

1 S.49

2 Introduced by Senators Bray, Ayer, Campion, Lyons, McAllister, and Starr

3 Referred to Committee on

4 Date:

5 Subject: Conservation and development; agriculture; water resources; water

6 quality; Lake Champlain

7 Statement of purpose of bill as introduced: This bill proposes to adopt

8 multiple provisions related to the remediation and preservation of the waters of

9 the State.

10 An act relating to improving the quality of State waters

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

12 \* \* \* Findings \* \* \*

13 Sec. 1. PURPOSE; IMPROVEMENT OF WATER QUALITY

14 It is the purpose of this act to:

15 (1) improve the quality of the waters of Vermont;

16 (2) authorize proactive measures designed to implement and meet

17 ultimately the impending total maximum daily load (TMDL) plan for Lake

18 Champlain, meet impending TMDL plans for other State waters, and improve

19 water quality across the State;

1           (3) identify cost-effective strategies for the State to address water  
2           quality issues; and

3           (4) engage more municipalities, agricultural operations, businesses, and  
4           other interested parties as part of the State's efforts to improve the quality of  
5           the waters of the State.

6                                 \* \* \* Agricultural Water Quality;

7                                 Accepted Agricultural Practices \* \* \*

8           Sec. 2. 6 V.S.A. § 4810 is amended to read:

9           § 4810. AUTHORITY; COOPERATION; COORDINATION

10           (a) Agricultural land use practices. In accordance with 10 V.S.A.  
11           § 1259(i), the ~~secretary~~ Secretary shall adopt by rule, pursuant to 3 V.S.A.  
12           ~~chapter 25 of Title 3~~, and shall implement and enforce agricultural land use  
13           practices in order to reduce the amount of agricultural pollutants entering the  
14           waters of the ~~state~~ State. These agricultural land use practices shall be created  
15           in two categories, pursuant to subdivisions (1) and (2) of this subsection.

16           (1) "Accepted Agricultural Practices" (AAPs) shall be standards to be  
17           followed in conducting agricultural activities in this ~~state~~ State. These  
18           standards shall address activities which have a potential for causing pollutants  
19           to enter the groundwater and waters of the ~~state~~ State, including dairy and  
20           other livestock operations plus all forms of crop and nursery operations and  
21           on-farm or agricultural fairground, registered pursuant to 20 V.S.A. § 3902,

1 livestock and poultry slaughter and processing activities. The AAPs shall  
2 include, as well as promote and encourage, practices for farmers in preventing  
3 pollutants from entering the groundwater and waters of the ~~state~~ State when  
4 engaged in, ~~but not limited to~~, animal waste management and disposal, soil  
5 amendment applications, plant fertilization, and pest and weed control.

6 Persons engaged in farming, as defined in 10 V.S.A. § 6001, who ~~follow~~ are in  
7 compliance with these practices shall be presumed to be in compliance with  
8 water quality standards. AAPs shall be practical and ~~cost-effective~~  
9 cost-effective to implement. The AAPs for groundwater shall include a  
10 process under which the ~~agency~~ Agency shall receive, investigate, and respond  
11 to a complaint that a farm has contaminated the drinking water or groundwater  
12 of a property owner.

13 (2) “Best Management Practices” (BMPs) may be required by the  
14 ~~secretary~~ Secretary on a ~~case-by-case~~ case-by-case basis. ~~Before requiring~~  
15 ~~BMPs, the secretary shall determine that sufficient financial assistance is~~  
16 ~~available to assist farmers in achieving compliance with applicable BMPs.~~  
17 When requiring implementation of a BMP, the Secretary shall inform a farmer  
18 of the resources available to assist the farmer in implementing BMPs and  
19 complying with the Vermont water quality standards. BMPs shall be practical  
20 and cost effective to implement.

1           (b) Cooperation and coordination. The ~~secretary of agriculture, food and~~  
2 ~~markets~~ Secretary of Agriculture, Food and Markets shall coordinate with the  
3 ~~secretary of natural resources~~ Secretary of Natural Resources in implementing  
4 and enforcing programs, plans, and practices developed for reducing and  
5 eliminating agricultural non-point source pollutants and discharges from  
6 concentrated animal feeding operations. The ~~secretary of agriculture, food and~~  
7 ~~markets~~ Secretary of Agriculture, Food and Markets and the ~~secretary of~~  
8 ~~natural resources~~ Secretary of Natural Resources shall develop a memorandum  
9 of understanding for the non-point program describing program administration,  
10 grant negotiation, grant sharing, and how they will coordinate watershed  
11 planning activities to comply with Public Law 92-500. The ~~secretary of~~  
12 ~~agriculture, food and markets~~ Secretary of Agriculture, Food and Markets and  
13 the ~~secretary of the agency of natural resources~~ Secretary of Natural Resources  
14 shall also develop a memorandum of understanding according to the public  
15 notice and comment process of 10 V.S.A. § 1259(i) regarding the  
16 implementation of the federal concentrated animal feeding operation program  
17 and the relationship between the requirements of the federal program and the  
18 ~~state~~ State agricultural water quality requirements for large, medium, and small  
19 farms under this chapter ~~215 of this title~~. The memorandum of understanding  
20 shall describe program administration, permit issuance, an appellate process,  
21 and enforcement authority and implementation. The memorandum of

1 understanding shall be consistent with the federal National Pollutant Discharge  
2 Elimination System permit regulations for discharges from concentrated  
3 animal feeding operations. The allocation of duties under this chapter between  
4 the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food  
5 and Markets and the ~~secretary of natural resources~~ Secretary of Natural  
6 Resources shall be consistent with the ~~secretary's~~ Secretary's duties,  
7 established under the provisions of 10 V.S.A. § 1258(b), to comply with Public  
8 Law 92-500. The ~~secretary of natural resources~~ Secretary of Natural  
9 Resources shall be the ~~state~~ State lead person in applying for federal funds  
10 under Public Law 92-500, but shall consult with the ~~secretary of agriculture,~~  
11 ~~food and markets~~ Secretary of Agriculture, Food and Markets during the  
12 process. The agricultural non-point source program may compete with other  
13 programs for competitive watershed projects funded from federal funds. The  
14 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and  
15 Markets shall be represented in reviewing these projects for funding. Actions  
16 by the ~~secretary of agriculture, food and markets~~ Secretary of Agriculture,  
17 Food and Markets under this chapter concerning agricultural non-point source  
18 pollution shall be consistent with the water quality standards and water  
19 pollution control requirements of 10 V.S.A. chapter 47 ~~of Title 10~~ and the  
20 federal Clean Water Act as amended. In addition, the ~~secretary of agriculture,~~  
21 ~~food and markets~~ Secretary of Agriculture, Food and Markets shall coordinate

1 with the ~~secretary of natural resources~~ Secretary of Natural Resources in  
2 implementing and enforcing programs, plans, and practices developed for the  
3 proper management of composting facilities when those facilities are located  
4 on a farm.

5 Sec. 3. 6 V.S.A. § 4810a is added to read:

6 § 4810a. ACCEPTABLE AGRICULTURAL PRACTICES; REVISION

7 (a) On or before July 1, 2016 the Secretary of Agriculture, Food, and  
8 Markets shall amend the accepted agricultural practices to enhance practices  
9 on farms to reduce adverse impacts to water quality and to implement the small  
10 farm certification program required by section 4858 of this title. At a  
11 minimum, the amendments to the accepted agricultural practices shall:

12 (1) Define what constitutes a small farm for the purposes of the  
13 certification required by section 4858a of this title.

14 (2) Require a farm subject to the accepted agricultural practices to stack  
15 manure, store fertilizer, and store other nutrients on the farm in an area that  
16 prevents impacts to private wells. In no case shall manure stacking sites,  
17 fertilizer storage, and other nutrient storage be located within 100 feet of  
18 private wells.

19 (3) Prohibit a farm from stacking or storing manure on lands subject to  
20 annual overflow from adjacent waters.

1           (4) Prohibit a farm from the stacking of manure in a manner that  
2           presents a threat of discharge to a surface water. In no case shall manure be  
3           field stacked on an unimproved site within 100 feet of a surface water.

4           (5) Require the construction and management of barnyards, waste  
5           management systems, animal holding areas, and production areas in a manner  
6           to prevent runoff of waste to a surface water, to groundwater, or across  
7           property boundaries.

8           (6) Establish standards for nutrient management on farms.

9           (7) Require cropland on the farm to be cultivated in a manner that  
10          results in an average soil loss of less than or equal to the soil loss tolerance for  
11          the prevalent soil, known as 1T, as calculated through application of the  
12          Revised Universal Soil Loss Equation, or through the application of similarly  
13          accepted models.

14          (8) Require a farm, subject to standards established by the Secretary, to  
15          maintain a vegetative buffer zone of perennial vegetation between annual  
16          croplands and the top of the bank of adjoining surface waters. At a minimum  
17          the vegetative buffer standards established by the Secretary shall prohibit the  
18          application of manure on the farm within 25 feet of an adjoining surface water  
19          or within 10 feet of a ditch.



1 shall report to the House Committee on Fish, Wildlife and Water Resources,  
2 the Senate Committee on Natural Resources and Energy, the House Committee  
3 on Agriculture and Forest Products, and the Senate Committee on Agriculture  
4 regarding the status of current, scientific research relating to the environmental  
5 management of subsurface agriculture tile drainage and how subsurface  
6 agriculture tile drainage contributes to nutrient loading of surface waters. The  
7 report shall include a recommendation from the Secretary of Agriculture, Food  
8 and Markets regarding how best to manage subsurface agriculture tile drainage  
9 in the State in order to mitigate the contribution of tile drainage to nutrient  
10 loading of surface waters.

11 \* \* \* Agricultural Water Quality;

12 Small Farm Certification and Inspection \* \* \*

13 Sec. 5. 6 V.S.A. § 4858a is added to read:

14 § 4858a. SMALL FARM CERTIFICATION

15 (a) Required small farm certification. A person who owns or operates a  
16 small farm shall certify compliance with the accepted agriculture practices.

17 The Secretary of Agriculture, Food and Markets shall certify the requirements  
18 and manner of certification, provided that the Secretary shall require an owner  
19 or operator of a farm to submit a certification at least once every five years.

20 (b) Rulemaking; small farm certification. The Secretary of Agriculture,  
21 Food and Markets shall adopt by rule requirements for a small farm

1 certification of compliance with the accepted agricultural practices. The rules  
2 required by this subsection shall be adopted as part of the accepted agricultural  
3 practices under section 4810 of this title.

4 (c) Small farm inspection. The Secretary may inspect a small farm in the  
5 State at any time for the purposes of assessing compliance by the small farm  
6 with the accepted agricultural practices and determining consistency with a  
7 certification of compliance submitted by the person who owns or operates the  
8 small farm. The Secretary may prioritize inspections of small farms in the  
9 State based on identified water quality issues posed by a small farm.

