

**ENVIRONMENTAL PROTECTION RULE**

**CHAPTER 22**

**STORMWATER PERMITTING RULE**

**State of Vermont**

**Agency of Natural Resources**

**Department of Environmental Conservation**

**Adopted **Date**; Effective **Date****

TABLE OF CONTENTS

Subchapter 1. GENERAL PROGRAM PROVISIONS

§ 22-101. PURPOSE.....5

§ 22-102. AUTHORITY.....6

§ 22-103. POLICY.....6

§ 22-104. EFFECT.....7

§ 22-105. GENERAL EXEMPTIONS.....7

§ 22-106. GENERAL PROHIBITIONS.....9

§ 22-107. APPLICABILITY; PERMIT REQUIRED; DESIGNATION.....10

§ 22-108. PHASED DEVELOPMENT AND CIRCUMVENTION.....12

§ 22-109. MUNICIPALITIES AND STORMWATER UTILITIES THAT HAVE ASSUMED FULL LEGAL RESPONSIBILITY FOR SPECIFIC IMPERVIOUS SURFACE.....13

2

§ 22-110. EFFECT OF A PERMIT .....13

§ 22-111. BASIN PLANNING AND THE MANAGEMENT OF STORMWATER RUNOFF.....13

Subchapter 2. DEFINITIONS

§ 22-201. DEFINITIONS.....16

Subchapter 3. GENERAL PROVISIONS REGARDING GENERAL AND INDIVIDUAL PERMITS AND AUTHORIZATIONS

§ 22-301. TYPES OF PERMITS AND AUTHORIZATIONS.....27

§ 22-302. PERMIT APPLICATION REQUIREMENTS.....28

§ 22-303. REQUIRING APPLICANT OR PERMITTEE TO APPLY FOR COVERAGE UNDER INDIVIDUAL OR GENERAL PERMIT.....32

§ 22-304. PROVISIONS SPECIFIC TO GENERAL PERMITS.....34

§ 22-305. FACT SHEETS.....	35
§ 22-306. PUBLIC NOTICE AND OPPORTUNITY TO PROVIDE COMMENT.....	37
§ 22-307. CHANGES MADE TO AN APPLICATION AFTER THE PUBLIC COMMENT PERIOD AND PRIOR TO ISSUANCE OF AUTHORIZATION.....	38
§ 22-308. ISSUANCE OR DENIAL OF AUTHORIZATION, AND RESPONSE TO COMMENTS.....	38
§ 22-309. ADMINISTRATIVE RECORD AND CONFIDENTIAL INFORMATION.....	39
§ 22-310. AMENDMENT, REVOCATION AND REISSUANCE, AND TERMINATION OF PERMITS.....	40
§ 22-311. PETITIONS RELATED TO PERMIT COVERAGE.....	46
Subchapter 4. ESTABLISHING PERMIT LIMITATIONS AND STANDARDS	
§ 22-401. ESTABLISHING PERMIT LIMITATIONS AND STANDARDS..	47
§ 22-402. ANTIBACKSLIDING.....	47
Subchapter 5. CONSTRUCTION STORMWATER PERMITS	
§ 22-501. CONSTRUCTION STORMWATER PERMITS.....	49
Subchapter 6. DESIGNATED MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS	
§ 22-601. DESIGNATED MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS.....	51
Subchapter 7. INDUSTRIAL STORMWATER PERMITS	
§ 22-701. INDUSTRIAL STORMWATER PERMITS.....	61
Subchapter 8. CONCENTRATED ANIMAL FEEDING OPERATION STORMWATER PERMITS	
§ 22-801. CONCENTRATED ANIMAL FEEDING OPERATION STORMWATER PERMITS.....	65

Subchapter 9. OPERATIONAL STORMWATER PERMITS	
§ 22-901. OPERATIONAL STORMWATER PERMITS.....	72
Subchapter 10. ENGINEERING FEASIBILITY ANALYSIS, STORMWATER IMPACT FEES, AND OFFSETS	
§ 22-1001. ENGINEERING FEASIBILITY ANALYSIS.....	85
§ 22-1002. STORMWATER IMPACT FEES.....	88
§ 22-1003. OFFSETS.....	95
Subchapter 11. MUNICIPAL ROADS STORMWATER PERMITS	
§ 22-1101. MUNICIPAL ROADS STORMWATER PERMITS.....	98
Subchapter 12. GENERAL PERMIT CONDITIONS AND PROVISIONS APPLICABLE TO ALL PERMITS	
§ 22-1201. GENERAL PERMIT CONDITIONS AND PROVISIONS APPLICABLE TO ALL PERMITS.....	100
Subchapter 13. SPECIAL CONDITIONS APPLICABLE ON A CASE-BY-CASE BASIS	
§ 22-1301. SPECIAL CONDITIONS APPLICABLE ON A CASE-BY-CASE BASIS.....	111
Subchapter 14. ELECTRONIC REPORTING	
§ 22-1401. ELECTRONIC REPORTING.....	113
Subchapter 15. FEDERAL REGULATIONS INCORPORATED BY REFERENCE	
§ 22-1501. FEDERAL REGULATIONS INCORPORATED BY REFERENCE.....	114

## Subchapter 1. GENERAL PROGRAM PROVISIONS

### § 22-101. PURPOSE

(a) The purpose of this Rule is to reduce the adverse effects of stormwater runoff, enhance the management of stormwater runoff to ensure compliance with the Vermont Water Quality Standards and the federal Clean Water Act (CWA), and maintain after development, as nearly as possible, predevelopment stormwater runoff characteristics.

(b) This Rule complies with the minimum requirements for stormwater permits issued by the State of Vermont as the approved authority to administer a permit program consistent with the federal National Pollution Discharge Elimination System. All permits issued under this Rule shall be issued pursuant to the State's approved authority.

(c) This Rule:

(1) Includes standards, best management practices, and permitting requirements for the management of stormwater runoff from construction sites and other land disturbing activities;

(2) Includes technical standards, best management practices, and permitting requirements for the management of post-construction regulated stormwater runoff from existing development, new development, and redevelopment;

(3) Includes all permitting requirements necessary for the State to meet its obligations as the authority delegated to administer a permit program consistent with the federal National Pollution Discharge Elimination System;

(4) Specifies minimum requirements for monitoring, inspection, maintenance, and reporting;

(5) Provides for the issuance of individual and general permits;

(6) Specifies permit application requirements;

(7) Allows municipalities to assume the full legal responsibility for stormwater systems permitted under this Rule as a part of a permit issued by the Secretary;

(8) Includes standards with respect to the use of offsets and stormwater impact fees.

(9) Requires certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty to satisfy certain permit requirements; and

(10) Establishes criteria for the use of the basin planning process to establish watershed-specific priorities for the management of stormwater runoff.

#### § 22-102. AUTHORITY

This Rule is adopted pursuant to the Vermont Water Pollution Control Statute, 10 V.S.A. Chapter 47, in particular §§ 1251a(a), 1258(b), 1263(g), and 1264(f).

#### § 22-103. POLICY

(a) The management of stormwater runoff differs from the management of sanitary and industrial wastes because of the differences and variations in the characteristics of stormwater runoff and sanitary and industrial wastes, the influence of natural events on stormwater runoff, and the increased stream flows and natural degradation of the receiving water quality at the time stormwater runoff may enter a receiving water.

(b) Permits issued pursuant to this Rule shall require compliance with applicable standards and effluent limitations, which may be expressed as best management practices, proper operation and maintenance of best management practices, and monitoring and reporting, as necessary, to ensure compliance with the Vermont Water Quality Standards.

§ 22-104. EFFECT

As of the effective date of this Rule, this Rule supersedes the Vermont Water Pollution Control Permit Regulations (Environmental Protection Rule, Chapter 13, as amended) for purposes of stormwater permitting, including the public notice and comment provisions applicable to stormwater permitting.

§ 22-105. GENERAL EXEMPTIONS

(a) No permit is required under this Rule for:

(1) Stormwater runoff from farms in compliance with agricultural practices adopted by the Secretary of Agriculture, Food and Markets, provided that this exemption shall not apply to construction stormwater permits required under Section 22-107(b)(6) (applicability; permit required) and to discharges from concentrated animal feeding operations requiring permit coverage under this Rule;

(2) Stormwater runoff from accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;

(3) Stormwater runoff permitted under 10 V.S.A. § 1263 as part of a permit for the discharge of sanitary or industrial wastes; and

(4) Stormwater runoff from dams and the portion of a bridge superstructure that spans the ordinary high water mark of a water.

(5) Stormwater runoff requiring permit coverage under Section 22-107(b)(2) (applicability; permit required) provided:

(A) Except for applications for permits issued pursuant to Section 22-107(b)(6), complete applications for all local, State, and federal permits related to the regulation of land use or a discharge to waters of the State have been submitted as of July 1, 2022, the applicant does not subsequently file an application for a permit amendment that would have an adverse impact on water quality, and substantial construction of the project commences within two years from July 1, 2022;

(B) Except for permits issued pursuant to Section 22-107(b)(6), all local, State, and federal permits related to the regulation of land use or a discharge to waters of the State have been obtained as of July 1, 2022, and substantial construction of the project commences within two years from July 1, 2022;

(C) Except for permits issued pursuant to Section 22-107(b)(6), no local, State, or federal permits related to the regulation of land use or a discharge to waters of the State are required, and substantial construction of the project commences within two years from July 1, 2022; or,

(D) The construction, redevelopment, or expansion is a public transportation project, and as of July 1, 2022, the Agency of Transportation or the municipality principally responsible for the project has initiated right-of-way valuation activities or determined that



right-of-way acquisition is not necessary, and substantial construction of the project commences within five years from July 1, 2022.

(b) Impervious surfaces not requiring permit coverage under subsections (a)(1), (2), or (4) of this section shall not be counted towards the total resulting impervious surface for purposes of permitting under this Rule.

#### § 22-106. GENERAL PROHIBITIONS

No permit shall be issued:

(1) When the conditions of the permit do not provide for compliance with the applicable requirements of the CWA and applicable regulations promulgated thereunder, and this Rule;

(2) When the Regional Administrator has objected to the issuance of the permit under 40 C.F.R. § 123.44;

(3) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

(4) When, in the judgment of the Secretary, anchorage and navigation in or on any waters would be substantially impaired by the discharge;

(5) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(6) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of the CWA;

(7) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to a violation of water quality standards. Compliance with the standards and best management practices set forth in this Rule will ensure that a

new source or new discharger will not cause or contribute to a violation of water quality standards.

§ 22-107. APPLICABILITY; PERMIT REQUIRED; DESIGNATION

(a) This Rule applies to stormwater runoff and establishes the permitting requirements for the management and control of stormwater runoff.

(b) A permit is required under this Rule for the following:

(1) To commence the development or redevelopment of one or more acres of impervious surface;

(2) Effective July 1, 2022, to commence the development or redevelopment of one half acre or more acres of impervious surface;

(3) To commence the expansion of existing impervious surface by more than 5,000 square feet, such that the total resulting impervious surface is equal to or greater than one acre;

(4) In accordance with the schedule established under the three-acre general permit issued pursuant to this Rule, a discharge of regulated stormwater runoff from impervious surface of three or more acres, which was never previously permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual. If any portion of an impervious surface of three or more acres in size was not permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual, the entire site shall be subject to the requirements of the three-acre general permit;

(5) In accordance with the schedule established under the municipal roads general permit issued pursuant to this Rule, a municipality's discharge of regulated stormwater runoff from a municipal road. For purposes of this subdivision "municipality" means a city, town, or village;

(6) To commence a project that will result in an earth disturbance of one acre or greater, or less than one acre if part of a common plan of development;

(7) Stormwater discharge associated with industrial activity;

(8) A discharge of stormwater runoff from a designated municipal separate storm sewer system; and

(9) A point source discharge from a concentrated animal feeding operation.

(c)(1) Permit required by designation.

(A) The Secretary shall require a permit under this Rule for a discharge of stormwater runoff from any size of impervious surface upon a determination by the Secretary that the treatment of the discharge of stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge of stormwater runoff taking into consideration any of the following factors: the size of the impervious surface, drainage patterns, hydraulic connectivity, existing stormwater treatment, stormwater controls necessary to implement the wasteload allocation of a TMDL, or other factors. The Secretary may make this determination on a case-by-case basis or according to classes of activities, classes of runoff, or classes of discharge. The Secretary may make a determination under this subdivision based on activities, runoff, discharges, or other information identified during the basin planning process.

(B) A permit is required under this Rule if, pursuant to 40 C.F.R. §§ 122.23(c) or 122.26(a)(9)(i)(C) or (D), the EPA Regional Administrator determines that permit coverage is necessary.

(2) A permit application shall be submitted to the Secretary within 180 days of designation, unless the Secretary specifies a later date.

#### § 22-108. PHASED DEVELOPMENT AND CIRCUMVENTION

(a) If the development, redevelopment, or expansion of impervious surface or a proposed earth disturbance does not meet the permit thresholds under Section 22-107 (applicability; permit required), but is part of a common plan of development that will meet such thresholds, then permit coverage for each phase is required. If the Secretary determines that a municipal or state transportation project has independent utility from adjoining and adjacent impervious surfaces and the project does not trigger subsection (b) of this section, such project shall not be considered part of a common plan of development.

(b) If the Secretary determines that a person has separated a single project into components in order to avoid the regulatory minimum threshold or other requirements of this Rule, the person shall be required to submit a permit application for the component parts.

(c) This section does not apply to the types of scattered or non-contiguous projects that are set forth as planned development in long-range transportation plans, regional plans, municipal plans, or housing authority plans.

§ 22-109. MUNICIPALITIES AND STORMWATER UTILITIES THAT HAVE ASSUMED FULL LEGAL RESPONSIBILITY FOR SPECIFIC IMPERVIOUS SURFACE

If a municipality or stormwater utility has assumed full legal responsibility for the discharge of stormwater runoff from an impervious surface and has permit coverage for such impervious surface pursuant to a permit issued under this Rule, the requirements for permit coverage under Sections 22-107(b)(1), (2), (3), and (4) (applicability; permit required; operational permits) shall be satisfied. For purposes of this Rule, “full legal responsibility” means legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

§ 22-110. EFFECT OF A PERMIT

Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, and 307 of the CWA. However, a permit may be amended, revoked and reissued, or terminated during its term for cause as set forth in Section 22-310 (amendment, revocation and reissuance, and termination of permits).

§ 22-111. BASIN PLANNING AND THE MANAGEMENT OF STORMWATER RUNOFF

(a) The Secretary shall consider information from basin plans prior to the issuance of individual and general permits, prior to adoption of technical standards including the

Vermont Stormwater Manual, and during any future revision of this rule, to ensure that expected pollutant load reductions are consistent with any waste load allocation for developed lands in a TMDL, and to ensure consistency with the Vermont Water Quality Standards.

