

**AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATER QUALITY DIVISION**

FACT SHEET

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)
GENERAL PERMIT 3-9030 FOR DESIGNATED DISCHARGES TO THE
BARTLETT, CENTENNIAL, ENGLSBY, MOREHOUSE AND POTASH
BROOK WATERSHEDS**

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Reference Sites: This document references Vermont statutes, Department rules and regulations, the Federal Clean Water Act, and Federal rules. See the specific web sites below for further information.

- The text of Vermont statutes can be found at: <http://www.leg.state.vt.us/statutes/statutes2.htm>
- The text of Department rules can be found at:
<http://www.anr.state.vt.us/dec/ww/Rules/WPC/chap1312.pdf>
- The text of the Clean Water Act can be found at: <http://www.epa.gov/npdes/pubs/cwatxt.txt>
- The text of Title 40, Part 122 of the Federal rules can be found at:
http://www.access.gpo.gov/nara/cfr/waisidx_08/40cfr122_08.html
- The text of the Department’s initial residual designation notice for Bartlett, Centennial, Englesby, Morehouse and Potash Brooks can be found at:
http://www.vtwaterquality.org/stormwater/htm/sw_RDA.htm
- Additional information concerning the regulation of stormwater in Vermont may be found at:
<http://www.vtwaterquality.org/stormwater.htm>

Summary

The Department of Environmental Conservation (Department) is providing this Notice of the issuance of draft General Permit 3-9030 for Designated Discharges to the Bartlett, Centennial, Englesby, Morehouse and Potash Brook Watersheds. This draft general permit is issued pursuant to the Department’s federally-delegated National Pollutant Discharge and Elimination System (NPDES) program. This general permit is applicable to designated discharges of stormwater runoff that previously received a notice of designation from the Department on June 19, 2009. This general permit describes permit coverage and limitations, definitions, requirements, procedures, and standard conditions.

Comment Period

The public comment period on this draft general permit is from September 30, 2009 through October 30, 2009. Interested parties may submit written comments on the general permit to the Department at the address given below by no later than 4:30 p.m. October 30, 2009. E-mail may also be used to submit comments. All relevant comments will be considered by the Department in issuing this general permit. After reviewing these comments and making appropriate changes to the general permit, if any, the Department intends to issue a final general permit, effective upon date of issuance. Owners of property with designated discharges will have until December 16, 2009 to file a Notice of Intent to comply with this general permit.

Public Meeting Schedule

The Department has scheduled a public meeting about the draft general permit for 6:00 p.m. on October 14, 2009 at the South Burlington City Hall Conference Room located at 575 Dorset Street in South Burlington, Vermont. At the meeting, Department staff will be available to answer questions concerning the general permit and implementation of the Total Maximum Daily Loads (TMDLs) for Bartlett, Centennial, Englesby, Morehouse and Potash brooks.

Contact Information

A copy of the proposed general permit, the initial Notice of Residual Designation, and TMDL for each watershed is available on-line at http://www.vtwaterquality.org/stormwater/htm/sw_RDA.htm. For additional information concerning the permit contact:

VT Water Quality Division
c/o Jennifer Callahan
103 S Main Street – Building 10 North
Waterbury, VT 05676

Or electronically to Jennifer.Callahan@state.vt.us
Or call: 802-241-3780.

BACKGROUND

Under Clean Water Act (“CWA”) section 402(p), 33 U.S.C. § 1342(p), the United States Environmental Protection Agency (“EPA”) established permitting requirements for certain stormwater discharges. Section 402(p)(1) requires EPA, or states that are delegated to implement the Clean Water Act, such as Vermont, to address through permits the specific following types of storm water discharges:

- Discharges subject to an NPDES permit before February 4, 1987;
- Discharges associated with industrial activity, including construction;
- Discharges from a municipal separate storm sewer system serving a population of 250,000 or more;
- Discharges from a municipal separate storm sewer system serving a population of 100,000 or more but less than 250,000.

In addition, Section 402(p)(2)(E) and (6) and 40 C.F.R. § 122.26 (a)(9)(i)(C) and (D), provide that the EPA Regional Administrator or, in states where there is an approved state program, the State Director may designate additional stormwater discharges as requiring National Pollutant Discharge Elimination System (NPDES) permits where he or she determines that: (C) stormwater controls are needed for the discharge based on wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutants of concern, or (D) the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States. This authority is commonly referred to as Residual Designation Authority (RDA).