10 (d) Notice of change of ownership. A person who owns or operates a small  
11 farm shall notify the Secretary of a change of ownership or a change of  
12 operator of a small farm within 30 days of the change. The notification shall  
13 include the certification of small farm compliance required under subsection  
14 (a) of this section.

15 (e)(1) Identification; ranking of water quality needs. During an inspection  
16 of a small farm under this section, the Secretary shall identify areas where the  
17 farm could benefit from capital, structural, or technical assistance in order to  
18 improve or come into compliance with the accepted agricultural practices and  
19 any applicable State water quality permits.

20 (2) Annually, the Secretary shall establish a priority ranking system for  
21 small farms according to the water quality benefit associated with the capital,

1 structural, or technical improvements identified as needed by the Secretary  
2 during an inspection of the farm.

3 (3) Notwithstanding the priority system established by subdivision (2) of  
4 this subsection, the Secretary may provide financial assistance to a small farm  
5 at any time, regardless of the priority ranking system, if the Secretary  
6 determines that the farm needs assistance to address a water quality issue that  
7 requires immediate abatement.

8 \* \* \* Agricultural Water Quality; Training \* \* \*

9 Sec. 6. 6 V.S.A. chapter 215, subchapter 8 is added to read:

10 Subchapter 8. Agricultural Water Quality Certification Training

11 § 4981. AGRICULTURAL WATER QUALITY CERTIFICATION

12 TRAINING; RULEMAKING

13 (a) The Secretary of Agriculture, Food and Markets shall adopt by  
14 procedure requirements for training classes or programs for owners or  
15 operators of small farms, medium farms, or large farms certified or permitted  
16 under this chapter regarding:

17 (1) the prevention of discharges, as that term is defined in 10 V.S.A.  
18 § 1251(3); and

19 (2) the mitigation and management of stormwater runoff, as that term is  
20 defined in 10 V.S.A. § 1264, from farms.

21 (b) Any training required by procedure under this section shall:

1           (1) address the existing statutory and regulatory requirements for  
2           operation of a large, medium, or small farm in the State; and

3           (2) address the management practices and technical and financial  
4           resources available to assist in compliance with statutory or regulatory  
5           agricultural requirements.

6                           \* \* \* Agricultural Water Quality;

7                           Certification of Custom Applicators \* \* \*

8           Sec. 7. 6 V.S.A. chapter 215, subchapter 9 is added to read:

9                   Subchapter 9. Certification of Custom Applicators of Manure,

10                                   Nutrients, or Sludge

11           § 4987. DEFINITIONS

12           As used in this subchapter:

13           (1) “Custom applicator” means a person who applies manure, nutrients,  
14           or sludge to land and who charges or collects other consideration for  
15           the service.

16           (2) “Manure” means livestock waste that may also contain bedding,  
17           spilled feed, water, or soil.

18           (3) “Seasonal employee” means a person who:

19                   (A) works for a custom applicator for 20 weeks or fewer in a  
20           calendar year; and

21                   (B) works in a job scheduled to last 20 weeks or fewer.

1           (4) “Sludge” means any solid, semisolid, or liquid generated from a  
2           municipal, commercial, or industrial wastewater treatment plant or process,  
3           water supply treatment plant, air pollution control facility, or any other such  
4           waste having similar characteristics and effects.

5           § 4988. CERTIFICATION OF CUSTOM APPLICATOR

6           (a) The Secretary of Agriculture, Food and Markets shall adopt by rule a  
7           process by which a custom applicator shall be certified to operate within the  
8           State. The certification process shall require a custom applicator to complete  
9           eight hours of training over each five-year period regarding:

10           (1) application methods or techniques to minimize the runoff of  
11           land-applied manure, nutrients, or sludge to waters of the State; and

12           (2) identification of weather or soil conditions that increase the risk of  
13           runoff of land-applied manure, nutrients, or sludge to waters of the State.

14           (b) A custom applicator shall not apply manure, nutrients, or sludge unless  
15           certified by the Secretary of Agriculture, Food and Markets.

16           (c) A custom applicator certified under this section may train seasonal  
17           employees in methods or techniques to minimize runoff to surface waters and  
18           to identify weather or soil conditions that increase the risk of runoff. A custom  
19           applicator that trains a seasonal employee under this subsection shall be liable  
20           for damages done and liabilities incurred by a seasonal employee who  
21           improperly applies manure, nutrients, or sludge.

1       (d) The requirements of this section shall not apply to an owner or operator  
2       of a farm applying manure, nutrients, or sludge to a field that he or she owns or  
3       controls.

4       \* \* \* Agricultural Water Quality; Enforcement; Corrective Actions \* \* \*

5       Sec. 8. 6 V.S.A. chapter 215, subchapter 10 is added to read:

6                               Subchapter 10. Enforcement

7       § 4991. CORRECTIVE ACTIONS; ADMINISTRATIVE ENFORCEMENT

8       (a)(1) When the Secretary of Agriculture, Food and Markets determines  
9       that a person engaged in farming is managing a farm in violation of the  
10       requirements of this chapter, rules adopted under this chapter, or a permit or  
11       certification issued under this chapter, the Secretary may issue a written  
12       warning that shall be served in person or by certified mail, return receipt  
13       requested. A warning issued under this subsection shall include:

14               (A) a brief description of the alleged violation;

15               (B) identification of this statute;

16               (C) identification of the applicable statute, rule, or permit  
17       condition violated;

18               (D) the required corrective actions that the person shall take to  
19       correct the violation; and

20               (E) a summary of federal and State assistance programs that may be  
21       utilized by the person to assist in correcting the violation.

1           (2) A person issued a warning under this subsection shall have 30 days  
2           to respond to the written warning and shall provide an abatement schedule for  
3           curing the violation and a description of the corrective action to be taken to  
4           cure the violation.

5           (3) If a person who receives a warning under this subsection fails to  
6           respond in a timely manner to the written warning or to take corrective action,  
7           the Secretary may act pursuant to subsection (b) or (c) of this section in order  
8           to protect water quality.

9           (b) The Secretary may:

10           (1) Issue cease and desist orders in accordance with the requirements of  
11           sections 15, 16, and 17 of this title

12           (2) Issue emergency administrative orders to protect water quality when  
13           an alleged violation, activity, or farm practice:

14           (A) presents an immediate threat of substantial harm to the  
15           environment or immediate threat to the public health or welfare;

16           (B) is likely to result in an immediate threat of substantial harm to the  
17           environment or immediate threat to the public health or welfare; or

18           (C) requires a permit or amendment to a permit issued under this  
19           chapter and a farm owner or operator has commenced an activity or is  
20           continuing an activity without a permit or permit amendment.

1           (3) Institute appropriate proceedings on behalf of the Agency of  
2           Agriculture, Food and Markets to enforce the requirements of this chapter,  
3           rules adopted under this chapter, or a permit or certification issued under this  
4           chapter.

5           (4) Order mandatory corrective actions, including a requirement to  
6           remove livestock from a farm or production area when the volume of waste  
7           produced by livestock on the farm exceeds the infrastructure capacity of the  
8           farm or the production area to manage the waste or waste leachate and prevent  
9           runoff or leaching of wastes to waters of the State or groundwater, as required  
10          by this chapter.

11          (5) Seek administrative or civil penalties in accordance with the  
12          requirements of section 15, 16, 17, or 4993 of this title. Notwithstanding the  
13          requirements of section 15 of this title to the contrary, the maximum  
14          administrative penalty issued by the Secretary under this section shall not  
15          exceed \$5,000.00 for each violation, and the maximum amount of any penalty  
16          assessed for separate and distinct violations of this chapter shall not exceed  
17          \$50,000.00.

18          (c) A person may request a hearing on a cease and desist or emergency  
19          order issued under this section within five days of receipt of the order. Upon  
20          receipt of a request for a hearing, the Secretary promptly shall set a date and

1 time for a hearing. A request for a hearing on a cease and desist order or  
2 emergency order issued under this section shall not stay the order.

3 (d) Any person subject to an enforcement order or an administrative  
4 penalty who is aggrieved by a final decision of the Secretary may appeal to the  
5 Superior Court within 30 days of the decision. The administrative judge may  
6 specially assign an Environmental judge to Superior Court for the purpose of  
7 hearing an appeal.

8 § 4992. PERMIT OR CERTIFICATION; REVOCATION; ENFORCEMENT

9 The Secretary may revoke or condition coverage under a general permit, an  
10 individual permit, a small farm certification, or other permit or certification  
11 issued under this chapter or rules adopted under this chapter after following the  
12 same process prescribed by section 2705 of this title regarding the revocation  
13 of a handler's license. The Secretary may also seek enforcement remedies and  
14 penalties under this subchapter against any person who fails to comply with  
15 any term, provision, or requirements of a permit or certification required by  
16 this chapter or who violates the terms or conditions of coverage under any  
17 general permit, any individual permit, or any certification issued under  
18 this chapter.

19 § 4993. CIVIL ENFORCEMENT

20 (a) The Secretary may bring an action in the Civil Division of the Superior  
21 Court to enforce the requirements of this chapter, or rules adopted under this

1 chapter, or any permit or certification issued under this chapter, to ensure  
2 compliance, and to obtain penalties in the amounts described in subsection (b)  
3 of this section. The action shall be brought by the Attorney General in the  
4 name of the State.

5 (b) The court may grant temporary and permanent injunctive relief,  
6 and may:

7 (1) Enjoin future activities.

8 (2) Order corrective actions to be taken to mitigate or curtail any  
9 violation and to protect human health or the environment, including the  
10 removal of livestock from the farm or production area when the volume of  
11 wastes produced by livestock exceeds the infrastructure capacity of the farm or  
12 its production area to manage the waste or waste leachate to prevent runoff or  
13 leaching of wastes to waters of the State or groundwater as required by the  
14 standards in this chapter.

15 (3) Order the design, construction, installation, operation, or  
16 maintenance of facilities designed to mitigate or prevent a violation of this  
17 chapter or to protect human health or the environment or designed to  
18 assure compliance.

19 (4) Fix and order compensation for any public or private property  
20 destroyed or damaged.

1           (5) Revoke coverage under any permit or certification issued under  
2           this chapter.

3           (6) Order reimbursement from any person who caused governmental  
4           expenditures for the investigation, abatement, mitigation, or removal of a  
5           hazard to human health or the environment.

6           (7) Levy a civil penalty as provided in this subdivision. A civil penalty  
7           of not more than \$85,000.00 may be imposed for each violation. In addition,  
8           in the case of a continuing violation, a penalty of not more than \$42,500.00  
9           may be imposed for each day the violation continues. In fixing the amount of  
10           the penalty, the court shall apply the criteria set forth in subsections (e) and (f)  
11           of this section. The cost of collection of penalties or other monetary awards  
12           shall be assessed against and added to a penalty assessed against a respondent.

