

**ENVIRONMENTAL PROTECTION RULES**

**CHAPTER 18**

**STORMWATER MANAGEMENT RULE**

State of Vermont  
Agency of Natural Resources  
Department of Environmental Conservation

Watershed Management Division  
Stormwater Management Section  
One National Life Drive, Main 2  
Montpelier, VT 05620  
(802) 828-1535  
<http://dec.vermont.gov/laws>

**Effective July 1, 2017**

**STORMWATER MANAGEMENT RULE  
TABLE OF CONTENTS**

Subchapter 1 – Purpose, Authority, Policy ..... 3  
    §18-101 Purpose ..... 3  
    §18-102 Authority ..... 3  
    §18-103 Policy ..... 3  
Subchapter 2 - Definitions ..... 4  
    § 18-201 Definitions ..... 4  
Subchapter 3 – Applicability and Administration ..... 7  
    §18-301 Applicability ..... 7  
    §18-302 Permit Required ..... 8  
    §18-303 Circumvention ..... 8  
    §18-304 Exemptions ..... 9  
    §18-305 Types of Permits and Authorizations to Discharge ..... 11  
    §18-306 Permitting Standards for Discharges of Regulated Stormwater Runoff to  
    Waters that are not Stormwater-Impaired Waters ..... 11  
    §18-307 Stormwater Discharge General Permit ..... 14  
    §18-308 Authorizations to Discharge Under a Stormwater Discharge General Permit 15  
    §18-309 Individual Stormwater Discharge Permits ..... 21  
    §18-310 Compliance with Existing Permits ..... 25  
    §18-311 Stormwater Utilities ..... 25  
    §18-312 Validity of Permit and Authorization to Discharge; Recording in Land  
    Records ..... 26  
    §18-313 Enforcement ..... 26  
    §18-314 Appeals ..... 26  
    §18-315 Liability ..... 26

## **STORMWATER MANAGEMENT RULE**

### **Subchapter 1 – Purpose, Authority, Policy**

#### **§18-101 Purpose**

- (a) The Secretary is issuing this Rule to enhance and clarify the management of stormwater runoff to waters that are not stormwater-impaired waters. Stormwater management is necessary to reduce stream channel instability, pollution, sedimentation and local flooding, all of which have adverse impacts on the surface water and land resources of the State. Stormwater management is also necessary to protect groundwater.
- (b) This Rule:
- (1) Establishes a state permit program for post-construction management of regulated stormwater runoff to waters that are not stormwater-impaired waters;
  - (2) Establishes permitting thresholds for discharges of regulated stormwater runoff that require a stormwater discharge permit;
  - (3) Sets forth treatment standards designed to minimize the adverse impacts of regulated stormwater runoff;
  - (4) Provides for the issuance of individual and general permits;
  - (5) Specifies application requirements, including the contents of permit applications and public notification requirements; and
  - (6) Amends the Vermont Stormwater Management Manual.

#### **§18-102 Authority**

This Rule is adopted pursuant to 10 V.S.A. § 1263 and § 1264.

#### **§18-103 Policy**

- (a) The primary goal for management of regulated stormwater runoff is to assure compliance with the Vermont Water Quality Standards. This goal will be reached through the use of technically sound and cost-effective stormwater management methods as required by 10 V.S.A. § 1264.
- (b) The Agency recognizes that stormwater runoff is different from the discharge of sanitary and industrial wastes because of the influence of natural events on stormwater

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

(c) Stormwater discharge permits issued pursuant to this Rule shall require BMP-based stormwater treatment practices and not individual load allocations. Permit compliance shall be judged on the basis of performance of the terms and conditions of the discharge permit, including construction and maintenance in accordance with BMP specifications.

## **Subchapter 2 - Definitions**

### **§ 18-201 Definitions**

(a) As used in this Rule, the following terms shall have the specified meaning. If a term is not defined, it shall have its common meaning:

- (1) “Agency” means the Vermont Agency of Natural Resources.
- (2) “Applicant” means a person applying for permit coverage. In some cases, more than one person may apply as co-applicants.
- (3) “Authorization to Discharge” means an authorization to discharge issued by the Secretary pursuant to a general permit.
- (4) “Best Management Practice” or “BMP” means a schedule of activities, prohibitions or practices, maintenance procedures, green infrastructure, and other management practices to prevent or reduce water pollution, including but not limited to the stormwater treatment practices (STPs) set forth in the Vermont Stormwater Management Manual.
- (5) “Clean Water Act” means the federal Clean Water Act, 33 U.S.C.A. § 1251 et. seq.
- (6) “New Development” means the construction of new impervious surface on a tract or tracts of land where no impervious surface previously existed.
- (7) “Existing impervious surface” means an impervious surface that is in existence, regardless of whether it ever required a stormwater discharge permit.
- (8) “Existing Stormwater Discharge” means a discharge of regulated stormwater runoff which first occurred prior to June 1, 2002 and that is subject to the permitting requirements of 10 V.S.A. Chapter 47.
- (9) “Expansion” and “the expanded portion of an existing discharge” mean an increase or addition of new impervious surface to an existing impervious

surface, such that the total resulting impervious surface is greater than the minimum regulatory threshold.

