

House Corrections and Institutions
Agency of Natural Resources
Three-Acre Developed Lands Permit

Michael O'Grady
Legislative Counsel
Review

2/10/21

Federal Clean Water Act 33 U.S.C. §1313. Water quality standards and implementation plans

(a) Existing water quality standards

* * *

(2) Any State which, before October 18, 1972, has adopted, pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after October 18, 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this chapter unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to October 18, 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3)(A) Any State which prior to October 18, 1972, has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after October 18, 1972, adopt and submit such standards to the Administrator.

* * *

(b) Proposed regulations

(1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to October 18, 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section.

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

* * *

(d) Identification of areas with insufficient controls; maximum daily load; certain effluent limitations revision

(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 1311 of this title are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1)(A) of this subsection, and in accordance with the priority ranking, **the total maximum daily load**, for those pollutants which the Administrator identifies under section 1314(a)(2) of this title as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

* * *

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. **The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.**

* * *

Lake Champlain Phosphorus TMDL



September 25, 2002

Prepared by

**Vermont Agency of Natural Resources
Department of Environmental Conservation
103 South Main St.
Waterbury, VT 05671**

and

**New York State Department of Environmental Conservation
625 Broadway
Albany, NY 12233-3508**



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

January 24, 2011

Secretary Deborah Markowitz
Agency of Natural Resources
Center Building
103 South Main Street
Waterbury, VT 05671-0301

Re: Lake Champlain Phosphorus TMDL Disapproval

Dear Secretary Markowitz:

The Region has completed its reconsideration of the 2002 approval of the Lake Champlain Phosphorus TMDL (Total Maximum Daily Load), and has concluded that two elements of the TMDL do not comply with EPA regulations and guidance, for reasons explained in the enclosed determination. Accordingly, the Region is hereby withdrawing its November 4, 2002 approval of the Vermont portion of the Lake Champlain Phosphorus TMDL. Further, the Region is hereby disapproving the Vermont portion of the TMDL.



Pursuant to § 303(d)(2) of the Act and 40 C.F.R. § 130.7(d)(2), upon disapproval of a TMDL, EPA must establish a new TMDL as determined to be necessary to implement applicable water quality standards. Therefore, the Region intends to commence development of a new TMDL for the Lake Champlain segments within Vermont's jurisdiction.



We respect the knowledge and capabilities of the Department of Environmental Conservation ("DEC") staff who worked on the original TMDL, and we hope to work collaboratively with you on the development of the revised TMDL. To assist with this process, EPA has arranged to provide contractor support for two aspects of the revised TMDL development: 1) the review and update (if needed) of the lake model, and 2) the assessment of the potential effects of climate change on nutrient loads to the lake.



Please do not consider this disapproval an indictment of the good work the State and other entities have been engaged in to restore Lake Champlain. EPA recognizes and appreciates the extensive effort involved in development of the original TMDL, and the many excellent projects and programs implemented to reduce phosphorus inputs to the lake. Indeed, we are pleased that EPA has been able to help fund some of these projects and programs over the years, and we hope to be able to continue to assist with this effort in the future both through the Lake Champlain Basin Program and through direct assistance to the State and other partners.

As a result of today's decision, we see opportunities to ultimately build on and further strengthen the restoration work underway in the Lake Champlain basin. We look forward to discussing options for collaboration with you and DEC staff at your earliest convenience.

Sincerely,

A handwritten signature in blue ink, appearing to read "H. Curtis Spalding".

H. Curtis Spalding
Regional Administrator

Enclosure

cc: Commissioner David Mears, VTDEC

**VERMONT LAKE CHAMPLAIN
PHOSPHORUS TMDL PHASE 1
IMPLEMENTATION PLAN**

DRAFT AUGUST 2015



EXECUTIVE SUMMARY

Vermonters value a clean Lake Champlain. We swim and fish in the lake, we boat on it, we drink its water, and we deeply appreciate its beauty. A clean lake attracts businesses and tourists to the region and is a major driver of the State's economy.

Phosphorus pollution is the greatest threat to clean water in Lake Champlain. Phosphorus is a nutrient that stimulates excessive growth of algae in the lake, turning the water green. In excessive amounts, algae can impair recreational uses, aesthetic enjoyment, the taste of drinking water, and the biological community. In some cases, algal blooms - particularly cyanobacteria (blue-green algae) - can produce toxins that harm animals and people. Phosphorus is found in eroded soil and runoff from farm fields, barnyards, roads, parking lots, and streambanks, and in wastewater discharges. Efforts to reduce all these sources of phosphorus have accelerated over the past ten years but the lake has been slow to improve.