13           (c)(1) In any civil action brought under this section in which a temporary  
14           restraining order or preliminary injunction is sought, relief shall be obtained  
15           upon a showing that there is the probability of success on the merits and that:

16                   (A) a violation exists; or

17                   (B) a violation is imminent and substantial harm is likely to result.

18           (2) In a civil action brought under this section in which a temporary  
19           restraining order or preliminary injunction is sought, the Secretary need not  
20           demonstrate immediate and irreparable injury, loss, or damage.

1       (d) Any balancing of the equities in actions under this section may affect  
2       the time by which compliance shall be attained, but not the necessity of  
3       compliance within a reasonable period of time.

4       (e) In determining the amount of the penalty provided in subsection (b) of  
5       this section, the court shall consider the following:

6           (1) the degree of actual or potential impact on public health, safety,  
7       welfare, and the environment resulting from the violation;

8           (2) the presence of mitigating circumstances, including unreasonable  
9       delay by the Secretary in seeking enforcement;

10          (3) whether the respondent knew or had reason to know the  
11       violation existed;

12          (4) the respondent's record of compliance;

13          (5) the deterrent effect of the penalty;

14          (6) the State's actual costs of enforcement; and

15          (7) the length of time the violation has existed.

16       (f) In addition to any penalty assessed under subsection (b) of this section,  
17       the Secretary may also recapture economic benefit resulting from a violation.

18       Sec. 9. 6 V.S.A. § 4812 is amended to read:

19       § 4812. ~~CORRECTIVE ACTIONS~~

20       ~~(a) When the Secretary of Agriculture, Food and Markets determines that a~~  
21       ~~person engaged in farming is managing a farm using practices which are~~

1 ~~inconsistent with the requirements of this chapter or rules adopted under this~~  
2 ~~subchapter, the Secretary may issue a written warning which shall be served in~~  
3 ~~person or by certified mail, return receipt requested. The warning shall include~~  
4 ~~a brief description of the alleged violation, identification of this statute and~~  
5 ~~applicable rules, a recommendation for corrective actions that may be taken by~~  
6 ~~the person, along with a summary of federal and State assistance programs~~  
7 ~~which may be utilized by the person to remedy the violation. The person shall~~  
8 ~~have 30 days to respond to the written warning and shall provide an abatement~~  
9 ~~schedule for curing the violation and a description of the corrective action to be~~  
10 ~~taken to cure the violation. If the person fails to respond to the written warning~~  
11 ~~within this period or to take corrective action to change the practices, the~~  
12 ~~Secretary may act pursuant to subsection (b) of this section in order to protect~~  
13 ~~water quality.~~

14 ~~(b) The Secretary may:~~

15 ~~(1) issue cease and desist orders and administrative penalties in~~  
16 ~~accordance with the requirements of sections 15, 16, and 17 of this title; and~~

17 ~~(2) institute appropriate proceedings on behalf of the Agency to enforce~~  
18 ~~this subchapter.~~

19 ~~(c) Whenever the Secretary believes that any person engaged in farming is~~  
20 ~~in violation of this subchapter or rules adopted thereunder, an action may be~~  
21 ~~brought in the name of the Agency in a court of competent jurisdiction to~~

1 ~~restrain by temporary or permanent injunction the continuation or repetition of~~  
2 ~~the violation. The court may issue temporary or permanent injunctions, and~~  
3 ~~other relief as may be necessary and appropriate to curtail any violations.~~

4 ~~(d) [Repealed.]~~

5 ~~(e) Any person subject to an enforcement order or an administrative~~  
6 ~~penalty who is aggrieved by the final decision of the Secretary may appeal to~~  
7 ~~the Superior Court within 30 days of the decision. The administrative judge~~  
8 ~~may specially assign an Environmental judge to Superior Court for the purpose~~  
9 ~~of hearing an appeal. [Repealed.]~~

10 Sec. 10. 6 V.S.A. § 4854 is amended to read:

11 § 4854. **REVOCATION; ENFORCEMENT**

12 ~~The secretary may revoke a permit issued under this subchapter after~~  
13 ~~following the same process prescribed by section 2705 of this title regarding~~  
14 ~~the revocation of a handler's license. The secretary may also seek enforcement~~  
15 ~~remedies under sections 1, 12, 13, 16, and 17 of this title as well as assess an~~  
16 ~~administrative penalty under section 15 of this title to any person who fails to~~  
17 ~~apply for a permit as required by this subchapter, or who violates the terms or~~  
18 ~~conditions of a permit issued under this subchapter. However, notwithstanding~~  
19 ~~the provisions of section 15 of this title to the contrary, the maximum~~  
20 ~~administrative penalty assessed for a violation of this subchapter shall not~~  
21 ~~exceed \$5,000.00 for each violation, and the maximum amount of any penalty~~

1 ~~assessed for separate and distinct violations of this chapter shall not exceed~~  
2 ~~\$50,000.00. [Repealed.]~~

3 Sec. 11. 6 V.S.A. § 4858(b) is amended to read:

4 (b) Rules; general and individual permits. The ~~secretary~~ Secretary shall  
5 establish by rule, pursuant to 3 V.S.A. chapter 25 of Title 3, requirements for a  
6 “general permit” and “individual permit” to ensure that medium and small  
7 farms generating animal waste comply with the water quality standards of the  
8 ~~state~~ State.

9 \* \* \*

10 (2) The rules adopted under this section shall also address permit  
11 administration, public notice and hearing, permit enforcement, permit  
12 transition, revocation, and appeals consistent with provisions of sections 4859;  
13 ~~4860~~, and 4861 of this title and subchapter 10 of this chapter.

14 \* \* \*

15 Sec. 12. 6 V.S.A. § 4860 is amended to read:

16 § 4860. ~~REVOCATION; ENFORCEMENT~~

17 ~~(a) The secretary may revoke coverage under a general permit or an~~  
18 ~~individual permit issued under this subchapter after following the same process~~  
19 ~~prescribed by section 2705 of this title regarding the revocation of a handler’s~~  
20 ~~license. The secretary may also seek enforcement remedies under sections 1,~~  
21 ~~11, 12, 13, 16, and 17 of this title as well as assess an administrative penalty~~

1 ~~under section 15 of this title from any person who fails to comply with any~~  
2 ~~permit provision as required by this subchapter or who violates the terms or~~  
3 ~~conditions of coverage under any general permit or any individual permit~~  
4 ~~issued under this subchapter. However, notwithstanding provisions of section~~  
5 ~~15 of this title to the contrary, the maximum administrative penalty assessed~~  
6 ~~for a violation of this subchapter shall not exceed \$5,000.00 for each violation,~~  
7 ~~and the maximum amount of any penalty assessed for separate and distinct~~  
8 ~~violations of this chapter shall not exceed \$50,000.00.~~

9 ~~(b) Any person who violates any provision of this subchapter or who fails~~  
10 ~~to comply with any order or the terms of any permit issued in accordance with~~  
11 ~~this subchapter shall be fined not more than \$10,000.00 for each violation.~~  
12 ~~Each violation may be a separate offense and, in the case of a continuing~~  
13 ~~violation, each day's continuance may be deemed a separate offense.~~

14 ~~(c) Any person who knowingly makes any false statement, representation,~~  
15 ~~or certification in any application, record, report, plan, or other document filed~~  
16 ~~or required to be maintained by this subchapter or by any permit, rule,~~  
17 ~~regulation, or order issued under this subchapter, or who falsifies, tampers~~  
18 ~~with, or knowingly renders inaccurate any monitoring device or method~~  
19 ~~required to be maintained by this subchapter or by any permit, rule, regulation,~~  
20 ~~or order issued under this subchapter shall upon conviction be punished by a~~  
21 ~~fine of not more than \$5,000.00 for each violation. Each violation may be a~~

1 ~~separate offense and, in the case of a continuing violation, each day's~~  
2 ~~continuance may be deemed a separate offense. [Repealed.]~~

3 \* \* \* Agricultural Water Quality; Basin Planning \* \* \*

4 Sec. 13. 6 V.S.A. § 4813 is amended to read:

5 § 4813. ~~BASIN MANAGEMENT; APPEALS TO THE WATER~~  
6 ~~RESOURCES BOARD~~ ENVIRONMENTAL DIVISION

7 (a) ~~The secretary of agriculture, food and markets~~ Secretary of Agriculture,  
8 Food and Markets shall cooperate with the ~~secretary of natural resources~~  
9 Secretary of Natural Resources in the basin planning process with regard to the  
10 agricultural non-point source waste component of each basin plan. Any person  
11 with an interest in the agricultural non-point source component of the basin  
12 planning process may petition the ~~secretary of agriculture, food and markets~~  
13 Secretary of Agriculture, Food and Markets to require, and the ~~secretary~~  
14 Secretary may require, best management practices in the individual basin  
15 beyond accepted agricultural practices adopted by rule, in order to achieve  
16 compliance with the water quality goals in 10 V.S.A. § 1250 and any duly  
17 adopted basin plan. ~~The secretary of agriculture, food and markets~~ Secretary  
18 of Agriculture, Food and Markets shall hold a public hearing within 60 days  
19 and shall issue a timely written decision that sets forth the facts and reasons  
20 supporting the decision.

1 (b) Any person engaged in farming that has been required by the ~~secretary~~  
2 ~~of agriculture, food and markets~~ Secretary of Agriculture, Food and Markets to  
3 implement best management practices or any person who has petitioned the  
4 ~~secretary of agriculture, food and markets~~ Secretary of Agriculture, Food and  
5 Markets under subsection (a) of this section may appeal the ~~secretary of~~  
6 ~~agriculture, food and market's~~ Secretary of Agriculture, Food and Markets'  
7 decision to the ~~environmental division~~ Environmental Division de novo.

8 (c) ~~Before requiring best management practices under this section, the~~  
9 ~~secretary of agriculture, food and markets or the board shall determine that~~  
10 ~~sufficient financial assistance is available to assist farmers in achieving~~  
11 ~~compliance with applicable best management practices~~ When requiring  
12 implementation of a best management practice, the Secretary shall inform a  
13 farmer of the resources available to assist the farmer in implementing the best  
14 management practice and complying with the Vermont water quality  
15 standards.

16 \* \* \* Stream Alteration; Agricultural Activities \* \* \*

17 Sec. 14. 10 V.S.A. § 1021 is amended to read:

18 § 1021. ALTERATION PROHIBITED; EXCEPTIONS

19 (a) A person shall not change, alter, or modify the course, current, or cross  
20 section of any watercourse or of designated outstanding resource waters,  
21 within or along the boundaries of this State either by movement, fill, or

1 excavation of ten cubic yards or more of instream material in any year, unless  
2 authorized by the Secretary. A person shall not establish or construct a berm in  
3 a flood hazard area or river corridor, as those terms are defined in subdivisions  
4 752(3) and (11) of this title, unless permitted by the Secretary or constructed as  
5 an emergency protective measure under subsection (b) of this section.

