

VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
RESPONSE TO COMMENTS ON DRAFT GENERAL PERMIT 3-9040 FOR
VERMONT POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL
PERMIT FOR STORMWATER DISCHARGES FROM MUNICIPAL ROADS
(January 26, 2018)

The Department of Environmental Conservation issued the Draft Municipal Roads Stormwater General Permit (MRGP) for public comment on September 11, 2017. The Department held 5 public meetings to solicit public comments on the draft permit. Public meetings were held on October 10, 2017 in Montpelier, October 11, 2017 in Johnson, October 16, 2017 in Ascutney, October 17, 2017 in Brandon, and October 18, 2017 in St. Johnsbury. The public comment period closed on October 27, 2017. The Department received written comments 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.

Comments Received by:

Bennington County Regional Commission
Central Vermont Regional Planning Commission
Chittenden County Regional Planning Commission
Lamoille County Regional Planning Commission
Northeastern Vermont Development Association
Northwest Regional Planning Commission
Southern Windsor County Regional Planning Commission
Two Rivers-Ottawaquechee Regional Commission
Vermont League of Cities and Towns
Windham Regional Commission

Town of Bolton
Town of Eden
Town of Stowe
Town of Thetford
Town of Warren
Town of West Windsor

Andrew Swayze, Charlotte
Bram Towbin, Plainfield
Dale Gephart, Post Mills
Danny Taylor, Grafton
Douglas Tuthill, Pomfret
Jon Bondy, Fletcher
Lars Dickson, Duxbury
Libby Chapin, Thetford

Linda Smith-Blais
Natasha Duarte, Composting Association of Vermont
Pat Grove, Lake Fairlee
Pat Sagui, Westfield
Peggy Barter, Morgan
Tim O'Dell, Corinth
William Emmons III, Woodstock

Joint Comments from:
Conservation Law Foundation
Lake Champlain Committee
Vermont Natural Resources Council
Lake Champlain International

Comments pertaining to Part 2: Coverage Under This Permit

1. 2.1 Duty to Apply – The term “operational control” over municipal roads needs to be defined.

Response: A municipality has operational control over its road where that municipality has the authority to exclusively or cooperatively maintain the road or the road is maintained by the town, except for scheduled surface maintenance performed by the Vermont Transportation Agency pursuant to Title 19 Chapter 3.
2. 2.1 - There is a reference to MS4 and “Part 7” in the 3rd sentence. It appears that this should refer to “Part 6.”

Response: The Department agrees and has incorporated the suggested change.
3. 2.2 (A) Permit Coverage – Many municipalities do not maintain Class 4 roads. Including class 4 roads in this permit will put a significant strain on local budgets and road crews.

Response: The Department acknowledges that Class 4 roads are managed differently by municipalities and has developed standards that address significant sources of erosion but do not require the municipality to maintain the road for purposes of navigability.
4. 2.2 (A) – The Department should remove Class 4 roads from the permit in this first permit term or until statute is clarified to specifically require this responsibility.

Response: The Department has reviewed applicable statute and believes that regulating Class 4 roads is appropriate. 10 V.S.A. § 1264(6) explicitly requires municipalities to obtain permit coverage to discharge stormwater from municipal roads. There is no language in Title 10 suggesting that certain classes of municipal roads should be exempted from that broad stormwater permitting requirement.
5. 2.2 (A) If Class 4 roads remain in the permit, the permit should clarify specific Class 4 road maintenance requirements.

Response: Section 6.1 states that the municipality shall maintain all practices after installation. The Class 4 standards are listed in Section 6.5.

6. 2.2 (B) – The definition for “municipal stormwater infrastructure” is overly broad and not clearly defined.

Response: For the purposes of the MRGP, the term “municipal stormwater infrastructure” refers to all stormwater conveyances and treatment and control systems controlled by a municipality that receive stormwater discharges from municipal roads. The Department believes this definition comprehensively and accurately describes the infrastructure through which stormwater discharges from municipal roads flow.

7. 2.2 (B) – Municipal stormwater infrastructure should only include infrastructure within the town right-of-way, which is under municipal control.

Response: Where a municipality has control of stormwater infrastructure outside of its right-of-way, the Department believes it is necessary and appropriate that it be managed by the municipality in accordance with this general permit.

8. 2.2 (B) - If improvements outside of the right-of-way are to be included, the need to secure additional rights-of-way and/or easements (by means other than condemnation) should also be recognized. This may require the extension of proposed permit deadlines for project completion, and additional funding specific to land or easement acquisition under available state funding programs.

Response: The requirements of the general permit are based on existing operational control; where a municipality does not have the legal means to access stormwater infrastructure they are not required to address such areas.

9. 2.2 (B) – If a municipality is unable to secure an easement outside of the ROW, modifications to the standards should be allowed to contain the improvement within the ROW.

Response: The general permit does not require a municipality to acquire additional land, either through the condemnation of private property or the securing of any new easements. In instances where municipal stormwater infrastructure extends on to private property and the municipality is not given access to that property, implementing the standards within the areas under the control of the municipality is appropriate and supported by the general permit.

10. 2.2 – The permit should be restricted to active rights of way. There are instances where “connected segments” have been identified that are not actively maintained. These should be removed from the Town Highway Map and not a part of the connected roads inventory.

Response: If a municipal road is no longer used, the municipality has the option of discontinuing the road, or reclassifying the road as a trail. Unless and until the road has been discontinued or reclassified, it falls under the jurisdiction of this general permit.

11. 2.3 – This permit should clarify that it does not hold jurisdiction over areas covered by other permits, particularly the Stream Alteration General Permit.

Response: This general permit applies to discharges of regulated stormwater from municipal roads. Coverage under this permit does not preclude the applicant from complying with any other state or federal permitting requirements.

12. 2.3 Limitations on Coverage – Clarify the intent of this section.

Response: The subject language is included for consistency with federal NPDES requirements. In effect, it means only those discharges explicitly authorized by the permit can be shielded from an enforcement action through authorization under this general permit. Discharges not authorized by the general permit cannot become authorized or protected from liability by inclusion in a municipality's RSWMP.

Comments pertaining to Part 3: Application Requirements

13. 3.1 Submittal of Initial NOI and Application Fee – The NOI forms should be easily accessible and user friendly. Electronic submittals should not be required. Provide a direct link to the Stormwater Permit Fees page.

Response: The Department agrees. The NOI form will be available on the MRGP website and paper submissions will be accepted. The MRGP fees have been listed on the MRGP website with links to the relevant statute.

14. 3.1 - Instead of a flat fee for all municipalities, the Department should base the fee on a formula that could use total road mileage, lane mileage, hydrologically connected miles, grand list, road budget, and/or population to better equate potential road impacts and/or ability to pay with impacts to water quality. There should be an incentive, such as a reduced fee, for towns to complete their road erosion projects in less than the 20-year timeframe.

Response: The Department has received a great deal of feedback on the existing fee and is not opposed to a fee structure based on size of the municipality and its road mileage. The general permit itself does not establish the fee; the fee structure is established in statute, and cannot be changed through this general permit, see 3 V.S.A. § 2822(j)(2)(A)(iii)(VIII). Any changes to the fee must be done through amendment to 3 V.S.A. § 2822.

15. 3.2 Deadlines – The deadlines for the NOI and RSWMP should be set out far enough for municipalities to accurately and fully comply.

Response: The NOI is due on July 31, 2018. This should give municipalities adequate time to complete the application form. The RSWMP, which includes the initial Road Erosion Inventory (REI) is due December 31, 2020. This Department believes that this will give the municipalities adequate time to inventory municipal roads and create a plan for the first year's implementation.

16. 3.4 Public Notice and Public Comments – DEC should adopt a 30-day comment period for authorizations under this General Permit.

Response: The general permit requires that the Department provide at least a 14-day public comment period. Interested persons may request an extension if they are not able to comment within that time period.

17. 3.4 – The NOI submittals and amendments should not be subject to the public notice process.

Response: Under state and federal law, the Department is required to, and completely supports, providing an opportunity for public comment.

18. 3.4 – In addition to posting on the ENB, the public notice of the NOI should be forwarded to the municipality in writing, for local posting during the public comment period.

Response: As part of revisions being made to the ENB, the municipality would receive direct notification of the noticing of the NOI via email. The notification can then be printed and posted in hard copy during the public comment period.

19. 3.5 Notice of Agency Decision - In addition to posting on the ENB, the notice of the final agency decision should also be forwarded to the municipality in writing, along with final permit terms and conditions, for local posting, and recording in the land records. It should also clearly state provisions for permit appeals.

Response: The municipality, as the permittee, will be provided with a final permit authorization. All permit authorizations include terms and conditions, and instructions related to appeal of the decision. The Department does not believe that recording authorizations under the MRGP in the local land records is necessary, since the affected property will be publicly owned.

20. 3.6 Authorization to Discharge – This part implies that municipalities can prevent naturally occurring discharges from occurring, prior to submitting an NOI. Discharges from pre-existing roads will occur prior to authorization.

Response: This section is not intended to imply that existing discharges must be controlled. Rather, it clarifies that discharges that occur prior to receipt of an authorization under the general permit are not authorized. Municipalities are not required to apply for an authorization prior to the schedule established in section 3.2 of the MRGP, and discharges that occur prior to the deadlines established in Section 3.2 do not constitute violation of the terms of this general permit.

