

1 S.303

2 Introduced by Senators Williams, Beck, Benson, Brennan, Brock, Collamore,
3 Heffernan, Ingalls, Major, Mattos, Morley, Norris, Weeks and
4 Westman

5 Referred to Committee on

6 Date:

7 Subject: Conservation and development; real property; stormwater; three-acre
8 stormwater discharge permit

9 Statement of purpose of bill as introduced: This bill proposes to amend
10 requirements related to the administration and implementation by the Agency
11 of Natural Resources (ANR) of the three-acre stormwater discharge permit.

12 The bill would require ANR to visit every parcel identified by geographic
13 information system data as subject to the three-acre stormwater discharge
14 permit to verify each parcel has three or more acres of impervious surface.

15 The bill also would require ANR to rank each parcel subject to the three-acre
16 stormwater discharge permit according to the severity of impact each parcel
17 has to water quality in the State. The bill would repeal the current permitting
18 schedule for discharges of stormwater from three-acre parcels and instead
19 would require a permit for a parcel ranked in the top 10 percent of severity of
20 impact to water quality to continue to require a permit. ANR would then be
21 directed to establish a schedule for the remaining parcels subject to permitting

1 based on severity of impact to water quality posed by a parcel. In addition, the
2 bill would provide that failure to obtain a three-acre stormwater discharge
3 permit when necessary does not create an encumbrance on the title to the
4 property subject to the parcel. The bill also would require ANR to conduct a
5 public hearing in each county of the State to explain application of the three-
6 acre stormwater discharge permit and the changes made to the permit by the
7 bill.

8 An act relating to administration of the three-acre stormwater discharge
9 permit

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

11 Sec. 1. FINDINGS

12 The General Assembly finds that:

13 (1) The three-acre stormwater discharge permit established under 2015
14 Acts and Resolves No. 64 has relied primarily on geographic information
15 system data without on-site verification, resulting in inaccuracies and required
16 permitting for properties that do not meet the statutory permit threshold.

17 (2) Requiring compliance from all properties subject to the three-acre
18 stormwater discharge permit, regardless of actual water quality impact,
19 imposes undue financial costs on property owners and creates inefficiencies in
20 the use of State resources. Vermonters are already subject to considerable

1 expenses and tax burdens. The State should not impose additional, substantial
2 costs on property owners that do not significantly contribute to the State's
3 water quality impairments.

4 (3) Public roads maintained by municipalities or the State should not be
5 calculated as impervious surface for private properties when determining if a
6 property is subject to the three-acre stormwater discharge permit.

7 (4) The designation of a property under the three-acre stormwater
8 discharge permit has been treated in practice as a cloud on title, complicating
9 or impeding property sales and property financing, even though designation of
10 a parcel as subject to the permit was never intended to serve as a lien or legal
11 encumbrance.

12 (5) Vermont's stormwater management resources must be prioritized
13 toward the properties that pose the greatest risk to water quality, while
14 preserving flexibility and fairness in implementation of stormwater discharge
15 permitting.

16 (6) Public outreach and education are necessary to restore public trust in
17 stormwater permitting and to ensure that property owners understand both the
18 history of the three-acre stormwater discharge permit and the amendments to
19 the permit required under this act.

1 Sec. 2. 10 V.S.A. § 1264 is amended to read:

2 § 1264. STORMWATER MANAGEMENT

3 * * *

4 (b) Definitions. As used in this section:

5 * * *

6 (6) “Impervious surface” means those manmade surfaces, including
7 paved and unpaved roads, parking areas, roofs, driveways, and walkways, from
8 which precipitation runs off rather than infiltrates.

9 * * *

10 (10) “Regulated stormwater runoff” means precipitation, snowmelt, and
11 the material dissolved or suspended in precipitation and snowmelt that runs off
12 impervious surfaces and discharges into surface waters or into groundwater via
13 infiltration.

14 * * *

15 (14) “Stormwater runoff” means precipitation and snowmelt that does
16 not infiltrate into the soil, including material dissolved or suspended in it, but
17 does not include discharges from undisturbed natural terrain or wastes from
18 combined sewer overflows.

19 (15) “Stormwater system” includes the storm sewers; outfall sewers;
20 surface drains; manmade wetlands; channels; ditches; wet and dry bottom
21 basins; rain gardens; and other control equipment necessary and appurtenant to

1 the collection, transportation, conveyance, pumping, treatment, disposal, and
2 discharge of regulated stormwater runoff.

3 * * *

4 (c) Prohibitions.

5 (1) A person shall not commence the construction or redevelopment of
6 one-half of an acre or more of impervious surface without first obtaining a
7 permit from the Secretary.