- (10) “Impervious Surface” means those man made surfaces, including, but not limited to, paved and unpaved roads, parking areas, roofs, driveways and walkways, from which precipitation runs off rather than infiltrates.
- (11) “Municipality” means an incorporated city, town, village or gore, a fire district established pursuant to state law, or any other duly authorized political subdivision of the state.
- (12) “NPDES” means the National Pollutant Discharge Elimination System for the issuance of permits under section 402 of the federal Clean Water Act and includes the Vermont-administered NPDES program authorized by the federal Environmental Protection Agency.
- (13) [Deleted.]
- (14) “New Stormwater Discharge” means a new or expanded discharge of regulated stormwater runoff, subject to the permitting requirements of 10 V.S.A. Chapter 47, which first occurs after June 1, 2002 and has not been previously authorized pursuant to 10 V.S.A. Chapter 47.
- (15) “Person” means any individual, partnership, company, corporation, association, joint venture, trust, municipality, the state of Vermont or any agency, department or subdivision of the state, any federal agency, or any other legal or commercial entity.
- (16) “Project” means the new development, expansion, redevelopment and/or existing impervious surface that the Secretary is considering for coverage under an individual or general permit or which has received coverage under an individual or general permit.
- (17) “Regulated stormwater runoff” means precipitation, snowmelt, and the material dissolved or suspended in precipitation and snowmelt that runs off impervious surfaces and discharges into surface waters or into groundwater via infiltration.
- (18) “Redevelopment” means the construction or reconstruction of an impervious surface where an impervious surface already exists when such new construction involves substantial site grading, substantial subsurface excavation, or substantial modification of an existing stormwater conveyance, such that the total of impervious surface to be constructed or reconstructed is greater than the minimum regulatory threshold. Redevelopment does not mean public road management activities on impervious surfaces, including any crack sealing, patching, coldplaning, resurfacing, paving a gravel road,

reclaiming, or grading treatments used to maintain pavement, bridges and unpaved roads. Redevelopment does not include expansions.

- (19) “Secretary” means the Secretary of the Agency of Natural Resources or the Secretary’s duly authorized representative.
- (20) “Site” means either the drainage area that includes all portions of a project contributing stormwater runoff to one or more discharge points; or, the area that includes all portions of disturbed area within a project contributing stormwater runoff to one or more discharge points. The choice of either of these two methods of calculating the site area shall be at the discretion of the designer. In cases where there are multiple discharges to one or more waters, “site” shall mean the total area of the sub-watersheds. For linear projects, including but not limited to highways, roads and streets, the term “site” includes the entire right of way within the limits of the proposed work, or all portions of disturbed area within the right of way associated with the project. The method of calculating the site area for linear projects shall be at the discretion of the designer. Calculations of a site are subject to the Secretary’s review under Section 18-303 of this Rule.
- (21) “Stormwater discharge permit” or “stormwater permit” means a permit issued by the Secretary for the discharge of regulated stormwater runoff to waters that are not stormwater-impaired waters.
- (22) “Stormwater-impaired water” means a state water listed as being impaired principally due to stormwater runoff on the EPA-approved State of Vermont 303(d) List of Waters prepared pursuant to 33 U.S.C. 1313(d).
- (23) “Stormwater runoff” means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.
- (24) “Substantially deteriorated” means the condition of a stormwater treatment practice that would necessitate repair or reconstruction beyond that which would be considered routine, periodic maintenance for a system of similar design.
- (25) “Tract or tracts of land” means a portion of land with defined boundaries created by a deed. A deed may describe one or more tracts.
- (26) “Watershed” means the total area of land contributing runoff to a specific point of interest within a receiving water.

(27) “Vermont Stormwater Management Manual” means the Agency of Natural Resources’ stormwater management manual, as adopted and amended by rule.

(28) “303(d) List” means the EPA-approved State of Vermont 303(d) List of Waters prepared pursuant to 33 U.S.C. 1313(d).

### **Subchapter 3 – Applicability and Administration**

#### **§18-301 Applicability**

- (a) This Rule applies to discharges of regulated stormwater runoff to waters that are not listed on the EPA-approved State of Vermont 303(d) List of Waters as being impaired principally due to stormwater runoff.
- (b) This Rule governs the issuance of individual and general stormwater discharge permits.
- (c) This Rule does not apply to the issuance of:
  - (1) Individual or general permits for discharges of regulated stormwater runoff to stormwater-impaired waters; and
  - (2) state-issued NPDES permits that are required pursuant to the Agency’s federally-authorized NPDES stormwater permit program pursuant to 10 V.S.A. § 1258 for, including but not limited to, discharges of stormwater runoff associated with large and small construction activity, certain industrial activities, and stormwater discharges from certain small municipal separate storm sewer systems.
- (d) Stormwater runoff from impervious surfaces of less than one (1) acre that discharges to groundwater may require a permit from the Agency’s Underground Injection Control Program, unless such discharges are covered by a state stormwater discharge permit.
- (e) The Vermont Water Pollution Control Permit Regulations shall not apply to stormwater discharge permits issued pursuant to this Rule.
- (f) Starting July 4, 2005, the Agency’s Stormwater Management Procedures effective December 15, 1997 shall no longer apply to discharges of regulated stormwater runoff to waters that are not stormwater-impaired waters.