(b) Each basin plan issued after adoption of this rule shall include an assessment of whether the waste load allocation for developed lands in any applicable TMDL is estimated to be met through existing regulatory programs. If the Secretary determines that additional stormwater-related pollutant reductions are needed from developed lands to implement the waste load allocation of a TMDL, either through changes to existing regulatory programs or through designation of additional impervious surfaces through Section 22-107(c)(1) (applicability; permit required), the Secretary shall include in the basin plan a description of the plan and timeline for making designations under Section 22-107(c)(1) (applicability; permit required) or adjusting existing regulatory programs, or both.

(c) The Secretary may consider the following criteria in establishing watershed-specific priorities in basin plans for the overall management of stormwater runoff:

- (1) The most recent water quality monitoring and other data, including:
  - (A) Light detection and ranging information data (LIDAR);
  - (B) Stream gauge data;
  - (C) Stream mapping, including fluvial erosion hazard maps;
  - (D) Water quality monitoring or sampling data, including both biological and chemical water quality monitoring data; and

(E) Cumulative stressors on a watershed, such as the frequency an activity is conducted within a watershed or the number of stormwater or other permits issued in a watershed.

(2) The most recent assessment results, including:

(A) Stream Geomorphic Assessments, and related River Corridor Plans;

(B) Road Erosion Inventories (REI) and related Municipal Road Capital Budget Plans;

(C) Small farm operation surveys and inspections conducted pursuant to 6 V.S.A. § 4871, including farms' compliance with and certification under the Required Agricultural Practices (RAPs); and

(D) Stormwater Mapping and Illicit Detection Discharge and Elimination surveys and assessments.

(3) The nature and impact of identified stressors on receiving waters and subwatersheds.

(4) The load reductions specified in TMDLs and associated modelling for estimation of pollutant load reductions.

(5) Identified critical source areas, including areas identified through Lake Champlain SWAT modeling and the Reasonable Assurance (RA) tool, and modeling scenarios via the Vermont Clean Water Roadmap, Lake Memphremagog TMDL Land Use Based Phosphorus Export Model, USDA-NRCS Resource Assessment, and Watershed Level Plans for Focused Watersheds under the RCPP in Vermont.

(6) Anticipated load reductions from stormwater BMPs identified through modelling efforts such as Vermont's Clean Water Roadmap, the Clean Water Initiative

Accountability Framework, the Clean Water Initiative Watershed Projects Database, and Approved Flow Restoration Plans and Pollution Control Plans.

## Subchapter 2. DEFINITIONS

### § 22-201. DEFINITIONS

As used in this Rule, the following terms shall have the specified meaning, unless a different meaning is clearly intended by the context. If a term is not defined, it shall have its common meaning.

(1) “Agency” means the Vermont Agency of Natural Resources.

(2) “Animal feeding operation” or “AFO” is defined in Section 22-801(b)(1) (CAFO permits).

(3) “Applicant” means a person or persons applying for permit coverage.

(4) “Authorization” means approval issued by the Secretary.

(5) “Best management practice” or “BMP” means a schedule of activities, prohibitions or practices, maintenance procedures, green infrastructure, and other management practices to prevent or reduce water pollution.

(6) “Clean Water Act” or “CWA” means the federal Clean Water Act, 33 U.S.C. § 1251 *et seq.*

(7) “Common plan of development” means development or redevelopment that is completed in phases or stages when such phases or stages share a common state or local permit related to the regulation of land use, the discharge or wastewater, or a discharge to surface waters or groundwater, or a development designed with common infrastructure. Common plans include subdivisions, industrial and commercial parks, university and other campuses, and ski areas.



(8) “Concentrated animal feeding operation” or “CAFO” is defined in Section 22-801(b)(2) (CAFO permits).

(9) “Department” means the Vermont Department of Environmental Conservation.

(10) “Designated municipal separate storm sewer system” or “designated MS4” is defined in Section 22-601(b)(1) (MS4 permits).

(11) “Development” means the construction of impervious surface on a tract or tracts of land where no impervious surface previously existed.

(12) “Discharge” means the placing, depositing, or emission of any wastes, directly or indirectly, into an injection well or into the waters of the State.

(13) “Discharge monitoring report” or “DMR” means the form for reporting of self-monitoring results by permittees.

(14) “Discharge of pollutants” means any addition of any pollutant or combination of pollutants to waters of the State from any point source. This definition includes additions of pollutants into waters of the State from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality, or other person which do not lead to a treatment works; and discharges through pipes, sewers, or other conveyances, leading into privately owned treatment works. This term does not include an addition of pollutants by any indirect discharger.

(15) “Earth disturbance” is defined in Section 22-501(b)(1) (construction permits).

(16) “Effluent limitation” means any restrictions or prohibitions established in accordance with the provisions of 10 V.S.A. Chapter 47 and this Rule or under federal law, including effluent limitations, standards of performance for new sources, and toxic

effluent standards, on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged to waters of the State, including schedules of compliance. Effluent limitations may be expressed as best management practices.

(17) “EPA” means the United States Environmental Protection Agency.

(18) “Existing development” or “existing impervious surface” means an impervious surface that is in existence, regardless of whether it ever required a stormwater permit.

(19) “Expansion” means an increase or addition of impervious surface, such that the total resulting impervious area is greater than the minimum regulatory threshold.

(20) “Facility or activity” means any point source or any other facility or activity, including land or appurtenances thereto, that is subject to regulation under this Rule.

(21) “Full legal responsibility” means legal control of the stormwater system, including a legal right to access the stormwater system, a legal duty to properly maintain the stormwater system, and a legal duty to repair and replace the stormwater system when it no longer adequately protects waters of the State.

(22) “Green infrastructure” means a wide range of multi-functional, natural and semi-natural landscape elements that are located within, around, and between developed areas, that are applicable at all spatial scales, and that are designed to control or collect stormwater runoff.

(23) “Hazardous substance” means any substance designated under 40 C.F.R. Part 116 pursuant to section 311 of the CWA.

(24) “Illicit discharge” means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater runoff except discharges pursuant to a discharge permit, other than the permit for discharges from the municipal separate storm sewer, and discharges resulting from fire-fighting activities.

(25) “Impervious surface” means those manmade surfaces, including paved and unpaved roads, parking areas, roofs, driveways, and walkways, from which precipitation runs off rather than infiltrates.

(26) “Impervious surface of three or more acres” means a single tract of land with three or more acres of impervious surface; a project on a tract or tracts of land that was previously authorized under a stormwater permit that authorized the discharge of stormwater from three or more acres of impervious surface; and impervious surfaces adjacent to or adjoining the foregoing types of impervious surfaces where the surfaces in question are part of a related operation, such as a hospital, resort, or campus.

(27) “Indirect discharger” means a nondomestic discharger introducing pollutants to a publicly owned treatment works.

(28) “Land application area” is defined in Section 22-801(b)(3) (CAFO permits).

(29) “Large concentrated animal feeding operation” or “Large CAFO” is defined in Section 22-801(b)(4) (CAFO permits).

(30) “Manure” is defined in Section 22-801(b)(5) (CAFO permits).

(31) “Medium concentrated animal feeding operation” or “Medium CAFO” is defined in Section 22-801(b)(6) (CAFO permits).

(32) “Municipal separate storm sewer” means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, and storm drains:

(A) Owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater runoff, or other wastes, including special districts under state law such as a sewer district, flood control district, or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State;

(B) Designed or used for collecting or conveying stormwater runoff;

(C) Which is not a combined sewer; and

(D) Which is not part of a publicly owned treatment works.

(33) “Municipality” means an incorporated city, town, village, or gore; a fire district established pursuant to state law; or any other duly authorized political subdivision of the State.

(34) “Municipal road” is defined in Section 22-1101(b)(1) (municipal roads permits).

(35) “New development” means the construction of impervious surface on a tract or tracts of land where no impervious surface previously existed.

(36) “New discharger” means any building, structure, facility, or installation:

(A) From which there is or may be a “discharge of pollutants;”

(B) That did not commence the discharge of pollutants at a particular site prior to August 13, 1979;

(C) Which is not a new source; and

(D) Which has never received a finally effective permit for discharges at that site.

(37) “New source” means any building, structure, facility, or installation from which there is or may be a “discharge of pollutants,” which meets the criteria for new source determination under 40 C.F.R. § 122.29(b), and the construction of which commenced:

(A) After promulgation of standards of performance under section 306 of the CWA which are applicable to such source, or

(B) After proposal of standards of performance in accordance with section 306 of the CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

(38) “Offset” means a State-permitted or state-approved action or project that mitigates the impacts that a discharge of regulated stormwater runoff has on receiving waters.

(39) “Offset charge capacity” means the reduction in sediment load, nutrient load, or hydrologic impact that an offset project or projects eligible for receipt of stormwater impact fees generates.

(40) “Outfall” means a point source at the point where a municipal separate storm sewer discharges to waters of the State and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances

which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

(41) “Overburden” means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(42) “Permittee” means a person who has received authorization pursuant to an individual permit or authorization under a general permit.

(43) “Person” means any individual; partnership; company; corporation; association; joint venture; trust; municipality; the State of Vermont or any agency, department, or subdivision of the State, any federal agency, or any other legal or commercial entity.

(44) “Point source” means any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.

(45) “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(A) Sewage from vessels; or

(B) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well is used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if the State determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(46) “Process wastewater” means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(47) “Production area” is defined in Section 22-801(b)(8) (CAFO permits).

(48) “Publicly owned treatment works” means a treatment works as defined by section 212 of the CWA, which is owned by a state or municipality. This definition includes any devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes, and other conveyances only if they convey wastewater to a publicly owned treatment works treatment plant. The term also means the municipality, which has jurisdiction over the indirect discharges to and the discharges from such a treatment works.

(49) “Redevelopment” or “redevelop” means the construction or reconstruction of an impervious surface where an impervious surface already exists when such new construction involves substantial site grading, substantial subsurface excavation, or substantial modification of an existing stormwater conveyance, such that the total of impervious surface to be constructed or reconstructed is greater than the minimum

regulatory threshold. Redevelopment does not mean public road management activities, including any crack sealing, patching, coldplaning, resurfacing, reclaiming, or grading treatments used to maintain pavement, bridges, and unpaved roads.

(50) “Regulated stormwater runoff” means precipitation, snowmelt, and the material dissolved or suspended in precipitation and snowmelt that runs off impervious surfaces and discharges into surface waters or into groundwater via infiltration.

(51) “Runoff coefficient” means the fraction of total rainfall that will appear at a conveyance as runoff.

(52) “Schedule of compliance” means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation or any other limitation, prohibition, or standard, including any water quality standard.

(53) “Secretary” means the Secretary of the Vermont Agency of Natural Resources or the Secretary’s duly authorized representative.

(54) “Significant materials” includes: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under section 101(14) of CERCLA; any chemical the facility is required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with stormwater discharges.

(55) “Site” means either the drainage area that includes all portions of a project contributing stormwater runoff to one or more discharge points, or the area that includes all portions of disturbed area within a project contributing stormwater runoff to one or



more discharge points. The choice of either of these two methods of calculating the site area shall be at the discretion of the designer. In cases where there are multiple discharges to one or more waters, “site” shall mean the total area of the sub-watersheds. For linear projects, including highways, roads, streets, paths, and sidewalks, the term “site” includes the entire right-of-way within the limits of the proposed work, or all portions of disturbed area within the right-of-way associated with the project. The method of calculating the site area for linear projects shall be at the discretion of the designer. Calculations of site area are subject to the Secretary’s review.

(56) “Small concentrated animal feeding operation” or “Small CAFO” is defined in Section 22-801(b)(9) (CAFO permits).

(57) “Small municipal separate storm sewer system” or “small MS4” is defined in Section 22-601(b)(2) (MS4 permits).

(58) “Stormwater discharge associated with industrial activity” is defined in Section 22-701(b)(1) (industrial permits).

(59) “Stormwater Fund” means the fund established under 10 V.S.A. § 1264b.

(60) “Stormwater impact fee” means the monetary charge assessed to an applicant 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.

(61) “Stormwater-impaired water” means a water of the State that the Secretary determines is significantly impaired by discharges of regulated stormwater runoff.

(62) “Stormwater Management Manual” or “Vermont Stormwater Management Manual” means the Agency of Natural Resources’ Stormwater Management Manual, as adopted and amended by rule.

(63) “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.

(64) “Stormwater system” includes the storm sewers; outfall sewers; surface drains; manmade wetlands; channels; ditches; wet and dry bottom basins; rain gardens; and other control equipment necessary and appurtenant to the collection, transportation, conveyance, pumping, treatment, disposal, and discharge of regulated stormwater runoff.

(65) “Stormwater utility” means a system adopted by a municipality or group of municipalities under 24 V.S.A. Chapter 97, 101, or 105 for the management of stormwater runoff.

(66) “Total maximum daily load” or “TMDL” means the calculations and plan for meeting water quality standards approved by EPA and prepared pursuant to 33 U.S.C. § 1313(d) and federal regulations adopted under that law.

(67) “Total resulting impervious surface” means the total impervious area resulting from development, redevelopment, or expansion of impervious surface plus existing impervious surface and any impervious surface that is part of a common plan of development.

(68) “Toxic pollutant” means any pollutant listed as toxic under section 307(a)(1) of the CWA.

(69) “Tract of land” means a portion of land with defined boundaries created by a deed. A deed may describe one or more tracts.

(70) “Waste” means effluent, sewage, or any substance or material, liquid, gaseous, solid, or radioactive, including heated liquids, whether or not harmful or deleterious to waters; provided however, the term “sewage” as used in this Rule shall not include the rinse or process water from a cheese manufacturing process.

(71) “Water quality remediation plan” or “WQRP” means a plan, other than a TMDL, designed to bring an impaired water into compliance with applicable water quality standards in accordance with 40 C.F.R. § 130.7(b)(1)(ii) and (iii).

(72) “Waters” and “waters of the State” includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the State or any portion of it.

(73) “Watershed” means the total area of land contributing runoff to a specific point of interest within a receiving water.

(74) “Watershed improvement permit” means a general permit specific to a stormwater-impaired water that is designed to apply management strategies to existing and new discharges and that includes a schedule of compliance no longer than five years reasonably designed to assure attainment of the Vermont Water Quality Standards in the receiving waters.

### Subchapter 3. GENERAL PROVISIONS REGARDING GENERAL AND INDIVIDUAL PERMITS AND AUTHORIZATIONS

#### § 22-301. TYPES OF PERMITS AND AUTHORIZATIONS

The Secretary may issue the following types of permits and authorizations under this Rule:

- (1) Individual permits;
- (2) General permits for classes of stormwater runoff;
- (3) Authorizations under general permits; and
- (4) Watershed improvement permits.

#### § 22-302. PERMIT APPLICATION REQUIREMENTS

(a) Completeness.

(1) The Secretary shall not issue an individual permit or authorization under a general permit before receiving a complete application, except when a general permit specifically authorizes a discharge without prior application. An application is complete when the Secretary receives an application form and all supplemental information completed to his or her satisfaction.

(2) Additional information requested by the Secretary. The Secretary may require an applicant to submit additional information that the Secretary considers necessary to make a decision on the issuance or denial of an individual permit or authorization under a general permit. The Secretary may deny the application if the requested information is not provided within 60 days of the Secretary's request.

