

Overview of Stormwater Impact Fees and Fee Calculations

Prepared by: Stormwater Program, VT Department of Environmental Conservation

Introduction

The Agency of Natural Resources was directed by Act 64/10 V.S.A. § 1264 to include stormwater impact fees in the Chapter 22 Stormwater Permitting Rule (adopted March 2019) and the General Permit 3-9050 for Operational Stormwater Discharges (adopted December 2020). Impact fees are monetary charges assessed to applicants for the discharge of regulated stormwater runoff in order to mitigate impacts that the discharger is unable to control through on-site treatment or completion of an offset on a site owned or controlled by the applicant. The purpose of stormwater impact fees is to ensure that projects that are not able to fully meet standards are able to indirectly mitigate the impact of their stormwater by providing funds to projects that voluntarily exceed standards. Without an impact fee system, projects that have site constraints would in some cases provide no treatment of their stormwater which could result in the regulatory threshold of three acres of impervious surface needing to be lowered in the future, or in additional measures being needed in stormwater-impaired waters, to ensure adequate pollutant reductions are achieved.

Structure and Process

Stormwater impact fees are additive. A project is subject to the fees applicable to the watershed in which the project is located. A project that is in the Lake Champlain watershed, and also in the watershed of a stormwater-impaired water, would be subject to impact fees associated with the Redevelopment Standard (applicable due to location in the Lake Champlain watershed) AND the Channel Protection Standard (applicable due to location in the stormwater-impaired watershed), unless both standards could be met via on-site treatment. Most three-acre sites are not in the watershed of a stormwater-impaired water and will be subject to only one impact fee for the Redevelopment Standard. The Stormwater Program website lists all stormwater-impaired waters in Vermont here:

<https://dec.vermont.gov/watershed/stormwater/impaired-waters>.

Stormwater impact fees are currently established as a **one-time fee** and are **not** required as a recurring fee due at the conclusion of each 5-year permit term when renewal of a permit is required. If impact fees are determined to be necessary, they must be paid by the applicant before the Department can issue an operational stormwater discharge permit for the project. Applicants or their consultants are advised to check in with the district contact in the Stormwater Program ahead of an application submittal where impact fees may need to be paid. This will enable the Program to provide feedback on the Engineering Feasibility Analysis and to ensure the Department's administrative staff are prepared to accept and process impact fees if they are confirmed as being necessary.

Applicability

Stormwater impact fees, and receipt of stormwater impact fees, currently apply only to projects located in the Lake Champlain, Lake Memphremagog, and stormwater-impaired watersheds. Impact fees do not apply for standards that may be waived entirely for a particular site per waiver criteria in the current Vermont Stormwater Management Manual such as the Channel Protection Standard. For sites where an applicable standard cannot be waived, the nature of the feasibility constraints in Subpart 4.1 of General Permit 3-9050 that prevent fully meeting standards are not a factor in assessing the applicability of paying impact fees. For example, wetlands or floodplains constraints, or activities not approvable under other regulations that prevent standards from being fully achieved do not preclude the need to pay impact fees.

An Engineering Feasibility Analysis submitted by the applicant and approved by the Department demonstrating that an applicable standard or standards cannot be feasibly met due to site constraints precluding construction of stormwater systems is required for eligibility of impact fee payment. Impact fees may not be paid in lieu of on-site stormwater treatment if such treatment is feasible per the maximization feasibility criteria in General Permit 3-9050. However an off-site stormwater offset project may be completed in lieu of paying impact fees if the offset satisfies Subsection 4.4 of General Permit 3-9050.

For sites discharging to a stormwater-impaired water for which a plan for meeting water quality standards (either a TMDL, watershed improvement permit, WQRP, or Flow Restoration Plan) has not been adopted, an existing offset project must be operational in that watershed for allowance of impact fee payments in lieu of on-site treatment or offsets. This applies only to several stormwater-impaired watersheds in Killington and Warren associated with ski resorts, and Moon Brook in Rutland.

Impact Fee Payment, Receipt, and Calculation by Standard

The terms “payment” and “receipt” are defined as “payment *by* the applicant *into* the Stormwater Fund,” and “receipt *to* the applicant *from* the Stormwater Fund.” Impact fees are paid into the Stormwater Fund account specific to the stormwater-impaired water or phosphorus-impaired Lake Champlain or Lake Memphremagog lake segment to which a site discharges. Funds are awarded to applicants who can exceed standards on an annual basis, based on availability of funds in the corresponding account. Funds for receipt of impact fees can be applied for and received by the applicant if there is a valid permit for a project eligible for receipt of impact fees and a designer’s statement of compliance has been submitted to certify the project has been completed in accordance with the permit. An increase in compliance with a standard over existing conditions by less than 10% is not eligible for receipt of impact fees. An example is utilization of an existing on-site stormwater treatment practice with no improvement, or less than 10% improvement in the level of treatment provided.

