

Vermont Agency of Natural Resources
Department of Environmental Conservation
Response to Comments on Draft General Permit 3-9040 for
Stormwater Discharges from Municipal Roads

The Department of Environmental Conservation issued the Draft Municipal Roads General Permit (MRGP) for public comment on September 09, 2022. The Department held 2 public meetings to solicit public comments on the draft permit. A virtual public meeting was held on October 10, 2022 via Microsoft Teams. An in-person meeting was held on October 11, 2022, in Montpelier. The public comment period closed on October 24, 2022. The Department received written comments from Vermont Association of Planning & Development Agencies (VAPDA), Vermont League of Cities & Towns, Two Rivers-Ottawaquechee Regional Commission, Alan Shelvey, and the Bristol Vermont Road Foreman on the Fact Sheet and Draft Permit. The following are the public comments received by the Department and the Department's responses. Where appropriate, comments have been paraphrased, consolidated, and categorized for clarity.

- 1. Comment:** There are some good changes in the proposed MRGP permit. We particularly think stating that the standards are not required if it would render the road unsafe for travel is a good change and addresses many concerns of local highway departments.

Response: The Department has added this new category to the Feasibility Section of the permit after hearing concerns from towns and residents, especially around concerns of the travel lane being narrowed to accommodate new stone-lined drainage ditches and winter travel.

- 2. Comment:** Continued funding commitments for REIs and technical assistance is critically important to provide guidance for municipalities to meet the requirements in the proposed MRGP permit. Each municipality will be required to complete a second road erosion inventory on every hydrologically connected road segment. In the first permit cycle, 191 of the 250 municipal inventories were funded through the Better Roads Program which allocated \$1,311,432 for FY 18-FY 22 through its Category A grants. It is our understanding that a significant portion of this funding was redirected from other efforts and may not be available for a second round of inventories. A conversation was organized between ANR and VTrans staff working on the MRGP rules update about funding assumptions, and an email was sent by VAPDA and VLCT regarding funding assumptions. Secretary Moore replied that funding decisions, "is a bit premature since the Better Roads funding hasn't been determined yet. My understanding is that VTrans and DEC staff believe approximately \$2M will be needed to complete the inventories over the next 5 years. To the extent VTrans and the Better Roads program come up short, we will work together to identify other funding sources to supplement any shortfall, appreciating this could

require amending the MOA we (ANR) have with VTrans which governs the funding.” This is a fundamental question that should be resolved sooner rather than later as it has direct bearing on the efficacy and fiscal sustainability of the proposed rule.

Response: The Department understands the importance of continued state and federal funding sources dedicated to assist municipalities in undertaking road erosion inventories (REIs) and implementation practices required by the MRGP. The Department will continue to collaborate with VTrans in advocating for continued grant funding such as Grants-in-Aid and Better Roads grant funding but final decisions about funding are determined by the Vermont Legislature and federal funding sources and not the Department or VTrans. In developing and structuring this permit, the Department has focused on requirements such as the REI and implementation measures that are essential to ensuring the success of the permit and therefore they cannot be viewed as conditional dependent upon the availability of funding.

- 3. Comment:** With changes to Grants-in-Aid, RPCs are not on the ground as much with municipalities at this point. This will leave a gap in knowledge. We recommend additional training including in-person field training and technical assistance for municipalities. RPCs have significant knowledge in this area and are willing to partner with DEC on this training and technical assistance.

Response: The Department acknowledges the important work provided by the RPCs in the implementation of the Grants-in-Aid program. It is the Department’s understanding that towns can continue to opt to use RPCs in implementing Grants-in-Aid projects if they so choose. The Department works in close collaboration with the VTrans Local Roads Program in developing and implementing MRGP Road Roundtable forums, both in-person and virtually. The Roundtable forums cover required practice implementation, MRGP requirements, REI training and MRGP database reporting and will continue to do so. Since the onset of the MRGP, the Department and VTrans Local Roads program have averaged five forums per year. The Department will also launch a new round of REI in-field trainings starting in the spring of 2023 to coincide with the new REI Survey 123 form being developed by the Department and the Agency of Digital Services.

- 4. Comment:** The changes do not appear to be reflective of our experiences since the MRGP permit was initially established. We recommend producing a report about how the permit process worked for the first five years, and then summarize how the proposed changes address those lessons learned.

Response: The Department regularly testifies at numerous Vermont Legislative Committee hearings and to the EPA to report on MRGP progress such as number of towns completing REIs, number of road segments upgraded to meet MRGP standards, number of towns fully compliant with different components of the permit, and phosphorous load reductions associated with the permit. Most of this information is available at the MRGP website in the MRGP Implementation Table Portal queries and the MRGP Compliance Status Database and as requested by various stakeholders the Department will continue to make this information available to the public.

- 5. Comment:** How is the funding raised by permit fees (administrative processing fee, annual operating fee) being used?

