

H.873

AN ACT RELATING TO THE CLEANUP OF LAKE CHAMPLAIN
AND OTHER STATE WATERS

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. FINDINGS

The general assembly finds that:

(1) Vermont's surface waters are vital assets that provide the citizens of the state clean water, recreation, and economic opportunity.

(2) Preserving and protecting the water quality of the surface waters of Vermont is necessary to preserve the quality of life for the citizens of Vermont.

(3) Lake Champlain does not comply with the Vermont water quality standards and has been designated by the state as impaired due to phosphorus.

(4) The federal Clean Water Act requires Vermont to develop a plan, known as a total maximum daily load (TMDL) plan, for the cleanup of Lake Champlain.

(5) Through adoption of the Lake Champlain TMDL and through implementation of the Clean and Clear Action Plan, Vermont has committed to the restoration of the water quality of Lake Champlain.

(6) Since 2004, a total of nearly \$65 million in state and federal funds has been made available to support the Clean and Clear Action Plan.

(7) Despite Vermont's financial commitment to the cleanup of Lake Champlain, the independent performance audit of the Clean and Clear Action Plan concluded that there have been no significant reductions in phosphorus loads to Lake Champlain, and there has been an actual increase in phosphorus loads during implementation of the Clean and Clear Action Plan.

(8) The audit of the Clean and Clear Action Plan also concluded that there is a lack of coordination between programs funded under "Clean and Clear, that there are no requirements for programs funded under Clean and Clear, that few of the programs funded by Clean and Clear track or measure phosphorus reduction related to the programs, that there is a general absence of any quantification of phosphorus reduction under the programs funded by Clean and Clear, and that there is a lack of a clear objective for the Clean and Clear Program as a whole.

(9) Implementation of the Lake Champlain TMDL also lacks an accurate measure for quantifying phosphorus reduction and has failed to date to reduce phosphorus loads in Lake Champlain as a whole.

(10) Vermont should reassert its commitment to the preservation of the water quality of the state and to the cleanup of Lake Champlain by requiring the agency of natural resources to improve the implementation of the Lake Champlain TMDL, to develop a clear objective for the Clean and Clear Action Plan, to coordinate implementation of the Clean and Clear Action Plan, and to

quantify phosphorus reduction under the Lake Champlain TMDL and the programs funded under the Clean and Clear Action Plan.

Sec. 2. Sec. 5 of No. 43 of the Acts of 2007 is amended to read:

Sec. 5. 10 V.S.A. chapter 47, subchapter 6 is added to read:

Subchapter 6. Lake Champlain Water Quality

§ 1385. IMPLEMENTATION PLAN FOR THE LAKE CHAMPLAIN
TOTAL MAXIMUM DAILY LOAD

~~(a)(1) The secretary of natural resources shall reopen the total maximum daily load (TMDL) plan for Lake Champlain as it pertains to the waters of Vermont in order to:~~

~~(A) Adopt a new hydrologic base year to reflect the average phosphorus load discharged to Lake Champlain between 1993 and 2004;~~

~~(B) Allocate point source and non point source load reductions on a subwatershed basis;~~

~~(C) Ensure that the total annual phosphorus discharged by all wastewater treatment facilities in the aggregate does not exceed the total phosphorus load discharged to Lake Champlain by all wastewater treatment facilities in the aggregate in 2006 and to adjust aggregate total phosphorus load allocations to Lake Champlain accordingly; and~~

~~(D) Amend pollutant load allocations within the TMDL so as to reduce point source and non point source load allocations in order to reasonably assure that the TMDL meets the Vermont water quality standards.~~

~~(2) The amended TMDL shall be submitted to the U.S. Environmental Protection Agency as required by 33 U.S.C. § 303.~~

~~(b) In addition to the requirements of subsection (a) of this section, the secretary of natural resources shall amend the Vermont specific implementation plan of the Lake Champlain TMDL to include a strategy for identifying and targeting critical source areas for non point source pollution in each subwatershed. For the purposes of this subsection, "critical source area" means an area in a watershed with high potential to release phosphorus to surface or subsurface runoff to waters of the state.~~