(3) Except as specified in subdivision (a)(3)(B) of this section, when a permit application requires submittal of quantitative data, a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. Chapter I, Subchapter N.

(A) For the purposes of this requirement, a method approved under 40 C.F.R. Part 136 or required under 40 C.F.R. Chapter I, Subchapter N is “sufficiently sensitive” when:

(i) The method minimum level is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter;

(ii) The method minimum level is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility’s discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(iii) The method has the lowest minimum level of the analytical methods approved under 40 C.F.R. Part 136 or required under 40 C.F.R. Chapter I, Subchapter N for the measured pollutant or pollutant parameter.

(B) When there is no analytical method that has been approved under 40 C.F.R. Part 136, required under 40 C.F.R. Chapter I, Subchapter N, or is not otherwise required by the Secretary, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method’s precision, accuracy, or resolution, may be considered when assessing the performance of the method.

(b) Information requirements. In addition to the information required under other subchapters of this Rule, all applicants shall provide the following information to the Secretary, using the applicable application form provided by the Secretary:

(1) The activities conducted by the applicant which require permit coverage.

(2) Name, mailing address, and location of the facility or activity for which the application is submitted.

(3) Contact information.

(A) For applications for permits issued under Subchapters 9 and 10 of this Rule, the applicant's name, address, and telephone number.

(i) If the applicant does not own the impervious surface, or lands on which the stormwater system used to comply with the requirements of Section 22-901 (operational permits) is located, the owner shall be a co-applicant, and the owner's name, address, and telephone number shall also be included.

(ii) If the application is for an existing housing or commercial development, the application shall include the owners' association, condominium association, or other common association as co-applicant. The Secretary may waive this requirement for existing developments on a case-by-case basis if a responsible party or parties accepts responsibility for the stormwater management system. If application is made for a new housing or commercial development, the developer and owners' association, condominium association, other common association, or other legal entity accepting responsibility for the stormwater management system shall apply as co-applicants.

(iii) If the applicant is a municipality, stormwater utility, or the Vermont Agency of Transportation and does not own the impervious surface, or lands on which the stormwater system used to comply with the requirements of Section 22-901 (operational permits) is located, the owner is not required to be a co-applicant, if the municipality, stormwater utility, or Vermont Agency of Transportation has assumed full legal responsibility for the impervious surface or stormwater system.

(B) For all other applications, the operator's name, address, telephone number, ownership status, and status as federal, state, private, public, or other entity.

(4) A topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the facility or activity, depicting, as applicable: the facility and each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface waters, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(5) For applications for a project that will discharge to groundwater a certification from the applicant that:

(A) The activity is not prohibited by the requirements of a municipal ordinance that applies to the location where the activity is proposed to be located;

(B) 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;

(C) If located within a groundwater protection overlay district established pursuant by a municipality pursuant to 24 V.S.A. § 4414(2), the activity is not inconsistent with the requirements of that overlay district.

(6) All information specific to the type of authorization the applicant is applying for, as required under Sections 22-501(c) (construction permits), 22-601(d) (MS4 permits), 22-701(d) (industrial permits), 22-801(d) (CAFO permits), 22-1002(c)(5) and (6) (impact fees), and 22-1003(d) (offsets).

(c) Signature. All applications shall be signed in accordance with the requirements of Section 22-1201(b)(5) (general permit conditions; signatories). For applications for permits issued under Subchapters 9 and 10 of this Rule, the application shall also be signed by a designer who is a professional engineer licensed pursuant to 26 V.S.A. Chapter 20 and practicing within the scope of their engineering specialty.

(d) Application fees. All applicants shall submit the applicable fees required for permit application under 3 V.S.A. § 2822.

(e) Recordkeeping. Applicants shall keep records of all data and calculations used to complete permit applications and any supplemental information submitted under this section for a period of at least five years from the date the application is signed.

#### § 22-303. REQUIRING APPLICANT OR PERMITTEE TO APPLY FOR COVERAGE UNDER INDIVIDUAL OR GENERAL PERMIT

(a) Requiring an individual permit.

(1) The Secretary may require any permittee authorized by a general permit or any person applying for coverage under a general permit to apply for and obtain an individual permit. Any interested person may petition the Secretary to take action under this subsection. Cases where an individual permit may be required include the following:

(A) The applicant or permittee is not in compliance with the conditions of the general permit;

(B) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the facility or activity;

(C) Effluent limitation guidelines are promulgated by EPA for point sources covered by the general permit;



(D) A Water Quality Management plan, approved by EPA under section 208(b) of the CWA, containing requirements applicable to such point sources is approved;

(E) 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;

(F) The discharge is a significant contributor of pollutants. In making this determination, the Secretary may consider the following factors:

(i) The location of the discharge with respect to waters of the State;

(ii) The size of the discharge;

(iii) The quantity and nature of the pollutants discharged to waters of the State; and

(iv) Other relevant factors;

(G) When necessary to implement an applicable TMDL or WQRP;

(H) If an applicant proposes to use an alternative stormwater treatment practice pursuant to the Vermont Stormwater Management Manual.

(2) If the Secretary determines that an applicant applying for authorization under a general permit or a permittee authorized by a general permit is required to apply for an individual permit, the Secretary shall so notify the applicant or permittee. The notice shall include a brief statement of the reasons for the decision, an application form, and the timeframe for the applicant or permittee to file the application.

(3) When an individual permit is issued to a person whose facility or activity would otherwise be subject to a general permit, the applicability of the general permit to

the person's facility or activity is automatically terminated on the effective date of the individual permit.

(b) Requiring authorization under a general permit.

(1) The Secretary may require any person applying for an individual permit to apply for coverage under a general permit provided the Secretary finds the application complies with all conditions of the general permit and the facility or activity is more appropriately covered under the general permit.

(2) A person that already has an individual permit, but whose facility or activity qualifies for coverage under a general permit, may simultaneously apply for coverage under the general permit and request that its individual permit be revoked. If the Secretary issues an authorization under the general permit to the person, the individual permit shall automatically terminate on the effective date of the authorization under the general permit.

#### § 22-304. PROVISIONS SPECIFIC TO GENERAL PERMITS

(a) Except as provided in subsections (e) and (f) of this section, persons seeking coverage under a general permit shall submit to the Secretary an application, also referred to as a notice of intent, to be covered by the general permit. A person who fails to submit a notice of intent in accordance with the terms of the general permit is not authorized under the terms of the general permit unless the general permit, in accordance with subsection (e), contains a provision that a notice of intent is not required or the Secretary notifies a person that its facility or activity is covered by a general permit in accordance with subsection (f).

(b) The contents of the notice of intent shall be specified in the general permit.

(c) General permits shall specify the deadlines for submitting notices of intent to be covered, if applicable, and the permit's expiration date.

(d) General permits shall specify whether an applicant that has submitted a complete and timely notice of intent to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge in accordance with the permit either upon receipt of the notice of intent by the Secretary, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of authorization by the Secretary.

(e) Discharges, other than discharges from small municipal separate storm sewer systems, stormwater discharges associated with industrial activity, and concentrated animal feeding operations, may, at the discretion of the Secretary, be authorized to discharge under a general permit without submitting a notice of intent where the Secretary finds that a notice of intent requirement would be inappropriate. In making such a finding, the Secretary shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Secretary shall provide in the public notice of the general permit the reasons for not requiring a notice of intent.

(f) The Secretary may notify a discharger that it is covered by a general permit, even if the discharger has not submitted a notice of intent to be covered.

§ 22-305. FACT SHEETS

When the Secretary is required to create a fact sheet pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder, the fact sheet shall include the following:

- (1) A brief statement of the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit;
- (2) A brief description of the type of facility or activity which is the subject of the draft permit;
- (3) The type and quantity of wastes, fluids, or pollutants which are proposed to be or are being treated, stored, disposed of, injected, emitted, or discharged;
- (4) A brief summary of the basis for the draft permit conditions, including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;
- (5) Any calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard and reasons why they are applicable or an explanation of how the alternate effluent limitations were developed. When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:
  - (A) Limitations to control toxic pollutants under Section 22-401 (establishing permit limits);
  - (B) Limitations on indicator pollutants under 40 C.F.R. § 125.3(g);
  - (C) Limitations set on a case-by-case basis under 40 C.F.R. § 125.3(c)(2) or (c)(3);

(D) Limitations to meet the criteria for permit issuance under Section 22-106(7) (new source; new discharger); or

(E) Waivers from monitoring requirements granted under Section 22-401 (establishing permit limits);

(6) A sketch or detailed description of the location of the discharge or regulated activity described in the application, if applicable;

(7) A description of the procedures for reaching a final decision on the draft permit including:

(A) The beginning and ending dates of the comment period and the address where comments will be received;

(B) Procedures for requesting a public meeting, if one is not already scheduled, and the nature of that public meeting; and

(C) Any other procedures by which the public may participate in the final decision; and

(8) Name and contact information for a person to contact for additional information.

#### § 22-306. PUBLIC NOTICE AND OPPORTUNITY TO PROVIDE COMMENT

In accordance with 10 V.S.A. Chapter 170 and the rules adopted thereunder, the Secretary shall provide public notice of and an opportunity for comment on:

(1) Draft and final general permits, and amendments to final general permits;

(2) Applications for individual permits, draft and final decisions on individual permits, and amendments to final individual permits; and

(3) Notices of intent for coverage under general permits, decisions on notices of intent, and amendments to such authorizations.

§ 22-307. CHANGES MADE TO AN APPLICATION AFTER THE PUBLIC COMMENT PERIOD AND PRIOR TO ISSUANCE OF AUTHORIZATION

If an application changes after the public comment period has ended, but before the Secretary issues an authorization, the Secretary does not need to provide notice of the changes if:

(1) The proposed changes do not reduce the quality of the stormwater discharge;

(2) The proposed changes do not substantially increase the quantity of the discharge or change the discharge location so as to adversely affect the instream hydrology or geomorphology;

(3) There is not a significant change in the type and nature of proposed treatment; and

(4) There is no change in the use of offsets, if any.

§ 22-308. ISSUANCE OR DENIAL OF AUTHORIZATION, AND RESPONSE TO COMMENTS

(a) If the Secretary determines that an application is complete and meets the terms and conditions of this Rule or, if the application is a notice of intent, it meets the terms and conditions of the general permit, the Secretary shall issue an authorization, unless the Secretary denies the application pursuant to subsection (c) of this section or subsection (g) of Section 22-310 (causes for permit termination) or the Secretary stays the application pursuant to 10 V.S.A. § 8014 for failure to pay penalties assessed as part of

an enforcement action. Any permit granted under this Rule shall not be construed as a vested right and shall be subject to continuing regulations and control by the State.

(b) If the Secretary received public comments on an application or draft decision, the Secretary shall provide a response to comments, pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder, concurrent with issuance or denial of authorization.

(c) The Secretary may, at his or her discretion and as necessary to assure achievement of the goals of the program and compliance with state law and the CWA, deny an application for the discharge of regulated stormwater if review of the applicant's compliance history indicates that the applicant is discharging regulated stormwater in violation of 10 V.S.A. Chapter 47 or is the holder of an expired permit for an existing discharge of regulated stormwater.

(d) Denials of authorization shall:

(1) Be issued in writing;

(2) Include the reasons for denial;

(3) Be noticed pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder; and

(4) If denied for lack of technical or other information, include appropriate information to help the applicant correct the deficiencies and re-apply for authorization.

#### § 22-309. ADMINISTRATIVE RECORD AND CONFIDENTIAL INFORMATION

(a) Administrative Record. The Secretary shall create an administrative record for each application under this Rule pursuant to 10 V.S.A. Chapter 170 and the rules adopted thereunder.

(b) Confidential Information.

(1) Any records or information obtained pursuant to this Rule that constitute trade secrets under 1 V.S.A. § 317 shall be kept confidential, except that such records or information may be disclosed to authorized representatives of the State and the United States when relevant to any proceedings under 10 V.S.A. Chapter 47.

(2) The following information shall not qualify as trade secrets under 1 V.S.A. § 317:

(A) The name and address of any applicant or permittee;

(B) Permit applications, permits, and monitoring and effluent data; and

(C) Information required by application forms provided by the Secretary, including information submitted on the forms themselves and any attachments used to supply information required by the forms.

(3) Claims that information constitutes a confidential trade secret must be asserted at the time the information is submitted. If no claim is made at the time of submission, the Secretary may make the information available to the public without further notice. If a claim is asserted, the information will be reviewed by the Secretary to determine whether it constitutes trade secrets under 1 V.S.A. § 317.

#### § 22-310. AMENDMENT, REVOCATION AND REISSUANCE, AND

#### TERMINATION OF PERMITS

(a) Permits may be amended, revoked and reissued, or terminated either at the request of any interested person, including the permittee, or upon the Secretary's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request. If the Secretary decides a request is not justified, he or she shall send the requester a brief



written response giving a reason for the decision. Denials of requests for amendment, revocation and reissuance, or termination are not subject to public notice requirements.

(b) Except for amendments under subsection (h) of this section, permits may only be amended, revoked and reissued, or terminated for cause as specified in this section.

(c) When a permit is amended, only the conditions subject to amendment are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

(d) Permit amendments, revocations and reissuances, and terminations are subject to the applicable requirements of 10 V.S.A. Chapter 170 and the rules adopted thereunder. During any revocation and reissuance proceeding the permittee shall comply with all conditions of the existing permit until a new final permit is reissued.

(e) Causes for amendment. The following are causes for amendment, but not for revocation and reissuance of permits except when the permittee requests or agrees.

(1) Alterations. There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(2) Information. The Secretary has received new information. Permits may be amended during their terms for this cause only if the information was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and would have justified the application of different permit conditions at the time of issuance. For general permits this cause includes any information indicating that cumulative effects on the environment are unacceptable.

(3) New standards or rules. The standards or rules on which the permit was based have been changed by adoption of amended standards or rules or by judicial decision after the permit was issued. Permits may be amended during their terms for this cause only as follows:

(A) For adoption of amended standards or rules, when:

(i) The permit condition requested to be amended was based on a promulgated effluent limitation guideline or EPA-approved water quality standards;

(ii) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a State action with regard to a water quality standard on which the permit condition was based; and

(iii) A permittee requests amendment in accordance with subsection (a) of this section and, if applicable, does so within 90 days after Federal Register notice of the action on which the request is based.

(B) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with subsection (a) of this section within 90 days of judicial remand.

(4) Compliance schedules. The Secretary determines good cause exists for amendment of a compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which the permittee has little or no control and for which there is no reasonably available remedy.

(5) When the permittee has filed a request for a variance under CWA sections 301(c), 301(g), 301(i), or 301(k), or for “fundamentally different factors” within the time specified in 40 C.F.R. § 122.21(m).

(6) 307(a) toxics. When required to incorporate an applicable 307(a) toxic effluent standard or prohibition.

(7) Reopener. When required by the “reopener” conditions in a permit.