The Department recently exercised residual designation authority pursuant to 40 C.F.R. Section 122.26(a)(9)(i)(D) for certain designated discharges to Bartlett, Centennial, Englesby, Morehouse and Potash Brooks as a result of a petition filed by the Conservation Law Foundation (CLF) and an August 2008 Judgment Order from the Vermont Environmental Court which ordered that:

NPDES permits are required for all identified, currently unregulated stormwater discharges that VTANR has determined contribute to violations of the Vermont Water Quality Standards in the five Brooks identified as impaired in these proceedings. We specifically conclude that ANR must exercise its residual designation authority...to require dischargers to apply for NPDES permits for the specific stormwater discharges that have been identified as contributing in more than a “de minimum” manner to the impairment of the identified Brooks.

It further stated, “We direct that ANR begin notifying contributing dischargers, pursuant to a specific schedule, of their obligation to apply for NPDES permits within 180 days of receiving notice.” The Environmental Court defined “currently unregulated” stormwater discharges from point sources as “currently unregulated under the state stormwater law and the NPDES permits for construction, industrial and municipal sites....” In re:

Stormwater NPDES Petition (Conservation Law Foundation Appeal) Docket No. 14-1-07 Vtec (Aug. 28, 2008).

The Department issued its notice of residual designation to approximately 450 property owners in the five watersheds on June 19, 2009. A designated discharge is defined as a stormwater discharge from an impervious surface to Bartlett Brook if such discharge is not covered under the NPDES municipal separate storm sewer system (MS4) permit or another NPDES permit (e.g., NPDES industrial or wastewater discharge permit), or is not authorized by a state stormwater discharge permit with an associated offset or on-site controls that result in no net contribution to the receiving water. Non-municipal discharges into the MS4 system or discharges that commingle with the MS4 system are not subject to the designation. The designation includes non-municipal discharges that are contributing stormwater runoff from an impervious surface to a specifically identified point source outfall to Bartlett Brook that is not currently covered under a NPDES permit or a state stormwater discharge permit with an associated offset or on-site controls that result in no net contribution to the receiving water. For purposes of the initial designation, impervious surface means: 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.

This draft general permit is applicable to these designated discharges and to any additional stormwater discharges to these five waterbodies that the Department designates pursuant to its residual designation authority. Where a property containing a designated discharge is owned by one person, but is operated by another person, the operator of the property is required to obtain the NPDES permit. Designated dischargers need to apply for coverage by December 16, 2009. During the public comment period on this general permit or during any appeal of this general permit, the question of whether a particular designation is proper will remain open for consideration.

USE OF GENERAL PERMIT OPTION

Section 13.12 of the Vermont Water Pollution Control Permit Regulations authorizes the issuance of "general permits" to cover a category of discharges, including stormwater runoff, within an existing geographic area. The Secretary has determined that the designated discharges may be appropriately controlled through a general permit process. This draft general permit meets the requirements of Section 13.12 of the Vermont Water Pollution Control Permit Regulations. Pursuant to subpart IV.E. of the draft general permit, the Secretary reserves the right to require an individual permit for a designated discharge in accordance with that subpart.

SUMMARY OF KEY PROVISIONS IN GENERAL PERMIT

Part I General Permit Coverage

This general permit authorizes a designated discharge to Bartlett, Centennial, Englesby, Morehouse and Potash Brooks provided that authorization to discharge is obtained and

compliance with the terms and conditions of the general permit is maintained. Owners or operators of property from which there is a designated discharge shall obtain coverage under this general permit. A designated discharge is a stormwater discharge from an impervious surface to Bartlett, Centennial, Englesby, Morehouse or Potash Brook if such stormwater discharge is not covered under a NPDES municipal separate storm sewer system (MS4) permit or another NPDES permit or is not authorized by a state stormwater discharge permit with an associated offset or on-site controls that result in no net contribution to the receiving water. Non-municipal stormwater discharges into a MS4 system or stormwater discharges that commingle with the MS4 system are not subject to this designation.

