

**RESPONSE SUMMARY**  
**REISSUANCE AND AMENDMENT OF GENERAL PERMIT 3-9020 FOR STORMWATER RUNOFF**  
**FROM CONSTRUCTION SITES**

**DRAFT GENERAL PERMIT 3-9020 (2019)**

**FEBRUARY 19, 2020**

The Vermont Agency of Natural Resources, Department of Environmental Conservation (Department or DEC) proposes to reissue the construction general permit for stormwater runoff, General Permit 3-9020 (2019). The Department issued Draft General Permit 3-9020 (2019) on March 21, 2019. The public comment period on the draft general permit opened on March 26, 2019 and closed on May 3, 2019. The Department held a public hearing to solicit public comments on the draft general permit on Thursday, April 25, 2019, at 10:00 a.m. in the Montpelier Room in the National Life Complex Davis Building located at 1 National Life Drive, Montpelier, VT. The draft permit was placed on notice as “Construction General Permit 3-9020 (2019)” in order to distinguish from the prior current general permit. Upon its issuance, the final construction general permit is now identified as “Construction General Permit 3-9020.”

The Department received both verbal and written comments on the proposed General Permit 3-9020 (2019). The following is a summary of the public comments and the Department’s responses to those comments. Comments may have been paraphrased and combined where appropriate. Comments on the draft general permit were submitted by the Vermont Ski Areas Association (VSAA) through its consultant Vanasse Hangen Brustlin, Inc. (VHB). Comments were also submitted by Ski Magic, LLC (Ski Magic) which supported the VSAA comment submittal. The Vermont Agency of Transportation (VTrans) also submitted comments on the draft permit.

General Comments - General Permit 3-9020

1. Comment: Subpart 1.1.A.3.a. [In reference to total earth disturbance of less than one acre and Total Maximum Daily Loads (TMDLs).] Can this be clarified or explained to better understand when this would apply? Could you provide some examples? (VTrans)

Response: This subpart is included consistent with federal regulations and applies if a waste load allocation in a TMDL identifies the need to regulate construction projects with less than one acre of earth disturbance. This provision was previously included in General Permit 3-9020 (2006) as Amended February 2008, Subpart 1.4.2. There are currently no TMDLs applicable in Vermont that include a waste load allocation that identifies the need to regulate construction projects with less than one acre of earth disturbance.

2. Comment: Subpart 1.4.A.4 b. and c. [The discharge of stormwater associated with support activities.] How do conditions b. and c. apply and what is the intent? Can these be further clarified? Could you provide some examples? (VTrans)

Response: Consistent with the federal construction general permit, Subpart 1.4.A.4. authorizes discharge of stormwater from a construction project support activity when conditions a., b., and c. are satisfied. The intent is that activities that have independent utility from the authorized construction project, such as a commercial asphalt plant or a material storage area that serves multiple unrelated projects, should not be authorized as support for that site, but instead should be evaluated for coverage requirements and authorization as independent projects under 1.1. In response to the comment, the language in Subparts 1.1.A.4., 1.4.A.4. and 1.6 were further revised to more closely align the examples of support activities with the federal construction general permit by specifically referencing concrete or asphalt batch plants that may be directly related to an authorized project.

3. Comment: Subpart 1.4.A.6. [The discharge of stormwater where use of active stormwater treatments, including flocculants.] If flocculants are not included/not anticipated in the approved EPSC Plan, does that trigger the need for an amendment? What if it is on a low risk project? Prohibits their use on low risk projects. Would the moderate risk permit need to be amended if flocculants are being used? Or just get ANR permission to use them? (VTrans)

Response: Active stormwater treatments, including flocculants, vary widely in the type and nature of treatment. The Department determined that use and approval of such measures under the Low Risk Site Handbook for Erosion Prevention and Sediment Control (LRHB) would not be appropriate without the Department's consideration of the proposed use, given product variability and the limited applicability for use on most projects. However, the use of active stormwater treatments will be allowable without amendment to the authorization when a permittee has obtained written Department approval, or when proposed and previously authorized in a project specific EPSC Plan for Moderate Risk construction activities. Subpart 1.4.A.6. and Part 5 of the general permit, the LRHB, and the 2019 Vermont Standards & Specifications for Erosion Prevention & Sediment Control (VSS) have been updated to reflect this change. While the general permit does not specifically require an amendment to an existing permit authorization to obtain approval for use of flocculants, written approval is required. An applicant may seek the Department's written approval for use of an active treatment product in advance of construction and at the time of permit application or in accordance with Part 5 of the general permit following authorization.