### **§18-302 Permit Required**

- (a) A state stormwater discharge permit is required for the following discharges of regulated stormwater runoff:
- (1) A discharge from new development equal to or greater than one (1) acre;
  - (2) A discharge from the expansion of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one (1) acre, except that a permit is not required for an expansion that meets the exemption in subsection 18-304(a)(4) of this Rule;
  - (3) A discharge from the redevelopment of an existing impervious surface if the redeveloped portion of the existing impervious surface is equal to or greater than one (1) acre;
  - (4) A discharge from a combination of expansion and redevelopment of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one (1) acre, except that a permit is not required if the exemptions in subsections 18-304(a)(4) and (5) of this Rule are met;
  - (5) A discharge from any size of impervious surface if the Secretary determines that treatment is necessary to reduce the adverse impacts to water quality of the discharge taking into consideration any of the following factors: the size of the impervious surface, drainage patterns, hydraulic connectivity, installation or modification of drainage or conveyance structures, location of the discharge, existing stormwater treatment, stormwater controls necessary to implement the wasteload allocation of a TMDL, or other factors identified by the Secretary; and
  - (6) A discharge from an existing impervious surface of equal to or greater than one (1) acre if the Secretary has previously issued an individual stormwater discharge permit or individual temporary pollution permit for the discharge or has previously granted coverage for the discharge under a stormwater discharge general permit.

### **§18-303 Circumvention**

If the Secretary determines that a person has separated a single project into components in order to avoid the regulatory minimum threshold or other requirements of this Rule, the person shall be required to submit a permit application for the component parts. This subsection is not intended to include the types of scattered or non-contiguous projects that are set forth as planned development in long-range transportation plans, regional plans, municipal plans, or housing authority plans.



## §18-304 Exemptions

- (a) No state stormwater discharge permit is required pursuant to this Rule for:
- (1) Discharges of stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets and discharges of stormwater runoff from accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;
  - (2) Discharges of stormwater runoff that are already covered by a NPDES permit for a direct or indirect discharge from a wastewater treatment plant or by a permit issued pursuant to Vermont's Underground Injection Control Rule;
  - (3) Discharges of regulated stormwater runoff from new development, redevelopment, or expansion of impervious surfaces if the discharge did not require a stormwater discharge permit prior to July 4, 2005, provided that:
    - (A) A technically complete application for all local, state, and federal permits, except NPDES construction activities permits, related to either the regulation of land use or a discharge to state waters has been submitted as of July 4, 2005, the applicant does not subsequently file an application for permit amendment that would have an adverse impact on water quality, and substantial construction (e.g. construction of roads and drainage infrastructure) of the project commences within two years of July 1, 2005;
    - (B) All local, state, and federal permits, except NPDES construction activities permits, related to either the regulation of land use or a discharge to state waters has been obtained as of July 4, 2005, and substantial construction (e.g. construction of roads and drainage infrastructure) of the project commences within two years of July 1, 2005;
    - (C) No local, state, or federal permit, except NPDES construction activities permits, related to either the regulation of land use or a discharge to state waters is required, and substantial construction (e.g. construction of roads and drainage infrastructure) of the project commences within two years of July 1, 2005; or
    - (D) The new development, redevelopment, or expansion is a linear project, and an order of necessity has been issued or right-of-way acquisition has

been substantially completed as of July 1, 2004, and construction of the project commences within five years after July 1, 2004;

- (4) The expansion of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one (1) acre, if:
  - (A) the increase or addition of impervious surface is less than 5,000 square feet; and
  - (B) the expansion is made to existing impervious surfaces created prior to June 1, 2002; and
  - (C) This exemption may be used for consecutive expansions of an existing impervious surface up to a cumulative total of 5,000 square feet. When the cumulative total expansion exceeds 5,000 square feet, the expanded impervious surface in excess of 5,000 square feet must comply with the treatment standard in subsection 18-306(a)(1) of this Rule.
- (5) The redevelopment of an existing impervious surface if the redeveloped portion of the existing impervious surface is less than one (1) acre;
- (6) Discharges of regulated stormwater runoff into a water that is not a stormwater-impaired water from impervious surfaces in existence as of January 1, 1978;
- (7) Discharges of regulated stormwater runoff into a water that is not a stormwater-impaired water from impervious surfaces of less than one (1) acre regardless of when constructed;
- (8) Discharges of regulated stormwater runoff from a single family or duplex residence, including associated driveways, that are not built as part of a multi-family residential subdivision; and
- (9) Discharges of regulated stormwater runoff from the portion of a bridge superstructure that spans the normal water level of a receiving water and normally no water from the approaches flows to the bridge deck.

(b) Notwithstanding the exemptions in subsections 304(a)(1) – (9) of this section, a stormwater discharge permit is required for a discharge described in any such subsection if the Secretary makes a determination that a permit is required pursuant to subsection 18-302(a)(5) of this Rule.

### **§18-305 Types of Permits and Authorizations to Discharge**

- (a) The Secretary may issue different categories of stormwater discharge permits and authorizations to discharge under this Rule, including:
- (1) An individual or general permit for any discharge of regulated stormwater runoff to a water that is not a stormwater-impaired water;
  - (2) General permits for different classes of stormwater runoff; and
  - (3) An authorization to discharge under a general permit when the Secretary determines that the discharge is eligible for coverage under the terms and conditions of the general permit.