21. 3.7 Amendments – This section applies to when a town wishes to amend a previously authorized NOI under this General Permit. Clarify when an amendment is required.

Response: A municipality shall request an amendment when a technical or administrative change to their permit authorization is needed. Following issuance of the initial permit authorization, approval of the required Road Stormwater Management Plan (RSWMP) will be done by amending the permit authorization. Submittal of annual reports does not require an amendment.

22. 3.7 - If the Notice and Public Comment requirements under a General Permit are not removed, they should not be required for minor amendments. The creation of new Town Highways and the Discontinuance and/or Reclassification of existing Town Highways should be listed as an Administrative Amendment.

Response: This comment falls outside the scope of this general permit. 10 V.S.A. § 7717(b) establishes the public comment period required for minor amendments to permit authorizations. Administrative amendments are defined in 10 V.S.A. § 7702(2) as amendments to permits that do not require technical review of the permitted activity of the imposition of new conditions or requirements. The addition of new town highways generally would require an amendment to a municipality's authorization for any new hydrologically-connected road segments.

23. 3.7 – Does the Department have discretion over setting the fee amounts for amendments?

Response: Permit fees are established by the Legislature under 3 V.S.A. § 2822.

Comments pertaining to Part 4: Road Stormwater Management Plan

24. 4.1 Comprehensive Plan for All Stormwater Discharges – DEC should share its analysis behind the definition of “hydrologically connected.” There may be roads with direct surface flow to waters beyond the criteria outlined in the permit.

Response: The hydrologically-connected roads layer is a GIS-based proximity analysis for municipal roads and water resources. Water resources include perennial and intermittent streams, lakes, ponds, and wetlands. Class 1-4 municipal roads located within 100' of water resources, or bisecting water resources, or located within the DEC river corridor layer are mapped as hydrologically-connected. Additionally, segments containing culverts 24" diameter and larger are mapped as hydrologically-connected, since these culverts often convey waters of perennial or intermittent streams. The GIS connectivity analysis also included segments adjacent to segments with slopes 8% or greater at water bisects as hydrologically-connected, since these segments were generally contained within the road watershed drainage area.

The hydrologically-connected roads layer is a GIS-based screening tool. Additional roads may be added to a municipality's list of hydrologically connected road segments by using the process in Part 4.1 of the permit.

25. 4.1 (A) – The use of the term for “all municipal roads” in this section contradicts the Road Erosion Inventory (REI) section, which only requires inventories on hydrologically connected roads. Change Section A to read, “A municipality shall complete and submit for Agency approval a Road Stormwater Management Plan (RSWMP) for all *hydrologically-connected* municipal road segments...”

Response: The Department agrees and has incorporated the suggested change.

26. 4.1 (A) – Only the portion of the segment that is connected should be required to meet the standards in the MRGP. For example, if half of the segment is on the far side of a hill but the connected body of water is on the near side, only the connected side should be addressed.

Response: If a road segment is determined to be hydrologically connected, the entire segment needs to meet standards.

27. 4.1 (A) - The applicability of this permit to “rights-of-ways” needs further clarification. This permit should not be applicable to such ROWs that are vacant and/or lack road infrastructure regulated by this permit.

Response: The permit applies to the discharge of stormwater from municipal roads. Where a right-of-way exists but no road has been laid out, or road-related stormwater infrastructure built, the MRGP has no applicable standards.

28. 4.1 (A)(1) - It is unclear what would characterize a road segment “likely to discharge to waters or wetlands” when it does not meet any criteria in subsection (a) or (b). There needs to be clear criteria for permittees to analyze that demonstrate how something can meet this requirement.

Response: The Department believes it is important to allow for segments not otherwise identified as connected to be managed as connected based on site conditions that are not captured by the criteria in subsection (a) or (b) of Section 4.1(A)(1), acknowledging that due to natural variability there may be conditions not covered by the criteria. The Department expects that these situations will be uncommon, and will engage municipalities in an evaluation of the site-specific conditions prior to making determinations.

29. 4.1 (A)(1) – Clarify if wetlands are considered “waters of the state” or if they need to be called out separately.

Response: Wetlands are defined separately from “waters” under Title 10 of the Vermont Statutes Annotated. For consistency with statute, wetlands are identified separately from “waters of the state” in the MRGP, since not all wetland types are included in the definition of “waters of the state.”

30. 4.1 (A)(1) – The segment scoring system referenced in the permit should be included in the permit language instead of in the field inventory sheet.

Response: The segment scoring system, which is part of the Road Erosion Inventory, is a means of assessing conformance with the standards in the MRGP and is appropriately considered an application material that is separate from the MRGP itself.

31. 4.1 (A)(1) – There are some errors in the ANR Atlas Hydraulically Connected Road Segment layer. Numerous segments are less than 100 meters and need to be cleaned up. There are also missing roads and issues at town boundaries that need to be addressed prior to using this GIS layer as the basis for the permit.

Response: The Department is in the process of correcting some of the data on the ANR Atlas. The level of accuracy is sufficient for its intended purpose of identifying hydrologically connected segments.

32. 4.1 (A)(1) – The requirement to conduct a new Road Erosion Inventory (REI) every 5 years is too frequent. The Department should change this requirement to revisiting high priority sites every 5 years, but only conduct a full inventory every 10 years, using the savings to implement more projects.

Response: The MRGP REIs establish road baseline erosion conditions and track practice installation. REIs can also be used to evaluate municipal progress in implementation, maintenance needs, and future prioritization. Over three quarters of Vermont’s municipal roads are gravel and are very malleable. The more frequent occurrence of flash flood events impacting road conditions merit inventory updates at least every 5 years to reset baseline conditions.

33. 4.1 (A)(1) – Municipalities should be allowed to produce a new REI “every five years *or sooner*.” This would allow for amendments and documenting changes in priorities due to unforeseen circumstances.

Response: The Department agrees. A municipality may conduct a new REI and request an amendment to their MRGP Authorization on a more frequent basis than every five years.

34. 4.1 (A)(1) – ANR should provide training and technical assistance to towns on conducting the Road Erosion Inventories. This will save the towns time and money. Consider providing a universal data collection application for conducting inventories.

Response: The Department agrees. The Department and the Vermont Transportation Agency (VTrans) have offered comprehensive training to regional planning commission staff and consultants to complete REIs and will expand these trainings to include municipal officials starting in 2018. DEC currently is working on developing a universal application for municipal and consultant use.

35. 4.1 (A)(1) – What “justification for removal or addition” of a road segment on the ANR map is required? Would stating that it does not meet the criteria in subsection (a) or (b) suffice?

Response: For purposes of removing a segment, reliance on the subject criteria would suffice, notwithstanding the Department’s ability to determine the segment is effectively connected.

36. 4.1 (A)(1) – Change “...*persons* conducting inventories...” to “...*permittees or municipalities* may propose to reclassify a segment as not connected.” Additionally, require proposed changes to be reviewed in the field and approved by ANR.

Response: The Department agrees and has incorporated the suggested change.

37. 4.1 (A)(1) – The permit should clearly allow the use of alternative data sources when more accurate data exists (for example, recent 2014, 1ft contour LIDAR data for slopes)

Response: The Department agrees. A municipality may use alternative data sources that are more accurate when conducting the Road Erosion Inventory (REI). If a methodology other than the ANR Atlas is used, the municipality must document this in the Implementation Table.

38. 4.1 (A)(1) - The ANR Atlas has listed the average road grade for some segments to be very steep (>10%), but it is not reflective of the entire segment length. Do BMPs for that slope range need to be applied to the entire segment?

Response: REIs completed prior to MRGP finalization will default to the road segment slopes included on the ANR Atlas hydrologically-connected layer. Going forward, Road Erosion Inventories will require field measurements of road segments using digital levels. “Short segments” will be addressed on the connected road ANR Atlas layer and in clarifying language in the Road Erosion Inventory Supplement document. Alternatively, LiDAR determined road segment slopes can be used.

If the slope is greater than 10% on the majority of the segment, then the segment shall conform to the higher slope standard requirements.

39. 4.1 (A)(1)(a) Adding or removing segments – For paved roads with catch basins, within 500 feet of a water is expansive and inconsistent with the 100 feet cutoff for other municipal roads in the next sections. Modify it to “within 100 feet and uphill of any water of the state or wetland” or “the catch basin outfall pipe is within 100 feet of a water of the state or wetland, or the catch basin outfall pipe is greater than 100 feet with a defined channel that leads from the outfall to a water from the state or wetland.”

Response: The criteria for hydrologic-connectivity for outfalls with catch basins is stricter because catch basin inlets, and their corresponding piped systems, typically collect a much larger road surface drainage area than a comparable road with drainage ditches. Due to the larger collection area conveyed to catch basins and the additional drainage area from connected non-road impervious area, there is an increased stormwater volume and velocity and therefore the need for longer separation areas between outfalls and water resources.

40. 4.1 (A)(1)(b)(2) – Explain “defined channel.” Modify to, “*The municipal road bisects any water of the state or wetland, or a defined channel extends above and below the road ROW and demonstrably reaches the water of the state or wetland.*” Alternatively, delete the word “defined,” as this will increase the number of hydrologically connected segments.

Response: The definition for defined channel has been added to Part 10, Definitions.

41. 4.1 (A)(1)(b)(3) –The definition of uphill should be refined to set a specified distance, e.g. “is uphill from, *and within x feet*, and drains to...”

