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Title 10: Conservation And Development

Chapter 47: Water Pollution Control

Subchapter 1: Water Pollution Control

§ 1250. State water quality policy

It is the policy of the State of Vermont to:

(1) protect and enhance the quality, character and usefulness of its surface waters and to assure the public health;

(2) maintain the purity of drinking water;

(3) control the discharge of wastes to the waters of the State, prevent degradation of high quality waters and prevent, abate or control all activities harmful to water quality;

(4) assure the maintenance of water quality necessary to sustain existing aquatic communities;

(5) provide clear, consistent, and enforceable standards for the permitting and management of discharges;

(6) protect from risk and preserve in their natural state certain high quality waters, including fragile high-altitude waters, and the ecosystems they sustain;

(7) manage the waters of the State to promote a healthy and prosperous agricultural community, to increase the opportunities for use of the State's forest, park, and recreational facilities, and to allow beneficial and environmentally sound development.

It is further the policy of the State to seek over the long term to upgrade the quality of waters and to reduce existing risks to water quality. (Added 1985, No. 199 (Adj. Sess.), § 1, eff. May 17, 1986.)

§ 1251. Definitions

Whenever used or referred to in this chapter, unless a different meaning clearly appears from the context:

(1) "Board" means the Secretary of Natural Resources.

(2) "Department" means the Department of Environmental Conservation.

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

(4) "Effluent limitation" means any restrictions or prohibitions established in accordance with the provisions of this chapter 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 that are discharged to waters of the State, including schedules of compliance.

(5) "Hazardous materials" means any material determined by the Secretary to have an unusually harmful effect on water quality if discharged to the waters of the State.

(6) "Mixing zone" means a length or area within the waters of the State required for the dispersion and dilution of waste discharges adequately treated to meet federal and State treatment requirements and within which it is recognized that specific water uses or water quality criteria associated with the assigned classification for such waters may not be realized. The mixing zone shall not extend more than 200 feet from the point of discharge.

(7) "Oil" means oil of any kind, including petroleum, fuel oils, oily sludge, waste oil, gasoline, kerosene, jet fuel, tar, asphalt, crude oils, lube oil, insoluble or partially soluble derivatives of mineral, animal, or vegetable oils, or any product or mixture thereof.

(8) "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.

(9) "Public interest" means that which is for the greatest benefit to the people of the State as determined by the standards set forth in subsection 1253(e) of this title.

(10) "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.

(11) "Secretary" means the Secretary of Natural Resources or his or her authorized representative.

(12) "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 chapter shall not include the rinse or process water from a cheese manufacturing process.

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

(14) "Injection well" means any opening in the ground used as a means of discharging waste except for a dry hole not exceeding seven feet in depth that is constructed as, and used solely for the disposal of domestic wastes.

(15) "Indirect discharge" means any discharge to groundwater, whether subsurface, land-based, or otherwise.

(16) "Waste management zone" means a specific reach of Class B waters designated by a permit to accept the discharge of properly treated wastes that prior to treatment contained organisms pathogenic to human beings. Throughout the receiving waters, water quality criteria must be achieved but increased health risks exist due to the authorized discharge.

(17) "Basin plan" means a plan prepared by the Secretary for each of Vermont's 17 basins in conjunction with the basin planning process required by section 303(e) of the federal Clean Water Act and 40 C.F.R. part 131.

(18) [Repealed.]

(19) "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. (Amended 1961, No. 100, § 2; 1964, No. 37 (Sp. Sess.), § 2; 1969, No. 252 (Adj. Sess.), § 1, eff. April 4, 1970; 1973, No. 103, § 2, eff. April 24, 1973; 1973, No. 112, § 3, eff. April 25, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1985, No. 199 (Adj. Sess.), § 2, eff. May 17, 1986; 1987, No. 76, § 18; 1991, No. 157 (Adj. Sess.), § 4, eff. May 5, 1992; 1991, No. 211 (Adj. Sess.), § 1; 2003, No. 115 (Adj. Sess.), § 24, eff. Jan. 31, 2005; 2015, No. 103 (Adj. Sess.), § 2, eff. May 12, 2016; 2015, No. 158 (Adj. Sess.), § 32, eff. June 2, 2016; 2017, No. 185 (Adj. Sess.), § 15, eff. May 28, 2018.)

§ 1251a. Water pollution administration

(a) The Secretary may adopt rules, in accordance with the procedures in the Administrative Procedure Act, that are necessary for the proper administration of the Secretary's duties under this subchapter, including a planning process approvable under Public Law 92-500, as amended.

(b) The Secretary shall establish by rule requirements for the issuance of permits under subsection 1259(e) of this title, including in-stream water quality parameters necessary to establish permit conditions and performance monitoring; however, these in-stream water quality parameters shall not supersede water quality standards adopted by the Secretary.

(c) On or before July 1, 2016, the Secretary of Natural Resources shall adopt by rule an implementation process for the antidegradation policy in the water quality standards of the State. The implementation process for the antidegradation policy shall be consistent with the State water quality policy established in section 1250 of this title, the Vermont Water Quality Standards, and any applicable requirements of the federal Clean Water Act. The Secretary of Natural Resources shall apply the antidegradation implementation policy to all new discharges that require a permit under this chapter. (Added 1981, No. 222 (Adj. Sess.), § 25; amended 1985, No. 199 (Adj. Sess.), § 4, eff. May 17, 1986; 1989, No. 64, § 2, eff. May 24, 1989; 1997, No. 155 (Adj. Sess.), § 34; 2003, No. 115 (Adj. Sess.), § 25, eff. Jan. 31, 2005; 2007, No. 43, § 6a, eff. May 23, 2007; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012; 2015, No. 64, § 30.)

§ 1252. Classification of high quality waters; mixing zones

(a) The State adopts, for the purposes of individually classifying the uses of its high quality waters, the following classes and definitions:

Class A(1): Waters in a natural condition that have significant ecological value;

Class A(2): Waters that are suitable for a public water source with filtration and disinfection or other required treatment; character uniformly excellent.

Class B(1): Waters in which one or more uses are of demonstrably and consistently higher quality than Class B(2) waters; or

Class B(2): Waters that are suitable for swimming and other primary contact recreation; irrigation and agricultural uses; aquatic biota and aquatic habitat; good aesthetic value; boating, fishing, and other recreational uses and suitable for public water source with filtration and disinfection or other required treatment.

(b) The Secretary may establish mixing zones or waste management zones as necessary in the issuance of a permit in accordance with this section and criteria established by rule. Those waters authorized under this chapter, as of July 1, 1992, to receive the direct discharge of wastes that prior to treatment contained organisms pathogenic to human beings are designated waste management zones for those discharges. Those waters that as of July 1, 1992 are Class C waters into which no direct discharge of wastes that prior to treatment contained organisms pathogenic to human beings is authorized, shall become waste management zones for any municipality in which the waters are located that qualifies for a discharge permit under this chapter for those wastes prior to July 1, 1997.

(c) Upon issuance or renewal of any discharge permit, subsequent to July 1, 1992, involving a discharge into a waste management zone created pursuant to subsection (b) of this section, the Secretary shall adjust the size of the waste management zone to the extent necessary to accommodate the authorized discharge.

(d) Prior to the initial authorization of a new waste management zone, except those created pursuant to subsection (b) of this section, or prior to the expansion of the size of an existing zone created under this section, in order to accommodate an increased discharge, the Secretary shall:

(1) Prepare a draft permit which includes a description of the proposed waste management zone and proceed in accordance with subsections 7713(c), (d), and (e) of this title.

(2) Give due consideration to the cumulative impact of overlapping waste management zones.

(3) Determine that the creation or expansion of such a waste management zone is in the public interest after giving due consideration to the factors specified in subdivisions 1253(e)(1) through (10) of this title.

(4) Determine that the creation or expansion of such a zone will not:

(A) create a public health hazard; or

(B) constitute a barrier to the passage or migration of fish or result in an undue adverse effect on fish, aquatic biota, or wildlife; or

(C) interfere with those uses that have actually occurred on or after November 28, 1975, in or on a water body, whether or not the uses are included in the standard for classification of the particular water body; or

(D) be inconsistent with the anti-degradation policy in the water quality standards.

(5) Provide a written explanation with respect to subdivisions (2) through (4) of this subsection.

(e) The Secretary shall adopt standards of water quality to achieve the purposes of the water classifications. Such standards shall be expressed in detailed water quality criteria, taking into account the available data and the effect of these criteria on existing activities, using as appropriate: (1) numerical values, (2) biological parameters; and (3) narrative descriptions. These standards shall establish limits for at least the following: alkalinity, ammonia, chlorine, fecal coliform, color, nitrates, oil and grease, dissolved oxygen, pH, phosphorus, temperature, all toxic substances for which the U.S. Environmental Protection Agency has established criteria values, and any other water quality parameters deemed necessary by the Board.

(f) The Secretary may issue declaratory rulings regarding these standards.

(g) Notwithstanding the provisions of subsection 1259(c) of this title and rules implementing that subsection, the Secretary may issue a discharge permit pursuant to section 1263 of this title, for a municipal discharge of treated municipal waste into Class B waters, if that municipal discharge was established prior to January 1, 1974 and was, as of January 1, 1990, occurring pursuant to authorization contained in an assurance of discontinuance.

(h) A discharge permit issued pursuant to subsection (g) of this section may not authorize an increase in mass pollutant loading beyond that contained in the assurance of discontinuance. (Amended 1961, No. 101; 1964, No. 37 (Sp. Sess.), § 3; 1967, No. 181, § 1, eff. April 17, 1967; 1973, No. 103, § 3, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1985, No. 199 (Adj. Sess.), § 5, eff. May 17, 1986; 1989, No. 278 (Adj. Sess.), § 5; 1991, No. 211 (Adj. Sess.), § 2; 2011, No. 138 (Adj. Sess.), § 21, eff. May 14, 2012; 2015, No. 79 (Adj. Sess.), § 1, eff. April 28, 2016; 2015, No. 150 (Adj. Sess.), § 15, eff. Jan. 1, 2018.)

§ 1253. Classification of waters designated, reclassification

(a) The waters of all lakes, ponds, and reservoirs, natural or artificial, used exclusively as a public water source prior to July 1, 1971, and all waters flowing into such lakes, ponds, and reservoirs, and all waters located above 2,500 feet altitude, National Geodetic Vertical Datum, are designated Class A waters and shall be maintained as such unless reclassified.

(b) The remaining waters are designated Class B(2) waters and shall be maintained as such unless reclassified.

(c) On its own motion, or on receipt of a written request that the Secretary adopt, amend, or repeal a reclassification rule, the Secretary shall comply with 3 V.S.A. § 806 and may initiate a rulemaking proceeding to reclassify one or more uses of all or any portion of the affected waters in the public interest. In the course of this proceeding, the Secretary shall comply with the provisions of 3 V.S.A. chapter 25, and may hold a public hearing convenient to the waters in question. If the Secretary finds that the established classification is contrary to the public interest and that reclassification is in the public interest, he or she shall file a final proposal of reclassification in accordance with 3 V.S.A. § 841. If the Secretary finds that it is in the public interest to change the classification of any pond, lake, or reservoir designated as Class A for a public water source, the Secretary shall so advise and consult with the Department of Health and shall provide in its reclassification rule a reasonable period of time before the rule becomes effective. During that time, any municipalities or persons whose water source is affected shall construct filtration and disinfection facilities or convert to a new water source.

(d)(1) Through the process of basin planning, the Secretary shall determine what degree of water quality and classification should be obtained and maintained for those waters not classified by the Board before 1981 following the procedures in sections 1254 and 1258 of this title. Those waters shall be classified in the public interest. The Secretary shall prepare and maintain an overall surface water management plan to assure that the State water quality standards are met in all State waters. The surface water management plan shall include a schedule for updating the basin plans. The Secretary, in consultation with regional planning commissions and the Natural Resources Conservation Council, shall revise all 15 basin plans and update the basin plans on a five-year rotating basis. On or before January 15 of each year, the Secretary shall report to the House Committees on Agriculture and Forestry and on Natural Resources, Fish, and Wildlife and to the Senate Committees on Agriculture and on Natural Resources and Energy regarding the progress made and difficulties encountered in revising basin plans. The report shall include a summary of basin planning activities in the previous calendar year, a schedule for the production of basin plans in the subsequent calendar year, and a summary of actions to be taken over the subsequent three years. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection.

(2) In developing a basin plan under this subsection, the Secretary shall:

(A) identify waters that should be reclassified outstanding resource waters or that should have one or more uses reclassified under section 1252 of this title;

(B) identify wetlands that should be reclassified as Class I wetlands;

(C) identify projects or activities within a basin that will result in the protection and enhancement of water quality;

(D) ensure that municipal officials, citizens, watershed groups, and other interested groups and individuals are involved in the basin planning process;

(E) ensure regional and local input in State water quality policy development and planning processes;

(F) provide education to municipal officials and citizens regarding the basin planning process;

(G) develop, in consultation with the regional planning commission, an analysis and formal recommendation on conformance with the goals and objectives of applicable regional plans;

(H) provide for public notice of a draft basin plan; and

(I) provide for the opportunity of public comment on a draft basin plan.

(3) The Secretary shall, contingent upon the availability of funding, negotiate and issue performance grants to the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or to produce a basin plan under the schedule set forth in subdivision (1) of this subsection in a manner consistent with the authority of regional planning commissions under 24 V.S.A. chapter 117 and the authority of the natural resources conservation districts under chapter 31 of this title. When negotiating a scope of work with the Vermont Association of Planning and Development Agencies or its designee and the Natural Resources Conservation Council or its designee to assist in or produce a basin plan, the Secretary may require the Vermont Association of Planning and Development Agencies or the Natural Resources Conservation Council to:

(A) conduct any of the activities required under subdivision (2) of this subsection (d);

(B) provide technical assistance and data collection activities to inform municipal officials and the State in making water quality investment decisions;

(C) coordinate municipal planning and adoption or implementation of municipal development regulations better to meet State water quality policies and investment priorities; or

(D) assist the Secretary in implementing a project evaluation process to prioritize water quality improvement projects within the region to ensure cost-effective use of State and federal funds.

(e) In determining the question of public interest, the Secretary shall give due consideration to, and explain his or her decision with respect to, the following:

(1) existing and obtainable water qualities;

(2) existing and potential use of waters as a public water source, recreational, agricultural, industrial, and other legitimate purposes;

(3) natural sources of pollution;

(4) public and private pollution sources and the alternative means of abating the same;

(5) consistency with the State water quality policy established in section 1250 of this title;

- (6) suitability of waters as habitat for fish, aquatic life, and wildlife;
- (7) need for and use of minimum streamflow requirements;
- (8) federal requirements for classification and management of waters;
- (9) consistency with applicable municipal, regional, and State plans; and
- (10) any other factors relevant to determine the maximum beneficial use and enjoyment of waters.