6 \* \* \*

7 (f) This subchapter shall not apply to:

8 (1) accepted agricultural or silvicultural practices, as defined by the  
9 Secretary of Agriculture, Food and Markets, or timber harvesting activities  
10 subject to accepted management practices adopted by the Commissioner of  
11 Forests, Parks and Recreation, respectively; or

12 (2) the stabilization of streambanks on a farm that is implementing a  
13 U.S. Department of Agriculture Natural Resource Conservation Service  
14 conservation practice or a conservation practice approved by the Secretary of  
15 Agriculture, Food and Markets, provided that the practice is consistent with  
16 policies adopted by the Secretary of Natural Resources to reduce fluvial  
17 erosion hazards.

18 \* \* \*

1                   \* \* \* Use Value Appraisal; Compliance with  
2                   Accepted Agricultural Practices \* \* \*

3       Sec. 15. 32 V.S.A. § 3756(i) is amended to read:

4           (i)(1) The Director shall remove from use value appraisal an entire parcel  
5       of managed ~~forest land~~ forestland and notify the owner ~~in accordance with the~~  
6       ~~procedure in subsection (b) of this section~~ when the ~~Department~~ Commissioner  
7       of Forests, Parks and Recreation has not received a management activity report  
8       or has received an adverse inspection report, unless the lack of conformance  
9       consists solely of the failure to make prescribed planned cutting. In that case,  
10       the Director may delay removal from use value appraisal for a period of one  
11       year at a time to allow time to bring the parcel into conformance with the plan.

12           (2)(A) The Director shall remove from use value appraisal an entire  
13       parcel or parcels of agricultural land and farm buildings identified by the  
14       Secretary of Agriculture, Food and Markets as being used by a person:

15           (i) found, after hearing, to be out of compliance with water quality  
16       requirements established under 6 V.S.A. chapter 215; or

17           (ii) who is not in compliance with the terms of an order issued  
18       under 6 V.S.A. chapter 215, subchapter 10 to remedy a violation of water  
19       quality requirements established under 6 V.S.A. chapter 215.

20           (B) The Director shall notify the owner that the land has been  
21       removed by mailing such notification to the owner's last and usual place of

1 abode. After a parcel or building has been removed from use value appraisal  
2 upon notification from the Agency of Agriculture, Food and Markets, a new  
3 application for use value appraisal will not be considered for a period of one  
4 year after certification from the Agency that there has been compliance with  
5 the standards or order.

6 Sec. 16. 32 V.S.A. § 3758 is amended to read:

7 § 3758. APPEALS

8 (a) Whenever the Director denies in whole or in part any application for  
9 classification as agricultural land or managed forestland or farm buildings, or  
10 grants a different classification than that applied for, or the Director or  
11 assessing officials fix a use value appraisal or determine that previously  
12 classified property is no longer eligible or that the property has undergone a  
13 change in use, the aggrieved owner may appeal the decision of the Director to  
14 the Commissioner within 30 days of the decision, and from there to Superior  
15 Court in the county in which the property is located.

16 \* \* \*

17 (e) When the Director removes a parcel or building pursuant to notification  
18 from the Secretary of Agriculture, Food and Markets under subsection 3756(i)  
19 of this title, the exclusive right of appeal shall be as provided in 6 V.S.A.  
20 chapter 215.



1 Secretary shall ~~prepare an overall management plan to ensure that the water~~  
2 ~~quality standards are met in all State waters.~~ The report shall include a  
3 schedule for the production of basin plans in the subsequent calendar year and  
4 a summary of actions to be taken over the subsequent three years. The  
5 provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply  
6 to the report to be made under this subsection.

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

- 10 (1) existing and obtainable water qualities;
- 11 (2) existing and potential use of waters for public water supply,  
12 recreational, agricultural, industrial, and other legitimate purposes;
- 13 (3) natural sources of pollution;
- 14 (4) public and private pollution sources and the alternative means of  
15 abating the same;
- 16 (5) consistency with the State water quality policy established in  
17 10 V.S.A. § 1250;
- 18 (6) suitability of waters as habitat for fish, aquatic life, and wildlife;
- 19 (7) need for and use of minimum streamflow requirements;
- 20 (8) federal requirements for classification and management of waters;
- 21 (9) consistency with applicable municipal, regional, and State plans; and

1           (10) any other factors relevant to determine the maximum beneficial use  
2 and enjoyment of waters.

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

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

9           (h) The Secretary may contract with a regional planning commission to  
10 assist in or to produce a basin plan under the timeline set forth in subsection (d)  
11 of this section. When contracting with a regional planning commission to  
12 assist in or produce a basin plan, the Secretary may require the regional  
13 planning commission to:

14           (1) ensure that municipal officials, citizens, watershed groups and other  
15 interested groups and individuals are involved in the basin planning process;

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

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

1           (4) ensure regional and local input in State water quality policy  
2           development and planning processes;

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

6           (6) provide education to municipal officials and citizens regarding the  
7           basin planning process.

8                           \* \* \* Antidegradation Policy Implementation Rule \* \* \*

9           Sec. 18. 10 V.S.A. § 1251a(c) is amended to read:

10           (c) On or before ~~January 15, 2008~~ July 1, 2016, the Secretary of Natural  
11           Resources shall ~~propose draft rules for~~ adopt by rule an implementation  
12           process for the antidegradation policy in the water quality standards of the  
13           State. The implementation process for the antidegradation policy shall be  
14           consistent with the State water quality policy established in section 1250 of  
15           this title, the Vermont Water Quality Standards, and any applicable  
16           requirements of the federal Clean Water Act. ~~On or before July 1, 2008, a~~  
17           ~~final proposal of the rules for an implementation process for the~~  
18           ~~antidegradation policy shall be filed with the Secretary of State under~~  
19           ~~3 V.S.A. § 841.~~



1 ~~permit program based on the requirements of this section for the discharge of~~  
2 ~~“regulated stormwater runoff” as that term is defined in subdivision (11) of this~~  
3 ~~subsection. As used in this section:~~

4 (1) ~~“2002 Stormwater Management Manual” means the Agency of~~  
5 ~~Natural Resources’ Stormwater Management Manual dated April 2002, as~~  
6 ~~amended from time to time by rule.~~

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

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

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

15 (5) ~~“Expansion” and “the expanded portion of an existing discharge”~~  
16 ~~mean an increase or addition of impervious surface, such that the total resulting~~  
17 ~~impervious area is greater than the minimum regulatory threshold. Expansion~~  
18 ~~does not mean an increase or addition of impervious surface of less than~~  
19 ~~5,000 square feet.~~

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

4           ~~(7) “New stormwater discharge” means a new or expanded discharge of~~  
5           ~~regulated stormwater runoff, subject to the permitting requirements of this~~  
6           ~~chapter, which first occurs after June 1, 2002 and has not been previously~~  
7           ~~authorized pursuant to this chapter.~~

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

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

15           ~~(10) “Redevelopment” means the construction or reconstruction of an~~  
16           ~~impervious surface where an impervious surface already exists when such new~~  
17           ~~construction involves substantial site grading, substantial subsurface~~  
18           ~~excavation, or substantial modification of existing stormwater conveyance,~~  
19           ~~such that the total of impervious surface to be constructed or reconstructed is~~  
20           ~~greater than the minimum regulatory threshold. Redevelopment does not mean~~  
21           ~~the construction or reconstruction of impervious surface where impervious~~

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

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

10 (12) ~~“Stormwater impact fee” means the monetary charge assessed to a~~  
11 ~~permit applicant for the discharge of regulated stormwater runoff to a~~  
12 ~~stormwater impaired water that mitigates a sediment load level or hydrologic~~  
13 ~~impact that the discharger is unable to control through on-site treatment or~~  
14 ~~completion of an offset on a site owned or controlled by the permit applicant.~~

15 (13) ~~“Stormwater impaired water” means a State water that the~~  
16 ~~Secretary determines is significantly impaired by discharges of regulated~~  
17 ~~stormwater runoff.~~

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

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

5           ~~(16) “Water quality remediation plan” means a plan, other than a TMDL~~  
6           ~~or sediment load allocation, designed to bring an impaired water body into~~  
7           ~~compliance with applicable water quality standards in accordance with 40~~  
8           ~~C.F.R. § 130.7(b)(1)(ii) and (iii).~~

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

14          ~~(18) “Stormwater system” means the storm sewers; outfall sewers;~~  
15          ~~surface drains; manmade wetlands; channels; ditches; wet and dry bottom~~  
16          ~~basins; rain gardens; and other control equipment necessary and appurtenant to~~  
17          ~~the collection, transportation, conveyance, pumping, treatment, disposal, and~~  
18          ~~discharge of regulated stormwater runoff.~~

1           ~~(19) “Net zero standard” means:~~

2                   ~~(A) A new discharge or the expanded portion of an existing discharge~~  
3           ~~meets the requirements of the 2002 Stormwater Management Manual and does~~  
4           ~~not increase the sediment load in the receiving stormwater impaired water; or~~

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

14                   ~~(b) The Secretary shall prepare a plan for the management of collected~~  
15           ~~stormwater runoff found by the Secretary to be deleterious to receiving waters.~~  
16           ~~The plan shall recognize that the runoff of stormwater is different from the~~  
17           ~~discharge of sanitary and industrial wastes because of the influence of natural~~  
18           ~~events of stormwater runoff, the variations in characteristics of those runoffs,~~  
19           ~~and the increased stream flows and natural degradation of the receiving water~~  
20           ~~quality at the time of discharge. The plan shall be cost effective and designed~~  
21           ~~to minimize any adverse impact of stormwater runoff to waters of the State.~~

1 By no later than February 1, 2001, the Secretary shall prepare an enhanced  
2 stormwater management program and report on the content of that program to  
3 the House Committees on Fish, Wildlife and Water Resources and on Natural  
4 Resources and Energy and to the Senate Committee on Natural Resources and  
5 Energy. In developing the program, the Secretary shall consult with the Board,  
6 affected municipalities, regional entities, other State and federal agencies, and  
7 members of the public. The Secretary shall be responsible for implementation  
8 of the program. The Secretary's stormwater management program shall  
9 include, at a minimum, provisions that:

10 (1) Indicate that the primary goals of the State program will be to assure  
11 compliance with the Vermont Water Quality Standards and to maintain after  
12 development, as nearly as possible, the predevelopment runoff characteristics.

13 (2) Allow for differences in hydrologic characteristics in different parts  
14 of the State.

15 (3) Incorporate stormwater management into the basin planning process  
16 conducted under section 1253 of this title.