In 2002, the U.S. Environmental Protection Agency (EPA) approved a Lake Champlain Phosphorus Total Maximum Daily Load (TMDL) prepared by the states of Vermont and New York. The TMDL placed caps on the amount of phosphorus allowed to enter each segment of Lake Champlain, and allocated those maximum amounts among the various sources within each major watershed draining to the lake. In 2011, the EPA revoked its approval of the Vermont portion of the Lake Champlain TMDL and is in the process of developing a new TMDL.

Phosphorus loading to Lake Champlain is dominated by "nonpoint sources," which are generated by runoff and erosion across the landscape, as opposed to "point sources" such as wastewater and certain stormwater discharges that are conveyed by a pipe or other discrete conveyance and are more closely regulated. For a TMDL to be approved in a situation where reductions in nonpoint source loading are relied upon to achieve the TMDL, the EPA must find "reasonable assurances" that the necessary nonpoint source reductions will actually occur. Insufficient reasonable assurance was the primary reason given by the EPA for reversing its approval of the 2002 TMDL.

EPA's expectations of Vermont for the new Lake Champlain TMDL are divided into two distinct planning phases. For the first phase, EPA expects Vermont to provide policy commitments relating to nonpoint source phosphorus reductions in a basin-wide scale implementation plan (Phase 1 Plan). After EPA finalizes the TMDL in 2015, it expects the State to develop a sub-basin tactical implementation plan (Phase 2 Plan) for each lake segment. Each tactical sub-basin plan will identify in more detail the specific point source and nonpoint source measures and practices to be implemented by identified dates.

This Vermont Lake Champlain TMDL Phase 1 Implementation Plan was developed by the Vermont Agency of Natural Resources (ANR) and the Vermont Agency of Agriculture, Food, and Markets (AAFV). These agencies have been working diligently to develop the types of policy commitments requested by EPA to provide, or reduce the need for, reasonable assurances in the new TMDL. A proposed set of commitments, the [Draft State of Vermont Proposal for a Clean Lake Champlain](#), was issued for public comment in November, 2013. As part of that

effort, ANR met frequently with other state agencies, including the Vermont Agency of Transportation (VTrans) to refine the proposed commitments. ANR and AAFM, in conjunction with EPA, held six public meetings in December 2013 and took public comments on the draft proposal. Over 500 people attended those meetings. ANR, in partnership with VTrans and the regional planning and development agencies, held 12 additional meetings with municipalities across the State to discuss the draft proposal.

The State received over 100 comments on the November 2013 Proposal for a Clean Lake Champlain as well as a [January 17, 2014 letter from the EPA](#), and used those comments to inform the development of a second and more detailed [March 31, 2014 Draft TMDL Phase 1 Implementation Plan](#). A summary of the public comments and a list of [Frequently Asked Questions](#) with responses are available online. A [May 8, 2014 letter from EPA](#) provided further review and comment on the March 31 draft plan, which guided revisions incorporated into the present document. This newest July 2015 Plan has been updated to conform to Act 64, Vermont's Clean Water Act, which was recently passed by the Vermont Legislature. A copy of Act 64 is included as Appendix F to this Plan. Act 64 also requires that this Plan be updated again no later than three months after EPA's issuance of the final Lake TMDL.

The policy commitments described in Chapter 5 of this Phase 1 Plan are summarized in Table 1 and Figure 1, and address all major nonpoint sources of phosphorus to the lake, including the following:

- Untreated/unmanaged runoff from existing developed lands ←
- Discharges from farmsteads and agricultural production areas
- Poorly managed cropland
- Unmanaged or poorly managed pasture
- River and stream channel modifications
- Floodplain, river corridor and lakeshore encroachments
- Stormwater runoff from developed lands and construction sites
- Road construction and maintenance
- Forest management practices
- Wetland alteration and loss
- Legacy effects of historic phosphorus loading
- Additional phosphorus contributions anticipated due to climate change

→ The commitments presented in this Phase 1 Plan include new and enhanced regulation, funding and financial incentives, and technical assistance, and build on work already done by the State over the past 10 years to reduce phosphorus contributions to the lake. They will require new and increased efforts from nearly every sector of society, including state government, municipalities, farmers, developers, businesses and homeowners. The Vermont Department of Environmental Conservation (DEC) is requesting a twenty year implementation schedule to allow for communities to plan and stage the necessary improvements to roads and stormwater infrastructure into long-term capital funding plans as a means of keeping costs and funding burdens down.

