

Prepared by David Wheeler, City of South Burlington, Deputy Director of Water Resources for the Senate Committee on Natural Resources and Energy

Senators, I am very concerned with the language in Section 8 of Bill S.115. It includes very broad language that could be misinterpreted to have a variety of unintended consequences. The language is also in direct conflict with requirements in the Vermont MS4 permit. I ask that you take some time to work through this language, review the legislation that it seeks to modify, and understand the negative impacts that could result from passing this bill.

1. Bill S.115 modifies **24 V.S.A. §4414(9)** which is a law authorizing municipalities to adopt zoning bylaws to regulate stormwater management and control. If this bill were to be passed as written, any municipalities charging fees to exempt practices would lose their authority to adopt zoning bylaws to regulate stormwater management. This would put municipalities out of compliance with their MS4 permit, as the MS4 permit requires municipalities to enforce a post-construction stormwater management program, in accordance with Minimum Control Measure 5 of the MS4 Permit.
 - a. The State cannot exceed federal authority and pass legislation that could jeopardize local compliance with the MS4 permit.
2. Bill S.115 also includes a requirement that states municipalities cannot exceed the Secretary's authority, but it is unclear what that is or isn't limited to. Under the new language, if a municipality exceeds the Secretary's authority, then they would lose their ability to adopt zoning bylaws to regulate stormwater management. Again, putting them out of compliance with Minimum Control Measure 5 of the MS4 permit. This creates confusion because **§6.2.5.f of the MS4 permit** actually *requires* that municipalities exceed the Secretary's authority, when it comes to adopting bylaws that regulate stormwater. The MS4 permit says that municipalities shall adopt bylaws that regulate discharges from new development or redevelopment projects that disturb more than one acre, *but are not subject to regulation under the Agency's post-construction stormwater management permit program*.
3. **10 V.S.A. §1264(d)(1)** exempts agriculture from the State Operational Stormwater Permitting process. This language is being cited in §8 of S.115 to suggest that agriculture should also be exempt from Stormwater Utility fees. Stormwater Utility fees are completely independent from the State Operational Stormwater Permits and their associated operating fees. There are many properties in Vermont that have a State permit and pay both operational fees and Stormwater Utility fees.
 - a. Stormwater Utility fees do not regulate or restrict how farm structures are built. Municipal stormwater bylaws do not regulate how farm structures are designed or built. Rather, once impervious surfaces are constructed on a farm – or any other site, Stormwater Utility fees are calculated and assessed based on the amount of impervious.
 - b. We see the confusion between the State Stormwater Permitting process and municipal Stormwater Utility fees in the drafting of the language, with the use of the term "operating fee." Municipalities do not charge operating fees, those are paid to the State for Operational Stormwater Permits. Municipalities collect Stormwater Utility fees.
 - c. If a legal connection were to be made between the Operational Stormwater Permit exemption under 10 V.S.A. §1264(d)(1) and Stormwater Utility fees, then this exemption could also be interpreted to apply to **10 V.S.A. §1264(d)(2)**, which exempts properties

rolled under an MS4 permit from being required to obtain State Operational Stormwater Permits. In this scenario, South Burlington would be required to stop charging fees to hundreds of households that have been rolled under the City's MS4 permit because the bill proposes that "the *municipality... does not charge an operating fee to exempt practices.*" The burden to support the Stormwater Utility would then fall on all other property owners in the City. This would also disincentivize municipalities from working with any other neighborhoods subject to the 3-Acre rule and other stormwater regulations in general.

4. Exempting farms could create a "slippery slope" as other entities may seek out exemptions as well, such as schools, hospitals, police/fire, affordable housing, non-profits, energy efficient housing, historic buildings, etc.
 - a. VTrans previously sought out an exemption from municipal stormwater utility fees, as they are required to implement stormwater treatment as part of their TS4 permit, but it was ultimately settled that VTrans would be provided with a 35% credit on stormwater utility fees, in the law governing Municipal Sewage Rates and Rents, **24 V.S.A. §3615(c)**: *"When a sewage disposal charge established under this section for the management of stormwater is applied to property owned, controlled, or managed by the Agency of Transportation, the charge shall not exceed the highest rate category applicable to other properties in the municipality, and the Agency of Transportation shall receive a 35 percent credit on the charge. The Agency of Transportation shall receive no other credit on the charge from the municipal corporation."*
5. This bill seeks to obtain an exemption for farms from stormwater utility fees, with the justification that they provide water quality treatment through their Required Agricultural Practices (RAPs). There are different levels of stormwater treatment standards that require different control strategies. RAPs do not address all of these stormwater treatment standards.
 - a. The first is the water quality treatment standard, such as removing pollutants or nutrients, including phosphorus. RAPs address phosphorus reduction through strategies like manure and animal management.
 - b. Groundwater recharge is the basic idea of soaking water into the ground. This is likely occurring on farm fields, unless the water is prevented from soaking down into the ground due to tile drainage.
 - c. Channel Protection is associated with slowing flows to prevent stream channel and ditch erosion, from the quantity of water typically experienced during the 1-year storm.
 - d. Extreme Flooding requires the safe conveyance of large storm events and either providing additional detention or increasing downstream infrastructure to safely convey the flows from the 25 year to 100 year storm events. It is unlikely that RAPs address the flow and flood based treatment standards.
 - e. Anecdote: Between 2019 and 2021, the City of South Burlington participated in reconstructing the Muddy Brook culvert, a 15 foot diameter culvert that was washed out during the Halloween storm of 2019, which was equivalent to the 50-year storm event. The total cost was around \$3 million to replace it with a new larger culvert that can handle larger storms and provide aquatic organism passage. The replacement costs were shared between the stormwater fund, grant funding and cost sharing from the adjacent community. The area draining to this culvert includes many different types of land uses, including farms.

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6. No property should be entirely exempt from Stormwater Utility fees. Instead, the municipalities should establish appropriate crediting systems within their jurisdiction to allow for reduced rate for those properties achieving certain water quality objectives. However, at the end of the day the municipality still has an obligation to maintain all the existing drainage infrastructure supporting the road network that our economy, businesses and citizens rely on and benefit from. No individual property is providing that service “on-site” or through their water quality permit requirements.
 - a. Many municipalities have stormwater utility fee credit manuals that provide different levels of credit for water quality treatment, groundwater recharge, channel protection treatment, and extreme flood storage. Additionally, some municipalities already have utility fee credits for farms with approved RAPs, as well as credits for schools that teach a water quality curriculum.
 - b. In addition to MS4 communities needing to meet the various stormwater treatment standards, they are also required to meet their “6 Minimum Control Measures” under the MS4 permit. The first of these, Minimum Control Measure 1, is Public Education and Outreach, hence the credit for schools teaching a curriculum on water quality.

Thank you,



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