(f) Notwithstanding the provisions of subsection (c) of this section, when reclassifying waters to Class A, the Secretary need find only that the reclassification is in the public interest.

(g) The Secretary under the reclassification rule may grant permits for only a portion of the assimilative capacity of the receiving waters, or may permit only indirect discharges from on-site disposal systems, or both. (Amended 1961, No. 100, § 2; 1964, No. 37 (Sp. Sess.), § 4; 1969, No. 252 (Adj. Sess.), § 2, eff. July 1, 1971; 1973, No. 3, eff. Feb. 8, 1973; 1973, No. 103, § 16, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1985, No. 199 (Adj. Sess.), § 6, eff. May 17, 1986; 1987, No. 154 (Adj. Sess.), §§ 1, 2, eff. April 20, 1988; 1991, No. 211 (Adj. Sess.), § 3; 1999, No. 114 (Adj. Sess.), § 2, eff. May 19, 2000; 2003, No. 115 (Adj. Sess.), § 26, eff. Jan. 31, 2005; 2009, No. 33, § 25; 2011, No. 138 (Adj. Sess.), § 22, eff. May 14, 2012; 2013, No. 142 (Adj. Sess.), § 18; 2015, No. 64, § 26; 2015, No. 79 (Adj. Sess.), § 2, eff. April 28, 2016; 2015, No. 154 (Adj. Sess.), § 12, eff. June 1, 2016; 2017, No. 113 (Adj. Sess.), § 44c; 2017, No. 168 (Adj. Sess.), § 4, eff. May 22, 2018.)

§ 1254. Classification of waters by Secretary; aid

In classifying or reclassifying the waters of the State, the Secretary is authorized to call upon any State department or agency for any pertinent information, other than information of a confidential nature, that the department or agency has or could obtain easily in the course of its work. (Amended 1961, No. 100, § 2; 1969, No. 252 (Adj. Sess.), § 3, eff. April 4, 1970; 1981, No. 222 (Adj. Sess.), § 25; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012.)

§§ 1255-1257. [Omitted.]

§ 1258. Management of waters after classification, enforcement

(a) After the classification of any waters has been determined by the Secretary, those waters shall be managed under the supervision of the Secretary in order to obtain and maintain the classification established. The Secretary may enforce a classification against any person affected thereby who, with notice of the classification, has failed to comply. An action to enforce a classification shall be brought in the Superior Court of the county wherein the affected waters are located.

(b) The Secretary shall manage discharges to the waters of the State by administering a permit program consistent with the National Pollutant Discharge Elimination System established by section 402 of Public Law 92-500 and with the guidelines promulgated in accordance with section 304(h)(2) of Public Law 92-500. The Secretary shall use the full range of possibilities and variables allowable under these sections of Public Law 92-500,

including general permits, as are consistent with meeting the objectives of the Vermont Water Pollution Control Program. The Secretary shall adopt a continuing planning process approvable under section 303(e) of Public Law 92-500. Neither the Secretary nor his or her duly authorized representative may receive or during the previous two years have received a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit under this chapter. (Amended 1969, No. 252 (Adj. Sess.), § 6, eff. April 4, 1970; 1971, No. 185 (Adj. Sess.), § 236, eff. March 29, 1972; 1973, No. 103, § 4, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1987, No. 282 (Adj. Sess.), § 12; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012.)

§ 1259. Prohibitions

(a) No person shall discharge any waste, substance, or material into waters of the State, nor shall any person discharge any waste, substance, or material into an injection well or discharge into a publicly owned treatment works any waste that interferes with, passes through without treatment, or is otherwise incompatible with those works or would have a substantial adverse effect on those works or on water quality, without first obtaining a permit for that discharge from the Secretary. This subsection shall not prohibit the proper application of fertilizer to fields and crops, nor reduce or affect the authority or policy declared in Joint House Resolution 7 of the 1971 Session of the General Assembly.

(b) Any records or information obtained under this permit program that constitutes trade secrets under 1 V.S.A. § 317(c)(9) 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 this chapter.

(c) No person shall cause a direct discharge into Class A waters of any wastes that, prior to treatment, contained organisms pathogenic to human beings. Except within a waste management zone, no person shall cause a direct discharge into Class B waters of any wastes that prior to treatment contained organisms pathogenic to human beings.

(d) No person shall cause a discharge of wastes into Class A waters, except for on-site disposal of sewage from systems with a capacity of 1,000 gallons per day (gpd), or less, that are either exempt from or comply with the environmental protection rules, or existing systems, which shall require a permit according to the provisions of subsection 1263(f) of this title.

(e) Except for on-site disposal of sewage from systems of less than 6,500 gpd capacity that are either exempt from or comply with the environmental protection rules, no person shall cause any new or increased indirect discharge of wastes into Class B waters without a permit under section 1263 of this title. The Secretary shall not issue a permit for on-site disposal of sewage that discharges into Class B waters, unless the applicant demonstrates by clear and convincing evidence, and the Secretary finds, that the discharge:

- (1) will not significantly alter the aquatic biota in the receiving waters;
- (2) will not pose more than a negligible risk to public health;
- (3) will be consistent with existing and potential beneficial uses of the waters; and

(4) will not cause a violation of water quality standards.

(f) The provisions of subsections (c), (d), and (e) of this section shall not regulate required agricultural practices, as adopted by rule by the Secretary of Agriculture, Food and Markets, or 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; nor shall these provisions regulate discharges from concentrated animal feeding operations that require a permit under section 1263 of this title; nor shall those provisions prohibit stormwater runoff or the discharge of nonpolluting wastes, as defined by the Secretary.

(g) Nothing in this chapter shall prohibit the Secretary from approving nondischarging sewage treatment systems that the Secretary finds are safe, reliable, and effective.

(h) The Secretary shall adopt rules to ensure that the installation of two or more systems discharging sewage will not result in the circumvention of the purposes of this chapter or the requirements of this section.

(i) The Secretary of Natural Resources, to the extent compatible with federal requirements, shall delegate to the Secretary of Agriculture, Food and Markets the State agricultural non-point source pollution control program planning, implementation, and regulation. A memorandum of understanding shall be adopted for this purpose, which shall address implementation grants, the distribution of federal program assistance, and the development of land use performance standards. Prior to executing the memorandum, the Secretary of State shall arrange for two formal publications of information relating to the proposed memorandum. The information shall consist of a summary of the proposal; the name, telephone number, and address of a person able to answer questions and receive comments on the proposal; and the deadline for receiving comments. Publication shall be subject to the provisions of 3 V.S.A. § 839(d), (e), and (g), relating to the publication of administrative rules. The proposed memorandum of understanding shall be available for 30 days after the final date of publication for public review and comment prior to being executed by the Secretary of Natural Resources and the Secretary of Agriculture, Food and Markets. The Secretary of Natural Resources and the Secretary of Agriculture, Food and Markets annually shall review the memorandum of understanding to ensure compliance with the requirements of the Clean Water Act and the provisions of section 1258 of this title. If the memorandum is substantially revised, it first shall be noticed in the same manner that applies to the initial memorandum. Actions by the Secretary of Agriculture, Food and Markets under this section shall be consistent with the water quality standards and water pollution control requirements of chapter 47 of this title and the federal Clean Water Act as amended.

(j) No person shall discharge waste from hydraulic fracturing, as that term is defined in 29 V.S.A. § 503, into or from a pollution abatement facility, as that term is defined in section 1278 of this title. (Amended 1967, No. 181, § 2, eff. April 17, 1967; 1969, No. 252 (Adj. Sess.), § 7, eff. April 4, 1970; 1971, No. 255 (Adj. Sess.), § 3, eff. April 11, 1972; 1973, No. 103, § 5, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1985, No. 199 (Adj. Sess.), § 3, eff. May 17,

1986; 1991, No. 211 (Adj. Sess.), § 4; 1991, No. 261 (Adj. Sess.), § 3; 2003, No. 42, § 2, eff. May 27, 2003; 2005, No. 78, § 12, eff. June 24, 2005; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012; 2011, No. 152 (Adj. Sess.), § 4, eff. May 16, 2012; 2015, No. 29, § 16; 2015, No. 64, § 51; 2015, No. 103 (Adj. Sess.), § 3, eff. May 12, 2016; 2017, No. 185 (Adj. Sess.), § 16, eff. May 28, 2018.)

§ 1260. Repealed. 1969, No. 252 (Adj. Sess.), § 18, eff. April 4, 1970.

§ 1261. [Omitted.]

§ 1262. Repealed. 1969, No. 252 (Adj. Sess.), § 18, eff. April 4, 1970.

§ 1263. Discharge permits

(a) Any person who intends to discharge waste into the waters of the State or who intends to discharge into an injection well or who intends to discharge into any publicly owned treatment works any waste that interferes with, passes through without treatment, or is otherwise incompatible with that works or would have a substantial adverse effect on that works or on water quality shall make application to the Secretary for a discharge permit. Application shall be made on a form prescribed by the Secretary. An applicant shall pay an application fee in accordance with 3 V.S.A. § 2822.

(b) When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title. The Secretary may require any applicant to submit any additional information that the Secretary considers necessary and may refuse to grant a permit, or permission to discharge under the terms of a general permit, until the information is furnished and evaluated.

(c) If the Secretary determines that the proposed discharge will not reduce the quality of the receiving waters below the classification established for them and will not violate any applicable provisions of State or federal laws or regulations, he or she shall issue a permit containing terms and conditions as may be necessary to carry out the purposes of this chapter and of applicable federal law. Those terms and conditions may include providing for specific effluent limitations and levels of treatment technology; monitoring, recording, reporting standards; entry and inspection authority for State and federal officials; reporting of new pollutants and substantial changes in volume or character of discharges to waste treatment systems or waters of the State; pretreatment standards before discharge to waste treatment facilities or waters of the State; and toxic effluent standards or prohibitions.

(d) A discharge permit shall:

(1) Specify the manner, nature, volume, and frequency of the discharge permitted and contain terms and conditions consistent with subsection (c) of this section.

(2) Require proper operation and maintenance of any pollution abatement facility necessary in the treatment or processing of the waste by qualified personnel in accordance with standards established by the Secretary and the Director of the Office of Professional Regulation. The Secretary may require that a pollution abatement facility be operated by

persons licensed under 26 V.S.A. chapter 99 and may prescribe the class of license required. The Secretary may require a laboratory quality assurance sample program to ensure qualifications of laboratory analysts.

(3) Contain an operation, management, and emergency response plan when required under section 1278 of this title and additional conditions, requirements, and restrictions as the Secretary deems necessary to preserve and protect the quality of the receiving waters, including requirements concerning recording, reporting, monitoring, and inspection of the operation and maintenance of waste treatment facilities and waste collection systems.

(4) Be valid for the period of time specified therein, not to exceed five years.

(e) A discharge permit may be renewed from time to time upon application to the Secretary. A renewal permit filing requirement for reissuance shall be determined by the Secretary and may range from a simple written request for reissuance to the submission of all information required by the initial application. A renewal permit shall be issued following all determinations and procedures required for initial permit application.

(f) Existing indirect discharges to the waters of the State from on-site disposal of sewage shall comply with and be subject to the provisions of this chapter, and shall obtain the required permit, no later than July 1, 1991. Notwithstanding the requirements of subsections 1259(d) and (e) of this title, the Secretary shall grant a permit for an existing indirect discharge to the waters of the State for on-site disposal of sewage unless he or she finds that the discharge violates the water quality standards. Existing indirect discharges from on-site sewage disposal systems of less than 6,500 gpd capacity shall not require a permit.

(g) Notwithstanding any other provision of law, any person who owns or operates a concentrated animal feeding operation that requires a permit under the federal National Pollutant Discharge Elimination System permit regulations shall submit an application to the Secretary for a discharge permit and pay the required fees specified in 3 V.S.A. § 2822. On or before July 1, 2007, the Secretary of Natural Resources shall adopt rules implementing the federal National Pollutant Discharge Elimination System permit regulations for discharges from concentrated animal feeding operations. Until such regulations are adopted, the substantive permitting standards and criteria used by the Secretary to evaluate applications and issue or deny discharge permits for concentrated animal feeding operations shall be those specified by federal regulations. The Secretary may issue an individual or general permit for these types of discharges in accordance with the procedural requirements of subsection (b) of this section and other State law. For the purposes of this subsection, "concentrated animal feeding operation" means a farm that meets the definition contained in the federal regulations. (Added 1969, No. 252 (Adj. Sess.), § 11, eff. April 4, 1970; amended 1973, No. 103, § 6, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1985, No. 199 (Adj. Sess.), § 7, eff. May 17, 1986; 1987, No. 76, § 4; 1987, No. 173 (Adj. Sess.), eff. May 6, 1988; 1987, No. 282 (Adj. Sess.), § 13; 1989, No. 116, § 2; 1993, No. 48, §§ 5, 6, eff. June 1, 1993; 2003, No. 115 (Adj. Sess.), § 27, eff. Jan. 31, 2005; 2005, No. 78, § 13, eff. June 24, 2005; 2005, No. 154 (Adj. Sess.), § 5b, eff. July 1, 2007; 2015, No. 150 (Adj. Sess.), § 16, eff. Jan. 1, 2018; 2015, No. 156 (Adj. Sess.), § 8, eff. Jan. 1, 2017; 2017, No. 144 (Adj. Sess.), § 11.)

§ 1263a. Repealed. 2009, No. 46, § 4.**§ 1264. Stormwater management**

(a) Findings and intent.

(1) Findings. The General Assembly finds that the management of stormwater runoff is necessary to reduce stream channel instability, pollution, siltation, sedimentation, and flooding, all of which have adverse impacts on the water and land resources of the State.

(2) Intent. The General Assembly intends, by enactment of this section to:

(A) Reduce the adverse effects of stormwater runoff.

(B) Direct the Agency of Natural Resources to develop a process that ensures broad participation; focuses upon the prevention of pollution; relies on structural treatment only when necessary; establishes and maintains accountability; tailors strategies to the region and the locale; builds broad-based programs; provides for the evaluation and appropriate evolution of programs; is consistent with the federal Clean Water Act and the State water quality standards; and accords appropriate recognition to the importance of community benefits that accompany an effective stormwater runoff management program. In furtherance of these purposes, the Secretary shall implement a stormwater permitting program. The stormwater permitting program developed by the Secretary shall recognize that stormwater runoff is different from the discharge of sanitary and industrial wastes because of the influence of natural events of stormwater runoff, the variations in characteristics of those runoffs, and the increased stream flows causing degradation of the quality of the receiving water at the time of discharge.