Phosphorus TMDLs for Vermont Segments of Lake Champlain

August 14, 2015

U.S. Environmental Protection Agency
Region 1, New England
Boston, MA

7.3.1 ACCOUNTABILITY FRAMEWORK THROUGH 2017

EPA has identified early key milestones in the Phase 1 Implementation Plan that are crucial to the long-term success of implementing the TMDLs and will constitute the main component of the accountability report card. A few other milestones are focused on implementation of key existing programs. These items are taken directly from the revised Phase 1 Implementation Plan. Many of these items are either authorized by or have deadlines for completion in Act 64, as noted below.

By Dec 30, 2015

- Obtain statutory authority to certify manure applicators (completed by passage of Act 64)
- Target CAFO inspections and prioritize inspections of Small Farm Operations in Missisquoi Bay and St. Albans Bay.
- Report to EPA with spending plan capacity
- Publish stormwater management practices handbook for non-jurisdictional projects (Act 64, Sec. 33)

By Dec 30, 2016

- AAP revisions adopted [with expected elements] (Act 64, Sec. 4)
- Small Farm Operation certification program rule adopted (Act 64, Sec. 3)
- Livestock exclusion incentive program in place (Act 64, Sec. 4)
- Develop matrix and small farm template for nutrient management planning
- Develop Environmental Stewardship Incentive program in priority watersheds
- Mandate certification of custom manure applicators (Act 64, Sec. 16)
- Develop requirements for farmer training programs (Act 64, Sec. 15)
- Issue Final TS4 permit
- Adopt final Vermont Stormwater Management Manual
- Establish Municipal Stormwater Technical Assistance program
- Forestry AMP revisions completed (Act 64, Sec. 49)
- Legislature establishes Clean Water Improvement Fund (completed by passage of Act 64)
- Tactical Basin Plans (Phase 2) complete for Lamoille and Missisquoi basins
- Updated Report to EPA with spending plan capacity

EPA will issue an interim report card in early 2017 assessing Vermont's success in meeting these milestones.

By Dec 30, 2017

- NMP milestones completed
- Targeted funding for agricultural BMP and Nutrient Management Plan implementation provided in Missisquoi Bay, St. Albans Bay and South Lake
- Report to legislature on recommendations for tile drains (Act 64, Sec. 5)
- Issue Final Municipal Roads General Permit (Act 64, Sec. 31)
- Issue Final Developed Lands General Permit (Act 64, Sec. 31)
- Tactical Basin Plans (Phase 2) completed for Poultney, Mettawee and Lower Lake Champlain

EPA will issue a final report card in early 2018 assessing Vermont's success in meeting these milestones. If EPA finds Vermont has failed to make satisfactory progress, EPA may take one or more of the following actions:

- Revise the TMDLs to reallocate additional load reductions from nonpoint to point sources, such as wastewater treatment plants (e.g., reduce the wasteload allocations for facilities in the South Lake B, Main Lake, Shelburne Bay, Burlington Bay, St. Albans Bay and Missisquoi Bay segments to loads equivalent to the limit of phosphorus removal technology).

Act No. 64 of 2015: Vermont Clean Water Act

10 V.S.A. § 1264. STORMWATER MANAGEMENT

* * *

(b) Definitions. As used in this section:

* * *

(10) “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.

* * *

(13) “Stormwater Management Manual” means the Agency of Natural Resources’ Stormwater Management Manual, as adopted and amended by rule.

(14) “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.

* * *

(c) Prohibitions.

* * *

(7) In accordance with the schedule established under subdivision (g)(3) of this section, a person shall not discharge stormwater from impervious surface of three or more acres in size without first obtaining an individual permit or coverage under a general permit issued under this section if the discharge 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.

* * *

(g) General permits.

* * *

(3) Within 120 days after the adoption by the Secretary of the rules required under subsection (f) of this section, the Secretary shall issue a general permit under this section for discharges of stormwater from impervious surface of three or more acres in size, when the stormwater discharge previously was not permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual. Under the general permit, the Secretary shall:

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

(i) for impervious surface located within the Lake Champlain watershed, the Lake Memphremagog watershed, or the watershed of a stormwater-impaired water on or before October 1, 2023;

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

(B) 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).

