

1 S.146

2 Introduced by Committee on Natural Resources and Energy

3 Date: April 13, 2023

4 Subject: Conservation and development; water pollution control; indirect

5 discharges; classification of waters; antidegradation implementation;

6 wastewater systems

7 Statement of purpose of bill as introduced: This bill proposes to clarify how

8 indirect discharges of wastewater in the State are permitted, including

9 compliance with the Vermont Water Quality Standards and the State

10 Antidegradation Implementation Rule.

11 An act relating to the permitting of indirect discharges

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 Sec. 1. FINDINGS

14 The General Assembly finds that:

15 (1) the federal Clean Water Act requires states to adopt an

16 antidegradation policy and requirements for implementation of the policy;

17 (2) the Agency of Natural Resources (ANR) has initiated rulemaking for

18 the Antidegradation Implementation Rule;

1 (3) the ANR Antidegradation Implementation Rule shall ensure that the
2 level of water quality necessary to support uses of State waters shall be
3 maintained, and waters shall be managed to minimize risk to existing and
4 designated uses of State waters;

5 (4) the ANR Antidegradation Implementation Rule also shall clarify
6 how proposed new discharges to State waters will be reviewed and permitted
7 by ANR;

8 (5) the ANR Antidegradation Implementation Rule shall require
9 consideration of cumulative impacts to the receiving water during the
10 evaluation of any proposed discharge;

11 (6) pursuant to the ANR Antidegradation Implementation Rule, the
12 Secretary of Natural Resources shall require a site-specific Tier 2 analysis
13 through the use of individual permits to ensure the protection of waters that are
14 Class A(1), B(1), or A(2) when proposed activities may result in a measurable
15 reduction in the physical, chemical, or biological quality of such waters due to
16 their location, size, and scale and provided that the Secretary determines water
17 quality data meets or exceeds the minimum criteria for these classes; or the
18 Secretary has received an administratively and technically complete
19 reclassification petition for such waters; and

20 (7) the Secretary shall propose to reclassify waters where water quality
21 data meets or exceeds the minimum criteria for a higher class for one or more

1 designated uses to allow for the protection and maintenance of designated uses
2 of the water supported by the higher water quality.

3 Sec. 2. 10 V.S.A. § 1259(d) is amended to read:

4 (d) No person shall cause a discharge of wastes into a Class A waters water
5 classified as Class A on or before July 1, 2023, except for on-site disposal of
6 sewage from systems with a capacity of 1,000 gallons per day (gpd), or less,
7 that are either exempt from or comply with the ~~environmental protection rules,~~
8 permitting requirements of chapter 64 of this title or existing systems, which
9 shall require a permit according to the provisions of subsection 1263(f) of this
10 title. For all other waters, the Secretary may permit the on-site disposal of
11 wastewater from a system with a capacity of less than 6,500 gpd, provided that
12 the permit is issued according to the requirements of chapter 64 of this title.
13 The on-site disposal of sewage from a system with the capacity of 6,500
14 gallons or more per day shall require an individual permit issued according to
15 the requirements of subsection 1263(f) of this title.

16 Sec. 3. 10 V.S.A. § 1263(f) is amended to read:

17 (f) ~~Existing indirect~~ Indirect discharges to the waters of the State from on-
18 site disposal of sewage shall comply with and be subject to the provisions of
19 this chapter, and shall obtain the required permit, ~~no later than July 1, 1991.~~
20 Notwithstanding the requirements of subsections 1259(d) and (e) of this title,
21 the Secretary shall grant a permit for an existing or new indirect discharge to

1 the waters of the State for on-site disposal of sewage unless ~~he or she~~ the
2 Secretary finds that the discharge violates the water quality standards.

3 ~~Existing indirect discharges from on-site sewage disposal systems of less than~~
4 ~~6,500 gpd capacity shall not require a permit.~~

5 Sec. 4. 10 V.S.A. § 1973(f)(1) is amended to read:

6 (f)(1) The Secretary shall give deference to a certification by a licensed
7 designer with respect to the engineering design or judgment exercised by the
8 designer in order to minimize Agency review of certified designs, except for
9 systems with a design flow of more than 1,000 gallons per day located in the
10 watersheds of Class A or Class B(1) waters. Systems with a design flow of
11 more than 1,000 gallons per day that are located in a Class A or Class B(1)
12 watershed shall be reviewed by the Secretary to determine if there would be a
13 measurable reduction in the chemical, physical, or biological quality of the
14 receiving water as a result of the system and, when required under the Agency
15 of Natural Resources Antidegradation Implementation Rule, the Secretary
16 shall conduct a Tier 2 Analysis that includes a site specific analysis and a
17 cumulative impact analysis, as required by the Vermont Water Quality
18 Standards, to ensure the protection of Class A and Class B(1) waters. Nothing
19 in this section shall limit the responsibility of the licensed designer to comply
20 with all standards and rules, or the authority of the Secretary to review and

1 comment on design aspects of an application or to enforce Agency rules with
2 respect to the design or the design certification.