~~(c) In amending the TMDL for Lake Champlain under subsection (a) of this section and in amending the Vermont specific implementation plan of the Lake Champlain TMDL under subsection (b) of this section, the secretary of natural resources shall comply with the public participation requirements of 40 C.F.R. § 130.7(c)(1)(ii). Beginning January 15, 2009, and every three years thereafter, the secretary of natural resources, in a document separate from the Lake Champlain total maximum daily load (TMDL), shall amend and update the Vermont-specific implementation plan of the Lake Champlain TMDL. The implementation plan shall:~~

- (1) Include or reference the elements set forth in 40 C.F.R. § 130.6(c) for water quality management plans;
- (2) Develop a process for identifying critical source areas for non-point source pollution in each subwatershed. As used in this subdivision, “critical source area” means an area in a watershed with high potential for the release, discharge, or runoff of phosphorus to the waters of the state;
- (3) Develop site-specific plans to reduce point source and non-point source load discharges in critical source areas identified under subdivision (2) of this subsection;
- (4) Develop a method for identifying and prioritizing on public and private land pollution control projects with the potential to provide the greatest water quality benefits to Lake Champlain;
- (5) Develop a method for measuring the amount of phosphorus in Lake Champlain and the amount of phosphorus reduced due to implementation of the TMDL;
- (6) Develop phosphorus reduction targets for each segment of Lake Champlain, including milestones that shall be achieved;
- (7) Establish a method for the coordination and collaboration of water quality programs within the state.

(8) Develop a method for offering incentives or disincentives to wastewater treatment plants for maintaining the 2006 levels of phosphorus discharge to Lake Champlain.

(9) Develop a method of offering incentives or disincentives for reducing the phosphorus contribution of stormwater discharges within the Lake Champlain basin.

(b) In amending the Vermont-specific implementation plan of the Lake Champlain TMDL under this section, the secretary of natural resources shall comply with the public participation requirements of 40 C.F.R. § 130.7(c)(1)(ii).

(c) Beginning January 15, 2009 and every three years thereafter, the secretary shall submit to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy the updated and amended Lake Champlain implementation plan required under subsection (a) of this section. The report shall include:

(1) An assessment of the implementation plan for the Lake Champlain TMDL based on available data, including an evaluation of the efficacy of the implementation plan;

(2) An assessment of the hydrologic targets of the Lake Champlain TMDL based on available data, including an evaluation of the adequacy of the hydrologic targets of the TMDL;

(3) Recommendations, if any, for amending the implementation plan or reopening the Lake Champlain TMDL.

Sec. 3. Sec. 4 of No. 43 of the Acts of 2007 is amended to read:

Sec. 4. AGENCY OF NATURAL RESOURCES REPORT ON
IMPLEMENTATION OF STORMWATER TMDLS

(a) ~~Beginning January 15, 2008, and every two years thereafter, the agency of natural resources shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate committees on agriculture regarding agency progress in establishing and implementing the total maximum daily load (TMDL) plan for Lake Champlain.~~ Beginning January 15, 2009, and every two years thereafter, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding agency progress in establishing and implementing the TMDLs for the stormwater-impaired waters of the state. Prior to issuing the reports required under this section, the agency of natural resources shall hold a public hearing in ~~the Lake Champlain watershed and~~ each watershed of a stormwater-impaired water for which a permit has been issued implementing a total maximum daily load. The reports required by this section shall include:

(1) An assessment of the implementation plan for the TMDL based on available data, including an evaluation of the efficacy of the implementation plan;

(2) An assessment of the hydrologic targets of the TMDL based on available data, including an evaluation of the adequacy of the hydrologic targets of the TMDL;

(3) Recommendations, if any, for amending an implementation plan or reopening a TMDL.