(8) Failure to notify. Upon failure of an approved state to notify, as required by section 402(b)(3), another state whose waters may be affected by a discharge from the approved state.

(9) Non-limited pollutants. When the level of discharge of any pollutant which is not limited in the permit exceeds the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 C.F.R. § 125.3(c).

(10) Compliance schedules. To amend a schedule of compliance to reflect the time lost during construction of an innovative or alternative facility.

(11) For a small MS4, to include an effluent limitation requiring implementation of a minimum control measure or measures as specified in Section 22-601(e)(2) (minimum control measures):

(A) The permit does not include such measure(s) based upon the determination that another entity was responsible for implementation of the requirement(s); and

(B) The other entity fails to implement measure(s) that satisfy the requirement(s).

(12) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions.

(13) When the discharger has installed the treatment technology considered by the permit writer in setting effluent limitations imposed under section 402(a)(1) of the CWA and has properly operated and maintained the facilities but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the amended permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by a subsequently promulgated effluent limitations guideline).

(14) Nutrient Management Plans. The incorporation of the terms of a CAFO's nutrient management plan into the terms and conditions of a general permit when a CAFO obtains coverage under a general permit is not a cause for amendment pursuant to the requirements of this section.

(f) Causes for amendment or revocation and reissuance. The following are causes to amend or, alternatively, revoke and reissue a permit:

(1) Cause exists for termination under this section, and the Secretary determines that amendment or revocation and reissuance is appropriate.

(2) The Secretary has received notification of a proposed transfer of the permit. A permit also may be amended to reflect a transfer after the effective date of an automatic transfer but will not be revoked and reissued after the effective date of the transfer except upon the request of the new permittee.

(g) Causes for termination. The following are causes for terminating a permit during its term, or for denying a permit renewal application:

(1) Noncompliance by the permittee with any condition of the permit;

(2) The permittee's failure in the application or during the permit issuance process to disclose fully all relevant facts, or the permittee's misrepresentation of any relevant facts at any time;

(3) A determination that the permitted activity endangers human health or the environment and can only be regulated to acceptable levels by permit amendment or termination; or

(4) A change in any condition that requires either a temporary or permanent reduction or elimination of any discharge.

(h) Other amendments. Upon the consent of the permittee, the Secretary may amend a permit to make the corrections or allowances for changes in the permitted activity listed in this subsection:

(1) Correct typographical errors;

(2) Require more frequent monitoring or reporting by the permittee;

(3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) Allow for a change in ownership or operational control of a facility where the Secretary determines that no other change in the permit is necessary;

(5)(A) Change the construction schedule for a discharger which is a new source.

(B) Delete a point source when the discharge from that point source is terminated and does not result in discharge of pollutants from other point sources except in accordance with permit limits.

(6) Require compliance with electronic reporting requirements.

(7) Incorporate changes to the terms of a CAFO's nutrient management plan that have been revised in accordance with the requirements of 40 C.F.R. § 122.42(e)(6).

#### § 22-311. PETITIONS RELATED TO PERMIT COVERAGE

(a) Any operator of a small municipal separate storm sewer system may petition the Secretary to require a separate permit for any discharge into the small municipal separate storm sewer system.

(b) Any person may petition the Secretary to require a permit for a discharge from a point source which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the State.

(c) The owner or operator of a small municipal separate storm sewer system may petition the Secretary to reduce the Census estimates of the population served by such separate system to account for stormwater discharged to combined sewers, meaning a sewer that is designed as a sanitary sewer and a storm sewer, that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the discharge permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(d) Any person may petition the Secretary for the designation of a small municipal separate storm sewer system.

(e) The Secretary shall make a final determination on any petition received under this section within 90 days after receiving the petition with the exception of petitions to designate a small municipal separate storm sewer system in which case the Secretary shall make a final determination on the petition within 180 days after its receipt.

#### Subchapter 4. ESTABLISHING PERMIT LIMITATIONS AND STANDARDS

##### § 22-401. ESTABLISHING PERMIT LIMITATIONS AND STANDARDS

Permit limitations and standards shall be established pursuant to 40 C.F.R. §§ 122.44(a), (b), (d), (e), and (k), 122.45, and 125.3. Pursuant to 40 C.F.R. § 122.44(k), because this Rule governs discharges of stormwater runoff, effluent limitations in permits issued pursuant to this Rule may be expressed as best management practices.

##### § 22-402. ANTIBACKSLIDING

(a) Except as provided in subsection (b) of this section, when a permit is renewed or reissued, interim effluent limitations, standards, or conditions must be at least as stringent as the final effluent limitations, standards, or conditions in the previous permit, unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit amendment or revocation and reissuance.

(b) In the case of effluent limitations established on the basis of section 402(a)(1)(B) of the CWA, a permit may not be renewed, reissued, or amended on the basis of effluent guidelines promulgated under section 304(b) of the CWA after the original issuance of such permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit. In the case of effluent limitations established on the basis of section 301(b)(1)(C) or section 303(d) or (e) of the CWA, a permit may

not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except in compliance with section 303(d)(4) of the CWA.

(1) Exceptions. A permit with respect to which subsection (b) of this section applies may be renewed, reissued, or amended to contain a less stringent effluent limitation applicable to a pollutant, if:

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limitation;

(B)(i) Information is available which was not available at the time of permit issuance, other than revised regulations, guidance, or test methods, and which would have justified the application of a less stringent effluent limitation at the time of permit issuance; or

(ii) The Secretary determines that technical mistakes or mistaken interpretations of law were made in issuing the permit under section 402(a)(1)(b) of the CWA;

(C) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is no reasonably available remedy;

(D) The permittee has received a permit amendment under section 301(c), 301(g), 301(i), 301(k), or 301(n); or

(E) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the



facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case the limitations in the reviewed, reissued, or amended permit may reflect the level of pollutant control actually achieved, but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or amendment.

(2) Limitations. In no event may a permit with respect to which subsection (b) of this section applies be renewed, reissued, or amended to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or amended. In no event may a permit to discharge into waters be renewed, issued, or amended to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under section 303 of the CWA applicable to such waters.

## Subchapter 5. CONSTRUCTION STORMWATER PERMITS

### § 22-501. CONSTRUCTION STORMWATER PERMITS

(a) Applicability. This Subchapter applies to projects that will result in an earth disturbance of one acre or greater, or less than one acre if part of a common plan of development, requiring permit coverage under Section 22-107(b)(5) (applicability; permit required). In addition to the generally applicable provisions of this Rule, permits issued pursuant to Section 22-107(b)(5) (applicability; permit required) shall comply with the requirements of this section.

(b) Definitions.

(1) “Earth disturbance” means construction activities including clearing, grading, and excavating, but does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(c) Application requirements. In addition to the application requirements under Section 22-302 (permit application requirements), an applicant for a permit under this Subchapter shall provide:

- (1) The location (including a map) and the nature of the construction activity;
- (2) The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;
- (3) Proposed measures, including best management practices, to control pollutants in stormwater discharges during construction, including a brief description of applicable state and local erosion and sediment control requirements;
- (4) Proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable state or local erosion and sediment control requirements;
- (5) An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material, and existing data describing the soil or the quality of the discharge; and
- (6) The name of the immediate receiving water.

(d) Permit conditions.

(1) Technology-based effluent limitations. Permits under this Subchapter shall include the technology-based effluent limitations under 40 C.F.R. §§ 450.21-24.

(2) The Secretary may include permit conditions that incorporate qualifying local erosion and sediment control program requirements by reference. Where a qualifying local program does not include one or more of the elements in this subdivision (d)(2),

then the Secretary shall include those elements as conditions in the permit. A qualifying local erosion and sediment control program is one that includes:

(A) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(B) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(C) Requirements for construction site operators to develop and implement a stormwater pollution prevention plan. A stormwater pollution prevention plan includes site descriptions, descriptions of appropriate control measures, copies of approved state or local requirements, maintenance procedures, inspection procedures, and identification of non-stormwater discharges; and

(D) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

## Subchapter 6. DESIGNATED MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

### § 22-601. DESIGNATED MUNICIPAL SEPARATE STORM SEWER SYSTEM PERMITS

(a) **Applicability.** This Subchapter applies to discharges of stormwater runoff from designated municipal separate storm sewer systems requiring permit coverage under Section 22-107(b)(7) (applicability; permit required). In addition to the generally applicable provisions of this Rule, permits issued pursuant to Section 22-107(b)(7) (applicability; permit required) shall comply with the requirements of this section.

(b) Definitions.

(1) “Designated municipal separate storm sewer system” or “designated MS4” means a small MS4, except for a small MS4 granted a waiver under 40 C.F.R. § 122.32(d), that:

(A) Is located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated; or

(B) Was previously designated by the Secretary pursuant to procedure or is designated by the Secretary pursuant to the “Procedure for Designation of Regulated Small MS4s” (May 16, 2016).

(2) “Small municipal separate storm sewer system” or “small MS4” means all separate storm sewers that are:

(A) Owned or operated by the United States, a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the State.

(B) Not defined as “large” or “medium” municipal separate storm sewer systems pursuant to 40 C.F.R. § 122.26(b)(4) and (b)(7), or designated under 40 C.F.R. § 122.26(a)(1)(v).

(C) This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

(c) Two-step general permit. In addition to the general permit requirements applicable to all general permits issued under this Rule, the Secretary shall comply with the following requirements for general permits applicable to designated MS4s.

(1) The Secretary shall include all required permit terms and conditions in the general permit applicable to all designated MS4s and, during the process of authorizing designated MS4s to discharge, establish additional terms and conditions not included in the general permit to satisfy one or more of the permit requirements under subsection (e) of this section.

(2) All additional terms and conditions not included in the general permit, shall be subject to the applicable public notice requirements under 10 V.S.A. Chapter 170 and the rules adopted thereunder.

(d) Application requirements. In addition to the application requirements under Section 22-302 (permit application requirements), an applicant for a permit under this Subchapter shall comply with the following requirements.

(1) If a small MS4 is designated by the Secretary pursuant to subdivision (b)(1)(B) of this section, the small MS4 shall have 180 days from final notice of the designation to apply for permit coverage, unless the Secretary grants a later date.

(2) General permit. If seeking coverage under a general permit, the designated MS4 operator shall submit a notice of intent to the Secretary including all information the

Secretary identifies as necessary to establish additional terms and conditions that satisfy the permit requirements of subsection (e) of this section, such as the information required under subdivision (3) of this subsection.

(3) Individual permit. If seeking coverage under an individual permit, the designated MS4 operator shall submit an application including:

(A) The BMPs that the designated MS4 operator or another entity proposes to implement for each of the stormwater minimum control measures described under subsection (e)(2) of this section.

(B) The proposed measurable goals for each of the BMPs including, as appropriate, the months and years in which the designated MS4 operator proposes to undertake required actions, including interim milestones and the frequency of the action;

(C) The person or persons responsible for implementing or coordinating the stormwater management program;

(D) An estimate of square mileage served by the designated MS4;

(E) A storm sewer map that satisfies the requirement under subdivision (e)(2)(C) of this section satisfies the map requirement under Section 22-302(b)(4) (permit application requirements); and

(F) Any additional information that the Secretary requests.

(e) Permit conditions.

(1) General requirements. For any permit issued to a designated MS4, the Secretary shall include permit terms and conditions to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the CWA. Terms and conditions

that satisfy the requirements of this section must be expressed in clear, specific, and measurable terms. Such terms and conditions may include narrative, numeric, or other types of requirements (e.g., implementation of specific tasks or BMPs, BMP design requirements, performance requirements, adaptive management requirements, schedules for implementation and maintenance, and frequency of actions).

(2) Minimum control measures. The permit must include requirements that ensure the permittee implements, or continues to implement, the minimum control measures in subdivisions (A) through (F) of this subsection during the permit term. The permit must also require a written stormwater management program document or documents that, at a minimum, describes in detail how the permittee intends to comply with the permit's requirements for each minimum control measure.

(A) Public education and outreach on stormwater impacts. The permit must identify the minimum elements and require implementation of a public education program to distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on waters and the steps that the public can take to reduce pollutants in stormwater runoff.

(B) Public involvement and participation. The permit must identify the minimum elements and require implementation of a public involvement and participation program that complies with state and local public notice requirements.

(C) Illicit discharge detection and elimination.

(i) The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to detect and eliminate

illicit discharges into the small MS4. At a minimum, the permit must require the permittee to:

(I) Develop, if not already completed, a storm sewer system map, showing the location of all outfalls and the names and location of all immediate waters of the State that receive discharges from those outfalls;

(II) To the extent allowable under state or local law, effectively prohibit, through ordinance, or other regulatory mechanism, non-stormwater discharges into the storm sewer system and implement appropriate enforcement procedures and actions;

(III) Develop and implement a plan to detect and address non-stormwater discharges, including illegal dumping, to the system; and

(IV) Inform public employees, businesses, and the general public of hazards associated with illegal discharges and improper disposal of waste.

(ii) The permit must also require the permittee to address the following categories of non-stormwater discharges or flows (i.e., illicit discharges) only if the permittee identifies them as a significant contributor of pollutants to the small MS4: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 C.F.R. § 35.2005(b)(20)), uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (discharges or flows from firefighting activities are excluded from the



effective prohibition against non-stormwater and need only be addressed where they are identified as significant sources of pollutants to waters of the State).

(D) Construction site stormwater runoff control. The permit may require the development, implementation, and enforcement of a program to reduce pollutants in any stormwater runoff to the designated MS4 from construction activities that are not regulated under Subchapter 5. The Secretary shall be responsible for implementing the requirements of 40 C.F.R. § 122.34(b)(4)(i).

(E) Post-construction stormwater management in new development and redevelopment. The permit must identify the minimum elements and require the development, implementation, and enforcement of a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre and that are not subject to regulation under Section 22-901 (operational permits). The permit must ensure that controls are in place that would prevent or minimize water quality impacts. At a minimum, the permit must require the permittee to:

(i) Develop and implement strategies which include a combination of structural or non-structural BMPs appropriate for the community;

(ii) Use an ordinance or other regulatory mechanism to address post-construction runoff from new development and redevelopment projects to the extent allowable under state or local law; and

(iii) Ensure adequate long-term operation and maintenance of BMPs.

(F) Pollution prevention and good housekeeping for municipal operations. The permit must identify the minimum elements and require the development and implementation of an operation and maintenance program that includes a training

component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. Using training materials that are available from EPA, the State, or other organizations, the program must include employee training to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances, and stormwater system maintenance.

(3) Other applicable requirements. As appropriate, the permit may include:

(A) More stringent terms and conditions, including permit requirements that modify, or are in addition to, the minimum control measures based on a TMDL or equivalent analysis, or where the Secretary determines such terms and conditions are needed to protect water quality.

(B) Other applicable permit requirements, standards, and conditions established pursuant to this Rule.

(4) Evaluation and assessment requirements.

(A) Evaluation. The permit shall require the permittee to evaluate compliance with the terms and conditions of the permit, including the effectiveness of the components of its stormwater management program, and the status of achieving the measurable requirements in the permit.

