER PERMITS

§ XX-701. INDUSTRIAL STORMWATER PERMITS

(a) Applicability. This Subchapter applies to stormwater discharges associated with industrial activity requiring permit coverage under Section XX-107(b)(7) of this Rule.

(b) Definitions.

(1) "Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is

directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities exempt from this Rule. For the categories of industries identified in this section, the term includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined under 40 C.F.R. § 401.11); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this section, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. The following categories of facilities are considered to be engaging in "industrial activity":

(A) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. Chapter I, Subchapter N, except facilities with toxic pollutant effluent standards which are exempted under subdivision (J) of this subsection;

(B) Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in this subdivision and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities). For purposes of this section, "rock crushing facilities" and "gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap. For purposes of this section, "log sorting facilities" and "log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking);

(C) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 C.F.R. § 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined,

but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(D) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

(E) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(F) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including those classified as Standard Industrial Classification 5015 and 5093;

(G) Steam electric power generating facilities, including coal handling sites;

(H) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions (A)-(H) or (I)-(J) of this subsection are associated with industrial activity;

(I) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and

reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 C.F.R. Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(J) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221–25.

(c) Conditional exclusion for "no exposure." Discharges composed entirely of stormwater are not "stormwater discharges associated with industrial activity" if there is "no exposure" of industrial materials and activities to rain, snow, snowmelt, and runoff, and the discharger satisfies the requirements of 40 C.F.R. § 122.26(g).

(d) Application requirements. In addition to the application requirements under Section XX-302 of this Rule, an applicant for a permit under this Subchapter shall comply with the applicable requirements in 40 C.F.R. §§ 122.21(g) and (k) and 122.26(c)(1)(i).

(e) Permit conditions.

(1) Technology-based effluent limitations. Permits under this Subchapter shall include the technology-based effluent limitations under 40 C.F.R. Chapter I, Subchapter N, as applicable.

(2) Additional reporting requirements. Permits under this Subchapter shall include the reporting requirements under 40 C.F.R. §§ 122.42(a) and 122.44(f) and (i)(3) and (4).

Subchapter 8. CONCENTRATED ANIMAL FEEDING OPERATION STORMWATER PERMITS

§ XX-801. CONCENTRATED ANIMAL FEEDING OPERATION STORMWATER PERMITS

(a) Applicability. This Subchapter applies to point source discharges from concentrated animal feeding operations requiring permit coverage under Subchapter XX-107(b)(9). Once an animal feeding operation meets the definition of a CAFO for at least one type of animal, the requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and process wastewater generated by those animals or the production of those animals, regardless of the type of animal.

(b) Definitions.

(1) "Animal feeding operation" or "AFO" means a lot or facility where the following conditions are met:

(A) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12–month period, and

(B) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) "Concentrated animal feeding operation" or "CAFO" means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a CAFO in accordance with subsection (c) of this section, and includes any land application area. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) "Land application area" means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

(4) "Large concentrated animal feeding operation" or "Large CAFO" means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(A) 700 mature dairy cows, whether milked or dry;

(B) 1,000 veal calves;

(C) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls and cow/calf pairs;

(D) 2,500 swine each weighing 55 pounds or more;

(E) 10,000 swine each weighing less than 55 pounds;

(F) 500 horses;

(G) 10,000 sheep or lambs;

(H) 55,000 turkeys;

(I) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(J) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(K) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

(L) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or

(M) 5,000 ducks (if the AFO uses a liquid manure handling system).

(5) "Manure" includes manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(6) "Medium concentrated animal feeding operation" or "Medium CAFO" means an AFO with the type and number of animals that fall within any of the ranges included in this subdivision and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

(A) The type and number of animals that it stables or confines falls within any of the following ranges:

(i) 200 to 699 mature dairy cows, whether milked or dry;

(ii) 300 to 999 veal calves;

(iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls and cow/calf pairs;

(iv) 750 to 2,499 swine each weighing 55 pounds or more;

(v) 3,000 to 9,999 swine each weighing less than 55 pounds;

(vi) 150 to 499 horses;

(vii) 3,000 to 9,999 sheep or lambs;

(viii) 16,500 to 54,999 turkeys;

(ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or

(xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and

(B) Either one of the following conditions are met:

(i) Pollutants are discharged into waters of the State through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants are discharged directly into waters of the State which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(7) "Process wastewater" means, for purposes of this Subchapter, water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(8) "Production area" means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers,

cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins, and areas within berms and diversions which separate uncontaminated stormwater. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(9) "Small concentrated feeding operation" or "Small CAFO" means an AFO that is designated as a CAFO and is not a Medium or Large CAFO.