### **§18-306 Permitting Standards for Discharges of Regulated Stormwater Runoff to Waters that are not Stormwater-Impaired Waters**

- (a) For discharges of regulated stormwater runoff to waters that are not stormwater-impaired waters, the Secretary shall require that:
- (1) Discharges of regulated stormwater runoff from new development and expansions obtain an individual permit or coverage under a general permit consistent with the treatment standards for new development in the Vermont Stormwater Management Manual;
  - (2) Discharges of regulated stormwater runoff from redeveloped impervious surfaces obtain an individual permit or coverage under a general permit consistent with the treatment standards for redevelopment in the Vermont Stormwater Management Manual.
  - (3) Previously permitted existing stormwater discharges obtain an individual permit or coverage under a general permit that provides that existing discharges that have been previously authorized by the Secretary shall meet the treatment requirements in the most recently issued permit unless the approved stormwater system was never built or has substantially deteriorated. If the system was never built or has substantially deteriorated, the Secretary shall require that the permittee conduct an engineering feasibility analysis acceptable to the Secretary and construct a stormwater management system to meet, or to meet as closely as possible, the treatment standards for new development in the Vermont Stormwater Management Manual. If an existing stormwater discharge is required to obtain a permit pursuant to subsection 18-302(a)(5) of this Rule, the Secretary shall require that the permittee conduct an engineering feasibility analysis acceptable to the Secretary and construct a stormwater management system to meet, or to meet as closely as possible, the treatment standards for new development in the Vermont Stormwater Management Manual;

(4) Subject to subsection 306(a)(6) of this section, if a permit is required for an expansion of an existing impervious surface, the expansion shall meet the treatment standard in subsection 306(a)(1) of this section and the existing impervious surface shall:

(A) meet the treatment standards for the existing impervious surface set forth in the most recently issued stormwater permit for the existing impervious surface;

(B) not be subject to any treatment standards if a stormwater permit was never previously required for the existing impervious surface and the Secretary has not required a stormwater permit pursuant to subsection 18-302(a)(5) of this Rule; or

(C) if a stormwater discharge permit was previously required for the existing impervious surface and was never obtained, the permittee shall conduct an engineering feasibility study acceptable to the Secretary and construct a stormwater management system to meet, or to meet as closely as possible, the treatment standards for new development in the Vermont Stormwater Management Manual.

(5) If a permit is required for the redevelopment of existing impervious surfaces, the redeveloped portion of the existing impervious surface shall meet the treatment standard in subsection 306(a)(2) of this section. The existing impervious surface that is not redeveloped shall:

(A) meet the treatment standards for the existing impervious surface set forth in the most recently issued stormwater permit for the existing impervious surface;

(B) not be subject to any treatment standards if a stormwater permit was never previously required for the existing impervious surface and the Secretary has not required a stormwater permit pursuant to subsection 18-302(a)(5) of this Rule; or

(C) if a stormwater discharge permit was previously required for the existing impervious surface and was never obtained, the permittee shall conduct an engineering feasibility analysis acceptable to the Secretary and construct a stormwater management system to meet, or to meet as closely as possible, the treatment standards for new development in the Vermont Stormwater Management Manual.

(6) If:

- (A) a permit is required for the expansion of an existing impervious surface; and
- (B) the new stormwater discharge from the expansion will commingle with the existing stormwater discharge from the existing impervious surface prior to treatment; and
- (C) the commingled discharge will be treated in a combined stormwater management system; then the new stormwater discharge must meet the treatment standards for new development in the Vermont Stormwater Management Manual and the existing stormwater discharge shall:
  - (i) meet the treatment standards for the existing impervious surface set forth in the most recently issued stormwater permit for the existing impervious surface;
  - (ii) not be subject to any treatment standards if a stormwater permit was never previously required for the existing impervious surface and the Secretary has not required a stormwater permit pursuant to subsection 18-302(a)(5) of this Rule; or
  - (iii) if a stormwater discharge permit was required for the existing impervious surface and was never obtained, the permittee shall conduct an engineering feasibility analysis acceptable to the Secretary and construct a stormwater management system to meet, or to meet as closely as possible, the treatment standards for new development in the Vermont Stormwater Management Manual.

(b) Any individual or general permit issued for discharges of regulated stormwater runoff to waters that are not stormwater-impaired waters shall specify the use of best management practices to control regulated stormwater runoff. Permit compliance shall be judged on the basis of performance of the terms and conditions of the discharge permit, including construction and maintenance in accordance with BMP specifications.

(c) Any individual or general permit issued for discharges of regulated stormwater runoff to waters that are not stormwater-impaired waters shall contain such additional conditions, requirements, and restrictions as the Secretary deems necessary to achieve and maintain compliance with Vermont water quality standards.

(d) A permittee that has an authorization to discharge under the terms of a general stormwater discharge permit issued by the Secretary prior to the effective date of this Rule shall continue to comply with the terms and conditions of the authorization to discharge and applicable general permit after the effective date of this Rule. The

permittee shall apply for renewal of the authorization to discharge in accordance with the applicable general permit and this Rule.

### **§18-307 Stormwater Discharge General Permit**

(a) Purpose and Applicability.

This section sets forth a process for the development and issuance of stormwater discharge general permits for discharges of regulated stormwater runoff to waters that are not stormwater-impaired waters.