(B) Recordkeeping. The permit shall require that the permittee keep records required by the permit for at least five years and submit such records to the Secretary when specifically asked to do so. The permit must require the permittee to make records, including a written description of the stormwater management program, available to the public at reasonable times during regular business hours.

(C) Reporting. Unless the permittee is relying on another entity to satisfy its permit obligations under subdivision (e)(6) of this section, the permittee shall submit annual reports to the Secretary for its first permit term. For subsequent permit terms, the permittee shall submit reports in year two and four unless the Secretary requires more frequent reports. The report shall include:

(A) The status of compliance with permit terms and conditions;

(B) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(C) A summary of the stormwater activities the permittee proposes to undertake to comply with the permit during the next reporting cycle;

(D) Any changes made during the reporting period to the permittee's stormwater management program; and

(E) Notice that the permittee is relying on another governmental entity to satisfy some of the permit obligations, if applicable, consistent with subdivision (e)(6) of this section.

(5) Qualifying local program. If an existing qualifying local program requires the permittee to implement one or more of the minimum control measures of subdivision (e)(2) of this section, the Secretary may include conditions in the permit that direct the permittee to follow that qualifying program's requirements rather than the requirements of subdivision (e)(2) of this section. A qualifying local program is a local or state municipal stormwater management program that imposes, at a minimum, the relevant requirements of subdivision (e)(2) of this section.

(6) Relying on another entity to satisfy permit requirements. The permittee may rely on another entity to satisfy its permit obligations to implement a minimum control measure if:

(A) The other entity, in fact, implements the control measure;

(B) The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirement; and

(C) The other entity agrees to implement the control measure on the permittee's behalf. In the reports, the permittee must submit under subdivision (e)(4)(C) of this section, the permittee must also specify that it is relying on another entity to satisfy some of the permit obligations. If the permittee is relying on another governmental entity regulated under this Rule to satisfy all of the permit obligations, including the obligation to file periodic reports required by subdivision (e)(4)(C) of this section, the permittee must note that fact in its notice of intent, but the permittee is not required to file the periodic reports. The permittee remains responsible for compliance with the permit obligations if the other entity fails to implement the control measure (or components thereof). Therefore, the Secretary encourages the permittee to enter into a legally binding agreement with that entity if the permittee wants to minimize any uncertainty about compliance with the permit.

(7) In some cases, the Secretary may recognize that another governmental entity is responsible for implementing one or more of the minimum control measures for a designated MS4 or designated MS4s or that the Secretary is responsible. Where the Secretary does so, the designated MS4 is not required to include such minimum control measure(s) in its stormwater management program. The permit may be reopened and

amended to include the requirement to implement a minimum control measure if the entity fails to implement it.

## Subchapter 7. INDUSTRIAL STORMWATER PERMITS

### § 22-701. INDUSTRIAL STORMWATER PERMITS

(a) Applicability. This Subchapter applies to stormwater discharges associated with industrial activity requiring permit coverage under Section 22-107(b)(6) (applicability; permit required). In addition to the generally applicable provisions of this Rule, permits issued pursuant to Section 22-107(b)(6) (applicability; permit required) shall comply with the requirements of this section.

(b) Definitions.

(1) “Stormwater discharge associated with industrial activity” means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing, or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities exempt from this Rule. For the categories of industries identified in this section, the term includes stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined under 40 C.F.R. § 401.11); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in

the past and significant materials remain and are exposed to stormwater. For the purposes of this section, material handling activities include storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product, or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. The following categories of facilities are considered to be engaging in "industrial activity":

(A) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. Chapter I, Subchapter N, except facilities with toxic pollutant effluent standards which are exempted under subdivision (J) of this subsection;

(B) Facilities classified within Standard Industrial Classification 24, Industry Group 241 that are rock crushing, gravel washing, log sorting, or log storage facilities operated in connection with silvicultural activities defined in this subdivision and Industry Groups 242 through 249; 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373; (not included are all other types of silviculture facilities). For purposes of this section, "rock crushing facilities" and "gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap. For purposes of this section, "log sorting facilities" and "log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held in self-contained bodies of

water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking);

(C) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 C.F.R. § 434.11(1) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

(D) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

(E) Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;

(F) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including those classified as Standard Industrial Classification 5015 and 5093;

(G) Steam electric power generating facilities, including coal handling sites;

(H) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under subdivisions (A)-(H) or (I)-(J) of this subsection are associated with industrial activity;

(I) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 C.F.R. Part 403. Not included are farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with section 405 of the CWA;

(J) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, and 4221–25.



(c) Conditional exclusion for “no exposure.” Discharges composed entirely of stormwater are not “stormwater discharges associated with industrial activity” if there is “no exposure” of industrial materials and activities to rain, snow, snowmelt, and runoff, and the discharger satisfies the requirements of 40 C.F.R. § 122.26(g).

(d) Application requirements. In addition to the application requirements under Section 22-302 (permit application requirements), an applicant for a permit under this Subchapter shall comply with the applicable requirements in 40 C.F.R. §§ 122.21(g) and 122.26(c)(1)(i).

(e) Permit conditions.

(1) Technology-based effluent limitations. Permits under this Subchapter shall include the technology-based effluent limitations under 40 C.F.R. Chapter I, Subchapter N, as applicable.

(2) Additional reporting requirements. Permits under this Subchapter shall include the reporting requirements under 40 C.F.R. §§ 122.42(a) and 122.44(f) and (i)(3) and (4).

## Subchapter 8. CONCENTRATED ANIMAL FEEDING OPERATION STORMWATER PERMITS

### § 22-801. CONCENTRATED ANIMAL FEEDING OPERATION STORMWATER PERMITS

(a) Applicability. This Subchapter applies to point source discharges from concentrated animal feeding operations requiring permit coverage under Section 22-107(b)(8) (applicability; permit required). Once an animal feeding operation meets the definition of a CAFO for at least one type of animal, the requirements for CAFOs apply with respect to all animals in confinement at the operation and all manure, litter, and

process wastewater generated by those animals or the production of those animals, regardless of the type of animal. In addition to the generally applicable provisions of this Rule, permits issued pursuant to Section 22-107(b)(8) (applicability; permit required) shall comply with the requirements of this section.

(b) Definitions.

(1) “Animal feeding operation” or “AFO” means a lot or facility where the following conditions are met:

(A) Animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

(B) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(2) “Concentrated animal feeding operation” or “CAFO” means an AFO that is defined as a Large CAFO or as a Medium CAFO, or that is designated as a CAFO in accordance with subsection (c) of this section, and includes any land application area. Two or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes.

(3) “Land application area” means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter, or process wastewater from the production area is or may be applied.

(4) “Large concentrated animal feeding operation” or “Large CAFO” means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

- (A) 700 mature dairy cows, whether milked or dry;
  - (B) 1,000 veal calves;
  - (C) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls and cow/calf pairs;
  - (D) 2,500 swine each weighing 55 pounds or more;
  - (E) 10,000 swine each weighing less than 55 pounds;
  - (F) 500 horses;
  - (G) 10,000 sheep or lambs;
  - (H) 55,000 turkeys;
  - (I) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
  - (J) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
  - (K) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
  - (L) 30,000 ducks (if the AFO uses other than a liquid manure handling system);
- or
- (M) 5,000 ducks (if the AFO uses a liquid manure handling system).

(5) “Manure” includes manure, bedding, compost, and raw materials or other materials commingled with manure or set aside for disposal.

(6) “Medium concentrated animal feeding operation” or “Medium CAFO” means an AFO with the type and number of animals that fall within any of the ranges included

in this subdivision and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

(A) The type and number of animals that it stables or confines falls within any of the following ranges:

(i) 200 to 699 mature dairy cows, whether milked or dry;

(ii) 300 to 999 veal calves;

(iii) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes heifers, steers, bulls and cow/calf pairs;

(iv) 750 to 2,499 swine each weighing 55 pounds or more;

(v) 3,000 to 9,999 swine each weighing less than 55 pounds;

(vi) 150 to 499 horses;

(vii) 3,000 to 9,999 sheep or lambs;

(viii) 16,500 to 54,999 turkeys;

(ix) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(x) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(xi) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(xii) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or

(xiii) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and

(B) Either one of the following conditions are met:

(i) Pollutants are discharged into waters of the State through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants are discharged directly into waters of the State which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(7) “Process wastewater” means, for purposes of this Subchapter, water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(8) “Production area” means that part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes feed silos, silage bunkers, and bedding materials. The waste containment area includes settling basins, and areas within berms and diversions which separate uncontaminated stormwater. Also included in the definition of production

area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(9) “Small concentrated feeding operation” or “Small CAFO” means an AFO that is designated as a CAFO and is not a Medium or Large CAFO.

(c) Designation of CAFOs.

(1) The Secretary may designate any AFO as a CAFO upon determining that it is a significant contributor of pollutants to waters of the State. The EPA Regional Administrator may designate any AFO as a CAFO pursuant to 40 C.F.R. § 122.23(c).

(2) In making the designation, the Secretary shall consider the following factors:

(A) The size of the AFO and the amount of wastes reaching waters of the State;

(B) The location of the AFO relative to waters of the State;

(C) The means of conveyance of animal wastes and process waste waters into waters of the State;

(D) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes, manure, and process waste waters into waters of the State; and

(E) Other relevant factors.

(3) No AFO shall be designated under this paragraph unless the Secretary has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program. In addition, no AFO may be designated as a CAFO unless:

(A) Pollutants are discharged into waters of the State through a manmade ditch, flushing system, or other similar manmade device; or

(B) Pollutants are discharged directly into waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

(d) Application requirements. In addition to the application requirements under Section 22-302 (permit application requirements), an applicant for a permit under this Subchapter shall comply with the applicable requirements in 40 C.F.R. § 122.21(i)(1).

(e) Permit conditions.

(1) Technology-based effluent limitations.

(A) Nutrient Management Plan and related requirements. Permits under this Subchapter shall include the requirements under 40 C.F.R. § 122.42(e).

(B) Permits under this Subchapter shall include the technology-based effluent limitations under 40 C.F.R. Chapter I, Subchapter N, Part 412.

(2) Discharges from land application areas. The discharge of manure, litter, or process wastewater to waters of the State from a CAFO as a result of the application of that manure, litter, or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to permit requirements, except where the manure, litter, or process wastewater has been applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in 40 C.F.R. § 122.42(e)(1)(vi)-(ix).

(A) For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall not require permit coverage where the manure, litter, or process wastewater has been land

applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater, as specified in 40 C.F.R. § 122.42(e)(1)(vi) through (ix).

(B) Unpermitted Large CAFOs must maintain documentation specified in 40 C.F.R. § 122.42(e)(1)(ix) either on site or at a nearby office, or otherwise make such documentation readily available to the Secretary or the EPA Regional Administrator upon request.

## Subchapter 9. OPERATIONAL STORMWATER PERMITS

### § 22-901. OPERATIONAL STORMWATER PERMITS

(a)(1) Applicability. This Subchapter applies:

(A) To the development or redevelopment of one or more acres of impervious surface requiring permit coverage under Section 22-107(b)(1) (applicability; permit required);

(B) To the development or redevelopment of one-half or more acres of impervious surface requiring permit coverage under Section 22-107(b)(2) (applicability; permit required);

(C) To the expansion of existing impervious surface by more than 5,000 square feet, such that the total resulting impervious surface is equal to or greater than one acre, requiring permit coverage under Section 22-107(b)(3) (applicability; permit required).

The calculation of expansions is cumulative. If expansions since July 4, 2005 are less than 5,000 square feet individually, but when the expansions added together result in a total expansion of greater than 5,000 square feet and the total resulting impervious



surface is greater than one acre, then permit coverage is required for the project that causes the foregoing threshold to be met;

(D) To a discharge of regulated stormwater runoff from impervious surface of three or more acres, which was never previously permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual, requiring permit coverage under Section 22-107(b)(4) (applicability; permit required);

(E) When an operational stormwater permit is required through designation pursuant to Section 22-107(c)(1) (applicability; permit required).

(2) Temporary impervious surfaces associated with the construction phase of a project shall not be considered impervious surface subject to the requirements of this Subchapter provided:

(A) The impervious surface is in existence for a period not to exceed three years, and

(B) The project is in compliance with any construction stormwater permit required pursuant to Section 22-107(b)(6) (applicability; permit required).

(3) In addition to the generally applicable provisions of this Rule, permits issued pursuant to Sections 22-107(b)(1), (2), and (4) (applicability; permit required; operational permits) shall comply with the requirements of this section.

(b) Permitting standards. Pursuant to Section 22-401 (establishing permit limits) and 40 C.F.R. § 122.44(k), effluent limitations in permits issued under this subchapter shall

be expressed as best management practices in accordance with the following stormwater treatment standards.

(1) For discharges of regulated stormwater runoff to a water that is not stormwater-impaired, that is not Lake Champlain or Lake Memphremagog, and that does not contribute to the phosphorus impairment of Lake Champlain or Lake Memphremagog, the discharge shall comply with the following treatment standards and any additional requirements necessary to comply with the Vermont Water Quality Standards or a TMDL or WQRP:

(A) For new development, for expansions, and for redevelopment, the project shall satisfy the requirements of the Vermont Stormwater Management Manual.

(B) Except for impervious surfaces of three or more acres requiring permit coverage under Section 22-107(b)(4) (applicability; permit required), for renewal of an authorization under a general permit or an individual permit, the project, whether previously built or not, shall comply with the terms of the operational stormwater permit issued most recently to the project, unless the project was built but the approved stormwater system was never built or has substantially deteriorated, meaning the condition of the stormwater treatment practice is beyond that which would be remedied by routine, periodic maintenance for a system of similar design, or unless substantial construction of the project did not commence prior to expiration of the permit and the previously authorized project did not meet the standards of the 2002 Vermont Stormwater Management Manual or its replacement. If the project was built but the system was never built or has substantially deteriorated, the permittee shall comply with the requirements of subdivision (1)(C) of this subsection, except, if a previously authorized

project met the standards of the 2002 Vermont Stormwater Management Manual, the project shall demonstrate compliance with the terms of the operational stormwater permit issued most recently to the project. If substantial construction of the project did not commence prior to expiration of the permit, and the project did not meet the standards of the 2002 Vermont Stormwater Management Manual or its replacement, the project shall comply with the requirements for new development.

(C) For impervious surfaces of three or more acres requiring permit coverage under Section 22-107(b)(4) (applicability; permit required), the project shall satisfy the redevelopment standard of the Vermont Stormwater Management Manual determined to be technically feasible by an engineering feasibility analysis conducted pursuant to Section 22-1001 (engineering feasibility analysis). For purposes of complying with this subsection, the entire impervious surface of three or more acres shall be treated as though it is being redeveloped.

(D) For regulated stormwater runoff requiring permit coverage pursuant to designation under Section 22-107(c)(1) (applicability; permit required), the project shall comply with any requirements the Secretary deems necessary to ensure the regulated stormwater runoff does not cause or contribute to violations of the Vermont Water Quality Standards.