* * *



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1
5 POST OFFICE SQUARE, SUITE 100
BOSTON, MA 02109-3912

OFFICE OF THE
REGIONAL ADMINISTRATOR

April 2, 2018

Julie Moore, Secretary
Agency of Natural Resources
1 National Life Drive
Davis 2
Montpelier, VT 05620-3901

Anson Tebbetts, Secretary
Department of Agriculture, Food and Markets
116 State Street
Montpelier, VT 05620-2901

Re: Report Card on Vermont Lake Champlain TMDL Phase I Implementation Plan Milestones

Dear Secretary Moore and Secretary Tebbetts:

Thank you for submitting the 2018 Accountability Report on March 7, 2018, and for your extensive efforts to implement the Lake Champlain TMDL. First and foremost, EPA is pleased with the overall magnitude and quality of Vermont's accomplishments since the passage of Act 64 in 2015. Your staff have clearly been working hard to get new programs off the ground, rapidly award large amounts of new funding to priority phosphorus reduction projects, ramp up inspection programs, and establish the new comprehensive tracking and accounting system. The many milestones that have been completed reflect this excellent progress.

EPA committed to issue a final report card in 2018 assessing Vermont's success in meeting the TMDL Phase I Implementation Plan milestones. Vermont successfully completed 25 of the 28 TMDL milestones and is making strong progress on the remaining targets. With the successful completion of all 2016 targets and most of the 2017 targets, EPA is giving Vermont a "provisional pass" for its TMDL Phase I compliance.

This assessment of "provisional pass" is contingent on EPA's review of Vermont's progress on the three remaining Phase 1 milestones by mid-2019, by which time they are all anticipated to be complete. A summary of the status of each of the milestones is included in Attachment A. EPA plans to revisit the provisional pass again in mid-2019, at which point we will review progress toward completion of the three remaining Phase 1 milestones in addition to our review of the Phase 2 Missisquoi and Lamoille tactical basin plans.

Of the three outstanding milestones, EPA is encouraged that progress has been made toward completion of each. First, for the required new Municipal Separate Storm Sewer System (MS4) permit, EPA has been told that a final permit is expected to be issued on April 13, 2018. While this permit is behind schedule, EPA is pleased that the bulk of the work has been completed and that it is expected to be issued very soon. Second, for the final Developed Lands General Permit, EPA urges the state to issue it before the mid-2019 report card update, based upon the jurisdictional clarity that you anticipate receiving from the legislature at the conclusion of the current session. Third, on the establishment of long-term revenue sources, EPA is encouraged that short-term funding in the Capital Bill has been secured through 2019 and that the property transfer tax surcharge has been renewed providing revenue to the Clean Water Fund through 2027 (detailed in Appendix A). It is important that the State establish a long-term revenue source as identified in the TMDL accountability framework, since this is critical to successful and full implementation of the TMDL. EPA intends to evaluate the State's progress to complete this long-term funding milestone in mid-2019 as mentioned above.



We commend the state for all the good work completed to date. Programs such as the Municipal Roads Grant-in-Aid program, which has provided incentive funding to 186 early adopters of road best management practices (BMP) projects, are impressive examples of the breadth of the commitment to restoration work at both state and municipal levels.

Thank you for your commitment to restoring Lake Champlain. As always, we look forward to continuing our regular, informal coordination and technical exchanges as you continue to implement the TMDL.

Sincerely,

Alexandra Dapolito Dunn
Regional Administrator

Enclosure

cc: Joe Flynn, Secretary, Vermont Agency of Transportation
Emily Boedecker, Commissioner, Vermont Department of Conservation



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I
5 POST OFFICE SQUARE SUITE 100
BOSTON, MASSACHUSETTS 02109-3912

June 25, 2020

Peter Walke, Commissioner
Vermont Department of Environmental Conservation
1 National Life Drive, Main 2
Montpelier VT 05620-3522

Re: Vermont's Phase 1 Implementation of the 2016 Lake Champlain TMDL

Dear Commissioner Walke:

On behalf of EPA Region 1, I am writing today to discuss the State of Vermont's progress toward completion of its 2016 Lake Champlain Phosphorus TMDL ("2016 TMDL") Phase 1 implementation obligations.

As you are aware, the 2016 TMDL includes an Accountability Framework describing 28 priority actions, or "milestones," that the State of Vermont agreed to complete by December 31, 2017. These milestones are necessary to achieve the TMDL's phosphorous reduction targets and meet water quality attainment timelines. Under the Accountability Framework, EPA committed to evaluating Vermont's progress and issuing a "report card" on the State's completion of the Phase 1 milestones.

