

Administrative Procedures – Final Proposed Rule Filing

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

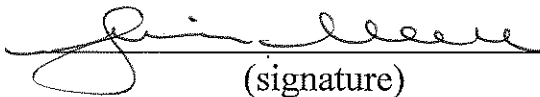
All forms requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Stormwater Permitting Rule

 _____, on 1/8/2019
 (signature) (date)

Printed Name and Title:
 Julie Moore, Secretary
 Agency of Natural Resources

RECEIVED BY: _____

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- ICAR Minutes
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Stormwater Permitting Rule

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

18P-041

3. ADOPTING AGENCY:

Agency of Natural Resources

4. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: Padraic Monks

Agency: Natural Resources

Mailing Address: 1 National Life Drive, Main 2,
Montpelier, VT 05620

Telephone: 802 490 - 6169 Fax: 802 828 - 1544

E-Mail: padraic.monks@vermont.gov

Web URL(*WHERE THE RULE WILL BE POSTED*):

<http://dec.vermont.gov/watershed/laws>

5. SECONDARY CONTACT PERSON:

(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Matt Chapman, General Counsel

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Drive, Davis 2,
Montpelier, VT 05620

Telephone: 802 249 - 4393 Fax: -

E-Mail: matt.chapman@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?) Yes

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

1 V.S.A. § 317

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

To conform to statute.

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

10 V.S.A. §§ 1251a(a), 1258(b), and 1264(f).

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

10 V.S.A. § 1264(a)(2)(B) directs the Secretary of the Agency of Natural Resources to implement a stormwater permitting program. 10 V.S.A. § 1264(f) directs the Secretary to adopt rules to manage stormwater runoff.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE NOT RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (150 WORDS OR LESS):

The Rule updates and combines all the stormwater rules, except the Vermont Stormwater Management Manual, in one comprehensive rule. The Rule includes the stormwater permitting requirements for all stormwater discharges the Agency must regulate pursuant to its authority to administer a permit program consistent with the federal National Pollutant Discharge Elimination System (NPDES), except concentrated animal feeding operations; these include requirements for construction stormwater, municipal separate storm sewer systems (MS4s), and industrial stormwater. The Rule also includes stormwater permitting requirements unique to the State, which include operational stormwater requirements for impervious surfaces of one or more acres, impervious surfaces of three or more acres, and municipal roads. To avoid duplicative permitting, the

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Rule has been drafted so that all permits issued under the Rule shall meet the minimum requirements of the Agency's authority to administer a program consistent with NPDES.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Section 1264(f) of Title 10 of the Vermont Statutes Annotated, adopted pursuant to Act 64 of 2015 (also known as the "Vermont Clean Water Act"), directed the Secretary of Natural Resources to adopt new stormwater rules on or before December 31, 2017. The Rule is necessary to comply with that statutory requirement and update the stormwater rules.

Additionally, Act 64 made changes to 10 V.S.A. § 1264, which governs all stormwater permitting, including directing the Agency to regulate certain impervious surfaces of three or more acres. This Rule is necessary to establish the specific permitting standards and requirements for those impervious surfaces.

Finally, the Rule is necessary to ensure the State stormwater permitting program is up-to-date and consistent with the Agency's authority to administer a program consistent with NPDES.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The Rule is not arbitrary because it is developed in accordance with state statute (10 V.S.A. § 1264). Elements related to NPDES programs are written in accordance with federal law. The specific permitting requirements and standards in the rule were carefully considered and designed to meet the requirements of state and federal law, without exceeding the Agency's statutory authority. The permitting parameters in the rule are as narrow in scope and extent as possible while still conforming to statutory requirements.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

- owners of impervious surface
- developers
- municipalities
- farmers

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- state agencies and departments, including the Vermont Agency of Transportation, the Agency of Commerce and Community Development, and the Department of Buildings and General Services
- engineers, designers, consultants, and contractors, who design and construct stormwater systems and work on stormwater permit applications
- the public at large with an interest in water quality

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The Rule establishes the permitting standards and requirements for certain impervious surfaces of three or more acres (approximately 1,000 sites). Impervious surfaces subject to the three-acre requirement will have to retrofit to the standards established in the Rule. Sites that are unable to meet the standards will be required to pay impact fees or complete offsets, and sites that exceed the standards will be eligible to receive payment.

The Agency estimates that on average it will cost \$30,000 per acre to comply. While complying with the three-acre requirements will be costly, these expenditures are necessary to ensure compliance with the Phosphorus TMDLs for Vermont Segments of Lake Champlain issued by the U.S. Environmental Protection Agency on June 17, 2016 (LC TMDL), and on the whole are less costly than the measures the State might otherwise be required to comply with were impervious surfaces not required to retrofit (e.g. requiring wastewater treatment facilities).

19. A HEARING WAS HELD.

20. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 9/13/2018
Time: 10:00 AM
Street Address: 109 State St
Zip Code: 05602

Final Proposed Coversheet

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

10/01/2018

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

stormwater

storm water

construction

MS4

industrial

MSGP

multi-sector general permit

operational

three acre

three-acre

municipal roads

MRGP

residual designation authority

RDA

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:
Stormwater Permitting Rule

2. ADOPTING AGENCY:
Agency of Natural Resources

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

SOS Log #: 05-053

The Vermont Stormwater Management Rule for Stormwater Impaired Waters was adopted on January 9, 2006, and last amended on July 1, 2017.