(2) For discharges of regulated stormwater runoff to a stormwater-impaired water, for discharges of phosphorus to Lake Champlain or Lake Memphremagog, or for discharges of phosphorus to a water that contributes to the impairment of Lake Champlain or Lake Memphremagog, for which no TMDL, watershed improvement permit, or WQRP has been approved, the following treatment standards apply:

(A) For new development and for expansions, the project shall satisfy the requirements of the Vermont Stormwater Management Manual and the discharge shall not increase the pollutant load in the receiving water for stormwater. If a project is unable to infiltrate the regulated stormwater runoff from the one-year 24-hour storm event, the project shall comply with the offset or stormwater impact fee requirements of Sections 22-1002 (impact fees) and 22-1003 (offsets).

(B) For redevelopment; for renewal of an authorization under a general permit or an individual permit, whether or not the previously authorized project has been built; for impervious surfaces of three or more acres requiring permit coverage under Section 22-107(b)(4) (applicability; permit required); and for regulated stormwater runoff requiring permit coverage pursuant to designation under Section 22-107(c)(1) (applicability; permit required), the discharge shall not increase the pollutant load in the receiving water for stormwater and the project shall satisfy on-site the groundwater recharge, water quality treatment, and channel protection standards of the Vermont Stormwater Management Manual that are determined to be technically feasible by an engineering feasibility analysis conducted pursuant to Section 22-1001 (engineering feasibility analysis), except, if portions of a previously authorized project met the standards of the 2002 Vermont Stormwater Management Manual, those portions shall demonstrate compliance with the terms of the operational stormwater permit issued most recently to the project. If an engineering feasibility analysis determines that compliance with the applicable standards is achievable on less than 75% of a site, the project shall comply with the offset or stormwater impact fee requirements of Sections 22-1002 (impact fees) and 22-1003 (offsets). If an engineering feasibility analysis determines that

compliance with the applicable standards is achievable on 85% or more of a site, the project may be eligible for receipt of impact fees under Section 22-1002 (impact fees).

(3) For discharges of regulated stormwater runoff to a stormwater-impaired water, for discharges of phosphorus to Lake Champlain or Lake Memphremagog, or for discharges of phosphorus to a water that contributes to the impairment of Lake Champlain or Lake Memphremagog, for which a TMDL or WQRP has been adopted, the Secretary shall determine that there are sufficient pollutant load allocations for the discharge and the discharge shall comply with the following treatment standards and any additional requirements necessary to comply with the Vermont Water Quality Standards or implement the TMDL or WQRP. If the Secretary determines that there are not sufficient pollutant load allocations for the discharge, the project shall comply with the requirements of subdivision (2) of this subsection.

(A) For new development and for expansions, the project shall satisfy the requirements of the Vermont Stormwater Management Manual.

(B) For redevelopment, the project shall satisfy the redevelopment standard of the Vermont Stormwater Management Manual, unless the impervious surface being redeveloped was constructed as new development after 2002 and was previously subject to the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual, in which case the redevelopment project shall be treated as new development and shall satisfy the requirements of the Vermont Stormwater Management Manual for new development. Redevelopment on sites with impervious surfaces of three or more acres requiring permit coverage under Section 22-107(b)(4) (applicability; permit required) shall comply with the applicable requirements of subdivisions (3)(D) and (E) of

this subsection, but in no case shall redevelopment projects involving such sites meet less than the redevelopment standard of the Vermont Stormwater Management Manual.

(C) Except for renewals subject to the standards under subdivision (3)(D) of this subsection, for renewal of an authorization under a general permit or an individual permit, the project, whether previously built or not, shall comply with the terms of the operational stormwater permit issued most recently to the project, unless the project was built but the approved stormwater system was never built or has substantially deteriorated, meaning the condition of the stormwater treatment practice is beyond that which would be remedied by routine, periodic maintenance for a system of similar design. If the project was built but the system was never built or has substantially deteriorated, the permittee shall comply with the requirements of subdivision (3)(D) of this subsection, except, if a previously authorized project met the standards of the 2002 Vermont Stormwater Management Manual, the project shall demonstrate compliance with the terms of the operational stormwater permit issued most recently to the project.

(D) For impervious surfaces of three or more acres that require permit coverage under Section 22-107(b)(4) (applicability; permit required); for the renewal of an authorization under a general permit or an individual permit for impervious surface of less than three acres for which the Secretary has determined additional controls are necessary to implement the TMDL or WQRP for Lake Champlain, Lake Memphremagog, or the stormwater-impaired water; and for regulated stormwater runoff requiring permit coverage pursuant to designation under Section 22-107(c)(1) (applicability; permit required), the project shall:

(i) For discharges to a stormwater-impaired water, satisfy on-site the redevelopment and channel protection standards of the Vermont Stormwater Management Manual determined to be technically feasible by an engineering feasibility analysis conducted pursuant to Section 22-1001 (engineering feasibility analysis), however the Secretary may waive the requirement to meet the channel protection standard on a watershed basis upon a determination by the Secretary that the TMDL wasteload allocation has been met as of the effective date of an authorization under a general permit issued pursuant to Section 22-901(c) (three-acre permits). For purposes of complying with the redevelopment requirement, the entire impervious surface of three or more acres shall be treated as though it is being redeveloped.

(ii) For discharges to Lake Champlain, Lake Memphremagog, or a water that contributes to the impairment of Lake Champlain or Lake Memphremagog, satisfy on-site the redevelopment standard of the Vermont Stormwater Management Manual determined to be technically feasible by an engineering feasibility analysis conducted pursuant to Section 22-1001 (engineering feasibility analysis). For purposes of complying with this subsection, the entire impervious surface of three or more acres shall be treated as though it is being redeveloped.

(iii) If an engineering feasibility analysis determines that a project cannot fully comply with the redevelopment standard under subdivisions (i) or (ii) of this subdivision (3)(D), the project shall comply with the offset or stormwater impact fee requirements of Sections 22-1002 (impact fees) and 22-1003 (offsets). If a project exceeds the requirements of the redevelopment standard such that 60% or more of the water quality volume is achieved pursuant to the redevelopment section of the Vermont

Stormwater Management Manual, the project may be eligible for receipt of impact fees under Section 22-1002 (impact fees). If an engineering feasibility analysis determines that compliance with the channel protection standard under subdivision (i) of this subdivision (3)(D) is achievable on less than 75% of a site, the project shall comply with the offset or stormwater impact fee requirements of Sections 22-1002 (impact fees) and 22-1003 (offsets). If an engineering feasibility analysis determines that compliance with the channel protection standard is achievable on 85% or more of a site, the project may be eligible for receipt of impact fees under Section 22-1002 (impact fees).

(c)(1) Three-acre general permit. On or before January 1, 2018, the Secretary shall issue a general permit for discharges of regulated stormwater runoff from impervious surface of three or more acres in size, when the stormwater discharge previously was not permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual.

(2) If any portion of an impervious surface of three or more acres in size was not permitted or was permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual or any subsequently adopted Stormwater Management Manual, the entire site shall be subject to the requirements of the three-acre general permit.

(3) In addition to complying with the general permit requirements applicable to all general permits issued under this Rule, under the three-acre general permit the Secretary shall:



(A) Establish a schedule for implementation of the general permit by geographic area of the State. The schedule shall establish the date by which an owner of impervious surface shall apply for coverage under the three-acre general permit. The schedule established by the Secretary shall require an owner of impervious surface subject to permitting under this subdivision to obtain coverage by the following dates:

(i) for impervious surface located within the Lake Champlain and Lake Memphremagog watersheds, no later than October 1, 2023; and

(ii) for impervious surface located within all other watersheds of the State, no later than October 1, 2033.

(B) Establish criteria and technical standards, such as best management practices, for implementation of stormwater improvements for the retrofitting of impervious surface subject to permitting under this subdivision.

(C) Require that a discharge of regulated stormwater runoff subject to the requirements of the three-acre general permit comply with the applicable permitting standards under subsection (b) of this section, except stormwater runoff from roads and other linear transportation facilities which does not commingle with stormwater runoff from adjoining or adjacent impervious surfaces that require permit coverage as part of a project that includes the road, shall comply with the technical standards established under the general permit, rather than the standards established under subsection (b) of this section, and such discharges shall not be subject to the offset or stormwater impact fee requirements of this Rule. Stormwater runoff from roads and other linear transportation facilities permitted under a three-acre individual permit shall also follow the standards

adopted under the general permit, rather than the standards under subsection (b) of this section.

(D) Allow the use of stormwater impact fees, offsets, and phosphorus credit trading within the watershed of the water to which the stormwater discharges or runs off.

(4) Notwithstanding the requirements of (c)(1)-(3) of this subsection, discharges of regulated stormwater runoff from impervious surface owned or controlled by the Vermont Agency of Transportation and permitted under a general permit, which establishes requirements for implementation of the Lake Champlain TMDL, TMDLs for stormwater-impaired waters, and requirements for existing impervious surface outside of those watersheds, satisfy the requirements of this subsection.

(d) Permit conditions applicable to all permits issued under this Subchapter.

(1) Recording in land records. The permittee shall record in the local land records, within 14 days of issuance of an individual permit or authorization under a general permit, a one-page notice of permit coverage. A one-page notice form may be obtained from the Secretary. A copy of the recording shall be provided to the Secretary within 14 days of the permittee's receipt of a copy of the recording from the local land records.

Permits for public linear transportation projects shall be exempt from the requirements of this subsection provided the permit is retained by the permittee in the official project file.

(2) Statement of Compliance. If the permittee is constructing a stormwater management system pursuant to an individual permit or authorization under a general permit, within 30 days of the completion of construction, the permittee shall submit to the Secretary a written certification signed by a designer, who is a professional engineer licensed pursuant to 26 V.S.A. Chapter 20 and practicing within the scope of their

engineering specialty, that the stormwater management system was built and is currently operating in compliance with the permit requirements.

(3) Annual inspections and reports. The permittee shall submit an annual inspection report on the operation, maintenance, and condition of the stormwater collection, treatment, and control system. Inspections shall be conducted in accordance with the schedule specified in the permit authorization.

(4) Notification of expansion and of planned changes. Expansions or changes may trigger the need for permit amendment, revocation and reissuance, termination, or coverage under a new or different permit. The permittee shall notify the Secretary of any expansion and of any planned changes that may result in new or increased discharges of regulated stormwater runoff at least 90 days prior to commencing the expansion or changes. The Secretary may require the permittee to submit additional information on the expansion or planned changes.

(5) Permit transfers. In addition to the permit transfer requirements under Section 22-1201(b)(3) (general permit conditions; permit transfers), the following requirements apply to permits issued pursuant to this Subchapter.

(A) All owners of impervious surface subject to this Rule must have coverage under an individual permit or authorization under a general permit.

(B) In the case of a property transfer, a permittee shall, prior to transfer of property subject to an individual permit or authorization under a general permit, either transfer the permit or authorization to the new owner, or add the new owner as a co-permittee if the existing permittee is retaining ownership or control of portions of the permitted project. A permittee's failure to transfer a permit or authorization, does not

relieve an owner of impervious surface from the requirement to have coverage under subdivision (A) of this subsection.

(C) If a permittee is an owners' association, condominium association, other common association, or other legal entity accepting responsibility for a stormwater management system that plans to dissolve, prior to dissolution it must transfer its individual permit or authorization under a general permit to another legal entity accepting responsibility for the stormwater management system.

(D) A permittee shall remain responsible for compliance with all terms and conditions of its individual permit or authorization under a general permit until a permit transfer is completed as required by this Rule.

(6) Conditions to ensure compliance with water quality standards. Permits shall require such additional conditions, requirements, and restrictions as the Secretary deems necessary to achieve and maintain compliance with the Vermont Water Quality Standards, including requirements concerning monitoring, recording, and reporting of discharges of stormwater runoff and impacts on waters due to the operation and maintenance of stormwater collection, treatment, and control systems.

(7) Offsets and stormwater impact fees. Permits may require the implementation of offsets and payment of stormwater impact fees, as required by this Rule and general permits adopted pursuant to this Rule.

(e) Presumption applicable to individual permits for discharges of regulated stormwater runoff to waters not principally impaired by stormwater. In any appeal under 10 V.S.A. Chapter 47, an individual permit issued under Sections 22-107(b)(1),(2), or (3) (applicability; permit required; operational permits) shall have a rebuttable presumption

in favor of the permittee that the discharge does not cause or contribute to a violation of the Vermont Water Quality Standards for the receiving waters with respect to the discharge of regulated stormwater runoff, provided that the discharge is to a water that is not principally impaired due to stormwater.

Subchapter 10. ENGINEERING FEASIBILITY ANALYSIS, STORMWATER  
IMPACT FEES, AND OFFSETS

§ 22-1001. ENGINEERING FEASIBILITY ANALYSIS

(a) Purpose. This section establishes the standards and processes for engineering feasibility analyses required under Section 22-901(b) (operational permitting standards).

(b) Prioritization of standards.

(1) The standards referred to in this section are the redevelopment, groundwater recharge, water quality treatment, and channel protection standards of the Vermont Stormwater Management Manual.

(2) A project that must complete an engineering feasibility analysis pursuant to the standards under Section 22-901(b) (operational permitting standards) shall:

(A) For discharges that must comply with the redevelopment standard, maximize the acreage in compliance with the redevelopment standard.

(B) For discharges that must comply with groundwater recharge, channel protection, or water quality treatment standards, maximize the acreage in compliance with the applicable standards in accordance with the following prioritization: groundwater recharge first, followed by channel protection second, and water quality treatment third.

(c) Maximization.

(1) For portions of a project that are exempt from compliance with a specific standard under the Vermont Stormwater Management Manual or for which compliance with a specific standard under the Vermont Stormwater Management Manual is waived:

(A) The project shall not be required to maximize compliance with that specific standard on the portion of the project that is exempt from compliance or for which compliance is waived, and

(B) The project shall not be required to comply with offset or impact fee requirements for that specific standard for the portion of the project that is exempt from compliance or for which compliance is waived.

(2) When supported by an engineering feasibility analysis completed in conformance with this section, the permittee may receive credit for treating all or portions of a site through use of the practices in the Vermont Stormwater Manual and based on a design storm different than specified in the Vermont Stormwater Management Manual. In such cases, the Secretary shall determine the percentage of the site in compliance with the standards in Section 22-901(b) (operational permitting standards) on a proportional basis.

(3) For a project included in a designated MS4's Flow Restoration Plan approved by the Agency prior to the effective date of this Rule, the Secretary shall consider a project to have maximized compliance with the redevelopment, groundwater recharge, water quality treatment, and channel protection standards if the Flow Restoration Plan identified the required level of treatment and the project complies with the Flow Restoration Plan. This shall apply only to portions of the project assessed as part of a feasibility analysis undertaken for the project.

