

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 House Bill No. 576 entitled “An act relating to stormwater management”
4 respectfully reports that it has considered the same and recommends that the
5 Senate propose to the House that the bill be amended by striking out all after
6 the enacting clause and inserting in lieu thereof the following:

7 * * * Three-Acre Stormwater Permit * * *

8 Sec. 1. FINDINGS

9 For the purposes of Secs. 1–3 of this act, the General Assembly finds that:

10 (1) As part of the total maximum daily load (TMDL) plan for Lake
11 Champlain and the implementation plan for the TMDL, the Agency of Natural
12 Resources (ANR) and the U.S. Environmental Protection Agency (EPA)
13 agreed to obtain most of the required pollutant reduction for Lake Champlain
14 from developed lands and nonpoint sources of phosphorus.

15 (2) In 2015, the General Assembly enacted 2015 Acts and Resolves
16 No. 64 (Act 64) to provide ANR with the statutory authority needed to
17 implement the point source and nonpoint source controls of phosphorus agreed
18 to by ANR and EPA.

19 (3) After enactment of Act 64, EPA finalized the TMDL for Lake
20 Champlain and listed within the accountability framework for the plan all of
21 the point source and nonpoint source control measures that would be

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

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

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

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

13 (7) ANR's failure to adopt the three-acre permit and its failure to
14 comply with statutory requirements are not accepted by the General Assembly
15 and the citizens of Vermont.

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

17 § 1264. STORMWATER MANAGEMENT

18 * * *

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

20 * * *

1 (8) “Offset” means a State-permitted or ~~approved~~ State-approved action
 2 or project ~~within a stormwater impaired water, Lake Champlain, or a water~~
 3 ~~that contributes to the impairment of Lake Champlain that a discharger or a~~
 4 ~~third person may complete to mitigate~~ that mitigates the impacts that a
 5 discharge of regulated stormwater runoff has on ~~the stormwater impaired~~
 6 ~~water, or the impacts of phosphorus on Lake Champlain, or a water that~~
 7 ~~contributes to the impairment of Lake Champlain~~ receiving waters.

* * *

9 (11) “Stormwater impact fee” means the monetary charge assessed to a
 10 permit applicant for the discharge of regulated stormwater runoff ~~to a~~
 11 ~~stormwater impaired water or for the discharge of phosphorus to Lake~~
 12 ~~Champlain, or a water that contributes to the impairment of Lake Champlain in~~
 13 order to mitigate ~~a sediment load level, hydrologic impact, or other impact~~
 14 impacts that the discharger is unable to control through on-site treatment or
 15 completion of an offset on a site owned or controlled by the permit applicant.

* * *

17 **(f) Rulemaking. On or before December 31, 2017, the Secretary shall**
 18 **adopt rules to manage stormwater runoff. At a minimum, the rules shall:**

* * *

1 (g) General permits.

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

5 * * *

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

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

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

4 (ii) for impervious surface located within all other watersheds of
5 the State, no later than October 1, ~~2028~~ 2033.

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

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

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

17 * * *

18 (h) Permit requirements. An individual or general stormwater permit shall:

19 (1) Be valid for a period of time not to exceed five years.

20 (2) For discharges of regulated stormwater to a ~~stormwater impaired~~
21 stormwater-impaired water, for discharges of phosphorus to Lake Champlain

1 or Lake Memphremagog, or for discharges of phosphorus to a water that
2 contributes to the impairment of Lake Champlain or Lake Memphremagog:

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

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

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

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

19 (i) For a new discharge or the expanded portion of an existing
20 discharge, the discharge shall satisfy the requirements of the Stormwater

1 Management Manual, and the Secretary shall determine that there are
2 sufficient pollutant load allocations for the discharge.

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

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

11 * * *

12 (k) Report on treatment practices. As part of the report required under
13 section 1389a of this title, the Secretary annually shall report the following:

14 (1) whether the phosphorus load from new development permitted under
15 this section by the Secretary in the Lake Champlain watershed in the previous
16 calendar year is achieving at least a 70 percent average phosphorus load
17 reduction;

18 (2) the estimated total phosphorus load reduction from new
19 development, redevelopment, and retrofit of impervious surface permitted
20 under this section in the previous calendar year; and

1 (3) the number of projects and the percentage of projects as a whole that
2 implemented Tier 1 stormwater treatment practices, Tier 2 stormwater
3 treatment practices, or Tier 3 stormwater treatment practices in the previous
4 calendar year.

5 Sec. 3. STORMWATER MANAGEMENT RULE; SUBMISSION TO
6 GENERAL ASSEMBLY

7 The Secretary of Natural Resources shall not file under 3 V.S.A. § 841 the
8 final proposal of the stormwater management rule required by 10 V.S.A.
9 § 1264(f) (stormwater management rule) until on or after February 1, 2019.
10 On or before January 15, 2019, the Secretary of Natural Resources shall submit
11 to the Senate Committee on Natural Resources and Energy and the House
12 Committee on Natural Resources, Fish, and Wildlife a draft of the stormwater
13 management rule that the Secretary intends to file under 3 V.S.A. § 841.

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

15 Sec. 4. 10 V.S.A. § 1264(c) is amended to read:

16 (c) Prohibitions.

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

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

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

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

10 (5) A person shall not expand existing impervious surface by more than
11 5,000 square feet, such that the total resulting impervious area is greater than
12 one acre, without first obtaining a permit from the Secretary.

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

16 (i) an individual permit;

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

18 (iii) coverage under a municipal separate storm sewer system

19 permit that implements the technical standards and criteria established by the

20 Secretary for stormwater improvements of municipal roads.

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

3 (7) In accordance with the schedule established under subdivision (g)(3)
4 of this section, a person shall not discharge stormwater from impervious
5 surface of three or more acres in size without first obtaining an individual
6 permit or coverage under a general permit issued under this section if the
7 discharge was never previously permitted or was permitted under an individual
8 permit or general permit that did not incorporate the requirements of the 2002
9 Stormwater Management Manual or any subsequently adopted Stormwater
10 Management Manual.

11 Sec. 5. APPLICABILITY OF AGENCY RULES

12 All Agency of Natural Resources rules applicable to the construction of one
13 acre or more of impervious surface shall be applicable to the construction or
14 redevelopment of one-half of an acre or more of impervious surface.

15 Sec. 6. TRANSITION

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

19 (1) except for applications for permits issued pursuant to 10 V.S.A.
20 § 1264(c)(4), complete applications for all local, State, and federal permits
21 related to the regulation of land use or a discharge to waters of the State have

1 been submitted as of July 1, 2022, the applicant does not subsequently file an
2 application for a permit amendment that would have an adverse impact on
3 water quality, and substantial construction of the project commences within
4 two years from July 1, 2022;

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

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

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

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* * * Stormwater Permit Fees * * *

Sec. 7. 3 V.S.A. 2822(j)(2)(B)(iv)(X) is added to read:

(X) Individual or general operating permits authorizing discharges of stormwater runoff from new development or redevelopment of less than one acre of impervious surface permitted after July 1, 2022 pursuant to 10 V.S.A. § 1264(c)(1) shall be exempt from the fees imposed by subdivisions (I) and (II) of this subdivision.

* * * Effective Dates * * *

Sec. 8. EFFECTIVE DATES

(a) This section and Secs. 1–3 (three-acre stormwater permit; rule) and 7 (permit fees) shall take effect on passage.

(b) Secs. 4–6 (half-acre operational threshold) shall take effect on July 1, 2022.

(Committee vote: _____)

Senator _____

FOR THE COMMITTEE