In April 2018, in recognition of Vermont having achieved 25 of its 28 Phase 1 milestones, EPA issued an interim report card giving the state a "provisional pass" and committing to concluding its review by mid-2019. EPA has worked with your Department over the past two years as the State completed two of its remaining three milestones, but we now need to move forward with our final review of the State's progress on the Phase 1 milestones. **As such, EPA anticipates completing its final review of the State's Phase 1 achievements, and issuing a final report card, this coming September.**

As EPA noted in its 2018 interim report card, the Agency was "pleased with the overall magnitude and quality of Vermont's accomplishments since the passage of Act 64 in 2015." State agencies stood up new programs, created innovative tracking and accountability systems, and established – and deployed – new funding pathways. I want to thank you and your colleagues for your hard work over the past few years, and for the energy and innovation that you have been bringing to the implementation of those programs. Those accomplishments will

lead to significant reductions in phosphorous loads entering Lake Champlain and will result in improved water quality.

Unfortunately, failure to complete the last critical milestone, issuance of the State's proposed Three-Acre General Permit (draft Stormwater General Permit 3-9050), puts ultimate achievement of the Lake's water quality goals in jeopardy. Developed land loadings must be reduced by an estimated 25 metric tons/year of phosphorus for Lake water quality attainment. Issuance of the Three-Acre Permit, required under Vermont's Act 64, is an important part of the State's strategy to achieve this reduction. In short, without an issued Three-Acre Permit, the State cannot meet its 2016 TMDL obligations.

If the State still has not issued this permit by September 4, 2020, EPA will be forced to give the State a failing grade on the 2016 TMDL Phase 1 milestones.



The TMDL Accountability Framework identifies a range of responses which may be warranted if Vermont fails to meet its Phase 1 phosphorus reduction milestones. Those include EPA actions such as further point source (e.g., wastewater treatment plant) load reductions, expanded NPDES permit coverage for unregulated stormwater sources, and increased federal enforcement. EPA plans to begin evaluating such actions only after completing our final review.

I do want to take this opportunity to again thank you and your staff for implementing 27 of the 28 Phase 1 milestones, and to offer our assistance as the State works to issue the final Three-Acre Permit. EPA Region 1 has confidence in the State's creativity and commitment to water quality, and we stand ready to work with you on a path forward. We've worked together to make significant progress in restoring Lake Champlain and look forward to continuing that partnership in the short and long term.

Please do not hesitate to reach out to me or Ken Moraff, Region 1 Water Division Director, with any questions.

Sincerely,

**DENNIS
DEZIEL**

Dennis Deziel
Regional Administrator

Digitally signed by
DENNIS DEZIEL
Date: 2020.06.25 16:57:52
-04'00'

Cc (via email): Neil Kamman, VTDEC
Pete LaFlamme, VTDEC

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**GENERAL PERMIT 3-9050 (2020)
FOR OPERATIONAL STORMWATER DISCHARGES**

**(For “three-acre sites,” new development,
redevelopment, and permit renewal)**

Effective December 1, 2020

PART 1: COVERAGE UNDER THIS GENERAL PERMIT

1.1 Introduction

This general permit is issued by the Secretary (“Secretary”) of the Agency of Natural Resources (“Agency”) for discharges of regulated stormwater runoff to waters of the State of Vermont. This general permit provides coverage for the following categories of projects: proposed new or redeveloped impervious surface; renewal of previously-permitted projects; impervious surface of three or more acres; certain existing unpermitted discharges determined to require permit coverage by the Secretary; stormwater offset projects; and projects subject to stormwater impact fees. This general permit covers discharges to all waters of the State, including stormwater-impaired waters, Lake Champlain, Lake Memphremagog, and waters that contribute to the impairment of Lake Champlain or Lake Memphremagog, where a TMDL or water quality remediation plan has, or has not, been adopted.

This general permit supersedes previously issued General Permit 3-9010, General Permit 3-9015, and General Permit 3-9030. Under this general permit, existing valid authorizations under General Permit 3-9010, General Permit 3-9015, and General Permit 3-9030 shall remain in full force and effect.

This general permit complies with the minimum requirements for stormwater permits issued by the State of Vermont as the approved authority to administer a permit program consistent with the federal National Pollutant Discharge Elimination System (NPDES). All authorizations under this general permit shall be issued pursuant to the State’s approved authority.

1.2 Legal Authority

This general permit is issued pursuant to the Vermont Water Pollution Control statute, 10 V.S.A. Chapter 47, specifically §§ 1258 and 1264 and the Vermont Stormwater Permitting Rule (Environmental Protection Rules, Chapter 22).

