

## **NOTICE OF DRAFT DESIGNATION**

Pursuant to 10 V.S.A. § 1264(e)<sup>1</sup>, the Secretary of Natural Resources (Secretary) issues this draft designation of stormwater discharges, from impervious surfaces owned or controlled by the Vermont Agency of Transportation (VTrans), that currently are unpermitted.

This draft designation will be placed on public notice for a 30-day public comment period, after which the Department will issue a final designation decision.

## **FINDINGS OF FACT**

### **Factual Background for Designation: VTrans Owned and Controlled Impervious Surface**

VTrans owns or controls a significant amount of impervious surface across the State of Vermont. VTrans' transportation infrastructure includes state highways, sidewalks, multi-use pedestrian paths, welcome centers, airports, gravel pits, mineral mining facilities, maintenance facilities, park & rides, truck weigh stations, and other impervious surfaces.

Many of these impervious surfaces currently have permit coverage for stormwater discharges under one of the following state permits: "General Permit 3-9014 for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s),"<sup>2</sup> the "Vermont Multi-Sector General Permits (MSGP) for Stormwater Discharges Associated with Industrial Activity MSGP 3-9003,"<sup>3</sup> or a State Operational Stormwater permit<sup>4</sup>. Although these permitting schemes require permit coverage for much of the impervious surface owned and controlled by VTrans,

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<sup>1</sup> This is the section of state law under which the Secretary may exercise "residual designation authority." This section of law is consistent with and at least as stringent as 40 C.F.R. § 122.26(a)(9)(i).

<sup>2</sup> This permit covers "VTrans designated regulated small MS4," which is made-up of state highways in the urbanized areas and stormwater-impaired watersheds of Burlington, Colchester, Essex, Essex Junction, Milton, Shelburne, South Burlington, Williston, Winooski, the University of Vermont, the Burlington International Airport, Jericho, Underhill, St. Albans, the Town of St. Albans, the Town of Rutland, and the City of Rutland.

<sup>3</sup> VTrans' facilities covered under this permit are VTrans' owned or controlled airport facilities and non-metallic mineral mining facilities.

<sup>4</sup> VTrans' impervious surfaces covered under State Operational Stormwater permits are those surfaces that have received coverage for post-construction stormwater discharges under Stormwater General Permit 3-9010 or 3-9015, or an individual state stormwater discharge permit.

these permitting schemes have not captured all of VTrans’ transportation infrastructure for purposes of stormwater permit coverage.

This unpermitted stormwater runoff from VTrans’ transportation infrastructure may cause or contribute to the impairment of waters of the State when unmanaged by stormwater treatment practices (STPs) and other best management practices (BMPs) required under a stormwater discharge permit.

## **Factual Background for Designation: Addressing the Lake Champlain Impairment and Protecting Water Quality Statewide**

### **I. The Lake Champlain Watershed**

The United States Environmental Protection Agency (U.S. EPA) established phosphorus total maximum daily loads (TMDLs) for 13 lake segments in Lake Champlain (See “Phosphorus TMDLs for Vermont Segments of Lake Champlain,” U.S. EPA, Region 1, June 17, 2016). Under the TMDLs, the phosphorus load from developed lands within the Lake Champlain watershed must be reduced as follows:

<b>Lake Segment</b>	<b>% Reduction</b>
01. South Lake B	21.1%
02. South Lake A	18.1%
03. Port Henry	7.6%
04. Otter Creek	15.0%
05. Main Lake	20.2%
06. Shelburne Bay	20.2%
07. Burlington Bay	24.2%
09. Malletts Bay	20.5%
10. Northeast Arm	7.2%
11. St. Albans Bay	21.7%
12. Missisquoi Bay	34.2%
13. Isle La Motte	8.9%

VTrans’ transportation infrastructure is included within the developed lands wasteload allocation (WLA). Regulation of stormwater from VTrans’ transportation infrastructure is necessary to implement the WLA.

### **II. Outside the Lake Champlain Watershed**

While permit coverage is specifically needed within the Lake Champlain watershed to address VTrans’ necessary phosphorus reductions, permit coverage is needed for VTrans owned and

controlled impervious surfaces outside the Lake Champlain watershed to ensure the protection and maintenance of existing water quality. Because of the sheer size of VTrans' transportation infrastructure, the types of activities occurring on its impervious surfaces (e.g. maintenance facility activities), and the hydraulic connectivity that may exist between certain parts of VTrans' transportation infrastructure and surface waters, the Secretary has determined that VTrans' currently unpermitted transportation infrastructure outside the Lake Champlain watershed shall also be subject to stormwater discharge permit coverage.

## **DESIGNATION**

### **Relevant Regulatory Authorities**

This designation is issued pursuant to 10 V.S.A. § 1264(e), which states:

State designation. The Secretary shall require a permit under this section for a discharge or stormwater runoff from any size of impervious surface upon a determination by the Secretary that the treatment of the discharge or stormwater runoff is necessary to reduce the adverse impact to water quality of the discharge or 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 subsection based on activities, runoff, discharges, or other information identified during the basin planning process.

### **Designation**

Based upon the foregoing findings of fact, the Secretary has determined that VTrans' currently unpermitted impervious surface within the Lake Champlain watershed<sup>5</sup> shall be subject to stormwater discharge permit coverage pursuant to 10 V.S.A. § 1264(e), to achieve the required reductions from VTrans portion of the developed lands within the Lake Champlain watershed.

Additionally, based upon the foregoing findings of fact, the Secretary has determined that VTrans' currently unpermitted impervious surface outside of the Lake Champlain watershed<sup>5</sup> shall be subject to stormwater discharge permit coverage pursuant to 10 V.S.A. § 1264(e), to protect and maintain the existing water quality across the State.

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<sup>5</sup> Excluding rail lines, rail yards, public transit facilities, and rail trails.

**AUTHORIZING SIGNATURE**

Vermont Department of Environmental Conservation

By: \_\_\_\_\_

Date: \_\_\_\_\_

Alyssa B. Schuren, Commissioner  
Department of Environmental Conservation