(b) Definitions. As used in this section:

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

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

(3) "Expansion" and "the expanded portion of an existing discharge" mean an increase or addition of impervious surface, such that the total resulting impervious area is greater than the minimum regulatory threshold.

(4) "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.

(5) "Healthy soil" means soil that has a well-developed, porous structure, is chemically balanced, supports diverse microbial communities, and has abundant organic matter.

(6) "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.

(7) "New stormwater discharge" means a new or expanded discharge of regulated stormwater runoff, subject to the permitting requirements of this chapter that has not been previously authorized pursuant to this chapter.

(8) "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.

(9) "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, cold planing, resurfacing, reclaiming, or grading treatments used to maintain pavement, bridges, and unpaved roads.

(10) "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.

(11) "Stormwater impact fee" means the monetary charge assessed to a permit 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 permit applicant.

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

(13) "Stormwater Management Manual" means the Agency of Natural Resources' Stormwater Management Manual, as adopted and amended by rule.

(14) "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.

(15) "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.

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

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

(18) "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.

Subsection (c) effective until July 1, 2022; see also subsection (c) effective July 1, 2022 .

(c) Prohibitions.

(1) A person shall not commence the construction or redevelopment of one acre or more of impervious surface without first obtaining a permit from the Secretary.

(2) A person shall not discharge from a facility that has a standard industrial classification identified in 40 C.F.R. § 122.26 without first obtaining a permit from the Secretary.

(3) A person that has been designated by the Secretary as requiring coverage for its municipal separate storm sewer system may not discharge without first obtaining a permit from the Secretary.

(4) A person shall not 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, without first obtaining a permit from the Secretary.

(5) A person shall not expand existing impervious surface by more than 5,000 square feet, such that the total resulting impervious area is greater than one acre, without first obtaining a permit from the Secretary.

(6)(A) In accordance with the schedule established under subdivision (g)(2) of this section, a municipality shall not discharge stormwater from a municipal road without first obtaining:

(i) an individual permit;

(ii) coverage under a municipal road general permit; or

(iii) coverage under a municipal separate storm sewer system permit that implements the technical standards and criteria established by the Secretary for stormwater improvements of municipal roads.

(B) As used in this subdivision (6), "municipality" means a city, town, or village.

(7) In accordance with the schedule established under subdivision (g)(3) of this section, a person shall not discharge stormwater from impervious surface of three or more acres in size without first obtaining an individual permit or coverage under a general permit issued under this section if the discharge 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.

Subsection (c) effective July 1, 2022; see also subsection (c) effective until July 1, 2022 .

(c) Prohibitions.

(1) A person shall not commence the construction or redevelopment of one-half of an acre or more of impervious surface without first obtaining a permit from the Secretary.

(2) A person shall not discharge from a facility that has a standard industrial classification identified in 40 C.F.R. § 122.26 without first obtaining a permit from the Secretary.

(3) A person that has been designated by the Secretary as requiring coverage for its municipal separate storm sewer system shall not discharge without first obtaining a permit from the Secretary.

(4) A person shall not commence a project that will result in an earth disturbance of one acre or greater, or of less than one acre if part of a common plan of development, without first obtaining a permit from the Secretary.

(5) A person shall not expand existing impervious surface by more than 5,000 square feet, such that the total resulting impervious area is greater than one acre, without first obtaining a permit from the Secretary.

(6)(A) In accordance with the schedule established under subdivision (g)(2) of this section, a municipality shall not discharge stormwater from a municipal road without first obtaining:

(i) an individual permit;

(ii) coverage under a municipal road general permit; or

(iii) coverage under a municipal separate storm sewer system permit that implements the technical standards and criteria established by the Secretary for stormwater improvements of municipal roads.

(B) As used in this subdivision (6), "municipality" means a city, town, or village.

(7) In accordance with the schedule established under subdivision (g)(3) of this section, a person shall not discharge stormwater from impervious surface of three or more acres in size without first obtaining an individual permit or coverage under a general permit issued under this section if the discharge 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.

(d) Exemptions.

(1) No permit is required under this section for:

(A) 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 by subdivision (c)(4) of this section.

(B) Stormwater runoff from concentrated animal feeding operations permitted under subsection 1263(g) of this chapter.

(C) 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.

(D) Stormwater runoff permitted under section 1263 of this title.

(2) No permit is required under subdivision (c)(1), (5), or (7) of this section and for which a municipality has assumed full legal responsibility as part of a permit issued to the municipality by the Secretary. As used in this subdivision, "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.

(e) State designation. The Secretary shall require a permit under this section for a discharge or stormwater runoff from any size of impervious surfaces upon a determination by the Secretary that the treatment of the discharge or stormwater runoff is necessary to reduce the adverse impacts 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.

(f) Rulemaking. On or before December 31, 2017, the Secretary shall adopt rules to manage stormwater runoff. At a minimum, the rules shall:

(1) Establish as the primary goals of the rules:

(A) assuring compliance with the Vermont Water Quality Standards; and

(B) maintenance after development, as nearly as possible, of the predevelopment runoff characteristics.

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

(3) Assure consistency with applicable requirements of the federal Clean Water Act.

(4) Include technical standards and best management practices that address stormwater discharges from existing development, new development, and redevelopment.

(5) Specify minimum requirements for inspection and maintenance of stormwater management practices.

(6) Include standards for the management of stormwater runoff from construction sites and other land disturbing activities.

(7) Allow municipal governments to assume the full legal responsibility for a stormwater system permitted under these rules as a part of a permit issued by the Secretary.

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

(9) Include minimum standards for the issuance of stormwater permits during emergencies for the repair or maintenance of stormwater infrastructure during a state of emergency declared under 20 V.S.A. chapter 1 or during flooding or other emergency conditions that pose an imminent risk to life or a risk of damage to public or private property. Minimum standards adopted under this subdivision shall comply with National Flood Insurance Program requirements.

(10) To the extent appropriate, authorize in the permitting process use of certifications of compliance by licensed professional engineers practicing within the scope of their engineering specialty.

(11) Include standards for alternative best management practices for stormwater permitting of renewable energy projects and telecommunication facilities located in high-elevation settings, provided that the alternative best management practices shall be designed to:

(A) minimize the extent and footprint of stormwater-treatment practices in order to preserve vegetation and trees;

(B) adapt to and minimize impact to ecosystems, shallow soils, and sensitive streams found in high-elevation settings;

(C) account for the temporary nature and infrequent use of construction and access roads for high-elevation projects; and

(D) maintain the predevelopment runoff characteristics, as nearly as possible, after development.

(12) Establish best management practices for improving healthy soils in order to improve the capacity of soil to retain water, improve flood resiliency, reduce sedimentation, and prevent stormwater runoff.

(g) General permits.

(1) The Secretary may issue general permits for classes of stormwater runoff that shall be adopted and administered in accordance with the provisions of subsection 1263(b) of this title.

(2)(A) The Secretary shall issue on or before December 31, 2017, a general permit for discharges of regulated stormwater from municipal roads. Under the municipal roads stormwater general permit, the Secretary shall:

(i) Establish a schedule for implementation of the general permit by each municipality in the State. Under the schedule, the Secretary shall establish:

(I) the date by which each municipality shall apply for coverage under the municipal roads general permit;

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

(III) 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

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

(ii) Establish criteria and technical standards, such as best management practices, for implementation of stormwater improvements of municipal roads.

(iii) 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.

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

(B) The Secretary may require an individual permit for a stormwater improvement at any time under subsection (e) of this section. An individual permit shall include site-specific standards for the stormwater improvement.

(C) All municipalities shall apply for coverage under the municipal road general permit on or before July 1, 2021.

(D) As used in this subdivision (g)(2), "municipality" means a city, town, or village.

(3) Within 120 days after the adoption by the Secretary of the rules required under subsection (f) of this section, the Secretary shall issue a general permit under this section for discharges of stormwater 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. Under the 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 this subdivision (3). 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 watershed, the Lake Memphremagog watershed, or the watershed of a stormwater-impaired water on or before October 1, 2023;

(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 (3).

(C) Require that a discharge of stormwater from impervious surface subject to the requirements of this section comply with the standards of subsection (h) of this section for redevelopment of or renewal of a permit for existing impervious surface.

(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.

(h) Permit requirements. An individual or general stormwater permit shall:

(1) Be valid for a period of time not to exceed five years.

(2) For discharges of regulated stormwater 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:

(A) In which no TMDL, watershed improvement permit, or water quality remediation plan has been approved, require that the discharge shall comply with the following discharge standards:

(i) A new discharge or the expanded portion of an existing discharge shall satisfy the requirements of the Stormwater Management Manual and shall not increase the pollutant load in the receiving water for stormwater.

(ii) For redevelopment of or renewal of a permit for existing impervious surface, the discharge shall satisfy on-site the water quality, recharge, and channel protection criteria set forth in the Stormwater Management Manual that are determined to be technically feasible by an engineering feasibility analysis conducted by the Agency, and the discharge shall not increase the pollutant load in the receiving water for stormwater.

(B) In which a TMDL or water quality remediation plan has been adopted, require that the discharge shall comply with the following discharge standards:

(i) For a new discharge or the expanded portion of an existing discharge, the discharge shall satisfy the requirements of the Stormwater Management Manual, and the Secretary shall determine that there are sufficient pollutant load allocations for the discharge.

(ii) For redevelopment of or renewal of a permit for existing impervious surface, the Secretary shall determine that there are sufficient pollutant load allocations for the discharge and the Secretary shall include any requirements that the Secretary deems

necessary to implement the TMDL or water quality remediation plan.

(3) Contain requirements necessary to comply with the minimum requirements of the rules adopted under this section, the Vermont water quality standards, and any applicable provision of the Clean Water Act.

(i) Disclosure of violations. 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 federal Clean Water Act, deny an application for the discharge of regulated stormwater under this section if review of the applicant's compliance history indicates that the applicant is discharging regulated stormwater in violation of this chapter or is the holder of an expired permit for an existing discharge of regulated stormwater.

(j) Presumption. In any appeal under this chapter, an individual permit issued under subdivisions (c)(1) and (c)(5) of this section 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.

(k) Report on treatment practices. As part of the report required under section 1389a of this title, the Secretary annually shall report the following:

(1) whether the phosphorus load from new development permitted under this section by the Secretary in the Lake Champlain watershed in the previous calendar year is achieving at least a 70 percent average phosphorus load reduction;

(2) the estimated total phosphorus load reduction from new development, redevelopment, and retrofit of impervious surface permitted under this section in the previous calendar year; and

(3) the number of projects and the percentage of projects as a whole that implemented Tier 1 stormwater treatment practices, Tier 2 stormwater treatment practices, or Tier 3 stormwater treatment practices in the previous calendar year. (Added 1981, No. 222 (Adj. Sess.), § 25; amended 1987, No. 282 (Adj. Sess.), § 14; 1999, No. 114 (Adj. Sess.), § 3, eff. May 19, 2000; 2001, No. 61, § 43, eff. June 16, 2001; 2001, No. 109 (Adj. Sess.), §§ 2-4, eff. May 16, 2002; 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 115 (Adj. Sess.), § 28, eff. Jan. 31, 2005; 2003, No. 140 (Adj. Sess.), § 1; 2005, No. 78, § 14, eff. June 24, 2005; 2005, No. 154 (Adj. Sess.), §§ 2, 3, eff. May 17, 2006; 2007, No. 43, § 1, eff. May 23, 2007; 2007, No. 130 (Adj. Sess.), § 5, eff. May 12, 2008; 2011, No. 53, § 3, eff. May 27, 2011; 2011, No. 91 (Adj. Sess.), § 1, eff. Jan. 15, 2012; 2011, No. 138 (Adj. Sess.), § 6, eff. May 14, 2012; 2013, No. 142 (Adj. Sess.), § 87; 2013, No. 190 (Adj. Sess.), § 20, eff. June 16, 2014; 2013, No. 199 (Adj. Sess.), § 30; 2015, No. 64, § 31; 2017, No. 181 (Adj. Sess.), § 2, eff. May 28, 2018; 2017, No. 181 (Adj. Sess.), § 4, eff. July 1, 2022.)

§ 1264a. Repealed. 2003, No. 140 (Adj. Sess.), § 10(a), eff. January 15, 2012, repealed subsecs. (a) through (d) and (f) through (h); 2017 No. 67, § 13 repealed subsec. (e), eff. July 1, 2017.

§ 1264b. Stormwater Fund

(a) A fund to be known as the Stormwater Fund is created in the State Treasury to be expended by the Secretary of Natural Resources. The Fund shall be administered by the Secretary of Natural Resources. The Fund shall consist of:

(1) stormwater impact fees paid by permittees to meet applicable permitting standards for the discharges of regulated stormwater runoff to the stormwater-impaired waters of the State and Lake Champlain and waters that contribute to the impairment of Lake Champlain;

(2) such sums as may be appropriated or transferred to the Fund by the General Assembly, the State Emergency Board, or the Joint Fiscal Committee during such times when the General Assembly is not in session;

(3) principal and interest received from the repayment of loans made from the Fund;

(4) private gifts, bequests, and donations made to the State for any of the purposes for which the Fund was established; and

(5) other funds from any public or private source intended for use for any of the purposes for which the Fund has been established.

(b) The Fund shall maintain separate accounts for each stormwater-impaired water and each phosphorus-impaired lake segment of Lake Champlain and the monies in each account may only be used to fund offsets in the designated water. Offsets shall be designed to reduce the sediment load, phosphorus load, or hydrologic impact of regulated stormwater runoff in the receiving water. All balances in the Fund at the end of any fiscal year shall be carried forward and remain a part of the Fund. Interest earned by the Fund shall be deposited into the Fund.

(c) The Secretary may authorize disbursements from the Fund to offsets that meet the requirements of the rule adopted pursuant to subsection 1264(f) of this title. The public funds used to capitalize the Fund shall:

(1) be disbursed only to an offset that is owned or operated by a municipality or a governmental subdivision, agency, or instrumentality; and

(2) be disbursed only to reimburse a municipality or a governmental subdivision, agency, or instrumentality for those funds provided by the municipality or governmental subdivision, agency, or instrumentality to complete or construct an offset.

