

Testimony to Vermont House Committee on Environment

March 11, 2025

From: Department of Environmental Conservation

Witnesses:

- Neil Kamman, Deputy Director, Department of Environmental Conservation (DEC)
- Kevin Burke, Program Manager, Stormwater Program (DEC)
- Gianna Petito, Grants Supervisor, Clean Water Initiative Program (DEC)

Related Agenda Item: 1:15 AM; 25-0967 - An act relating to stormwater management

Re: Commentary on Draft Three-Acre Stormwater Legislation version dated 2.27.2025:

<https://legislature.vermont.gov/Documents/2026/Workgroups/House%20Environment/Water%20Quality/Clean%20Water%20Oversight/Three%20Acre%20Storm%20Rule/Drafts,%20Amendments,%20Other%20Legal%20Documents/W~Michael%20Grady~DR%2025-0967,%20Draft%202.1,%202-27-2025~2-28-2025.pdf>

Chair Sheldon and Committee Members,

The Department of Environmental Conservation (DEC) appreciates the opportunity to continue to engage with you on drafting legislation pertaining to the state’s three-acre regulations and funding assistance. Below we outline our commentary on the draft legislation dated 2.27.2025 organized by what we support, what we believe might have been omissions, what we suggest editing, and remaining outstanding policy items for your consideration.

1. **DEC is supportive** of the following changes and requests they are kept in future drafts:
 - a. **Repeal of the Property Transfer Tax Clean Water Surcharge Sunset.** (Page 2, Lines 11-16 and other associated edits through page 4)
 - b. **Removal of the term “Grant” and addition of the term “financial assistance,” explanation** (Page 4, Line 20 and other associated edits through page 6)
 - i. We are suggesting broader language here to align with other language around the Clean Water Fund ([10 V.S.A. § 1387](#)) as well as to be reflective of more recently implemented and proposed approaches from DEC to support sites subject to retrofit under Stormwater General Permit 3-9050.
 - ii. The Clean Water Fund was established as a “mechanism for financing the improvement of water quality in the State...” and to “assist the State in the implementation of the Clean Water Initiative.” A purpose of the Clean Water Initiative is “to provide ...financing necessary to achieve and maintain compliance with the Vermont Water Quality Standards for all State waters.” Traditionally “financing” in this statute has been interpreted broadly to include all types of agreement structures that move money including grants, contracts, and loans.
 - iii. One example of financial assistance for three-acre sites not tied to a grant design is the [Manufacture Housing Community \(MHCs\) Stormwater Construction and Technical Assistance Initiative](#). DEC entered into a contract

with a vendor to provide stormwater construction funding for MHCs. The vendor manages outreach and engagement with this unique high needs sector, consults with DEC on prioritization and fund allocations, and oversees bidding and contracting for each site. In this manner each MHC site can benefit from access to funding and technical expertise without the burden of managing additional funds or performing grant management and reporting.

- iv. Another example is the [Linked Deposit program](#) proposed to be seed funded through the SFY 2026 Clean Water Budget in front of the legislature currently (see page 6 of the linked materials). In this scenario, financial assistance in the form of loans is proposed as opposed to grants to stretch the reach and impact of limited available funding across so many affected landowners and sites. As ANR proposed in the State Fiscal Year 2026 Clean Water Budget “Granting and loan forgiveness are not currently under consideration given the limited dollars to seed this financing program pilot. With demonstrated success, however, and any additional spending authority the program may receive, there is potential to expand beyond loans and merge with opportunities for complementary granting, loan forgiveness and/or subsidy given the needs and repayment capacities of the target audiences.” The linked deposit financing program is intended to be self-sustaining and alleviate long-term demand on the Clean Water Budget for regulatory clean water work. This allows more funds in the Budget to be available to invest in and incentivize non-regulatory or voluntarily-driven clean water projects.

c. Removing conditionality of stormwater funding to Clean Water Service Provider accomplishments, explanation (Page 5 Lines 1-4; Page 6 Lines 1-3)

- i. We are supportive of removing the tie between the Developed Lands and Municipal Stormwater funding programs and the adequate progress of the Clean Water Service Provider (CWSP). Clean Water Service Providers cannot fund regulatory work¹ but there are situations where they can support water quality improvements “above and beyond” once regulated phosphorus reduction targets are met. To date it has been very useful to allow and financially support regulatory progress in step with non-regulatory work to help with these funding partnerships and ensure that TMDL progress in one sector does not unnecessarily slow down progress in another sector. In practice, this has been challenging to follow given the tight timelines associated with American Rescue Plan Act (ARPA) dollars and the complex coordination needed across regulatory and non-regulatory clean water progress. For example, the Municipal Separate Storm Sewer Systems (MS4) communities received Municipal Stormwater Grant funding allocated through

¹ By definition of an eligible “clean water project” under [10 V.S.A 921](#) which means a best management practice or other program designed to improve water quality to achieve a target established under section 922 of this title that: (A) is not subject to a permit under chapter 47 of this title, is not subject to the requirements of 6 V.S.A. chapter 215, exceeds the requirements of a permit issued under [chapter 47](#) of this title, or exceeds the requirements of [6 V.S.A chapter 215](#)

the Clean Water Board but populated with ARPA dollars that necessitated quick spend down out of step/in advance of CWSP significant progress.

