

REPORT ON DEFERRAL OF TITLE ENCUMBRANCE FOR
NON-COMPLIANCE WITH
PRE-TRANSITION STORMWATER PERMITS

A RECOMMENDATION ON WHETHER THE LEGISLATURE SHOULD
EXTEND THE SUNSET IN
27 V.S.A. §613

2012 Act 91, Section 4

Submitted to the
House Committee on Fish, Wildlife and Water Resources
Senate Committee on Natural Resources and Energy

Agency of Natural Resources
Department of Environmental Conservation

January 15, 2016

INTRODUCTION

This report is prepared pursuant to Sec. 4 of Act 91 of the Acts of 2011 and reports on whether 27 V.S.A. §613 (encumbrance on title; failure to obtain a pre-transition stormwater permit) should be repealed. For the reasons described herein, the Department recommends that 27 V.S.A. §613 not be repealed before 2017.

BACKGROUND

There exist roughly a few hundred expired stormwater permits in the stormwater-impaired waters that were issued before the adoption of current standards (i.e. the Vermont Stormwater Management Manual). To prevent a title defect on the holder of an expired permit during the period before there is a watershed or general permit implementing the TMDL (total maximum daily load), 27 V.S.A. §613 provides a process for ensuring clean title provided the holder of the permit undertakes certain land recording and notification (to DEC) steps. 27 V.S.A. §613 is set to be repealed effective June 30, 2016.

All of the non-mountain stormwater-impaired waters now have a general permit, i.e. the Municipal Separate Storm Sewer System General Permit (MS4 GP), that implements the applicable stormwater TMDLs, with the exception of Moon Brook in Rutland City. As part of the implementation of the TMDL via the MS4 GP expired permits will be renewed, and upgraded as necessary, to implement the stormwater TMDLs for the respective receiving water. However, because the MS4 GP provided municipalities until October 2015 to identify all expired permits for which the municipality would assume responsibility, and because the municipalities have not completed this requirement despite working in good faith, most of the expired permits have yet to be resolved. The Department expects all MS4 communities will complete the process of identifying expired permits for which it will assume responsibility no later than June 30, 2017.

The so-called stormwater-impaired “mountain watersheds” at Mt. Snow, Killington, and Sugarbush have some number of expired permits and to date there are no TMDLs or watershed permits in place (Rice Brook at Sugarbush has been remediated, Clay Brook remains impaired). Consequently, the holders of expired permits have not had a path to permit renewal. The Department anticipates directing Mt. Snow, Sugarbush, and Killington to obtain permit coverage under permits that implement a Water Quality Remediation Plan in early 2016. Additionally, all other holders of expired permits in these watersheds will be directed to renew their permits in 2016. Consequently, there should be no need to continue with permit deferral in the mountain watersheds after June 30, 2017.

RECOMMENDATION

The Department’s recommendation is that the statute be modified so as to not be repealed before June 30, 2017. The Department further recommends that §613(e) be modified as follows to provide certainty as to when title deferral ceases:

(e) This section shall not apply to any impaired watershed for which the secretary of natural resources has issued a watershed improvement permit, issued an individual permit under a total maximum daily load approved by the U.S. Environmental Protection Agency, issued a general permit implementing a total maximum daily load approved by the U.S. Environmental Protection Agency, or issued a general or individual permit implementing a water quality remediation plan, upon issuance of notification by the secretary of natural resources to the owners of lands covered by a pre-transition stormwater permit. (Added 2011, No. 91 (Adj. Sess.), § 2, eff. Jan. 15, 2012.)

This proposed revision will provide the time necessary for expired permits to be addressed during the period between the issuance of a permit implementing a TMDL or water quality remediation plan, and the development of the specific standard to which an expired permit may be held.