(d) A municipality or governmental subdivision, agency, or instrumentality may, on an annual basis, reserve capacity in an offset that the municipality or governmental subdivision, agency, or instrumentality operates or owns and that meets the requirements of the rule adopted pursuant to subsection 1264(f) of this title. A municipality or governmental subdivision, agency, or instrumentality reserving offset capacity shall inform the Secretary of the offset capacity for which the offset will not receive disbursements from the Fund for nonmunicipal discharges.

(e) Eligible persons may apply for a grant from the Fund to design and implement an offset. The Fund may be used to match other public and private sources of funding for such projects.

(f) A discharger that pays a stormwater impact fee to the Fund in order to receive a permit for the discharge of regulated stormwater runoff may receive reimbursement of that fee if the discharger fails to discharge under the stormwater discharge permit, if the discharger notifies the Secretary of the abandonment of the discharge permit, and if the Secretary determines that unobligated monies for reimbursement remain in the Fund. (Added 2003, No. 140 (Adj. Sess.), § 3; amended 2017, No. 67, § 12.)

§ 1264c. Repealed. 2005, No. 154 (Adj. Sess.), § 8, eff. September 30, 2012.

§ 1264d. Ecosystem Restoration and Water Quality Improvement Special Fund

(a) Purpose. The federal and State requirements for the permitting of Municipal Separate Storm Sewer Systems (MS4) require certain communities to collect water flow and precipitation data at monitoring stations on stormwater-impaired waters in order to demonstrate compliance with stormwater Total Maximum Daily Load allocations. The costs, equipment, and expertise to conduct monitoring can be prohibitive to individual communities. The establishment of the Ecosystem Restoration and Water Quality Improvement Special Fund is intended to ensure municipal compliance with the monitoring requirements for MS4 communities while reducing the fiscal and other pressures on these communities.

(b) Creation of Fund; purpose. There is created an Ecosystem Restoration and Water Quality Improvement Special Fund, to be managed in accordance with the requirements of 32 V.S.A. chapter 7, subchapter 5, and to be administered by the Secretary of Natural Resources. The Ecosystem Restoration and Water Quality Improvement Special Fund shall be used to provide assistance to municipalities in fulfilling the monitoring, education, and other requirements of the MS4 permitting program. The Secretary is authorized to collect monies for the Fund and to make disbursements from the Fund directly related to the Secretary's oversight of monitoring required under the MS4 program.

(c) Participation by municipalities.

(1) A municipality may through a memorandum of understanding (MOU) with the Secretary of Natural Resources agree to contribute to the Ecosystem Restoration and Water Quality Improvement Special Fund to perform the monitoring and other data collection that a municipality is required to conduct under the MS4 permitting program. Under the MOU, a municipality shall commit to contribute to the Fund the municipality's share of funding required by the Agency of Natural Resources to perform MS4 monitoring and provide oversight and administration. Memoranda of understanding shall serve to coordinate funding and work among municipalities, the State, and any entity contracted with or by a municipality or the State for the purposes of improving water quality.

(2) At a minimum, each memorandum of understanding developed under this section shall contain the following:

(A) the purpose of the memorandum of understanding;

(B) a description of the work to be performed under the memorandum of understanding;

(C) a description of how the coordinated work proposed under the memorandum of understanding will improve water quality;

(D) the entities eligible to participate under the memorandum of understanding; and

(E) the amount of required contribution by the entity, based on a funding formula developed in consultation with entities eligible to participate in the program.

(3) A memorandum of understanding developed under this section shall be posted on the Agency website and subject to a comment period of not less than 30 days.

(4) All participating entities, and the Agency, shall sign any final memoranda of understanding.

(d) Fund proceeds.

(1) The Ecosystem Restoration and Water Quality Improvement Special Fund deposits shall consist of:

(A) payment of costs by participating MS4 communities;

(B) monies appropriated by the General Assembly; and

(C) any other source, public or private.

(2) Unexpended balances and interest earned on the Fund shall be retained in the Fund for use in accordance with the purposes of the Fund.

(e) Fund accounts; expenditures.

(1) The Secretary shall maintain separate accounts within the Ecosystem Restoration and Water Quality Improvement Special Fund for each memorandum of understanding. The Secretary may establish within the Fund an account for the purpose of conducting education and outreach related to improvements to water quality.

(2) Expenditures from an account shall be limited to the purposes established by the memorandum of understanding associated with that account. The Secretary is prohibited from disbursing funds on behalf of an entity that failed to contribute its assigned allocation pursuant to the funding formula established by the Secretary or for any purpose not associated with that account. (Added 2013, No. 171 (Adj. Sess.), § 1.)

§ 1265. Temporary pollution permits

(a) A person who does not qualify for or has been denied a waste discharge permit under section 1263 of this title may apply to the Secretary for a temporary pollution permit. Application shall be made on a form prescribed by the Secretary and shall contain information as the Secretary may require. The person shall pay to the Secretary at the time

of submitting the application a fee in accordance with 3 V.S.A. § 2822. The Secretary may require the person to submit any additional information he or she considers necessary for proper evaluation.

(b) When an application is filed under this section, the Secretary shall proceed in accordance with chapter 170 of this title. The Secretary may require the applicant to submit any additional information that the Secretary considers necessary, and may refuse to grant a permit until the information is furnished and evaluated.

(c) After consideration of the application, any additional information furnished and all written comments submitted, and the record of any public hearings the Secretary shall grant or deny a temporary pollution permit. No such permit shall be granted by the Secretary unless he or she affirmatively finds:

(1) the proposed discharge does not qualify for a discharge permit;

(2) the applicant is constructing, installing, or placing into operation or has submitted plans and reasonable schedules for the construction, installation, or operation of an approved pollution abatement facility or alternate waste disposal system, or that the applicant has a waste for which no feasible and acceptable method of treatment or disposal is known or recognized but he or she is making a bona fide effort through research and other means to discover and implement such a method;

(3) the applicant needs permission to pollute the waters of the State for a period of time necessary to complete research, planning, construction, installation, or the operation of an approved and acceptable pollution abatement facility or alternate waste disposal system;

(4) there is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the State;

(5) the denial of a temporary pollution permit would work an extreme hardship upon the applicant;

(6) the granting of a temporary pollution permit will result in some public benefit;

(7) the discharge will not be unreasonably destructive to the quality of the receiving waters;

(8) the proposed discharge will not violate any applicable provisions of State or federal laws or regulations.

(d) Any temporary pollution permit issued shall:

(1) Specify the manner, nature, volume, and frequency of the discharge permitted.

(2) Require the proper operation and maintenance of any interim or temporary pollution abatement facility or system required by the Secretary as a condition of the permit, to include but not to be limited to all terms and conditions authorized under subsection 1263(c) of this title.

(3) Require the permit holder to maintain monitoring equipment and make and file such records and reports as the Secretary deems necessary to ensure compliance with the terms of the permit and evaluate the effect of the discharge upon the receiving waters.

(4) Be valid only for the period of time, not exceeding five years, necessary for the permit holder to place into operation the facility, system, or method required to obtain a permit under section 1263 of this title. However, the terms of the permit may be amended upon application of the permit holder and a finding by the Secretary that the amendment meets all of the requirements of subsection (c) of this section. Upon application of the permit holder and a finding by the Secretary that the amendment meets all of the requirements of subsection (c) of this section and that there is a substantial change in circumstances not under the control of the permit holder, the terms of the permit may be amended following all determinations and procedures for initial permit application.

(5) [Repealed.]

(6) Contain other requirements, restrictions, and conditions that the Secretary deems necessary and desirable to protect the quality of the receiving waters and promote the public interest.

(e), (f) [Repealed.] (Added 1969, No. 252 (Adj. Sess.), § 12, eff. April 4, 1970; amended 1971, No. 93, § 1, eff. April 22, 1971; 1971, No. 255 (Adj. Sess.), §§ 4, 5, 10, 11, eff. April 11, 1972; 1973, No. 103, § 7, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1987, No. 76, § 5; 1989, No. 278 (Adj. Sess.), § 2; 2013, No. 34, § 6; 2015, No. 150 (Adj. Sess.), § 17, eff. Jan. 1, 2018.)

§ 1265a. Repealed. 2001, No. 133 (Adj. Sess.), § 14, eff. June 13, 2002.

§ 1266. Repealed. 2009, No. 46, § 4.

§ 1266a. Discharges of phosphorus

(a) No person directly discharging into the drainage basins of Lake Champlain or Lake Memphremagog shall discharge any waste that contains a phosphorus concentration in excess of 0.80 milligrams per liter on a monthly average basis. Discharges of less than 200,000 gallons per day, permitted on or before July 1, 1991, shall not be subject to the requirements of this subsection. Discharges from a municipally owned aerated lagoon type secondary sewage treatment plant in the Lake Memphremagog drainage basin, permitted on or before July 1, 1991 shall not be subject to the requirements of this subsection unless the plant is modified to use a technology other than aerated lagoons.

(b) Notwithstanding any provision of subsection (a) of this section to the contrary, the Secretary shall establish effluent phosphorus wasteload allocations or concentration limits within any drainage basin in Vermont, as needed to achieve wasteload allocations in a total maximum daily load document approved by the U.S. Environmental Protection Agency, or as needed to attain compliance with water quality standards adopted by the Secretary pursuant to chapter 47 of this title.

(c) [Repealed.] (Added 1977, No. 39, § 6, eff. April 19, 1977; amended 1981, No. 222 (Adj. Sess.), § 25; 1991, No. 261 (Adj. Sess.), § 2; 1997, No. 51, § 2; 2001, No. 61, § 47, eff. June 16, 2001; 2003, No. 63, § 53, eff. June 11, 2003; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14,

2012; 2015, No. 64, § 47.)

§ 1266b. Application of phosphorus fertilizer

(a) Definitions. As used in this section:

(1) "Compost" means a stable humus-like material produced by the controlled biological decomposition of organic matter through active management, but shall not mean sewage, septage, or materials derived from sewage or septage.

(2) "Fertilizer" shall have the same meaning as in 6 V.S.A. § 363(5).

(3) "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.

(4) "Manipulated animal or vegetable manure" means manure that is ground, pelletized, mechanically dried, supplemented with plant nutrients or substances other than phosphorus or phosphate, or otherwise treated to assist with the use of manure as fertilizer.

(5) "Nitrogen fertilizer" means fertilizer labeled for use on turf in which the nitrogen content consists of less than 15 percent slow-release nitrogen.

(6) "Phosphorus fertilizer" means fertilizer labeled for use on turf in which the available phosphate content is greater than 0.67 percent by weight, except that "phosphorus fertilizer" shall not include compost or manipulated animal or vegetable manure.

(7) "Slow-release nitrogen" means nitrogen in a form that is released over time and that is not water-soluble nitrogen.

(8)(A) "Turf" means land planted in closely mowed, managed grasses, including residential and commercial property and publicly owned land, parks, and recreation areas.

(B) "Turf" shall not include:

(i) pasture, cropland, land used to grow sod, or any other land used for agricultural production; or

(ii) private and public golf courses.

(9) "Water" or "water of the State" means all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, that are contained within, flow through, or border upon the State or any portion of it.

(10) "Water-soluble nitrogen" means nitrogen in a water-soluble form that does not have slow-release properties.

(b) Application of phosphorus fertilizer.

(1) No person shall apply phosphorus fertilizer to turf except for:

(A) phosphorus fertilizer necessary for application to turf that is deficient in phosphorus as shown by a soil test performed no more than 18 months before the application of the fertilizer; or

(B) phosphorus fertilizer that is labeled as starter fertilizer and that is intended for application to turf when a property owner or an agent of a property owner is first establishing grass in turf via seed or sod procedures and the application of starter fertilizer is limited to the first growing season.

(2) On or before October 1, 2011, the Secretary of Agriculture, Food and Markets, after consultation with the University of Vermont, shall approve a standard, that may authorize multiple testing methods, for the soil test required under subdivision (1)(A) of this subsection.

(c) Application of nitrogen fertilizer. No person shall apply nitrogen fertilizer to turf.

(d) Application of fertilizer to impervious surface; in proximity to water; and seasonal restriction. No person shall apply any fertilizer:

(1) to an impervious surface. Fertilizer applied or released to an impervious surface shall be immediately collected and returned to a container for legal application. This subdivision shall not apply to activities regulated under the required agricultural practices as those practices are defined by the Secretary of Agriculture, Food and Markets under 6 V.S.A. § 4810;

(2) to turf before April 1 or after October 15 in any calendar year or at any time when the ground is frozen; or

(3) to turf within 25 feet of a water of the State.

(e) Retail display of phosphorus fertilizer. If a retailer sells or offers for sale phosphorus fertilizer to consumers and consumers have direct access to the phosphorus fertilizer, the retailer shall:

(1) In the retail area where phosphorus fertilizer is accessible by a consumer, display nonphosphorus fertilizer separately from phosphorus fertilizer.

(2) Post in the retail location, if any, where phosphorus fertilizer is accessible by the consumer a clearly visible sign that is at least eight and one-half inches by 11 inches in size and that states "Phosphorus runoff poses a threat to water quality. Most Vermont lawns do not benefit from fertilizer containing phosphorus. Under Vermont law, fertilizer containing phosphorus shall not be applied to lawn unless applied to new lawn or lawn that is deficient for phosphorus as indicated by a soil test."

(f) Violations. A person who knowingly and intentionally violates this section shall be subject to a civil penalty of not more than \$500.00 per violation. A violation of this section shall be enforceable in the Judicial Bureau pursuant to the provisions of 4 V.S.A. chapter 29 in an action that may be brought by the Agency of Agriculture, Food and Markets or the Agency of Natural Resources. (Added 2011, No. 37, § 1, eff. Jan. 1, 2012; amended 2015, No. 64, § 13.)

§ 1267. Revocation of permits

The Secretary may, after notice and opportunity for public hearing, under 3 V.S.A. § 814(c), revoke, modify, or suspend any permit issued by the Secretary pursuant to this subchapter upon finding that the permit holder submitted false or inaccurate information in the application or has violated any requirement, restrictions, or condition of the permit or that there is a change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge. The Secretary shall impose conditions as the Secretary deems reasonable for regulating the discharges of a person whose permit has been revoked, modified, or suspended. Revocation shall be effective upon actual notice thereof to the permit holder. When the Secretary determines, after consultation with the Commissioner of Health, that a violation threatens the public health, the Secretary shall suspend the permit until the permit holder removes the risk. (Added 1969, No. 252 (Adj. Sess.), § 13, eff. April 4, 1970; amended 1973, No. 103, § 8, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1985, No. 199 (Adj. Sess.), § 8, eff. May 17, 1986.)

