

No. 91. An act relating to permitting stormwater discharges in impaired watersheds.

(H.752)

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. § 1264 is amended to read:

§ 1264. STORMWATER MANAGEMENT

(a) The general assembly finds that the management of stormwater runoff is necessary to reduce stream channel instability, pollution, siltation, sedimentation, and local flooding, all of which have adverse impacts on the water and land resources of the state. The general assembly intends, by enactment of this section, to reduce the adverse effects of stormwater runoff. The general assembly determines that this intent may best be attained by a process that: assures 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; assures an adequate funding source; builds broadbased programs; provides for the evaluation and appropriate evolution of programs; is consistent with the federal Clean Water Act 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 two stormwater permitting programs. The first program is based on the requirements of the federal National

Pollutant Discharge Elimination System (NPDES) permit program in accordance with section 1258 of this title. The second program is a state permit program based on the requirements of this section for the discharge of “regulated stormwater runoff” as that term is defined in subdivision (11) of this subsection. As used in this section:

(1) “2002 stormwater management manual” means the agency of natural resources’ stormwater management manual dated April 2002, as amended from time to time by rule.

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

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

(4) “Existing stormwater discharge” means a discharge of regulated stormwater runoff which first occurred prior to June 1, 2002 and that is subject to the permitting requirements of this chapter.

(5) “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. Expansion does not mean an increase or addition of impervious surface of less than 5,000 square feet.

(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, which first occurs after June 1, 2002 and has not been previously authorized pursuant to this chapter.

(8) “Offset” means a state-permitted or approved action or project within a stormwater-impaired water that a discharger or a third person may complete to mitigate the impacts that a discharge of regulated stormwater runoff has on the stormwater-impaired water.

(9) “Offset charge” means the amount of sediment load or hydrologic impact that an offset must reduce or control in the stormwater-impaired water in which the offset is located.

(10) “Redevelopment” 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 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 the construction or reconstruction of impervious surface where impervious

surface already exists when the construction or reconstruction involves less than 5,000 square feet. Redevelopment does not mean public road management activities, including any crack sealing, patching, coldplaning, resurfacing, reclaiming, or grading treatments used to maintain pavement, bridges, and unpaved roads.

(11) “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.

(12) “Stormwater impact fee” means the monetary charge assessed to a permit applicant for the discharge of regulated stormwater runoff to a stormwater-impaired water that mitigates a sediment load level or hydrologic impact 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.

(13) “Stormwater-impaired water” means a state water that the secretary determines is significantly impaired by discharges of regulated stormwater runoff.

(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) “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.

(16) “Water quality remediation plan” means a plan, other than a TMDL or sediment load allocation, 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).

(17) “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.

(18) “Stormwater system” means 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.

(19) “Net zero standard” means:

(A) A new discharge or the expanded portion of an existing discharge meets the requirements of the 2002 stormwater management manual and does not increase the sediment load in the receiving stormwater-impaired water; or

(B) A discharge from redevelopment; from an existing discharge operating under an expired stormwater discharge permit where the property owner applies for a new permit; or from any combination of development, redevelopment, and expansion meets on-site the water quality, recharge, and channel protection criteria set forth in Table 1.1 of the 2002 stormwater management manual that are determined to be technically feasible by an engineering feasibility analysis conducted by the agency and if the sediment load from the discharge approximates the natural runoff from an undeveloped field or open meadow that is not used for agricultural activity.

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(f)(1) In a stormwater-impaired water, the secretary may issue:

(A) An individual permit in a stormwater-impaired water for which no TMDL, water quality remediation plan, or watershed improvement permit has been established or issued, provided that the permitted discharge meets the following discharge standard set by rule: prior to the issuance of a general permit to implement a TMDL or a water quality remediation plan, the discharge meets the net-zero standard;

(B) An individual permit or a general permit to implement a TMDL or water quality remediation plan in a stormwater-impaired water, provided that the permitted discharge meets the following discharge standard:

(i) a new stormwater discharge or the expansion of an existing discharge shall meet the treatment standards for new development and expansion in the 2002 stormwater management manual and any additional requirements deemed necessary by the secretary to implement the TMDL or water quality remediation plan;

(ii) for a discharge of regulated stormwater runoff from redeveloped impervious surfaces:

