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State NPDES Authority Statutes:

Vermont



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A National Agricultural Law Center Research Publication
State NPDES Authority Statutes: Vermont

[10 V.S.A. § 1250](#)

[10 V.S.A. § 1251](#)

[10 V.S.A. § 1251a](#)

[10 V.S.A. § 1252](#)

[10 V.S.A. § 1253](#)

[10 V.S.A. § 1254](#)

[10 V.S.A. § 1258](#)

[10 V.S.A. § 1259](#)

[10 V.S.A. § 1263](#)

[10 V.S.A. § 1264](#)

Current through the 2022 legislative session.

§ 1250. State Water Quality Policy.

It is the policy of the State of Vermont to:

- (1) protect and enhance the quality, character and usefulness of its surface waters and to assure the public health;
- (2) maintain the purity of drinking water;
- (3) control the discharge of wastes to the waters of the State, prevent degradation of high quality waters and prevent, abate or control all activities harmful to water quality;
- (4) assure the maintenance of water quality necessary to sustain existing aquatic communities;
- (5) provide clear, consistent, and enforceable standards for the permitting and management of discharges;



(6) protect from risk and preserve in their natural state certain high quality waters, including fragile high-altitude waters, and the ecosystems they sustain;

(7) manage the waters of the State to promote a healthy and prosperous agricultural community; to increase the opportunities for use of the State's forest, park, and recreational facilities; and to allow beneficial and environmentally sound development; and

(8) seek over the long term to upgrade the quality of waters and to reduce existing risks to water quality.

§ 1251. Definitions.

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "Board" means the Secretary of Natural Resources.

(2) "Department" means the Department of Environmental Conservation.

(3) "Discharge" means the placing, depositing, or emission of any wastes, directly or indirectly, into an injection well or into the waters of the State.

(4) "Effluent limitation" means any restrictions or prohibitions established in accordance with the provisions of this chapter or under federal law including effluent limitations, standards of performance for new sources, and toxic effluent standards, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged to waters of the State, including schedules of compliance.

(5) "Hazardous materials" means any material determined by the Secretary to have an unusually harmful effect on water quality if discharged to the waters of the State.

(6) "Mixing zone" means a length or area within the waters of the State required for the dispersion and dilution of waste discharges adequately treated to meet federal and State treatment requirements and within which it is recognized that specific water uses, or water quality criteria associated with the assigned classification for such waters may not be realized. The mixing zone shall not extend more than 200 feet from the point of discharge.

(7) "Oil" means oil of any kind, including petroleum, fuel oils, oily sludge, waste oil, gasoline, kerosene, jet fuel, tar, asphalt, crude oils, lube oil, insoluble or partially soluble derivatives of mineral, animal, or vegetable oils, or any product or mixture thereof.

(8) "Person" means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the State of Vermont or any agency,



department, or subdivision of the State; any federal agency; or any other legal or commercial entity.

(9) “Public interest” means that which is for the greatest benefit to the people of the State as determined by the standards set forth in subsection 1253(e) of this title.

(10) “Schedule of compliance” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or any other limitation, prohibition, or standard, including any water quality standard.

(11) “Secretary” means the Secretary of Natural Resources or his or her authorized representative.

(12) “Waste” means effluent, sewage, or any substance or material, liquid, gaseous, solid, or radioactive, including heated liquids, whether or not harmful or deleterious to waters; provided, however, the term “sewage” as used in this chapter shall not include the rinse or process water from a cheese manufacturing process.

(13) “Waters” includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, that are contained within, flow through, or border upon the State or any portion of it.

(14) “Injection well” means any opening in the ground used as a means of discharging waste except for a dry hole not exceeding seven feet in depth that is constructed as and used solely for the disposal of domestic wastes.

(15) “Indirect discharge” means any discharge to groundwater, whether subsurface, land-based, or otherwise.

(16) “Waste management zone” means a specific reach of Class B waters designated by a permit to accept the discharge of properly treated wastes that prior to treatment contained organisms pathogenic to human beings. Throughout the receiving waters, water quality criteria must be achieved but increased health risks exist due to the authorized discharge.

(17) “Basin plan” means a plan prepared by the Secretary for each of Vermont's 17 basins in conjunction with the basin planning process required by section 303(e) of the federal Clean Water Act and 40 C.F.R. part 131.

(18) Repealed by 2017, Adj. Sess., No. 185, § 15, eff. May 28, 2018.

(19) “Stormwater utility” means a system adopted by a municipality or group of municipalities under 24 V.S.A. chapter 97, 101, or 105 for the management of stormwater runoff.



§ 1251a. Water Pollution Administration.

(a) The Secretary may adopt rules, in accordance with the procedures in the Administrative Procedure Act, that are necessary for the proper administration of the Secretary's duties under this subchapter, including a planning process approvable under Public Law 92-500, as amended.