Response: The uphill extent is not set at a fixed number, but rather by conditions in the field. The field determined uphill extent to water resources varies depending on a number of different factors, including slope.

42. 4.1 (A)(1) – What amount of detail needs to be completed for “Fully Meets” segments in the Implementation Table? The town should not have to further explain or justify these scores.

Response: The Department agrees. The “Reason for Condition” column does not need to be completed for segments that “Fully Meet.”

43. 4.1 (A)(2) - When updating the road segment prioritization and needing to include “specific steps for achieving compliance,” it must be noted that any and all updates and work done must to be funded, which is wholly dependent on voter approval of the local budget and state funding. It may not be the fault of the permittee for the inability to comply.

Response: The Department acknowledges the comment; however, the permittee shall comply with all terms and conditions of the permit. The requirement to specify the practices being implemented has been modified. Municipalities shall update the Implementation Table with the segments upgraded in the previous year.

44. 4.1 (A)(3) - The dates of meeting full compliance for high priority segments of roads – or any noncompliant road segment for that matter – will be impacted by resource availability and weather events. Municipalities may be in violation of the permit due to circumstances outside their control.

Response: The Department acknowledges the comment. Unforeseen weather events that impact the planned schedule of compliance may be documented in the Implementation Table.

45. 4.1 (A)(3) – Addressing all noncompliant segments of 10% slope or greater by 2025 may be infeasible. Towns may need to apply for federal grants and it could take more than 4 years from project conception to completion. Consider changing the language to allow municipalities to make reasonable progress by 2025. Class 4 roads should not be included in this required timeframe.

Response: The Department has updated the permit to reflect this comment. Very High Priority segments on Class 4 roads will need to meet the MRGP standards by December 31, 2028. Very High Priority segments on gravel and paved roads with ditches will need to meet the original MRGP implementation date of December 31, 2025. The criteria for Very High Priority segments for paved roads with catch basins has been modified to be field measured erosion values of 3 cubic yards and greater. The Department has combined the municipalities previously separated into Category 1 and Category 2, and all municipalities shall upgrade the Very High Priority segments by December 31, 2025.

46. 4.1 (A)(3)– Very high priority segments should be required to upgrade sooner than 2025. Seven years is too long.

Response: The Department established December 31, 2025 as the date by which municipalities need to implement standards on Very High Priority to provide time for planning and implementing standards on what may be multiple segments per town.

47. 4.1 (A) Add a new section to Part 4 (A) to include prioritization of eroding outfalls. The guidance is currently only included in the Catch Basin Inventory and Outlet Evaluation document.

Response: The Department has updated Part 4.3, Very High Priority Road Segments to include paved roads with catch basins.

48. Outfall Erosion Guidance – Modify the priority for addressing outfall gullies from >10% to >60% and modify the language from, “...which don’t meet the standard partially or completely” to “...which do not meet the standard.” Based on field measurements, a high percentage of outfalls would need to be addressed in the first 5 years.

Response: The Department has modified the criteria for prioritizing Very High Priority segments for paved roads with catch basins, as stated in the response to comment 45.

49. 4.1 (A)(3) and 4.1 (C) – Be consistent with deadlines by switching all January 1 dates to December 31.

Response: The Department agrees and has incorporated the suggested change.

50. 4.1 (B) – Extenuating circumstances, such as disaster declarations, that prevent a town from keeping up with its Implementation Plan, should not constitute a violation of the permit. Towns should be allowed a grace period to come back into compliance.

Response: The Department will take extenuating circumstances, such as natural disasters, into consideration when reviewing municipalities’ annual reports for compliance with their authorizations.

51. 4.1 (C) - Once municipalities bring roads into “full compliance” there is a strong likelihood that compliance cannot be maintained in perpetuity given normal wear, resource availability and weather events.

Response: Municipalities will be expected to comply with the terms of their authorizations under this general permit. If road segments fail to meet the standards required by the permit, municipalities will be expected to bring those segments up to the required standards. The municipality shall plan to maintain connected road segments post upgrade to comply with standards. The Department acknowledges the ongoing maintenance responsibilities and impact of normal wear and weather events. However, the MRGP practices should help to reduce maintenance and improve transportation infrastructure resilience.

52. 4.1 (C) - The financial strain, impact on the municipal budget, and ability to comply needs to be considered in the minimum number of road segments that must be brought up each year. Modify the minimum annual number of segments to be a target, not a requirement (i.e. an average of 5% of segments over the 5 years); or strike the requirement. Alternatively, allow towns to spread the cost of compliance over the 20-year period.

Response: The permit requires that municipalities determine the number of road segments that must be brought up to standards by 2036 and upgrade 15% of those within the first permit

term. It is expected that this implementation schedule will allow municipalities to spread the cost of compliance over the 18-year implementation period.

53. 4.1 (C) – The schedule of compliance does not account for the interim engineering and design work that may be needed in advance of project scheduling, especially for larger projects—which is also now required for most grant funded projects. We anticipate that outside technical and funding assistance will be needed for this.

Response: The 18-year schedule of compliance allows municipalities to plan for and prioritize projects based on funding and resources.

54. 4.1 (C) – Strategic capital budget planning is required to achieve large-scale projects and placing funds in reserve to develop capital should be considered in the compliance schedule.

Response: The Department acknowledges this comment. See response to comment 53.

55. 4.1.B-C Schedule of Compliance and Planning Report – The implementation schedule is not in accordance with the timeframe set forth in the TMDL Implementation Plan. The Implementation Plan states that the Draft Permit must be *implemented* beginning 2018. DEC has set December 1, 2020 as the date that municipalities must submit an “Implementation Table.”

Response: The MRGP will be issued by 2018 pursuant to the requirements of 10 V.S.A § 1264(g), and the requirements contained in the general permit will impose regulatory obligations on applicable municipalities, including the requirement that municipalities submit NOIs for authorization and complete their Road Erosion Inventory. Implementation of the permit itself includes the completion of the road erosion inventories, and completion of the Implementation Tables, based on the results of the inventories.

56. 4.1.B-C– The incremental implementation over decades is at odds with the phosphorus reduction tradeoff allowed in the TMDL between nonpoint and point sources. EPA assigned more lenient phosphorus reduction targets to point sources based on the assurance that load reduction would occur from nonpoint sources. The implementation is not swift enough.

Response: The Vermont Lake Champlain Phosphorous TMDL Phase 1 Implementation Plan is based on a 20-year implementation schedule, specifically to allow communities to plan and budget for the improvements required by the Plan. The compliance schedule in this general permit is based on the 20-year compliance schedule in the Phase 1 Implementation Plan.

57. 4.1 B-C – It will be financially difficult for municipalities to be fully compliant in a 20 year timeframe. Funding shortfalls are anticipated related to project development and construction.

Response: The Department acknowledges the increased financial burden this general permit places on municipalities, and has established several funding sources to assist with implementation costs. Funding sources include VTrans Better Roads and DEC Grant-in-Aid, along with VTrans Transportation Alternatives and Stormwater Mitigation grants.

58. 4.1.B-C– Municipalities should be given three months instead of seven months to submit an NOI.

Response: The NOI application date was set at July 31, 2018 to give municipalities time to complete the form and budget for the application fee.

59. 4.1.B-C– Road Erosion Inventories (REIs) should be submitted prior to February 1, 2020. Two and a half years is too long.

Response: Conducting the Road Erosion Inventory requires training on road conditions, connectivity, and the collection forms and application. To conduct the inventories, municipalities are relying on assistance from regional planning commission and other partners. This assistance is necessarily spread out during the field season to all member municipalities and can realistically be completed by December 31, 2020.

60. 4.1 (B) – Municipalities are required to complete the REI and a 5-year remediation plan by 2020. It would make more sense to complete the REI by 2020 and the plan by 2021.

Response: The Road Stormwater Management Plan is due December 31, 2020. This includes the results of the REI and the Implementation Table. The Implementation Table shall include the number of road segments that need to be upgraded by 2036 and the number of road segments that will be upgraded in the first permit term to equal 15% of the total.

61. 4.1 (C) – The 20-year implementation timeframe is too long to wait for improvements to Lake Champlain. Consider cutting it in half.

Response: The Vermont Lake Champlain Phosphorous TMDL Phase 1 Implementation Plan is based on a 20-year implementation schedule, specifically to allow communities to plan and budget for the improvements required by the Plan. The compliance schedule in this general permit is based on the 20-year compliance schedule in the Phase 1 Implementation Plan.

62. 4.1 (C) – Confirm and clarify in the permit that municipalities will be given flexibility in prioritizing implementation for segments that “Do Not Meet” or “Partially Meet,” other than those on slopes greater than 10%.

Response: The Department confirms that municipalities will be given flexibility in prioritizing implementation of standards on segments other than the “Very High Priority Segments.” Municipalities shall implement the standards on a *minimum number* of segments per permit cycle, determined by the total number of non-compliant segments and remaining time in the implementation schedule, but the municipality has the discretion to determine which segments are prioritized.

63. 4.1 (D) Planning Report – This is redundant to the Road Stormwater Management Plan (RSWMP) and creates unnecessary administrative burden.

Response: The Planning Report, or similar annual report, is required to comply with Water Pollution Control Regulations that allow for compliance schedules for permit implementation

to exceed the standard five-year permit term. The Planning Report will be a straightforward form.