4. Comment: Subpart 1.6.A.3. [Support activities requiring coverage and property ownership.] Does this clause alone mean that coverage is required, even if it is an area less than 1 acre and not directly adjacent? What about a district site owned by VTrans? Could this be further clarified? (VTrans)

Response: Subpart 1.6.A.3. of the draft permit provided one of the criteria (ownership) for determining whether a support activity is excepted from the requirement for permit coverage. Subpart 1.6.A. has been revised by the Department in response to public comment to clarify the exceptions. A support activity located on a site that is both owned and controlled by a party other than the project site owner or any of its affiliates, and independently involves earth disturbance of less than 1 acre, is not required to obtain coverage under the general permit. In addition, this Subpart has been amended so that a support

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activity that directly abuts the project site may now qualify for this exception, provided the site meets the above conditions related to ownership, control, and total earth disturbance.

Regarding the comment's reference to a district site owned by VTrans, such a site would continue to operate beyond the completion of the construction activity it supports and is therefore not eligible for coverage under the general permit as a support activity (see Subpart 1.4.A.4.c).

5. Subpart 1.6.B.3. [Support activities requiring coverage and how to obtain a permit.] Will there be an amendment process for low risk projects? Currently need to reapply for new permit. Will the landowner be a co-permittee to the entire project or just a portion? (VTrans)

Response: Part 5 of the general permit addresses project changes for both low and moderate risk projects and identifies the types of changes that require an amendment to an authorization and the changes that can be made without an amendment.

Subpart 1.6.B.3. establishes that an authorization may be amended to cover a support activity, including but not limited to support activity for a low risk project. A support activity may also obtain permit coverage at the time of initial permitting of the construction activity or under an independent authorization as set forth in Subpart 1.6.B.1. and 1.6.B.2. respectively. The landowner may be a co-permittee on the authorization for the construction activity or may obtain an independent authorization.

6. Comment: Subpart 2.1.B.4 and Appendix A, Part IV, Subpart 1.4 indicate that Low Risk project applications require a "site plan drawn to scale..." however Fact Sheet Part VI, Subpart 3 indicates that, "Low Risk site plans will be comprised of a map or aerial image..." VHB recommends that the requirements of Low Risk site plans be clarified in the general permit as "site plan" and "map or aerial image" have significantly different meanings. VHB suggests the requirements include language such as, "A map or plan drawn to scale depicting property boundaries, proposed limits of disturbance, waters of the State, and vegetated buffers used in determining the risk score of the construction activity in accordance with Appendix A." (VSAA-Ski Magic)

Response: In response to the comment, the Department has clarified the type of map or plan required as part of a low risk application. Subpart 2.1.B.4. and Appendix A, Part IV, Subpart 1.4 of the general permit were modified to reference "...a map or plan drawn to scale..." rather than "...a site plan drawn to scale..."

7. Comment: Subpart 2.1.B.5. [Permit Application.] Will VTrans still process fees as we presently do? Suggest "payment" instead of "check". (VTrans)

Response: The new general permit does not intend to modify the manner in which VTrans provides payment of administrative processing or application review fees. In response to the comment, the Department has modified the general permit to require payment generally rather than referencing a check.

8. Comment: Subpart 2.2.A. [Submitting Notice of Intent and Fee.] When will an electronic system be ready for online submittals? It would be great to have this active prior to VTrans relocating their office

out of the National Life building in Montpelier, in consideration that VTrans currently is able to hand deliver applications with large files.

Response: Following the close of the public comment period, the Department has developed the ability to accept electronic construction stormwater discharge permit applications through the ANR Online portal. Instructions for application submittal through ANR Online have been added to the Department's Stormwater Program website.

9. Comment: Subpart 2.2.E. ["A completed NOI and all necessary attachments shall be filed prior to commencement of construction activity."] This statement is a little confusing, given the statement that follows, "Construction activity shall not commence until an authorization to discharge is issued pursuant to this permit or an individual construction stormwater permit is issued." Should this first statement be struck from the general permit? (VTrans)

Response: In response to the comment, the Department has removed that statement from Subpart 2.2.E.

10. Comment: Subpart 2.5.B. [Temporary or Final stabilization within 14 days]  
See VTrans comment regarding Appendix A and deleted criterion for 7 days stabilization. (VTrans)

Response: See the Department's response to Comment #24.

11. Comment: Subparts 2.5.B, 3.5.B – VHB offers comments regarding the removal of the ability to provide mitigation in the form of voluntarily electing the 7-day limit on disturbance as described in Appendix A comments below.

Response: See the Department's response to Comment #24. (VSAA-Ski Magic)

12. Comment: Subpart 3.5.A. [Limitations on concurrent earth disturbance. For moderate risk construction activities, earth disturbance at any one time is limited to five acres...] For long, linear projects, with distributed areas and potentially different discharge points or receiving waters, greater than 5 acres concurrent earth disturbance may not represent a high risk for erosion. Consider retaining the allowance for greater than 5 acres concurrent earth disturbance under a moderate risk authorization that exists under the current general permit. (VTrans)

Response: The Department considers the concurrent earth disturbance limitation of 5 acres to be appropriate for projects covered under the general permit. Projects that require a greater amount of concurrent earth disturbance may apply for individual permit coverage. No changes were made to the general permit in response to the comment.