17 (4) Assure consistency with applicable requirements of the federal Clean  
18 Water Act.

19 (5) Address stormwater management in new development and  
20 redevelopment.

1           ~~(6) Control stormwater runoff from construction sites and other land~~  
2           ~~disturbing activities.~~

3           ~~(7) Indicate that water quality mitigation practices may be required for~~  
4           ~~any redevelopment of previously developed sites, even when~~  
5           ~~preredevelopment runoff characteristics are proposed to be maintained.~~

6           ~~(8) Specify minimum requirements for inspection and maintenance of~~  
7           ~~stormwater management practices.~~

8           ~~(9) Promote detection and elimination of improper or illegal connections~~  
9           ~~and discharges.~~

10           ~~(10) Promote implementation of pollution prevention during the conduct~~  
11           ~~of municipal operations.~~

12           ~~(11) Provide for a design manual that includes technical guidance for the~~  
13           ~~management of stormwater runoff.~~

14           ~~(12) Encourage municipal governments to utilize existing regulatory and~~  
15           ~~planning authority to implement improved stormwater management by~~  
16           ~~providing technical assistance, training, research and coordination with respect~~  
17           ~~to stormwater management technology, and by preparing and distributing a~~  
18           ~~model local stormwater management ordinance.~~

19           ~~(13) Promote public education and participation among citizens and~~  
20           ~~municipalities about cost-effective and innovative measures to reduce~~  
21           ~~stormwater discharges to the waters of the State.~~

1       ~~(e) The Secretary shall submit the program report to the House Committees~~  
2       ~~on Agriculture and Forest Products, on Transportation, and on Natural~~  
3       ~~Resources and Energy and to the Senate Committees on Agriculture and on~~  
4       ~~Natural Resources and Energy.~~

5       ~~(d)(1) The Secretary shall initiate rulemaking by October 15, 2004, and~~  
6       ~~shall adopt a rule for a stormwater management program by June 15, 2005.~~  
7       ~~The rule shall be adopted in accordance with 3 V.S.A. chapter 25 and~~  
8       ~~shall include:~~

9               ~~(A) the regulatory elements of the program identified in subsection~~  
10       ~~(b) of this section, including the development and use of offsets and the~~  
11       ~~establishment and imposition of stormwater impact fees to apply when issuing~~  
12       ~~permits that allow regulated stormwater runoff to stormwater impaired waters;~~

13               ~~(B) requirements concerning the contents of permit applications that~~  
14       ~~include, at a minimum, for regulated stormwater runoff, the permit application~~  
15       ~~requirements contained in the Agency's 1997 stormwater management~~  
16       ~~procedures;~~

17               ~~(C) a system of notifying interested persons in a timely way of the~~  
18       ~~Agency's receipt of stormwater discharge applications, provided any alleged~~  
19       ~~failures with respect to such notice shall not be relevant in any Agency permit~~  
20       ~~decision or any appeals brought pursuant to section 1269 of this chapter;~~

1           ~~(D) requirements concerning a permit for discharges of regulated~~  
2           ~~stormwater runoff from the development, redevelopment, or expansion of~~  
3           ~~impervious surfaces equal to or greater than one acre or any combination of~~  
4           ~~development, redevelopment, and expansion of impervious surfaces equal to or~~  
5           ~~greater than one acre; and~~

6           ~~(E) requirements concerning a permit for discharges of regulated~~  
7           ~~stormwater runoff from an impervious surface of any size to~~  
8           ~~stormwater impaired waters if the Secretary determines that treatment is~~  
9           ~~necessary to reduce the adverse impact of such stormwater discharges due to~~  
10           ~~the size of the impervious surface, drainage patterns, hydraulic connectivity,~~  
11           ~~existing stormwater treatment, or other factors identified by the Secretary.~~

12           ~~(2) Notwithstanding 3 V.S.A. § 840(a), the Secretary shall hold at least~~  
13           ~~three public hearings in different areas of the State regarding the proposed rule.~~

14           ~~(e)(1) Except as otherwise may be provided in subsection (f) of this~~  
15           ~~section, the Secretary shall, for new stormwater discharges, require a permit~~  
16           ~~for discharge of, regulated stormwater runoff consistent with, at a minimum,~~  
17           ~~the 2002 Stormwater Management Manual. The Secretary may issue,~~  
18           ~~condition, modify, revoke, or deny discharge permits for regulated stormwater~~  
19           ~~runoff, as necessary to assure achievement of the goals of the program and~~  
20           ~~compliance with State law and the federal Clean Water Act. The permit shall~~  
21           ~~specify the use of best management practices to control regulated stormwater~~

1 runoff. The permit shall require as a condition of approval, proper operation,  
2 and maintenance of any stormwater management facility and submittal by the  
3 permittee of an annual inspection report on the operation, maintenance and  
4 condition of the stormwater management system. The permit shall contain  
5 additional conditions, requirements, and restrictions as the Secretary deems  
6 necessary to achieve and maintain compliance with the water quality standards,  
7 including requirements concerning recording, reporting, and monitoring the  
8 effects on receiving waters due to operation and maintenance of stormwater  
9 management facilities.

10 (2) ~~As one of the principal means of administering an enhanced~~  
11 ~~stormwater program, the Secretary may issue and enforce general permits. To~~  
12 ~~the extent appropriate, such permits shall include the use of certifications of~~  
13 ~~compliance by licensed professional engineers practicing within the scope of~~  
14 ~~their engineering specialty. The Secretary may issue general permits for~~  
15 ~~classes of regulated stormwater runoff permittees and may specify the period~~  
16 ~~of time for which the permit is valid other than that specified in subdivision~~  
17 ~~1263(d)(4) of this title when such is consistent with the provisions of this~~  
18 ~~section. General permits shall be adopted and administered in accordance with~~  
19 ~~the provisions of subsection 1263(b) of this title. No permit is required under~~  
20 ~~this section for:~~

1           ~~(A) Stormwater runoff from farms subject to accepted agricultural~~  
2           ~~practices adopted by the Secretary of Agriculture, Food and Markets;~~

3           ~~(B) Stormwater runoff from concentrated animal feeding operations~~  
4           ~~that require a permit under subsection 1263(g) of this chapter; or~~

5           ~~(C) Stormwater runoff from silvicultural activities subject to accepted~~  
6           ~~management practices adopted by the Commissioner of Forests, Parks~~  
7           ~~and Recreation.~~

8           ~~(3) Prior to issuing a permit under this subsection, the Secretary shall~~  
9           ~~review the permit applicant's history of compliance with the requirements of~~  
10           ~~this chapter. The Secretary may, at his or her discretion and as necessary to~~  
11           ~~assure achievement of the goals of the program and compliance with State law~~  
12           ~~and the federal Clean Water Act, deny an application for the discharge of~~  
13           ~~regulated stormwater under this subsection if review of the applicant's~~  
14           ~~compliance history indicates that the applicant is discharging regulated~~  
15           ~~stormwater in violation of this chapter or is the holder of an expired permit for~~  
16           ~~an existing discharge of regulated stormwater.~~

17           ~~(f)(1) In a stormwater impaired water, the Secretary may issue:~~

18           ~~(A) An individual permit in a stormwater impaired water for which~~  
19           ~~no TMDL, water quality remediation plan, or watershed improvement permit~~  
20           ~~has been established or issued, provided that the permitted discharge meets the~~  
21           ~~following discharge standard: prior to the issuance of a general permit to~~

1 ~~implement a TMDL or a water quality remediation plan, the discharge meets~~  
2 ~~the net zero standard;~~

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

6 ~~(i) a new stormwater discharge or the expansion of an existing~~  
7 ~~discharge shall meet the treatment standards for new development and~~  
8 ~~expansion in the 2002 Stormwater Management Manual and any additional~~  
9 ~~requirements deemed necessary by the Secretary to implement the TMDL or~~  
10 ~~water quality remediation plan;~~

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

13 ~~(I) the existing impervious surface shall be reduced by 20~~  
14 ~~percent, or a stormwater treatment practice shall be designed to capture and~~  
15 ~~treat 20 percent of the water quality volume treatment standard of the 2002~~  
16 ~~Stormwater Management Manual from the existing impervious surface; and~~

17 ~~(II) any additional requirements deemed necessary by the~~  
18 ~~Secretary to implement the TMDL or the water quality remediation plan;~~

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

1                   ~~(iv) if a permit is required for an expansion of an existing~~  
2                   ~~impervious surface or for the redevelopment of an existing impervious surface,~~  
3                   ~~discharges from the expansion or from the redeveloped portion of the existing~~  
4                   ~~impervious surface shall meet the relevant treatment standard of the 2002~~  
5                   ~~Stormwater Management Manual, and the existing impervious surface shall~~  
6                   ~~meet the treatment standards deemed necessary by the Secretary to implement~~  
7                   ~~a TMDL or the water quality remediation plan;~~

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

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

13                   ~~(E) A statewide general permit for new discharges that the Secretary~~  
14                   ~~deems necessary to assure attainment of the Vermont Water Quality Standards.~~

15                   ~~(2) An authorization to discharge regulated stormwater runoff pursuant~~  
16                   ~~to a permit issued under this subsection shall be valid for a time period not to~~  
17                   ~~exceed five years. A person seeking to discharge regulated stormwater runoff~~  
18                   ~~after the expiration of that period shall obtain an individual permit or coverage~~  
19                   ~~under a general permit, whichever is applicable, in accordance with subsection~~  
20                   ~~1263(e) of this title.~~

1           ~~(3) By January 15, 2010, the Secretary shall issue a watershed~~  
2           ~~improvement permit, issue a general or individual permit implementing a~~  
3           ~~TMDL approved by the EPA, or issue a general or individual permit~~  
4           ~~implementing a water quality remediation plan for each of the~~  
5           ~~stormwater impaired waters on the Vermont Year 2004 Section 303(d) List of~~  
6           ~~Waters required by 33 U.S.C. 1313(d). In developing a TMDL or a water~~  
7           ~~quality remediation plan for a stormwater impaired water, the Secretary shall~~  
8           ~~consult “A Scientifically Based Assessment and Adaptive Management~~  
9           ~~Approach to Stormwater Management” and “Areas of Agreement about the~~  
10           ~~Scientific Underpinnings of the Water Resources Board’s Original Seven~~  
11           ~~Questions” set out in appendices A and B, respectively, of the final report of~~  
12           ~~the Water Resources Board’s “Investigation Into Developing Cleanup Plans~~  
13           ~~For Stormwater Impaired Waters, Docket No. Inv-03-01,” issued March 9,~~  
14           ~~2004.~~

15           ~~(4) Discharge permits issued under this subsection shall require BMP-~~  
16           ~~based stormwater treatment practices. Permit compliance shall be judged on~~  
17           ~~the basis of performance of the terms and conditions of the discharge permit,~~  
18           ~~including construction and maintenance in accordance with BMP~~  
19           ~~specifications. Any permit issued for a new stormwater discharge or for the~~  
20           ~~expanded portion of an existing discharge pursuant to this subsection shall~~  
21           ~~require compliance with BMPs for stormwater collection and treatment~~

1 established by the 2002 Stormwater Management Manual, and any additional  
2 requirements for stormwater treatment and control systems as the Secretary  
3 determines to be necessary to ensure that the permitted discharge does not  
4 cause or contribute to a violation of the Vermont Water Quality Standards.