8 * * *

9 ~~(7) In accordance with the schedule established under subdivision (g)(3)~~
10 ~~of this section, a person shall not discharge stormwater from impervious~~
11 ~~surface of three or more acres in size without first obtaining an individual~~
12 ~~permit or coverage under a general permit issued under this section if the~~
13 ~~discharge was never previously permitted or was permitted under an individual~~
14 ~~permit or general permit that did not incorporate the requirements of the 2002~~
15 ~~Stormwater Management Manual or any subsequently adopted Stormwater~~
16 ~~Management Manual. The Secretary shall provide notice to all owners of~~
17 ~~property subject to the permit required under this subdivision~~ A person that
18 owns a parcel on which three or more acres of impervious surface is located
19 shall be required to obtain a permit under this section for the discharge of
20 stormwater from the impervious surface if the discharge was never previously
21 permitted or was permitted under an individual permit or general permit that

1 did not incorporate the requirements of the 2002 Stormwater Management
2 Manual or any subsequently adopted Stormwater Management Manual,
3 provided that:

4 (A) ANR initially shall only require a permit for those parcels that
5 the Secretary ranked under subdivision (g)(3)(C) of this section as within the
6 top 10 percent of parcels impacting water quality in the State; and

7 (B) all other parcels shall be subject to permitting according to the
8 schedule adopted by the Secretary under subdivision (g)(3)(D) of this section.

9 (d) Exemptions.

10 * * *

11 (e) State designation. The Secretary shall require a permit under this
12 section for a discharge or stormwater runoff from any size of impervious
13 surfaces upon a determination by the Secretary that the treatment of the
14 discharge or stormwater runoff is necessary to reduce the adverse impacts to
15 water quality of the discharge or stormwater runoff taking into consideration
16 any of the following factors: the size of the impervious surface, drainage
17 patterns, hydraulic connectivity, existing stormwater treatment, stormwater
18 controls necessary to implement the wasteload allocation of a TMDL, or other
19 factors. The Secretary may make this determination on a case-by-case basis or
20 according to classes of activities, classes of runoff, or classes of discharge.
21 The Secretary may make a determination under this subsection based on

1 activities, runoff, discharges, or other information identified during the basin
2 planning process.

3 (f) Rulemaking. ~~On or before December 31, 2017, the~~ The Secretary shall
4 adopt rules to manage stormwater runoff. At a minimum, the rules shall:

5 * * *

6 (13) Establish the general permit required under subdivision (g)(3) of
7 this section for discharges of stormwater from impervious surface of three or
8 more acres in size provided that the requirements of the rule and the general
9 permit are predictable, accessible to ordinary Vermonters, and cost
10 proportionate and cost reasonable relative to the impact of the parcel subject to
11 the permit.

12 (g) General permits.

13 (1) The Secretary may issue general permits for classes of stormwater
14 runoff that shall be adopted and administered in accordance with the provisions
15 of subsection 1263(b) of this title.

16 * * *

17 (3) ~~Within 120 days after the adoption by the Secretary of the rules~~
18 ~~required under subsection (f) of this section, the~~ The Secretary shall issue a
19 general permit under this section for discharges of stormwater from impervious
20 surface of three or more acres in size, ~~when the stormwater discharge~~
21 ~~previously was not permitted or was permitted under an individual permit or~~

1 ~~general permit that did not incorporate the requirements of the 2002~~
2 ~~Stormwater Management Manual or any subsequently adopted Stormwater~~
3 ~~Management Manual~~ that require a permit under subdivision (c)(7) of this
4 section. Under the general permit, the Secretary shall:

5 (A) Exclude from the calculation of impervious surface on private
6 property impervious surface on any municipal or State road or highway located
7 adjacent to or within the residential or commercial development where the
8 private property is located.

9 (B) Conduct site visits of every parcel of property identified by
10 geographic information system (GIS) data as subject to the three-acre
11 stormwater discharge permit in order to confirm that impervious surface
12 subject to permitting under the permit is actually present on the parcel.

13 (C) Once the Secretary has confirmed that every parcel identified by
14 GIS data is subject to the three-acre stormwater discharge permit, rank all
15 parcels according to the severity of impact that the parcels have on water
16 quality. Severity of impact shall be determined by multiple factors, including
17 the parcel's proximity to a water, slope, soil type, and drainage characteristics.

18 (D) Establish a schedule for implementation of the general permit by
19 geographic area of the State. The schedule shall establish the date by which an
20 owner of impervious surface shall apply for coverage under this subdivision
21 (3). The schedule established by the Secretary shall require an owner of

1 ~~impervious surface subject to permitting under this subdivision to obtain~~
2 ~~coverage by the following dates:~~

3 ~~(i) for impervious surface located within the Lake Champlain~~
4 ~~watershed, the Lake Memphremagog watershed, or the watershed of a~~
5 ~~stormwater impaired water on or before October 1, 2028; and~~

6 ~~(ii) for impervious surface located within all other watersheds of~~
7 ~~the State, not later than October 1, 2038, or not later than five years after a~~
8 ~~binding stormwater specific waste load allocation has been established for that~~
9 ~~watershed, whichever occurs first~~ for discharges from parcels subject to the
10 permit required under subdivision (c)(7) of this section that are not within the
11 top 10 percent of parcels impacting water quality in the State. The schedule
12 shall be transparent and the required compliance date for the permitting of each
13 parcel shall be based on the actual severity of impact to water quality from a
14 discharge of stormwater from a parcel so that those parcels posing greater
15 impact are required to be permitted prior to those parcels of lower impact.