13. Comment: Subpart 4.2.B. [The EPSC Plan shall include the On-Site Plan Coordinator (OSPC) site inspection schedule.] If the OSPC inspection frequency is already stated in the general permit in Subparts 6.2 & 6.3, does it need to be repeated in the EPSC plan? (VTrans)

Response: The Department considers the requirement to include OSPC inspection schedule within the EPSC Plan an important component that ensures compliance with the terms and conditions of the

general permit, since the EPSC Plan is a document that is required to be maintained on the construction site. No changes were made to the general permit in response to the comment.

14. Comment: Subpart 5, Paragraph 1. [Project changes for low-risk and moderate risk projects.] What if flocculants are proposed as a change? If an amendment is required, is there a means for expediting it given the immediacy of the need for use. (VTrans)

Response: See the Department's response to Comment #3.

15. Comment: Part 5. VHB welcomes clarification on changes to permitted projects that would require a permit amendment; however, we suggest the following modifications.

Item 1 in Part 5 states that project changes which result in increases to the total or concurrent earth disturbance will require reauthorization. VHB recommends that an increase in total disturbance be allowed and that an increase in concurrent disturbance be allowed provided that it does not alter the risk score in accordance with Appendix A. Item 2 in Part 5 provides the ability to shift the limits of disturbance up to 200 feet without a permit amendment which is a welcome addition, however it is unrealistic that a shift of almost any magnitude would not result in an increase of total disturbance.

VHB understands that the primary concern with allowing an increase in total or concurrent disturbance without reauthorization is the satisfaction of public noticing requirements. Put simply, the disturbance values are "just a number" and VHB questions how many public comments are received based on those values. Additionally, the total disturbance value has little bearing on the risk the project poses to resources. This is evidenced by the fact that there is only a single question in Appendix A (Part I, Question 1) regarding total disturbance, and even that question is only for the purposes of screening projects from automatically qualifying for Low Risk.

VHB therefore recommends that projects be allowed an increase in total and/or concurrent disturbance based on a percentage of the originally permitted disturbance, e.g. 10-percent. VHB's suggested language for Item 1 in Part 5 is, "Increases the total or concurrent earth disturbance by more than 10-percent of the originally permitted disturbance area or increases the total or concurrent disturbance area which results in an increase or change in the Appendix A risk score such that the level of permit required is increased." (-VSAA-Ski Magic)

Response: The comment is two-fold and therefore the Department has considered the public comment in two parts; (1) regarding the need for an amendment when there is a proposed increase in *total* project earth disturbance and (2) regarding the need for an amendment when there is a proposed increase in the amount of *concurrent* earth disturbance on a project.

- (1) An increase in *total* project earth disturbance may affect the risk factors that were considered at the time of application, including whether the project in total will disturb more than two acres, and including soil erodibility across the project area, both in terms of slope and the soil's erodibility rating. The provision for allowance of up to a 200-foot shifting of the limits of disturbance was intended to accommodate minor project configuration or alignment changes and not an overall increase in the total. However, since total project related earth disturbance alone is unlikely to affect the overall risk score of most projects, the Department is receptive to an allowance of up to a 10-

percent increase from the permitted total earth disturbance without the need for an amendment, when the change does not increase the risk category of the project, in consideration of all other risk factors or risk mitigation factors. This reevaluation of project risk, in consideration of up to a 10-percent increase will require documentation by the permittee prior to implementation of the change. The Department has revised Part 5 in response to the comment.

- (2) An increase in *concurrent* earth disturbance on a project may also affect the risk factors that were considered at the time of application. In addition, an authorization issued by the Department would be inclusive of conditions that specifically limit the amount of allowable concurrent earth disturbance. The Department considers the amount of concurrent earth disturbance to be a significant factor in a project's overall risk to water quality. As an area of concurrent disturbance increases, the amount of resources required to manage a site also increases, particularly in advance of or in response to a precipitation event. Therefore, no changes were made to the general permit in response to the comment.

16. Comment: Subpart 6.1.H.11. [A certification that the construction activities are in compliance with the EPSC Plan and this permit ... ] Saying "EPSC Plan" here is confusing, as low risk projects don't have a site specific EPSC Plan. Use Low Risk Site Handbook instead? (VTrans)

Response: See the Department's response to Comment #17. The Department has also made several corrections in the general permit so as to not reference EPSC Plan for low risk construction activities but rely on BMPs and the Low Risk Handbook for Erosion Prevention and Sediment Control.