(b) The Secretary shall establish by rule requirements for the issuance of permits under subsection 1259(e) of this title, including in-stream water quality parameters necessary to establish permit conditions and performance monitoring; however, these in-stream water quality parameters shall not supersede water quality standards adopted by the Secretary.

(c) On or before July 1, 2016, the Secretary of Natural Resources shall adopt by rule an implementation process for the antidegradation policy in the water quality standards of the State. The implementation process for the antidegradation policy shall be consistent with the State water quality policy established in section 1250 of this title, the Vermont Water Quality Standards, and any applicable requirements of the federal Clean Water Act. The Secretary of Natural Resources shall apply the antidegradation implementation policy to all new discharges that require a permit under this chapter.

§ 1252. Classification of High-Quality Waters; Mixing Zones.

(a) The State adopts, for the purposes of individually classifying the uses of its high-quality waters, the following classes and definitions:

Class A(1): Waters in a natural condition that have significant ecological value;

Class A(2): Waters that are suitable for a public water source with filtration and disinfection or other required treatment; character uniformly excellent.

Class B(1): Waters in which one or more uses are of demonstrably and consistently higher quality than Class B(2) waters; or

Class B(2): Waters that are suitable for swimming and other primary contact recreation; irrigation and agricultural uses; aquatic biota and aquatic habitat; good aesthetic value; boating, fishing, and other recreational uses and suitable for public water source with filtration and disinfection or other required treatment.

(b) The Secretary may establish mixing zones or waste management zones as necessary in the issuance of a permit in accordance with this section and criteria established by rule. Those waters authorized under this chapter, as of July 1, 1992, to receive the direct discharge of wastes that prior to treatment contained organisms pathogenic to human beings are designated waste management zones for those discharges. Those waters that as of July 1, 1992 are Class C waters into which no direct discharge of wastes that prior to treatment contained organisms pathogenic to human beings is authorized, shall become waste management zones for any municipality in



which the waters are located that qualifies for a discharge permit under this chapter for those wastes prior to July 1, 1997.

(c) Upon issuance or renewal of any discharge permit, subsequent to July 1, 1992, involving a discharge into a waste management zone created pursuant to subsection (b) of this section, the Secretary shall adjust the size of the waste management zone to the extent necessary to accommodate the authorized discharge.

(d) Prior to the initial authorization of a new waste management zone, except those created pursuant to subsection (b) of this section, or prior to the expansion of the size of an existing zone created under this section, in order to accommodate an increased discharge, the Secretary shall:

(1) Prepare a draft permit which includes a description of the proposed waste management zone and proceed in accordance with subsections 7713(c), (d), and (e) of this title.

(2) Give due consideration to the cumulative impact of overlapping waste management zones.

(3) Determine that the creation or expansion of such a waste management zone is in the public interest after giving due consideration to the factors specified in subdivisions 1253(e)(1) through (10) of this title.

(4) Determine that the creation or expansion of such a zone will not:

(A) create a public health hazard; or

(B) constitute a barrier to the passage or migration of fish or result in an undue adverse effect on fish, aquatic biota, or wildlife; or

(C) interfere with those uses that have actually occurred on or after November 28, 1975, in or on a water body, whether or not the uses are included in the standard for classification of the particular water body; or

(D) be inconsistent with the anti-degradation policy in the water quality standards.

(5) Provide a written explanation with respect to subdivisions (2) through (4) of this subsection.

(e) The Secretary shall adopt standards of water quality to achieve the purposes of the water classifications. Such standards shall be expressed in detailed water quality criteria, taking into account the available data and the effect of these criteria on existing activities, using as appropriate: (1) numerical values, (2) biological parameters; and (3) narrative descriptions. These standards shall establish limits for at least the following: alkalinity, ammonia, chlorine, fecal coliform, color, nitrates, oil and grease, dissolved oxygen, pH, phosphorus, temperature, all toxic substances for which the U.S.



Environmental Protection Agency has established criteria values, and any other water quality parameters deemed necessary by the Board.

(f) The Secretary may issue declaratory rulings regarding these standards.

(g) Notwithstanding the provisions of subsection 1259(c) of this title and rules implementing that subsection, the Secretary may issue a discharge permit pursuant to section 1263 of this title, for a municipal discharge of treated municipal waste into Class B waters, if that municipal discharge was established prior to January 1, 1974 and was, as of January 1, 1990, occurring pursuant to authorization contained in an assurance of discontinuance.

(h) A discharge permit issued pursuant to subsection (g) of this section may not authorize an increase in mass pollutant loading beyond that contained in the assurance of discontinuance.

§ 1253. Classification of Waters Designated, Reclassification.

(a) The waters of all lakes, ponds, and reservoirs, natural or artificial, used exclusively as a public water source prior to July 1, 1971, and all waters flowing into such lakes, ponds, and reservoirs, and all waters located above 2,500 feet altitude, National Geodetic Vertical Datum, are designated Class A waters and shall be maintained as such unless reclassified.