(b) Issuance of Stormwater Discharge General Permits; Notice and Hearing

- (1) The Secretary shall prepare a draft stormwater discharge general permit and shall provide notice of the draft to the clerk of the municipalities in the geographic area covered by the general permit, on the Environmental Notice Bulletin and to a list of interested persons, if any.
- (2) The Secretary shall provide at least thirty (30) days from completion of the public notice requirements in subsection 307(b)(1) of this section for the submission of written public comments on the proposed draft general permit.
- (3) Any request for a public informational meeting must be submitted in writing to the Secretary during the public comment period. The Secretary shall hold a public informational meeting if there is a demonstrated interest in a meeting.
- (4) The Secretary shall publish notice of any public informational meeting at least thirty (30) days prior to the meeting. Notice shall be given in the same manner as notice of the draft general permit.

(c) General Requirements Applicable to Stormwater Discharge General Permits

- (1) A general permit shall require that a permittee allow the Secretary and his/her authorized representatives, at reasonable times, and upon presentation of credentials, to enter upon and inspect the permitted property and the stormwater collection, treatment and control system and to have access to and copy any records required to be kept pursuant to the permit.
- (2) A general permit shall require that the permittee properly operate and maintain all stormwater collection, treatment and control systems and that the permittee shall submit an annual inspection report on the operation, maintenance and condition of the stormwater collection, treatment and control systems. Inspections shall be conducted between the conclusion of spring snow melt and June 15<sup>th</sup> of each year and the inspection report shall be submitted to the Secretary by July 15<sup>th</sup> of each year, or by July 30<sup>th</sup> of each

year if performed by a utility or municipality pursuant to a duly adopted stormwater management ordinance. The first annual inspection report for a new development, redevelopment or expansion shall include a written certification by a designer, other than the landowner, stating that the stormwater system was installed in accordance with the conditions of the general permit and is functioning properly.

- (3) A general permit shall require BMP-based stormwater treatment practices and not individual source pollutant load allocations. Permit compliance shall be judged on the basis of performance with the terms and conditions of the discharge permit, including construction and maintenance in accordance with BMP specifications.

(d) Duration of General Permit

A general permit shall be valid for a period of time not to exceed five years.

(e) Modification of General Permit

- (1) The Secretary may modify a general permit after providing an opportunity for public participation in the same manner as described in subsection 307(b) of this section. Grounds for modification include, but are not limited to:

- (A) The statutes or rules on which the general permit is based have changed;
- (B) There is a change in any condition that requires redrafting or alteration of the boundaries of a designated geographic area;
- (C) If the general permit has been issued for a non-stormwater impaired water and the Secretary subsequently determines that the water is a stormwater-impaired water;
- (D) When required by the reopener conditions in the general permit; or
- (E) To correct technical mistakes, such as errors in calculations or mistaken interpretations of law made in determining permit conditions.

**§18-308 Authorizations to Discharge Under a Stormwater Discharge General Permit**

(a) Purpose and Applicability

This section sets forth a process for the issuance of authorizations to discharge pursuant to stormwater discharge general permits for discharges of regulated stormwater runoff to waters that are not stormwater-impaired waters.

(b) Application for Coverage under a Stormwater Discharge General Permit

- (1) An applicant for coverage under a stormwater discharge general permit shall submit a completed Notice of Intent (NOI) form with all necessary attachments and fees and all other application information required by the general permit and the Secretary.
- (2) The applicant shall own or control the impervious surfaces for which permit coverage is required. If the applicant merely controls the impervious surfaces, the owner of the impervious surfaces shall be a co-applicant, unless the applicant that controls the impervious surface is a municipality or stormwater utility that has assumed responsibility for the management of discharges of regulated stormwater runoff from the impervious surfaces.
- (3) A municipality or stormwater utility may apply as the permittee in lieu of the owner(s) of the impervious surfaces for which coverage under a general stormwater discharge permit is sought, provided that the municipality or stormwater utility accepts responsibility for compliance with the general permit and has the legal authority to do so.
- (4) An application for an existing housing or commercial project shall include the owners' association, condominium association or other common association as co-permittee with applicant. The Secretary may waive this requirement for existing developments on a case-by-case basis if a responsible party or parties accept(s) responsibility for the stormwater management system. If application is made in connection with a new housing or commercial development, the developer and an owners' association, condominium association, other common association or other legal entity accepting responsibility for the stormwater management system shall apply as co-permittees.
- (5) The NOI must be signed by a designer acceptable to the Secretary.
- (6) The Secretary may require an applicant to submit any additional information that the Secretary considers necessary in order to make a decision on the issuance or denial of an authorization to discharge under the general permit. The Secretary may deny coverage if the requested information is not provided within sixty (60) days of the Secretary's request.

(c) Public Notice for Applications for an Authorization to Discharge

- (1) Once the Secretary determines that an application for coverage under a stormwater discharge general permit is complete, the Secretary shall provide public notice to the clerk of the municipality in which the discharge is located,



shall post notice on the Environmental Notice Bulletin, and shall provide notice to a list of interested persons, if any.

- (2) For a period of ten (10) days following completion of the public notice requirements in subsection 308(c)(1) of this section, the Secretary shall provide an opportunity to the public to provide written comment regarding whether the application complies with the terms and conditions of the general permit.
- (3) The period for public comment may be extended at the sole discretion of the Secretary.
- (4) The applicant shall comply with any additional notice requirements specified in the general permit.