§ 1268. Emergency permits

When a discharge permit holder finds that pollution abatement facilities require repairs, replacement, or other corrective action in order for them to continue to meet standards specified in the permit, the holder may apply in the manner specified by the Secretary for an emergency pollution permit for a term sufficient to effect repairs, replacements, or other corrective action. The Secretary shall proceed in accordance with chapter 170 of this title. No emergency pollution permit shall be issued unless the applicant certifies and the Secretary finds that:

- (1) there is no present, reasonable alternative means of disposing of the waste other than by discharging it into the waters of the State during the limited period of time of the emergency;
- (2) the denial of an emergency pollution permit would work an extreme hardship upon the applicant;
- (3) the granting of an emergency pollution permit will result in some public benefit;
- (4) the discharge will not be unreasonably harmful to the quality of the receiving waters;
- (5) the cause or reason for the emergency is not due to willful or intended acts or omissions of the applicant. (Added 1981, No. 222 (Adj. Sess.), § 25; amended 2015, No. 150 (Adj. Sess.), § 18, eff. Jan. 1, 2018.)

§ 1269. Appeals

Appeals of any act or decision of the Secretary under this chapter shall be made in accordance with chapter 220 of this title. (Added 1969, No. 252 (Adj. Sess.), § 14, eff. April 4, 1970; 1981, No. 222 (Adj. Sess.), § 25; 2003, No. 115 (Adj. Sess.), § 29, eff. Jan. 31, 2005.)

§ 1270. Repealed. 2005, No. 115 (Adj. Sess.), § 119(b).

§ 1271. Extension of municipal sewer system; filing map; approval

No municipality shall extend its sewer system until it has filed a copy of its plan for the extension with the Secretary and has received the Secretary's approval. (Amended 1961, No. 100, § 2; 1973, No. 103, § 9, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25.)

§ 1272. Regulation of activities causing discharge or affecting significant wetlands

If the Secretary finds that any person's action, or an activity, results in the construction, installation, operation, or maintenance of any facility or condition that reasonably can be expected to create or cause a discharge to waters in violation of this subchapter, or to violate the Secretary's rules under section 905b of this title relating to significant wetlands, the Secretary may issue an order establishing reasonable and proper methods and procedures for the control of that activity and the management of substances used therein that cause discharges or violations of the Secretary's rules with respect to significant wetlands in order to reduce or eliminate those discharges and rule violations with respect to significant wetlands. (Added 1969, No. 252 (Adj. Sess.), § 15, eff. April 4, 1970; amended 1971, No. 255 (Adj. Sess.), § 6, eff. April 11, 1972; 1973, No. 103, § 10, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1985, No. 188 (Adj. Sess.), § 4; 2003, No. 115 (Adj. Sess.), § 30, eff. Jan. 31, 2005; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012.)

§ 1273. Repealed. 1969, No. 252 (Adj. Sess.), § 18, eff. April 4, 1970.

§ 1274. Enforcement

(a) Notwithstanding any other provision or procedure set forth in this chapter, if the Secretary finds that any person has discharged or is discharging any waste in violation of this chapter or that any person has failed to comply with any provisions of any order or permit issued in accordance with this chapter, the Secretary may bring suit in the Superior Court in any county where the discharge or noncompliance has occurred to enjoin the discharge and to obtain compliance. The suit shall be brought by the Attorney General in the name of the State. The court may issue a temporary injunction or order in any such proceedings and may exercise all the plenary powers available to it in addition to the power to:

- (1) Enjoin future discharges.
- (2) Order the design, construction, installation, or operation of pollution abatement facilities or alternate waste disposal systems.
- (3) Order the removal of all wastes discharged and the restoration of water quality.
- (4) Fix and order compensation for any public property destroyed, damaged, or injured. Compensation for fish taken or destroyed shall be deposited into the Fish and Wildlife Fund.
- (5) Assess and award punitive damages.
- (6) Levy civil penalties not to exceed \$10,000.00 a day for each day of violation.
- (7) Order reimbursement to any agency of federal, State, or local government from any person whose discharge caused governmental expenditures.

(b) The Secretary, by rule, shall define those violations that are significant, based upon the magnitude, duration, consequences, and causes of the violation. When a significant violation occurs, the Secretary may initiate proceedings to compel compliance by and seek penalties from the violator. A court, upon finding that such a violation has occurred, shall order compliance and retain jurisdiction to assure that compliance schedules are met. The court also shall impose penalties. Action under this section shall not restrict the Secretary's authority to proceed under section 1267 of this title. (Added 1969, No. 252 (Adj. Sess.), § 16, eff. April 4, 1970; amended 1971, No. 185 (Adj. Sess.), § 236, eff. March 29, 1972; 1973, No. 103, § 11, eff. April 24, 1973; 1973, No. 112, § 4, eff. April 25, 1973; 1981, No. 222 (Adj. Sess.), § 25; 1985, No. 199 (Adj. Sess.), §§ 9, 10, eff. May 17, 1986; 1989, No. 205 (Adj. Sess.), § 3.)

§ 1275. Penalty

(a) Any person who violates any provision of this subchapter or who fails, neglects, or refuses to obey or comply with any order or the terms of any permit issued in accordance with this subchapter, shall be fined not more than \$25,000.00 or be imprisoned not more than six months, or both. Each violation may be a separate offense and, in the case of a continuing violation, each day's continuance may be deemed a separate offense.

(b) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this subchapter, or by any permit, rule, regulation, or order issued under this subchapter, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this subchapter or by any permit, rule, regulation, or order issued under this subchapter, shall upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than six months, or by both. (Amended 1969, No. 252 (Adj. Sess.), § 9, eff. April 4, 1970; 1973, No. 103, § 12, eff. April 24, 1973; 1981, No. 222 (Adj. Sess.), § 25.)

§ 1276. Construction

Nothing contained in this subchapter shall be construed to prohibit or require a permit for the proper use of waters for customary sport and recreational purposes such as fishing, swimming, and boating if the classification of the water permits that usage. In the event of an irreconcilable conflict between the provisions of this subchapter and 3 V.S.A. chapter 25, the provisions of this subchapter shall prevail. Nothing in this subchapter shall be construed to affect, impair, or abridge the right of riparian or littoral owners or others to sue for damages or injunctions or exercise any other common law or statutory remedy to abate and recover damages for water pollution. If a permit holder is required to pay such damages by judgment or order of a court, the amount of damages shall be a credit against any pollution charges due under this subchapter. Any permit granted under this subchapter shall not be construed as a vested right and shall be subject to continuing regulations and control by the State. (Added 1969, No. 252 (Adj. Sess.), § 17, eff. April 4, 1970; amended 1981, No. 222 (Adj. Sess.), § 25.)

§ 1277. Municipal sewage treatment plants

If, after public hearing, the Secretary finds that:

(1) any municipality is discharging untreated or improperly treated sewage or stormwater into waters of the State or that conditions exist in any municipality or combination of municipalities that cause or threaten to cause a reduction in the quality of ground or surface waters; and

(2) the discharge or condition can most effectively be corrected or abated by the construction and installation of a sewage collection and treatment system or a stormwater collection and treatment system or by other management practices, and after giving due regard to regional development factors, he or she may order the municipality or combination of municipalities to provide the facilities or undertake the practices necessary to correct or abate the discharge or condition. In the case of correcting or abating a discharge of stormwater runoff not created by a municipality, the Secretary may order the municipality or combination of municipalities to provide the facilities or undertake the practices necessary to correct or abate the discharge or condition if the municipality or combination of municipalities has in place a mechanism to recover the costs from users. The order shall include a reasonable time schedule for action by the municipality or municipalities to place the facilities into operation. This section does not abridge any duty or remedy created by this subchapter. (Added 1969, No. 252 (Adj. Sess.), § 22, eff. April 4, 1970; amended 1981, No. 222 (Adj. Sess.), § 25; 2001, No. 109 (Adj. Sess.), § 14, eff. May 16, 2002.)

§ 1278. Operation, management, and emergency response plans for pollution abatement center

(a) Findings. The General Assembly finds that the State shall protect Vermont's lakes, rivers, and streams from pollution by implementing programs to prevent sewage spills to Vermont waters and by requiring emergency planning to limit the damage from spills which do occur. In addition, the General Assembly finds it to be cost effective and generally beneficial to the environment to continue State efforts to ensure energy efficiency in the operation of treatment facilities.

(b) Planning requirement. Effective July 1, 2007, the Secretary of Natural Resources shall, as part of a permit issued under section 1263 of this title, require a pollution abatement facility, as that term is defined in this section, to prepare and implement an operation, management, and emergency response plan for those portions of each pollution abatement facility that include the treatment facility, the sewage pumping stations, and the sewer line stream crossing. As used in this section, "pollution abatement facility" means municipal sewage treatment plants, pumping stations, interceptor and outfall sewers, and attendant facilities as prescribed by the Department to abate pollution of the waters of the State.

(c) Collection system planning. As of July 1, 2010, the Secretary of Natural Resources, as part of a permit issued under section 1263 of this title, shall require a pollution abatement facility, as that term is defined in subsection (b) of this section, to prepare and implement an operation, management, and emergency response plan for that portion of each pollution abatement facility that includes the sewage collection systems. The requirement to develop

a plan under this subsection shall be included in a permit issued under section 1263 of this title, and a plan developed under this subsection shall be subject to public review and inspection.

(d) Plan components. An operation, management, and emergency response plan shall include the following:

(1) Identification of those elements of the facility, including collection systems that are determined to be prone to failure based on installation, age, design, or other relevant factors.

(2) Identification of those elements of the facility identified under subdivision (1) of this subsection that, if one or more failed, would result in a significant release of untreated or partially treated sewage to surface waters of the state.

(3) A requirement that the elements identified in subdivision (2) of this subsection shall be inspected in accordance with a schedule approved by the Secretary of Natural Resources.

(4) An emergency contingency plan to reduce the volume of a detected spill and to mitigate the effect of such a spill on public health and the environment.

(e) [Repealed.] (Added 2005, No. 154 (Adj. Sess.), § 5a, eff. July 1, 2006; amended 2007, No. 130 (Adj. Sess.), § 8, eff. May 12, 2008; 2007, No. 209 (Adj. Sess.), § 5; 2015, No. 86 (Adj. Sess.), § 2, eff. May 4, 2016; 2015, No. 103 (Adj. Sess.), § 4, eff. May 12, 2016; 2017, No. 185 (Adj. Sess.), § 17, eff. May 28, 2018.)

§ 1279. Repealed. 1985, No. 53, § 3.

§ 1280. Emergency actions

Notwithstanding any other provision of this chapter, upon receipt of evidence that a pollution source or combination of sources, including industrial users of publicly owned treatment works, is presenting an imminent and substantial endangerment to water or groundwaters or to the health of persons or to the welfare of persons by endangering their livelihood, the Secretary may bring suit on behalf of the State in Superior Court in the county where the source is located to immediately restrain any person causing or contributing to the alleged pollution to stop the discharge or introduction of the waste causing or contributing to that pollution or to take other action as may be necessary. (Added 1973, No. 103, § 15, eff. April 24, 1973; amended 1981, No. 222 (Adj. Sess.), § 25.)

§ 1281. Oil and other hazardous materials

(a) The Secretary shall adopt rules relating to the handling, storage, and transport of oil and other hazardous materials within the State of Vermont for the purpose of preventing the discharge of any oil and other hazardous materials directly or indirectly into the waters of the State. The Secretary shall coordinate any proposed rule relating to oil or other hazardous materials with the Secretary of Human Services and the Commissioner of Labor to ensure the absence of conflict.

(b) Any rule adopted under this section or section 1282 of this title shall be presented immediately to the Clerk of the House of Representatives and the Secretary of the Senate who shall immediately publish it in their respective calendars. If the General Assembly is not in session at the time a rule or regulation is adopted, publication in the calendars shall occur within 10 days after the General Assembly next convenes. The General Assembly may repeal a rule or regulation. (Added 1973, No. 112, § 5, eff. April 25, 1973; amended 1981, No. 222 (Adj. Sess.), § 25; 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006.)

§ 1282. Contingency plans; adoption

(a) The Secretary shall develop and implement a statewide contingency plan that shall provide for the coordination of the activities of State agencies and municipalities for the purpose of controlling, undertaking cleanup operations, or otherwise mitigating the effects of a spillage of oil or other hazardous materials that is likely to reach the waters of the State either directly or indirectly.

(b) The plan developed in accordance with this section shall be submitted to and approved by the Governor prior to becoming effective. (Added 1973, No. 112, § 6, eff. April 25, 1973; amended 1981, No. 222 (Adj. Sess.), § 25.)

§ 1283. Contingency Fund

(a) The Environmental Contingency Fund is established within the control of the Secretary. Subject to the limitations contained in subsection (b) of this section, disbursements from the Fund may be made by the Secretary to undertake actions that the Secretary considers necessary to investigate or mitigate, or both, the effects of hazardous material releases to the environment.

(b) Disbursements under this subsection may be made for emergency purposes or to respond to other than emergency situations; provided, however, that disbursements in response to an individual situation that is not an emergency situation shall not exceed \$100,000.00 for costs attributable to each of the subdivisions of this subsection, unless the Secretary has received the approval of the General Assembly, or the Joint Fiscal Committee, in case the General Assembly is not in session. Furthermore, the balance in the Fund shall not be drawn below the amount of \$100,000.00, except in emergency situations. If the balance of the Fund becomes insufficient to allow a proper response to one or more emergencies that have occurred, the Secretary shall appear before the Emergency Board, as soon as possible, and shall request that necessary funds be provided. Within these limitations, disbursements from the Fund may be made:

(1) to initiate spill control procedures, removal actions, and remedial actions to clean up spills of hazardous materials where the discharging party is unknown, cannot be contacted, is unwilling to take action, or does not take timely action that the Secretary considers necessary to mitigate the effects of the spill;

(2) to investigate an actual or threatened release to the environment of any pollutant or contaminant that may present an imminent and substantial danger to the public health and welfare or to the environment. The Secretary may use this Fund for those investigations necessary to:

(A) determine the magnitude and extent of the existing and potential public exposure and risk and environmental damage;

(B) determine appropriate remedial action to prevent or minimize the impact of such releases; or

(C) to prescribe other environmentally sound measures to protect the long-range public health and welfare or to ensure environmental protection, or to prescribe additional investigations to determine same;

(3) to take appropriate removal action to prevent or minimize the immediate impact of such releases to the public health and the environment;

(4) to take appropriate remedial action;

(5) to reimburse private persons or municipalities for expenditures made to provide alternative water supplies or to take other emergency measures deemed necessary by the Secretary, in consultation with the Commissioner of Health, to protect the public health from hazardous material. Reimbursement under this subdivision shall be pursuant to criteria adopted by rule of the Secretary and by rule of the Commissioner establishing, among other provisions, requirements that alternative sources of reimbursement are pursued in a diligent manner;

(6) to pay administrative and field supervision costs incurred by the Secretary or by a municipality at the direction of the Secretary in carrying out the provisions of this subchapter. Annual disbursements, for these costs, to the Department of Environmental Conservation under this subdivision shall not exceed 2.0 percent of annual revenues;

(7) to pay costs of management oversight provided by the State for investigation and cleanup efforts conducted by voluntary responsible parties;

(8) to pay costs of emergency response operations and equipment in the spill response program;

(9) to pay costs of required capital contributions and operation and maintenance when the remedial or response action was taken pursuant to 42 U.S.C. § 9601 et seq.;

(10) to pay the costs of oversight or conducting assessment of a natural resource damaged by the release of a hazardous material and being assessed for damages pursuant to section 6615d of this title; or

(11) to pay the costs of oversight or conducting restoration or rehabilitation to a natural resource damaged by the release of a hazardous material and being restored or rehabilitated pursuant to section 6615d of this title.