(c) Designation of CAFOs.

(1) The Secretary may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the State. The EPA Regional Administrator may designate any AFO as a CAFO pursuant to 40 C.F.R. § 122.23(c).

(2) In making the designation, the Secretary shall consider the following factors:

(A) The size of the AFO and the amount of wastes reaching waters of the State;

(B) The location of the AFO relative to waters of the State;

(C) The means of conveyance of animal wastes and process waste waters into waters of the State;

(D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes manure and process waste waters into waters of the State; and

(E) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the Secretary has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO may be designated as a CAFO unless:

(A) Pollutants are discharged into waters of the State through a manmade ditch, flushing system, or other similar manmade device; or

(B) Pollutants are discharged directly into waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) Application requirements. In addition to the application requirements under Section XX-302 of this Rule, an applicant for a permit under this Subchapter shall comply with the applicable requirements in 40 C.F.R. § 122.21(i)(1).

(e) Permit conditions.

(1) Technology-based effluent limitations.

(A) Nutrient Management Plan and related requirements. Permits under this Subchapter shall include the requirements under 40 C.F.R. § 122.42(e).

(B) Permits under this Subchapter shall include the technology-based effluent limitations under 40 C.F.R. Chapter I, Subchapter N, Part 412.

(2) Discharges from land application areas. The discharge of manure, litter, or process wastewater to waters of the State from a CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to permit requirements, except where it is an agricultural stormwater discharge as provided in 33 U.S.C. § 1362(14). For purposes of

this Subchapter, where the manure, litter, or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in 40 C.F.R. § 122.42(e)(1)(vi)-(ix), a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

(A) For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural stormwater discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in 40 C.F.R. § 122.42(e)(1)(vi) through (ix).

(B) Unpermitted Large CAFOs must maintain documentation specified in 40 C.F.R. § 122.42(e)(1)(ix) either on site or at a nearby office, or otherwise make such documentation readily available to the Secretary or Regional Administrator upon request.

Subchapter 9. OPERATIONAL STORMWATER PERMITS

§ XX-901. OPERATIONAL STORMWATER PERMITS

(a) Applicability. This Subchapter applies:

(1) To the development or redevelopment of one or more acres of impervious surface requiring permit coverage under Section XX-107(b)(1) of this Rule;

(2) To the expansion of existing impervious surface by more than 5,000 square feet, such that the total resulting impervious surface is equal to or greater than one acre, requiring permit coverage under Section XX-107(b)(2) of this Rule. The calculation of

expansions is cumulative. If expansions since July 4, 2005 are less than 5,000 square feet individually, but when the expansions added together result in a total expansion of greater than 5,000 square feet and the total resulting impervious surface is greater than one acre, then permit coverage is required;

(3) To any combination of redevelopment and expansion of existing impervious surface resulting in impervious surface equal to or greater than one acre requiring permit coverage under Section XX-107(b)(3) of this Rule;

(4) To a discharge of regulated stormwater runoff from impervious surface of three or more acres, which was never previously 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, requiring permit coverage under Section XX-107(b)(4) of this Rule;

(5) When the Secretary requires an operational stormwater permit through designation pursuant to Section XX-107(c)(1) of this Rule.

(b) Permitting standards. Pursuant to Section XX-401(f) of this Rule, effluent limitations in permits issued under this subchapter shall be expressed as best management practices in accordance with the following stormwater treatment standards.

(1) For discharges of regulated stormwater runoff to a water that is not impaired for stormwater, that is not Lake Champlain, and that does not contribute to the phosphorus impairment of Lake Champlain, the following treatment standards apply:

(A) For new development, for expansions, and for redevelopment, the project shall satisfy the requirements of the Vermont Stormwater Management Manual.

(B) Except for impervious surfaces of three acres or more requiring permit coverage under Section XX-107(b)(4) of this Rule, for renewal of an authorization under a general permit or an individual permit, the project shall demonstrate compliance with the terms of the permit issued most recently to the project, unless the approved stormwater system was never built or has substantially deteriorated, meaning the condition of the stormwater treatment practice is beyond that which would be considered routine, periodic maintenance for a system of similar design. If the system was never built or has substantially deteriorated, the permittee shall upgrade the system or build a system, pursuant to the requirements of Appendix X of this Rule, to meet, or to meet as closely as possible, the water quality treatment and channel protection standards in the Vermont Stormwater Management Manual.

