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April 9, 2025

Senate Committee on Natural Resources & Energy

Vermont State House
115 State Street
Montpelier, VT 05633-5301

Dear Chair Watson and Members of the Senate Committee on Natural Resources and Energy,

I am writing to express several concerns about the State's Three Acre Site Rule (the "Stormwater Rule"), which was passed under the authority of the 2015 Clean Water Act. My neighbors and I learned this summer that part of our neighborhood is subject to the Stormwater Rule. As you are likely aware, the Stormwater Rule requires existing sites (including residential developments) with more than three acres of impervious surface that lack a stormwater permit based on the 2002 Stormwater Management Manual to develop and implement projects to treat stormwater runoff to remove phosphorus and other pollutants.

While my neighborhood has a pre-existing stormwater permit, with some stormwater infrastructure in place such as grassed swales, I understand that the standards under the Stormwater Rule will likely require construction of additional stormwater treatment facilities throughout my neighborhood. Prior to 2024, the Town assumed responsibility for my neighborhood's stormwater permit under the "orphan program." However, once the Town understood that costs of maintaining the new permit would far exceed previous costs, it declined to continue to take full responsibility for the stormwater permit.

When I purchased my property, it was my understanding that I would only be responsible for the land and property which I own. I personally own about one acre of land, with well under three acres of impervious surface. My neighborhood does not have a homeowner's association and there are no common elements for which property owners have any collective responsibility. Pursuant to the Stormwater Rule, however, I am now required to take responsibility for stormwater runoff from the impervious surfaces on my land as well as from 47 neighboring properties, all of varying sizes and character. The Department of Environmental Conservation ("DEC") has informed us that in order to comply with the Stormwater Rule, the private landowners in my neighborhood need to create a collective entity which is legally empowered to act on behalf of all the property owners subject to this rule. There are several property owners who refuse to join any such collective entity, which creates a collective action issue. If not all property owners join, then the costs of compliance will unfairly fall on those property owners who agree to join the collective. I have never before encountered a law or regulation which requires such collective action in order to achieve compliance.

The alternative is for the Town of Richmond to take full legal responsibility for our stormwater permit. As noted above, the Town has declined to do so, due to concerns about costs and potential legal liability. Although the proposed amendments to the Clean Water Act are intended to ease the process for municipalities to take responsibility for stormwater permits, they do not adequately address the issues of available funding or liability. In order to take full legal responsibility for my neighborhood's permit, the Town would need to exercise easements over privately owned land. This exercise of easements/eminent domain will likely face resistance from private landowners, including costly legal challenges. Richmond is a small town of approximately 4,100 residents. There is no Town-wide stormwater utility and Richmond does not have an MS4 permit. There is no staff dedicated to stormwater management. The Selectboard has repeatedly expressed that the Town lacks the expertise and resources to take full responsibility for my neighborhood's stormwater permit.

I am also greatly concerned about the costs of compliance with the Stormwater Rule. Last fall, DEC estimated the cost of compliance to fall between \$30,000 and \$50,000 per impervious acre within the permit area. However, more recent estimates of the costs of compliance range from \$70,000 to \$112,000 per impervious acre. Our neighborhood has approximately 10.3 acres of impervious surface, which is a mixture of municipal roads and privately owned properties. Per the Stormwater Rule, the private landowners are responsible for stormwater runoff from approximately 6.6 acres of impervious surface. This means that we'll likely spend at least \$4,125-\$15,400 per household on remediation efforts. (The engineers are currently conducting their preliminary study, so we do not yet have a more accurate estimate of remediation costs.) Frankly, I cannot afford to pay over \$15,400. As a dual income family of four, my husband and I are already struggling to make ends meet while paying for childcare for two small children. I have spoken with several neighbors who have also expressed distress over the cost of compliance, some of whom fear they may need to sell their homes. Additionally, there is a less obvious cost of compliance, which is that the required remediation measures may negatively impact some people's property values. DEC has informed us that at this time, there is no funding available to help to offset the cost of remediation for our neighborhood.

Under the currently proposed amendments to the Clean Water Act, additional funding will be dedicated to help offset the costs of the compliance. However, funding for private landowners is still categorized as a Tier 3 priority, meaning these funds are lowest priority. Given the high cost of compliance for developments state-wide, I highly doubt that landowners will have access to a meaningful pool of funds to help offset costs.

Lastly, I note that DEC estimates that the Stormwater Rule affects approximately 5% of private residential landowners in Vermont. This means that the State is requiring 5% of homeowners to shoulder the burden and costs of cleaning up Lake Champlain for the entire State. This strikes me as extremely inequitable and unfair. Rather than targeting a select few neighborhoods, a more fair and logical approach would be to require Towns and municipalities to take a comprehensive and holistic town-wide approach to managing stormwater runoff into Lake Champlain. The State should also require DEC to work closely with municipalities to help them to secure funding for engineering studies and remediation and assist them in identifying cost effective solutions to the stormwater pollution in their communities.

I want to be clear that I support efforts to clean up Lake Champlain. However, I believe that those efforts need to be undertaken on a more equitable and comprehensive scale across the State. I am willing to pay my fair share, as a homeowner and taxpayer, but I do not believe that the costs and burdens of compliance should fall on a few unlucky communities. I understand that some communities have already incurred great costs in implementing measures to comply with the Stormwater Rule and I urge the State to seek funding to assist those communities and reimburse them for some or all of their costs. There is still time for the legislature to amend the Clean Water Act and for DEC to implement revised rules that address stormwater phosphorus pollution in a more equitable and comprehensive manner.

Thank you for your time and attention to this matter.

Sincerely,

Sarah Heim

Resident of the Southview Neighborhood
Richmond, VT