Impact fees are based on the amount of site impervious area that is unpermitted or that did not incorporate the requirements of the 2002 Stormwater Management Manual, and the level of treatment provided for the surface. Post-2002 permitted portions of a site shall not be considered in fee calculations nor credited toward compliance with standards.

1. For three-acre sites and renewals of certain expired permits in stormwater-impaired waters for which the Department has determined additional controls are necessary to implement the cleanup plan for the impaired water (ex. an expired permit for a site previously identified in an MS4’s Flow Restoration Plan), impact fees are as follows:
 - **Redevelopment Standard (applicable for all 3-acre sites and all projects subject to upgrades in stormwater-impaired waters, except for a narrow subset of projects in certain watersheds where a cleanup plan has not been adopted that are subject to the Water Quality Treatment and Groundwater Recharge Standards)**
 - If a project cannot fully comply with the Redevelopment Standard:
Pay \$25,000 per acre * the difference between the required volume for redevelopment (50%) and the average water quality volume achieved. A project that provides no treatment (0% of the water quality volume for the Redevelopment Standard achieved) pays \$25,000 * 50%, or **\$12,5000 per acre (maximum rate redevelopment impact fee)**. If a project provides treatment equivalent to 25% of the water quality volume for the Redevelopment Standard, the fee is \$25,000 * (50%-25%) = \$6,250 per acre of impervious surface for which treatment is not feasible.
 - If a project exceeds the Redevelopment Standard by 10% or more:
Receipt of \$25,000 per acre * the difference between the required volume for redevelopment (50%) and the average water quality volume achieved; to be eligible, 60% or more of the water quality volume must be treated. A project that provides 100% of the water quality volume is eligible for receipt of **\$12,500 per acre (the maximum rate)** [calculated as \$25,000 * (100%-50%)].
- A. Channel Protection Standard (applicable only for discharges to stormwater-impaired waters)**
 - If a project cannot meet 75% of the Channel Protection Standard:
Pay \$25,000 per acre of impervious not meeting standard.
 - If a project exceeds 75% of the Channel Protection Standard by 10% or more (min. 85% treated):

Receipt of \$25,000 per acre of impervious exceeding 75% of the Channel Protection Standard.

B. Water Quality Treatment and Groundwater Recharge Standards (applicable only for discharges to a limited subset of projects in stormwater-impaired waters lacking an adopted cleanup plan)

- If a project cannot meet 75% of the Water Quality Treatment Standard (WQTS):
Pay \$25,000 per acre impervious not meeting standard.
For projects requiring Groundwater Recharge, compliance with that standard shall be counted towards compliance with the Water Quality Treatment Standard (no separate fee for Recharge Standard).
- If a project exceeds 75% of the Water Quality Treatment Standard by 10% or more (min. 85% treated):
Receipt of \$25,000 per acre of impervious exceeding 75% of the Water Quality Treatment Standard.

2. For new development and expansions on sites that discharge to impaired waters without an approved cleanup or flow restoration plan (uncommon, currently only applicable to a few watersheds in Killington, Warren, and Rutland):

- Payment of \$10,000 per acre of impervious surface for which compliance with the treatment standard (infiltration of the one-year storm event volume from the proposed project) is not achieved. There is no feasibility analysis component for these projects. Certain discharges may not meet the requirement via impact fee payment and will need to complete an offset project.

Examples of Impact Fee Payment Calculations:

Redevelopment Standard calculation (WQv = Water Quality volume):

Given:

- 3.18 acres of impervious surface subject to the Redevelopment Standard
- 0.2445 acre-feet of WQv required (accounting for 50% WQv to meet the Redevelopment Standard)
- 0.2020 acre-feet treatment provided

Avg. WQv Achieved = $(0.2020/0.2445) = 0.8262$.

50% WQV required * Avg. WQv Acheived (0.8262) = 41.31% of WQv met for 3-acre compliance

% Required - % Met = $0.5 - 0.4131 = 0.0869$

Redevelopment Standard Impact Fee = $\$25,000 \times (3.18 \text{ impervious acres} \times 0.0869) = 0.2763$

$\$25,000 \times (0.2763) = \mathbf{\$6,907.50}$

Channel Protection Standard calculation (CPv = Channel Protection volume):

Given:

- 4.37 acres of impervious subject to the Channel Protection Standard
- 2.56 acres of impervious can be treated
- 0.8991 acre-feet of CPv required
- 0.5264 acre-feet of CPv provided

% CPv achieved = $0.5264/.8991 = 0.5854 \times 100 = 58.54\%$

Compliance with standard is achievable for less than 75% of the site, therefore impact fees apply

Channel Protection Standard Impact Fee = $\$25,000 \times 4.37 \text{ acres} \times (100\% - 58.54\% \text{ CPv achieved}) = \mathbf{\$18,779}$