1.3 Permit Coverage Required

The following activities require coverage under this general permit, unless the Secretary determines the discharge requires coverage under an individual permit pursuant to Subpart 8.5 of this permit:

- A. To commence the development or redevelopment of one or more acres of impervious surface;
- B. Effective July 1, 2022, to commence the development or redevelopment of one-half acre or more acres of impervious surface;

- C. 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;
- D. A discharge of regulated stormwater runoff from impervious surface of three or more acres to a stormwater-impaired water, to Lake Champlain or Lake Memphremagog, or a discharge of phosphorus from impervious surface of three or more acres to a water that contributes to the impairment of Lake Champlain or Lake Memphremagog, that 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. If any portion of such an impervious surface of three or more acres in size 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, the entire site shall be subject to the requirements of this general permit;
- E. A designated discharge of stormwater runoff from impervious surface that the Secretary has determined requires permit coverage pursuant to the Secretary's authority under Section 22-107(c)(1) of the Stormwater Permitting Rule (Environmental Protection Rules, Ch. 22) and 40 C.F.R. § 122.26(a)(9)(i)(C) and (D); and
- F. Renewals of the following previously-issued authorizations for discharges of stormwater runoff:
 - 1. Projects authorized under General Permit 3-9030;
 - 2. Projects authorized under an individual state stormwater discharge permit;
 - 3. Projects authorized under a temporary pollution permit pursuant to 10 V.S.A. § 1265;
 - 4. Projects authorized under General Permit 3-9015; and
 - 5. Projects authorized under General Permit 3-9010.

1.4 Phased Development and Circumvention

- A. If the development, redevelopment, or expansion of impervious surface does not meet the permit thresholds under Subpart 1.3 but is part of a common plan of development that will meet such thresholds, then permit coverage for each phase is required. If the Secretary determines that a municipal or state transportation project has independent utility from adjoining and adjacent impervious surfaces and the project does not trigger Subpart 1.4.B, such project shall not be considered part of a common plan of development.
- 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 the Stormwater

2.3 When to Submit a Notice of Intent for Permit Coverage

An applicant requiring permit coverage under this general permit shall submit a notice of intent per the following schedule.

***¶

- E. For projects with three or more acres of impervious surface subject to Subpart 1.3.D, where no portion of the project was previously permitted: an Initial NOI pursuant to Subpart 2.2.A.2.a:
1. For projects within the watersheds of the following lake segments as identified in the Lake Champlain TMDLs:
 - a. Missisquoi Bay, Main Lake, Burlington Bay, and Shelburne Bay: no later than January 1, 2022;
 - b. All other segments: no later than June 1, 2022.
 2. For projects within the watersheds of stormwater-impaired waters: no later than January 1, 2022.
 3. For projects within the watershed of Lake Memphremagog: no later than January 1, 2023.
 4. For projects not within the watersheds of a stormwater-impaired water, Lake Champlain, or Lake Memphremagog: no later than the date to be determined by the Secretary, which, pursuant to 10 V.S.A. § 1264(g)(3)(A)(ii), shall be no later than October 1, 2033.

Note: For projects subject to this Subpart 2.3.E and discharging to more than one receiving water, the applicant shall apply for coverage by the earliest applicable date within this Subpart and such application and authorization shall cover all portions of the site subject to Subpart 1.3.D. The applicant may submit the NOI pursuant to Subpart 2.2.A.2.b in lieu of an Initial NOI, and in any event must submit such NOI prior to the expiration of any initial authorization.

- F. For projects with impervious surface of three or more acres subject to Subpart 1.3.D and subject to one or more existing authorization(s) under a general permit or individual permit(s), the applicant shall apply for permit coverage prior to the earliest expiration date of such authorization(s) and permit(s), with such application and authorization also covering any unpermitted portions of the site subject to Subpart 1.3.D, provided that the applicant shall apply for permit coverage for any unpermitted portion of the site subject to Subpart 1.3.D no later than June 1, 2023. An applicant may apply for permit coverage at the same time for any portion of the site covered by a later expiring authorization or permit, or may wait to apply for coverage for such portion(s) any time prior to the expiration of such existing coverage.
- G. For projects requiring permit coverage pursuant to designation under Subpart 1.3.E: within 180 days of designation, unless the Secretary specifies a later date.

3 ACRE PROPERTIES

[What is a 3-acre site?](#)

[List of 3 acre properties](#)

What is a "3-acre site?"