(d) Interested Persons List

The Secretary shall maintain an interested persons list for those individuals/groups that wish to receive copies of notices of all general permit applications within the State or within a certain geographic area.

(e) Changes Made to a Project After the Public Comment Period and Prior to Issuance of an Authorization to Discharge

If a proposed project changes after the public comment period has ended, but before the authorization to discharge is issued, the project does not need to be re-noticed for public comment if:

- (1) the proposed project changes do not reduce the quality of the stormwater discharge;
- (2) the proposed project changes do not substantially increase the quantity of the discharge or change the discharge location so as to adversely affect the instream hydrology or geomorphology; and
- (3) there is not a significant change in the type or nature of proposed treatment.

(f) Issuance or Denial of Authorizations to Discharge

- (1) If the Secretary determines that an application is complete and that the discharge meets the terms and conditions of the general permit, the Secretary shall issue an authorization to discharge unless the Secretary determines that an individual permit is required pursuant to subsection 308(l) of this section.
- (2) Denials of an authorization to discharge shall be issued in writing, stating the reasons for the denial.

- (3) If an application is denied for lack of technical or other information, the Secretary will provide appropriate information to help the applicant correct the deficiencies and re-apply for an authorization to discharge.

(g) Renewal of an Authorization to Discharge

A permittee who wishes to continue to discharge after the expiration date of his/her authorization to discharge shall apply for renewal in accordance with the general permit. The Secretary may require any permittee authorized by a general permit to apply for an individual stormwater discharge permit in accordance with subsection 308(l) of this section.

(h) Transfer of Authorization to Discharge or Addition of a Co-Permittee

- (1) A permittee may transfer an authorization to discharge by submitting a notice of transfer on a form provided by the Secretary. The notice shall be submitted at least five (5) days prior to transfer and shall include, at a minimum:
  - (A) the name and address of the new permittee;
  - (B) the name and address of the former permittee;
  - (C) the date of transfer; and
  - (D) a statement, signed by the new permittee, stating that he/she has read and is familiar with the terms of the general permit and the authorization to discharge and agrees to comply with all the terms and conditions of the general permit and the authorization to discharge.
- (2) A permittee may add a co-permittee by submitting a notice of addition of co-permittee on a form provided by the Secretary. The form notice shall include, at a minimum, the information listed in subsections 308(h)(1)(A)-(D) of this section.

(i) Changes to Permitted Impervious Surfaces

The permittee shall notify the Secretary of any planned expansion or change that may result in new or increased discharges of regulated stormwater runoff at least sixty (60) days prior to the expansion or change. The Secretary may require the permittee to submit additional information on the proposed change or expansion. The Secretary shall determine the appropriateness of continued inclusion under the general permit.

(j) Modification of Authorization to Discharge

If a project changes after the issuance of an authorization to discharge is issued, but before the project is built, the authorization to discharge may be amended without re-noticing for public comment if:

- (1) the proposed project changes do not reduce the quality of the stormwater discharge;
- (2) the proposed project changes do not substantially increase the quantity of the stormwater discharge or change the stormwater discharge location so as to adversely affect the instream hydrology or geomorphology; and
- (3) there is not a significant change in the type or nature of proposed treatment.

(k) Revocation of Authorization to Discharge

The Secretary may, after notice and opportunity for public hearing, revoke or suspend, in whole or in part, an authorization to discharge under a general permit for cause, including but not limited to:

- (1) violation of the terms or conditions of the general permit;
- (2) obtaining coverage under a general permit by misrepresentation or failure to disclose fully all relevant facts; or
- (3) a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted activity or discharge.

(l) Requiring or Requesting an Individual Permit Rather than Coverage under a General Permit

- (1) The Secretary may require a permittee applying for coverage under a general permit to apply for an individual permit. Cases where an individual permit may be required include, but are not limited to, the following:
  - (A) The permittee is not in compliance with the terms and conditions of the general permit;
  - (B) The discharge does not qualify for general permit coverage taking into account:
    - (i) the location of the discharge;
    - (ii) the size of the discharge; or
    - (iii) the impact on the receiving water; or

(C) If a permit applicant proposes to use an alternative stormwater treatment system pursuant to the Vermont Stormwater Management Manual.

(2) If the Secretary determines that a permittee authorized by a general permit is required to apply for an individual permit, the Secretary shall so notify the permittee. This notice shall include a brief statement of the reasons for this decision, an application form and the timeframe for the permittee to file the application.

(3) When an individual permit is issued to a person otherwise subject to a general permit, the general permit's applicability to the individual permittee is automatically terminated on the effective date of the individual permit.

(4) Any permittee authorized by a general permit may request to be excluded from the coverage of the general permit provided the permittee submits information supporting the request. If the Secretary finds that the terms and conditions of the general permit do not apply to the activity or discharge, or that the activity or discharge is more appropriately covered by an individual permit, the Secretary shall grant the request and shall notify the permittee in writing of his/her decision. Upon receipt of such notification, the permittee shall submit to the Secretary an application for an individual permit.

(m) Requiring Coverage under a General Permit

(1) The Secretary may require any person applying for an individual permit to apply for coverage under a general permit provided the Secretary finds the discharge complies with all conditions of the general permit and the discharge is more appropriately covered under the general permit.

(2) Any permittee subject to an individual permit and wishing to obtain coverage under a general permit may file a notice on forms provided by the Secretary. Upon the request of the Secretary, any person who files a notice shall submit such additional information that may be necessary to enable the Secretary to determine whether to authorize the activity or discharge under the terms of a general permit.