5 ~~(5) In addition to any permit condition otherwise authorized under~~  
6 ~~subsection (e) of this section, in any permit issued pursuant to this subsection,~~  
7 ~~the Secretary may require an offset or stormwater impact fee as necessary to~~  
8 ~~ensure the discharge does not cause or contribute to a violation of the Vermont~~  
9 ~~Water Quality Standards. Offsets and stormwater impact fees, where utilized,~~  
10 ~~shall incorporate an appropriate margin of safety to account for the variability~~  
11 ~~in quantifying the load of pollutants of concern. To facilitate utilization of~~  
12 ~~offsets and stormwater impact fees, the Secretary shall identify by January 1,~~  
13 ~~2005 a list of potential offsets in each of the waters listed as a~~  
14 ~~stormwater impaired water under this subsection.~~

15 ~~(g)(1) The Secretary may issue a permit consistent with the requirements of~~  
16 ~~subsection (f) of this section, even where a TMDL or wasteload allocation has~~  
17 ~~not been prepared for the receiving water. In any appeal under this chapter an~~  
18 ~~individual permit meeting the requirements of subsection (f) of this section~~  
19 ~~shall have a rebuttable presumption in favor of the permittee that the discharge~~  
20 ~~does not cause or contribute to a violation of the Vermont Water Quality~~  
21 ~~Standards for the receiving waters with respect to the discharge of regulated~~

1 stormwater runoff. This rebuttable presumption shall only apply to permitted  
2 discharges into receiving waters that are principally impaired by sources other  
3 than regulated stormwater runoff.

4 (2) This subsection shall apply to stormwater permits issued under the  
5 federally delegated NPDES program only to the extent allowed under federal  
6 law.

7 (h) The rebuttable presumption specified in subdivision (g)(1) of this  
8 section shall also apply to permitted discharges into receiving waters that meet  
9 the water quality standards of the State, provided the discharge meets the  
10 requirements of subsection (e) of this section.

11 (i) A residential subdivision may transfer a pretransition stormwater  
12 discharge permit or a stormwater discharge permit implementing a total  
13 maximum daily load plan to a municipality, provided that the municipality  
14 assumes responsibility for the permitting of the stormwater system that serves  
15 the residential subdivision. As used in this section:

16 (1) "Pretransition stormwater discharge permit" means any permit  
17 issued by the Secretary of Natural Resources pursuant to this section on or  
18 before June 30, 2004 for a discharge of stormwater.

19 (2) "Residential subdivision" means land identified and demarcated by  
20 recorded plat or other device that a municipality has authorized to be used  
21 primarily for residential construction.

1           ~~(j) Notwithstanding any other provision of law, if an application to~~  
2           ~~discharge stormwater runoff pertains to a telecommunications facility as~~  
3           ~~defined in 30 V.S.A. § 248a and is filed before July 1, 2017 and the discharge~~  
4           ~~will be to a water that is not principally impaired by stormwater runoff:~~

5                 ~~(1) The Secretary shall issue a decision on the application within~~  
6                 ~~40 days of the date the Secretary determines the application to be complete, if~~  
7                 ~~the application seeks authorization under a general permit.~~

8                 ~~(2) The Secretary shall issue a decision on the application within~~  
9                 ~~60 days of the date the Secretary determines the application to be complete, if~~  
10                ~~the application seeks or requires authorization under an individual permit.~~

11           ~~(k) The Secretary may adopt rules regulating stormwater discharges and~~  
12           ~~stormwater infrastructure repair or maintenance during a state of emergency~~  
13           ~~declared under 20 V.S.A. chapter 1 or during flooding or other emergency~~  
14           ~~conditions that pose an imminent risk to life or a risk of damage to public or~~  
15           ~~private property. Any rule adopted under this subsection shall comply with~~  
16           ~~National Flood Insurance Program requirements. A rule adopted under this~~  
17           ~~subsection shall include a requirement that an activity receive an individual~~  
18           ~~stormwater discharge emergency permit or receive coverage under a general~~  
19           ~~stormwater discharge emergency permit.~~

20                ~~(1) A rule adopted under this subsection shall establish:~~

1           ~~(A) criteria for coverage under an individual or general emergency~~  
2 ~~permit;~~

3           ~~(B) criteria for different categories of activities covered under a~~  
4 ~~general emergency permit;~~

5           ~~(C) requirements for public notification of permitted activities,~~  
6 ~~including notification after initiation or completion of a permitted activity;~~

7           ~~(D) requirements for coordination with State and municipal~~  
8 ~~authorities;~~

9           ~~(E) requirements that the Secretary document permitted activity,~~  
10 ~~including, at a minimum, requirements for documenting permit terms,~~  
11 ~~documenting permit duration, and documenting the nature of an activity when~~  
12 ~~the rules authorize notification of the Secretary after initiation or completion of~~  
13 ~~the activity.~~

14           ~~(2) A rule adopted under this section may:~~

15           ~~(A) establish reporting requirements for categories of activities;~~

16           ~~(B) authorize an activity that does not require reporting to the~~  
17 ~~Secretary; or~~

18           ~~(C) authorize an activity that requires reporting to the Secretary after~~  
19 ~~initiation or completion of an activity.~~

1           (a) Findings and intent.

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

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

8           (A) Reduce the adverse effects of stormwater runoff.

9           (B) Direct the Agency of Natural Resources to develop a process that  
10           assures broad participation; focuses upon the prevention of pollution; relies on  
11           structural treatment only when necessary; establishes and maintains  
12           accountability; tailors strategies to the region and the locale; builds  
13           broad-based programs; provides for the evaluation and appropriate evolution of  
14           programs; is consistent with the federal Clean Water Act and the State water  
15           quality standards; and accords appropriate recognition to the importance of  
16           community benefits that accompany an effective stormwater runoff  
17           management program. In furtherance of these purposes, the Secretary shall  
18           implement a stormwater permitting program. The stormwater permitting  
19           program developed by the Secretary shall recognize that the runoff of  
20           stormwater is different from the discharge of sanitary and industrial wastes  
21           because of the influence of natural events of stormwater runoff, the variations

1 in characteristics of those runoffs, and the increased stream flows and natural  
2 degradation of the receiving water quality at the time of discharge.

3 (b) Definitions. As used in this section:

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

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

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

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

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

18 (6) “New stormwater discharge” means a new or expanded discharge of  
19 regulated stormwater runoff, subject to the permitting requirements of this  
20 chapter, that first occurs after June 1, 2002 and that has not been previously  
21 authorized pursuant to this chapter.

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

5           (8) “Redevelopment” means the construction or reconstruction of an  
6           impervious surface where an impervious surface already exists when such new  
7           construction involves substantial site grading, substantial subsurface  
8           excavation, or substantial modification of an existing stormwater conveyance,  
9           such that the total of impervious surface to be constructed or reconstructed is  
10           greater than the minimum regulatory threshold. Redevelopment does not mean  
11           the construction or reconstruction of impervious surface where impervious  
12           surface already exists when the construction or reconstruction involves less  
13           than 5,000 square feet. Redevelopment does not mean public road  
14           management activities, including any crack sealing, patching, coldplaning,  
15           resurfacing, reclaiming, or grading treatments used to maintain pavement,  
16           bridges, and unpaved roads.

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

1           (10) “Stormwater impact fee” means the monetary charge assessed to a  
2           permit applicant for the discharge of regulated stormwater runoff to a  
3           stormwater-impaired water that mitigates a sediment load level or hydrologic  
4           impact that the discharger is unable to control through on-site treatment or  
5           completion of an offset on a site owned or controlled by the permit applicant.

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

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

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

15          (14) “Stormwater system” means the storm sewers; outfall sewers;  
16          surface drains; manmade wetlands; channels; ditches; wet and dry bottom  
17          basins; rain gardens; and other control equipment necessary and appurtenant to  
18          the collection, transportation, conveyance, pumping, treatment, disposal, and  
19          discharge of regulated stormwater runoff.

20          (15) “Total maximum daily load” (TMDL) means the calculations and  
21          plan for meeting water quality standards approved by the U.S. Environmental

1 Protection Agency (EPA) and prepared pursuant to 33 U.S.C. § 1313(d) and  
2 federal regulations adopted under that law.

3 (16) “Water quality remediation plan” means a plan, other than a  
4 TMDL, designed to bring an impaired water body into compliance with  
5 applicable water quality standards in accordance with 40 C.F.R.  
6 § 130.7(b)(1)(ii) and (iii).

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

12 (c) Prohibitions.

13 (1) A person shall not commence the construction or redevelopment of  
14 one acre or more of new impervious surface without first obtaining a permit  
15 from the Secretary.

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

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

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

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

7           (d) Exemptions. No permit is required under this section for:

8           (1) stormwater runoff from farms subject to accepted agricultural  
9           practices adopted by the Secretary of Agriculture, Food and Markets;

10           (2) stormwater runoff from concentrated animal feeding operations that  
11           require a permit under subsection 1263(g) of this chapter;

12           (3) stormwater runoff from silvicultural activities subject to accepted  
13           management practices adopted by the Commissioner of Forests, Parks  
14           and Recreation;

15           (4) stormwater systems that were permitted under this section and for  
16           which a municipality has assumed full legal responsibility for that stormwater  
17           system; or

18           (5) stormwater runoff permitted under section 1263 of this title.

19           (e) State designation. The Secretary shall require a permit under this  
20           section for a discharge or stormwater runoff from impervious surfaces upon a  
21           designation by the Secretary that the treatment of the discharge or stormwater

1 runoff is necessary to reduce the adverse impacts to water quality of the  
2 discharge or stormwater runoff taking into consideration any of the following  
3 factors: the size of the impervious surface, drainage patterns, hydraulic  
4 connectivity, existing stormwater treatment, stormwater controls necessary to  
5 implement the wasteload allocation of a TMDL, or other factors. The  
6 Secretary may make this designation through the basin planning process or on  
7 a case-by-case basis.

8 (f) Rulemaking. The Secretary shall adopt rules to manage regulated  
9 stormwater runoff. At a minimum the rules shall:

10 (1) Establish as the primary goals of the rules assuring compliance with  
11 the Vermont Water Quality Standards and maintenance after development, as  
12 nearly as possible, of the predevelopment runoff characteristics.