This permit is issued in accordance with Vermont's federally-delegated NPDES stormwater program pursuant to the following state and federal laws and rules: the Vermont Water Pollution Control statute, 10 V.S.A. Chapter 47; the Vermont Water Pollution Control Rules, chapter 13, including the rule governing general permits in Section 13.12; the federal Clean Water Act, as amended, 33 U.S.C.A. 1251 et seq.; and related regulations of the federal Environmental Protection Agency including 40 C.F.R. 122. This permit is consistent with the EPA- approved Total Maximum Daily Loads (TMDLs) for Bartlett, Centennial, Englesby, Morehouse and Potash Brooks.

This permit does not authorize stormwater discharge-related activities (e.g. BMP installation) when the discharge-related activity is likely to jeopardize the continued existence of any State or federally threatened or endangered species or result in the destruction or adverse modification of any critical habitat.

The Secretary has determined that if a designated discharge obtains coverage and is in compliance with the terms and conditions of this general permit, the discharge will not be contributing to a water quality standards violation pursuant to 40 C.F.R. § 122.26 (a)(9)(i)(D).

This part also explains how this draft general permit relates to Vermont's State Stormwater Law. In accordance with Section 22-306 of the Department's Stormwater-Management Rule for Stormwater-Impaired Waters (Chapter 22, Environmental Protection Rules), a designated discharge that receives authorization under this general permit is no longer required to renew its previously issued state stormwater operational permit pursuant to Chapter 22 of the Environmental Protection Rules (EPR) and 10 V.S.A. Sections 1264 and 1264a. However, if the authorized designated discharge is expanded or increased, then coverage under EPR Chapter 22 and 10 V.S.A. Sections 1264 and 1264a may be required for the expanded or increased discharge as further described in Subsection V.E. of the general permit.

Part II Definitions

This part provides relevant definitions such as: stormwater best management practice or stormwater BMPs, designated discharge, impervious surface, previously issued state stormwater discharge permit, owner or operator and stormwater runoff.

Part III Application Requirements

This part provides application requirements that designated discharges need to comply with in order to obtain permit coverage. This draft general permit provides different application requirements for three specified categories of designated discharges, as follows:

- **Designated Discharges from Property with Existing Impervious Surfaces that are Subject to a Previously Issued State Stormwater Permit**

This category of designated discharges shall apply for general permit coverage by submitting a Notice of Intent (NOI) to the Department by December 16, 2009.

- **Designated Discharges from Property with Existing Impervious Surfaces Greater than One Acre that do not have a Previously Issued State Stormwater Permit**

This category of designated discharges shall apply for general permit coverage by submitting a NOI to the Department by December 16, 2009.

- **Designated Discharges from Property with Existing Impervious Surfaces Less than One Acre that do not have a Previously Issued State Stormwater Permit**

A designated discharge from property that has impervious surfaces less than one acre that are not subject to a previously issued state stormwater discharge permit shall be authorized to discharge upon the effective date of this permit. A NOI is not required for such a designated discharge. By no later than June 30, 2010, the permittee shall implement the BMPs set forth in Appendix C of this general permit. Authorization to discharge shall terminate any time after June 30, 2010 if the BMPs set forth in Appendix C are not implemented for a designated discharge.

This part also describes the public notice and comment procedures required for applications to discharge under this general permit. This part also specifies that a one-page notice of authorization to discharge under this general permit must be filed by each permittee in the local land records.

Part IV Permit Submittal Requirements and Collection, Treatment and Control Standards

This part specifies the submittal requirements and stormwater collection, treatment and control standards applicable to three categories of designated discharges as follows:

- **Designated Discharges from Property with Existing Impervious Surfaces that are Subject to a Previously Issued State Stormwater Permit**

An applicant for permit coverage for a designated discharge from property that is subject to a previously issued state stormwater discharge permit shall:

1. **By June 31, 2011**, conduct and submit to the Department an analysis conducted in accordance with the requirements contained in Appendix A to this general permit. The applicant shall also submit design plans for implementing the BMPs identified in this analysis.

2. **By no later than eighteen (18) months of the Secretary's approval of the analysis and design plans**, the permittee shall implement the approved stormwater BMPs for the designated discharge.