3 Sec. 5. 10 V.S.A. § 1252 is amended to read:

4 § 1252. CLASSIFICATION OF ~~HIGH QUALITY~~ HIGH-QUALITY
5 WATERS; MIXING ZONES

6 * * *

7 (i) During the triennial rulemaking for the Vermont Water Quality
8 Standards, the Secretary, on the Secretary's own motion or on receipt of an
9 administratively and technically complete petition, shall propose to reclassify
10 any waters where water quality data meets or exceeds the minimum criteria for
11 a higher class for one or more designated uses and that have been proposed as
12 candidate waters for reclassification by the Secretary. In the event that
13 triennial rulemaking for the Vermont Water Quality Standards does not occur
14 every three years from the date of the most recent revision to the Vermont
15 Water Quality Standards, the Secretary, on the Secretary's own motion or on
16 receipt of an administratively and technically complete petition, shall propose
17 to reclassify any waters where water quality data meets or exceeds the
18 minimum criteria for a higher class for one or more designated uses and that
19 have been proposed as candidate waters for reclassification by the Secretary.

1 Sec. 6. 10 V.S.A. § 1253(i) is added to read:

2 (i) Beginning on January 15, 2024, and biennially thereafter, the Secretary
3 shall report to the House Committee on Environment and Energy and the
4 Senate Committee on Natural Resources and Energy on the status of very
5 high-quality waters, Class A and B(1). The report shall include:

6 (1) a listing of the waters where water quality data meets or exceeds the
7 minimum criteria for a higher class for one or more designated uses and that
8 have been proposed as candidate waters for reclassification or petitioned for
9 reclassification;

10 (2) the Secretary's observations about whether the General Assembly's
11 decision to lift the 1,000 gallon per day indirect discharge prohibition in Class
12 A waters actually improved the Secretary's overall ability to reclassify waters;

13 (3) the number of wastewater system permits and other discharge
14 permits issued in very high-quality waters; and

15 (4) progress made and difficulties encountered during reclassification.

16 Sec. 7. NONPOINT SOURCE POLLUTION STAKEHOLDER

17 GROUP; REPORT

18 (a) Creation. The Secretary, in consultation with the Secretary of
19 Agriculture, Food and Markets, shall convene the Nonpoint Source Pollution
20 in Class A and B(1) Waters Stakeholder Group to review, investigate, and

1 make recommendations regarding the State antidegradation policy as it relates
2 to nonpoint source pollution in high-quality waters.

3 (b) Duties. The Nonpoint Source Pollution in in Class A and B(1) Waters
4 Stakeholder Group shall:

5 (1) analyze whether the Required Agricultural Practices (RAPs) and the
6 Acceptable Management Practices for Maintaining Water Quality on Logging
7 Jobs in Vermont (AMPs) are sufficient to protect Class A and B(1) waters; and

8 (2) recommend whether amendments to statute or rule are necessary to
9 improve the regulation of nonpoint source pollution from agricultural and
10 timber harvesting, including:

11 (A) whether or how to apply the Vermont Antidegradation Policy to
12 nonpoint source pollution from agriculture or timber harvesting;

13 (B) whether and how to regulate runoff from subsurface tile drains in
14 a manner consistent with the Vermont Water Quality Standards; and

15 (C) whether or how to improve management of nonpoint source
16 pollution from timber harvesting, including whether to mandate
17 implementation of the AMPs on all timber harvests and whether to require
18 timber harvesters to notify the State of harvest sites prior to initiation of
19 harvest.

20 (c) Report. Upon the conclusion of the Stakeholder Group's meetings, the
21 Stakeholder Group shall prepare and submit a written report on or before

1 January 15, 2024 to the House Committee on Environment and Energy and
2 Senate Committee on Natural Resources and Energy providing its findings and
3 recommendations on whether the RAPs and AMPs are sufficient to protect
4 Class A and B(1) waters.

5 Sec. 8. EFFECTIVE DATE

6 (a) This section and Secs. 1 (findings) and 7 (nonpoint pollution report)
7 shall take effect on passage.

8 (b) Secs. 2–6 (indirect discharge; classification of waters) shall take effect
9 on the effective date of the Agency of Natural Resources Antidegradation
10 Implementation Rule.