Response: Administrative, permit review, and annual operating fees all support the Department’s budget by contributing to the Environmental Permit Fund, which represents about 1/3 of the Department’s budget. The Department depends on these fees for supporting work across the various divisions, including permit administration, compliance monitoring, technical assistance, administrative support, and water quality monitoring. The Department collects fees for a variety of permit types, all of

which go to support the Environmental Permit Fund, which is a critical component of the Department's overall budget.

- 6. Comment:** ANR has not issued a synthesis of the proposed changes to the permit. This requires painstaking cross referencing between the current permit and the draft permit in order to get a sense of what changes are proposed. A synthesis of the proposed changes would be helpful for evaluating the draft permit.

Response: The Department made available for several months a "track changes" version of the new permit changes for the MRGP Core Team members that were meeting monthly for nearly a year in assisting the Department in determining which permit changes from the original permit were necessary based on lessons learned over the past five years. The Core Team is composed of members of the Department, VTrans Local Roads and Better Roads Programs, VTrans Program managers, three RPC directors and additional staff as needed, and the VLCT. The Department requested that Core Team members share the track changes document with their constituents as they saw fit. Additionally, the Department made itself available to conduct numerous presentations, both virtual and in-person, as well as two publicly noticed meetings to review proposed changes in the permit. The Department has made available that presentation with the proposed changes summarized on its website and it continues to reside there.

- 7. Comment:** How will the transition from the current permit to the reissued permit work? For example, proposed changes to the prioritization methodology may significantly reduce the number of very high priority (VHP) road segments in many municipalities. If the initial road erosion inventory (REI) is to serve as the basis for implementation requirements until a second REI assessment is completed, is a municipality required to implement drainage improvements in accordance with the number of VHP segments as calculated from the initial inventory? Might this trigger permit violations that may not otherwise be violations if a second REI assessment had been completed resulting in fewer overall VHP segments

Response: The MRGP implementation requirements are determined by the REI results. Towns are required to upgrade 7.5% of non-compliant segments annually and upgrade all of their non-Class 4 road VHP segments by 12/31/2025 as determined by their baseline REI. Once each town completes the newly required REI reassessment (before 10/31/2027) it then replaces the baseline REI as the basis for all implementation requirements, including new VHP requirements, such as 20% of VHP segments included within the 7.5% upgrade requirement. If the town is meeting the baseline REI-determined implementation requirements until the REI reassessment is complete, the town will be compliant with permit.

- 8. Comment:** The new requirement about intermittent stream culverts will require training for road crews on identifying and sizing intermittent stream culverts to be compliant with the permit.

Response: The Department recognizes that the new requirement for the Active Channel Width for non-compliant intermittent stream crossing culvert upgrades will require some additional training. The Department has and will continue to offer MRGP Road Roundtable forums with VTrans Local Roads Program, which features presentations from the Department's River Management Program Stream Alteration Engineers which include intermittent and perennial stream culvert sizing and installation. Additionally, the Department will offer field trainings on Active Channel Width determinations as part of the new REI field trainings beginning in spring of 2023.

- 9. Comment:** As it relates to annual reporting (particularly the annual report due April 1, 2023), we have concerns regarding some municipalities' ability to certify compliance for projects that may have been completed in the absence of VTrans, DEC or RPC oversight. Some municipalities may substantially overestimate the number of segments that have been upgraded to meet the permit standards. For the 2023 Annual Report, some towns may be required to estimate the number of segments that have been upgraded over as much as a 4-5 year period, during which tracking of work completed was deficient and there was little to no oversight to ensure that the work was compliant with the permit.

Response: The Department will continue to offer both virtual and in-person trainings for municipal officials and those working on behalf of municipalities in reporting upgrades to road segments. In 2022, the Department and Agency of Digital Services offered a new web-based reporting tool (The Reporter for the MRGP), as well as the Field Worker App-based tool. One reason for the new townwide REI requirement due in the next MRGP 5-year permit cycle is to address the comment mentioned here. The new REI will field verify each town's connected road segments compliance status in meeting or not meeting the MRGP requirements, as both an accountability tool, and to determine practice efficacy and longevity.

- 10. Comment:** Develop accessible and suitable technology to implement the proposed MRGP permit:
- a. The draft permit language is requiring all REIs be collected using that state's app/survey 123 forms. Since RPCs will no longer be able to collect the data using their own systems—customized for the needs of the collector and including basic layers such as streams—it is imperative that tools are as accessible and user-friendly as possible. This will require DEC to take feedback from users and be willing to direct staff time to updating the materials/tools. It is essential that DEC make this a priority to ensure this tool works and can be optimized for its intended purposes.
 - b. Another long-standing concern is using one set of credentials for the entire state (every municipality, RPCs and partners). For example, CCRPC and their consultant developed a solution for vtculverts.org (a non-regulatory data set). VAPDA encourages DEC to invest in a solution for better protecting this regulatory dataset.
 - c. The MRGP Reporter, which allows towns and RPCs to view and edit REI data, uses red for “does not meet” and green for “fully meets.” That needs to change to use a color scheme that is legible for colorblindness.

