

Guidance for the renewal of expired permits in the stormwater-impaired waters

The following guidance is applicable to the renewal of expired permits in stormwater-impaired waters. It further applies to those permits that were issued prior to adoption of the Vermont Stormwater Management Manual and that do not currently meet the “net-zero” standard for pollutant load.

It is the Department’s intention that all expired permits will be required to obtain coverage under a valid permit. As a result of the Environmental Court’s decision in the Residual Designation Authority (RDA) petition, all such permits shall be National Pollutant Discharge Elimination System (NPDES) permits. To this end, the Department has issued an RDA general permit for five watersheds, and will be applying the RDA permit to additional watersheds in the near future.

Under the MS4 General permit (IV.C.e.3), MS4 permittees are required to submit a plan to the Department for addressing expired permits that discharge into the permittee’s separate storm sewer system. The intent of this requirement is to provide municipalities the option of providing permit coverage for these discharges under the municipalities’ MS4 Permit coverage. Alternatively, a municipality may choose to petition the Department to issue permit coverage to these discharges separately from the MS4 permit coverage. In such a case the Department will use its RDA permitting mechanism to issue NPDES permits to these discharges. Municipalities should be aware that to the extent to which such discharges include municipally owned areas, the municipality may need to coordinate closely with the other affected property owners to ensure all portions of the project receive the required level of stormwater management.

For permits that will be covered under the municipalities MS4 permit, the municipality must demonstrate that existing expired permits will meet the terms of the expired permit, at a minimum, within 24 months. For projects that have stormwater systems that were not constructed, or that are substantially deteriorated, and that will be upgraded to meet a higher standard as part of the Flow Restoration Plan (FRP), it is not the Department’s intention to have both the originally permitted design constructed, only to undergo future construction to upgrade the originally permitted system. It is our position that provided a system is under an approved schedule for upgrade beyond the originally-permitted design, then such a plan exceeds the requirement that the system be brought into compliance with the existing expired permit.