(b) The remaining waters are designated Class B(2) waters and shall be maintained as such unless reclassified.

(c) On its own motion, or on receipt of a written request that the Secretary adopt, amend, or repeal a reclassification rule, the Secretary shall comply with 3 V.S.A. § 806 and may initiate a rulemaking proceeding to reclassify one or more uses of all or any portion of the affected waters in the public interest. In the course of this proceeding, the Secretary shall comply with the provisions of 3 V.S.A. chapter 25, and may hold a public hearing convenient to the waters in question. If the Secretary finds that the established classification is contrary to the public interest and that reclassification is in the public interest, he or she shall file a final proposal of reclassification in accordance with 3 V.S.A. § 841. If the Secretary finds that it is in the public interest to change the classification of any pond, lake, or reservoir designated as Class A for a public water source, the Secretary shall so advise and consult with the Department of Health and shall provide in its reclassification rule a reasonable period of time before the rule becomes effective. During that time, any municipalities or persons whose water source is affected shall construct filtration and disinfection facilities or convert to a new water source.

(d)

(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for



those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forestry and on Natural Resources, Fish, and Wildlife and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(2) In developing a basin plan under this subsection, the Secretary shall:

- (A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;
- (B) identify wetlands that should be reclassified as Class I wetlands;
- (C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;
- (D) review the evaluations performed by the Secretary under subdivisions 922(a)(1) and (2) of this title and update those findings based on any new data collected as part of a basin plan;
- (E) for projects in the basin that will result in enhancement of resources, including those that protect high quality waters of significant natural resources, the Secretary shall identify the funding needs beyond those currently funded by the Clean Water Fund;
- (F) ensure that municipal officials, citizens, natural resources conservation districts, regional planning commissions, watershed groups, and other interested groups and individuals are involved in the basin planning process;
- (G) ensure regional and local input in State water quality policy development and planning processes;



(H) provide education to municipal officials and citizens regarding the basin planning process;

(I) develop, in consultation with the regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

(J) provide for public notice of a draft basin plan; and

(K) provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, negotiate and issue performance grants to the Vermont Association of Planning and Development Agencies or its designee, the Natural Resources Conservation Council or its designee, and to Watersheds United Vermont or its designee to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection in a manner consistent with the authority of regional planning commissions under 24 V.S.A. chapter 117 and the authority of the natural resources conservation districts under chapter 31 of this title. When negotiating a scope of work with the Vermont Association of Planning and Development Agencies or its designee, the Natural Resources Conservation Council or its designee, and Watersheds United Vermont or its designee to assist in or produce a basin plan, the Secretary may require the Vermont Association of Planning and Development Agencies, the Natural Resources Conservation Council, or Watersheds United Vermont to:

(A) conduct any of the activities required under subdivision (2) of this subsection (d);

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations better to meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to ensure cost-effective use of State and federal funds.

(e) In determining the question of public interest, the Secretary shall give due consideration to, and explain his or her decision with respect to, the following:

(1) existing and obtainable water qualities;

(2) existing and potential use of waters as a public water source, recreational, agricultural, industrial, and other legitimate purposes;



- (3) natural sources of pollution;
- (4) public and private pollution sources and the alternative means of abating the same;
- (5) consistency with the State water quality policy established in section 1250 of this title;
- (6) suitability of waters as habitat for fish, aquatic life, and wildlife;
- (7) need for and use of minimum streamflow requirements;
- (8) federal requirements for classification and management of waters;
- (9) consistency with applicable municipal, regional, and State plans; and
- (10) any other factors relevant to determine the maximum beneficial use and enjoyment of waters.

(f) Notwithstanding the provisions of subsection (c) of this section, when reclassifying waters to Class A, the Secretary need find only that the reclassification is in the public interest.

(g) The Secretary under the reclassification rule may grant permits for only a portion of the assimilative capacity of the receiving waters, or may permit only indirect discharges from on-site disposal systems, or both.

(h)

(1) The Secretary shall administer a Clean Water Act Section 401 certification program to review activities that require a federal license or permit or activities subject to regulation under chapter 41, subchapter 4 of this title to ensure that a proposed activity complies with the Vermont Water Quality Standards, as well as with any other appropriate requirement of State law, including:

(A) 10 V.S.A. chapter 37 (wetlands protection and water resources management);

(B) 10 V.S.A. chapter 41 (regulation of stream flow);

(C) 10 V.S.A. § 1264 (stormwater management);

(D) 29 V.S.A. chapter 11 (management of lakes and ponds); and

(E) the Agency of Natural Resources Rules for Water Withdrawals for Snowmaking.

(2) The Secretary of Natural Resources shall not grant an application for certification under Section 401 of the Clean Water Act unless the applicant demonstrates all of the following:



(A) there is no practicable alternative to the proposed activity that would have a less adverse impact on waters and wetlands of the State and provided that any proposed alternative shall not have other significant adverse human health, safety, or environmental consequences;

(B) the proposed activity will not result in the violation of any applicable water quality criteria established in the Vermont Water Quality Standards; and

(C) the proposed activity will not result in a violation of the State's antidegradation policy.