- d. **Broader language than “three-acre” for retrofit support, explanation** (Page 5 Lines 6-11)
 - i. To date the state has provided funding for stormwater projects that provide a net water quality benefit, specifically funding projects that treat existing impervious surfaces as opposed to funding projects to treat new impervious surfaces. Over the past two years of funding “three-acre” sites the Department has heard from a handful of sub-three-acre sites seeking financial assistance. The structure of the rule does require previously permitted sub-three-acre sites in stormwater impaired watersheds to also complete an Engineering Feasibility Analysis (EFA), re-permit, and retrofit stormwater treatment and control. This can include engineering costs and permit obtainment costs in line with the 3-acre site requirements. One such example is a portion of the Oakwood development in South Burlington. To date, however, statutory authorizations of funding have been specific to “three-acre” to grant those sites financial assistance and reprieve. We’re suggesting this language addition to provide greater equity in access to financial assistance. This seems appropriate given these other sites are similarly addressing treatment of existing impervious surfaces and providing a net water quality benefit to the state. Note DEC only believes this edit is needed under the Developed Lands Program as the Municipal Stormwater Implementation Program already provides sufficient flexibility through the following language; “or a permit required by the Secretary to reduce the adverse impacts to water quality of a discharge or stormwater runoff.” (Page 5 Lines 19-21)
 - e. **Change to State Fiscal Year 2027 for further capitalizing the Municipal Stormwater Implementation Program**, explanation (Page 8, Line 14).
 - i. As a slight re-write that potentially avoids the concern of binding future legislative action, the committee might consider directing the Clean Water Board to include this as part of their initial budget recommendation prior to release of the Draft SFY 2027 budget for public comment in October 2025.
2. DEC notes in this February 27, 2025 draft the following **key omissions when compared to the [February 25, 2025 version](#)** and DEC requests re-inclusion of:
- a. The date extension for properties located in Lake Champlain, Lake Memphremagog, and stormwater impaired waters to apply for permit coverage from 2023 to 2028. (See the following sections of the [February 25, 2025 version](#): Page 4 Lines 7-8, Page 6, Line 21).
 - b. Removal of permit requirements for properties located outside of Lake Champlain, Lake Memphremagog, and stormwater impaired waters. (See the following section of the [February 25, 2025 version](#): Page 7 Lines 1-2). **DEC suggests the following alternative language for this section:** “(ii) for impervious surface located within all other watersheds of the State, no later than five years after a binding stormwater-specific waste-load allocation has been established for that watershed.” Note the

following DEC concerns for retaining permit applicability for these areas of the state on the current schedule:

- i. The stormwater treatment standard for phosphorus reduction may or may not be the same treatment standard as would be required for other impairments. For example, specific nitrogen reduction targets in the Connecticut River Watershed to address the nitrogen impairment in Long Island Sound would inform more prescribed treatment standards.
- ii. While 3-acre permit standards do assist with flood mitigation to a degree, they are not designed to control fluvial and inundation flooding. While flood resiliency planning and project implementation are key priorities statewide, a nutrient-reduction focused permit confined to specific regulated sites may not be the most cost-effective or efficient approach to regional resilience planning and implementation.
- iii. Permitting staff will be challenged in their ability to provide site technical assistance to properties statewide given the welcomed extension for Lake Champlain, Lake Memphremagog, and stormwater impaired waters. A staggered approach alleviates these workload challenges and maximizes the availability and quality of technical assistance provided to Vermonters.
- iv. Expansion of the three-acre requirements will add pressure and demand for financial assistance already challenged by limited available funding.

3. DEC suggests a few **minor edits** to the following sections:

- a. Expansion of focus of the Stormwater Utility study committee to consider regional utilities against the statewide structure for financial assistance. (Page 11, Lines 20-21)
 - i. Replace “(4) propose how a regional stormwater utility district could be eligible for Clean Water State Revolving Loan Fund awards; and”
 - ii. With “(4) propose how a regional stormwater utility district could access state-level financial assistance for the design, construction, and operation and maintenance (O&M) of regulatory and non-regulatory stormwater systems including from the Clean Water State Revolving Loan Fund; and”
 - b. Provide additional time for the Stormwater Utility study committee to unpack complex legal and funding questions and allow time for establishment of new statewide financial assistance programs to see how municipal incentives are working and identify any regional gaps. (Page 12, Line 6)
 - i. Replace “(e) Report. On or before January 15, 2026, the Study Committee shall”
 - ii. With “(e) Report. On or before January 15, 2027, the Study Committee shall”
4. DEC would like to highlight the following **policy items that remain unaddressed** in this draft that would benefit from your continued consideration.

