

**Vermont Agency of Natural Resources
Department of Environmental Conservation
Watershed Management Division**

**Interim Procedure for Offsets for Discharges of Phosphorus to Lake Champlain and
Waters that Contribute to the Impairment of Lake Champlain**

I. Applicability

This Procedure shall apply to stormwater permits issued pursuant to 10 V.S.A. § 1264 for discharges to Lake Champlain or waters that contribute to the phosphorus impairment of Lake Champlain for which application was made for on or after October 1, 2015. This Procedure shall apply until the U.S. Environmental Protection Agency (EPA) adopts final Phosphorus Total Maximum Daily Loads (TMDLs) for Lake Champlain, or until the Procedure is withdrawn or modified by the Secretary.

II. Background and Purpose

Pursuant to 10 V.S.A. § 1264, the Department of Environmental Conservation (Department) has implemented the legislatively-directed “net zero” standard for discharges of regulated stormwater to stormwater-impaired waters under the Chapter 22 Stormwater Management Rule for Stormwater-Impaired Waters (Chapter 22 Rule) since 2006. The applicability of the Chapter 22 Rule is limited to discharges of regulated stormwater to waters listed as being impaired due to stormwater runoff on the EPA-approved 303(d) List of Waters. In short, the “net zero” standard requires that such discharges not increase the sediment or hydrologic pollutant load in stormwater-impaired waters. The Chapter 22 Rule implements the “net zero” standard and provides for the use of “offsets” that mitigate for what otherwise would be an increase in pollution.

In 2015 the State of Vermont adopted Act 64 (previously H.35), which amends 10 V.S.A. § 1264. Under the revised 10 V.S.A. § 1264(h) and Section 54(b)(2) of Act 64, starting October 1, 2015, the “net zero” standard is expanded to discharges of phosphorus to Lake Champlain and its tributaries, until such time that EPA adopts final Phosphorus TMDLs for Lake Champlain.

The purpose of this Procedure is to provide instructions for using the pollutant load estimation methods and offsets, as contained in the Chapter 22 Rule, to meet the requirements of 10 V.S.A. § 1264(h). This Procedure acknowledges that phosphorus may take several forms as a pollutant in stormwater and that estimating the specific impact from a given project and offset project on each form of phosphorus would require an undue effort for most projects. Consequently, it is the intent of the Department to provide in this Procedure a simplified, yet conservative, approach for projects to demonstrate no increase in phosphorus.

III. Requirements

(a) Subdivision 1264(h)(2)(A) of title 10 of the Vermont statutes requires that individual and general permits shall, for discharges of regulated stormwater to a stormwater-impaired water, for discharges of phosphorus to Lake Champlain, or for discharges of phosphorus to a water that contributes to the impairment of Lake Champlain in which no TMDL has been approved, require that:

(1) 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.

(2) For redevelopment or the 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 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) To comply with the requirements of 10 V.S.A. § 1264(h)(2)(A), permit applicants shall:

(1) For discharges of regulated stormwater to stormwater-impaired waters that are not tributary to Lake Champlain, comply with the Chapter 22 Rule. There shall be no change to how permitting is conducted in these watersheds as a result of the new legislation.

(2) For discharges of regulated stormwater to waters tributary to Lake Champlain that are stormwater-impaired, demonstrate no increase in the sediment load and hydrologic impact pursuant to the Chapter 22 Rule and demonstrate no increase in the phosphorus load pursuant to subdivision (3) of this subsection.

(3) For discharges of regulated stormwater to Lake Champlain and all waters tributary to Lake Champlain that are not stormwater-impaired waters, use sections 22-402; 22-501 to 22-504; 22-507 to 22-511; 22-601; Appendix A(a), (c), and (d); Appendix B; and Appendix C of the Chapter 22 Rule in conjunction with the following requirements to demonstrate no increase in phosphorus:

(A) Permit applicants shall address phosphorus in all pollutant load calculations for existing and proposed conditions, and for purposes of determining offsets, offset charge, and offset charge capacity.

(B) The Department shall accept use of the Simple Method, as that term is defined in Appendix B of the Chapter 22 Rule, to determine the pre-development and post-development phosphorus loads from a project site. The Department may approve the use of other models on a project-by-project basis.

(C) All phosphorus offsets shall be in the watershed of the lake segment to which the permitted project discharges. For purposes of this subdivision, "lake segment" means the separate segments of Lake Champlain identified in EPA's draft "Phosphorus TMDLs for Vermont Segments of Lake Champlain," except that the Main Lake, Shelburne Bay, and Burlington Bay segments shall be treated as a singular segment.

(D) The Department shall accept use of existing sediment offset capacity, in other words sediment capacity permitted under an Individual Stormwater Offset Permit, to demonstrate no increase in phosphorus, provided the permit applicant demonstrates that the amount of sediment capacity to be deducted from the permitted offset project will achieve the necessary reduction in phosphorus. Permit applicants shall use a conservative assumed concentration of phosphorus per unit of sediment, as provided by the Department, unless project specific data are presented by the applicant.

(E) Use of offset charge capacity at a stand-alone offset project to satisfy the requirement to not increase phosphorus load shall require the written consent of the permittee of the offset permit.

(F) Permit applicants shall contact the Stormwater Program Analyst for the project in question to review application requirements prior to submittal of operational permit applications.

IV. Effect

Upon EPA's adoption of the Phosphorus TMDLs for Lake Champlain, this Procedure shall no longer have any force or effect.

Dated this 28th day of September 2015 at Montpelier, Vermont.


Alyssa B. Schuren, Commissioner
Department of Environmental Conservation