(C) For impervious surfaces of three acres or more requiring permit coverage under Section XX-107(b)(4) of this Rule, the project shall satisfy on-site the water quality treatment and groundwater recharge standards of the Vermont Stormwater Management Manual that are determined to be technically feasible by an engineering feasibility analysis pursuant to Section XX-XXX of this Rule.

(D) For regulated stormwater runoff requiring permit coverage pursuant to designation under Section XX-107(c)(1) of this Rule, the project shall comply with any requirements the Secretary deems necessary to ensure the regulated stormwater runoff does not cause or contribute to violations of the Vermont Water Quality Standards.

(2) For discharges of regulated stormwater runoff to a stormwater-impaired water, for discharges of phosphorus to Lake Champlain, or for discharges of phosphorus to a water that contributes to the impairment of Lake Champlain, for which no TMDL,

watershed improvement permit, or water quality remediation plan has been approved, the following treatment standards apply:

(A) For new development and for expansions, the project shall satisfy the requirements of the Vermont Stormwater Management Manual and the discharge shall not increase the pollutant load in the receiving water for stormwater. If a discharge will increase the pollutant load in the receiving water for stormwater after compliance with the requirements of the Vermont Stormwater Management Manual, the project shall comply with the offset or impact fee requirements of Section XX-XXX of this Rule.

(B) For redevelopment, for renewal of an authorization under a general permit or an individual permit, for impervious surfaces of three acres or more requiring permit coverage under Section XX-107(b)(4) of this Rule, and for regulated stormwater runoff requiring permit coverage pursuant to designation under Section XX-107(c)(1) of this Rule, the project shall satisfy on-site the water quality treatment, groundwater recharge, and channel protection standards of the Vermont Stormwater Management Manual that are determined to be technically feasible by an engineering feasibility analysis pursuant to Section XX-XXX of this Rule and the discharge shall not increase the pollutant load in the receiving water for stormwater. If an engineering feasibility analysis determines that compliance with the applicable standards is achievable on less than 75% of a site, the project shall comply with the offset or impact fee requirements of Section XX-XXX of this Rule. If an engineering feasibility analysis determines that compliance with the applicable standards is achievable on 75% or more of a site, the project may be eligible for receipt of impact fees under Section XX-XXX of this Rule.

(3) For discharges of regulated stormwater runoff to a stormwater-impaired water, for discharges of phosphorus to Lake Champlain, or for discharges of phosphorus to a water that contributes to the impairment of Lake Champlain, for which a TMDL or water quality remediation plan has been adopted, the Secretary shall determine that there are sufficient pollutant load allocations for the discharge and the discharge shall comply with the following treatment standards and any additional requirements necessary to comply with the Vermont Water Quality Standards or implement the TMDL or WQRP:

(A) For new development and for expansions, the project shall satisfy the requirements of the Vermont Stormwater Management Manual.

(B) For redevelopment, the project shall satisfy the redevelopment standard of the Vermont Stormwater Management Manual. Redevelopment on impervious surfaces of three acres or more requiring permit coverage under Section XX-107(b)(4) of this Rule shall comply with the redevelopment standard of the Vermont Stormwater Management Manual and the requirements of subdivision (3)(D) of this subsection.

(C) Except for renewals subject to the standards under subdivision (3)(D) of this subsection, for renewal of an authorization under a general permit or an individual permit, the project shall demonstrate compliance with the terms of the permit issued most recently to the project.

(D) For impervious surfaces of three acres or more requiring permit coverage under Section XX-107(b)(4) of this Rule, for projects identified in an approved TMDL implementation plan or WQRP as requiring an upgrade that a municipality has not assumed full legal responsibility for, and for regulated stormwater runoff requiring permit

coverage pursuant to designation under Section XX-107(c)(1) of this Rule, the project shall:

(i) In a stormwater-impaired water, satisfy on-site the water quality treatment, channel protection, and groundwater recharge standards of the Vermont Stormwater Management Manual determined to be technically feasible by an engineering feasibility analysis pursuant to Section XX-XXX of this Rule.

(ii) In Lake Champlain or a water that contributes to the impairment of Lake Champlain, satisfy on-site the water quality treatment and groundwater recharge standards of the Vermont Stormwater Management Manual determined to be technically feasible by an engineering feasibility analysis pursuant to Section XX-XXX of this Rule.