(I) the existing impervious surface shall be reduced by 20 percent, or a stormwater treatment practice shall be designed to capture and treat 20 percent of the water quality volume treatment standard of the 2002 stormwater management manual from the existing impervious surface; and

(II) any additional requirements deemed necessary by the secretary to implement the TMDL or the water quality remediation plan;

(iii) an existing stormwater discharge shall meet the treatment standards deemed necessary by the secretary to implement a TMDL or a water quality remediation plan;

(iv) if a permit is required for an expansion of an existing impervious surface or for the redevelopment of an existing impervious surface,

discharges from the expansion or from the redeveloped portion of the existing impervious surface shall meet the relevant treatment standard of the 2002 stormwater management manual, and the existing impervious surface shall meet the treatment standards deemed necessary by the secretary to implement a TMDL or the water quality remediation plan;

~~(B)~~(C) A watershed improvement permit, provided that the watershed improvement permit provides reasonable assurance of compliance with the Vermont water quality standards in five years;

~~(C)~~(D) A general or individual permit that is implementing a TMDL or water quality remediation plan; or

~~(D)~~(E) A statewide general permit for new discharges that the secretary deems necessary to assure attainment of the Vermont water quality standards.

(2) An authorization to discharge regulated stormwater runoff pursuant to a permit issued under this subsection shall be valid for a time period not to exceed five years. A person seeking to discharge regulated stormwater runoff after the expiration of that period shall obtain an individual permit or coverage under a general permit, whichever is applicable, in accordance with subsection 1263(e) of this title.

(3) By January 15, 2010, the secretary shall issue a watershed improvement permit, issue a general or individual permit implementing a

TMDL approved by the EPA, or issue a general or individual permit implementing a water quality remediation plan for each of the stormwater-impaired waters on the Vermont Year 2004 Section 303(d) List of Waters required by 33 U.S.C. 1313(d). In developing a TMDL or a water quality remediation plan for a stormwater-impaired water, the secretary shall consult “A Scientifically Based Assessment and Adaptive Management Approach to Stormwater Management” and “Areas of Agreement about the Scientific Underpinnings of the Water Resources Board’s Original Seven Questions” set out in appendices A and B, respectively, of the final report of the water resources board’s “Investigation Into Developing Cleanup Plans For Stormwater Impaired Waters, Docket No. Inv-03-01,” issued March 9, 2004. Beginning January 30, 2005 and until a watershed improvement permit, a general or individual permit implementing a TMDL, or a general or individual permit implementing a water quality remediation plan is set for each of the stormwater-impaired waters on the Vermont Year 2004 Section 303(d) List of Waters required by 33 U.S.C. § 1313(d), the secretary shall report annually to the general assembly on agency progress in establishing the watershed improvement permits, TMDLs, and water quality remediation plans for the stormwater-impaired waters of the state; on the accuracy of assessment and environmental efficacy of any stormwater impact fee paid to the state stormwater-impaired waters restoration fund; and on the efforts by the

secretary to educate and inform owners of real estate in watersheds of stormwater-impaired waters regarding the requirements of the state stormwater law.

(4) Discharge permits issued under this subsection shall require BMP-based stormwater treatment practices. Permit compliance shall be judged on the basis of performance of the terms and conditions of the discharge permit, including construction and maintenance in accordance with BMP specifications. Any permit issued for a new stormwater discharge or for the expanded portion of an existing discharge pursuant to this subsection shall require compliance with BMPs for stormwater collection and treatment established by the 2002 stormwater management manual, and any additional requirements for stormwater treatment and control systems as the secretary determines to be necessary to ensure that the permitted discharge does not cause or contribute to a violation of the Vermont water quality standards.

(5) In addition to any permit condition otherwise authorized under subsection (e) of this section, in any permit issued pursuant to this subsection, the secretary may require an offset or stormwater impact fee as necessary to ensure the discharge does not cause or contribute to a violation of the Vermont water quality standards. Offsets and stormwater impact fees, where utilized, shall incorporate an appropriate margin of safety to account for the variability in quantifying the load of pollutants of concern. To facilitate utilization of

offsets and stormwater impact fees, the secretary shall identify by January 1, 2005 a list of potential offsets in each of the waters listed as a stormwater-impaired water under this subsection.

