

## **FREQUENTLY ASKED QUESTIONS (FAQ)**

### **VERMONT AGENCY OF NATURAL RESOURCES INITIAL DESIGNATION PURSUANT TO CLEAN WATER ACT**

#### **LEGAL BASIS FOR THE INITIAL DESIGNATION**

##### **1. What law allows the Vermont Agency of Natural Resources (VTANR) to require a federal permit for my stormwater discharge?**

The federal Clean Water Act (CWA) authorizes the Environmental Protection Agency (EPA), or the State Director in states like Vermont where there is an approved state program, to control stormwater pollution by designating certain stormwater discharges as requiring federal Clean Water Act permits. For example, EPA or the State Director may require permits for a discharge or a category of stormwater discharges within a geographic area contributing to violations of water quality standards. This authority to designate discharges is commonly referred to as “Residual Designation Authority” or “RDA.” Designated discharges must apply for permits under the National Pollutant Discharge Elimination System (NPDES), commonly referred to as “NPDES permits.”

##### **2. Why is VTANR residually designating discharges to Potash, Englesby, Morehouse, Bartlett and Centennial Brooks?**

VTANR is issuing notice to certain designated discharges as a result of a petition filed by the Conservation Law Foundation (CLF) and a Judgment Order issued by the Vermont Environmental Court. In June of 2003, VTANR received a petition from CLF requesting a determination that NPDES permits were required for all existing stormwater discharges that contribute to violations of water quality standards in Potash, Englesby, Bartlett, Morehouse and Centennial Brooks. After consultation with EPA, VTANR denied CLF’s petition. CLF appealed this decision to the Water Resources Board. In 2004, the Water Resources Board reversed VTANR’s decision and remanded the matter to VTANR with instructions to implement and require NPDES permits for all non-de minimus stormwater discharges. VTANR (through the Vermont Attorney General’s Office) and other interested third parties appealed the Water Resource’s Board decision to the Vermont Supreme Court.

In August of 2006, the Vermont Supreme Court reversed the Water Resource Board’s decision that all stormwater discharges in the five watersheds required NPDES permits and remanded the matter back to VTANR to undertake the requisite analysis under its RDA to determine whether NPDES permits were necessary for the specific discharges in question, in light of the views expressed in its opinion. In re: Stormwater NPDES Petition, 2006 VT 91. VTANR then reconsidered CLF’s petition in light of the Vermont Supreme Court decision and in December 2006 again denied CLF’s petition finding that it had “determined that it is not prudent or necessary to residually designate existing

dischargers into the five identified streams...[t]his conclusion is based on additional scientific data and information gathered and generated by VTANR within the past two years, and on VTANR's ongoing efforts in developing TMDLs and implementation plans for these waters...." The denial also stated that "VTANR will consider residually designating the discharges it identifies in the general permit under the authority of 40 C.F.R. § 122.26(a)(9)(i)(C) (which is the more appropriate too for residual designation after the issuance of a TMDL) if such discharges are 'point sources'. These residually designated discharges would then be subject to a NPDES general watershed permit."

In January 2007 CLF appealed VTANR's denial to the Vermont Environmental Court. In August 2008, the Environmental Court issued a Judgment Order in favor of CLF and concluded that "NPDES permits are required for all identified, currently unregulated stormwater discharges that VTANR has determined contribute to violations of the Vermont Water Quality Standards in the five Brooks identified as impaired in these proceedings. We specifically conclude that VTANR must exercise its residual designation authority...to require dischargers to apply for NPDES permits for the specific stormwater discharges that have been identified as contributing in more than a "de minimus" manner to the impairment of the identified Brooks." It further stated, "We direct that VTANR begin notifying contributing dischargers, pursuant to a specific schedule, of their obligation to apply for NPDES permits within 180 days of receiving notice." The Environmental Court defined "currently unregulated" stormwater discharges from point sources as "currently unregulated under the state stormwater law and the NPDES permits for construction, industrial and municipal sites...." In re: Stormwater NPDES Petition (Conservation Law Foundation Appeal) Docket No. 14-1-07 Vtec (Aug. 28, 2008). VTANR filed a Motion for Reconsideration of the Judgment Order, and in February 2009, the Environmental Court affirmed its Judgment Order. In re: Stormwater NPDES Petition (Conservation Law Foundation Appeal) Docket No. 14-1-07 Vtec (Feb. 18, 2008). VTANR is issuing this initial RDA notice as directed by the Environmental Court.