17. Comment: Part 6, Subpart 6.1.H – VHB believes that the proposed inclusion of inspection reporting/documentation for low risk permits is onerous and unnecessary. These projects are recognized as posing less risk to the environment and the proposed inclusion of reporting requirements further reduces the few differences in the requirements for low and moderate risk projects. (VSAA-Ski Magic)

Response: In consideration of the comment, the Department has removed inspection reporting and documentation requirements for Low Risk construction activities from the general permit. Although a permittee operating under a 'low risk' authorization is still required to inspect and maintain their site and EPSC practices in accordance with the LRHB, they will not be required to complete and maintain inspection reports. The permittee however is still obligated to notify the Department of discharges under certain conditions and maintain records related to any reports of releases or reportable quantities of oils or hazardous substances and Notices of Addition or Removal of Co-Permittees, and any other project changes subject to documentation.

18. Comment: Part 9. It is indicated that projects which discharge to receiving waters with approved TMDLs must meet the requirements of those TMDLs in order to be eligible for coverage under the general permit, now including "nutrients" as a pollutant of concern. As a general comment, this will make construction stormwater permitting in Vermont more difficult, costlier, more time consuming and more unpredictable, for little if any gain in environmental protection. Additional guidance on this topic should be provided in the Permit. (VTrans)
- a. Are there requirements within existing TMDLs which have additional or differing requirements from the proposed general permit requirements?

- b. Does the Stormwater Program anticipate publishing a list of TMDLs which have requirements differing from the general permit requirements?
- c. Are the TMDL requirements applied on a receiving water basis or on a watershed basis? For instance, if a project discharges to a non-impaired tributary to Lake Champlain, does the project need to meet any additional requirements of the Lake Champlain TMDL?
- d. What TMDL takes precedent when the project is located within a watershed containing multiple TMDLs?

Response: There are no current TMDLs that have specific requirements applicable to construction discharges. Rather, existing construction discharge allocations are contained within general waste load allocations for developed lands. Consequently, for applicable sites, compliance with this general permit is consistent with applicable TMDLs. Notwithstanding the above, the Department may require additional measures as necessary to comply with applicable TMDLs or may require coverage under an individual permit. Additionally, where an applicable TMDL precludes construction discharges, coverage under the general permit is not allowed.

Any stormwater permits issued for a given project must be consistent with all applicable TMDLs; which TMDL has precedence is not relevant. Compliance with applicable TMDLs is determined on a watershed basis.

#### General Permit 3-9020 - Appendix A Comments

19. Comment: VHB has provided comments regarding the specific changes to the Appendix A questions below but is our opinion that the cumulative effect of these changes will be that projects will consistently have a higher risk score when compared to the current Appendix A. VHB understands that the Stormwater Program expects fewer projects to qualify as Low Risk as a result of the proposed changes. It is VHB's opinion that a potentially significant number of projects that currently qualify as Moderate Risk would now require an individual permit. VHB has conducted a comparison of the current and proposed Appendix A using a hypothetical project (attached) and it is possible to add four points to the existing risk score, meaning that it is possible that a project that currently qualifies as Low Risk would now require an individual permit. While this is an extreme example, it is not unrealistic that the majority of current Moderate Risk projects would have a point or two added to their risk scores, resulting in the majority of them now requiring individual permits.

In particular, the cumulative effect of including a 100-foot distance to receiving waters, the removal of the exemption for stormwater treatment infrastructure, and the removal of the ability to voluntarily mitigate a point by electing a 7-day disturbance limit will have significant impact. VHB recommends that the Stormwater Program evaluate this potential impact prior to implementation, otherwise the proposed changes in the 2019 Permit would, based on our analysis, result in a significantly greater number of projects being required to obtain individual permits, which will make construction stormwater permitting in Vermont more difficult, costlier, more time consuming and more unpredictable, for little if any gain in environmental protection.

Another option that VHB recommends considering is the modification of the Appendix A risk score threshold so that projects with a risk score of 1 through 4 will be permitted under GP 3-9020 as Moderate Risk. With the revisions to the proposed 3-9020 general permit, there are sufficient conditions

and protections in place to appropriately address complex site constraints that were previously not addressed in the earlier (2006/2008) 3-9020 general permit. Revising the risk scoring threshold will allow additional sites to be consistently and effectively permitted. (VSAA-Ski Magic)

Response: The Department expected that changes to the Appendix A – Risk Evaluation would likely result in a reduced number of projects qualifying as Low Risk construction activities, and that more projects that were previously characterized as Moderate Risk construction activity may require an individual permit under the revised risk criteria. In response to comment, the Department has reviewed the overall scoring breakdown in Appendix A – Part III and concurs that some of the risk evaluation criteria in the draft permit may have resulted in projects unnecessarily being required to obtain individual permits where site conditions are readily managed via coverage under the general permit. Please see responses to Comments 21, 22 and 24 for more detail regarding changes to the risk scoring criteria.

