

## **FREQUENTLY ASKED QUESTIONS (FAQ) AMENDED GENERAL PERMIT 3-9010**

### **Previously Permitted Stormwater Discharges To Waters That Are Not Principally Impaired by Regulated Stormwater Runoff**

#### **Background**

Current owners/operators of previously permitted stormwater discharges to waters that are not principally impaired by stormwater must apply for coverage under General Permit 3-9010 Amended. This general permit requires the submission of a Notice of Intent, including a written certification regarding the current condition of the existing stormwater system. If the existing stormwater management system needs routine maintenance, then the permittee must perform such maintenance. If the stormwater system was never built or has “substantially deteriorated,” then the permittee must design a “best fit” system to meet the Vermont Stormwater Management Manual as closely as possible.

The previous permits now subject to General Permit 3-9010 Amended were issued over the past twenty years under three different sets of Agency of Natural Resources (“Agency”) procedures (see Appendix B). The permit thresholds and treatment standards often varied in each procedure. As a result, in its effort to implement General Permit 3-9010 Amended, the Stormwater Program has been asked a multitude of questions by permittees involving diverse regulatory and factual backgrounds. This FAQ clarifies how General Permit 3-9010 Amended will be implemented given this complex regulatory history.

#### **Frequently Asked Questions**

##### **1. What stormwater discharges are covered by General Permit 3-9010 Amended?**

General Permit 3-9010 Amended applies to all previously permitted discharges of stormwater runoff to all waters that are not principally impaired by stormwater. These stormwater discharges previously received either a stormwater discharge permit or a temporary pollution permit. Stormwater discharges to waters listed on Appendix A (waters that are principally impaired by stormwater runoff) are not eligible for coverage under General Permit 3-9010 Amended.

##### **2. What is a general permit?**

A general permit authorizes similar discharges from different projects and is used in lieu of individual stormwater permits that are issued on an individual project basis. General Permits are cost-effective because of the large number of projects that can be covered under a single permit. In addition, the use of a general permit ensures consistency of permit conditions for similar projects.

After you apply for coverage and the Agency determines that your discharge complies with General Permit 3-9010 Amended, you will be issued an authorization to discharge. The authorization to discharge must be filed in the local land records. Once you obtain an authorization to discharge by General Permit 3-9010 Amended, you will no longer need an individual permit for your stormwater discharge.

### **3. Why have I received notice regarding General Permit 3-9010 Amended?**

The Stormwater Program has received a number of calls from: 1) persons stating that they sold the property that is subject to the stormwater permit and they should no longer be responsible for the discharge; and 2) persons stating that they were not even aware that the property that they currently own is subject to a stormwater permit.

The Stormwater Management Program maintains a database of all stormwater discharge permits. For older permits the information in this database is often limited to the name of the permittee, and may or may not include a project description and location. If a permit was not officially transferred to a new owner (notice should have been given to the Agency when the property was sold), then the original permittee is still listed as the contact person in the Stormwater Program's database. (You can see the existing permits in our database on the "Statewide Map of Existing Stormwater Permits" at [http://www.vtwaterquality.org/stormwater/htm/sw\\_permitviewer.htm](http://www.vtwaterquality.org/stormwater/htm/sw_permitviewer.htm). Once you have located your permit you can find additional information such as the original permittee or a copy of the expired permit.) If you have sold the property that is subject to the stormwater permit and never officially transferred the permit to the new owner, then the Agency still regards you as the permittee. You should immediately notify us in writing of the current owner's name and address. If you do not know who the current owner is, then please provide the name of the person or entity to whom you sold the property.

In those cases where the Stormwater Program could easily identify the current property owner, notice was sent to the current owner rather than to the original permittee. Therefore, some current owners who were not aware that their property was subject to a stormwater permit recently received notice of General Permit 3-9010 Amended. The current owners were unaware of the stormwater permit because the original owners never informed the new owners of the permit's existence.

### **4. What does General Permit 3-9010 Amended require me to do?**

The current recorded owner/operator of the previously permitted stormwater discharge must apply for coverage. The application deadline in General Permit 3-9010 Amended has passed. The Agency hopes to gain voluntary cooperation in obtaining coverage under General Permit 3-9010 Amended. If this cooperative effort fails, then the Agency will be forced to resort to more formal processes used by our Enforcement Division.