(iii) If an engineering feasibility analysis determines that compliance with any of the applicable standards under subdivisions (i) or (ii) of this subdivision (3)(D) is achievable on less than 75% of a site, the project shall comply with the offset or impact fee requirements of Section XX-XXX of this Rule. If an engineering feasibility analysis determines that compliance with the applicable standards under subdivisions (i) or (ii) of this subdivision (3)(D) is achievable on 75% or more of a site, the project may be eligible for receipt of impact fees under Section XX-XXX of this Rule.

(c) Three-acre general permit. On or before January 1, 2018, the Secretary shall issue a general permit under this Rule for discharges of regulated stormwater runoff 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. In addition to

complying with the general permit requirements applicable to all general permits issued under this Rule, under the three-acre general permit the Secretary shall:

(1) 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 the three-acre general permit. 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:

(A) for impervious surface located within the Lake Champlain watershed, no later than October 1, 2023; and

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

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

(3) Require that a discharge of regulated stormwater runoff subject to the requirements of the three-acre general permit comply with the applicable permitting standards under subsection (b) of this section.

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

(d) Permit conditions applicable to all permits issued under this Subchapter.

(1) Recording in land records. The permittee shall record in the local land records, within 14 days of issuance of an individual permit or authorization under a general permit, a one-page notice of permit coverage. A one-page notice form may be obtained

from the Secretary. A copy of the recording shall be provided to the Secretary within 14 days of the permittee's receipt of a copy of the recording from the local land records.

(2) Annual inspections and reports. The permittee shall submit an annual inspection report on the operation, maintenance, and condition of the stormwater collection, treatment, and control systems. Inspections shall be conducted between the conclusion of spring snow melt and June 15th of each year, and the inspection report shall be submitted to the Secretary by July 15th of each year, or by July 30th if performed by a utility or municipality pursuant to a duly adopted stormwater management ordinance. The first annual inspection report under a permit for a new development, redevelopment, or expansion, or a discharge of regulated stormwater runoff from impervious surface of three acres or more or impervious surface designated as requiring operational stormwater permit coverage shall include a written certification by a designer, other than the landowner, stating that the stormwater system was installed in accordance with the conditions of the general permit and is functioning properly.

(3) Notification of expansion and of planned changes. Expansions or changes may trigger the need for permit modification, revocation and reissuance, termination, or coverage under a new or different permit. The permittee shall notify the Secretary of any expansion and of any planned changes that may result in new or increased discharges of regulated stormwater runoff at least 90 days prior to commencing the expansion or changes. The Secretary may require the permittee to submit additional information on the expansion or planned changes.

(4) Permit transfers. In addition to the permit transfer requirements under Section XX-1201(b)(3) of this Rule, the following requirements apply to permits issued pursuant to this Subchapter.

(A) All owners of impervious surface subject to this Rule must have coverage under an individual permit or authorization under a general permit.

(B) In the case of a property transfer, a permittee shall, prior to transfer of property subject to an individual permit or authorization under a general permit, either transfer the permit or authorization to the new owner, or add the new owner as a co-permittee if the existing permittee is retaining ownership or control of portions of the permitted project. A permittee's failure to transfer a permit or authorization, does not relieve an owner of impervious surface from the requirement to have coverage under subdivision (A) of this subsection.

(C) If a permittee is an owners' association, condominium association, other common association, or other legal entity accepting responsibility for a stormwater management system that plans to dissolve, prior to dissolution it must transfer its individual permit or authorization under a general permit to another legal entity accepting responsibility for the stormwater management system.

(D) A permittee shall remain responsible for compliance with all terms and conditions of its individual permit or authorization under a general permit until a permit transfer is completed as required by this Rule.

(5) Conditions to ensure compliance with water quality standards. Permits shall require such additional conditions, requirements, and restrictions as the Secretary deems necessary to achieve and maintain compliance with the Vermont Water Quality

Standards, including requirements concerning monitoring, recording, and reporting of discharges of stormwater runoff and impacts on waters due to the operation and maintenance of stormwater collection, treatment, and control systems.

(6) Offsets and stormwater impact fees. Permits may require the implementation of offsets and stormwater impact fees, as required by this Rule and general permits adopted pursuant to this Rule.

(e) Presumption applicable to individual permits for discharges of regulated stormwater runoff to waters not principally impaired by stormwater. In any appeal under 10 V.S.A. Chapter 47, an individual permit issued under Sections XX-107(b)(1), (2), or (3) shall have a rebuttable presumption in favor of the permittee that the discharge does not cause or contribute to a violation of the Vermont Water Quality Standards for the receiving waters with respect to the discharge of regulated stormwater runoff, provided that the discharge is to a water that is not principally impaired due to stormwater.