13 (2) Use the basin planning process to establish watershed-specific  
14 priorities for the management of stormwater runoff.

15 (3) Assure consistency with applicable requirements of the federal Clean  
16 Water Act.

17 (4) Include technical standards and best management practices that  
18 address stormwater discharges from existing development, new development,  
19 and redevelopment.

20 (5) Specify minimum requirements for inspection and maintenance of  
21 stormwater management practices.

1           (6) Include standards for the management of stormwater runoff from  
2           construction sites and other land disturbing activities.

3           (7) Allow municipal governments to assume the full legal responsibility  
4           for a stormwater system permitted under these rules as a part of that  
5           municipality's separate storm sewer system permit.

6           (8) Include standards with respect to the use of offsets and stormwater  
7           impact fees.

8           (9) Include minimum standards for the issuance of emergency permits  
9           for the repair or maintenance of stormwater infrastructure during a state of  
10           emergency declared under 20 V.S.A. chapter 1 or during flooding or other  
11           emergency conditions that pose an imminent risk to life or a risk of damage to  
12           public or private property. Minimum standards adopted under this subdivision  
13           shall comply with National Flood Insurance Program requirements.

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

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

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

21           (1) Be valid for a period of time, not to exceed ten years;

1           (2) For discharges of regulated stormwater to a stormwater  
2           impaired water:

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

6                           (i) A new discharge or the expanded portion of an existing  
7                           discharge shall satisfy the requirements of the Stormwater Management  
8                           Manual and shall not increase the pollutant load in the receiving water for  
9                           stormwater; or

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

16                           (B) In which a TMDL or water quality remediation plan has been  
17                           adopted, the discharge shall satisfy the requirements of the Stormwater  
18                           Management Manual, and the Secretary shall determine that there is sufficient  
19                           pollutant load allocations for the discharge.

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

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

11                           \* \* \* Municipal Highway Stormwater Permit \* \* \*

12           Sec. 20. 10 V.S.A. § 1285 is added to read:

13           § 1285. STORMWATER; MUNICIPAL ROADS

14           (a) Definitions. As used in this section:

15                   (1) "Municipality" means a city, town, or village.

16                   (2) "Municipal road" shall have the same meaning as "town highway,"  
17           as that term is defined in 19 V.S.A. § 1. "Municipal road" shall not mean a  
18           driveway or parking lot for a municipal building.

19                   (3) "Redevelopment" or "redevelop" means the construction or  
20           reconstruction of an impervious surface where an impervious surface already  
21           exists when such new construction involves substantial site grading, substantial

1 subsurface excavation, or substantial modification of an existing stormwater  
2 conveyance, such that the total of impervious surface to be constructed or  
3 reconstructed is greater than the minimum regulatory threshold.

4 Redevelopment does not mean the construction or reconstruction of  
5 impervious surface where impervious surface already exists when the  
6 construction or reconstruction involves less than 5,000 square feet.

7 Redevelopment does not mean crack sealing, patching, coldplaning,  
8 resurfacing, reclaiming, or grading treatments used to maintain pavement,  
9 bridges, and unpaved roads.

10 (b) Prohibition. A municipality shall not construct or redevelop a  
11 municipal road without first obtaining a permit under this section.

12 (c) State designation. The Secretary shall require a permit under this  
13 section for a discharge or stormwater runoff from municipal roads upon a  
14 designation by the Secretary that the treatment of the discharge or stormwater  
15 runoff is necessary to reduce the adverse impacts to water quality of the  
16 discharge or stormwater runoff taking into consideration any of the following  
17 factors: the size of the impervious surface, drainage patterns, hydraulic  
18 connectivity, existing stormwater treatment, that stormwater controls are  
19 necessary to implement the wasteload allocation of a TMDL, or other factors.  
20 The Secretary may make this designation through the basin planning process or  
21 on a case-by-case basis.

1           (d) Rulemaking. The Secretary, in consultation with the Secretary of  
2           Transportation, shall adopt rules to manage regulated stormwater runoff from  
3           municipal highways. At a minimum the rules shall:

4                   (1) establish as the primary goals of the rules assuring compliance with  
5                   the Vermont Water Quality Standards and maintenance after development, as  
6                   nearly as possible, of the predevelopment runoff characteristics;

7                   (2) use of the basin planning process to establish watershed-specific  
8                   priorities for the management of stormwater runoff;

9                   (3) criteria for the prioritization of municipal road stormwater  
10                  improvements that takes into consideration the water quality impacts of the  
11                  stormwater discharge, the current state of the municipal road and its priority in  
12                  any existing transportation capital plan developed by the municipality, and the  
13                  benefits of the stormwater improvement to the life of the municipal road being  
14                  improved; and

15                  (4) include technical standards and best management practices that  
16                  address stormwater discharges from the construction and redevelopment of  
17                  municipal roads.

18           (e) General permits. The Secretary may issue general permits for classes of  
19           regulated stormwater from municipal roads that shall be adopted and  
20           administered in accordance with the provisions of subsection 1263(b) of  
21           this title.

1       (f) Permit requirements. An individual or general stormwater permit issued  
2       under this section shall:

3           (1) Require that one year after the adoption of a general permit each  
4       municipality shall inventory its existing municipal roads and gather  
5       information necessary to prioritize improvements to stormwater infrastructure.

6           (2) Require that two years after the adoption of a general permit under  
7       this section that each municipality shall prioritize municipal road stormwater  
8       improvements in accordance with criteria adopted by the Secretary and provide  
9       the Secretary with a schedule for when improvements shall be made.

10          (3) Require the implementation of the schedule, as approved by the  
11       Secretary, of municipal road stormwater improvements. Improvements shall  
12       be made in accordance with technical standards and BMPs adopted by the  
13       Secretary. The Secretary may require site-specific standards under an  
14       individual permit.

15                           \* \* \* Water Quality Data Coordination \* \* \*

16       Sec. 21. 10 V.S.A. § 1284 is added to read:

17       § 1284. WATER QUALITY DATA COORDINATION

18           (a) To facilitate attainment or accomplishment of the purposes of this  
19       chapter, the Secretary shall coordinate and assess all available data and science  
20       regarding the quality of the waters of the State, including:

1           (1) light detection and ranging information data (LIDAR) identifying  
2 water quality issues;

3           (2) stream gauge data;

4           (3) stream mapping, including fluvial erosion hazard maps;

5           (4) water quality monitoring or sampling data;

6           (5) cumulative stressors on a watershed, such as the frequency an  
7 activity is conducted within a watershed or the number of stormwater or other  
8 permits issued in a watershed; and

9           (6) any other data available to the Secretary.

10          (b) After coordination of the data required under subsection (a) of this  
11 section, the Secretary shall:

12           (1) assess where additional data are needed and the best methods for  
13 collection of such data;

14           (2) identify and map on a regional basis areas of the State that are  
15 significant contributors to water quality problems or are in critical need of  
16 water quality remediation or response.

17          (c) The Secretary shall post all data compiled under this section on the  
18 website of the Agency of Natural Resources.



1           (2) to provide funding to projects that address water pollution identified  
2           as a critical source of water quality pollution;

3           (3) to provide funding to programs or projects that address or repair  
4           riparian conditions that increase the risk of flooding or pose a threat to life  
5           or property.

6           (c) Unexpended balances and any earnings shall remain in the Fund from  
7           year to year.

8           § 1388. CLEAN WATER FUND BOARD

9           (a) Creation. There is created a Clean Water Fund Board which shall be  
10           attached to the Agency of Administration for administrative purposes.

11           (b) Organization of the Board. The Clean Water Fund Board shall be  
12           composed of:

13           (1) the Secretary of Administration or designee;

14           (2) the Secretary of Natural Resources or designee;

15           (3) the Secretary of Agriculture, Food and Markets or designee;

16           (4) the Secretary of Commerce and Community Development or  
17           designee;

18           (5) the Secretary of Transportation or designee;

19           (6) two members of the public or the House of Representatives  
20           appointed by the Speaker of the House;

1           (7) two members of the public or the Senate appointed by the  
2           Committee on Committees; and

3           (8) two members of the public appointed by the Governor.

4           (c) Officers; committees; rules. The Clean Water Fund Board shall  
5           annually elect a chair from its members. The Clean Water Fund Board may  
6           elect additional officers from its members, establish committees or  
7           subcommittees, and adopt procedural rules as necessary and appropriate to  
8           perform its work.

9           (d) Member terms. Members of the Clean Water Fund Board appointed by  
10          the Governor shall serve initial terms of three years, members appointed by the  
11          Speaker of the House shall serve initial terms of two years, and members  
12          appointed by the Committee on Committees shall serve initial terms of one  
13          year. Thereafter, each of the above appointed members shall serve a term of  
14          three years. A vacancy shall be filled by the appointing authority for the  
15          remainder of the unexpired term. An appointed member shall not serve more  
16          than three consecutive three-year terms.

17          (e) Compensation. Public members of the Clean Water Fund Board may  
18          receive compensation according to 32 V.S.A. § 1010(b).

19          (f) Powers and duties of the Clean Water Fund Board.

20                 (1) The Clean Water Fund Board shall have the following powers  
21                 and authority:

1           (A) to receive a proposals from the Secretaries of Agriculture, Food,  
2           and Markets, of Commerce and Community Development, of Natural  
3           Resources, and of Transportation on the appropriate expenditures of the Fund;

4           (B) to make recommendations to the Secretary of Administration  
5           regarding the appropriate allocation of funds from the Clean Water Fund for  
6           the purposes of developing the State budget; and

7           (C) to pursue and accept grants or other funding from any public or  
8           private source and to administer such grants or funding consistent with  
9           their terms.

10           (2) The Clean Water Fund Board shall develop:

11           (A) an annual revenue estimate and proposed budget for the Clean  
12           Water Fund;

13           (B) measures for determining progress and effectiveness of  
14           expenditures for clean water restoration efforts; and

15           (C) the annual Clean Water Investment Report required under section  
16           1389 of this title.

17           (3) The Clean Water Fund Board shall solicit public comment and  
18           consult with existing organizations and advisory committees devoted to  
19           improving water quality in Vermont, including the Citizens Advisory  
20           Committee of the Lake Champlain Basin Program.

1       (g) The Secretary of Administration shall give substantial deference to the  
2       recommendations of allocations from the Clean Water Fund proposed by the  
3       Clean Water Fund Board when developing the State budget.

4       § 1389. CLEAN WATER INVESTMENT REPORT

5       Beginning on January 15, 2016, and annually thereafter, the Clean Water  
6       Fund Board shall publish a Clean Water Investment Report. The report shall  
7       summarize all investments made by the Clean Water Fund Board and other  
8       State agencies for clean water restoration over the past calendar year. The  
9       report shall include expenditures from the Clean Water Fund, the General  
10       Fund, the Transportation Fund, and any other State expenditures for clean  
11       water restoration, regardless of funding source. The report shall document  
12       progress or shortcomings in meeting established indicators for clean water  
13       restoration. The report may also provide an overview of additional funding  
14       necessary to meet objectives established for clean water restoration and  
15       recommendations for additional revenue to meet those restoration objectives.