64. 4.2 Reviewing and Updating Road Stormwater Management Plans – The staffing and time needed to update implementation tables annually, and conduct new Road Erosion Inventories every five years will be immense on small municipalities and municipalities with challenging geography and road segments. This will have a huge impact on budgets, especially given the new requirement that Class 4 roads that are hydrologically connected also be maintained. Tie compliance with availability of funding and put a cap on the amount of money a municipality is required to spend on compliance every year.

Response: The Department acknowledges the increased financial burden this general permit places on municipalities, and has established several funding sources to assist with implementation costs. Funding sources include VTrans Better Roads and DEC Grant-in-Aid, along with VTrans Transportation Alternatives and Stormwater Mitigation grants.

65. 4.2 (A) – Change 4.2 (A)(4) to read, “Identification of any changes to the status of hydrologically-connected road segments or any other changes to the inventory list based on field inspections.”

Response: The Department agrees and has updated the permit to reflect this comment.

Comments pertaining to Part 5: Recordkeeping and Reporting

66. 5.2 Reporting – Materials associated with the permit need to be user friendly and all hyperlinks in the permit should link to the website. Documents should have consistent names and include the date of the last revision. All supporting documents should be made available for public comment before it is finalized. Consider adding the referenced forms to a Permit Appendix. Provide examples of complete documents where appropriate.

Response: The documents have been renamed and uploaded to the MRGP website. The documents may be reviewed and amended during the permit term, based on comments or necessary changes. Where appropriate, examples of completed versions are posted.

Comments pertaining to Part 6: Road Stormwater Management Standards

67. For situations where implementing stormwater management standards is infeasible municipalities should attach supporting evidence to demonstrate the condition (ex, maps indicating historic structures or buried utility lines).

Response: The Department agrees that sufficient documentation should be provided to justify any waiver of the permitting requirements. The language of Part 6 requires that municipalities shall document in the RSWMP, for approval by the Secretary, each instance where feasibility affects implementation of the standards. The required documentation shall include sufficient evidence of infeasibility to support a waiver of the standards.

68. There may be other cases, not described in the permit, where implementation is infeasible. Will exemptions be granted under such circumstances?

Response: The language of Part 6 is drafted broadly to encompass a range of instances in which the implementation of the standards in the general permit is not feasible. Excluding those scenarios described in Part 6, permittees are expected to implement the standards required under the general permit.

69. Some requirements—including 4-foot ditches—will adversely affect the character of some scenic back roads and neighborhoods. The permit currently addresses adverse impacts to historic stone walls, historic structures and “historic” trees – and should also more generally include provisions for “scenic roads” (e.g., as designated under 19 V.S.A. § 2502), allowing for acceptable, less intrusive alternatives for stormwater management along these roads. Consider including, “significant features within the ROW of Scenic Roads adopted in accordance with State Statutes” to the list of exemptions.

Response: The Department agrees and has included the consideration of “historic resources” in Part 6.1, Feasibility.

70. Consider changing “feasibility” to “exemptions.”

Response: The Department has retained “feasibility.” Feasibility is inherent to implementation of the best management practice (BMP) approach used by the MRGP. The language of Part 6 identifies some instances in which the Department considers implementation of the required standards to be infeasible.

71. “Feasibility” of implementation should also include those circumstances where weather events or lack of resources force non-compliance under a permit.

Response: Where extreme weather events affect a municipality’s road and drainage infrastructure, amendments may be made to the RSWMP. Financial resources are not a consideration when determining feasibility.

72. The presence of Exotic Invasive Species (EIS), such as Japanese Knotweed, that may be spread during soil excavation should be included in the list of feasibility criteria. Guidance documents for proper management to reduce the spread of invasive species should be provided.

Response: The presence of EIS is not a consideration when determining feasibility of implementation; however, the Department and VTrans are currently developing new road ROW vegetation management guidelines and workshops that will address how to reduce the spread of invasive plants during ditching activities.

73. The list of feasibility exemptions should include “sunken roads.” In these cases, there is no room for ditches and achieving the standard is complicated and expensive.

Response: The Department concurs that these may be challenging sites; however because they may be significant sources of stormwater runoff, the Department is not including them under the feasibility criteria.

74. The presence of Rare and Irreplaceable Natural Areas (RINA) should be included in the list of feasibility criteria.

Response: Rare and Irreplaceable Natural Areas are covered in the category of “significant environmental and cultural resources” in Part 6 of the permit.

75. Will mitigation actions be required if there is no feasible approach to implement the standard?

Response: The general permit as drafted does not require mitigation in instances where implementation of the standards is infeasible. Tailored mitigation practices may be included in future revisions to this general permit.

76. Substitution of equivalent BMPs should be allowed on a case-by-case basis, recognizing the real-life variability of field conditions.

Response: The MRGP provides a range of applicable BMPs. Use of alternative BMPs may necessitate an individual permit.

77. Disconnection should be emphasized as the preferred manner for reducing discharges to waters of the state. Further, road segments that have been disconnected and demonstrated over time to be properly maintained should be eligible for removal from the list of hydrologically-connected segments.

Response: As stated in Part 6.2.C, “Roadway drainage shall be disconnected from waterbodies whenever possible and shall flow in a distributed manner to a grass or forest filter area.” To remove a segment from the list of hydrologically connected segments, the segment must meet the criteria in Part 4.1.A.1. Disconnection and practices to achieve disconnection are standards in the permit that shall be maintained.

78. Towns will have to update and amend zoning and subdivision bylaws to incorporate these new road standards. Towns with Public Works Specifications will need to update their road criteria for compliance. The road specifications in the VTrans Roads and Bridge Standards must also reflect these new mandates. Updating all regulations, policies and practices to meet these requirements will take time, resources and coordination.

Response: The Department acknowledges this comment.

79. Include the phrase, “hydrologically connected” with each reference of “road segment.”

Response: The language of the general permit clarifies that the standards are only applicable to hydrologically-connected segments and is not otherwise further inclined to revise the permit as requested.

80. Change “*condemnation* of private property” to “*acquisition* of private property.”

Response: The term condemnation refers to the authority of local, state, or federal government to seize private property and compensate the owner. Because the permittees are municipalities, condemnation is the appropriate term to use in this context.

81. Hydrologic and hydraulic considerations should be required for the standards. If the ditch/channel or culvert is not hydraulically adequate for the tributary watershed, the goal of the program/permit will not be met and significant valuable resources will have been wasted.

Response: The general permit is a BMP-based approach to significantly improving the water-quality impacts of road-related stormwater runoff. Requiring hydrologic and hydraulic analyses of affected road segments and receiving waters would be a massive undertaking, the benefits of which have not been demonstrated to be warranted.

82. 6.1 General Standards – Consider adding the following to the end of the first sentence, “except those determined to not be feasible (or exempt) in accordance with the preamble of Part 6 above.”

Response: The Department acknowledges the comment, and has determined that the suggested revision is not necessary.

83. 6.2 Required Standards for Gravel and Paved Roads with Ditches - With regards to “new construction” and “significant road upgrades,” please clarify that the MRGP standards only apply to such work if the segment is a hydrologically-connected gravel and/or paved municipal road segment with drainage ditches.

Response: The Department has updated the permit to reflect this comment. The standards shall apply to new construction and significant road upgrades on all hydrologically-connected road segments.

84. 6.2 – In some cases, disturbance where no erosion is present could create a problem where none exists. Consider changing “*whether or not* erosion is present” with “*where* erosion is present.”

Response: The requirements of the general permit are intended to address existing erosion, and prevent future erosion. No change has been made to the general permit in response to the comment.

85. 6.2 – In some cases the best solution is to raise the road grade in order to create a sheet flow run off condition. Is this an allowable alternative?

Response: The Department agrees and has updated the permit to reflect this comment.

86. 6.2 (A)(1) – Roadway Crown – Road crowns are altered by winter maintenance, and may be shaved prior to freezing for safety. A reasonable time frame should be incorporated to give municipalities time to regrade roads in the spring/early summer to re-establish the permit cross slope requirements. Otherwise all municipalities with gravel roads will be technically in violation of the permit every spring.

Response: The Department acknowledges changes to winter and spring road maintenance practices and will exercise enforcement discretion in consideration of seasonal changes.

87. 6.2 (A)(2) – Grader Berm/Windrows – Grader berms located along the elevated side of an in-sloped or out-sloped road should be allowed. If located on the elevated side of the road they are not impacting water quality.

Response: The Department agrees and has updated the permit to reflect this comment.

88. 6.2 (A)(2) – Clarify that the grader berm standard only applies to gravel roads.

Response: The Department agrees and has updated the permit to reflect this comment.

89. 6.2 (A)(2) – Clarify that spoil from grader berm removal should not be deposited into waters or wetlands. If necessary, it should be hauled elsewhere.

Response: Spoil from grader berm removal should not be deposited into waters or wetlands.

90. 6.2 (A)(2) – When conducting inventories, existing “plow berms” are mistaken for “grader berms.” Road crews address these as part of the annual plan.

Response: The Department acknowledges this comment. In the spring, road crews shall remove plow berms as part of early spring grading.

91. 6.2 (B) Road Drainage Standards - For “shoulders lower than travel lane” allow for feasibility exceptions, especially if “excessive ledge” is present that precludes lowering of road shoulders.

Response: Excessive ledge is included in the feasibility criteria in Part 6. Alternatively, the road bed may be elevated.