Subchapter 10. ENGINEERING FEASIBILITY ANALYSIS, OFFSETS, AND STORMWATER IMPACT FEES

§ XX-1001. ENGINEERING FEASIBILITY ANALYSIS

(a) Purpose. This Section establishes the standards and processes for engineering feasibility analyses required under Section XX-901(b).

(b) Prioritization of standards.

(1) The standards referred to in this Section are the groundwater recharge, channel protection, and water quality treatment standards of the Vermont Stormwater Management Manual.

(2) A project that must complete an engineering feasibility analyses pursuant to the standards under Section XX-901(b) shall:

(A) In a stormwater-impaired water or a stormwater-impaired water located in the Lake Champlain watershed, maximize the amount of acreage in compliance with the following standards in accordance with the following prioritization: groundwater recharge first, followed by channel protection second, and water quality treatment third.

(B) In the Lake Champlain watershed, maximize the amount of acreage in compliance with the following standards in accordance with the following prioritization: groundwater recharge first, followed by water quality treatment second.

(c) Maximization.

(1) For a project or portions of a project that are exempt from compliance with a specific standard under the Vermont Stormwater Management Manual or for which compliance with a specific standard under the Vermont Stormwater Management Manual is waived, …

(2) For a project included in a designated MS4's Flow Restoration Plan approved by the Agency prior to the effective date of this Rule, the Secretary shall consider a project to have maximized groundwater recharge, channel protection, and water quality treatment if the Flow Restoration Plan identified the required level of treatment and the project complies with the Flow Restoration Plan.

(3) Maximization feasibility criteria. A project shall not be required to undertake the following activities to maximize compliance with the groundwater recharge, channel protection, or water quality treatment standards:

(A) Purchase or acquisition of land for off-site treatment of stormwater;

(B) Site re-grading or site re-contouring to the point of permanent interference with either the land use or material conditions of any existing land use permits;

(C) Pumping or otherwise mechanical re-routing of stormwater runoff;

(D) Mechanical or chemical treatment of stormwater;

(E) Infiltration where basement flooding or subsurface pollutant plume transport would occur;

(F) Construction that would not be in compliance with the Agency's "Flood Hazard Area and River Corridor Protection Procedure";

(G) Construction within any wetland or its 50-foot buffer zone; and

(H) Destruction of contiguous forested areas exceeding 5,000 square feet.

§ XX-1002. STORMWATER IMPACT FEES

(a) This Section establishes the standards and processes for assessing, paying, and receiving stormwater impact fees.

(b) A project requiring payment of stormwater impact fees under XX-901(b) shall pay a stormwater impact fee in accordance with this subsection.

(1) The Secretary shall assess fees based on the acreage of impervious surface where compliance with the applicable standards is not achieved. Acreage shall be determined to the hundredth of an acre.

(2) The Secretary shall not issue a permit to an applicant until the applicant has paid the required stormwater impact fees.

(3) The fees shall be as follows:

(A) For new development and expansions, subject to the permitting standard under Section XX-901(b)(2)(A), that increase the pollutant load after compliance with the

requirements of the Vermont Stormwater Management Manual - $10,000.00 per acre. No fees shall be assessed for areas of a project designed to infiltrate all regulated stormwater runoff from the 1-year storm.

(B) For redevelopment, for renewal of an authorization under a general permit or an individual permit, for impervious surfaces of three acres or more requiring permit coverage under Section XX-107(b)(4) of this Rule, and for regulated stormwater runoff requiring permit coverage pursuant to designation under Section XX-107(c)(1) of this Rule, requiring payment of stormwater impact fees under Sections XX-901(b)(2) and (3):

(i) Groundwater recharge - $12,500.00 per acre.

(ii) Water quality treatment - $12,500.00 per acre.

(iii) Channel protection - $25,000.00 per acre.

(4) Fees shall be deposited into the account for the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain in which the project is located.

(c) Projects eligible for receipt of stormwater impact fees are:

§ XX-1003. OFFSETS

Subchapter 11. MUNICIPAL ROADS STORMWATER PERMITS

§ XX-1101. MUNICIPAL ROADS STORMWATER PERMITS

(a) Applicability. This Subchapter applies to municipalities' discharges of regulated stormwater runoff from municipal roads requiring permit coverage under Section XX-107(b)(5).

(b) Definitions.

(1) "Municipal road" means

(2) "Municipality" for purposes of this Subchapter means a city, town, or village.