Draft General Permit 3-9050 serves as the "Three-Acre General Permit" as required under the Vermont Clean Water Act. A "three-acre site" is an impervious surface of three or more acres that:

- has never had an operational stormwater permit, or
- was permitted to standards in place prior to the 2002 Stormwater Management Manual

The [Stormwater Rule](#) defines these sites as follows:

- Impervious surface of three or more acres means a single tract of land with three or more acres of impervious surface;
- a project on a tract or tracts of land that was previously authorized under a stormwater permit that authorized the discharge of stormwater from three or more acres of impervious surface; and
- impervious surface adjacent to or adjoining the foregoing types of impervious surfaces where the surface in question are part of a related operation, such as a hospital, resort, or campus.

List of "3-acre properties"

The list below identifies properties that are required to obtain permit coverage and retrofit their site to improve the level of stormwater treatment. This list includes properties in Lake Champlain, Lake Memphremagog, and stormwater-impaired watersheds only. The list will be updated in the future as information for the rest of the state becomes available.

- [List of "3-acre Properties"](#)

3 ACRE ASSISTANCE

[When do I need to apply?](#)

[Who can help me?](#)

[Is funding available?](#)

When do I need to apply?

The Draft General Permit will include the schedule for submitting an application. Affected properties will receive notification from the Stormwater Program identifying when applications are due.

Who can help me?

- Contact information for [staff in the Stormwater Program](#)
- Permit applications must be prepared by a licensed professional engineer. The following firms have submitted stormwater applications in the past and may be able to assist you.
 - [List of Stormwater Engineering Firms](#)

Is funding available?

- The Agency anticipates grant funding and subsidized loans will be available to support engineering, design, and implementation costs associated with this general permit. The Agency is currently developing a funding plan and will release it in the near future.

Fiscal Year 2022 - 2023 Capital Budget Request		FY22 - FY23 CAPITAL BUDGET Departmental Requests				FY22-FY23 CAPITAL BUDGET Governor's Recommendation			line #
line #	Agency/Department: Project Description	Total Project Cost or Biennial Request	FY22 Department Request	FY23 Department Request	FY22 & FY23 Total Department Request	Governor's Recommend FY22	Governor's Recommend FY23	Governor's Recommend Total	
1	Section 1: Agency of Administration								1
2	Buildings & General Services								2
3	Statewide: BGS Engineer/Architectural Cost - Annual Appropriation	\$7,371,916	3,624,474	3,747,442	7,371,916	3,624,474	3,747,442	7,371,916	3
4	Statewide: Major Maintenance - Annual Appropriation	\$14,445,000	7,098,000	7,347,000	14,445,000	7,098,000	7,347,000	14,445,000	4
5	Statewide: Physical Security Enhancements	\$517,000	254,000	263,000	517,000	250,000	250,000	500,000	5
6	Statewide: Reuse/Planning/Realignment/Contingency - Annual Appropriation	\$1,032,000	507,000	525,000	1,032,000	500,000	500,000	1,000,000	6
7	Burlington: 108 Cherry Street - Parking Garage	\$15,974,000	3,093,000	0	3,093,000	3,093,000	0	3,093,000	7
8	Springfield: SSCF - Door Control	\$5,350,000	2,100,000	700,000	2,800,000	2,100,000	700,000	2,800,000	8
9	Rutland: Asa Bloomer - Major Renovation	\$2,582,000	507,000	1,575,000	2,082,000	400,000	1,575,000	1,975,000	9
10	Montpelier: Statehouse - HVAC Renovations	\$2,535,000	2,535,000	0	2,535,000	0	2,535,000	2,535,000	10
11	Newport: Courthouse Replacement	\$9,312,000	507,000	525,000	1,032,000	507,000	525,000	1,032,000	11
12	Statewide: MV, CR, NWCF, NESCF - door controls	\$5,598,000	1,268,000	1,837,000	3,105,000	0	671,000	671,000	12
13	Montpelier: Statehouse Carpets, seating, draperies, interior finishes	\$104,000	51,000	53,000	104,000	51,000	53,000	104,000	13
14	Montpelier: 120 State Street - Steam Lines, Interior Renovation	\$11,017,000	\$0	\$525,000	525,000		525,000	525,000	14
15	Brattleboro: Courthouse - re-roof	\$1,778,000	\$203,000	\$1,575,000	1,778,000	0	100,000	100,000	15
16	Burlington: 32 Cherry-Parking Garage Renovations	\$2,729,000	\$865,000	\$896,000	1,761,000	0	865,000	865,000	16
17	Rutland: Multimodal Garage Renovation	\$13,781,000	\$609,000	\$0	609,000	0	609,000	609,000	17
18	Statewide: Stormwater Planning (Design and Implementation in out years)	\$6,600,000	\$609,000	\$1,470,000	2,079,000	0	609,000	609,000	18
19	Waterbury: WSOC-Historic Core Roof Replacements	\$24,074,000	\$3,043,000	\$3,149,000	6,192,000	1,043,000	3,149,000	4,192,000	19
20	Montpelier: 111 State Street Renovation of Court Area HVAC Timedec and Elanstar	\$11,541,000	\$0	\$150,000	150,000	0	150,000	150,000	20