20. Comment: General: The seasonal nature of construction activities generates undulating permit application demands on the Department. At the same time, timely authorization to proceed with work is required to avoid project disruption and economic loss. Therefore, we recommend that the proposed 3-9020 Construction General Permit allow projects that comply with all low-risk criteria to proceed after a defined time period. Accordingly, the proposed 3-9020 permit should contain a provision where activities that comply with the Low Risk requirements of the General Permit can occur if no action or request for further information is made by the Secretary within 14-days of the Secretary’s receipt of a complete low-risk notice-of-intent. This provision would allow the Department to effectively protect environmental harm by prioritizing review of projects based on environmental risk and removing administrative burdens from staff during periods of high workloads. Concerns regarding accountability, compliance and enforcement could easily be handled through a targeted/randomized field auditing effort by DEC (VSAA-Ski Magic)

Response: During the past year, 95 percent of Low Risk applications met the Department’s Permit Expediting Program (PEP) standard of 30 days, which includes time for administrative and technical review, as well as public comment. The proposed approach would be inconsistent with 10 V.S.A. Chapter 170.

21. Comment: Appendix A, Part I, Criterion 3 and Part II, Criterion A– VHB recommends that this question be revised to remove the 100-foot distance to any receiving water and instead include a distance commensurate with the buffers/setbacks dictated by other regulatory requirements, e.g. 50 feet for Class II wetlands or equivalent to the appropriate riparian buffer for streams. In our experience, the use of a blanket 100-foot distance would effectively add a risk score point to the majority of projects. Additionally, this distance may be difficult to evaluate in certain situations such as whether or not there is a receiving water within 100 feet on a neighboring property. This change will also increase project costs by increasing the required extents of natural resource Study Areas, which may be difficult or impossible if required to include neighboring properties. (VSAA-Ski Magic)

Response: The Department concurs that the proposed 100-foot distance could have a disproportionate effect on the risk scoring of projects and has revised the setback to 50 feet in the final general permit. While this is a significant change from the 100-foot distance set forth in the draft general permit, and a return to the 50-foot distance established by the previous 2006 Construction General Permit (CGP) as

Amended 2008, the Department maintained the removal of the risk-factor exemption for disturbance associated with road stream crossings and now has also removed the exemption for disturbance associated with stormwater infrastructure construction. Construction associated with road stream crossings and stormwater infrastructure within 50 feet of waters increases risk to water quality. Including this type of construction activity within the CGP Appendix A – Risk Evaluation will be more protective than the previous 2006 CGP (Amended 2008), despite reverting back to a 50-foot distance.

22. Comment: Appendix A, Part II, Criteria C and H – VHB objects to the inclusion of a requirement to evaluate slope risks based on both the existing slopes and proposed slopes on the basis that it is onerous and unnecessary. In all cases the average slope of a site remains effectively unchanged. Additionally, once a portion of a site has been brought to final grade it should be at least temporarily stabilized, effectively mitigating the risk of steeper slopes which have been constructed. This would also appear to begin dictating the means and methods of project construction. For example, what if the contractor determines that it would be beneficial to construct a temporary steep slope in order to facilitate construction, does this need to be evaluated as well? VHB recommends that the analysis pertaining to these questions be limited to the existing site slopes as required by the current Appendix A. (VSAA-Ski Magic)

Response: In consideration of the comment the Department concurs that the additional site engineering involved in evaluating existing and proposed slopes is unwarranted given that a site's average slope remains unchanged. The final permit has been modified accordingly.

23. Comment: Appendix A, Part II, Criteria H and I – What is the purpose of the word “remain” in these questions? This language gives the impression that projects can mitigate this risk by limiting concurrent disturbance to two acres in these areas, however the guidance for these questions indicates that the evaluations should be done based on the total project disturbance. VHB recommends that this be clarified by using language similar to Questions C and D. (VSAA-Ski Magic)

Response: The Department agrees that the term “remain” as used in these criteria may be misleading and therefore the language has been revised to ensure that these criteria are considered in the context of total project disturbance.

24. Comment: Appendix A, Part II, Removal of Current Criterion J – Limiting the duration of exposed earth disturbance is an erosion and sedimentation risk mitigating factor. Under the current General Permit 3-9020, applicants are incentivized to reduce environmental risk by sequencing their activities so that the duration of exposed earth disturbance is less than 7-days. The new Appendix A removes this risk mitigation incentive, which is one of only two voluntary mitigation points currently available to projects. Consistent with the currently effective General Permit 3-9020, we recommend that Criterion J be included in the revised Appendix A and allow projects to voluntarily limit disturbed earth exposure in any one location to 7-consecutive days before temporary or final stabilization is implemented. (VSAA-Ski Magic)

Response: Based on the Department's site inspection experience, there is too high a probability that regulated projects will not comply with the 7-day stabilization requirement. No changes were made to the general permit in response to the comment.