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Sec. 4. AGENCY OF NATURAL RESOURCES STORMWATER

ADVISORY GROUP

(a) The agency of natural resources shall reconvene the stormwater advisory group (SWAG) in order to propose a method for issuing the implementation plans for the total maximum daily load (TMDL) plans for the 17 stormwater-impaired waters of the state. The SWAG shall:

(1) Propose methods for implementing the stormwater TMDLs;

(2) Evaluate and recommend whether and how municipalities shall contribute to the implementation of any of the 17 stormwater TMDLs;

(3) Evaluate and recommend how homeowners shall contribute to the implementation of any of the 17 stormwater TMDLs;

(4) Propose methods for financing implementation of the stormwater TMDLs; and

(5) Recommend a schedule for the submission to EPA of those stormwater TMDLs that require approval.

(b) Beginning January 15, 2009, and annually thereafter, the agency of natural resources shall report to the house committee on fish, wildlife and water resources and the senate committee on natural resources and energy regarding the status of the SWAG, any recommendations made by the SWAG, and the status of the implementation of the stormwater TMDLs.

(c) This section shall be repealed upon issuance by the agency of natural resources of a permit implementing the last of the stormwater TMDLs.

Sec. 5. 10 V.S.A. § 1264(i) is added to read:

(i) A residential subdivision may transfer a pretransition stormwater discharge permit or a stormwater discharge permit implementing a total maximum daily load plan to a municipality, provided that the municipality assumes responsibility for the permitting of the stormwater system that serves the residential subdivision. For the purposes of this section:

(1) "Pretransition stormwater discharge permit" means any permit issued by the secretary of natural resources pursuant to this section on or before June 30, 2004 for a discharge of stormwater.

(2) “Residential subdivision” means land identified and demarcated by recorded plat or other device that a municipality has authorized to be used primarily for residential construction.

Sec. 6. 27 V.S.A. § 614 is added to read:

§ 614. TRANSFER OF STORMWATER DISCHARGE PERMITS TO
STORMWATER UTILITY

(a) The failure of the residential subdivision to obtain, renew, or comply with the terms of a pretransition stormwater discharge permit shall not create an encumbrance on record title to real property within the residential subdivision or affect marketability of title of real property within the residential subdivision, provided that:

(1) The residential subdivision transfers a pretransition stormwater permit to a municipality according to the requirements of subsection 1264(i) of Title 10;

(2) Property owners within the residential subdivision record in the land records:

(A) The deed or other legal document of conveyance of the stormwater system to the utility; and

(B) A notice indicating that the stormwater utility has assumed responsibility for the permitting of the stormwater system located in the residential subdivision.

(b) The definitions found in section 1264 of Title 10 and subsection 613(a) of this title apply to this section unless otherwise indicated. For the purposes of this section, “residential subdivision” means land identified and demarcated by recorded plat or other device that a municipality has authorized to be used primarily for residential construction.

Sec. 7. 24 V.S.A. § 4753 is amended to read:

§ 4753. REVOLVING LOAN FUNDS; AUTHORITY TO SPEND;

REPORT

(a) There is hereby established a series of special funds to be known as:

(1) The Vermont environmental protection agency (EPA) pollution control revolving fund which shall be used to provide loans to municipalities, state agencies, and the Vermont housing finance agency, for planning sewage systems and sewage treatment or disposal plants as defined in subdivisions 3501(6) and 3601(3) of this title, for constructing ~~publicly owned~~ publicly owned sewage systems and sewage treatment or disposal plants as defined in subdivisions 3501(6) and 3601(3) of this title, for planning or construction of certain ~~privately owned~~ privately owned wastewater systems, and for implementing related management programs.

(2) The Vermont pollution control revolving fund which shall be used to provide loans to municipalities, state agencies, and the Vermont housing finance agency, for planning pollution control facilities, for constructing

~~publicly owned~~ publicly owned pollution control facilities, and for constructing certain ~~privately owned~~ privately owned wastewater systems and potable water supply systems.