(c) Municipal roads stormwater general permit. On or before December 31, 2017, the Secretary shall issue a general permit for discharges of regulated stormwater from municipal roads. Under the municipal roads stormwater general permit, the Secretary shall:

(1) Establish a schedule for implementation of the general permit by each municipality in the State. On or before July 1, 2021, all municipalities shall apply for coverage under the municipal roads general permit or coverage under an individual permit or municipal separate storm sewer system permit that implements the technical standards and criteria established by the Secretary for stormwater improvements of municipal roads. Under the schedule, the Secretary shall establish:

(A) The date by which each municipality shall apply for permit coverage;

(B) The date by which each municipality shall inventory necessary stormwater management projects on municipal roads;

(C) The date by which each municipality shall establish a plan for implementation of stormwater improvements that prioritizes stormwater improvements according to criteria established by the Secretary under the general permit; and

(D) The date by which each municipality shall implement stormwater improvements of municipal roads according to a municipal implementation plan.

(2) Establish criteria and technical standards, such as best management practices, for implementation of stormwater improvements of municipal roads.

(3) Establish criteria for municipal prioritization of stormwater improvements of municipal roads. The Secretary shall base the criteria on the water quality impacts of a stormwater discharge, the current state of a municipal road, the priority of a municipal road or stormwater project in any existing transportation capital plan developed by a municipality, and the benefits of the stormwater improvement to the life of the municipal road.

(4) Require each municipality to submit to the Secretary and periodically update its implementation plan for stormwater improvements.

(d) Requiring an individual permit. The Secretary may require an individual permit for a stormwater improvement at any time under Section XX-107(c)(1) of this Rule. An individual permit shall include site-specific standards for the stormwater improvement.

Subchapter 12. GENERAL PERMIT CONDITIONS AND PROVISIONS APPLICABLE TO ALL PERMITS

§ XX-1201. GENERAL PERMIT CONDITIOSN AND PROVISIONS APPLICABLE TO ALL PERMITS

(a) All permit conditions shall be included expressly or incorporated by reference. If incorporated by reference, a specific citation to the applicable rules or regulations must be included in the permit.

(b) The following general conditions shall be included in all permits issued pursuant to this Rule:

(1) Duty to comply.

(A) The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of 10 V.S.A. Chapter 47 and this Rule and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.

(B) If a permittee has a point source discharge of toxic pollutants for which effluent standards or prohibitions are established under section 307(a) of the federal Clean Water Act, the permittee shall comply with the effluent standards or prohibitions within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

(C) Violations of the terms and conditions of this permit are subject to civil and criminal penalties pursuant to 10 V.S.A. §§ 1274 and 1275 and administrative enforcement pursuant to 10 V.S.A. § 1272 and Chapters 201 and 211, and EPA retains authority to enforce violations of the Clean Water Act pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319.

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permittee's authorization, the permittee must submit a complete application prior to the expiration date.

(3) Permit transfers and addition of co-permittees.

(A) Automatic transfers. This permit may be automatically transferred to a new permittee if:

(i) The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date;

(ii) The notice includes a written agreement between the current permittee and proposed permittee containing:

(I) The name and address of the current permittee;

(II) The name and address of the proposed permittee;

(III) A specific date for transfer of permit responsibility, coverage, and liability between them; and

(IV) A statement, signed by the proposed permittee, stating that the proposed permittee has read and is familiar with the terms of the permit and agrees to comply with all terms and conditions; and

(iii) The Secretary does not notify the current permittee and the proposed new permittee of the Secretary's intent to modify or revoke and reissue the permit.

(B) Addition of co-permittee. The permittee may add a co-permittee by submitting a notice of addition of co-permittee on a form provided by the Secretary. The notice shall include, at a minimum, the information listed in subdivision (A)(ii) of this subsection, except that rather than a date of transfer, the notice shall specify the date of addition of co-permittee.

(4) Continuation of expiring permits. When the permittee has made timely and sufficient application for the renewal of a permit or a new permit with reference to any activity of a continuing nature, the existing permit shall not expire until the application has been finally determined by the Secretary, and, in case the application is denied or the

terms of the new permit limited, until the last day for seeking review of the Secretary's decision or a later date fixed by order of the reviewing court.

(5) Signatories.

(A) Applications. All permit applications, including notices of intent, shall be signed as follows:

(i) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(ii) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(iii) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of

the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(B) All reports required by permits, and other information requested by the Secretary shall be signed by a person described in subdivision (A) of this subsection, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) The authorization is made in writing by a person described in subdivision (A) of this subsection;

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, or an individual or position having overall responsibility for environmental matters for the company; and

(iii) The written authorization is submitted to the Secretary.