25. Comment: Appendix A, Part I, Criterion 3. [Will the proposed project have earth disturbance within 100 ft. (horizontal) upslope of any lake, pond, wetland, river, or stream?] Need clarification on inclusion of wetlands here. State wetland defined or Army Corps? How to know if wetlands are present? What if on adjacent property? Would we need to complete a delineation on private property? Permission could be challenging. (VTrans)

Response: In consideration of public comments, the Department has modified the Appendix A, including Part I, Criterion 3 and Part II, Criterion A. The distance to any lake, pond, wetland, river, or stream has been revised to 50 feet. Please see the Department's response to Comment #21 regarding this change. In addition, to clarify how wetlands are defined in this risk evaluation, Appendix C – Definitions, now includes "wetlands" which references the definition established by Vermont statute and the Vermont Wetland Rules.

26. Comment: Appendix A, Part II, Criterion A. [Will the proposed project have earth disturbance within 100 ft. (horizontal) upslope of any lake, pond, wetland, river, or stream?] Class II is 50-foot buffer. What about wetlands outside of our ROW/ construction limits? See comments above. (VTrans)

Response: See the Department's response to Comment #25.

27. Comment: Appendix A, Part II, Criteria. [Present General Permit 3-9020 – Appendix A - Risk Evaluation states: Will the project have a maximum of 7 consecutive days of disturbed earth exposure in any location before temporary or final stabilization is implemented?] Stabilization within 7 days is a good mitigating factor and the criterion should remain. (VTrans)

Response: See the Department's response to Comment #24.

28. Comment: Appendix A, Part II, Criterion F. [Will stormwater from the construction site pass through at least 50-ft. of established vegetated buffer before entering a receiving water or conveyance to a receiving water?] Might be rare to have a 50-foot buffer before a conveyance. Based on the conveyance definition, utilizing this criterion will become very limited. Definition includes, swales, ditches, natural channels, etc.; all of which may be vegetated. (VTrans)

Response: The Department made this change to ensure projects claiming this mitigation factor have at least a 50-foot established vegetated buffer before reaching a conveyance, as opposed to a conveyance through a buffer, which even if vegetated would not be as effective for managing sediment laden stormwater discharges from a construction site. No further changes were made to the general permit in response to the comment.

29. Comment: Appendix A, Part III, Interpreting the Detailed Risk Evaluation [Overall Score - 1 or 2, Risk Category - Moderate Risk] Consider adjusting the scoring such that many more projects won't require individual permits. Maybe the score should be 1 to 3 for Moderate Risk.

Response: See the Department's response to Comment #19.

30. Comment: Appendix A, Part 111, Risk Score, Individual Permit. [Overall Score - 3 or higher, Risk Category - Requires Individual Permit] Could this be "Greater than 3"?

Response: See the Department's response to Comment #19.

General Permit 3-9020 Appendix B Comments

31. Comment: Appendix B, 5. Stabilization Plan, i. [Dewatering plan details, if dewatering is anticipated;] This doesn't seem appropriate for the stabilization plan. Dewatering should already be finished at that point.

Response: The comment references the minimum EPSC Plan Requirements set forth in Appendix B. Specifically, in the draft permit, Appendix B.5. - Stabilization Plan, included a requirement for a dewatering plan. The Department agrees with the comment that a dewatering plan is more appropriately aligned with Appendix B.4 – Construction Plan requirements. Since the draft permit had also listed dewatering under Construction Plan requirements, the Department deleted the additional reference under Stabilization Plan in response to the comment and has updated Part 3 of the 2019 Vermont Standards and Specifications for Erosion Prevention and Sediment Control for consistency.

General Permit 3-9020 Appendix C Comments

32. Comment: Appendix C - Definitions. Include a definition for "Wetlands"? Maybe reference the Vermont State Wetlands Rule and its definition. (VTrans)

Response: See the Department's response to Comment #25.

Department Initiated Changes to Final 2019 Construction General Permit 3-9020

33. Comment: The Department identified that the draft Part 9: (303)(D) Listed Waters, TMDLs; inadvertently included the following language carried over from the previous General Permit 3-9020:

*The risk scoring system considers extra protection for these waters by accounting for construction activities discharging to sediment, stormwater, or nutrient impaired waters.*

Response: The draft had incorporated changes to the Appendix A – Risk Evaluation that conflict with this statement by *removing* the criteria that considered receiving waterbody impairment in the project's overall risk. The Department considers the integrated risk-based approach to site controls, including limiting concurrent earth disturbance and accounting for soil erodibility, slope, the presence of buffers, and proximity to water resources, to be sufficiently protective of all waters, regardless of impairment. The Department did not receive public comment on these changes to Appendix A, and as such this statement has been removed in the final language of Part 9: (303)(D) Listed Waters, TMDLs.