(c) The Secretary may bring an action under this section or other available State and federal laws to enforce the obligation to repay the Fund. To the extent compatible with the urgency of the situation, the Secretary shall provide an opportunity for the responsible party or parties to undertake the investigations, removal, and remedial actions under the direction of the Secretary.

(d), (e) [Repealed.]

(f) Except as provided in subsection 6618(a) of this title, revenues under the hazardous waste tax established under 32 V.S.A. chapter 237 shall be deposited in the Environmental Contingency Fund. The Secretary may reimburse the Fund with funds received from the U.S. Pollution Prevention Revolving Fund authorized by subsection (k) of section 311 of Public Law 92-500, as amended, codified in 1979 as 33 U.S.C. § 1321(k). Monies may be accepted by the Secretary under written agreements with responsible parties for release site cleanup to provide administrative, technical, and management oversight.

(g) For purposes of this section:

(1) "Emergency" means any release or threatened release of hazardous materials that causes or may cause an immediate and significant risk of harm to human life, health, or to the environment.

(2)(A) "Hazardous material" means all petroleum and toxic, corrosive, or other chemicals and related sludge included in any of the following:

(i) any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;

(ii) petroleum, including crude oil or any fraction thereof; or

(iii) hazardous waste, as determined under subdivision 6602(4) of this title.

(B) "Hazardous material" does not include herbicides and pesticides when applied in a manner consistent with good practice conducted in conformity with federal, State, and local laws and regulations and according to manufacturers' instructions. Nothing in this subdivision shall affect the authority granted and the limitations imposed by section 6608a of this title.

(3) "Release" means any intentional or unintentional action or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, dumping, or disposing of hazardous materials into the surface or groundwaters, or onto the lands in the State, or into waters outside the jurisdiction of the State when damage may result to the public health, lands, waters, or natural resources within the jurisdiction of the State.

(4) "Remedial action" means those actions consistent with a permanent remedy taken instead of or in addition to removal actions in the event of the improper release or threat of release of a hazardous material into the environment, to prevent or minimize the release of hazardous materials so that they do not migrate or cause substantial danger to present or future public health or welfare or the environment.

(5) "Removal action" means the cleanup or removal of released hazardous materials from the environment and such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or to the environment which may result from the improper release or threat of release of hazardous materials.

(h) Receipts from the Redevelopment of Contaminated Properties Program,' established under section 6615a of this title, shall be deposited into a separate account of the Fund, named the redevelopment of contaminated properties account. (Added 1979, No. 195 (Adj.

Sess.), § 5, eff. May 6, 1980; amended 1981, No. 222 (Adj. Sess.), § 25; 1983, No. 205 (Adj. Sess.); 1985, No. 70, §§ 1, 2, eff. May 20, 1985; 1987, No. 282 (Adj. Sess.), § 17, eff. Oct. 1, 1988; 1991, No. 78, § 3; 1991, No. 225 (Adj. Sess.), § 1; 1995, No. 44, § 4, eff. April 20, 1995; 1997, No. 155 (Adj. Sess.), § 35; 2005, No. 135 (Adj. Sess.), §§ 1, 4; 2013, No. 142 (Adj. Sess.), § 88; 2015, No. 154 (Adj. Sess.), § 5, eff. June 1, 2016.)

§ 1284. Water quality data coordination

(a) To facilitate attainment or accomplishment of the purposes of this chapter, the Secretary shall coordinate and assess all available data and science regarding the quality of the waters of the State, including:

- (1) light detection and ranging information data (LIDAR);
- (2) stream gauge data;
- (3) stream mapping, including fluvial erosion hazard maps;
- (4) water quality monitoring or sampling data;

(5) 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; and

- (6) any other data available to the Secretary.

(b) After coordination of the data required under subsection (a) of this section, the Secretary shall:

(1) assess where additional data are needed and the best methods for collection of such data;

(2) identify and map on a watershed basis areas of the State that are significant contributors to water quality problems or are in critical need of water quality remediation or response.

(c) The Secretary shall post all data compiled under this section on the website of the Agency of Natural Resources. (Added 2015, No. 64, § 35.)

Subchapter 1A: Notification Of Sewage And Wastewater Discharges

§ 1295. Notification of sewage and wastewater discharges

(a) Definitions. Notwithstanding the application of the definitions in section 1251 to the chapter as a whole, as used in this subchapter:

(1) "Collection system" means pipelines or conduits, pumping stations, force mains, and all other facilities used to collect or conduct sewage or stormwater, or both sewage and stormwater.

(2) "Combined sewer overflow" means an untreated or partially treated discharge to waters of the State from a combined sewer system outfall that results from a wet weather storm event.

(3) "Combined sewer system" means a collection system that was designed to convey sewage and stormwater through the same network of pipes to a treatment plant.

- (4) "Dry weather flow" means flow in a sanitary sewer or combined sewer system during periods of dry weather.

(5) "Sanitary sewer system" means a collection system that conveys sewage and groundwater entering the collection system through inflow and infiltration to a wastewater treatment facility.

(6) "Separate storm sewer system" means a collection system that is designed to discharge stormwater and groundwater entering the collection system through inflow and infiltration to surface waters.

(7) "Sewage" means domestic, commercial, and industrial wastewater conveyed by a collection system.

(8) "Stormwater" means precipitation and snowmelt that does not infiltrate into soil, including material dissolved or suspended in it.

(9) "Untreated discharge" means:

(A) combined sewer overflows from a wastewater treatment facility;

(B) overflows from sanitary sewers and combined sewer systems that are part of a wastewater treatment facility during dry weather flows, which result in a discharge to waters of the State;

(C) upsets or bypasses around or within a wastewater treatment facility during dry or wet weather conditions that are due to factors unrelated to a wet weather storm event and that result in a discharge of sewage that has not been fully treated to waters of the State; and

(D) discharges from a wastewater treatment facility to separate storm sewer systems.

(10) "Wastewater treatment facility" means a treatment plant, collection system, pump station, and attendant facilities permitted by the Secretary for the purpose of treating sewage.

(b) Public alert. An operator of a wastewater treatment facility or the operator's delegate shall as soon as possible, but no longer than one hour from discovery of an untreated discharge from the wastewater treatment facility, post on a publicly accessible electronic network, mobile application, or other electronic media designated by the Secretary an alert informing the public of the untreated discharge and its location, except that if the operator or his or her delegate does not have telephone or Internet service at the location where he or she is working to control or stop the untreated discharge, the operator or his or her delegate may delay posting the alert until the time that the untreated discharge is controlled or stopped, provided that the alert shall be posted no later than four hours from discovery of the untreated discharge.

(c) Agency notification.

(1) An operator of a wastewater treatment facility shall within 12 hours from discovery of an untreated discharge from the wastewater treatment facility notify the Secretary and the local health officer of the municipality where the facility is located of the untreated discharge. The operator shall notify the Secretary through use of the Department of Environmental Conservation's online event reporting system. If, for any reason, the online event reporting system is not operable, the operator shall notify the Secretary via telephone or e-mail.

(2) A notification required by this subsection shall include:

(A) The specific location of each untreated discharge, including the body of water affected. For combined sewer overflows, the specific location of each untreated discharge means each outfall that has discharged during a wet weather storm event.

(B) Except for untreated discharges under subdivision (a)(9)(D) of this section, the date and approximate time the untreated discharge began.

(C) The date and approximate time the untreated discharge ended. If the untreated discharge is still ongoing at the time of reporting, the entity reporting the untreated discharge shall amend the report with the date and approximate time the untreated discharge ended within three business days of the untreated discharge ending.

(D) Except for untreated discharges under subdivision (a)(9)(D) of this section, the approximate total volume of sewage and, if applicable, stormwater that was released. If the approximate total volume is unknown at the time of reporting, the entity reporting the untreated discharge shall amend the report with the approximate total volume within three business days.

- (E) The cause of the untreated discharge.
- (F) The person reporting the untreated discharge.
- (G) Any other information deemed necessary by the Secretary.

(d) Notification of additional discharges. In addition to untreated discharges posted pursuant to subsection (c) of this section, the Secretary shall post a notification of other unpermitted discharges to waters of the State that may pose a threat to human health or the environment and that are identified by the Secretary. The Secretary's notification shall include the information required under subdivision (c)(2) of this section and shall be posted on the Secretary's online event reporting system no later than four hours from the discovery of an unpermitted discharge, except that if the unpermitted discharge is discovered between the hours of 9:00 p.m. and 5:00 a.m., the Secretary shall post the notification no later than 10:00 a.m. of that morning. The Secretary's notification shall identify the potential threat to the public health that may be posed by recreating in the waters where the unpermitted discharge occurred.

(e) Signage.

(1) Each combined sewer overflow outfall shall be marked with a permanent sign that identifies the outfall and warns of the potential threat to public health that may be posed by recreating in the waters at the outfall or downstream of the outfall during or after a wet weather storm event. The Secretary shall provide each municipality with a combined sewer overflow two signs for each outfall within the municipality. A municipality shall periodically inspect and maintain each sign marking a combined sewer overflow outfall and shall replace a sign if it is destroyed, removed, or no longer legible.

(2)(A) A municipality shall, within its jurisdiction or other geographic area specified by the Secretary, post temporary signs at public access areas downstream of:

- (i) untreated discharges under subdivisions (a)(9)(B)-(D) of this section; and
- (ii) other unpermitted discharges posted by the Secretary under subsection (d) of this section.

(B) The signs shall warn of the potential threat to public health that may be posed by recreating in the waters due to the untreated or unpermitted discharge. The signs shall remain in place for 48 hours after the untreated or unpermitted discharge has stopped. (Added 2015, No. 86 (Adj. Sess.), § 1, eff. May 4, 2016.)

Subchapter 2: Mill Refuse

§ 1301. Deposit of sawmill waste in waters

(a) It shall be unlawful for a person to deposit edgings, slabs, sawdust, shavings, or any other sawmill refuse in the waters of any stream, pond, reservoir, or lake in this State or on the shores or banks thereof in such a manner as to be subject to being washed in the main stream or body of water under normal high water conditions.

(b) A person who violates the provisions of subsection (a) of this section shall be fined no more than \$100.00 for each offense. (Amended 1963, No. 224; 1967, No. 112.)

§§ 1302-1305. Repealed. 1963, No. 224, § 2.

Subchapter 2A: Lake In Crisis

§ 1310. Designation of lake in crisis

(a) The Secretary of Natural Resources (Secretary) shall review whether a lake in the State should be designated as a lake in crisis upon the Secretary's own motion or upon petition of 15 or more persons or a selectboard of a municipality in which the lake or a portion of the lake is located.

(b) The Secretary shall designate a lake as a lake in crisis if, after review under subsection (a) of this section, the Secretary determines that:

(1) the lake or segments of the lake have been listed as impaired;

(2) the condition of the lake will cause:

(A) a potential harm to the public health; and

(B) a risk of damage to the environment or natural resources; and

(3) a municipality in which the lake or a portion of the lake is located has reduced the valuation of real property due to the condition of the lake. (Added 2017, No. 168 (Adj. Sess.), § 5, eff. May 22, 2018.)

§ 1311. State response to a lake in crisis

(a) Adoption of crisis response plan. When a lake is declared in crisis, the Secretary shall within 90 days after the designation of the lake in crisis issue a comprehensive crisis response plan for the management of the lake in crisis in order to improve water quality in the lake or to mitigate or eliminate the potential harm to public health or the risk of damages to the environment or natural resources. The Secretary shall coordinate with the Secretary of Agriculture, Food and Markets and the Secretary of Transportation in the development of the crisis response plan. The crisis response plan may require implementation of one or both of the following in the watershed of the lake in crisis:

(1) water quality requirements necessary to address specific harms to public health or risks to the environment or natural resources; or

(2) implementation of or compliance with existing water quality requirements under one or more of the following:

(A) water quality requirements under chapter 47 of this title, including requiring a property owner to obtain a permit or implement best management practices for the discharge of stormwater runoff from any size of impervious surfaces if the Secretary determines that the treatment of the discharge of stormwater runoff is necessary to reduce the adverse impacts to water quality of the discharge or stormwater on the lake in crisis;

(B) agricultural water quality requirements under 6 V.S.A. chapter 215, including best management practices under 6 V.S.A. § 4810 to reduce runoff from the farm; or

(C) water quality requirements adopted under section 1264 of this section for stormwater runoff from municipal or State roads.

(b) Public hearing. The Secretary shall hold at least one public hearing in the watershed of the lake in crisis and shall provide an opportunity for public notice and comment for a proposed lake in crisis response plan.

(c) Term of designation. A lake shall remain designated as in crisis under this section until the Secretary determines that the lake no longer satisfies the criteria for designation under subsection (b) of this section.

(d) Agency cooperation and services. All other State agencies shall cooperate with the Secretary in responding to the lake in crisis, and the Secretary shall be entitled to seek technical and scientific input or services from the Agency of Agriculture, Food and Markets, the Agency of Transportation, or other necessary State agencies. (Added 2017, No. 168 (Adj. Sess.), § 5, eff. May 22, 2018.)

§ 1312. Lake in crisis order

The Secretary of Natural Resources, pursuant to chapter 201 of this title, or the Secretary of Agriculture, Food and Markets, pursuant to 6 V.S.A. chapter 215, may issue an order to require a person to:

(1) take an action identified in the lake in crisis response plan;

(2) cease or remediate any acts, discharges, site conditions, or processes contributing to the impairment of the lake in crisis;

(3) mitigate a significant contributor of a pollutant to the lake in crisis; or

(4) conduct testing, sampling, monitoring, surveying, or other analytical operations required to determine the nature, extent, duration, or severity of the potential harm to the public health or a risk of damage to the environment or natural resources. (Added 2017, No. 168 (Adj. Sess.), § 5, eff. May 22, 2018.)