(C) Changes to authorization. If an authorization under subdivision (B) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subdivision (B) of this subsection must be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(D) Certification. Any person signing a document under subdivisions (A) or (B) of this subsection shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified

personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(E) Electronic reporting. If documents described in subdivisions (A) or (B) of this subsection are submitted electronically, any person providing the electronic signature for such documents shall meet all relevant requirements of this section.

(6) Need to halt or reduce activity not a defense. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(7) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(8) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by a permittee, only when the operation is necessary to achieve compliance with the conditions of the permit.

(9) Permit modification, revocation and reissuance, and termination. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(10) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(11) Duty to retain records and provide information. The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Secretary upon request, copies of records required to be kept by this permit. The permittee shall keep copies of all reports required by this permit and records of all data used to complete the application for this permit, for a period of at least five years from the date of the report or application. This period may be extended by request of the Secretary at any time.

(12) Inspection and entry. The permittee shall allow the Secretary, at reasonable times and upon presentation of credentials, to:

(A) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(B) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

(C) Inspect at reasonable times any facilities; equipment, including monitoring and control equipment; practices; or operations regulated or required under this permit; and

(D) Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act or state law, any substances or parameters, including performance of best management practices, at any location.

(13) Reporting requirements.

(A) Planned changes. The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required when:

(i) The alteration or addition may meet one of the criteria for determining whether a facility is a new source; or

(ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants specifically included in the permit and pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements.

(B) Anticipated noncompliance. The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(C) Twenty-four hour reporting.

(i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the

time the permittee becomes aware of the circumstances. A report shall also be provided within five days of the time the permittee becomes aware of the circumstances. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this subdivision.

(I) Any unanticipated bypass, meaning the unanticipated diversion of waste streams from any portion of a treatment facility, which exceeds any effluent limitations in the permit.

(II) Violation of a maximum daily discharge limitation for any pollutants listed in the permit to be reported within 24 hours.

(iii) The Secretary may waive the written report on a case-by-case basis for reports under subdivision (C)(ii) of this subsection, if the oral report has been received within 24 hours.

(D) Other noncompliance. The permittee shall report all instances of noncompliance, not otherwise required to be reported under this permit, at the time monitoring reports are submitted, or if monitoring is not required, at least annually. The report shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(E) Other information. If the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Secretary, it shall promptly submit such facts or information.

(14) Compliance with other laws. This permit does not obviate the necessity to comply with other federal, state, and local laws and regulations nor does it obviate the necessity of obtaining other applicable federal, state, and local permits and approvals as may be required by law.

(15) Appeals.

(A) Pursuant to 10 V.S.A. Chapter 220, any appeal of this permit, except as specified under subdivision (B) of this subsection, must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The notice of appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the notice of appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings.

(B) If this permit relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248, any appeal of this decision must be filed

with the Vermont Public Service Board pursuant to 10 V.S.A. § 8506. This section does not apply to a facility that is subject to 10 V.S.A. § 1004 (dams before the Federal Energy Regulatory Commission), 10 V.S.A. § 1006 (certification of hydroelectric projects), or 10 V.S.A. Chapter 43 (dams). Any appeal under this subdivision must be filed with the clerk of the Public Service Board within 30 days of the date of this decision; the appellant must file with the clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in accordance with 10 V.S.A. § 8504(c)(2), and shall also serve a copy of the notice of appeal on the Vermont Department of Public Service. For further information, see the Rules and General Orders of the Public Service Board.

(c) Monitoring and records. The following general condition shall be included in all permits issued pursuant to this Rule that include monitoring requirements.

(1) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least five years from the date of the sample, measurement, report, or application. This period may be extended by request of the Secretary at any time.

(2) Records of monitoring information shall include:

(A) The date, exact place, and time of sampling or measurements;

(B) The individual(s) who performed the sampling or measurements;

(C) The date(s) analyses were performed;

(D) The individual(s) who performed the analyses;

(E) The analytical techniques or methods used; and

(F) The results of such analyses.

(3) Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(A) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(B) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. Part 136, or another method required for an industry-specific waste stream under 40 C.F.R. Chapter I, Subchapter N, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(C) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Secretary in the permit.

(d) Duration. All individual and general permits issued pursuant to this Rule shall be valid for a period of time not to exceed five years.

Subchapter 13. SPECIAL CONDITIONS APPLICABLE ON A CASE-BY-CASE BASIS

§ XX-1301. SPECIAL CONDITIONS APPLICABLE ON A CASE-BY-CASE BASIS

(a) In addition to the conditions required in all permits, the Secretary shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of CWA and state law.

