

House Fish, Wildlife and Water Resources

Stormwater Summary 2/09/07

What is Stormwater?

Stormwater runoff is precipitation, snowmelt, and the material dissolved or suspended in it that runs off impervious surfaces and discharges into surface waters or into groundwater via infiltration. Impervious surfaces include paved streets, parking lots, and building rooftops.

Why is Stormwater an Issue?

- Stormwater runoff can include sediment, bacteria, and other pollutants that may adversely affect water quality, plants, fish, animals, and people.
- Failure to obtain a stormwater permit when required is a violation of state and federal law.
- A permit is required for several types of stormwater discharges. Requirements under state or federal law require stormwater permits for construction activities, industrial activities, municipal activities, discharges to unimpaired waters, and discharges to impaired waters.
- Legal issues, described below, exist regarding the discharge of stormwater to impaired waters and discharges of stormwater from orphan stormwater systems in unimpaired waters.
- Lack of a valid stormwater permit may be an encumbrance on property title and may hinder the sale of real estate. This problem arises in both impaired and unimpaired watersheds. This issue inspired the orphan stormwater systems program enacted in 2006.
- Federal requirements: construction; MS4; multi-sector general permit.

State Stormwater Program—Operational Permits

10 V.S.A. § 1259 Prohibits discharge of any waste, substance or material into waters of the state without first obtaining a permit for the discharge.

10 V.S.A. § 1264 Regulates the discharge of stormwater to state waters.

- Section 1264 is the basis of ANR's stormwater authority, including rulemaking.
- Below is a summary of the rulemaking provisions in §1264 from 2004 and 2016.

Act 140 (2004): Comprehensive amendment of state stormwater discharge requirements.

- Required ANR to adopt a rule for a stormwater management program by June 15, 2005.
- Act 140 required the Stormwater Management Rules to include:
 - ❖ the regulatory elements of a stormwater program, including the development and use of offsets and the establishment and imposition of stormwater impact fees;
 - ❖ requirements for a permit for discharges of regulated stormwater from development, redevelopment, or expansion of impervious surfaces equal of one acre or more; and
 - ❖ requirements for a permit to discharge regulated stormwater runoff from an impervious surface of any size if necessary to reduce adverse impacts.
- Act 140 defined the term “2002 stormwater management manual” as ANR’s stormwater management manual dated April 2002, as amended from time to time by rule
 - ❖ The Stormwater Management Manual establishes the post-construction stormwater treatment standards for projects subject to stormwater discharge permitting.
 - ❖ The standards established in the Manual are applied, through general and individual permits, as required by Statute and ANR’s Stormwater Management Rules.

Act 64 (2016): Total rewrite of the stormwater section in 10 V.S.A. § 1264.

- Clarified activities that require an ANR stormwater permit
 - ❖ construction of 1 acre or more of new impervious surface;
 - ❖ discharge from a facility with a standard industrial classification;
 - ❖ municipal separate storm sewer systems;
 - ❖ earth disturbance of 1 acre or greater;
 - ❖ expansion of impervious surface by more than 5,000 sq. feet if total > than 1 acre;
 - ❖ discharges of stormwater from municipal roads; and
 - ❖ retrofitting of old impervious surface.
- Clarifies the exemptions from permitting, including:
 - ❖ stormwater runoff from farms subject to RAPs, except for stormwater construction;
 - ❖ stormwater runoff from CAFOs with a discharge permit;
 - ❖ stormwater runoff from silvicultural activities; and
 - ❖ stormwater systems for which a municipality assumes legal responsibility.

- ANR may issue general permits for classes of regulated stormwater runoff.
- ANR shall issue a general permit for stormwater discharges from municipal roads.
 - ❖ The permit shall establish a schedule for implementation, including the inventory of roads, prioritization of projects, and implementation.
 - ❖ All cities, towns, and villages shall apply for the permit by July 1, 2021.
- On or before Jan. 1, 2018, ANR shall issue a general permit for discharges of stormwater from impervious surface of 3 or more acres in size that previously were never permitted or were permitted under a pre-2002 permit standard.
 - ❖ The general permit shall require retrofitting or redevelopment of old impervious surface.
 - ❖ The permit shall establish an implementation schedule, provided that the permit will be implemented in the Lake Champlain and Lake Memphremagog basins by Oct. 1, 2023, and by Oct. 1, 2033 for the rest of the State.
 - ❖ The general permit shall allow for stormwater impact fees, offsets, and phosphorus credit trading within the watershed of the water to which the stormwater discharges or runs off.
- Establishes permit requirements for regulated stormwater runoff permits, including:
 - ❖ A stormwater permit may be issued for a term of up to 10 years, but any permit required under the federal CWA must have a permit term of up to 5 years.
 - ❖ Regulated stormwater runoff must meet discharge standards based discharge type.
- ANR granted rulemaking authority to implement the stormwater program, including use of basin planning to establish watershed specific priorities for stormwater management.
- On or before December 31, 2017, the Secretary shall adopt rules to manage stormwater runoff. At a minimum, the rules shall:
 - ❖ Establish as the primary goals of the rules: assuring compliance with the VWQS; and maintenance after development, as nearly as possible, of the predevelopment runoff.
 - ❖ Establish criteria for the use of the basin planning process to establish watershed-specific priorities for the management of stormwater runoff.
 - ❖ Assure consistency with applicable requirements of the federal Clean Water Act.
 - ❖ Include technical standards and best management practices that address stormwater discharges from existing development, new development, and redevelopment.

- ❖ Specify minimum requirements for inspection and maintenance of stormwater management practices.
- ❖ Include standards for the management of stormwater runoff from construction sites and other land disturbing activities.
- ❖ Allow municipal governments to assume the full legal responsibility for a stormwater system permitted under these rules as a part of a permit issued by the Secretary.
- ❖ Include standards with respect to the use of offsets and stormwater impact fees.
- ❖ Include minimum standards for the issuance of stormwater permits during emergencies for the repair or maintenance of stormwater infrastructure during a state of emergency.
- ❖ To the extent appropriate, authorize in the permitting process use of certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty.
- ❖ Include standards for alternative best management practices for stormwater permitting of renewable energy projects and telecommunication facilities located in high-elevation settings.
- ❖ Establish best management practices for improving healthy soils in order to improve the capacity of soil to retain water, improve flood resiliency, reduce sedimentation, and prevent stormwater runoff.