- a. Limited focus on municipally “adopted” residential subdivisions for financial assistance. (Page 7 Lines 18-20; Page 8 Lines 16-18).
 - i. As drafted, the one-time capitalization of funds (\$5 million) as well as the annual minimum funding allocation (\$1 million) into the Municipal Stormwater Implementation program focuses financial assistance towards “residential subdivisions when the municipality assumes full legal responsibility for the stormwater system.”
 - ii. **Are there other high-need sites, beyond residential subdivisions, that would benefit from technical and financial assistance through incentivized municipal adoption or partnership?** There is a large diversity of three-acre site types and ownership structures, such as those owned and managed by non-profits providing critical community services, utilities and waste districts, and local small businesses. There are benefits to the site and the state for municipal adoption or partnership as municipalities tend to offer stronger technical knowledge and expertise in permitting and construction oversight as well as capacity and equipment for operations and maintenance. ANR has piloted seven public-private partnership three-acre projects as priorities for American Rescue Plan Act (ARPA) financial assistance to demonstrate the mutualism of these partnerships and the private site users are not limited to residential subdivisions. Programs established with ARPA funds may be continued pending continued funds but most all currently remain insufficiently funded to meet the need and high construction costs.
 - iii. **Is financially incentivizing municipal adoption the preferred pathway to support high needs three-acre sites?** It should also be noted that as proposed, financial assistance through municipal adoption may present geographic inequities, where sites will receive varying levels of financial assistance depending on their location and municipality’s willingness and capacity to adopt and take on legal responsibility for the site. There are some three-acre sites that might still be considered high-needs but that benefit from a regional or basin-wide approach as opposed to reliance on municipal willingness. So far, ANR has identified public schools, Manufactured Housing Communities (MHC), and Agricultural Fairgrounds, as key site users for prioritized funding assistance, largely through American Rescue Plan Act (ARPA) funding. Existing ANR initiatives to support these site users help provide broader geographic equity so that each fairground or MHC does not have to rely on a willing municipality to access technical and financial assistance for three-acre compliance. Programs established with ARPA funds may be continued pending continued funds but most all currently remain insufficiently funded to meet the need and high construction costs. By carving out five million initially, and annually an additional one million for the municipal stormwater implementation program targeting residential subdivisions, this leaves less funding overall, within the confines of the Clean Water Budget to support these other site users and needs. Ultimately, this draft legislation establishes a new site user type (residential subdivision) as a funding priority without holistically contemplating all other user and owner types and providing guidance on respective or comparative priorities.

b. **Impact Fees** – Pursuant to the direction and authority set forth in [10 V.S.A. § 1264 \(f\)\(8\)](#) and (g)(3)(d), DEC has developed and implemented a permitting structure that allows for the use of stormwater impact fees and offsets by watershed, as it relates to 3-acre site permitting and other sub-3-acre site permitting subject to the same requirements.

i. Currently, impact fees apply when a site is unable to meet the applicable standards.

a. Impact fees are prorated (reduced) based on the amount of treatment achieved through an approved Engineering Feasibility Analysis (EFA). The impact fee schedule is as follows:

Redevelopment Standard: \$12,500 per untreated impervious acre;
Channel Protection Standard: \$25,000 per untreated impervious acre.

b. The cost of impact fees, when applicable, is in addition to the engineering, permitting, and implementation costs. The impact fees were designed to fund or incentivize additional stormwater treatment in the same watershed, that was otherwise not accomplished on a given site as well as to incentivize thorough engineering analysis and best effort to achieve maximum treatment on site. There has been some concern within the regulated community and the engineering community, however, that an impact fee assessed on a site that will already be incurring implementation costs is punitive. DEC would like to present a few options for revising the impact fee and offset structure that are aimed at alleviating what may be an unnecessary and additional financial burden on some of the regulated property owners, without compromising the established treatment standards. Several options follow for consideration.

i. Eliminate impact fees for sites that can retrofit, if the site can achieve at least 50% compliance with applicable standards, contingent on Department approval of EFA. This does not modify the standards, and is specific to impact fee assessment..

ii. For sites that already have some treatment practices, and where the approved EFA was determined to not result in an increase in treatment by more than 10% over existing conditions, for any applicable standard, the site is not required to construct a new best management practice and the standard is considered to be met. In this instance, impact fees are not applicable.

iii. Impact fees may be capped at a set amount. Caps could be established and applied independently for each standard. The details and specific structure of such a system will require further consideration by DEC. A cap could be set at a specified dollar

amount or be structured based on regulated impervious acres. A range of caps could also be established if determined necessary for equity considerations.