34. Comment: The Department identified and made the following additions and changes to the general permit necessary for compliance with the recently adopted Stormwater Permitting Rule (Environmental Protection Rules, Chapter 22) (the "Rule"):

Response:

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- a. Additions to the Contents of Notice of Intent (Subparts 2.1.B.1 and 3.1.B.1) and changes to Appendix A, Part IV – Filing Directions and Appendix B.1 – Erosion Prevention and Sediment Control Plan Requirements, to align with these additions:
  - d. Description of proposed treatment or control of stormwater and any applicable municipal requirements for erosion prevention and sediment control during project construction activity;
  - e. Description of proposed treatment or control of stormwater and any applicable municipal requirements for erosion prevention and sediment control after construction completion;
  - f. Estimated runoff coefficient of the site after construction completion;
  - g. The increase in impervious surface area as a result of the project;
  - h. The nature of any fill material that will be utilized for construction.
  - i. A brief description of the type and nature of soil that will be disturbed on site or the quality of any existing stormwater discharges from the site, if known.
- b. Additions to the location map requirements (Subparts 2.1.B.3 and 3.1.B.3):
  3. Location map, in the form of a topographic map, or aerial image if a topographic map is unavailable, extending one mile beyond the property boundaries of the activity, providing:
    - a. sufficient information to determine the location of the project and the receiving water; and
    - b. as applicable for an existing facility, the location of:
      - i. The facility and each of its intake and discharge structures;
      - ii. Hazardous waste, treatment, storage, or disposal facilities;
      - iii. Wells where fluids from the facility are injected underground; and
      - iv. Wells, springs, other surface waters, and drinking water wells listed in public records or otherwise known to the applicant in the map area.
  - c. Addition of a certification regarding any activity that will discharge to groundwater (New Subparts 2.1.B.4 and 3.1.B.4):
    4. For applications for a project or activity that will discharge to groundwater, a certification from the applicant that:
      - a. If located within zone one or two of a public water source protection area, the activity is consistent with the purpose of the identified source protection area and of the approved source protection plan;
      - b. If located within a groundwater protection overlay district established by a municipality pursuant to 24 V.S.A. § 4414(2), the activity is not inconsistent with the requirements of that overlay district.
  - d. Addition to the types of records that shall be maintained on-site with the authorized EPSC Plan as specified under Subpart 4.4 and the addition of a record retention requirement (New Subpart 4.4.B):
    7. Any amendments or revisions to the EPSC Plan required by this permit; and
    8. Documentation and reports prepared pursuant to Subparts 5.2, 5.3, 5.4, and 5.5.

B. The permittee shall retain all records in accordance with Condition 9 of Appendix D.

- e. Addition of requirements for permittee to give notice to Secretary of planned changes (New Subpart 5.3):
  - A. The permittee shall give notice to the Secretary as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required when:
    - 1. The alteration or addition may meet one of the criteria for determining whether a facility is a new source; or
    - 2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants specifically included in the permit and pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements.
  
- f. Addition of requirements for permittee to give advance notice to Secretary of any planned changes that may result in permit noncompliance (New Subpart 5.4.A):
  - A. The permittee shall give advance notice to the Secretary of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
  
- g. Addition of requirements for permittee to report other instances of noncompliance, including a 24-hour notification requirements for noncompliance which may endanger health or the environment (New Subparts 5.5.A and 5.5.B):
  - A. Twenty-four hour reporting:

The permittee shall report to the Secretary any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A report shall also be provided within five days of the time the permittee becomes aware of the circumstances. The report shall contain:

    - a. A description of the noncompliance and its cause;
    - b. The period of noncompliance, including exact dates and times;
    - c. If the noncompliance has not been corrected, the anticipated time it is expected to continue;
    - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance; and
    - e. Any additional information required to be reported under Stormwater Permitting Rule § 1201(b)(13)(C)(ii) (Environmental Protection Rules, Ch. 22), unless waived by the Secretary, and provided the oral report has been received within 24 hours.
  
  - B. The permittee shall report all instances of noncompliance, not otherwise required to be reported under this permit, at the time monitoring reports are submitted, or if monitoring is not required, at least annually. The report shall contain:
    - a. A description of the noncompliance and its cause;
    - b. The period of noncompliance, including exact dates and times;
    - c. If the noncompliance has not been corrected, the anticipated time it is expected to continue; and
    - d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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- h. Addition of requirements for permittee to notify the Secretary of any failure to submit information or for past submittal of incorrect information (New Subpart 5.6):

If a permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Secretary, it shall promptly submit such facts or information.