(3) Any permittee subject to an individual permit shall be authorized to discharge under the terms of a general permit upon issuance of a notice by the Secretary authorizing the discharge under the general permit. The individual permit's applicability to the permittee is automatically terminated on the effective date of the authorization to discharge under the general permit.

## **§18-309 Individual Stormwater Discharge Permits**

### **(a) Purpose and Applicability**

This section sets forth a process for the development and issuance of individual stormwater discharge permits for discharges of regulated stormwater runoff to waters that are not stormwater-impaired waters.

### **(b) Application for an Individual Stormwater Permit**

- (1) An applicant for an individual permit to discharge regulated stormwater runoff shall submit a completed application form with all necessary attachments and fees.
- (2) The applicant shall own or control the impervious surfaces for which permit coverage is required. If the applicant merely controls the impervious surfaces, the owner of the impervious surfaces shall be a co-applicant, unless the applicant that controls the impervious surface is a municipality or stormwater utility that has assumed responsibility for the management of discharges of regulated stormwater runoff from the impervious surfaces.
- (3) An application for an existing housing or commercial project shall include the owner's association, condominium association or other common association as a co-permittee. The Secretary may waive this requirement for existing projects on a case-by-case basis if a responsible party or parties accepts responsibility for the stormwater management system. If application is made in connection with a new housing or commercial development, the developer and an owners' association, condominium association, other common association, or other legal entity accepting responsibility for the stormwater management system shall apply as co-permittees.
- (4) A municipality or stormwater utility may apply as a permittee in lieu of the owner(s) of the impervious surfaces for which an individual stormwater permit is required, provided that the municipality or stormwater utility accepts responsibility for compliance with the individual permit and has the legal authority to do so.

### **(c) Additional Information Requested by the Secretary**

The Secretary may require an applicant to submit additional information that the Secretary considers necessary in order to make a decision on the issuance or denial of an individual permit. The Secretary may deny the individual permit if the requested information is not provided within sixty (60) days of the Secretary's request.

(d) Public Notice and Hearing for Applications for an Individual Stormwater Discharge Permit

- (1) If the Secretary determines that an application for an individual stormwater discharge permit is complete, the Secretary shall prepare a draft stormwater discharge permit and shall provide notice to the clerk of the municipality in which the discharge is located, on the Environmental Notice Bulletin, and to a list of interested persons, if any.
- (2) The Secretary shall provide thirty (30) days from completion of the public notice requirements in subsection 309(d)(1) of this section for persons to submit written comments on the application and the draft stormwater discharge permit.
- (3) The period for public comment may be extended at the sole discretion of the Secretary.
- (4) Any request for a public informational meeting must be submitted in writing to the Secretary during the thirty (30) day public comment period. The Secretary will hold a public informational meeting if there is a demonstrated public interest in holding such a meeting.
- (5) The Secretary shall publish notice of a public informational meeting at least thirty (30) days prior to the meeting. Notice shall be given in the same manner as notice of the permit application.

(e) Interested Persons List

The Secretary shall maintain an interested persons list for those individuals/groups that wish to receive copies of notices of all individual stormwater permit applications within the State or within a certain geographic area.

(f) Changes Made to Project After Public Comment Period and Prior to Issuance of Final Individual Permit

If a proposed project changes after the public comment period has passed, but before the final individual permit is issued, the project does not need to be re-noticed for public comment if:

- (1) the proposed changes do not reduce the quality of the stormwater discharge;
- (2) the proposed changes do not substantially increase the quantity of the stormwater discharge or change the stormwater discharge location so as to adversely affect the instream hydrology or geomorphology; or
- (3) there is not a significant change in the type or nature of proposed treatment.

(g) Issuance or Denial of an Individual Permit

If the Secretary approves an application, the Secretary may issue an individual permit. Denials of an individual permit shall be issued in writing, stating the reasons for the denial. If the permit application is denied for lack of technical or other information, the Secretary will provide appropriate information to help the applicant correct the deficiencies and re-apply for an individual permit.

(h) Transfer of Individual Permit or Addition of Co-Permittee

(1) A permittee may transfer an individual permit by submitting a notice of transfer on a form provided by the Secretary. The notice shall be submitted at least five (5) days prior to the transfer and shall include, at a minimum:

(A) the name and address of the new permittee;

(B) the name and address of the former permittee;

(C) the date of transfer; and

(D) a statement, signed by the new permittee, stating that he/she has read and is familiar with the terms of the individual permit and agrees to comply with the individual permit.

(2) A permittee may add a co-permittee by submitting a notice of addition of co-permittee on a form provided by the Secretary. The form notice shall include, at a minimum, the information listed in subsections 309(h)(1)(A)-(D) of this section.

(i) Permit Modification

(1) The Secretary may modify an individual permit after providing an opportunity for public participation in the same manner described in subsection 309(d) of this section. The Secretary may modify an individual permit for cause, including but not limited to the following:

(A) The statutes or rules on which the individual permit is based have changed;

(B) There is a change in any condition that requires redrafting or alteration of the boundaries of a designated geographic area;

(C) If the individual permit has been issued for a non-stormwater impaired water and the Secretary subsequently determines that the water is a stormwater-impaired water;

(D) When required by the reopener conditions in the individual permit; or

(E) To correct technical mistakes, such as errors in calculations or mistaken interpretations of law made in determining permit conditions.