92. 6.2 (B)(1) – The “no bare soil” requirement will be difficult to achieve after routine maintenance and if a town does not have a hydro-seeder.

Response: The Department acknowledges the comment. Municipalities are encouraged to work with neighboring towns or the Regional Planning Commissions for shared equipment agreements.

93. 6.2 (B)(1) – Roads are often graded twice a year and material is removed from the ditch and put back on the road. Requiring a grass lined ditch will require seeding twice a year at substantial cost.

Response: The Department acknowledges this comment, however maintaining vegetation is an important water quality practice.

94. 6.2 (B)(1) – Where it is difficult to grow grass, consider allowing for other methods (geotextile/erosion control matting).

Response: The Department agrees and has updated the permit to reflect this comment.

95. 6.2 (B)(1) – Infiltration practices are the most cost effective. Instead of stone lining, soils in ditches should be amended to promote good vegetative cover with strong root systems. The State should consider a revegetation performance standard.

Response: Developing bio-retention areas is an allowed alternative, if appropriate, to installing a stone lined ditch. The Department and VTrans are developing a Best Practice Guide for Roads, which will include revegetation guidance.

96. 6.2 (B)(1)– For roads with slopes between 0 and 5 percent, a grass-lined ditch is required at a minimum. Consider whether vegetation, beyond grass, offers higher infiltration rates and should be required in certain critical areas.

Response: The Department has considered this comment, and does not intend to revise this standard at this time.

97. 6.2 (B)(2) - The flexibility to implement options a, b or c. is appreciated. Additional guidance should be provided on when options b or c could be implemented such as soil type and/or performance-based requirements.

Response: The Department and VTrans are available to provide technical assistance regarding the practices in question. Municipal road crews are in the best position to determine which practices are preferable.

98. 6.2 (B)(2) – Stone lined ditches fill with sand from winter road maintenance and then fail. These do not work on Class 3 roads. Additionally, much of this material will wash away with the first hard spring rains.

Response: The Department acknowledges that this practice will require additional maintenance. The Department and VTrans are conducting joint training sessions for road crews on minimizing sediment accumulation during construction and on-going maintenance activities. Sediment accumulation in ditches can often be minimized by starting stone-lined ditching at the top of hills, preventing grader berms by keeping stone low on the front slope, adequate road crowning, using the proper gradation of stone, and using proper road surface material.

99. 6.2 (B)(2)(b) – Instead of including the check dam specification in Appendix B, reference existing specifications in the VTrans Better Roads or DEC Stormwater Manual. This eliminates the implication that check dams are the only BMP that have a schematic based specification guidance.

Response: The Department believes it is appropriate to include the requirement in the MRGP itself, rather than referencing other standards.

100. 6.2 (B)(2)(b) – In appendix B, include specifications for the use of Compost Filter Socks as Check Dams.

Response: Research findings are inconsistent on the recommendation for using compost to reduce phosphorus. In some cases, compost may increase phosphorus levels and is therefore not included in the standards at this time.

101. 6.2 (B)(2)(c) – Change “shall” to “recommend” for placing at least two cross culverts or turnouts per segment of grass-lined ditch; or every 164 feet. In certain cases, these may not be needed or field conditions may preclude this spacing.

Response: Because this is a requirement, “shall” has been retained. The Department has modified this to every 160 feet to allow for two cross culvers or turnouts per segment.

102. 6.2 (B)(3) – For roads with slopes of 8% or greater, “or the equivalent” should refer to the stormwater quality outcomes achieved rather than the specified stone.

Response: Assessing the “water quality outcomes” would require a significant amount of monitoring over time, and is inconsistent with the best management practice based approach of the MRGP.

103. 6.2 (B)(3)(b) – For road segments with 10% or greater slope, consider requiring 6”-8” minus stone and recommending 12” minus stone. In many instances, ditches to accommodate 12” minus stone will not fit.

Response: The Department agrees and has updated the permit to reflect this comment. The Department will change this standard to “recommended” 12” stone for road drainages greater than 10%. The minimum stone size for slopes >10% will be 6-8” minus.

104. 6.2 (B)(4) – Provide guidance on when a substitute practice would be appropriate.

Response: The Department and VTrans will be providing additional training on the appropriate use of these practices.

105. 6.2 (B)(4) – Many roads in sparsely populated or high elevation areas lack ditches. Road foremen often make “grader cuts” along the edge of the road to convey water off the road. Please clarify under what conditions existing or new “grader cut” conveyances may be used.

Response: Grader cuts or cut outs is the practice of cutting holes through high road shoulders to convey road runoff off the travel lane and into vegetated areas. This practice is not an acceptable alternative to lowering the road shoulder. Grader cuts may be made when meeting the road standard is infeasible, pursuant to Section 6.

106. 6.2 (B)(4) – This section should address where disconnecting turnouts is appropriate, in addition to a discussion about “grader cuts.”

Response: The Department and VTrans will be providing additional training on the appropriate use of turnouts.

107. 6.2 (B) and (C) – Ensure that all % slope values are included and are consistent.

Response: These values were reviewed prior to issuing the MRGP.

108. 6.2 (B) and (C) – Stone size specifications should reflect existing industry standards (Type 1 or Type 2) and not imply that municipalities will need to special order stone. Many municipalities have only one reliable source of ditch stone and will not be able to meet the permit standard without significant cost increases.

Response: In Parts 6.2.B.2 and 6.2.B.3, stone dimensions include “or equivalent” to address this concern. This is consistent with the VTrans Better Roads Manual.

109. 6.2 (C) - Clarify that in addressing outfalls, the Road Erosion Inventory is only required to address what is visible within the ROW, within any applicable easements or within the area allowed to be inventoried by the applicable property owner. Clarify that municipalities are not required to bring up to standards any outfall that is outside of the municipal ROW, outside of any applicable easement and not allowed by any applicable landowner.

Response: The Road Erosion Inventory is intended to identify all hydrologically connected municipal road segments, and identify whether those road segments meet the standards in the permit. If a municipality maintains operational control over stormwater infrastructure that extends outside of the right of way, the municipality is expected to maintain that infrastructure according to the standards identified in the permit. Municipalities are required to implement the standards in the permit to the greatest extent feasible, and are not expected to obtain easements or acquire private property in order to bring stormwater infrastructure up to standards.

110. 6.2 (C) – If distributed flow is not possible, stabilized outlets are required. In many cases, this is not possible within the Town Highway ROW’s and discharges onto private property will be diverted by landowners. Modifications to the standards will be required within the ROW.

Response: The MRGP does not require a municipality to acquire new ROW or ownership or control of private property.

111. 6.2 (C)(2)– Clarify if a-d apply to all turnouts or just to conveyances. What is adequate outlet protection for turnouts that aren’t conveyances? Specify adequate protection.

Response: The permit has been updated to address this comment. The definition of conveyance area has been updated and Part 6.3.1.C.2 has been changed to specify turnouts.

112. 6.2 (C)(2) – Clarify in the permit whether the slope that drives the stabilization requirement is based on the conveyance/turnout slope or the prevailing road segment slope.

Response: The requirement pertains to the turnout bank slope. The permit has been revised to clarify.

113. 6.2 and 6.3 – Implementation and long-term maintenance of stone-line ditches is expensive. Site specific alternative treatments such as grass-lined ditches with additional culverts should be allowable.

Response: Stone-lined ditches are required at slopes of 8% and greater; grass is unlikely to be effective at these slopes. Alternatives to stone lining are included for slopes less than 8%.

114. 6.2 and 6.3 – The Department should partner with VTrans and towns to develop effective practices for cleaning stone-lined ditches.

Response: See response to Comment 98.

115. 6.3 Standard if Rill or Gully Erosion is Present on Gravel and Paved Roads with Ditches – Clarify that these standards do not apply to new construction on non-hydrologically-connected segments.

Response: See response to Comment 83. The standards do not apply.

116. 6.3 – This section is almost entirely related to culverts. Consider changing the title.

Response: The Department has reorganized Part 6 of the permit to clarify the road type categories and required practices.

117. 6.3 – Renumber the references sections, Part 6.4 and Part 6.5.

Response: The Department agrees and has updated the permit to reflect this comment.

118. 6.3 – It may be helpful to municipalities for ANR to provide minimum BMP standards for segments that do and *do not* have erosion present.

Response: The BMPs are intended to correct active erosion, and prevent future erosion, based on objective site conditions. Differentiating as proposed would require a substantial amount of evaluation on the part of permittees, and would be unlikely to result in significantly different BMP approaches.

119. 6.3 (B) - Culverts and headwalls at the end of driveways are generally the responsibility of the property owner, and the municipality has a ROW. Municipalities should not be responsible for the replacement of driveway culverts or headwalls.

Response: The regulated municipality will be responsible for all drainage infrastructure in its ROW and under its control.

120. 6.3 (B) – Many towns do not have driveway culvert inventories or ordinances for maintaining and replacing driveway culverts. Politically it will be difficult to only maintain those on hydrologically connected roadways.

Response: The Department acknowledges the comment.

121. 6.3 (A) and (B) - Rill or gully erosion is mostly caused by inadequate road crowns, the presence of berms, slope and other factors. Include improvements to road crowns, grading and/or berm removal in this section rather than improvements to culverts; or please explain the rationale for this section as written.

Response: The Department agrees. See response to comment 116.

