

VERMONT AGENCY OF NATURAL RESOURCES  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Response to comments on VTrans' application for authorization under the  
Transportation Separate Storm Sewer System (TS4) General Permit  
Stormwater Permit #7892-9007.A1  
May 26, 2021

The Department of Environmental Conservation received a Notice of Intent (NOI) from the Vermont Agency of Transportation (VTrans) to amend the previously issued TS4 authorization to incorporate the VTrans Phosphorus Control Plan (PCP). The Department noticed the application for public comment. The Department received comments from R.L. Vallee, Inc. The following is the public comment received and the Department's response.

1. The issued NOI (7892-9007) did not meet the standards of Section 6.2 of the TS4 General Permit. Section 6.2 requires that VTrans:

VTrans shall develop, implement, and enforce a stormwater management program, which shall include the six minimum control measures, designed to reduce the discharge of pollutants from the TS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act. For purposes of the six minimum control measures, implementation of BMPs consistent with the provisions of the SWMP shall constitute compliance with the standard of reducing pollutants to the MEP.

The NOI for which Permit 7892-9007 issued did not meet these standards because it allows for VTrans to increase chloride pollution to chloride impaired waters. Further it did not meet the requirements of Section 6.2 because it did not require any expansion of impervious surfaces to be "net-zero" as to phosphorus loading to Lake Champlain which is practicable with the availability of offset projects and no regard to "cost" in the definition of "feasible." See TS4 GP defining Feasible to mean "technologically possible as well as practicable and achievable in light of best industry practices."

**Response:** This amendment NOI (7892-9007.A1) is limited to the incorporation of the Phosphorus Control Plan required under Section 9.2 of the TS4 General Permit. The elements of VTrans' Stormwater Management Program related to Section 6 are outside the scope of this amendment.

2. Section 9.2 of the TS4 General Permit requires that VTrans develop a specific Phosphorus Control Plan ("PCP") to deal with the pollutant of phosphorus into Lake Champlain. It is unclear whether the PCP submitted by VTrans and as reviewed by the ANR has any bearing on VTrans' compliance with Section 6.2 of the TS4 General Permit. Vallee therefore asks that ANR is to clarify the relationship and effect, if any, between the PCP submitted by VTrans and that is now on public comment, the draft amended permit (7892-9007.A1) also on public comment, and previously issued permit 7892-9007.

**Response:** The subject Notice of Intent (7892-9007.A1) and draft authorization amend the previous authorization (7892-9007) to fulfill the Phosphorous Control Plan (PCP) compliance requirement in Section 9.2 of the TS4 General Permit, and per the compliance schedule contained in authorization 7892-9007. Submittal of and compliance with the PCP does not relate to VTrans' compliance with Section 6.2 of the TS4 General Permit. Section 6.2 establishes the requirement to reduce pollutants to the maximum extent practicable through implementation of the general permit's required six Minimum Control Measures. Part 9 of the TS4 General Permit pertains to TMDL implementation.

3. To the extent there is a relationship, and the PCP has a bearing on VTrans' obligations under Section 6.2 to reduce the discharge of pollutants (in this case phosphorus) from the TS4 to the maximum extent practicable, then Vallee asserts that the PCP fails to do so.

The failure lies in the interstitial time between the issuance of the PCP and permit 7892-9007.A1 and the construction of the proposed phosphorus reduction projects proposed in the PCP. These reduction projects will take many years to complete and thus it will be several years before VTrans begins to reduce its phosphorus discharges to Lake Champlain. Before that occurs, the PCP seems to allow VTrans to increase its phosphorus discharges to Lake Champlain.

This is inconsistent with the original overall goal of the TS4 and PCP which is to effectuate necessary phosphorus reductions in the various segments of Lake Champlain. For example, if VTrans were to increase its discharges of phosphorus to the Main Lake segment by 1% in the before the construction of the proposed reduction measures, then the proposed measures in the PCP (which are designed to get the necessary 20% reduction) will not achieve the 20% reduction. They would only achieve a 19% reduction.

Thus, to be effective the PCP must require that VTrans "hold the line" with any new expansion and be "net-zero" as to phosphorus discharges into the applicable lake segment. Thus, Vallee asks that the Agency also a) answer whether VTrans may increase phosphorus discharges under the PCP, b) explain how the necessary reduction targets are met if VTrans does increase phosphorus discharges before the necessary reduction projects are completed, and c) explain how if VTrans is allowed to increase phosphorus discharges how Section 6.2 of the General Permit it satisfied.

**Response:** As stated in response to Comment 2, adoption of the PCP is unrelated to VTrans' compliance with Section 6.2, which requires the permittee to reduce pollutants to the "maximum extent practicable" through implementation of the six minimum control measures described in Section 6.3. The adoption and implementation of the PCP is an independent requirement related to TMDL implementation, specifically the Lake Champlain TMDLs for phosphorus. The Lake Champlain TMDLs include future-growth allocations for the developed lands sector. In other words, VTrans' PCP does not prohibit development on land under VTrans' control because any potential increases in phosphorus from new development were accounted for in setting the lake-segment specific phosphorus reduction targets. Further, the wasteload allocations for developed lands apply to the sector as a whole, and to

not individual dischargers within the sector. Section 9.2 of the TS4 requires VTrans to develop and implement a Phosphorus Control Plan per the schedule in 9.2.C., which includes phased implementation in four-year periods concluding in 2036, that achieves phosphorus reduction consistent with the TMDLs.