(2) Notwithstanding subsection 18-309(i)(1) of this section, if a project changes after the issuance of an individual permit, but before the project is built, the individual permit may be amended without re-noticing for public comment if:

(A) the proposed project changes do not reduce the quality of the stormwater discharge;

(B) the proposed project changes do not substantially increase the quantity of the stormwater discharge or change the stormwater discharge location so as to adversely affect the instream hydrology or geomorphology; and

(C) there is not a significant change in the type or nature of proposed treatment.

(j) Revocation of Individual Permits

(1) The Secretary may, after notice and opportunity for public hearing, revoke or suspend, in whole or in part, an individual permit for cause, including but not limited to:

(A) violation of the terms or conditions of the individual permit;

(B) obtaining coverage under an individual permit by misrepresentation or failure to disclose fully all relevant facts; or

(C) a change in any condition that requires either a temporary or permanent reduction in or elimination of the permitted discharge.

(k) Permit Renewal

(1) A permittee who wishes to continue to discharge after the expiration date of his/her individual permit shall file an application for reissuance of the individual permit, on a form provided by the Secretary, at least 90 days prior to its expiration. A renewal application shall be noticed subject to the public participation requirements set forth in subsection 309(d) of this section. The Secretary may require an applicant for renewal of an individual permit to be subject to a general permit in accordance with subsection 18-308(m) of this Rule.



(2) The Secretary may require an applicant to submit additional information that the Secretary considers necessary in order to make a decision on the renewal of an individual permit. The Secretary may deny the renewal if the requested information is not provided within thirty (30) days of the Secretary's request.

(l) General Requirements

(1) Each individual permit:

(A) shall require proper operation and maintenance of all stormwater collection, treatment and control systems and that the permittee shall submit an annual inspection report on the operation, maintenance and condition of the stormwater collection, treatment and control systems. Inspections shall be conducted between the conclusion of spring snow melt and June 15<sup>th</sup> of each year and the inspection report shall be submitted to the Secretary by July 15<sup>th</sup> of each year, or by July 30<sup>th</sup> of each year if performed by a utility or municipality pursuant to a duly adopted stormwater management ordinance. The first annual inspection report for a new development, redevelopment or expansion shall include a written certification by a designer, other than the landowner, stating that the stormwater system was installed in accordance with the conditions of the individual permit and is functioning properly;

(B) shall require that the permittee allow the Secretary and his/her authorized representatives, at reasonable times and upon presentation of credentials, to enter upon and inspect the permitted property and to have access to and copy any records required to be kept pursuant to the permit;

(C) may contain such additional conditions, requirements and restrictions as the Secretary deems necessary to achieve and maintain compliance with the Vermont Water Quality Standards, including but not limited to requirements concerning recording, reporting and monitoring the effects on receiving waters due to operation and maintenance of stormwater collection, treatment and control systems.

**§18-310 Compliance with Existing Permits**

Unless otherwise provided herein, this Rule does not affect the responsibility of a permittee to comply with the most recent previously issued stormwater permit.

**§18-311 Stormwater Utilities**

(a) This Rule recognizes that a municipality may elect to form a stormwater utility or join with other municipalities to form a regional stormwater-utility, or adopt an ordinance related to stormwater management, to assume responsibility for the management of

regulated stormwater runoff. In such cases, the stormwater utility or municipality may apply for permit coverage in lieu of other entities that own or control impervious surfaces that require a permit pursuant to this Rule.

- (b) Any individual permit or authorization to discharge under a general permit issued to a stormwater utility, or to a municipality pursuant to an ordinance-based stormwater management program, shall be consistent with the scope of the authority of the utility or management program, and may include permit requirements for, including but not limited to, construction of stormwater management systems, performance of maintenance and inspection duties, submittal of certifications of compliance, retention of records and compliance with all other applicable provisions of this Rule and any applicable individual or general permit.

### **§18-312 Validity of Permit and Authorization to Discharge; Recording in Land Records**

- (a) A notice of the issuance of an individual stormwater permit or an authorization to discharge pursuant to a general stormwater permit shall be recorded by the permittee in the local land records within fourteen (14) days of the issuance of the individual permit or authorization to discharge. A copy of the notice form that must be filed is available from the Secretary. A copy of the recording shall be provided to the Secretary within fourteen (14) days of the permittee's receipt of a copy of the recording from the local land records. Stormwater discharge permits for public roads are exempted from the recording requirements in this section.
- (b) An individual stormwater permit or authorization to discharge under a general stormwater permit shall not be effective until the notice of the permit or authorization is filed in the local land records in accordance with subsection 312(a) of this section.

### **§18-313 Enforcement**

This Rule may be enforced in accordance with 10 V.S.A. Chapter 47 and 10 V.S.A. Chapters 201 and 211.

### **§18-314 Appeals**

A person aggrieved by a final act or decision of the Secretary under this Rule may appeal in accordance with 10 V.S.A. Chapter 220.

### **§18-315 Liability**

The issuance of a permit or authorization to discharge under this Rule does not relieve the permittee from the responsibility for proper operation of any stormwater collection, treatment and control system and does not limit liability under common law or statutes pertaining to ground and surface water protection or rights.