122. 6.3 (A) and (B) – In comparing Part 6 and Part 8.13, a municipality may be unclear of requirements by other federal and state agencies with jurisdiction. It could be concluded that

working in intermittent streams is allowed without consultation with other Agencies in accordance with the Clean Water Act.

Response: The Department respectfully disagrees with this interpretation. Section 8.13 indicates the permittee is not relieved of any other state, local, or federal regulatory requirements. If a permittee believes that a proposed project will impact any protected historical, cultural, or natural resources, the permittee should consult with the appropriate state agency before beginning work on the project.

123. 6.3 – Reconsider the requirement for “plunge pools.” Plunge pools and splash pads are not recommended for culverts at stream crossings. “Splash pads” or “Rock Lined Sump” could be considered to stabilize culvert outlets instead.

Response: The Department agrees that plunge pools and splash pads should not be located at perennial streams; however, the MRGP practices do not apply to perennial streams, only intermittent streams and drainage ditches. The MRGP was not modified in response to this comment.

124. 6.3 - This section should cross reference with the definitions of rill and gully erosion. Ensure that figures demonstrating each erosion type are included in the permit.

Response: Figures are included in the Road Erosion Inventory Supplement document. The MRGP was not modified in response to this comment.

125. 6.4 Standards for Paved Roads and Catch Basins – Include the methods required to meet the catch basin outlet stabilization standard.

Response: The Department agrees and has included methods that shall be used to meet the catch basin standard.

126. 6.4 – Clarify that “*all* catch basin outlets...” only includes municipally owned infrastructure.

Response: Section 2.2 of the MRGP describes the applicability of the permit.

127. 6.4 – Category 2 municipalities should not be given more time than Category 1 municipalities to implement catch basin outlet stabilization. Fewer paved roads with catch basins should not equate to later implementation.

Response: The Department has amended the permit to combine Category 1 and Category 2 municipalities and require all municipalities to bring Very High Priority paved road with catch basin segments up to standards by December 31, 2025.

128. 6.5 Standards for Connected Class 4 Roads - Language in the draft permit and Inventory Template is problematic in that the presence of any gully erosion automatically classifies that Class IV segment as “Does Not Meet Standard.” This standard should be changed to say, for example, “any gully erosion equals Partially Meets, gully erosion exceeding 10 ft. in length equals Does Not Meet.”

Response: The Department is not making a change to the permit in response to this comment. A road segment either meets or does not meet the standards. There is no distinction when gully erosion is present.

129. 6.5 - Requiring maintenance to improve water quality on Class 4 roads conflicts with Title 19, which vest the sole responsibility for determining the level of maintenance of Class 4 roads with municipalities.

Response: Chapter 3 of Title 19 gives municipalities discretion regarding the extent to which they maintain class 4 roads for the purposes of navigability; Class 4 roads are not required to be maintained so as to be negotiable by a car. This general permit is issued pursuant to Section 1264 of Title 10, which pertains to the management of stormwater runoff. The MRGP imposes new regulatory standards to restore and protect water quality. The stormwater statute and the terms of this general permit do not require municipalities to make class 4 roads negotiable by cars, which would potentially conflict with Title 19. Instead this permit imposes technical standards intended to reduce stormwater runoff from municipal roads. The requirements of this permit do not conflict with the authority municipalities are granted under Title 19 over the negotiability of municipal roads.

130. 6.5 - Municipalities may be required out of necessity to improve the surface conditions of the right-of-way (of Class 4 roads) to allow for the mobilization of equipment, personnel, and materials to the site.

Response: The Department acknowledges that improvements to Class 4 road surface conditions may be necessary, depending on the condition of the road. Pursuant to 19 V.S.A. § 310(b), Class 4 highways may be maintained to the extent required by the necessity of the town, the public good and the convenience of the inhabitants of the town.

131. 6.5 - Requiring work on Class 4 roads is a unique and undue burden for municipalities because municipalities receive no state aid funds for Class 4 roads and are often not eligible for FEMA reimbursement on Class 4 roads.

Response: VTrans Better Roads grants and DEC Grant-in-Aid funding is available for work on Class 4 Roads.

132. 6.5 - Implementing the MRGP on Class 4 Roads may result in phosphorus contributions from some Class 4 roads. The MRGP should include the option to compare expected reductions from different classes of highways. Alternatively, municipalities could require Right-of-Way permits to those using the Class 4 road to require and pay for improvements.

Response: The MRGP standards for all road types are based on scientific analysis and have been shown to result in phosphorus reductions.

133. 6.5 - Improvements to Class IV roads to meet the MRGP standards shall be considered the last priority. Municipalities should be given tools for understanding and estimating phosphorus

reductions for various field conditions, in order to develop a prioritized implementation schedule.

Response: Towns are given flexibility to choose which hydrologically connected road segments they will upgrade in any given year. However, upgrades to Very High Priority segments on Class 4 roads shall be implemented by December 31, 2028. This implementation timeframe has been extended in the revised permit.

134. 6.5 – Gully erosion stabilization on Class 4 roads should be required after year 10 of the permit. This will enable municipalities to evaluate Class 4 roads and consider reclassification.

Response: See response to comment 133.

135. 6.5 - Municipalities may reclassify Class 4 roads or completely forfeit the rights-of-way to avoid implementing the MRGP on Class 4 roads.

Response: Pursuant to 19 V.S.A. §§ 302 and 310(b), municipalities have the authority to reclassify Class 4 roads. The Department discourages the reclassification of roads strictly for the purpose of avoiding stormwater infrastructure improvements.

136. 6.5 – Municipalities will be required to fix gullies > 12” deep within the ROW. Fixing the gully may create a larger gully outside of the ROW.

Response: The Department acknowledges this comment, but disagrees that implementing required upgrades to gullies will result in larger or new gullies.

Comments pertaining to Part 7: Discharges Under This Permit

137. This part creates the possibility for litigation to interfere with municipal implementation by identifying the possibility that some BMPS may not be effective and therefore are rebuttable presumptions of compliance with the State Anti-Degradation Policy.

Response: An individual may present credible, available evidence to rebut the presumption that the BMPs required under this general permit will maintain and protect the higher quality of the State’s high quality waters, will prevent limited reductions in the existing higher quality of those waters, and will minimize risk to the existing and designated uses of those waters, during the appeal period of this general permit. The opportunity to challenge the presumption of compliance with the State’s Anti-Degradation Policy is available to interested parties, and the language is included in the permit for the sake of clarity and transparency.

138. This part allows for the standards to be changed every 5 years. This is unfair to municipalities and should be deleted.

Response: Pursuant to 40 C.F.R. § 122.46(a), National Pollutant Discharge Elimination System discharge permits shall be effective for a term not to exceed five years. Section 7 of this general permit states that the terms of the permit will be reviewed every five years, upon reissuance of the permit. The review of standards coincides with the reissuance of the permit,

and is subject to notice and comment, giving municipalities the opportunity to review and comment on any proposed changes to the standards.

Comments pertaining to Part 8: Standard Permit Conditions

139. 8.1 Operation and Maintenance – Guidance documents should be provided on the proper disposal of solids and other pollutants.

Response: The Department has included language in Part 6 regarding the proper disposal of fill and invasive species.

140. 8.2 Duty to Comply - In addition to the statutory references regarding violations for noncompliance, related provisions regarding notices of violation, remedies and appeals should be clearly outlined in issued permits. This should include what constitutes “noncompliance” given that much of this work will depend heavily on available municipal capacity and resources, as well as continued state support.

Response: Language regarding compliance, enforcement, and the right to appeal will be included in authorizations to discharge issued to individual municipalities. This language will include a more detailed explanation of what constitutes noncompliance with the terms of an individual authorization.

141. 8.2 – Can municipalities or the permittee be subject to criminal penalties?

Response: Pursuant to 10 V.S.A. § 1275, any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, or other document filed or required to be maintained under this permit, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit, may, upon conviction, be subject to imprisonment for no more than six months.

142. 8.3 and 8.4 Duty to Reapply and Continuation of the Expired General Permit – Include the actual due date for reapplication and the expiration date.

Response: The expiration date will be clearly stated on the final issued general Permit. The permittee shall reapply for coverage under this permit at least ninety (90) days prior to the expiration date of the general Permit.

143. 8.5 Requiring and Individual Permit - The terms, conditions and relevant criteria for when “individual permits” may be required are unclear and broadly written, making it unclear to permittees when and how such permits will be mandated and administered.

Response: It is the intent that all municipalities will be covered under the General Permit; however, if there are unique circumstances as outlined in Part 8.5 in a particular town, the Department has the discretion to issue an Individual Permit. An individual permit will be required when a permittee is out of compliance with the terms and conditions of their authorization under this general permit, and when a discharge from a municipal road is

determined to be a significant contributor of pollution. The determination that a discharge is a significant contributor will be made on a case-by-case basis.

144. 8.6 Right of Entry - Provide a complete and comprehensive list of the constituents and properties which may be sampled, in addition to the frequency of anticipated sampling. Also include any anticipated obligations incumbent upon the affected municipality.

Response: The Department does not have a plan for sampling permitted municipalities. If and when the Department plans to conduct sampling, the municipality will be notified.

145. 8.9 Rights & Privileges – Confirm that this part indicates that if a landowner refuses access to the municipality to install and/or maintain infrastructure, the municipality will not be in violation of the MRGP for unauthorized discharges.