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Stormwater Permitting Rule

2. ADOPTING AGENCY:

Agency of Natural Resources

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

- owners of impervious surface
- developers
- municipalities
- farmers
- state agencies and departments, including the Vermont Agency of Transportation, the Agency of Commerce and

Economic Impact Analysis

Community Development, and the Department of Buildings and General Services

- engineers, designers, consultants, and contractors, who design and construct stormwater systems and work on stormwater permit applications
- the public at large with an interest in water quality

The Rule establishes the permitting standards and requirements for certain impervious surfaces of three or more acres. Impervious surfaces subject to the three-acre requirement will have to retrofit to the standards established in the Rule. Sites that are unable to meet the standards will be required to pay impact fees or complete offsets, and sites that exceed the standards will be eligible to receive payment.

The Agency estimates that on average it will cost \$30,000 per acre to comply. While complying with the three-acre requirements will be costly, these expenditures are necessary to ensure compliance with the Phosphorus TMDLs for Vermont Segments of Lake Champlain issued by the U.S. Environmental Protection Agency on June 17, 2016 (LC TMDL), and on the whole are less costly than the measures the State might otherwise be required to comply with were impervious surfaces not required to retrofit (e.g. requiring wastewater treatment facilities to treat their effluent to the limits of technology).

Besides the three-acre requirements, the economic impacts of the Rule are de minimis because the other requirements of the Rule are existing requirements, which the Agency already implements pursuant to state statute, the current state stormwater rules, and the Agency's authority to administer a permit program consistent with the federal National Pollutant Discharge Elimination System (NPDES).

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

Economic Impact Analysis

Section 1264 of Title 10 of the Vermont Statutes Annotated does not exempt schools from having to comply with the three-acre requirements. Therefore, schools with impervious surface of three or more acres, which was not 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, will have to comply with the three-acre requirements.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

The Rule, including the three-acre requirements, is required pursuant to state statute. Alternatives were not considered, as they would not achieve the objective of the Rule.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

Individual small businesses with impervious surfaces of three or more acres, which were not previously permitted or were permitted under an individual permit or general permit that did not incorporate the requirements of the 2002 Stormwater Management Manual, will have to comply with the three-acre requirements. Costs associated with these requirements include engineering services, permit fees, construction costs, and potential stormwater-impact fees.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

The enabling legislation for this rule requires retrofit of all impervious surfaces of three or more acres for the purpose of reducing the adverse effects of stormwater runoff, and does not require separate consideration of the impacts of retrofits on small businesses. Small businesses, like other regulated entities, may reduce the cost/burden of compliance with

Economic Impact Analysis

this regulation through the use of highly-qualified engineers and contractors.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

Section 1264 of Title 10 of the Vermont Statutes Annotated does not exempt small businesses from having to comply with the rule; separate requirements or an exemption for small businesses is not an option. Similarly, the enabling statute does not direct the Agency to adopt a separate rule for small businesses. The requirements of the rule are intended to be as narrow in scope as possible while still meeting statutory requirements, including meeting State Water Quality Standards. Developing separate, less-demanding requirements for small businesses would result in higher costs, societally, as a result of failing to protect and restore waters of the state, or would shift requirements, and associated costs, onto currently unregulated dischargers.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

The economic analysis is based on best available data and information regarding retrofit of impervious sites, and considers all potential new economic impacts that may result from promulgation of this rule.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Stormwater Permitting Rule

2. ADOPTING AGENCY:

Agency of Natural Resources

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

None.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

The rule governs the discharge of stormwater to waters of the state. It is designed to ensure compliance with the Vermont Water Quality Standards, and includes provisions necessary for the restoration of Lake Champlain.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

The rule does not regulate or impact forestry. Although initially proposed to include requirements for

Environmental Impact Analysis

the CAFO (Concentrated Animal Feeding Operation) Program, the rule no longer includes such requirements, as the Agency has decided to adopt those requirements in a separate, future rule.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

The rule is intended to enhance the management of stormwater runoff. As a result of this management, the adverse effects of stormwater runoff on Vermont's surface waters will be mitigated, potentially allowing for continued and enhanced recreational opportunities on these waters.

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

None.

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

None.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

This analysis is based on best available information.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

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2. ADOPTING AGENCY:

Agency of Natural Resources

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE:

Continue outreach with stakeholder groups. Hold a public hearing.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The Agency held a public hearing on September 13, 2018 and a 60-day public comment period. The rule itself was developed through an extensive stakeholder process.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The Agency received involvement from the following groups:

- owners of impervious surface
- developers
- municipalities
- state agencies and departments, including the Vermont Agency of Transportation and the Agency of Commerce and Community Development

Public Input

- engineers, designers, consultants, and contractors, who design and construct stormwater systems and work on stormwater permit applications
- the public at large with an interest in water quality

The Department participated in the following meetings and presentations on the proposed rule:

- Vermont Environmental Consortium, Randolph:6/6/18
- Vermont Ski Areas Association, Montpelier: 3/6/18
- Central Vermont RPC, Berlin: 2/13/18
- Rutland County RPC, Rutland:11/30/17
- Vermont League of Cities and Towns, Montpelier: 9/29/17
- Chittenden County RPC, Winooski: 9/5/17
- Associated Industries of Vermont, Montpelier: 8/22/17
- American Council of Engineering Companies, Montpelier: 4/4/17

Incorporation By Reference

on the Internet: <https://www.ecfr.gov/cgi-bin/ECFR?page=browse>

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

See Subchapter 15 of the Rule for the specific provisions of the Code of Federal Regulations that are incorporated by reference as well as modifications to the sections.

Run Spell Check