### **3. Why do these brooks need to be cleaned up?**

Section 303(d) of the federal Clean Water Act requires each state to identify waters not attaining water quality standards. Potash, Englesby, Morehouse, Bartlett and Centennial Brooks are all listed on Vermont's 303(d) list based on biologic monitoring. The source of the impairment is multiple impacts associated with excess stormwater runoff.

Section 303(d) of the federal Clean Water Act and EPA's regulations (40 CFR Part 130) require states to develop Total Maximum Daily Loads (TMDLs) for impaired waterbodies. A TMDL establishes the amount of a pollutant that a water can receive and still safely meet water quality standards. EPA has approved TMDLs for each of these five brooks. For more information on the TMDLs visit:

[http://www.vtwaterquality.org/stormwater/htm/sw\\_TMDLs.htm](http://www.vtwaterquality.org/stormwater/htm/sw_TMDLs.htm)

## **PARCEL DESIGNATION**

### **4. What discharges are being designated by VTANR as needing federal NPDES discharge permits?**

A Designated Discharge is defined as a stormwater discharge from an impervious surface to one of the five impaired brooks (Potash, Englesby, Morehouse, Bartlett and Centennial Brooks) if the discharge is not covered under one of the following:

- a) A NPDES industrial Multi Sector General Permit (MSGP)
- b) A NPDES wastewater permit that includes stormwater discharges
- c) A state stormwater discharge permit with an associated offset or on-site controls that result in no net contribution to the receiving water.
- d) A NPDES municipal separate storm sewer system (MS4) permit

For the purposes of this designation any stormwater runoff that enters or commingles with the MS4 system is considered to have coverage under the MS4 permit.

### **5. Why don't properties discharging to municipal stormwater systems have to apply for NPDES permits?**

The Environmental Court ordered VTANR to residually designate certain stormwater discharges to the impaired streams that were not already covered by a NPDES permit or a state permit with an associated offset so that it had no net contribution to the stream. (Refer to FAQ #5) If a site contributes stormwater to a local municipal (MS4) stormwater collection system, then for purposes of the Court's decision and VTANR's residual designation, the property's discharge is considered to be already regulated by the NPDES MS4 permit and therefore not needing another NPDES permit at this time.

VTANR will be working with local municipalities over the next 3 years to develop a watershed-specific remediation plan that will identify the most cost-effective stormwater BMPs to remediate the brook. Once the BMP plan is developed, VTANR will be able to identify where BMPs will need to be installed for MS4 discharges.

### **6. How do I know if I discharge to a municipal stormwater system (MS4) or not?**

Based on current available information, VTANR has prepared maps which indicate which properties it believes contribute to the MS4 system. These determinations are considered preliminary and subject to change as more detailed site-specific information becomes available. VTANR will be working closely with each municipality to better identify which discharges contribute to its stormwater collection systems.

**7. My site already has a stormwater permit and does not discharge to the MS4 system; do I still need a NPDES permit?**

During the designation process, information of existing permit coverage was taken into consideration. Whether an existing discharge is designated as requiring NPDES permit coverage pursuant to the residual designation is dependent, in part, on their existing permit coverage status. Discharges will not need residual designation even though they do not discharge to the MS4 system if they are already covered under another NPDES permit. Other previously permitted discharges that do not discharge to the MS4 system will need a NPDEPS residual designation permit. Examples of these include:

- a. ***A construction permit (permits ending in –INDC or -9020):*** While these permits are issued under the NPDES permitting program, they only cover temporary discharges from active construction sites. The purpose of this designation is to regulate post-construction runoff existing impervious surfaces, which are not covered by a construction permit. Properties that have only been issued a construction discharge permit are still required to obtain a NPDES permit for any existing discharges that do not discharge to the MS4 system.
- b. ***A current Individual state stormwater permit (permits ending –INDS) with an offset:*** Permits that were issued to discharges under the current state stormwater regulations were required to achieve a “net zero” contribution to the impaired stream; therefore in accordance with the Court’s decision, properties with these permitted discharges do not need to apply for NPDES coverage.
- c. ***An expired state stormwater permit (permits 1-XXXX or 2-XXXX): Discharges), or valid state permit that does not meet the “no net increase” standard:*** Discharges that have state permits that were issued prior to the current state stormwater regulations do not meet the requirements of the Court order and will be required to obtain coverage under the NPDES residual designation permit when it becomes available. The only exception to this is if the state stormwater permit included on-site controls so that there is no discharge to the impaired waters (e.g. complete on-site infiltration of stormwater).
- d. ***A Multi Sector General Permit (MSGP, permits ending in -9003):*** Discharges that are covered under the MSGP do not need NDPEPS residual designation permit coverage since the MSGP is a NPDES permit.