§ 1313. Assistance

(a) A person subject to a lake in crisis order shall be eligible for technical and financial assistance from the Secretary to be paid from the Lake in Crisis Response Program Fund. The Secretary shall adopt by procedure the process for application for assistance under this section.

(b) State financial assistance awarded under this section shall be in the form of a grant. An applicant for a State grant shall pay at least 35 percent of the total eligible project cost or shall pay the specific cost share authorized by statute for the program from which the grant is awarded. The dollar amount of a State grant shall be equal to the total eligible project cost, less the percent of the total required to be paid by the applicant, and less the amount of any federal assistance awarded.

(c) A grant awarded under this section shall comply with all terms and conditions for the issuance of State grants. (Added 2017, No. 168 (Adj. Sess.), § 5, eff. May 22, 2018.)

§ 1314. Funding of State response to a lake in crisis

(a) Initial response. Upon designation of a lake in crisis, the Secretary may, for the purposes of the initial response to the lake in crisis, expend up to \$50,000.00 appropriated to the Agency of Natural Resources from the Clean Water Fund for authorized contingency spending.

(b) Long-term funding. Annually, the Secretary of Natural Resources shall present to the House and Senate Committees on Appropriations a multiyear plan for the funding of all lakes designated in crisis under this subchapter. Based on the multiyear plan, the Secretary of Administration annually shall recommend to the House and Senate Committees on Appropriations recommended appropriations to the Lake in Crisis Response Program Fund for the subsequent fiscal year. (Added 2017, No. 168 (Adj. Sess.), § 5, eff. May 22, 2018.)

§ 1315. Lake in Crisis Response Program Fund

(a) There is created a special fund known as the Lake in Crisis Response Program Fund to be administered by the Secretary of Natural Resources. The Fund shall consist of:

(1) funds that may be appropriated by the General Assembly; and

(2) other gifts, donations, or funds received from any source, public or private, dedicated for deposit into the Fund.

(b) The Secretary shall use monies deposited in the Fund for the Secretary's implementation of a crisis response plan for a lake in crisis and for financial assistance under section 1313 of this title to persons subject to a lake in crisis order.

(c) Notwithstanding the requirements of 32 V.S.A. § 588(3) and (4), interest earned by the Fund and the balance of the Fund at the end of the fiscal year shall be carried forward in the Fund and shall not revert to the General Fund. (Added 2017, No. 168 (Adj. Sess.), § 5, eff. May 22, 2018.)

Subchapter 3: New England Interstate Water Pollution Control Compact

§ 1331. Preamble

Whereas, the growth of population and the development of the territory of the New England states has resulted in serious pollution of certain interstate streams, ponds and lakes, and of tidal waters ebbing and flowing past the boundaries of two or more states; and

Whereas, such pollution constitutes a menace to the health, welfare and economic prosperity of the people living in such area; and

Whereas, the abatement of existing pollution and the control of future pollution in the interstate waters of the New England area are of prime importance to the people and can best be accomplished through the cooperation of the New England states in the establishment of an interstate agency to work with the states in the field of pollution abatement;

Now, therefore, The states of Connecticut and Rhode Island and the Commonwealth of Massachusetts (the states of Maine, New Hampshire and Vermont when authorized and do join herein) are now bound and do agree as follows:

§ 1332. Waters subject to compact-Article I

It is agreed between the signatory states that the provisions of this compact shall apply to streams, ponds and lakes which are contiguous to two or more signatory states or which flow through two or more signatory states or which have a tributary contiguous to two or more signatory states or flowing through two or more signatory states, and also shall apply to tidal waters ebbing and flowing past the boundaries of two states.

§ 1333. Creation of Commission-Article II

There is hereby created the New England Interstate Water Pollution Control Commission (hereinafter referred to as the Commission) which shall be a body corporate and politic, having the powers, duties and jurisdiction herein enumerated and such other and additional powers as shall be conferred upon it by the act or acts of a signatory state concurred in by the others.

§ 1334. Composition of Commission-Article III

The Commission shall consist of five commissioners from each signatory state, each of whom shall be a resident voter of the state from which he or she is appointed. The commissioners shall be chosen in the manner and for the terms provided by law of the state from which they shall be appointed. For each state there shall be on the Commission a member representing the state health department, a member representing the state water pollution control board (if such exists), and, except where a state in its enabling legislation decides that the best interests of the state will be otherwise served, a member representing municipal interests, a member representing industrial interests, and a member representing an agency acting for fisheries or conservation.

§ 1335. General powers of Commission-Article IV

The Commission shall annually elect from its members a chair and vice chair and shall appoint and at its pleasure remove or discharge such officers. It may appoint and employ a secretary who shall be a professional engineer versed in water pollution and may employ such stenographic or clerical employees as shall be necessary, and at its pleasure remove or discharge such employees. It shall adopt a seal and suitable bylaws and shall promulgate rules and regulations for its management and control. It may maintain an office for the transaction of its business and may meet at any time or place within the signatory states. Meetings shall be held at least twice each year. A majority of the members shall constitute a quorum for the transaction of business, but no action of the Commission imposing any obligation on any signatory state or on any municipal agency or subdivision thereof or on any person, firm or corporation therein shall be binding unless a majority of the members from such signatory state shall have voted in favor thereof. Where meetings are planned to discuss matters relevant to problems of water pollution control affecting only certain of the signatory states, the Commission may vote to authorize special meetings of the commissioners of the states especially concerned. The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report to the governor and the legislature of each signatory state setting forth in detail the operations and transactions conducted by it pursuant to this compact, and shall make recommendations for any legislative action deemed by it advisable, including amendments to the statutes of the signatory states which may be necessary to carry out the intent and purpose of this compact. The Commission shall not incur any obligations for salaries, office, administrative, traveling or other expenses prior to the allotment of funds by the signatory states adequate to meet the same; nor shall the Commission pledge the credit of any of the signatory states. Each signatory state reserves the right to provide hereafter by law for the examination and audit of the accounts of the Commission. The Commission shall appoint a treasurer who may be a member of the Commission, and disbursements by the Commission shall be valid only when authorized by the Commission and when vouchers therefor have been signed by the secretary and countersigned by the treasurer. The secretary shall be custodian of the records of the Commission with authority to attest to and certify such records or copies thereof.

§ 1336. Water standards; classification-Article V

It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, industrial and agricultural uses, bathing and other recreational purposes, maintenance and propagation of fish life, shellfish culture, navigation and disposal of wastes.

The Commission shall establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory states through appropriate agencies will prepare a classification of its interstate waters in entirety or by portions according to present and proposed highest use and for this purpose technical experts employed by state departments of health and state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory state agrees to submit its classification of its interstate waters to the Commission for approval. It is agreed that after such approval all signatory states through their appropriate state health departments and water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet standards established by the Commission for classified waters. The Commission may from time to time make such changes in definitions of, classifications and in standards as may be required by changed conditions or as may be necessary for uniformity.

§ 1337. Interstate inland and tidal waters-Article VI

Each of the signatory states pledges to provide for the abatement of existing pollution and for the control of future pollution of interstate inland and tidal waters as described in Article I, and to put and maintain the waters thereof in a satisfactory condition consistent with the highest classified use of each body of water.

§ 1338. Effect on local legislation; pending causes-Article VII

Nothing in this compact shall be construed to repeal or prevent the enactment of any legislation or prevent the enforcement of any requirement by any signatory state imposing any additional condition or restriction to further lessen the pollution of waters within its jurisdiction. Nothing herein contained shall affect or abate any action now pending brought by any governmental board or body created by or existing under any of the signatory states.

§ 1339. Expenses; obligation of signatories-Article VIII

The signatory states agree to appropriate for the salaries, office, administrative, travel and other expenses such sum or sums as shall be recommended by the Commission. The commonwealth of Massachusetts obligates itself only to the extent of \$6,500.00 in any one year, the state of Connecticut only to the extent of \$3,000.00 in any one year, the state of Rhode Island only to the extent of \$1,500.00 in any one year, and the states of New Hampshire, Maine and Vermont each only to the extent of \$1,000.00 in any one year.

§ 1340. Separability of provisions-Article IX

Should any part of this compact be held to be contrary to the constitution of any signatory state or of the United States, all other parts thereof shall continue to be in full force and effect.

§ 1341. New York State; cooperation-Article X

The Commission is authorized to discuss with appropriate state agencies in New York State questions of pollution of waters which flow into the New England area from New York State or vice versa and to further the establishment of agreements on pollution abatement to promote the interests of the New York and New England areas.

Whenever the Commission by majority vote of the members of each signatory state shall have given its approval and the State of New York shall have taken the necessary action to do so, the State of New York shall be a party to this compact for the purpose of controlling and abating the pollution of waterways common to New York and the New England states signatory to this compact but excluding the waters under the jurisdiction of the Interstate Sanitation Commission (New York, New Jersey and Connecticut).

§ 1342. Effective, when-Article XI

This compact shall become effective immediately upon the adoption of the compact by any two contiguous states of New England but only insofar as applies to those states and upon approval by federal law. Thereafter upon ratification by other contiguous states, it shall also become effective as to those states.

§ 1343. Commission membership

The State shall be represented on the Commission by five commissioners, one of whom shall be the Commissioner of Water Resources, and four of whom shall be appointed by the Governor. Of those appointed by the Governor, one shall be an officer of municipal government, and the remaining members may be members of the public or officers or employees of State government. (Added 1981, No. 222 (Adj. Sess.), § 26.)

Subchapter 4: Provisions Relating To Water Pollution Compact**§ 1371. Authority for compact**

On behalf of the State of Vermont, the Governor thereof is hereby authorized and directed to execute a compact, as set forth in sections 1331-1342 of this title, with any of the New England states or the State of New York legally joined therein.

§ 1372. Members; appointment; term

(a) Within 30 days after he or she has executed the Compact with any or all of the states legally joined therein, the Governor shall appoint three persons to serve as commissioners to the New England Interstate Water Pollution Control Commission. The Commissioner of Environmental Conservation and the Commissioner of Health shall serve as ex officio commissioners on the Commission.

(b) The commissioners so appointed shall hold office for six years. A vacancy occurring in the office of a commissioner shall be filled by the Governor for the unexpired portion of the term.

(c) The commissioners shall be entitled to per diem compensation and reimbursement of expenses as permitted under 32 V.S.A. § 1010.

(d) The commissioners shall have the powers and duties and be subject to limitations as set forth in the Compact. (Amended 2018, No. 2 (Sp. Sess.), § 8.)

§ 1373. Appropriation

The sum of \$1,150.00 annually, or so much thereof as may be necessary, is hereby appropriated for the purpose of carrying out the provisions of the New England Interstate Water Pollution Control Compact relating to the payment by the State to the New England Interstate Water Pollution Control Commission of the proportionate share of the State in the expenses of such Commission.

Subchapter 5: Detergents And Household Cleansing Products**§ 1381. Definitions**

As used in this subchapter:

(1) "Commercial establishment" means any premises used for the purpose of carrying on or exercising any trade, business, profession, vocation, or commercial or charitable activity, including laundries, hospitals, and food or restaurant establishments.

(2) "Household cleansing product" means any product, including soaps and detergents used for domestic or commercial cleaning purposes, including the cleansing of fabric, dishes, food utensils, and household and commercial premises. Household cleansing product shall not mean:

(A) Food, drugs and cosmetics, including personal care items such as toothpaste, shampoo, and hand soap;

(B) Products labeled, advertised, marketed, and distributed for use primarily as economic poisons as defined in 6 V.S.A. § 911(5).

(3) "Phosphorus" means elemental phosphorus.

(4) "Trace quantity" means an incidental amount of phosphorus that is not part of the household cleansing product formulation, is present only as a consequence of manufacturing and does not exceed 0.5 percent of the content of the product by weight, expressed as elemental phosphorus.

(5) "Secretary" means the Secretary of Natural Resources or the Secretary's duly authorized representative.

(6) "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. (Added 1977, No. 39, § 1, eff. April 19, 1977; amended 1987, No. 76, § 18; 2003, No. 115 (Adj. Sess.), § 31.)

§ 1382. Prohibitions

(a) No household cleansing products containing a phosphorus compound in concentrations in excess of a trace quantity may be distributed, sold, offered for sale at retail or wholesale, exposed for sale at retail or wholesale, or used in a commercial establishment in this State, except as set forth in subsections (b) and (c) of this section.

(b) No household cleansing product used in a dishwasher in a commercial establishment, used to cleanse food and beverage processing equipment, including dishes, pots, pans, and utensils, used to cleanse medical or surgical equipment, or used to cleanse dairy equipment may be distributed, sold, offered for sale at retail or wholesale, exposed for sale at retail or wholesale, or used in a commercial establishment if it contains a phosphorus compound in concentrations in excess of 8.7 percent by weight expressed as elemental phosphorus.

(c) As of July 1, 2010, no household cleansing product used in a residential dishwasher may be distributed, sold, offered for sale at retail or wholesale, or exposed for sale at retail or wholesale if it contains a phosphorus compound in concentrations in excess of a trace quantity, except for product inventory purchased by retailers prior to July 1, 2010.

(d) The provisions of this section shall not be construed to limit the phosphorus content of household cleansing products used in agricultural production and for cleansing equipment used in processing of agricultural products.

(e) The provisions of this section shall not be construed to limit the phosphorus content of household cleaning products approved by the Commissioner of Health for use in lead hazard management projects. (Added 1977, No. 39, § 1, eff. April 19, 1977; amended 1993, No. 229 (Adj. Sess.), § 1; 2007, No. 28, § 1.)

§ 1383. Exclusions

The manufacturer of a cleansing product used primarily in industrial manufacturing, production, and assembling processes or any user of the product may apply to the Secretary to have the product excluded from regulation under this subchapter. The application shall contain sufficient evidence to show that the cleansing product is used primarily in industrial manufacturing, production, and assembling processes and that there is no reasonably available alternative to the user. The exclusion shall only extend to the use of the product in industrial manufacturing, production, and assembling processes. The exclusion, if granted, shall be for a specified period of time and may be extended by the Secretary upon further application by the industrial manufacturer or user. (Added 1977, No. 39, § 1, eff. April 19, 1977.)

§ 1384. Penalty

A person who violates a provision of this subchapter shall be fined not more than \$2,500.00 for a single violation. In the case of a continuing violation, each day's continuance after notification by a law enforcement officer shall be considered an additional offense for which a person shall be fined not more than \$100.00 for each day's offense, in addition to the penalty imposed for a single violation. (Added 1977, No. 39, § 1, eff. April 19, 1977.)