- i. Addition to the types of records that shall be maintained on-site with a copy of the Low Risk Site Handbook for Erosion Prevention and Sediment Control as specified under Subpart 6.1.K and the addition of a record retention requirement (New Subpart 6.1.L):

- 4. Documentation and reports prepared pursuant to Subparts 5.2, 5.3, 5.4, and 5.5.

- L. The permittee shall retain all records in accordance with Condition 9 of Appendix D.

- j. Addition to allow for the automatic transfer of an authorization to discharge under the general permit under certain conditions (New Subpart 7.2.C):

- C. An authorization to discharge issued pursuant to this general permit may be automatically transferred to a new permittee if:

- 1. The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date;

- 2. The notice includes a written agreement between the current permittee and proposed permittee containing:

- a. The name and address of the current permittee;

- b. The name and address of the proposed permittee;

- c. A specific date for transfer of permit responsibility, coverage, and liability between them; and

- d. A statement, signed by the proposed permittee, stating that the proposed permittee has read and is familiar with the terms of the permit and agrees to comply with all terms and conditions; and

- 3. The Secretary does not notify the current permittee and the proposed new permittee of the Secretary's intent to amend or revoke and reissue the permit.

- k. Modification to language pertaining to permittee's obligation to comply with all terms and conditions of the general permit and their authorization, and implications related to violations and grounds for enforcement, or other permitting action (Subpart 12.B):

- C. A permittee shall comply with all terms and conditions of this permit and the permittee's authorization. Any permit or authorization noncompliance constitutes a violation of 10 V.S.A.

Chapter 47, the Stormwater Permitting Rule (Environmental Protection Rules, Ch. 22), and the federal Clean Water Act, and is grounds for enforcement action; for termination, revocation and reissuance, or amendment of an authorization; or denial of an authorization renewal application.

1. Additions and Modifications to Appendix D – Additional Permit Conditions:

i. Additions to Condition 1.A (Requiring an Individual Permit) that allow the Secretary to require an applicant to apply for an individual NPDES construction stormwater permit when circumstances have changed from the time the application was made under the general permit and when necessary to implement an applicable TMDL or WQRP (Appendix D, New Subparts 1.A.5 and 1.A.7):

5. Circumstances have changed since the time of the request to be covered so that the applicant or permittee's facility or activity is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

7. When necessary to implement an applicable TMDL or WQRP.

ii. Modification to Part 4 (Amendment, Revocation and Reissuance, and Termination of an Authorization to Discharge):

An authorization to discharge may be amended, revoked and reissued, or terminated for cause as set forth in Stormwater Permitting Rule § 22-310 (Environmental Protection Rules, Ch. 22). The filing of a request by the permittee for an amendment, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

iii. Modification to Condition 7 (Right of Entry):

A permittee shall allow the Secretary and their authorized representatives, at reasonable times, and upon presentation of credentials, to:

- A. Enter upon and inspect the property on which the construction activities are occurring or the premises where records must be kept under the conditions of this permit;
- B. Have access to and copy, at reasonable times, any records required to be kept pursuant to the permit;
- C. Inspect at reasonable times any facilities; equipment, including monitoring and control equipment; practices; or operations regulated or required under this permit; and
- D. Sample or monitor at reasonable times any construction-related discharges.

iv. Modification to Condition 9 (Retention of Records):

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least five years from the date of the sample, measurement, report, or application, in accordance with Stormwater Permitting Rule § 1201(c) (Environmental Protection Rules, Ch. 22). This period may be extended by request of the Secretary at any time.

v. Addition of new Condition 14 (Proper Operation and Maintenance):

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control, and related appurtenances, which are installed or used by the permittee to achieve compliance with the conditions of this permit, in accordance with Stormwater Permitting Rule § 1201(b)(8) (Environmental Protection Rules, Ch. 22).

35. Comment: The Department identified that the definition of “Stormwater Runoff” had to be revised as follows for consistency with the recently adopted Stormwater Permitting Rule (Environmental Protection Rules, Chapter 22) (the “Rule”):

Response: The “Stormwater Runoff” definition is revised as follows:

“Stormwater” or “Stormwater Runoff” means precipitation and snowmelt that does not infiltrate into the soil, including material dissolved or suspended in it, but does not include discharges from undisturbed natural terrain or wastes from combined sewer overflows.

Comments on the LRHB

36. Comment: The LSHB states that dust control measures cannot include chemicals without approval, which conflicts with the 2019 Vermont Standards and Specifications for Erosion Prevention and Sediment Control (Standards and specifications) on dust control. VHB recommends that these two documents provide consistent requirements for dust control measures. (VSAA-Ski Magic)

Response: The language in the 2019 LRHB was slightly different than the language in the 2019 Standards and Specifications, however each document prohibited the application of chemicals for dust control without written approval from the VT DEC. In response to the comment, the Department slightly modified the language in each document for consistency, and to specifically reference the use of chloride.