**8. What is an impervious surface?**

For purposes of the initial designation, impervious surface means: man made surfaces, including, but not limited to, paved and unpaved roads, parking areas, roofs, driveways and walkways, from which precipitation runs off rather than infiltrates.

## **9. How was the list of designated properties generated?**

VTANR identified parcels not covered under an existing NPDES permit, including the MS4, MSGP, or other permit (e.g. direct discharge) or a state individual stormwater permit that has an offset or on-site controls that result in no net discharge to the stream. Dischargers covered under a NPDES construction permit were not excluded from designation because of the temporary nature of that permit coverage.

Parcels with coverage under MSGP, direct discharge, or individual stormwater permits were identified using data on these permits maintained by VTANR. In estimating those dischargers that are, or could be covered under the MS4 General Permit, an inclusive approach was taken. A property with any discharge from impervious surfaces that come into contact with MS4 runoff or MS4 conveyances is deemed to be under the scope of the MS4 General Permit.

## **10. Who should I contact if I believe there is an error on the lists of designated discharges?**

While great effort was put in to ensure this designation is accurate, the list has not been completely confirmed in the field. VTANR will work with the affected municipalities and property owners to continue to check the accuracy of these determinations.

If you feel an error has been made, please contact:

Jennifer Callahan  
103 S. Main Street  
Waterbury, VT USA 05671-0408  
(802) 241-3780  
[jennifer.callahan@state.vt.us](mailto:jennifer.callahan@state.vt.us)

## **NPDES PERMITS**

### **11. When will I need to apply for a NPDES permit by?**

The Environmental Court's order requires discharges designated by the VTANR to apply for coverage within 180 days of notice of the designation. VTANR will prepare a draft permit and issue it for public comment. VTANR will notify designated dischargers, as well as the general public, of this opportunity for public comment. Once the draft permit is finalized, VTANR will notify designated discharges of their obligation to apply for coverage.

### **12. When will VTANR issue a NPDES permit for me to apply for?**

Pursuant to order of the Environmental Court, the designated discharges must apply within 180 days of notice for coverage under a NPDES permit. VTANR will prepare and issue a permit prior to the expiration of the 180 day period. The designated discharges will then apply for coverage under that permit.

**13. What sort of action will the NPDES permit require me to do?**

VTANR is currently developing a NPDES permit for residually designated discharges. VTANR is anticipates issuing a draft permit for public comment in August, 2009. VTANR will notify designated dischargers, as well as the general public, of this opportunity for public comment. Once the draft permit is finalized, VTANR will notify designated discharges of their obligation to apply for coverage.

**14. I have an expired state stormwater permit with a stormwater treatment system. Will I be required to upgrade my system under the NPDES permit?**

VTANR has not yet written the federal NPDES permit, and has not yet determined what treatment may be required for any individual discharge. However, upgrading of existing stormwater systems is one approach that VTANR is considering in order to meet the TMDL stormwater flow targets.

**15. How will I know when there is a permit to apply for? Will I be contacted directly?**

VTANR will notify the affected property owners by letter when a final permit is issued with instructions for how to apply. VTANR will also issue notice of the draft permit and of a public comment period prior to issuance of the final permit.

**16. If I have less than 1 acre of impervious surface, am I still required to obtain NPDES permit coverage?**

Yes. If you are a designated discharge you will need to obtain NPDES permit coverage regardless of the size of your impervious surfaces, unless you already have NPDES permit coverage or unless you have a state stormwater permit with an associated offset project or with on-site controls so that the discharge has no net contribution to the receiving water.

**17. I own a designated property that is part of a common plan of development (i.e. subdivision). Can my homeowners association apply on my behalf?**

Yes. An owner's association, or similar legal entity, should apply for coverage in those instances where the permit will cover discharges from more than one parcel, or have several owners, as in the case of a condo or homeowner's association.