Subchapter 6: Lake Champlain Water Quality

§ 1385. Repealed. 2011, No. 138 (Adj. Sess.), § 33, eff. May 14, 2012.

§ 1386. Implementation plan for the Lake Champlain total maximum daily load

(a) Within three months after the issuance of a phosphorus total maximum daily load plan (TMDL) for Lake Champlain by the U.S. Environmental Protection Agency, the Secretary of Natural Resources shall update the State of Vermont's phase I TMDL implementation plan to reflect the elements that the State determines are necessary to meet the allocations established in the final TMDL for Lake Champlain. The update of the phase I TMDL implementation plan for Lake Champlain shall explain how basin plans will be used to implement the updated phase I TMDL implementation plan, and shall include a schedule for the adoption of basin plans within the Lake Champlain basin. In addition to the requirements of subsection 1253(d) of this title, a basin plan for a basin within the Lake Champlain basin shall include the following:

(1) phosphorus reduction strategies within the basin that will achieve the State's obligations under the phase I TMDL implementation plan for Lake Champlain;

(2) a schedule for the issuance of permits to control phosphorus discharges from wastewater treatment facilities as necessary to implement the State's obligations under the phase I TMDL implementation plan for Lake Champlain;

(3) a schedule for the issuance of permits to control stormwater discharges as necessary to implement the State's obligations under the phase I TMDL implementation plan for Lake Champlain;

(4) wetland and river corridor restoration and protection projects that will achieve the State's obligations under the phase I TMDL implementation plan for Lake Champlain;

(5) a table of non-point source activities that will achieve the State's obligations under the phase I TMDL implementation plan for Lake Champlain; and

(6) other strategies and activities that the Secretary determines to be necessary to achieve the State's obligations under the phase I TMDL implementation plan for Lake Champlain.

(b) The Secretary shall develop and implement a method of tracking and accounting for actions implemented to achieve the Lake Champlain TMDL.

(c) Prior to finalizing the update to the phase I TMDL implementation plan for Lake Champlain, the Secretary shall provide notice to the public of the proposed revisions and a comment period of no less than 30 days.

(d) On or before January 15 in the year following issuance of the updated phase I TMDL implementation plan for Lake Champlain under subsection (a) of this section and every four years thereafter, the Secretary shall report to the House Committee on Natural Resources, Fish and Wildlife, the Senate Committee on Natural Resources and Energy, the House Committee on Agriculture and Forestry, and the Senate Committee on Agriculture regarding the execution of the updated phase I TMDL implementation plan for Lake Champlain. The report shall include:

(1) A summary of the efforts undertaken to implement the phase I TMDL implementation plan for Lake Champlain.

(2) An assessment of the implementation plan for the Lake Champlain TMDL based on available data, including an evaluation of the efficacy of the phase I TMDL implementation plan for Lake Champlain.

(e) Beginning on February 1, 2016, and annually thereafter, the Secretary, after consultation with the Secretary of Agriculture, Food and Markets and the Secretary of Transportation, shall submit to the House Committee on Natural Resources, Fish, and Wildlife a summary of activities and measures of progress of water quality ecosystem restoration programs. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report to be made under this subsection. (Added 2007, No. 130 (Adj. Sess.), § 2, eff. May 12, 2008; amended 2011, No. 138 (Adj. Sess.), § 32, eff. May 14, 2012; 2015, No. 64, § 36; 2017, No. 154 (Adj. Sess.), § 20, eff. May 21, 2018.)

Subchapter 7: Vermont Clean Water Fund**§ 1387. Purpose**

The General Assembly establishes in this subchapter a Vermont Clean Water Fund as a mechanism for financing the improvement of water quality in the State. The Clean Water Fund shall be used to:

(1) assist the State in complying with water quality requirements and construction or implementation of water quality projects or programs;

(2) fund staff positions at the Agency of Natural Resources, Agency of Agriculture, Food and Markets, or Agency of Transportation when the positions are necessary to achieve or maintain compliance with water quality requirements and existing revenue sources are inadequate to fund the necessary positions; and

(3) provide funding to nonprofit organizations, regional associations, and other entities for implementation and administration of community-based water quality programs or projects. (Added 2015, No. 64, § 37, eff. June 16, 2015.)

§ 1388. Clean Water Fund

(a) There is created a special fund to be known as the Clean Water Fund to be administered by the Secretary of Administration. The Fund shall consist of:

(1) revenues from the Property Transfer Tax surcharge established under 32 V.S.A. § 9602a;

(2) other gifts, donations, and impact fees received from any source, public or private, dedicated for deposit into the Fund and approved by the Secretary of Administration;

(3) the unclaimed beverage container deposits (escheats) remitted to the State under chapter 53 of this title; and

(4) other revenues dedicated for deposit into the Fund by the General Assembly.

(b) Notwithstanding any contrary provisions of 32 V.S.A. chapter 7, subchapter 5, unexpended balances and any earnings shall remain in the Fund from year to year. (Added 2015, No. 64, § 37, eff. June 16, 2015; amended 2017, No. 208 (Adj. Sess.), § 4b, eff. May 30, 2018.)

§ 1389. Clean Water Board

(a) Creation.

(1) There is created the Clean Water Board that shall:

(A) be responsible and accountable for planning, coordinating, and financing of the remediation, improvement, and protection of the quality of State waters;

(B) recommend to the Secretary of Administration expenditures:

(i) appropriations from the Clean Water Fund; and

(ii) clean water projects to be funded by capital appropriations.

(2) The Clean Water Board shall be attached to the Agency of Administration for administrative purposes.

(b) Organization of the Board. The Clean Water Board shall be composed of:

(1) the Secretary of Administration or designee;

(2) the Secretary of Natural Resources or designee;

(3) the Secretary of Agriculture, Food and Markets or designee;

(4) the Secretary of Commerce and Community Development or designee;

(5) the Secretary of Transportation or designee; and

(6) four members of the public, who are not legislators, with expertise in one or more of the following subject matters: public management, civil engineering, agriculture, ecology, wetlands, stormwater system management, forestry, transportation, law, banking, finance, and investment, to be appointed by the Governor.

(c) Officers; committees; rules; compensation; term.

(1) The Secretary of Administration shall serve as the Chair of the Board. The Clean Water Board may elect additional officers from its members, establish committees or subcommittees, and adopt procedural rules as necessary and appropriate to perform its work.

(2) Members of the Board who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 paid from the budget of the Agency of Administration for attendance of meetings of the Board.

(3) Members who are appointed to the Clean Water Board shall be appointed for terms of four years, except initial appointments shall be made such that two members appointed by the Governor shall be appointed for a term of two years. Vacancies on the Board shall be filled for the remaining period of the term in the same manner as initial appointments.

(d) Powers and duties of the Clean Water Board. The Clean Water Board shall have the following powers and authority:

(1) The Clean Water Board shall recommend to the Secretary of Administration the appropriate allocation of funds from the Clean Water Fund for the purposes of developing the State budget required to be submitted to the General Assembly under 32 V.S.A. § 306. All recommendations from the Board should be intended to achieve the greatest water quality gain for the investment. The recommendations of the Clean Water Board shall be open to inspection and copying under the Public Records Act, and the Clean Water Board shall submit to the Senate Committees on Appropriations, on Finance, on Agriculture, and on Natural Resources and Energy and the House Committees on Appropriations, on Ways and Means, on Agriculture and Forestry, and on Natural Resources, Fish, and Wildlife a copy of any recommendations provided to the Governor.

(2) The Clean Water Board may pursue and accept grants, gifts, donations, or other funding from any public or private source and may administer such grants, gifts, donations, or funding consistent with the terms of the grant, gift, or donation.

(3) The Clean Water Board shall:

(A) establish a process by which watershed organizations, State agencies, and other interested parties may propose water quality projects or programs for financing from the Clean Water Fund;

(B) develop an annual revenue estimate and proposed budget for the Clean Water Fund;

(C) establish measures for determining progress and effectiveness of expenditures for clean water restoration efforts;

(D) issue the annual Clean Water Investment Report required under section 1389a of this title;

(E) solicit, consult with, and accept public comment from organizations interested in improving water quality in Vermont regarding recommendations under this subsection (d) for the allocation of funds from the Clean Water Fund; and

(F) establish a process under which a watershed organization, State agency, or other interested party may propose that a water quality project or program identified in a watershed basin plan receive funding from the Clean Water Fund.

(e) Priorities.

(1) In making recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall prioritize:

(A) funding to programs and projects that address sources of water pollution in waters listed as impaired on the list of waters established by 33 U.S.C. § 1313(d);

(B) funding to projects that address sources of water pollution identified as a significant contributor of water quality pollution, including financial assistance to grant recipients at the initiation of a funded project;

(C) funding to programs or projects that address or repair riparian conditions that increase the risk of flooding or pose a threat to life or property;

(D) assistance required for State and municipal compliance with stormwater requirements for highways and roads;

(E) funding for education and outreach regarding the implementation of water quality requirements, including funding for education, outreach, demonstration, and access to tools for the implementation of the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation;

(F) funding for innovative or alternative technologies or practices designed to improve water quality or reduce sources of pollution to surface waters, including funding for innovative nutrient removal technologies and community-based methane digesters that utilize manure, wastewater, and food residuals to produce energy;

(G) funding to purchase agricultural land in order to take that land out of practice when the State water quality requirements cannot be remediated through agricultural Best Management Practices;

(H) funding to municipalities for the establishment and operation of stormwater utilities; and

(I) investment in watershed basin planning, water quality project identification screening, water quality project evaluation, and conceptual plan development of water quality projects.

(2) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Clean Water Board shall, during the first three years of its existence and within the priorities established under subdivision (1) of this subsection (e), prioritize awards or assistance to municipalities for municipal compliance with water quality requirements and to municipalities for the establishment and operation of stormwater utilities.

(3) In developing its recommendations under subsection (d) of this section regarding the appropriate allocation of funds from the Clean Water Fund, the Board shall, after satisfaction of the priorities established under subdivision (1) of this subsection (e), attempt to provide investment in all watersheds of the State based on the needs identified in watershed basin plans.

(f) Assistance. The Clean Water Board shall have the administrative, technical, and legal assistance of the Agency of Administration, the Agency of Natural Resources, the Agency of Agriculture, Food and Markets, the Agency of Transportation, and the Agency of Commerce and Community Development for those issues or services within the jurisdiction of the respective agency. The cost of the services provided by agency staff shall be paid from the budget of the agency providing the staff services. (Added 2015, No. 64, § 37, eff. June 16, 2015; amended 2015, No. 158 (Adj. Sess.), § 33, eff. June 2, 2016; 2017, No. 74, § 16a; 2017, No. 168 (Adj. Sess.), § 1, eff. May 22, 2018.)

§ 1389a. Clean Water Investment Report

(a) Beginning on January 15, 2017, and annually thereafter, the Secretary of Administration shall publish the Clean Water Investment Report. The Report shall summarize all investments, including their cost-effectiveness, made by the Clean Water Board and other State agencies for clean water restoration over the prior fiscal year. The Report shall include expenditures from the Clean Water Fund, the General Fund, the Transportation Fund, and any other State expenditures for clean water restoration, regardless of funding source.

(b) The Report shall include:

(1) Documentation of progress or shortcomings in meeting established indicators for clean water restoration.

(2) A summary of additional funding sources pursued by the Board, including whether those funding sources were attained; if it was not attained, why it was not attained; and where the money was allocated from the Fund.

(3) A summary of water quality problems or concerns in each watershed basin of the State, a list of water quality projects identified as necessary in each basin of the State, and how identified projects have been prioritized for implementation. The water quality problems and projects identified under this subdivision shall include programs or projects identified across State government and shall not be limited to projects listed by the Agency of Natural Resources in its watershed projects database.

(4) A summary of any changes to applicable federal law or policy related to the State's water quality improvement efforts, including any changes to requirements to implement total maximum daily load plans in the State.

(5) A summary of available federal funding related to or for water quality improvement efforts in the State.

(c) The Report may also provide an overview of additional funding necessary to meet objectives established for clean water restoration and recommendations for additional revenue to meet those restoration objectives. The provisions of 2 V.S.A. § 20(d) (expiration of required reports) shall not apply to the report required by this section.

(d)(1) The Secretary of Administration shall develop and use a results-based accountability process in publishing the annual report required by subsection (a) of this section.

(2) The Secretary of Administration shall develop user-friendly issue briefs, tables, or executive summaries that make the information required under subdivision (b)(3) available to the public separately from the report required by this section.

(3) On or before September 1 of each year, the Secretary of Administration shall submit to the Joint Fiscal Committee an interim report regarding the information required under subdivision (b)(5) of this section relating to available federal funding. (Added 2015, No. 64, § 37, eff. June 16, 2015; amended 2017, No. 85, § E.700.1; 2017, No. 168 (Adj. Sess.), § 2, eff. May 22, 2018.)

§ 1389b. Clean Water Fund audit

(a) On or before January 15, 2021, the Secretary of Administration shall submit to the House and Senate Committees on Appropriations, the Senate Committee on Finance, the House Committee on Ways and Means, the Senate Committee on Agriculture, the House Committee on Agriculture and Forestry, the Senate Committee on Natural Resources and Energy, and the House Committee on Natural Resources, Fish, and Wildlife a program audit of the Clean Water Fund. The audit shall include:

(1) a summary of the expenditures from the Clean Water Fund, including the water quality projects and programs that received funding;

(2) an analysis and summary of the efficacy of the water quality projects and programs funded from the Clean Water Fund or implemented by the State;

(3) an evaluation of whether water quality projects and programs funded or implemented by the State are achieving the intended water quality benefits;

(4) an assessment of the capacity of the Agency of Agriculture, Food and Markets to effectively administer and enforce agricultural water quality requirements on farms in the State; and

(5) a recommendation of whether the General Assembly should authorize the continuation of the Clean Water Fund and, if so, at what funding level.

(b) The audit required by this section shall be conducted by a qualified, independent environmental consultant or organization with knowledge of the federal Clean Water Act, State water quality requirements and programs, the Lake Champlain Total Maximum Daily Load plan, and the program elements of the State clean water initiative.

(c) Notwithstanding provisions of section 1389 of this title to the contrary, the Secretary of Administration shall pay for the costs of the audit required under this section from the Clean Water Fund, established under section 1388 of this title. (Added 2015, No. 64, § 37, eff. June 16, 2015; amended 2015, No. 97 (Adj. Sess.), § 20.)