16       Sec. 23. 32 V.S.A. chapter 245 is added to read:

17               CHAPTER 245. IMPERVIOUS SURFACE ASSESSMENT

18               § 10501. DEFINITIONS

19               As used in this chapter:

20               (1) “Commercial property” means a real property that has a highest and  
21       best use of providing goods and services for sale, including retail stores, malls,

1 motels, hotels, filling stations, restaurants, office buildings, bowling alleys, and  
2 golf courses. Commercial property does not mean industrial property.

3 (2) “Commissioner” means the Commissioner of Taxes.

4 (3) “Farming” means:

5 (A) the cultivation or other use of land for growing food, fiber,  
6 Christmas trees, maple sap, or horticultural and orchard crops;

7 (B) the raising, feeding, or management of livestock, poultry, fish,  
8 or bees;

9 (C) the operation of greenhouses;

10 (D) the production of maple syrup;

11 (E) the on-site storage, preparation, production, and sale of fuel or  
12 power from agricultural products principally produced on the farm; or

13 (F) the raising, feeding, or management of four or more equines  
14 owned or boarded by the farmer, including training, showing, and providing  
15 instruction and lessons in riding, training, and the management of equines.

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

19 (5) “Industrial property” means a property that has a highest and best  
20 use of producing a product from raw materials, rather than a product or service  
21 simply being sold. Industrial property includes all property used by a utility

1 for the provision of that regulated service, including a gas pipeline, water  
2 treatment plant, or electric generation facility, but not administrative offices  
3 of a utility.

4 (6) “Lake Champlain basin” means all property wholly or partially  
5 within the municipal boundaries of the following municipalities: Alburgh, Isle  
6 La Motte, North Hero, Grand Isle, South Hero, Highgate, Franklin, Berkshire,  
7 Richford, Swanton, Sheldon, Enosburgh, Montgomery, St. Albans City,  
8 St. Albans Town, Fairfield, Bakersfield, Georgia, Fairfax, Fletcher, Milton,  
9 Westford, Underhill, Colchester, Essex, Jericho, Bolton, Burlington,  
10 South Burlington, Williston, Winooski, Richmond, Shelburne, St. George,  
11 Charlotte, Hinesburg, Huntington, Buel’s Gore, Ferrisburgh, Monkton,  
12 Starksboro, Vergennes, Panton, Waltham, New Haven, Bristol, Lincoln,  
13 Granville, Addison, Bridport, Cornwall, Middlebury, Ripton, Shoreham,  
14 Orwell, Whiting, Salisbury, Leicester, Goshen, Hancock, Hubbardton, Benson,  
15 Sudbury, Brandon, Chittenden, Weybridge, West Haven, Fair Haven,  
16 Castleton, Pittsford, West Rutland, Proctor, Rutland Town, Rutland City,  
17 Mendon, Killington, Poultney, Middletown Springs, Ira, Clarendon,  
18 Shrewsbury, Wells, Tinmouth, Wallingford, Mount Holly, Pawlet, Danby,  
19 Mount Tabor, Rupert, Dorset, Peru, Waterville, Belvidere, Eden, Cambridge,  
20 Johnson, Hyde Park, Wolcott, Stowe, Morristown, Elmore, Waterbury,  
21 Duxbury, Fayston, Warren, Waitsfield, Roxbury, Middlesex, Moretown,

1 Northfield, Montpelier, Berlin, Barre Town, Barre City, Worcester,  
2 East Montpelier, Calais, Woodbury, Plainfield, Marshfield, Cabot, Jay, Troy,  
3 Newport, Westfield, Lowell, Craftsbury, Greensboro, Hardwick, Walden,  
4 Wheelock, Stannard, Peacham, Williamstown, Orange, and Washington.

5 (7) "Parcel" means parcel as defined in section 4152 of this title.

6 § 10502. LIABILITY FOR PAYMENT

7 (a) There shall be an impervious cover assessment of \$200.00 per calendar  
8 year imposed on each commercial and industrial parcel located within the  
9 Lake Champlain basin that contains any amount of impervious surface except  
10 as provided in subsection (b) of this section.

11 (b) The assessment established under subsection (a) of this section shall not  
12 apply to property used for farming or forestry.

13 (c) The assessment established under subsection (a) of this section shall be  
14 imposed on owners of real property on April 1 of each year and shall be paid  
15 no later than April 15 of the following year.

16 (d) To the extent that they are not in conflict with the provisions of this  
17 subchapter, the administrative provisions of chapters 103 and 151 of this title,  
18 including those regarding payment, deficiency assessments, appeal, interest  
19 and penalty, enforcement, and collection shall apply to the assessment imposed  
20 by this subchapter.

1       Sec. 24. 6 V.S.A. § 366 is amended to read:

2       § 366. TONNAGE FEES

3           (a) There shall be paid annually to the ~~secretary~~ Secretary for all fertilizers  
4       distributed to a nonregistrant consumer in this ~~state~~ State an annual ~~inspection~~  
5       fee at a rate of \$0.25 cents per ton.

6           (b) Persons distributing fertilizer shall report annually by January 15 for the  
7       previous year ending December 31 to the ~~secretary~~ Secretary revealing the  
8       amounts of each grade of fertilizer and the form in which the fertilizer was  
9       distributed within this ~~state~~ State. Each report shall be accompanied with  
10      payment and written permission allowing the ~~secretary~~ Secretary to examine  
11      the person's books for the purpose of verifying tonnage reports.

12          (c) No information concerning tonnage sales furnished to the ~~secretary~~  
13      Secretary under this section shall be disclosed in such a way as to divulge the  
14      details of the business operation to any person unless it is necessary for the  
15      enforcement of the provisions of this chapter.

16          (d) A ~~\$50.00~~ \$150.00 minimum tonnage fee shall be assessed on all  
17      distributors who distribute fertilizers in this ~~state~~ State.

18          (e) Agricultural limes, including agricultural lime mixed with wood ash,  
19      are exempt from the tonnage fees required in this section.

1 (f) Lime and wood ash mixtures may be registered as agricultural liming  
2 materials and guaranteed for potassium or potash provided that the wood ash  
3 totals less than 50 percent of the mixture.

4 (g) All fees collected under subsection (a) of this section shall be deposited  
5 in the revolving fund created by section 364(e) of this title and used in  
6 accordance with its provisions.

7 (h) There shall be paid annually to the Secretary for all fertilizers  
8 distributed to a nonregistrant consumer in this State an annual fee at a rate of  
9 \$30.00 per ton for the purpose of supporting agricultural water quality  
10 programs in Vermont.

11 (1) Persons distributing fertilizer shall report annually on or before  
12 January 15 for the previous year ending December 31 to the Secretary  
13 revealing the amounts of each grade of fertilizer and the form in which the  
14 fertilizer was distributed within this State. Each report shall be accompanied  
15 with payment and written permission allowing the Secretary to examine the  
16 person's books for the purpose of verifying tonnage reports.

17 (2) No information concerning tonnage sales furnished to the Secretary  
18 under this section shall be disclosed in such a way as to divulge the details of  
19 the business operation to any person unless it is necessary for the enforcement  
20 of the provisions of this chapter.

1           (3) A \$150.00 minimum tonnage fee shall be assessed on all distributors  
2           who distribute fertilizers in this State.

3           (4) Agricultural limes, including agricultural lime mixed with wood ash,  
4           are exempt from the tonnage fees required under this subsection.

5           (5) All fees collected under this subsection shall be deposited in the  
6           revolving fund created by subsection 364(e) of this title and shall be dedicated  
7           to staffing and administering the agricultural water quality programs required  
8           under this title.

9           \* \* \* Eligibility for Ecosystem Restoration Program Assistance \* \* \*

10          Sec. 25. ECOSYSTEM RESTORATION PROGRAM; ELIGIBILITY FOR  
11                  FINANCIAL ASSISTANCE

12          It is the policy of the State of Vermont that all municipal separate storm  
13          sewer system (MS4) communities in the State shall be eligible for grants and  
14          other financial assistance from the Agency of Natural Resources' Ecosystem  
15          Restoration Program or any other State water quality financing program.

16          A project or proposal that is the subject of an application for a grant or other  
17          assistance from the Agency of Natural Resources shall not be denied solely on  
18          the basis that the project or proposal may be construed as a regulatory  
19          requirement of the MS4 permit program.

1                   \* \* \* Shoreland Contractor Certification \* \* \*

2           Sec. 26. VOLUNTARY SHORELAND EROSION CONTROL  
3                   CERTIFICATION PROGRAM

4           (a) Definitions. As used in this section:

5                   (1) "Impervious surface" shall have the same meaning as in  
6                   10 V.S.A. § 1264.

7                   (2) "Lake" means a body of standing water, including a pond or a  
8                   reservoir, which may have natural or artificial water level control. Private  
9                   ponds shall not be considered lakes.

10                  (3) "Mean water level" means the mean water level of a lake as defined  
11                  in the Mean Water Level Rules of the Agency of Natural Resources adopted  
12                  under 29 V.S.A. § 410.

13                  (4) "Shoreland area" means all land located within 250 feet of the mean  
14                  water level of a lake that is greater than 10 acres in surface area.

15                  (b) Voluntary certification. The Agency of Natural Resources, in  
16                  consultation with the Associated General Contractors of Vermont, shall  
17                  develop an optional shoreland erosion control certification program. The  
18                  program shall include training related to the disturbance of soil, clearance of  
19                  vegetation, and construction of impervious surfaces of more than  
20                  1,000 square feet in a shoreland area. The voluntary certification program  
21                  shall end after three years of operation.

1        (c) Report. After two years of operation of the certification program, the  
2        Agency of Natural Resources shall report to the House and Senate Committees  
3        on Natural Resources and Energy and the House Committee on Fish, Wildlife  
4        and Water Resources regarding the voluntary shoreland erosion control  
5        certification program created in subsection (b) of this section. The report shall  
6        include:

7            (1) a general summary of the program's success, including an overview  
8            of shoreland projects constructed by certified persons;

9            (2) the number of persons certified under the certification program;

10          (3) a recommendation of whether the State should continue the  
11          voluntary certification program, including whether to make the program  
12          mandatory; and

13          (4) any other recommendations for improving the program.

14        Sec. 27. EFFECTIVE DATES

15          This act shall take effect on July 1, 2015, except that:

16            (1) Sec. 5 (small farm certification) shall take effect on July 1, 2017; and

17            (2) Sec. 23 (impervious surface assessment) shall take effect on passage  
18          and shall apply to the April 1, 2015 grand list.