Response:

- a. The Department will work in collaboration with the Agency of Digital Services to ensure that the REI tools are user-friendly and accessible to its users. The changes and support for this permit cycle are focused on the MRGP applications and resulting data fitting into your organization and systems more than the previous one. The tools used for the field worker solution continue to be ArcGIS Field Maps and Survey123. The applications are readily used by RPCs, private, local, state and federal organizations in Vermont and are free to download at the Google Play and Apple App store. The proposed change only requires you to use the State's Survey123 form either in the field app or web form. [In the fieldworker solution's FAQs](#), there are instructions on using your own map for launching the official REI form. This allows RPCs and others to add whatever layers you need for other business.

- b. We plan on covering this concept in more detail at a future Vermont Local Roads Webinar. In the next permit cycle, you can access the MRGP solution with your organization's ArcGIS login. As a MRGP group member you get access to the all the MRGP items without having to log-in and log-out and the Department gets more granular information on who is submitting the data. In addition, ANR just procured a mobile worker license for the MRGP. The mobile worker licenses provide a narrower access to ANR's organization and how they can interact with the data. We will continue to provide an ArcGIS login for workers without an ArcGIS organizational account.
- c. The Agency is in the process of adopting a Language Access Plan that provides a mechanism to request accommodations for communications needs from members of the public. After some research, we've found a website to simulate what a chosen color palette looks like to persons with protanopia, deuteranopia, or tritanopia. We found an accessible palette and added a pattern to one class of roads on the MRGP Reporter application.

11. Comment: Gully erosion along some Class 4 town highways may be impractical to access with the heavy machinery necessary to implement the required improvements. In some instances, attempts to do so may trigger road improvements and disturbance that may exacerbate erosive conditions. We encourage ANR to consider an exemption option (like the historic stone walls, historic large trees, buried utilities or wetland) to the permit standards to account for this scenario.

Response: While the Department acknowledges the concern brought here, it will not make any additional exceptions in the permit Feasibility Section related to Class 4 roads. If the required practices would trigger a state or federal permit, such as wetlands permits, the town would not be required to implement that practice (MRGP Feasibility Section exemption).

12. Comment: We recognize the need for use of fractured stone to stabilize drainage ditches along steeper slopes to ensure that the stone remains in place. However, ANR should be aware that limiting the types of compliant stone protection may have a magnifying effect on supply chain issues.

Response: The Department recognizes this comment's concerns but also acknowledges the importance of using fractured stone and will make a modification in this language accordingly to recommend, instead of require fractured rock in Section 6.3b of the permit.

13. Comment: The state needs to not only continue but *increase* funding commitments for

- Road Erosion Inventories (REIs),
- the actual road work being done in compliance with the MRGP, and
- technical assistance to provide guidance to help municipalities meet the requirements of the proposed MRGP.

The permit requires every municipality to do new road erosion inventories on hydrologically connected roads – which will be a significant cost – yet the dedicated funding used for the first MRPG REIs has largely been diverted to other initiatives. Perpetual funding that is dedicated to MRGP compliance is necessary given the fact that the MRGP will exist in perpetuity, with funding going to both Regional Planning Commissions (RPCs) and municipalities for both REIs and the road work that's necessary to comply with the permit.

Response: See Response to Comment 2 above.

14. Comment: The permit does not track or provide a means to compare and contrast the current MRGP with the new draft proposal, making it very difficult to determine what updates and changes are proposed. This makes it incredibly difficult for municipalities to understand what new requirements and standards to anticipate. This puts a huge burden on municipalities and RPCs.

Response: See Response to Comment 6 above.

15. Comment: The permit needs to explain how municipalities with projects or Very High Priority segments under the current MRGP will transition to the new MRGP. Municipalities need to know how to remain in compliance with the appropriate permit because the new MRGP regulations will inevitably impact current projects and road designations.

Response: See Response to Comment 7 above.

16. Comment: Without significant assistance, municipalities will have a very difficult time given the short turnaround with the annual reporting required on April 1, 2023. It is close to impossible to have every municipality change compliance statuses, recalculate remaining segments, and identify any changes on hydrologically connected roads in such a short time frame. This requirement becomes almost impossible to meet if no funding and assistance are provided.

Response: The Department has given towns more than 5 years and provided ample training for municipalities and stakeholder organizations and continues to do so to fully update the MRGP Implementation Table Database Portal to meet the 15% implementation reporting requirement by April 1, 2023 Please see Response to Comment 2 and 3 above.