16 ~~(B)~~(E) Establish practical, implementable, and cost-effective criteria
17 and technical standards, such as best management practices, for
18 implementation of stormwater improvements for the retrofitting of impervious
19 surface subject to permitting under this subdivision (3).

20 ~~(C)~~(F) Require that a discharge of stormwater from impervious
21 surface subject to the requirements of this section comply with the standards of

1 subsection (h) of this section for redevelopment of or renewal of a permit for
2 existing impervious surface.

3 ~~(D)~~(G) Allow the use of stormwater impact fees, offsets, and
4 phosphorus credit trading within the watershed of the water to which the
5 stormwater discharges or runs off.

6 (1) Enforcement safe harbor. The Secretary shall not initiate an
7 enforcement action under chapter 201 of this title against a person that failed to
8 obtain a permit under subdivision (c)(1) of this section for construction or
9 redevelopment of more than one-half of an acre but less than one acre of
10 impervious surface when:

11 (1) the construction occurred between July 1, 2022 and January 1, 2026;

12 (2) the owner of the property applied for and received a municipal
13 permit approving construction under authority set forth in 24 V.S.A. chapter
14 117; and

15 (3) the owner of the property was not notified by the municipality or the
16 Secretary that the threshold for a permit under subdivision (c)(1) of this section
17 had been lowered to one-half of an acre or more of impervious surface.

18 * * *

19 Sec. 3. IMPLEMENTATION AND TRANSITION

20 (a) Before filing under 3 V.S.A. § 841 a final proposal of the rule and
21 general permit required pursuant to 10 V.S.A. § 1264(f)(13) for discharges of

1 stormwater from impervious surface of three or more acres, the Secretary of
2 Natural Resources shall submit to the House Committee on Environment and
3 the Senate Committee on Natural Resources and Energy the proposed rule and
4 general permit for review. The submission shall include the list of properties
5 in the State subject to the permit under the proposed rule.

6 (b) Beginning on the effective date of this act, the requirements of the
7 Agency of Natural Resources' General Permit 3-9050 Application
8 Requirements for Operational Stormwater Permits shall no longer be applied to
9 discharges of stormwater from impervious surface of three or more acres in
10 size if the discharge was never previously permitted or was permitted under an
11 individual permit or general permit that did not incorporate the requirements of
12 the 2002 Stormwater Management Manual or any subsequently adopted
13 Stormwater Management Manual. The required permitting of three-acre
14 parcels previously identified by the Agency of Natural Resources as requiring
15 a permit, including for parcels for which property owners have applied for but
16 have not received coverage under the general permit, shall pause until the
17 adoption by the Secretary of Natural Resources of the rule and general permit
18 required under 10 V.S.A. § 1264(f)(13).

19 (c) If a property owner of a parcel previously identified by the Agency of
20 Natural Resources as requiring a three-acre stormwater discharge permit
21 voluntarily elects to continue with stormwater management of the parcel, the

1 Secretary of Natural Resources shall issue any required permit as an individual
2 permit under 10 V.S.A. § 1264 and the rules adopted under that section.

3 (d) The Agency of Natural Resources shall permit parcels that are subject
4 to the permit requirement in 10 V.S.A. § 1264(c)(7) and that are in the top 10
5 percent of parcels impacting water quality as individual permits.

6 Sec. 4. 27 V.S.A. § 613 is added to read:

7 § 613. THREE-ACRE SITE STORMWATER PERMIT

8 (a) Marketability of title. No encumbrance on record title to real estate or
9 effect on marketability shall be created by a property owner's failure to obtain
10 or comply with the three-acre stormwater discharge permit issued by the
11 Secretary of Natural Resources pursuant to 10 V.S.A. § 1264(c)(7).

12 (b) Disclosure of three-acre stormwater discharge permit.

13 (1) A property owner preparing to sell property subject to the three-acre
14 stormwater discharge permit issued under 10 V.S.A. § 1264(c)(7) shall, at least
15 72 hours prior to execution of the contract for the conveyance of the property,
16 disclose to the buyer that the property is subject to the three-acre stormwater
17 discharge permit.

18 (2) The Secretary of Natural Resources shall prepare a disclosure form
19 and informational material regarding the three-acre stormwater discharge
20 permit that a seller may provide to a buyer to satisfy the requirement of
21 subdivision (1) of this subsection.

1 (3) Noncompliance with the requirements of this subsection shall not
2 affect the marketability of title of a property.

3 Sec. 5. AGENCY OF NATURAL RESOURCES PUBLIC HEARINGS ON
4 THREE-ACRE STORMWATER DISCHARGE PERMIT

5 Within 120 days following the effective of this act, the Secretary of Natural
6 Resources shall conduct at least one public hearing in each county of the State
7 regarding the implementation and administration of the three-acre stormwater
8 discharge permit. At each public hearing, the Secretary shall:

9 (1) provide a plain-language overview of the history and purpose of the
10 three-acre stormwater discharge permit;

11 (2) explain the changes provided for in this act and the effect the
12 changes have on property owners; and

13 (3) allow time for public testimony, questions, and input.

14 Sec. 6. EFFECTIVE DATE

15 This act shall take effect on passage.