* * *

~~(8) The Vermont stormwater management fund which shall be used to provide grants and loans to municipalities, pursuant to rules proposed by the agency of natural resources and enacted by the general assembly, for planning, designing, engineering, constructing, repairing, or improving infrastructure necessary to protect the waters of the state from the adverse impacts of untreated stormwater runoff. Funds may also be used to plan and establish a process for managing stormwater within or among municipalities.~~

* * *

(d) Funds from the Vermont environmental protection agency pollution control fund and the Vermont pollution control revolving fund, established by subdivisions (a)(1) and (2) of this section, may be awarded for:

(1) the refurbishment or construction of a new or an enlarged wastewater treatment plant with a resulting total capacity of 250,000 gallons or more per day in accordance with the provisions of this chapter and section 1626a of Title 10; or

(2) the construction of stormwater management facilities as specifically or generally described in Vermont's nonpoint source management plan, and

which are necessary to remedy or prevent pollution of waters of the state, provided, in any year in which the federal grant for the fund established in subdivision (a)(1) of this section does not exceed the amount available to the state in the 2002 federal appropriation, no more than ~~40~~ 30 percent of that year's federal and state appropriations to that fund shall be used for the purpose outlined in this subdivision.

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Sec. 8. 10 V.S.A. § 1278 is amended to read:

§ 1278. OPERATION, MANAGEMENT, AND EMERGENCY RESPONSE

PLANS FOR POLLUTION ABATEMENT FACILITIES

(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.

(b) Planning requirement. Effective July 1, 2007, the secretary of natural resources shall, ~~upon renewal~~ as part of a permit issued under section 1263 of this title, require a pollution abatement facility, as that term is defined in section 1571 of this title, to prepare 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.

(c) 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 section 1571 of this title, to prepare and implement an operation, management, and emergency response plan for each permitted facility. The requirement to develop a plan under this subsection shall be included in a permit issued under section 1263 of this title and subject to public review and inspection. 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 which, 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)~~(d) The secretary of natural resources shall post publicly notice of an illegal discharge that may pose a threat to human health or the environment on its website within 24 hours of the agency's receipt of notification of the discharge.

Sec. 9. 10 V.S.A. § 6001(3)(D) is amended to read:

(D) The word "development" does not include:

(i) The construction of improvements for farming, logging or forestry purposes below the elevation of 2,500 feet.

(ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under section 30 V.S.A. § 248 or a natural gas facility as defined in subdivision 30 V.S.A. § 248(a)(3).

(iii) [Repealed.]

(iv) The construction of improvements for agricultural fairs that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(v) The construction of improvements for the exhibition or showing of equines at events that are open to the public for 60 days per year, or fewer, provided that any improvements constructed do not include one or more buildings.

(vi) The construction of improvements for the controlled biological decomposition of organic matter through active management to produce, use, or sell a stable humus-rich material that is subject to regulation under chapter 159 of this title, excluding regulation of wastewater sludge or septage, or is subject to regulation under chapter 215 of Title 6.

Sec. 10. 10 V.S.A. § 6602(2) is amended to read:

(2) “Solid waste” means any discarded garbage, refuse, septage, sludge from a waste treatment plant, water supply plant, or pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous materials resulting from industrial, commercial, mining, or agricultural operations and from community activities but does not include animal manure and absorbent bedding used for soil enrichment; high carbon bulking agents used in composting; or solid or dissolved materials in industrial discharges which are point sources subject to permits under the Water Pollution Control Act, chapter 47 of this title.

Sec. 11. AGENCY OF NATURAL RESOURCES REPORT ON
COMPOSTING

On or before January 15, 2009, the agency of natural resources, after consultation with the agency of agriculture, food and markets, shall report to the house committee on fish, wildlife and water resources, the senate committee on natural resources and energy, and the house and senate

committees on agriculture with recommended amendments or improvements to the existing rules governing the construction, alteration, or operation of a composting facility. The report shall include:

(1) Recommendations for increasing public awareness of the benefits of composting;

(2) Recommendations for increasing awareness within the composting community and those interested in initiating a composting operation of the existing regulations governing composting; and

(3) The contact information of an individual or department at the agency of natural resources that can assist interested persons in understanding and complying with the agency's regulations for composting.

Sec. 12. EFFECTIVE DATE

This act shall take effect upon passage.