17. Comment: Reporting new REIs through a new state data collection system needs to be user friendly and suitable for all users, particularly municipal road crews and RPC personnel.

Response: See Response to Comments 8, 9, and 10 above.

18. Comment: Class 4 town highways with gully erosion often are roadways that are impractical to access with the heavy machinery needed to complete roadway improvements. In instances where the heavy machinery will cause more damage and exacerbate erosion conditions, those roads should be exempt from permit standards.

Response: See Response to Comment 11 above.

19. Comment: Municipalities' ability to not only source, but also afford, the types and size of stones needed complete MRGP road projects has become increasingly difficult. Some level of flexibility needs to be given to municipalities to complete projects with different materials when appropriate.

Response: The Department recognizes the concerns brought in this comment and has made changes in how road segments are scored in the REI process. The new scoring template will focus on the degree of

erosion within each road segment to more effectively and efficiently address municipal road-related erosion sites. For example, if there is a steeper road slope that would have previously required stone-lining, upgrading to a stone-lined ditch would only be required when erosion is present in the drainage ditch area, reducing the need for this practice in some cases. Also see Response to Comment 12 above.

20. Comment: One of the main issues with the MRGP permit is the technical knowledge and inventory work required by already stretched town road crews. The inventories and project documentation plus the new small stream culvert sizing are not insignificant time investments for our dedicated town workers.

Response: The Department acknowledges the increased pressure that town road foremen and road crews are currently under but at the same time the Department is required by Act 64 and EPA to create regulatory programs that require water quality improvements associated with municipal road stormwater runoff. The Department, working in close connection with the MRGP Core Team stakeholders, have sought to make the re-issued permit more user-friendly and efficient.

21. Comment: One way to streamline and ease the burden on town crews would be to eliminate the slope measurement requirement. More consistent and accurate slope data could be automatically generated using the statewide LiDAR layer. Having folks take three measurements with different quality slope levels across the segment will not generate consistent and accurate data and takes time. Applying the current LiDAR DEM slope values to the segment with the average of three sample points would [be] a dramatic data quality improvement. This process could be automated easily and applied to the statewide dataset. The final statewide LiDAR coverage was not finalized until October 2016 and October 2017. The MRGP segment dataset with slope was finalized in June of 2016 using the Stone Environmental RERR methods (other non-slope changes were made in 2017-2018). Thank you for considering this dataset improvement with new changes to the draft General Permit 39040 for Stormwater Discharges from Municipal Roads (MRGP).

Response: The Department acknowledges this concern. A new field determined slope will not be required. It will be optional. This will streamline the REI field process accordingly.

22. Comment: Section “6.5 Standards for Connected Class 4 Roads” simply states: “*Stabilize any areas of gully erosion identified in the REI with the practices described above or equivalent practices. Disconnection practices such as broad-based dips and water bars may replace cross culverts and turnouts.*”

There are some areas where, while there is gully erosion in excess of the trigger depth, sections of streams within the road right of way are stable. Sometimes, this is due to the waterway having been eroded down to a stable, stone lined channel. In other cases, the waterway has re-vegetated over time, developed a tough-turfed surface and, in the absence of wheeled vehicle traffic, stabilized. Treating “*with the practices described above or equivalent practices*” will re-create the situation that nature healed over the last one hundred years or more, starting that process over again. These stabilized sections should not be disturbed, which seems to be required with the current wording.

Wording acknowledging that stable areas should not be disturbed should be added to this section.

Response: See Response to Comment 11 above.

23. Comment: Why do we need to do a new REI when we already did one a few years ago and we update it every year, putting the cost on towns to get the inventory done is wrong, if the State wants it done it should be up to them to pay for it.

Response: See Responses to Comments 2, 8, 9, and 10 above.

24. Comment: What happens if the towns decide not to do the new inventory.

Response: Failing to comply with any permit conditions constitutes permit non-compliance, which may be subject to enforcement by the Department. Enforcement language applicable to all stormwater permits can be found at 22-1201(b)(1)(A&C):

https://dec.vermont.gov/sites/dec/files/wsm/stormwater/docs/2019_02_15%3B%20Final%20Adopted%20Chapter%2022%2C%20Stormwater%20Permitting%20Rule.pdf

Penalties are further described in 10 VSA 8010:

<https://legislature.vermont.gov/statutes/section/10/201/08010>

25. Comment: The state has in the rules that the town will have to complete 7% of the bad segments a year, what happens if they can't complete that because of employment issue. You know that a lot of towns are short on help these days.

Response: Towns are expected to do all that they can do re-prioritize their workloads to meet this state-required permit to stay in compliance and take full advantage of grant funding programs available to assist them and consider options such as sub-contracting out implementation requirements if there are vacancies in positions such as in this example. Towns can contact the Department when they feel that they may be out of compliance. Also see Responses to Comments 20 and 24 above.