(3)

(A) An alternative is considered practicable under subdivision (2)(A) of this subsection (h) if it is available and capable of being completed after taking into consideration cost, existing technology, and logistics in light of overall purposes of the proposed activity.

(B) Failure to comply with the requirements of subdivision (2)(A) of this subsection (h) shall not be the basis for denial of an application for a certification under Section 401 of the Clean Water Act if the proposed activity is exempt from those requirements under a rule adopted by the Secretary.

(4) The Secretary may issue a certification required by this subsection to any general permit or authorization issued by a federal agency. An applicant's compliance with that federal permit or authorization shall be presumed to be in compliance with the certification unless the Secretary determines that an individual review of the applicant's activity is necessary to assure compliance with the Vermont Water Quality Standards and other appropriate State laws.

§ 1254. Classification of Waters by Secretary; Aid.

In classifying or reclassifying the waters of the State, the Secretary is authorized to call upon any State department or agency for any pertinent information, other than information of a confidential nature, that the department or agency has or could obtain easily in the course of its work.

§ 1258. Management of Waters After Classification, Enforcement.

(a) After the classification of any waters has been determined by the Secretary, those waters shall be managed under the supervision of the Secretary in order to obtain and maintain the classification established. The Secretary may enforce a classification against any person affected thereby who, with notice of the classification, has failed to comply. An action to enforce a classification shall be brought in the Superior Court of the county wherein the affected waters are located.



(b) The Secretary shall manage discharges to the waters of the State by administering a permit program consistent with the National Pollutant Discharge Elimination System established by section 402 of Public Law 92-500 and with the guidelines promulgated in accordance with section 304(h)(2) of Public Law 92-500. The Secretary shall use the full range of possibilities and variables allowable under these sections of Public Law 92-500, including general permits, as are consistent with meeting the objectives of the Vermont Water Pollution Control Program. The Secretary shall adopt a continuing planning process approvable under section 303(e) of Public Law 92-500. Neither the Secretary nor his or her duly authorized representative may receive or during the previous two years have received a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit under this chapter.

§ 1259. Prohibitions.

(a) No person shall discharge any waste, substance, or material into waters of the State, nor shall any person discharge any waste, substance, or material into an injection well or discharge into a publicly owned treatment works any waste that interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the Secretary. This subsection shall not prohibit the proper application of fertilizer to fields and crops, nor reduce or affect the authority or policy declared in Joint House Resolution 7 of the 1971 Session of the General Assembly.

(b) Any records or information obtained under this permit program that constitutes trade secrets under 1 V.S.A. § 317(c)(9) shall be kept confidential, except that such records or information may be disclosed to authorized representatives of the State and the United States when relevant to any proceedings under this chapter.

(c) No person shall cause a direct discharge into Class A waters of any wastes that, prior to treatment, contained organisms pathogenic to human beings. Except within a waste management zone, no person shall cause a direct discharge into Class B waters of any wastes that prior to treatment contained organisms pathogenic to human beings.

(d) No person shall cause a discharge of wastes into Class A waters, except for on-site disposal of sewage from systems with a capacity of 1,000 gallons per day (gpd), or less, that are either exempt from or comply with the environmental protection rules, or existing systems, which shall require a permit according to the provisions of subsection 1263(f) of this title.

(e) Except for on-site disposal of sewage from systems of less than 6,500 gpd capacity that are either exempt from or comply with the environmental protection rules, no person shall cause any new or increased indirect discharge of wastes into Class B waters without a permit under section 1263 of this title. The Secretary shall not issue a permit for on-site disposal of sewage that discharges into Class B waters, unless the applicant demonstrates by clear and convincing evidence, and the Secretary finds, that the discharge:



- (1) will not significantly alter the aquatic biota in the receiving waters;
- (2) will not pose more than a negligible risk to public health;
- (3) will be consistent with existing and potential beneficial uses of the waters; and
- (4) will not cause a violation of water quality standards.

(f) The provisions of subsections (c), (d), and (e) of this section shall not regulate required agricultural practices, as adopted by rule by the Secretary of Agriculture, Food and Markets, or accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; nor shall these provisions regulate discharges from concentrated animal feeding operations that require a permit under section 1263 of this title; nor shall those provisions prohibit stormwater runoff or the discharge of nonpolluting wastes, as defined by the Secretary.

(g) Nothing in this chapter shall prohibit the Secretary from approving nondischarging sewage treatment systems that the Secretary finds are safe, reliable, and effective.

(h) The Secretary shall adopt rules to ensure that the installation of two or more systems discharging sewage will not result in the circumvention of the purposes of this chapter or the requirements of this section.

