

S.146. An Act relating to the Permitting of Indirect Discharge

Section by Section Summary

Sec. 1. Findings

Section 1 summarizes the background and purpose of the bill:

- The Clean Water Act requires states to adopt an antidegradation policy and requirements for implementation;
- ANR has initiated rulemaking for the Antidegradation Implementation Rule;
- The ANR Antidegradation Implementation Rule shall ensure that the level of water quality necessary to support uses of State waters shall be maintained, and waters shall be managed to minimize risk to existing and designated uses of State waters;
- The ANR Antidegradation Implementation Rule also shall clarify how proposed new discharges to State waters will be reviewed and permitted by ANR;
- The ANR Antidegradation Implementation Rule shall require consideration of cumulative impacts to the receiving water during the evaluation of any proposed discharge;
- Under the ANR Antidegradation Implementation Rule, ANR shall require a site-specific Tier 2 analysis through the use of individual permits to ensure the protection of waters that are Class A(1), B(1), or A(2); and
- ANR shall propose to reclassify waters where water quality data meets or exceeds the minimum criteria for a higher class for one or more designated uses to allow for the protection and maintenance of designated uses of the water supported by the higher water quality.

Sec. 2. Prohibitions on Discharge to Waters. 10 V.S.A. § 1259(d)

- Currently, a person is prohibited from discharging waste into Class A waters, except for on-site wastewater systems with a capacity of 1,000 gpd or less or they have an existing system with an indirect discharge permit.
 - Class A(1) waters are waters in a natural condition that have significant ecological value;
 - Class A(2) water are waters that are suitable for a public water source with filtration and disinfection or other required treatment; character uniformly excellent.
- The law prevents ANR from reclassifying Class B waters that are high quality to Class A because there may already be development in the watershed that exceeds 1,000 gpd or does not have an indirect discharge permit.
- In addition, the 1,000 gpd limit is an arbitrary number that is not related to water quality data.
- Sec. 2 would retain the current law for waters classified as Class A before July 1, 2023, but for all other waters, Sec. 2 allows ANR to permit an on-site disposal of wastewater from a system with a capacity of less than 6,500 gpd, provided that the permit is issued according to the requirements for on-site wastewater systems.
 - Any system that is 6,500 gpd or more will require an indirect discharge permit (this is a current requirement under ANR's onsite wastewater rules).

Sec. 3. Indirect discharges. 10 V.S.A. § 1263(f)

- Sec. 3 cleans up some obsolete or confusing language under the indirect discharge permit requirement.
- First, Sec. 3 strikes a reference to existing indirect discharges obtaining a permit by July of 1991.
- Second, Sec. 3 strikes a sentence that states that indirect discharges from on-site sewage disposal does not require a permit. In fact, a permit is required, but it is the wastewater and potable water supply permit under 10 V.S.A. §1973. Striking this sentence eliminates potential confusion.

Sec. 4. On-site Wastewater Permits. 10 V.S.A. § 1973(f)(1)

- Sec. 4 amends the statute relating to issuance of on-site wastewater permits (septic permits).
- Generally, under statute, ANR relies on certifications from professional engineers and site designers when permitting on-site wastewater systems.
- Sec. 4, however, provides that when permitting on-site wastewater systems of over 1,000 gpd in a Class A or Class B(1) water, ANR shall review each proposed system to determine if there would be a measurable reduction in the chemical, physical, or biological quality of the receiving water as a result of the system.
- And, if required by the ANR Antidegradation Implementation Rule, the Secretary shall conduct a Tier 2 Analysis that includes a site specific analysis and a cumulative impact analysis of the proposed system to ensure the protection of Class A and Class B(1) waters.

Sec. 5. Classification of High Quality Waters. 10 V.S.A. § 1252

- Sec. 5 directs ANR, during the triennial rulemaking for the VWQS, to propose to reclassify any waters where water quality data meets or exceeds the minimum criteria for a higher class for one or more designated uses and that have been proposed as candidate waters for reclassification by the Secretary.
- In the event that triennial rulemaking does not occur, ANR shall propose to reclassify any waters where water quality data meets or exceeds the minimum criteria for a higher class for one or more designated uses and that have been proposed as candidate waters for reclassification by the Secretary.

Sec. 6. Report on Status of High Quality Waters. 10 V.S.A. § 1253(i)

- Beginning on January 15, 2024, and biennially thereafter, ANR shall report to the General Assembly on the status of very high-quality waters, Class A and B(1).
- The report shall include:
 - a listing of the waters where water quality data meets or exceeds the minimum criteria for a higher class for one or more designated uses and that have been proposed as candidate waters for reclassification or petitioned for reclassification;
 - ANR's observations about whether the General Assembly's decision to lift the 1,000 gallon per day indirect discharge prohibition in Class A waters actually improved the Secretary's overall ability to reclassify waters;
 - the number of wastewater system permits and other discharge permits issued in very high-quality waters; and
 - progress made and difficulties encountered during reclassification.

Sec. 7. Nonpoint Source Pollution Stakeholder Group; Report

- Sec. 7 directs ANR, in consultation with the Secretary of Agriculture, to convene the Nonpoint Source Pollution in Class A and B(1) Waters Stakeholder Group to review, investigate, and make recommendations regarding the State antidegradation policy as it relates to nonpoint source pollution in high-quality waters.
- The Group submits recommendations to the General Assembly on or before January 15, 2024 on:
 - whether the RAPs and the AMPs are sufficient to protect Class A and B(1) waters; and
 - whether amendments to statute or rule are necessary to improve the regulation of nonpoint source pollution from agricultural and timber harvesting.

Sec. 8. Effective Dates

- The findings and the Sec. 7 (nonpoint stakeholder group) take effect on passage.
- The rest of the sections take effect on the effective date of the Agency of Natural Resources Antidegradation Implementation Rule.