The application must include a written certification, signed by a consultant, that the existing stormwater management system was built and is currently operating in compliance with the most recent previously issued permit. If such certification cannot be made, General Permit 3-9010 Amended specifies a reasonable timeframe for taking corrective action. This action includes:

- a. If the permitted stormwater system was never built or has “substantially deteriorated” (as defined in General Permit 3-9010 Amended), then a stormwater system must be built or repaired in accordance with the flowchart attached to General Permit 3-9010 Amended. The flowchart is designed so that the new or repaired system will either meet the water quality and channel protection treatment standards in the Vermont Stormwater Management Manual or will meet the standards as closely as possible, otherwise known as a “best fit” system, taking into account existing site constraints or prohibitive costs. Once this corrective action is taken, a consultant’s certification must be provided to DEC to that effect.
- b. If the permitted system was built in accordance with the previously issued permit(s), has not “substantially deteriorated,” and only requires routine maintenance, then such maintenance shall be performed and a consultant’s certification must be provided to DEC with the permit application.

**5. I missed the October 5, 2002 deadline in General Permit 3-9010 Amended for submitting a notice of my intent to seek coverage. I have also missed the November 15, 2002 application deadline. What do I do now? Am I in violation?**

Any time that a permit deadline is missed, a person is technically in violation of a permit. Moreover, you are in violation of state law for currently discharging stormwater with a permit. You must immediately apply for coverage under General Permit 3-9010 Amended.

We advise that you engage the services of a qualified consultant and submit an application as soon as possible.

**6. Is the Agency regulating only “collected” stormwater discharges to State waters or all stormwater discharges from developments with impervious surfaces meeting the permit thresholds? My development was built to discharge stormwater solely via sheet flow and there are no “collected” stormwater discharges. Is permit coverage under General Permit 3-9010 Amended required?**

When the previous permit was issued, Agency staff made a determination that there would be a discharge to state waters. The Stormwater Management Section will not attempt to “second guess” stormwater permit decisions made by Agency staff over the past twenty years, under three different sets of Agency procedures (see Appendix B). In many cases the administrative record is incomplete, and specific information

related to permit decisions is missing. If the Agency issued a stormwater permit (or temporary pollution permit) and the permittee then built the development in a different manner (e.g. with no “collected” stormwater discharge), then the permittee should have obtained a permit amendment; coverage is still required under General Permit 3-9010 Amended. **The only exceptions are:**

- a. If the permittee redesigned and built the development so that it fell below the permit thresholds in effect at the time of construction (see Appendix B). In these cases, the permittee would have in effect “abandoned” the previously issued permit and the current owner/operator of the development would not need to apply for coverage under General Permit 3-9010 Amended. However, the permittee needs to send a letter to the Agency stating that they have “abandoned” their previously issued permit. This information, referenced by your individual permit number should be sent to:

Department of Environmental Conservation  
Water Quality Division, Stormwater Management Section  
Building 10 North  
Waterbury, VT 05671-0408

Keep in mind that if the development has expanded since the original permit was “abandoned” another permit threshold may have been triggered.

- b. If the impervious surfaces covered by the previous permit are less than 1 acre.

**7. If a previously issued stormwater permit did not require treatment of stormwater and the permit has expired, is coverage required under General Permit 3-9010 Amended?**

Coverage under General Permit 3-9010 Amended is required for a previously permitted development regardless of whether treatment was required in the previous permit.

**8. If a previously permitted development does not meet today’s permit thresholds (see the 2005 Stormwater Management Rule in Appendix B) and the previous permit has expired, does the development need coverage under General Permit 3-9010 Amended?**

Coverage under General Permit 3-9010 Amended is required for a previously permitted development only if the previously permitted development has equal to or greater than one acre of impervious area.

**9. The expiration date for my individual stormwater permit has not yet passed. Do I have to apply for coverage under General Permit 3-9010 Amended now?**

If the expiration date of your current permit has not passed, then you do not have to apply for coverage under General Permit 3-9010 Amended until ninety (90) days prior to the expiration date of your individual permit (See Part I.F. of General Permit

3-9010 Amended). However, you may voluntarily seek coverage under General Permit 3-9010 Amended earlier.

**10. My old stormwater permit expired years ago and I reapplied to the Agency for a renewal of that permit. The Agency issued a letter granting Title III protection. Do I have to apply under General Permit 3-9010 Amended?**

Yes. You must now seek coverage under General Permit 3-9010 Amended.