(i) The Secretary of Natural Resources, to the extent compatible with federal requirements, shall delegate to the Secretary of Agriculture, Food and Markets the State agricultural non-point source pollution control program planning, implementation, and regulation. A memorandum of understanding shall be adopted for this purpose, which shall address implementation grants, the distribution of federal program assistance, and the development of land use performance standards. Prior to executing the memorandum, the Secretary of State shall arrange for two formal publications of information relating to the proposed memorandum. The information shall consist of a summary of the proposal; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. Publication shall be subject to the provisions of 3 V.S.A. § 839(d), (e), and (g), relating to the publication of administrative rules. The proposed memorandum of understanding shall be available for 30 days after the final date of publication for public review and comment prior to being executed by the Secretary of Natural Resources and the Secretary of Agriculture, Food and Markets. The Secretary of Natural Resources and the Secretary of Agriculture, Food and Markets annually shall review the memorandum of understanding to ensure compliance with the requirements of the Clean Water Act¹ and the provisions of section 1258 of this title. If the memorandum is substantially revised, it first shall be noticed in the same manner that applies to the initial memorandum. Actions by the Secretary of Agriculture, Food and Markets under this



section shall be consistent with the water quality standards and water pollution control requirements of chapter 47 of this title and the federal Clean Water Act as amended.

(j) No person shall discharge waste from hydraulic fracturing, as that term is defined in 29 V.S.A. § 503, into or from a pollution abatement facility, as that term is defined in section 1278 of this title.

§ 1263. Discharge Permits.

(a) Any person who intends to discharge waste into the waters of the State or who intends to discharge into an injection well or who intends to discharge into any publicly owned treatment works any waste that interferes with, passes through without treatment, or is otherwise incompatible with that works or would have a substantial adverse effect on that works or on water quality shall make application to the Secretary for a discharge permit. Application shall be made on a form prescribed by the Secretary. An applicant shall pay an application fee in accordance with 3 V.S.A. § 2822.

(b) When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title. The Secretary may require any applicant to submit any additional information that the Secretary considers necessary and may refuse to grant a permit, or permission to discharge under the terms of a general permit, until the information is furnished and evaluated.

(c) If the Secretary determines that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them and will not violate any applicable provisions of State or federal laws or regulations, he or she shall issue a permit containing terms and conditions as may be necessary to carry out the purposes of this chapter and of applicable federal law. Those terms and conditions may include providing for specific effluent limitations and levels of treatment technology; monitoring, recording, reporting standards; entry and inspection authority for State and federal officials; reporting of new pollutants and substantial changes in volume or character of discharges to waste treatment systems or waters of the State; pretreatment standards before discharge to waste treatment facilities or waters of the State; and toxic effluent standards or prohibitions.

(d) A discharge permit shall:

(1) Specify the manner, nature, volume, and frequency of the discharge permitted and contain terms and conditions consistent with subsection (c) of this section.

(2) Require proper operation and maintenance of any pollution abatement facility necessary in the treatment or processing of the waste by qualified personnel in accordance with standards established by the Secretary and the Director of the Office of Professional Regulation. The Secretary may require that a pollution abatement facility be operated by persons licensed under 26 V.S.A. chapter 99 and may prescribe the class of license required. The Secretary may require a



laboratory quality assurance sample program to ensure qualifications of laboratory analysts.

(3) Contain an operation, management, and emergency response plan when required under section 1278 of this title and additional conditions, requirements, and restrictions as the Secretary deems necessary to preserve and protect the quality of the receiving waters, including requirements concerning recording, reporting, monitoring, and inspection of the operation and maintenance of waste treatment facilities and waste collection systems.

(4) Be valid for the period of time specified therein, not to exceed five years.

(e) A discharge permit may be renewed from time to time upon application to the Secretary. A renewal permit filing requirement for reissuance shall be determined by the Secretary and may range from a simple written request for reissuance to the submission of all information required by the initial application. A renewal permit shall be issued following all determinations and procedures required for initial permit application.

(f) Existing indirect discharges to the waters of the State from on-site disposal of sewage shall comply with and be subject to the provisions of this chapter, and shall obtain the required permit, no later than July 1, 1991. Notwithstanding the requirements of subsections 1259(d) and (e) of this title, the Secretary shall grant a permit for an existing indirect discharge to the waters of the State for on-site disposal of sewage unless he or she finds that the discharge violates the water quality standards. Existing indirect discharges from on-site sewage disposal systems of less than 6,500 gpd capacity shall not require a permit.

(g) Notwithstanding any other provision of law, any person who owns or operates a concentrated animal feeding operation that requires a permit under the federal National Pollutant Discharge Elimination System permit regulations shall submit an application to the Secretary for a discharge permit and pay the required fees specified in 3 V.S.A. § 2822. On or before July 1, 2007, the Secretary of Natural Resources shall adopt rules implementing the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. Until such regulations are adopted, the substantive permitting standards and criteria used by the Secretary to evaluate applications and issue or deny discharge permits for concentrated animal feeding operations shall be those specified by federal regulations. The Secretary may issue an individual or general permit for these types of discharges in accordance with the procedural requirements of subsection (b) of this section and other State law. For the purposes of this subsection, “concentrated animal feeding operation” means a farm that meets the definition contained in the federal regulations.