(4) Maximization feasibility criteria. A project shall not be required to undertake the following activities to maximize compliance with the redevelopment, groundwater recharge, water quality treatment, or channel protection standards:

(A) The purchase or acquisition of land for off-site treatment of stormwater;

(B) Removal of, or actions that would permanently preclude the use or operation of existing structures, utilities, roads, parking areas, sidewalks, and similar infrastructure;

(C) Site re-grading or site re-contouring that would permanently preclude the land use;

(D) Pumping of stormwater runoff;

(E) Infiltration where basement flooding or subsurface pollutant plume transport would occur based on a site-specific analysis identifying seasonal high-water table, soil-infiltrative capacity, and direction of groundwater flow;

(F) Construction that would not be in compliance with the Agency's "Flood Hazard Area and River Corridor Protection Procedure";

(G) Construction within any wetland or its 50-foot buffer zone; and

(H) Destruction of contiguous forested areas exceeding 5,000 square feet where such forested areas are to remain forested under the terms of a permit issued under this Rule.

(I) Activities not approvable under local, state, and federal laws and regulations.

(5) If an engineering feasibility analysis shows that constructing a new best management practice will equate to an increase in compliance with an applicable standard by a factor of 10% or less, the project shall not be required to construct a new

best management practice to comply with the applicable standard and shall satisfy the maximization requirement for purposes of compliance with that standard.

#### § 22-1002. STORMWATER IMPACT FEES

(a) This section establishes the standards and processes for assessing, paying, and receiving stormwater impact fees.

(b) A project requiring payment of stormwater impact fees or completion of an offset under Section 22-901(b) (operational permitting standards) shall pay a stormwater impact fee in accordance with this subsection or complete an offset in accordance with Section 22-1003 (offsets).

(1) The Secretary shall assess fees based on the acreage of impervious surface where compliance with the applicable standards is not achieved. Areas shall be determined in square feet, with the total area converted to acres rounded to the nearest hundredth of an acre.

(2) If paying fees to satisfy the requirements of Section 22-901(b)(2) (operational permitting standards; impaired, no TMDL), the Secretary must determine that sufficient offset charge capacity has been created in the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain or Lake Memphremagog in which the project is located to ensure the discharge will not increase the pollutant load in the receiving water for the pollutant of concern. If there is insufficient offset charge capacity, the applicant shall, in accordance with Section 22-1003 (offsets), complete an offset that generates sufficient offset charge capacity to ensure the discharge will not increase the pollutant load in the receiving water for the pollutant of concern, and if the offset will not have a monetary value equal to or greater than the stormwater impact fee assessed for the



project, then the applicant must pay the difference between the monetary value of the offset and the stormwater impact fee assessed for the project.

(3) The Secretary shall not issue a permit to an applicant until the applicant has paid the required stormwater impact fees.

(4) The fees shall be as follows:

(A) For new development and expansions, subject to the permitting standard under Section 22-901(b)(2)(A) (operational permitting standards; impaired, no TMDL), that are not designed to infiltrate all regulated stormwater runoff from the one-year 24-hour storm event - \$10,000.00 per acre of impervious surface. No fees shall be assessed for areas of a project designed to infiltrate all regulated stormwater runoff from the one-year 24-hour storm event.

(B) Where compliance with the redevelopment, groundwater recharge, water quality treatment, or channel protection standards of the Vermont Stormwater Management Manual is required, but not achieved under Sections 22-901(b)(2) and (3) (operational permitting standards; impaired, no TMDL or with TMDL) for redevelopment, for renewal of an authorization under a general permit or an individual permit, for impervious surfaces of three acres or more requiring permit coverage under Section 22-107(b)(3) (applicability; permit required), for projects identified in an approved TMDL implementation plan or WQRP as requiring an upgrade that a municipality has not assumed full legal responsibility for, and for regulated stormwater runoff requiring permit coverage pursuant to designation under Section 22-107(c)(1) (applicability; permit required):

(i) Redevelopment - \$25,000 per acre of impervious surface calculated based on the area of impervious surface for which water quality volume treatment is not provided but where treatment is required under the redevelopment standard.

(ii) Water quality treatment - \$25,000.00 per acre of impervious surface; for projects that must comply with the groundwater recharge standard, compliance with that standard shall be counted towards compliance with the water quality treatment standard.

(iii) Channel protection - \$25,000.00 per acre of impervious surface.

(5) Fees shall be deposited in the Stormwater Fund, established under 10 V.S.A. § 1264b, and into the account for the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain or Lake Memphremagog in which the project is located.

(6) If a permittee has paid a stormwater impact fee in accordance with this section and subsequently does not construct the permitted project and the Secretary revokes the stormwater discharge permit, the permittee may request that the Secretary reimburse the stormwater impact fee. The Secretary shall reimburse the permittee when sufficient monies are available in the account of the Stormwater Fund into which the permittee paid. Requests for reimbursement shall be honored in the order in which they are received by the Secretary.

(c) Projects eligible for receipt of stormwater impact fees.

(1) The following types of projects, which have improved compliance with the applicable standard by at least 10% over existing conditions, are eligible for receipt of stormwater impact fees as follows:

(A) Projects subject to Sections 22-901(b)(2)(B) (impaired, no TMDL; redevelopment, renewal, three-acre, residually designated) that comply with the water

quality treatment or channel protection standards of the Vermont Stormwater Management Manual on more than 85% of a site shall be eligible to receive funds for the portions of the site exceeding 75% that are in compliance with the applicable standards

(B) Projects subject to Section 22-901(b)(3)(B) (impaired, with TMDL; redevelopment) that exceed the requirements of the redevelopment standard of the Vermont Stormwater Management Manual such that more than 60% of the site is in compliance with the water quality treatment standard of the Vermont Stormwater Management Manual shall be eligible to receive funds for the portions of the site exceeding the redevelopment standard ;

(C) Projects subject to Section 22-901(b)(3)(C) (impaired, with TMDL; renewals) that exceed the applicable standards shall be eligible to receive funds for the portions of the site exceeding the standards that are in compliance with the water quality treatment and channel protection standards of the Vermont Stormwater Management Manual;

(D) Projects subject to Section 22-901(b)(3)(D)(i) (stormwater-impaired, with TMDL; three-acre previously permitted, certain renewals, residually designated) that comply with the channel protection standard of the Vermont Stormwater Management Manual on more than 85% of a site shall be eligible to receive funds for the portions of the site exceeding 75% that are in compliance with the channel protection standard;

(E) Projects subject to Section 22-901(b)(3)(D)(ii) (impaired, Champlain and Memphremagog, with TMDL; three-acre previously permitted, certain renewals, residually designated) that exceed the requirements of the redevelopment standard such that more than 60% of the site is in compliance with the water quality treatment standard

of the Vermont Stormwater Management Manual shall be eligible to receive funds for the portions of the site exceeding the redevelopment standard;

(F) Projects in stormwater impaired waters or Lake Champlain or Lake Memphremagog or waters that contribute to the impairment of Lake Champlain or Lake Memphremagog not otherwise required to have permit coverage under Subchapters 6 or 9 that comply with the water quality treatment or channel protection standards of the Vermont Stormwater Management Manual on any portion of the site shall be eligible to receive funds for the portions of the site in compliance with the water quality treatment and channel protection standards;

(G) Projects for which a municipality has assumed full legal control that are included under an approved TMDL implementation plan that comply with the water quality treatment or channel protection standards of the Vermont Stormwater Management Manual shall be eligible to receive funds for the portions of the site in compliance with the water quality treatment and channel protection standards of the Vermont Stormwater Management Manual.

(2) Projects eligible for receipt of stormwater impact fees that have been paid into the Stormwater Fund must apply to receive the funds. To apply for funds, a person shall:

(A) Have a valid permit issued by the Secretary pursuant to this Rule for a project eligible for receipt of stormwater impact fees under subdivision (c)(1) of this section.

(B) Provide a statement of compliance, on a form provided by the Secretary, certifying that the project has been completed in accordance with its permit issued

pursuant to this Rule. Such statement of compliance shall be subject to verification by the Secretary.

(3) Calculation of the amount of funding a project shall be eligible for. The Secretary shall calculate the amount of funding a project shall be eligible for based on the acreage of impervious surface meeting the requirements of subdivision (c)(1) of this section multiplied by the dollar value applicable to the standard or standards that the project complies with under subdivision (c)(1) of this section. Areas shall be determined in square feet, with the total area converted to acres rounded to the nearest hundredth of an acre. The dollar values for the standards are as follows:

(A) Redevelopment - \$25,000 per acre of impervious surface calculated based on the area of impervious surface for which water quality volume treatment is provided but where treatment is not required under the redevelopment standard.

(B) Water quality treatment - \$25,000.00 per acre of impervious surface; for projects that must comply with the groundwater recharge standard, compliance with that standard shall be counted towards compliance with the water quality treatment standard.

(C) Channel protection - \$25,000.00 per acre of impervious surface.

(4) Award of stormwater impact fees that have been previously paid into the Stormwater Fund.

(A) Funds shall be awarded on an annual basis to projects eligible for receipt of stormwater impact fees that have applied pursuant to the requirements of subdivision (c)(2) of this section.

(B) Funds may only be awarded to a project eligible for receipt of stormwater impact fees from the Stormwater Fund account for the stormwater-impaired water or

phosphorus-impaired lake segment of Lake Champlain or Lake Memphremagog in which the project is located.

(i) Funds shall be awarded first to projects under subdivisions (c)(1)(A) – (F) of this section in order of which projects applied first.

(ii) If funds remain after funds are awarded pursuant to subdivision (c)(4)(B)(i) of this section, funds shall be awarded to projects under subdivision (c)(1)(G) in order of which projects applied first.

(iii) All balances remaining at the end of any fiscal year shall be carried forward and remain a part of the Stormwater Fund.

(5) Reservation of offset charge capacity. This subdivision is applicable when the standards under Section 22-901(b)(2) (operational permitting standards; impaired, no TMDL) apply.

(A) If an applicant plans to create an offset under Section 22-1003 (offsets) and wants to reserve offset charge capacity for itself or for another discharger, the applicant shall:

(i) Provide modeling, acceptable to the Secretary, demonstrating the reduction in pollutant load that the project will generate, and

(ii) Clearly indicate on its permit application the discharger for which the offset charge capacity shall be reserved.

(B) A discharger for which offset charge capacity has been reserved may use such offset charge capacity once the offset project generating the capacity has been completed in compliance with a valid permit issued by the Secretary pursuant to this Rule.

(6) Reservation of stormwater impact fees. If an applicant applies for a permit for a project eligible for receipt of stormwater impact fees and chooses to direct the funds that the project would be eligible for towards future projects requiring payment of stormwater impact fees, the applicant shall indicate that intent on its permit application.

#### § 22-1003. OFFSETS

(a) A project requiring payment of stormwater impact fees or completion of an offset under Section 22-901(b) (operational permitting standards) shall complete an offset in accordance with this section or pay a stormwater impact fee in accordance with Section 22-1002 (impact fees).

(b) The following types of projects may be completed as offsets:

(1) For a project subject to Sections 22-901(b)(2)(B) (impaired, no TMDL; redevelopment, renewal, three-acre, residually designated) or 22-901(b)(3)(D) (impaired, with TMDL; three-acre previously permitted, certain renewals, residually designated), the part of the project, which exceeds 75% of the site, that complies with the applicable standards, and projects subject to Section 22-901(b)(3)(D) (impaired, with TMDL; three-acre not previously permitted) that exceed the redevelopment standard based on the area of impervious surface for which water quality volume treatment is provided but where treatment is not required under the redevelopment standard;

(2) For a project subject to Section 22-901(b)(3)(B) (impaired, with TMDL; redevelopment), the part of the project that exceeds the applicable standards, when such treatment is not already being provided through implementation of the redevelopment standard of the Vermont Stormwater Management Manual;

(3) For a project subject to Section 22-901(b)(3)(C) (impaired, with TMDL; renewals), the part of the project that exceeds the applicable standards;

(4) A project not otherwise required to have permit coverage under Subchapters 6 or 9 that complies with the groundwater recharge, water quality treatment, or channel protection standards of the Vermont Stormwater Management Manual.

(c)(1) If a permittee is completing an offset to satisfy the requirements of Section 22-901(b)(2) (operational permitting standards; impaired, no TMDL) for new development or expansions, the offset must be completed prior to initiation of the discharge.

(2) For all other projects for which a permittee is completing an offset, the offset must be completed prior to the end of the permit term or as otherwise required by the permit.

(d) When an applicant proposes to complete an offset to satisfy the requirements of Section 22-901(b) (operational permitting standards), the person shall:

(1) Apply for a permit issued pursuant to this Rule for a project eligible as an offset under subsection (b) of this section, unless the person is not the landowner, in which case the landowner shall apply,

(2) Clearly indicate on the permit application the project for which the offset will be used to satisfy the requirements of Section 22-901(b) (operational permitting standards), and

(3) Provide all information required by the Secretary on the required permit application form.

(e) If completing an offset to comply with Section 22-901(b)(2) (operational permitting standards; impaired, no TMDL), the applicant shall provide modeling,



acceptable to the Secretary, demonstrating the reduction in pollutant load that the offset will generate. If the applicant must complete an offset under Section 22-901(b)(2) (operational permitting standards; impaired, no TMDL) because sufficient offset charge capacity has not previously been created in the stormwater-impaired water or phosphorus-impaired lake segment of Lake Champlain or Lake Memphremagog in which the project is located, the applicant's modeling must demonstrate that the offset will generate sufficient offset charge capacity to ensure the discharge will not increase the pollutant load in the receiving water for the pollutant of concern.

(f) Offsets shall be assessed monetary value as follows. The Secretary shall calculate the monetary value of an offset based on the acreage of impervious surface meeting the requirements of subsection (b) of this section multiplied by the dollar value applicable to the standard or standards that the project complies with under subdivision (b) of this section. Areas shall be determined in square feet, with the total area converted to acres rounded to the nearest hundredth of an acre. The dollar values for the standards are as follows:

(1) Redevelopment - \$25,000 per acre of impervious surface calculated based on the area of impervious surface for which water quality volume treatment is provided.

(2) Water quality treatment - \$25,000.00 per acre of impervious surface; for projects that must comply with the groundwater recharge standard, compliance with that standard shall be counted towards compliance with the water quality treatment standard.

(3) Channel protection - \$25,000.00 per acre of impervious surface.

(g) The monetary value of an offset shall be subtracted from the stormwater impact fees that a project must pay under Section 22-1002 (impact fees).

(h) If a permittee creates an offset project with a monetary value, as determined by this Rule, that exceeds the stormwater impact fee applicable to the project under Section 22-1002 (impact fees), the permittee may apply for receipt of stormwater impact fees pursuant to the requirements of Section 22-1002(c) (impact fees).

#### Subchapter 11. MUNICIPAL ROADS STORMWATER PERMITS

##### § 22-1101. MUNICIPAL ROADS STORMWATER PERMITS

(a) Applicability. This Subchapter applies to municipalities' discharges of regulated stormwater runoff from municipal roads requiring permit coverage under Section 22-107(b)(5) (applicability; permit required). In addition to the generally applicable provisions of this Rule, permits issued pursuant to Section 22-107(b)(5) (applicability; permit required) shall comply with the requirements of this section.

(b) Definitions.