(b) Monitoring and reporting. Permits shall comply with the following requirements, as applicable.

(1) General. All permits with monitoring requirements shall specify:

(A) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods, when appropriate;

(B) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(C) Applicable reporting requirements based upon the impact of the regulated activity; and

(D) Any pollutants for which the permittee must report violations of maximum daily discharge limitations under Section XX-1201(b)(13)(C)(ii)(II) (24–hour reporting). This list of pollutants shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(2) Monitoring requirements.

(A) To assure compliance with permit limitations, requirements to monitor:

(i) The mass, or other measurement specified in the permit, for each pollutant limited in the permit;

(ii) The volume of effluent discharged from each outfall, if applicable;

(iii) Other measurements as appropriate; and

(iv) According to sufficiently sensitive test procedures approved under 40 C.F.R. Part 136 for the analysis of pollutants or pollutant parameters or required under 40 C.F.R. Chapter I, Subchapter N. For purposes of this subdivision, a method is

"sufficiently sensitive" when it meets the definition under Section XX-302(a)(3)(A) of this Rule. In the case of pollutants or pollutant parameters for which there are no approved methods under 40 C.F.R. Part 136 or methods are not otherwise required under 40 C.F.R. Chapter I, Subchapter N, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

(3) Recording and reporting monitoring results. Except as provided in Section XX-701(e)(2) of this Rule, requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(c) Compliance schedules. A permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and state law.

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than the applicable statutory deadline under the CWA.

(3) Interim dates. If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(A) The time between interim dates shall not exceed 1 year.

(B) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports

of progress toward completion of the interim requirements and indicate a projected completion date.

(4) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Secretary in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision (3)(B) of this subsection is applicable.

Subchapter 14. ELECTRONIC REPORTING

§ XX-1401. ELECTRONIC REPORTING

Subchapter 15. FEDERAL REGULATIONS INCORPORATED BY REFERENCE

§ XX-1501. FEDERAL REGULATIONS INCORPORTED BY REFERENCE

(a) The following section of the Code of Federal Regulations are incorporated by reference into this Rule:

(1) 40 C.F.R. § 122.21(g), (i)(1), (k), (m), and (o) (Application for a permit)

(2) 40 C.F.R. § 122.26(c)(1)(i) and (g) (Stormwater discharges)

(3) 40 C.F.R. § 122.29(d) (New sources and new dischargers, effect of compliance with new source performance standards)

(4) 40 C.F.R. § 122.32(d) (Waiver of permit coverage for certain MS4s)

(5) 40 C.F.R. § 122.42(a) and (e) (Additional conditions applicable to specified categories of permits – industrial and CAFO)

(6) 40 C.F.R. § 122.44(f), and (i)(3) and (4)

(7) 40 C.F.R. § 122.45 (Calculating permit conditions)

(8) 40 C.F.R. Part 122, Appendix D (Permit application testing requirements for 40 C.F.R. § 122.21(g) and (k))

(9) 40 C.F.R. § 124.62 (Decision on variances)

(10) 40 C.F.R. § 125.3 (Technology-based treatment requirements in permits)

(11) 40 C.F.R. §§ 125.30-32 (Criteria and standards for determining fundamentally different factors under Sections 301(b)(1)(A), 301(b)(2)(a) and (e))

(12) 40 C.F.R. Part 129 (Toxic pollutant effluent standards and prohibitions)

(13) 40 C.F.R. Part 136 (Guidelines establishing test procedures for the analysis of pollutants)

(14) 40 C.F.R. Chapter I, Subchapter N, Parts 400-471 (Effluent guidelines and standards)

(b) When applying the foregoing sections of the Code of Federal Regulations, the following terms and provisions from this Rule shall be substituted for the terms and provisions in the Code of Federal Regulations:

(1) The defined term "Secretary" shall substitute for "Director."

(2) The defined term "waters of the State" shall substitute for "waters of the United States."

(3) The defined term "stormwater" shall substitute for "storm water."

(4) The requirements of 10 V.S.A. Chapter 170 and the rules adopted thereunder shall substitute for references to requirements related to public notice, public hearings, and public comment in the Code of Federal Regulations.

(5) The signature requirements under Section XX-1201(b)(5) of this Rule shall substitute for references to 40 C.F.R. § 122.22.

(6) The compliance schedule requirements under Section XX-1301(c) of this Rule shall substitute for references to 10 C.F.R. § 122.47.