§ 1264. Stormwater Management.

(a) Findings and intent.



(1) Findings. The General Assembly finds that the management of stormwater runoff is necessary to reduce stream channel instability, pollution, siltation, sedimentation, and flooding, all of which have adverse impacts on the water and land resources of the State.

(2) Intent. The General Assembly intends, by enactment of this section to:

(A) Reduce the adverse effects of stormwater runoff.

(B) Direct the Agency of Natural Resources to develop a process that ensures broad participation; focuses upon the prevention of pollution; relies on structural treatment only when necessary; establishes and maintains accountability; tailors strategies to the region and the locale; builds broad-based programs; provides for the evaluation and appropriate evolution of programs; is consistent with the federal Clean Water Act¹ and the State water quality standards; and accords appropriate recognition to the importance of community benefits that accompany an effective stormwater runoff management program. In furtherance of these purposes, the Secretary shall implement a stormwater permitting program. The stormwater permitting program developed by the Secretary shall recognize that stormwater runoff is different from the discharge of sanitary and industrial wastes because of the influence of natural events of stormwater runoff, the variations in characteristics of those runoffs, and the increased stream flows causing degradation of the quality of the receiving water at the time of discharge.

(b) Definitions. As used in this section:

(1) “Best management practice” (BMP) means a schedule of activities, prohibitions or practices, maintenance procedures, green infrastructure, and other management practices to prevent or reduce water pollution.

(2) “Development” means the construction of impervious surface on a tract or tracts of land where no impervious surface previously existed.

(3) “Expansion” and “the expanded portion of an existing discharge” mean an increase or addition of impervious surface, such that the total resulting impervious area is greater than the minimum regulatory threshold.

(4) “Green infrastructure” means a wide range of multi-functional, natural and semi-natural landscape elements that are located within, around, and between developed areas, that are applicable at all spatial scales, and that are designed to control or collect stormwater runoff.

(5) “Healthy soil” means soil that has a well-developed, porous structure, is chemically balanced, supports diverse microbial communities, and has abundant organic matter.



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

(7) “New stormwater discharge” means a new or expanded discharge of regulated stormwater runoff, subject to the permitting requirements of this chapter that has not been previously authorized pursuant to this chapter.

(8) “Offset” means a State-permitted or State-approved action or project that mitigates the impacts that a discharge of regulated stormwater runoff has on receiving waters.

(9) “Redevelopment” or “redevelop” means the construction or reconstruction of an impervious surface where an impervious surface already exists when such new construction involves substantial site grading, substantial subsurface excavation, or substantial modification of an existing stormwater conveyance, such that the total of impervious surface to be constructed or reconstructed is greater than the minimum regulatory threshold. Redevelopment does not mean public road management activities, including any crack sealing, patching, cold planing, resurfacing, reclaiming, or grading treatments used to maintain pavement, bridges, and unpaved roads.

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

(11) “Stormwater impact fee” means the monetary charge assessed to a permit applicant for the discharge of regulated stormwater runoff in order to mitigate impacts that the discharger is unable to control through on-site treatment or completion of an offset on a site owned or controlled by the permit applicant.

(12) “Stormwater-impaired water” means a State water that the Secretary determines is significantly impaired by discharges of regulated stormwater runoff.

(13) “Stormwater Management Manual” means the Agency of Natural Resources’ Stormwater Management Manual, as adopted and amended by rule.

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

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



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

(16) “Total maximum daily load” (TMDL) means the calculations and plan for meeting water quality standards approved by the U.S. Environmental Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and federal regulations adopted under that law.

(17) “Water quality remediation plan” means a plan, other than a TMDL, designed to bring an impaired water body into compliance with applicable water quality standards in accordance with 40 C.F.R. § 130.7(b)(1)(ii) and (iii).

(18) “Watershed improvement permit” means a general permit specific to a stormwater-impaired water that is designed to apply management strategies to existing and new discharges and that includes a schedule of compliance no longer than five years reasonably designed to assure attainment of the Vermont water quality standards in the receiving waters.

(c) Prohibitions.

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

(2) A person shall not discharge from a facility that has a standard industrial classification identified in 40 C.F.R. § 122.26 without first obtaining a permit from the Secretary.

(3) A person that has been designated by the Secretary as requiring coverage for its municipal separate storm sewer system shall not discharge without first obtaining a permit from the Secretary.

(4) A person shall not commence a project that will result in an earth disturbance of one acre or greater, or of less than one acre if part of a common plan of development, without first obtaining a permit from the Secretary.

(5) A person shall not expand existing impervious surface by more than 5,000 square feet, such that the total resulting impervious area is greater than one acre, without first obtaining a permit from the Secretary.