(1) "Municipal road" means all town highways, classes 1-4, as defined under 19 V.S.A. Chapter 3, and their rights-of-way, as well as municipal stormwater infrastructure associated with town highways.

(2) "Municipality" for purposes of this Subchapter, means a city, town, or village.

(c) Municipal roads stormwater general permit. On or before December 31, 2017, the Secretary shall issue a general permit for discharges of regulated stormwater from municipal roads. Under the municipal roads stormwater general permit, the Secretary shall:

(1) Establish a schedule for implementation of the general permit by each municipality in the State. On or before July 1, 2021, all municipalities shall apply for coverage under the municipal roads general permit or coverage under an individual

permit or municipal separate storm sewer system permit that implements the technical standards and criteria established by the Secretary for stormwater improvements of municipal roads. Under the schedule, the Secretary shall establish:

(A) The date by which each municipality shall apply for permit coverage;

(B) The date by which each municipality shall inventory necessary stormwater management projects on municipal roads;

(C) The date by which each municipality shall establish a plan for implementation of stormwater improvements that prioritizes stormwater improvements according to criteria established by the Secretary under the general permit; and

(D) The date by which each municipality shall implement stormwater improvements of municipal roads according to a municipal implementation plan.

(2) Establish criteria and technical standards, such as best management practices, for implementation of stormwater improvements of municipal roads. Pursuant to Section 22-401 (establishing permit limits) and 40 C.F.R. § 122.44(k), all effluent limitations established under this subchapter shall be expressed as best management practices.

(3) Establish criteria for municipal prioritization of stormwater improvements of municipal roads. The Secretary shall base the criteria on the water quality impacts of a stormwater discharge, the current state of a municipal road, the priority of a municipal road or stormwater project in any existing transportation capital plan developed by a municipality, and the benefits of the stormwater improvement to the life of the municipal road.

(4) Require each municipality to submit to the Secretary and periodically update its implementation plan for stormwater improvements.

(d) Requiring an individual permit. The Secretary may require an individual permit for a stormwater improvement at any time under Section 22-107(c)(1) (applicability; permit required). An individual permit shall include site-specific standards for the stormwater improvement.

## Subchapter 12. GENERAL PERMIT CONDITIONS AND PROVISIONS

### APPLICABLE TO ALL PERMITS

#### § 22-1201. GENERAL PERMIT CONDITIONS AND PROVISIONS APPLICABLE TO ALL PERMITS

(a) All permit conditions shall be included expressly or incorporated by reference. If incorporated by reference, a specific citation to this Rule must be included in the permit.

(b) The following general conditions shall be applicable to all permits issued pursuant to this Rule:

(1) Duty to comply.

(A) The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of 10 V.S.A. Chapter 47 and this Rule and is grounds for enforcement action; for permit termination, revocation and reissuance, or amendment; or denial of a permit renewal application.

(B) If a permittee has a point source discharge of toxic pollutants for which effluent standards or prohibitions are established under section 307(a) of the CWA, the permittee shall comply with the effluent standards or prohibitions within the time provided in the regulations that establish these standards or prohibitions, even if the permit has not yet been amended to incorporate the requirement.

(C) Violations of the terms and conditions of this permit are subject to civil and criminal penalties pursuant to 10 V.S.A. §§ 1274 and 1275 and administrative enforcement pursuant to 10 V.S.A. § 1272 and Chapters 201 and 211, and EPA retains authority to enforce violations of the CWA pursuant to section 309 of the CWA.

(2) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of the permittee's authorization, the permittee shall submit an administratively complete application prior to the expiration date of the authorization.

(3) Permit transfers and addition of co-permittees.

(A) Automatic transfers. This permit may be automatically transferred to a new permittee if:

(i) The current permittee notifies the Secretary at least 30 days in advance of the proposed transfer date;

(ii) The notice includes a written agreement between the current permittee and proposed permittee containing:

(I) The name and address of the current permittee;

(II) The name and address of the proposed permittee;

(III) A specific date for transfer of permit responsibility, coverage, and liability between them; and

(IV) 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

(iii) 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.

(B) Addition of co-permittee. The permittee may add a co-permittee by submitting a notice of addition of co-permittee on a form provided by the Secretary. The notice shall include, at a minimum, the information listed in subdivision (A)(ii) of this subsection, except that rather than a date of transfer, the notice shall specify the date of addition of co-permittee.

(4) Continuation of expiring permits. When the permittee has made timely and sufficient application for the renewal of a permit or a new permit with reference to any activity of a continuing nature, the existing permit shall not expire until the application has been finally determined by the Secretary, and, in case the application is denied or the terms of the new permit limited, until the last day for seeking review of the Secretary's decision or a later date fixed by order of the reviewing court.

(5) Signatories.

(A) Applications. All permit applications, including notices of intent, shall be signed as follows:

(i) For a corporation. By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit

duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

(ii) For a partnership or sole proprietorship. By a general partner or the proprietor, respectively; or

(iii) For a municipality, state, federal, or other public agency. By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a federal agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(B) All reports required by permits, and other information requested by the Secretary shall be signed by a person described in subdivision (A) of this subsection, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) The authorization is made in writing by a person described in subdivision (A) of this subsection;

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, or an individual or position having overall responsibility for environmental matters for the company; and

(iii) The written authorization is submitted to the Secretary.

(C) Changes to authorization. If an authorization under subdivision (B) of this subsection is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of subdivision (B) of this subsection must be submitted to the Secretary prior to or together with any reports, information, or applications to be signed by an authorized representative.

(D) Certification. Any person signing a document under subdivisions (A) or (B) of this subsection shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under the direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(E) Electronic reporting. If documents described in subdivisions (A) or (B) of this subsection are submitted electronically, any person providing the electronic signature for such documents shall meet all relevant requirements of this section.

(6) Need to halt or reduce activity not a defense. It shall not be a defense for the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.



(7) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(8) 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. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by a permittee, only when the operation is necessary to achieve compliance with the conditions of the permit.

(9) Permit amendment, revocation and reissuance, and termination. This permit may be amended, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit amendment, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(10) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.

(11) Duty to retain records and provide information. The permittee shall furnish to the Secretary, within a reasonable time, any information which the Secretary may request to determine whether cause exists for amending, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Secretary upon request, copies of records required to be kept by this permit. The

permittee shall keep 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 report or application. This period may be extended by request of the Secretary at any time.

(12) Inspection and entry. The permittee shall allow the Secretary, at reasonable times and upon presentation of credentials, to:

(A) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

(B) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this 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, for the purposes of ensuring permit compliance or as otherwise authorized by the CWA or state law, any substances or parameters, including performance of best management practices, at any location.

(13) Reporting requirements.

(A) Planned changes. 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:

(i) The alteration or addition may meet one of the criteria for determining whether a facility is a new source; or

(ii) 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.

(B) Anticipated noncompliance. 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.

(C) Twenty-four hour reporting.

(i) The permittee shall report 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 description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) The following shall be included as information which must be reported within 24 hours under this subdivision.

(I) Any unanticipated bypass, meaning the unanticipated diversion of waste streams from any portion of a treatment facility, which exceeds any effluent limitations in the permit.

(II) Violation of a maximum daily discharge limitation for any pollutants listed in the permit to be reported within 24 hours.

(iii) The Secretary may waive the written report on a case-by-case basis for reports under subdivision (C)(ii) of this subsection, if the oral report has been received within 24 hours.

(D) Other noncompliance. 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 description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(E) Other information. If the 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.

(14) Compliance with other laws. This permit does not obviate the necessity to comply with other federal, state, and local laws and regulations nor does it obviate the necessity of obtaining other applicable federal, state, and local permits and approvals as may be required by law.

(15) Appeals.

(A) Pursuant to 10 V.S.A. Chapter 220, any appeal of this permit, except as specified under subdivision (B) of this subsection, must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The notice of appeal must specify the parties taking the appeal and the statutory provision

under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the notice of appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings.

(B) If this permit relates to a renewable energy plant for which a certificate of public good is required under 30 V.S.A. § 248, any appeal of this decision must be filed with the Vermont Public Utility Commission pursuant to 10 V.S.A. § 8506. This section does not apply to a facility that is subject to 10 V.S.A. § 1004 (dams before the Federal Energy Regulatory Commission), 10 V.S.A. § 1006 (certification of hydroelectric projects), or 10 V.S.A. Chapter 43 (dams). Any appeal under this subdivision must be filed with the clerk of the Public Utility Commission within 30 days of the date of this decision; the appellant must file with the clerk an original and six copies of its appeal. The appellant shall provide notice of the filing of an appeal in accordance with 10 V.S.A. § 8504(c)(2), and shall also serve a copy of the notice of appeal on the Vermont Public Service Department. For further information, see the Rules and General Orders of the Public Utility Commission.

(c) Monitoring and records. The following general condition shall be included in all permits issued pursuant to this Rule that include monitoring requirements.

(1) 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. This period may be extended by request of the Secretary at any time.

(2) Records of monitoring information shall include:

- (A) The date, exact place, and time of sampling or measurements;
- (B) The individual(s) who performed the sampling or measurements;
- (C) The date(s) analyses were performed;
- (D) The individual(s) who performed the analyses;
- (E) The analytical techniques or methods used; and
- (F) The results of such analyses.

(3) Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(A) Monitoring results must be reported on a Discharge Monitoring Report (DMR).

(B) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 C.F.R. Part 136, or another method required for an industry-specific waste stream under 40 C.F.R. Chapter I, Subchapter N, the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR.

(C) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Secretary in the permit.

(d) Duration. All individual and general permits issued pursuant to this Rule shall be valid for a period of time not to exceed five years.

Subchapter 13. SPECIAL CONDITIONS APPLICABLE ON A CASE-BY-CASE BASIS

§ 22-1301. SPECIAL CONDITIONS APPLICABLE ON A CASE-BY-CASE BASIS

(a) In addition to the conditions required in all permits, the Secretary shall establish conditions, as required on a case-by-case basis, to provide for and ensure compliance with all applicable requirements of the CWA and state law.

(b) Monitoring and reporting. Permits shall comply with the following requirements, as applicable.

(1) General. All permits with monitoring requirements shall specify:

(A) Requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods, when appropriate;

(B) Required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring;

(C) Applicable reporting requirements based upon the impact of the regulated activity; and

(D) Any pollutants for which the permittee must report violations of maximum daily discharge limitations under Section 22-1201(b)(13)(C)(ii)(II) (general permit

conditions; reporting requirements) of this Rule (24-hour reporting). This list of pollutants shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(2) Monitoring requirements.

(A) To assure compliance with permit limitations, requirements to monitor:

- (i) The mass, or other measurement specified in the permit, for each pollutant limited in the permit;
- (ii) The volume of effluent discharged from each point source, if applicable;
- (iii) Other measurements as appropriate; and
- (iv) According to sufficiently sensitive test procedures approved under 40 C.F.R. Part 136 for the analysis of pollutants or pollutant parameters or required under 40 C.F.R. Chapter I, Subchapter N. For purposes of this subdivision, a method is “sufficiently sensitive” when it meets the definition under Section 22-302(a)(3)(A) (permit application requirements). In the case of pollutants or pollutant parameters for which there are no approved methods under 40 C.F.R. Part 136 or methods are not otherwise required under 40 C.F.R. Chapter I, Subchapter N, monitoring shall be conducted according to a test procedure specified in the permit for such pollutants or pollutant parameters.

(3) Recording and reporting monitoring results. Except as provided in Section 22-701(e)(2) (industrial permits), requirements to report monitoring results shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.



(c) Compliance schedules. A permit may, when appropriate, specify a schedule of compliance leading to compliance with the CWA and state law.

(1) Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible, but not later than any applicable statutory deadline under the CWA.

(2) Interim dates. If a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

(A) The time between interim dates shall not exceed one year.

(B) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.

(3) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Secretary in writing of its compliance or noncompliance with the interim or final requirements, or submit progress reports if subdivision (2)(B) of this subsection is applicable.

(d) Reopener. A permit may include a reopener clause.

#### Subchapter 14. ELECTRONIC REPORTING

#### § 22-1401. ELECTRONIC REPORTING

The Secretary shall comply with the electronic reporting requirements applicable to delegated states under 40 C.F.R. Part 127, and shall include the electronic reporting requirements applicable to permittees in all general and individual permits issued pursuant to this Rule.

#### Subchapter 15. FEDERAL REGULATIONS INCORPORATED BY REFERENCE

##### § 22-1501. FEDERAL REGULATIONS INCORPORATED BY REFERENCE

(a) The following sections of the Code of Federal Regulations are incorporated by reference into this Rule:

- (1) 40 C.F.R. § 122.21(g), (i)(1), (m), and (o) (Application for a permit)
- (2) 40 C.F.R. § 122.26(c)(1)(i) and (g) (Stormwater discharges)
- (3) 40 C.F.R. § 122.29(b) and (d) (New sources and new dischargers, effect of compliance with new source performance standards)
- (4) 40 C.F.R. § 122.32(d) (Waiver of permit coverage for certain MS4s)
- (5) 40 C.F.R. § 122.42(a) and (e) (Additional conditions applicable to specified categories of permits – industrial and CAFO)
- (6) 40 C.F.R. § 122.44(a), (b), (d), (e), (f), (i)(3) and (4), and (k)
- (7) 40 C.F.R. § 122.45 (Calculating permit conditions)
- (8) 40 C.F.R. Part 122, Appendix D (Permit application testing requirements for 40 C.F.R. § 122.21(g))
- (9) 40 C.F.R. § 124.62 (Decision on variances)
- (10) 40 C.F.R. § 125.3 (Technology-based treatment requirements in permits)
- (11) 40 C.F.R. §§ 125.30-32 (Criteria and standards for determining fundamentally different factors under sections 301(b)(1)(A), 301(b)(2)(a) and (e) of the CWA)

(12) 40 C.F.R. Part 129 (Toxic pollutant effluent standards and prohibitions)

(13) 40 C.F.R. Part 136 (Guidelines establishing test procedures for the analysis of pollutants)

(14) 40 C.F.R. Chapter I, Subchapter N (Effluent guidelines and standards)

(b) When applying the foregoing sections of the Code of Federal Regulations, the following terms and provisions from this Rule shall be substituted for the terms and provisions in the Code of Federal Regulations:

(1) The defined term “Secretary” shall substitute for “Director.”

(2) The defined term “waters of the State” shall substitute for “waters of the United States.”

(3) The defined term “stormwater” shall substitute for “storm water.”

(4) The requirements of 10 V.S.A. Chapter 170 and the rules adopted thereunder shall substitute for references to requirements related to public notice, public hearings, and public comment in the Code of Federal Regulations.

(5) The signature requirements under Section 22-1201(b)(5) (general permit conditions; signatories) shall substitute for references to 40 C.F.R. § 122.22.

(6) The compliance schedule requirements under Section 22-1301(c) (special permit conditions) shall substitute for references to 40 C.F.R. § 122.47.

(7) The fact sheet requirements under Section 22-305 (fact sheets) shall substitute for references to 40 C.F.R. §§ 124.8 and 124.56.