Response: Confirmed; the preamble to Part 6, in conjunction with Section 8.9, provides that this general permit conveys no right to enter private property without authorization, and a permittee is not required under the terms of this general permit to implement those standards that require the acquisition of private property. Thus if a private landowner prohibits a permittee from entering their property, the permittee is not obligated to implement any standards that would necessitate entrance onto that property.

146. 8.10 Need to Halt or Reduce Activity Not a Defense - This provision is unclear. Needs to be reworded for permittee to understand the intent.

Response: Section 8.10 makes clear that a permitted activity must be halted or reduced if necessary to maintain compliance with the conditions of this general permit. The permitted activity is only allowed when it complies with the conditions of the permit.

147. 8.11 Duty to Mitigate - This provision is very subjective with undefined standards and potentially a significant risk and liability to municipalities.

Response: This language is intentionally broad, and does not prescribe additional mitigation measures that must be taken, but rather requires permittees to take reasonable steps to minimize discharges in violation of the terms of this general permit.

148. 8.13 Compliance With Other Laws - Some Town Highways have existing stormwater permits under previous permitting requirements, either individually or as part of larger development projects. The requirements under this permit conflict with the requirements of these older permits, putting municipalities at risk of being in violation of this provision.

Response: The Department disagrees that MRGP conditions will conflict with other stormwater permits. The Department can work with a municipality on a case-by-case basis to address permit overlap.

149. 8.13 - Municipalities should not have to pay the permit fees for 2 different permits for the same Town Highways, nor should they be responsible as a Permittee for private stormwater components and systems outside of the Town Highway ROW.

Response: Pursuant to 3 V.S.A. § 2822, permit fees are assessed based on activity, not on the area impacted. If a municipality is subject to the requirements of more than one regulatory program, they are obligated to pay the fees assessed for each permitted activity. With regard to stormwater infrastructure outside the town right of way, please see the response to Question 109. The Department will consider fees for overlapping permits on a case by case basis.

150. 8.13 - In the case of where a Town Highway is previously permitted individually, provisions to annul the old permit in favor of the new should be incorporated under this MRGP. In the case where a Town Highway is part of a larger stormwater system/permit, often time with others as the Permittee, the Town Highway should be separated from the old permit and included under this MRGP.

Response: The Department is not changing the requirements for previously issued stormwater permits. Municipalities shall comply with existing stormwater permit authorizations as well as the requirements of the MRGP.

151. 8.15 Enforcement – The enforcement action of possible imprisonment conflicts with established law that municipal officers acting within the scope of their office are not civilly liable in enforcement actions pursuant to 24 V.S.A. § 901 and needs to be removed.

Response: As the permittee, the municipality will be liable for compliance with the terms of this permit. Generally, actions against municipal employees acting within the scope of their employment are maintained against the municipality itself, *unless* the employee acted willfully or maliciously. The criminal penalties outlined under 10 V.S.A. § 1275 are also contingent on the employee acting knowingly in violation of the conditions of the permit.

152. 8.16 Signatory Requirements –This “oath” is not mandated under state law and if this permit is a state permit, the language is improper and unnecessary. Further, the signatory authority may be reluctant to sign given the fact that not all data has been ground truthed and verified.

Response: While this signatory language is not a requirement under state statute, the certification language is required for all NPDES permit applications pursuant to 40 C.F.R. § 122.22. This permit is issued pursuant to the state of Vermont’s delegated authority to administer the NPDES program, and as such it complies with all state specific permit requirements under 40 C.F.R. Part 122.

General comments on Draft Permit

153. The standards are clear and reasonable. It is good that the State is working with towns to stop the degradation of our lakes and streams.

Response: The Department acknowledges this comment.

154. This permit will be extremely challenging financially and logistically for small communities. Between the costs of the annual permit, increased cost of material, labor, equipment usage, fuel, administrative costs we anticipate an increase of 25% to our highway budget over the

next two years to get this program up and running. This is unaffordable to already struggling towns.

Response: The Department acknowledges this comment. The Department, along with the Legislature, is developing a long-term water quality funding strategy. Currently, municipalities can apply for grants including the VTrans Better Roads grants and the DEC Grants-in-Aid.

155. The stormwater dynamics within the broad Champlain basin are very different than the hydrologic dynamics in the upland watersheds of the Green Mountains. Different recommendations may be more appropriate for different geomorphologies.

Response: The Department acknowledges that steeper-sloped upland watersheds require different management techniques relative to lesser-sloped valleys. The technical requirements of the MRGP do account for slope.

156. This permit will exist in perpetuity, and new, robust, permanent funding sources need to accompany these new mandates.

Response: The Department acknowledges this comment. See response to comment 154.

157. Compliance with the permit standards will result in an increased demand for stone, of which there is already a short supply. This will result in higher costs both due to availability and distance for trucking.

Response: The Department acknowledges this comment. The Department has adjusted the requirements and recommendations for stone size.

158. The State should consider including towns in its purchasing power for gravel and stone and dedicate a portion of highway personnel to truck the required material to town storage sites.

Response: The Department acknowledges this comment and will share it with VTrans.

159. In certain cases, it may be best to leave the existing soil intact and not disturb areas to implement the standards. Municipalities should be given the latitude to discern what constitutes “best business practices” on their roads.

Response: The MRGP describes the specific conditions under which flexibility may be exercised.

160. The lack of oversight of private roads, which can have significant impact on municipal roads and ROWs, and the lack of regulation over certain agricultural practices, and private property phosphorus applications, puts municipalities as *the* entity that will be held responsible for those “gaps” in water quality restoration under the “all-in” approach the state has pushed for.

Response: The requirements of Act 64 (2015) related to stormwater, along with the Lake Champlain TMDL and the associated Phase I Implementation Plan, require treatment of thousands of acres of existing, non-road developed and agricultural lands. Although the

implementation of the MRGP is an important component of the State's water-quality efforts, private landowners face substantial requirements as well.

161. Innovative and cost-effective alternative projects *outside* of road systems should be allowed as a substitute for treatments within rights-of-way when they can achieve more pollution reduction per dollar.

Response: Addressing road-related stormwater runoff is one of the most cost-effective approaches to reducing stormwater-related pollution. Providing the flexibility suggested would require an expansion of the use of stormwater offsets that is beyond the scope of the general permit, but that could be considered during future updates of the Stormwater Rule.

162. Instead of individual towns pursuing small fixes, towns should contribute to a State Fund for larger projects to improve water quality.

Response: Achieving the flood-resilience and water quality goals of the MRGP program necessitate implementing a broad range of relatively small projects.

163. When scoring the Road Erosion Inventory (REI), the Department should create different Partially Meets/Does Not Meet criteria for slopes <5%.

Response: The Department believes the existing criteria are well suited to such conditions.

164. Many towns have adopted Stormwater Master Plans (SWMPs) that have included detailed field work to prioritize projects. The MRGP implementation plan should be based on adopted SWMPs, not the road erosion inventory.

Response: Stormwater Master Plans may help inform both inventories and RSWMPs, but do not typically assess the condition of all connected road segments.

165. There are too many closely related grant programs to manage. Consider using the TPI model for clean water grant programs.

Response: The Department acknowledges this comment. The Department is working closely with VTrans to align the various grant programs.

166. Deficient road crowns most often result in rill erosion. All stormwater projects should allow reimbursable costs associated with the establishment of road crowns.

Response: Road grading is considered regular road maintenance and is not a reimbursable cost for Grant-in-Aid funds.

167. Use plain language familiar to the reader. For example, "obviate" could be replaced with "remove".

Response: The Department supports the use of plain language. The wording in the MRGP is intended to be as unambiguous as possible, which may require use of terms outside of common parlance. For the sake of clarity, the Department has replaced the word "obviate" with "remove."

168. The Standard Permit Conditions call for the permittee to “at all times properly operate, inspect, and maintain all stormwater collection, treatment and control systems and BMPs which are used to achieve compliance with this permit.” Please include the BMPs as an appendix to the permit as well as some rule of thumb maintenance guidelines, for instance, how often to resurface a gravel road, typical grading schedule, how often to clean ditches, how to maintain ditches, etc. A summary chart for Road Foremen to have as a guide would be helpful in ensuring compliance but also for scheduling and budgeting purposes.

Response: The Department supports the intent of this comment, however such materials are more appropriately provided in the form of guidance and technical assistance materials, not through the general permit itself. Such technical guidance documents will be made available on the MRGP website.

169. Homeowner and excavation contractor education should be conducted to inform them of the new culvert sizing expectations and rules.

Response: The Department concurs and will work with partner organizations and agencies to maximize training opportunities.

170. Road crews should be offered a proper road grading course. Further, abutting towns should share grading work using a predetermined route to allow for grading the worst roads first. Regional Planning Commissions should help to develop an efficient process.

Response: VTrans currently offers road grading training through the Road Grader Operator Training and the Roads Roundtable forums.

171. Definitions included in Part 10 should be consistent with existing standard definitions found in the DEC Stormwater Manual and the VTrans Better Roads Manual. Some definitions are incomplete or conflict with existing documents.

Response: Definitions were made consistent with other Department regulations as necessary.