3. **Within sixty (60) days of completion** of implementation of the identified BMPs, the permittee shall submit to the Secretary a written statement signed by a designer that the identified BMPs have been built or implemented and are currently operating in compliance with the plans and this general permit. As-built-plans shall be submitted with the certification if the BMPs have changed from the original plans submitted to the Department.

- **Designated Discharges from Property with Existing Impervious Surfaces Greater than One Acre that do not have a Previously Issued State Stormwater Permit**

An applicant for permit coverage for property from which there is a designated discharge and that has impervious surfaces greater than one acre that are entirely or partially subject to a previously issued state stormwater discharge permit shall:

1. **By December 31, 2010**, conduct and submit a Site Assessment (SA) conducted in accordance with the Department's VTDEC Procedure for Site Assessments in Appendix B to this general permit.

2. If, after review of the SA and other available information, the Department determines that stormwater BMPs must be implemented for the subject property in order to implement the applicable TMDL, the Secretary shall reopen this permit to specify and require implementation of these BMPs by the permittee. The Secretary shall require that construction of such BMPs shall be completed within 18 months of the effective date of the amended permit.

3. **By June 30, 2010**, the permittee shall implement the BMPs set forth in Appendix C of this general permit. Authorization to discharge shall terminate at any time after **June 30, 2010**, if the BMPs set forth in Appendix C are not being implemented for a designated discharge.

- **Designated Discharges from Property with Existing Impervious Surfaces Less than One Acre that do not have a Previously Issued State Stormwater Permit**

A designated discharge from property that has impervious surfaces less than one acre that are not subject to a previously issued state stormwater discharge permit shall be authorized to discharge upon the effective date of this permit. **By June 30, 2010**, the permittee shall implement the BMPs set forth in Appendix C of this general permit.. Authorization to discharge shall terminate any time after June 30, 2010 if the BMPs set forth in Appendix C are not being implemented for a designated discharge.

Part V Operation and Maintenance

This part describes requirements for the operation and maintenance of stormwater BMPs required by this general permit, annual inspections and report submittals, designer certifications of compliance, changes to authorized discharges or impervious surfaces and recordkeeping.

The permittee shall at all times properly operate, inspect and maintain all stormwater BMPs that are installed or used by the permittee to achieve and maintain compliance with this general permit. The permittee shall use the operation, maintenance and inspection checklists provided by the Secretary. The stormwater BMPs for a designated discharge shall be properly operated and maintained and shall be inspected at least twice per year. The permittee shall submit an annual inspection report to the Secretary by December 31st of each year. In accordance with a schedule provided in the authorization to discharge, a permittee shall submit to the Secretary a written statement signed by a designer that the stormwater BMPs for a designated discharge is properly operating and maintained. Any erosion or associated discharge of sediment from the stormwater BMPs for a designated discharge shall be corrected immediately.

This part also provides requirements for any changes to an authorized stormwater discharges or impervious surfaces covered by this general permit. A permittee shall notify the Secretary of any planned development, facility, or impervious surface expansions and/or changes that may result in new, expanded or increased stormwater discharges. The Secretary may require the permittee to submit additional information on the proposed changes. If there will be a new, expanded or increased stormwater discharge, the permittee shall obtain coverage under a state stormwater permit for such new, expanded or increased discharge if required pursuant to EPR Chapter 22 and 10 V.S.A. Sections 1264 and 1264a, or under another appropriate general or general permit issued by the Secretary.

Part VI Standard Conditions

This part includes a set of standard conditions such as: duty to comply, duty to apply, modification of general permit, reissuance of general permit, revocation of authorization to

discharge, right of entry and inspection for the Secretary, recordkeeping requirements, requiring an individual permit and signatory requirements for permit submittals.

Part VII Violation of Permit Requirements

Part VII provides that a permittee shall comply with all terms and conditions of this permit and that any permit noncompliance constitutes a violation of 10 V.S.A. Chapter 47 and the federal Clean Water Act, and is grounds for an enforcement action, or suspension or revocation of the permittee's authorization to discharge under this permit.

Part VIII Appeals

Part VIII of provides that the final permit may be appealed to the Vermont Environmental Court in accordance with 10 V.S.A. Section 220.

Part IX Effective Date and Term

The final permit shall become effective upon signing and shall expire five (5) years from the date of signing.