

WATER QUALITY DIVISION
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September 27, 2004

Re: New Legislation Relating to Stormwater Discharges
to Impaired Waters (Act 140)
Stormwater Discharge Permit
Receiving Water:

I am writing to inform you of the recent passage of a new law governing stormwater discharges. The new law, An Act Relating to Stormwater Discharge (Act 140), took effect on July 1, 2004.

This new law requires the Agency of Natural Resources (ANR) to develop and implement, by September 30, 2007, long-term clean up plans for each of the seventeen state waters significantly impaired by stormwater runoff. These long-term plans will either be issued as Total Maximum Daily Loads (TMDLs) or as water quality remediation plans. The goal of each plan is attain state water quality standards in the impaired water. Once a long-term plan is established, ANR will issue a general permit to implement the plan. All new and existing discharges to the impaired water will need to apply for coverage under the general permit. Since you are the current owner of an existing discharge to a stormwater-impaired water, you will need to apply for coverage under the applicable general permit when it is issued.

It will take at least a year and possibly longer, for ANR to develop these long-term cleanup plans and to issue the associated general permits. Therefore, the new law creates an interim ANR permitting process. The interim permitting period will expire for a stormwater-impaired water once a general permit is issued, or on September 30, 2007, whichever is sooner.

The interim permitting program requires ANR to issue individual permits with a strict "net zero" pollution standard (i.e. no more sediment is caused by the discharge than would occur if the site of the discharge were in its pre-existing or "natural" condition). This net zero standard applies to individual stormwater permits for new construction, redevelopment and for re-permitting the 300 existing impervious surfaces in impaired waters that have **expired** stormwater permits.

Owners of currently permitted systems with **un-expired** permits should make sure to re-apply for permit renewal in a timely manner - prior to the permit's expiration date. This will ensure uninterrupted permit coverage and will not adversely affect the marketability of title.

If the current landowner of an existing discharge wishes to renew an expired stormwater permit during this interim period, he/she will need to:

- Upgrade the existing stormwater system to meet as closely as possible the water quality treatment standards in ANR's 2002 Stormwater Management Manual. The owner will have to perform an engineering feasibility analysis to determine the required amount of system

upgrading. This analysis must be performed in accordance with “VTDEC Procedure for Evaluation of Stormwater Discharges and Offsets in Impaired Watersheds” dated May 5, 2004.

- If the “net zero” discharge standard is not met by upgrading the existing stormwater system, then the landowner is required to mitigate the remaining impact by completing an additional project, known as an offset, in the same stormwater-impaired water. If an offset is not feasible or does not result in meeting the discharge standard, then the landowner may pay a stormwater impact fee to mitigate the remaining impact.

As you can see, the process for obtaining an individual permit during the interim period is both work-intensive and potentially costly. It is currently unknown if the long-term cleanup plans will require upgrading of existing stormwater systems. Given this, a landowner may decide to take a “wait and see” approach and not seek renewal of an expired permit during the interim period. This approach is supported by a provision in the new law that removes the “cloud” on a landowner’s property title for failure to have a valid stormwater permit. The law provides that a failure of a real property owner to obtain, renew or comply with the terms of a stormwater discharge permit in impaired waters will not encumber or affect the marketability of property title during the interim period. **To qualify for this exemption, the seller of a property or owner seeking to refinance must take two basic actions:** (1) submit a notification of permit deferral to ANR and (2) record in the land records a notice that the mortgagor or grantee in a property refinancing or conveyance will need to comply with the requirements of a long-term cleanup plan and associated general permit for the watershed in which the property is located. You should consult with your attorney to insure that all technical requirements are met. This provision removes a major problem some people encountered during property sales and refinancing; namely the failure to have a current stormwater permit. **If you are being contacted by us as the representative of a homeowner or condominium association please inform your constituents of this provision in the law and the process for exemption.**

If you have any questions regarding this letter please call the Stormwater Management Section at 241-4320. If you want to renew your expired stormwater permit or expand or redevelop your impervious surfaces during the interim period, please call us immediately. These actions will require significant upfront work before a permit can be issued; including conducting an engineering feasibility study and identifying any required offset projects. Finally, if you wish to file a notification of permit deferral after July 1, 2004, you can obtain a notification form at our website at: http://www.vtwaterquality.org/stormwater/htm/sw_permits.htm (under Stormwater Forms).

Sincerely,



Pete LaFlamme

Chief, Stormwater Management Section