(6)

(A) In accordance with the schedule established under subdivision (g)(2) of this section, a municipality shall not discharge stormwater from a municipal road without first obtaining:

(i) an individual permit;

(ii) coverage under a municipal road general permit; or



(iii) coverage under a municipal separate storm sewer system permit that implements the technical standards and criteria established by the Secretary for stormwater improvements of municipal roads.

(B) As used in this subdivision (6), “municipality” means a city, town, or village.

(7) In accordance with the schedule established under subdivision (g)(3) of this section, a person shall not discharge stormwater from impervious surface of three or more acres in size without first obtaining an individual permit or coverage under a general permit issued under this section if the discharge was never previously permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual.

(d) Exemptions.

(1) No permit is required under this section for:

(A) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, provided that this exemption shall not apply to construction stormwater permits required by subdivision (c)(4) of this section.

(B) Stormwater runoff from concentrated animal feeding operations permitted under subsection 1263(g) of this chapter.

(C) Stormwater runoff from accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation.

(D) Stormwater runoff permitted under section 1263 of this title.

(2) No permit is required under subdivision (c)(1), (5), or (7) of this section and for which a municipality has assumed full legal responsibility as part of a permit issued to the municipality by the Secretary. As used in this subdivision, “full legal responsibility” means legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

(e) State designation. The Secretary shall require a permit under this section for a discharge or stormwater runoff from any size of impervious surfaces upon a



determination by the Secretary that the treatment of the discharge or stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge or stormwater runoff taking into consideration any of the following factors: the size of the impervious surface, drainage patterns, hydraulic connectivity, existing stormwater treatment, stormwater controls necessary to implement the wasteload allocation of a TMDL, or other factors. The Secretary may make this determination on a case-by-case basis or according to classes of activities, classes of runoff, or classes of discharge. The Secretary may make a determination under this subsection based on activities, runoff, discharges, or other information identified during the basin planning process.

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

- (1) Establish as the primary goals of the rules:
 - (A) assuring compliance with the Vermont Water Quality Standards; and
 - (B) maintenance after development, as nearly as possible, of the predevelopment runoff characteristics.
- (2) Establish criteria for the use of the basin planning process to establish watershed-specific priorities for the management of stormwater runoff.
- (3) Assure consistency with applicable requirements of the federal Clean Water Act.
- (4) Include technical standards and best management practices that address stormwater discharges from existing development, new development, and redevelopment.
- (5) Specify minimum requirements for inspection and maintenance of stormwater management practices.
- (6) Include standards for the management of stormwater runoff from construction sites and other land disturbing activities.
- (7) Allow municipal governments to assume the full legal responsibility for a stormwater system permitted under these rules as a part of a permit issued by the Secretary.
- (8) Include standards with respect to the use of offsets and stormwater impact fees.
- (9) Include minimum standards for the issuance of stormwater permits during emergencies for the repair or maintenance of stormwater infrastructure during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage



to public or private property. Minimum standards adopted under this subdivision shall comply with National Flood Insurance Program requirements.

(10) To the extent appropriate, authorize in the permitting process use of certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty.

(11) Include standards for alternative best management practices for stormwater permitting of renewable energy projects and telecommunication facilities located in high-elevation settings, provided that the alternative best management practices shall be designed to:

(A) minimize the extent and footprint of stormwater-treatment practices in order to preserve vegetation and trees;

(B) adapt to and minimize impact to ecosystems, shallow soils, and sensitive streams found in high-elevation settings;

(C) account for the temporary nature and infrequent use of construction and access roads for high-elevation projects; and

(D) maintain the predevelopment runoff characteristics, as nearly as possible, after development.

(12) Establish best management practices for improving healthy soils in order to improve the capacity of soil to retain water, improve flood resiliency, reduce sedimentation, and prevent stormwater runoff.

(g) General permits.

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

(2)

(A) The Secretary shall issue on or before December 31, 2017, a general permit for discharges of regulated stormwater from municipal roads. Under the municipal roads stormwater general permit, the Secretary shall:

(i) Establish a schedule for implementation of the general permit by each municipality in the State. Under the schedule, the Secretary shall establish:

(l) the date by which each municipality shall apply for coverage under the municipal roads general permit;



(II) the date by which each municipality shall inventory necessary stormwater management projects on municipal roads;

(III) the date by which each municipality shall establish a plan for implementation of stormwater improvements that prioritizes stormwater improvements according to criteria established by the Secretary under the general permit; and

(IV) the date by which each municipality shall implement stormwater improvements of municipal roads according to a municipal implementation plan.

(ii) Establish criteria and technical standards, such as best management practices, for implementation of stormwater improvements of municipal roads.

(iii) Establish criteria for municipal prioritization of stormwater improvements of municipal roads. The Secretary shall base the criteria on the water quality impacts of a stormwater discharge, the current state of a municipal road, the priority of a municipal road or stormwater project in any existing transportation capital plan developed by a municipality, and the benefits of the stormwater improvement to the life of the municipal road.

