



March 11, 2025

Committee on Environment
115 State Street
Montpelier, VT 05633

Re: 25-0967 - An act relating to stormwater management

Dear Committee Members,

Municipalities subject to an MS4 permit typically establish a Stormwater Utility and associated fees, providing a dedicated revenue source for maintaining, operating, and upgrading stormwater systems. However, non-MS4 municipalities without such utilities must secure alternative funding for these functions. The proposed bill addresses this funding gap by allowing special assessments to support stormwater system operation, maintenance, and repairs—critical for meeting permit obligations.

However, the bill fails to address a key municipal concern: maintaining clear legal distinctions between public and private stormwater permits.

Under current policies stormwater runoff from municipally owned roads is regulated by the State of Vermont Agency of Natural Resources through one of two permits; a state mandated **Municipal Roads General Permit** or a Federally mandated, State administered, **Municipal Separate Storm Sewer System (MS4) Permit**. Both of these permits provide municipalities with the legal authority to discharge stormwater from their impervious surfaces, including public roads.

The issue is when a road is part of a private developer's stormwater permit for a development and eventually is transferred to the municipality. After the Road is transferred to the municipality it is required to be incorporated into the Municipalities Municipal Roads General Permit, or the MS4 permit, but the state is also requiring the municipality to remain a co-permittee to the original Operational Stormwater Discharge permit (3-acre permit).

The state's determination is based on **The Stormwater Permitting Rule (Section 22-302(b)(3)(A)(i))**, which states:

"If the applicant does not own the impervious surface or lands on which the stormwater system used to comply with the requirements of Section 22-901 (operational permits) is located, the owner shall be a co-applicant."

This requirement is problematic for several reasons:

- **Redundancy** – Municipal road discharges are already permitted under either the **Municipal Roads General Permit** or the **MS4 permit**, making additional permitting unnecessary.



- **Legal & Financial Risk** – Municipalities cannot reasonably secure performance bonds or sureties in these situations, unlike typical public-private agreements.
- **Compliance Risks** – If **Homeowners' Associations (HOAs)** or private permit holders fail to meet obligations, municipalities risk non-compliance or may be forced to make costly infrastructure upgrades to maintain compliance.

Proposed Amendment:

We request an amendment to **The Stormwater Permitting Rule (Section 22-302(b)(3)(A)(i))** to read:

*"If the applicant does not own the impervious surface or lands on which the stormwater system used to comply with the requirements of Section 22-901 (operational permits) is located, the owner shall be a co-applicant, *unless the land from which the stormwater is being discharged is already permitted under an MS4, TS4, or Municipal Roads General Permit.*"*

This revision would allow municipalities to **retain autonomy in negotiations** and **provide support to private stormwater system operators** without assuming unnecessary liabilities.

We would also like to take this opportunity to discuss the proposal outlined in Section 8: Appropriation.

Prior to implementation of the 3-9050 General Permit which implemented the 3-acre requirements, the concern about appropriate funding was raised with the State Department of Environmental Conservation. The following Q&A dated September 01, 2020 is from the Final Response Summary published on the Agencies website.

Comments on Costs, Impact Fees, and Funding

35. How much money per acre do you estimate on the average this will cost? We recommend that a study is conducted to look at the economic impact of this draft permit before it is finalized. This will likely have impact on the cost of living and doing business here in Vermont. Given the default impact fee of \$50,000 per acre in the permit it is safe to assume that this is in the ballpark of what DEC estimates as the cost per acre to install stormwater infrastructure. The cost to implement this permit may run into the hundreds of millions of dollars.

Response: The Agency does not have an accurate estimate of total costs associated with implementation of the stormwater requirements stemming from Act 64 of 2015, including the implementation of the General Permit. Costs will vary substantially between individual projects depending on what standards the project needs to meet, existing conditions, and the size of the project. With that said, the Agency has previously used \$30,000 per acre for generating rough cost estimates. This value is based on cost information compiled by the Agency approximately 15 years ago, for compliance with multiple standards (Water Quality, Recharge, and Channel Protection) of the Vermont Stormwater Management Manual (Manual). Although \$30,000/acre is dated, most "three-acre sites" are



required to only meet the Redevelopment Standard, as such costs are less than for projects meeting multiple standards under the Manual. Additionally, some “three-acre sites” will require little to no site modification to comply with the General Permit, thus further complicating development of an average cost estimate. Using an average cost of \$30,000 per acre of impervious surface results in total costs in the hundreds of millions of dollars.

We are finding that the real cost of implementation in 2024/2025 is costing \$60,000-\$70,000/acre of impervious surface. These costs were provided by the City S. Burlington and the Town of Shelburn.

We understand that the committee is aware of the burdening cost the 3-acre requirement is having on communities across the state, but we are concerned that this bill is only taking funding from one Clean Water Sector and allocating it to another. If the goal of meeting the Lakes TMDL through reductions of Phosphorus from developed lands is to be obtained, then annual investments of \$20 Million new additional funds to CWS over the next 10 years for the improvements of existing stormwater systems which do not currently meet 2002 Stormwater Standards is going to be required, in conjunction with a time extension for systems to complete construction because there is not enough capacity in the engineering and construction sector of Vermont to support the current requirements. A concern that was expressed during the public comment period in 2020, and which is being experienced today.

9. Comment: Comments were received expressing concern that the schedule for submittal of the NOIs, and for constructing required stormwater treatment practices, does not consider the capacity of consulting engineers and construction contractors to perform the necessary work.

Response: The Agency acknowledges this concern. In addition to revising the application schedule to provide applicants with additional time, there may be some ability among private sector engineers and construction contractors to increase capacity based on the increased demand for their services.

Sincerely,

Christine Dougherty

Christine Dougherty
President
Green Mountain Water and Environment Association
christine.dougherty@gmwea.org