172. Provide definitions for the following terms:

- Historic stone walls, structures and trees
- Excessive blasting of ledge – change to “removal of ledge when cost prohibitive under funding options available to the municipality, or when the presence of ledge provides a stable, non-erosive condition”
- Adverse impacts
- New road construction
- New construction
- Significant road upgrades
- Rill and gully erosion should be defined by length in addition to depth
- Consistently use “standards” instead of BMPs. BMPs are usually a guideline.
- Conveyance area
- Header/Headwall and material used (including block or stone)
- Condemnation

- Environmental Notice Bulletin
- Hydrologically connected road segment – recognize that the 100m segments are pre-determined by ANR, and in some cases may be less than 100m
- Redevelopment (used in Part 6.2, A.1.b.)
- Ditch, swale, gully – define and/or reduce the number of terms
- “Stream crossing” culverts – applicability to perennial and/or intermittent streams
- Defined channel (used in Part 4.1)
- Grader berm/windrows – change to “shoulder berm/windrows”
- Secondary ditch
- “Grass or forested area” and “grass lined ditch” – change to “vegetated” to be consistent with the DEC Stormwater Manual

Response: The Department has clarified terms, removed inconsistencies, and updated definitions in Part 10, Definitions as appropriate.

173. Provide a list of Acronyms.

Response: All acronyms are defined in the MRGP.

174. Road gravel, that was distributed into it this year, should be removed from the White River.

Response: This comment is beyond the scope of the general permit.

175. It is unclear that the legislation is trying to address stormwater runoff. It seems that there may be a different objective.

Response: The Department is not aware of any other objectives intended.

176. Many town’s governments consist of volunteers who are increasingly responsible for addressing state initiatives. This is demanding and time consuming and may be the cause of the increased volunteer dropout rate. This results in less participation in local government, and ultimately a decline in effective town government.

Response: The Department acknowledges this comment.

177. In addition to including BMPs for road runoff, please support the protection of the shoreland that exists between the road and the water. The width of this buffer zone should not be reduced by road grading. The buffer should require limits to mowing and plant cutting.

Response: The Department encourages municipalities to avoid disturbing lakeshore vegetation whenever possible. Part 6 of the MRGP, covering required standards, includes feasibility considerations, and states that standards do not need to be implemented if doing so would result in adverse impact to significant environmental resources, including lake shorelands. The language in the final permit has been revised to clarify that lakeshores are included as a significant environmental resource. The Departments of Environmental Conservation, and Forests, Parks and Recreation, along with the VTrans Local Roads program are planning a workshop series and guidance documents for municipal road crew members

regarding municipal road right-of-way vegetation management in sensitive areas including shorelands.

Beyond the feasibility consideration stated above, this permit does not change or conflict with municipality's rights and obligations to manage town highway rights-of-way near lake shoreland. Certain activities within 250 feet of a lake's mean water level (also known as the Protected Shoreland Area), such as any new development, redevelopment, or vegetation removal, may require a lake Shoreland Permit. Shoreland Permits are issued under 10 V.S.A Chapter 49A, Subsections 1441–1449. The maintenance, emergency repair, repair, and replacement of transportation infrastructure by a municipality is exempt from shoreland protection permitting requirements. Additionally, town selectmen are required pursuant to 19 V.S.A. § 904 to remove from within the limits of town highways rights-of-way trees and bushes which obstruct the view of the highway ahead or that cause damage to the highway or that are objectionable from a material or scenic standpoint. This permit is not intended to remove or conflict with that obligation.

178. Include in the permit standards that shoulders of roads be planted with pollinator species rather than grass. Pollinator species have more robust root systems to prevent runoff from a road reaching the lake. Federal FAST rules include this, which then allows states to apply for funding for pollinator plants.

Response: This permit does not include specific requirements for plant species or seed mix. The use of pollinator species is more appropriately promoted through other regulatory or non-regulatory programs.

179. How is the effectiveness of the BMPs being measured? There is no reference in the permit to measuring progress.

Response: The Department is developing an extensive tracking and compliance program to estimate and report on phosphorus reductions for all implemented BMPs. The Department will continue to work with UVM and in-house water quality staff to evaluate road BMP effectiveness.

180. The Vermont Water Resources and Lake Studies Center, Annual Technical Report, 2013 (VWRLSC) describes rural roads as both a source and a vector. The term “vector” has been dropped from the report without explanation. The MRGP should help to clarify the ultimate source of sediment loading, leading to further corrective policy and action.

Response: The contents of the technical report are outside of the scope of the permit. The permit acknowledges that roads are a significant source of sediment and phosphorus.

181. The VWRLSC Fact Sheet cites a modelling assumption by the US EPA of a 50% reduction on 65-100% of hydrologically connected roads. Field work by Wemple, Ross et al. suggests that “post-treatment storm damage appeared to overwhelm the capacity of installed BMPs to reduce erosion and sediment delivery.” Is it correct to conclude that it is unknown if this plan will work?

Response: Based on the referenced field work, the Department did not include practices that did not demonstrate effectiveness.

182. The MRGP appears to be based on the sediment measurement and P-assay results for approximately or precisely 9, negatively controlled, culvert outlets in or near Warren, VT. Based on this, the MRGP should be administered for learning and correction prior to implementing the 8.15 Enforcement measures.

Response: The Department will implement an adaptive management approach to adjusting standards in future permits. The Department's enforcement authority is linked to permittees' compliance with the terms and conditions of the permit in effect, and enforcement discretion will be exercised accordingly.

183. The "modeled" phosphorus contribution from roads is only 10% or less of the total load. It does not make sense to invest huge amounts of taxpayer dollars to fix 10% of the load. Other areas of concern might be more cost effective, such as stream bank slides.

Response: The Legislature passed Act 64 which requires new regulatory programs across a spectrum of land uses. The MRGP is one component of the regulatory requirements under Act 64.

Comments comparing Draft Permit Standards to the Lake Champlain TMDL

184. DEC should share its analysis for how the Draft Permit anticipates equivalent reductions as those achieved through the scenario presented by EPA and how the Road Stormwater Management Standards (Part 6) aligns with surface infiltration retrofits.

Response: The MRGP was developed in accordance with the Lake Champlain TMDL accountability framework. Implementation of the MRGP will be prioritized based on Road Erosion Inventories required under the MRGP. Road Erosion Inventories will result in MRGP implementation plans that will be referenced in Phase II Tactical Basin Plans. The Department's TMDL-implementation tracking system will estimate phosphorus reductions associated with MRGP implementation (both expected phosphorus reductions for planned work, and estimated phosphorus reductions for completed work). TMDL implementation progress will be measured using the TMDL's phosphorus baseline and targets.

Comments on Assumed Removal Efficiencies

185. Instead of assigning phosphorus removal efficiencies to categories (Partially, Fully, or Does Not Meet), DEC should assign a removal efficiency to each best management practice.

Response: The Department will be tracking each municipal road segment's compliance with the road standards. Assigning removal efficiencies and tracking individual BMPs is not feasible in this structure.

Comments on BMP Effectiveness

186. How does the Department plan to monitor the long-term reduction of nutrients from BMPs implemented through MRGP requirements?

Response: The Department's monitoring efforts include the Lake Champlain Long Term Monitoring project, which includes nutrient monitoring in tributaries. These data, along with other sampling data, are used to inform the effectiveness of remediation strategies across many sectors. Additionally, the Department reviews the effectiveness of BMPs included in general permits at cycles not to exceed five years against best available information. Finally, the BMPs included in the MRGP have been monitored in Vermont applications, and the Department will seek to continue to support and partner with other local monitoring efforts.

187. How does the Department plan to attribute nutrient load reduction to specific BMPs as compared to other water quality improvement projects?

Response: The Department will use best-available nutrient loading data for roads under the range of conditions contemplated by the MRGP. The Department will assign loads, and subsequent reductions, on a road-segment basis, rather than a BMP-specific basis.

188. Is there a proven and measurable benefit to the BMPs required in the MRGP?

Response: Yes, the practices in the MRGP have been shown to reduce erosion-related sediment and discharge of associated nutrients into receiving waters.

189. Have concrete figures been established for the long-term maintenance costs of BMPs?

Response: The Department has not established costs for long-term maintenance costs.

Comments on the Road Erosion Inventory (REI)

190. The Department received several comments on the Road Erosion Inventory (REI) analysis requesting changes to the methodology.

Response: The REI is used to evaluate compliance with the standards as part of the MRGP application requirements. Based on the comments received the REI is unchanged at this time, however may be modified if necessary in the future.

191. Require segments that Do Not Meet criteria for Adequacy of Road Drainage; a high number of Poor Conveyances; Gully Erosion Locations and Stream and Road Conflicts to be addressed in the first five years of the Permit to meet all standards.

Response: The Department acknowledges the comment but believes the prioritization requirements in the permit are sufficient.

192. As stream Crossings provide the most likely avenue by which sediment and flow can be conveyed into waters, require any segments with such crossings to be addressed in the first five years of the Permit to meet all standards.

Response: The Department acknowledges the comment but has not revised the prioritization requirements in response to this comment. The road segments identified as “Very High Priority” segments are those segments that have been identified as the greatest contributors of sediment and phosphorus and must achieve standards sooner.

193. While assessing Road Crowns and Berms could remain as part of the Inventory process, it is inappropriate to make them part of the MRGP Standards. They are transient features of roads and their status and condition fluctuate depending upon the timing and frequency of maintenance activities.

Response: The Department has retained these elements of the standards because they are important BMPs related to reducing erosion, and maintaining flood resilience.