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Sec. 2. 27 V.S.A. § 613 is added to read:

§ 613. STORMWATER DISCHARGE PERMITS DURING TRANSITION PERIOD

(a) In addition to the following, the definitions found in 10 V.S.A. § 1264 apply to this section unless otherwise indicated. As used in this section:

(1) "Conveyance" means any conveyance of real property or an interest or estate therein in which recording is required under this title and where the real property is located within an impaired watershed.

(2) "Impaired watershed" means a watershed where the receiving water or a segment of the receiving water is a stormwater-impaired water.

(3) "Pretransition stormwater discharge permit" means any permit issued by the secretary of natural resources pursuant to 10 V.S.A. § 1264 on or before June 30, 2004 for a discharge of stormwater.

(4) "Refinancing" means the refinancing of an existing loan on real property located within an impaired watershed.

(5) "Stormwater discharge permit" means any permit or approval issued by the secretary pursuant to 10 V.S.A. § 1264 and rules adopted thereunder on

or after July 1, 2004, and includes coverage under any general permit covering stormwater runoff into stormwater-impaired waters.

(b) Beginning on July 1, 2004, and notwithstanding any law to the contrary, no encumbrance on record title to real property or effect on marketability of title shall be created by the failure of the holder of real property from which regulated stormwater runoff discharges to an impaired watershed to obtain, renew, or comply with the terms and conditions of a pretransition stormwater discharge permit for a conveyance or refinancing, provided that such holder:

(1) Provides a notice of deferral of permit to the secretary of natural resources with a property description, the identity of the impaired watershed, the permit number of any expired pretransition stormwater discharge permit covering the property, and such other information as the secretary may require; and

(2) Records in the land records a notice indicating, in an appropriate form to be determined by the secretary of natural resources, that at the time of establishment of a general permit in the impaired watershed where the real property is located, but not later than June 30, 2016, the mortgagor (in the case of a refinancing) or the grantee (in the case of a conveyance) shall be subject to all applicable requirements of the water quality remediation plan, TMDL, or watershed improvement permit established under 10 V.S.A. chapter 47.

(c) Subsection (b) of this section shall not apply in cases in which, on or after July 1, 2004, the owner of the real property from which regulated stormwater runoff discharges to an impaired watershed to be conveyed or refinanced engages, contracts to engage, or assists the engagement by others in expansion or redevelopment without first obtaining a stormwater discharge permit from the secretary of natural resources pursuant to 10 V.S.A. § 1264 and rules adopted thereunder.

(d)(1) After July 1, 2004, a purchaser of real property shall have the right to terminate a binding contract for the sale of real property from which regulated stormwater runoff discharges to an impaired watershed if, after a contract for sale has been signed but prior to closing, the purchaser determines and gives written notice to the seller within 30 days of discovery of any of the following:

(A) That “expansion” or “redevelopment” as defined in 10 V.S.A. § 1264 occurred on the subject property on or after July 1, 2004 without the seller or other party first obtaining a stormwater discharge permit required pursuant to 10 V.S.A. § 1264 and rules adopted thereunder; or

(B) That the seller has failed to renew or comply with the material terms and conditions of any pretransition stormwater discharge permit or stormwater discharge permit; or

(C) That the seller has failed to comply with the notice requirements of subsection (b) of this section.

(2) Following the receipt of written notice, the seller shall have 30 days, unless the parties agree to a shorter or longer period, either to obtain a stormwater discharge permit or to take reasonable steps to demonstrate compliance with the terms and conditions of a stormwater discharge permit. If the seller does not obtain the required stormwater discharge permit or comply with the terms of a stormwater discharge permit, the purchaser may terminate the contract if, as an owner or occupant of the property, the purchaser may be subject to an enforcement action under 10 V.S.A. § 1274.

(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.

Sec. 3. REPEAL

27 V.S.A. § 613 (stormwater discharges during transition period; encumbrance on title) shall be repealed on June 30, 2016.

Sec. 4. AGENCY OF NATURAL RESOURCES REPORT; INTERIM
STORMWATER PERMITTING AUTHORITY

On or before January 15, 2016, the secretary of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy with a recommendation as to whether 27 V.S.A. § 613 (encumbrance on title; failure to obtain a pretransition stormwater discharge permit) and other statutory authority regarding the regulation of stormwater should be amended, repealed, or the date of repeal extended. The report shall include a summary of the basis for the secretary's recommendation.

Sec. 5. EFFECTIVE DATE

This act shall take effect on January 15, 2012.

Approved: May 1, 2012