Fiscal Year 2022 - 2023 Capital Budget Request		FY22 - FY23 CAPITAL BUDGET Departmental Requests				FY22-FY23 CAPITAL BUDGET Governor's Recommendation			
line #	Agency/Department: Project Description	Total Project Cost or Biennial Request	FY22 Department Request	FY23 Department Request	FY22 & FY23 Total Department Request	Governor's Recommend FY22	Governor's Recommend FY23	Governor's Recommend Total	line #
	Section 9: Agency of Natural Resources								
95	Drinking Water Supply -Drinking Water State Revolving Fund 20% Match	\$4,428,925	2,215,714	2,213,211	4,428,925	2,215,714	2,213,211	4,428,925	95
96	Contaminants of Emerging Concern Special Fund	\$500,000	300,000	200,000	500,000	0	0	0	96
97	Dam safety and hydrology projects- DEC	\$1,115,000	310,000	805,000	1,115,000	310,000	805,000	1,115,000	97
98	Waterbury Dam Spillway Project	\$20,100,000	2,700,000	2,700,000	5,400,000	750,000	750,000	1,500,000	98
99	State Share (10%) of Federal Superfund and State Lead Hazardous Waste	\$10,400,000	0	0	0	0	0	0	99
100	Forest, Parks and Recreation - State Parks Major Maintenance	\$10,010,000	4,935,000	5,075,000	10,010,000	4,935,000	5,075,000	10,010,000	100
101	FPR - Rustic Cabin Construction Program	\$1,797,586			0	500,000	500,000	1,000,000	101
102	FPR - 3 acre Stormwater Rule Compliance	\$3,341,800	107,000	222,000	329,000	107,000	222,000	329,000	102
103	Gifford Woods and Groton Forest Park Maintenance Facilities	\$2,635,000	480,000	2,155,000	2,635,000	480,000		480,000	103
104	Fishing Access Area	\$200,000	100,000	100,000	200,000	100,000	100,000	200,000	104
105	Conservation Camps	\$45,000	45,000	0	45,000	45,000	0	45,000	105
106	Fishing Opportunities: Hatchery Improvements	\$1,764,000	1,016,000	748,000	1,764,000	835,000	748,000	1,583,000	106
107	Shooting range improvements	\$30,000	10,000	20,000	30,000	10,000	20,000	30,000	107
108	Fish and Wildlife Public Access Infrastructure	\$265,000	87,500	177,500	265,000	87,500	177,500	265,000	108
109	Fish and Wildlife Dept. Buildings infrastructure improvements	\$225,000	187,000	38,000	225,000	187,000	38,000	225,000	109
110									110
111									111
112	Agency of Natural Resources	\$56,857,311	\$12,493,214	\$14,453,711	\$26,946,925	\$10,562,214	\$10,648,711	\$21,210,925	112
113									113

What if State Does not Comply?--EPA Permit Authority

A. EPA Will Attempt to Meet TMDL Through its Permitting Authority

- Discharge of pollutants from a point source to a navigable water-e.g., wastewater treatment, industrial discharge, etc.
- The construction stormwater permit for disturbance of more than 1 acre of land.
- The multisector general permit for stormwater runoff from industrial sites.
- The municipal separate storm sewer permit for stormwater control in specified towns.
- The concentrated animal feeding operation permit for certain farms that have an actual discharge or are proposing an actual discharge.

B. If it Cannot Meet TMDL Through EPA Permitting

- EPA has "residual designation" authority to require permits for other discharges or category of discharges on a case-by-case basis when it determines that:
 - The discharge contributes to a violation of water quality standards;
 - The discharge is a significant contributor of pollutant to a water; or
 - Controls are needed for the discharge based on wasteload allocations that are part of a TMDL that address the pollutant(s) of concern.