(iv) Require each municipality to submit to the Secretary and periodically update its implementation plan for stormwater improvements.

(B) The Secretary may require an individual permit for a stormwater improvement at any time under subsection (e) of this section. An individual permit shall include site-specific standards for the stormwater improvement.

(C) All municipalities shall apply for coverage under the municipal road general permit on or before July 1, 2021.

(D) As used in this subdivision (g)(2), "municipality" means a city, town, or village.

(3) Within 120 days after the adoption by the Secretary of the rules required under subsection (f) of this section, the Secretary shall issue a general permit under this section for discharges of stormwater from impervious surface of three or more acres in size, when the stormwater discharge previously was not permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual



or any subsequently adopted Stormwater Management Manual. Under the general permit, the Secretary shall:

(A) Establish a schedule for implementation of the general permit by geographic area of the State. The schedule shall establish the date by which an owner of impervious surface shall apply for coverage under this subdivision (3). The schedule established by the Secretary shall require an owner of impervious surface subject to permitting under this subdivision to obtain coverage by the following dates:

(i) for impervious surface located within the Lake Champlain watershed, the Lake Memphremagog watershed, or the watershed of a stormwater-impaired water on or before October 1, 2023;

(ii) for impervious surface located within all other watersheds of the State, no later than October 1, 2023.

(B) Establish criteria and technical standards, such as best management practices, for implementation of stormwater improvements for the retrofitting of impervious surface subject to permitting under this subdivision (3).

(C) Require that a discharge of stormwater from impervious surface subject to the requirements of this section comply with the standards of subsection (h) of this section for redevelopment of or renewal of a permit for existing impervious surface.

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

(h) Permit requirements. An individual or general stormwater permit shall:

(1) Be valid for a period of time not to exceed five years.

(2) For discharges of regulated stormwater to a stormwater-impaired water, for discharges of phosphorus to Lake Champlain or Lake Memphremagog, or for discharges of phosphorus to a water that contributes to the impairment of Lake Champlain or Lake Memphremagog:

(A) In which no TMDL, watershed improvement permit, or water quality remediation plan has been approved, require that the discharge shall comply with the following discharge standards:

(i) A new discharge or the expanded portion of an existing discharge shall satisfy the requirements of the Stormwater



Management Manual and shall not increase the pollutant load in the receiving water for stormwater.

(ii) For redevelopment of or renewal of a permit for existing impervious surface, the discharge shall satisfy on-site the water quality, recharge, and channel protection criteria set forth in the Stormwater Management Manual that are determined to be technically feasible by an engineering feasibility analysis conducted by the Agency, and the discharge shall not increase the pollutant load in the receiving water for stormwater.

(B) In which a TMDL or water quality remediation plan has been adopted, require that the discharge shall comply with the following discharge standards:

(i) For a new discharge or the expanded portion of an existing discharge, the discharge shall satisfy the requirements of the Stormwater Management Manual, and the Secretary shall determine that there are sufficient pollutant load allocations for the discharge.

(ii) For redevelopment of or renewal of a permit for existing impervious surface, the Secretary shall determine that there are sufficient pollutant load allocations for the discharge and the Secretary shall include any requirements that the Secretary deems necessary to implement the TMDL or water quality remediation plan.

(3) Contain requirements necessary to comply with the minimum requirements of the rules adopted under this section, the Vermont water quality standards, and any applicable provision of the Clean Water Act.

(i) Disclosure of violations. The Secretary may, at his or her discretion and as necessary to assure achievement of the goals of the program and compliance with State law and the federal Clean Water Act, deny an application for the discharge of regulated stormwater under this section if review of the applicant's compliance history indicates that the applicant is discharging regulated stormwater in violation of this chapter or is the holder of an expired permit for an existing discharge of regulated stormwater.

(j) Presumption. In any appeal under this chapter, an individual permit issued under subdivisions (c)(1) and (c)(5) of this section shall have a rebuttable presumption in favor of the permittee that the discharge does not cause or contribute to a violation of the Vermont water quality standards for the receiving waters with respect to the discharge of regulated stormwater runoff, provided that the discharge is to a water that is not principally impaired due to stormwater.



(k) Report on treatment practices. As part of the report required under section 1389a of this title, the Secretary annually shall report the following:

(1) whether the phosphorus load from new development permitted under this section by the Secretary in the Lake Champlain watershed in the previous calendar year is achieving at least a 70 percent average phosphorus load reduction;

(2) the estimated total phosphorus load reduction from new development, redevelopment, and retrofit of impervious surface permitted under this section in the previous State fiscal year; and

(3) the number of projects and the percentage of projects as a whole that implemented Tier 1 stormwater treatment practices, Tier 2 stormwater treatment practices, or Tier 3 stormwater treatment practices in the previous State fiscal year.