**11. What if the project for which I have an individual stormwater permit has not been built?**

There are several potential scenarios under this question:

- a. If the individual stormwater permit expired, a timely renewal application was not filed prior to the expiration date (so Title III protection was never granted), and the project was never built, then coverage is not available under General Permit 3-9010 Amended. The project would now be considered new development and a new permit is required if you still intend to build the project. New development projects should seek coverage under General Permit 3-9015.
- b. If the individual stormwater permit has expired, and a timely renewal application was filed before the permit expired (so that Title III protection was granted), and the project was never built, then coverage may be obtained under General Permit 3-9010 Amended.
- c. If the expiration date of your individual stormwater permit has not passed and your project has not been built, then you may build your project pursuant to your individual permit until the permit expiration date. However, you must apply for coverage under General Permit 3-9010 Amended ninety (90) days prior to the expiration date of your individual permit (See Part I.F. of General Permit 3-9010 Amended).

**12. I don't know what stormwater system exists at my property and I don't have a copy of the old stormwater permit. How can I get a copy of the old permit?**

You should contact the Stormwater Management Program at 802-241-4320 to obtain a copy of the stormwater permit. Copies of the site plans and stormwater system plans associated with the permit are also available from the Agency. The plans should indicate the type and location of the stormwater system at your property.

**13. What fee(s) do I have to pay when I apply for coverage under General Permit 3-9010 Amended?**

Effective July 1, 2004, the Vermont legislature increased fees for the processing of stormwater permit applications and annual operating fees for stormwater permits. The fees applicable to General Permit 3-9010 Amended are as follows:

- a. **Administrative processing fee (\$100.00):** This fee must be paid at the time of application.
- b. **Application review fee (\$300 per acre of impervious surface in a Class B watershed; \$1170 per acre of impervious surface in a Class A watershed):** This fee must be paid at the time of application.
- c. **Annual operating fee (\$55 per acre of impervious surface in a Class B watershed; \$255 per acre of impervious surface in a Class A watershed):** This fee must be paid annually for coverage under General Permit 3-9010 Amended. You will receive a bill for the first permit year operating fee at the time you receive your authorization to discharge under General Permit 3-9010 Amended. You will be notified each subsequent year when annual operating fees are due. Annual fees due over the duration of the permit may be paid up front at one time.

*Note: Fees applicable to General Permit 3-9010 Amended may vary (See Questions 14-17 below)*

**14. I applied for renewal of my individual permit, paid the \$100 application fee and received Title III coverage from the Agency. What fee do I have to pay when I apply for coverage under General Permit 3-9010 Amended?**

- Projects that have received Title III coverage within the past 3 years; no fees will be required.
- Projects that received Title III coverage prior to 3 years ago; \$100 administrative processing fee only.

**15. I reapplied for renewal of my individual permit, paid the \$100 application fee and never heard from the Agency. Now I understand that I did not receive Title III coverage because my renewal application was late. What fee do I have to pay when I apply for coverage under General Permit 3-9010 Amended?**

When you apply for coverage under General Permit 3-9010 Amended, the administrative processing fee of \$100 will be waived. You will still be required to pay the application review fee and annual operating fee discussed in Question 13 above.

**16. The expiration date for my individual stormwater permit has not yet passed. I wish to apply for coverage under General Permit 3-9010 Amended. What fees will I have to pay?**

Projects operating with a current unexpired stormwater permit will need to pay only the \$100 administrative processing fee.

**17. I was previously issued a Temporary Pollution Permit. I wish to apply for coverage under General Permit 3-9010 Amended. What fees will I have to pay?**

Projects that originally received coverage under a Temporary Pollution Permit will need to pay only the \$100 administrative processing fee.

**18. My development has expanded over the years and now has more than one stormwater permit. Can I submit one application under General Permit 3-9010 Amended to replace all of these individual permits?**

Yes. You may submit one application for coverage under General Permit 3-9010 Amended. The application must reference all of the previous individual permits for which you are seeking consolidated coverage. This consolidated permit coverage is only available for previous individual permits that are part of one contiguous development. A developer may not obtain consolidated coverage under General Permit 3-9010 Amended for numerous, geographically distinct projects.

**19. My old stormwater permit was issued for a subdivision and the town has taken over control of the road(s) in the subdivision. Who is responsible for applying under General Permit 3-9010 Amended?**

If a town has assumed control of the road in a subdivision than the town should apply as a co-permittee with the homeowner's association, if one exists. If a homeowner's association does not exist, than the individual homeowners in the subdivision will need to sign on as co-permittees with the town. The homeowners are responsible parties, in addition to the town, since they own impervious surfaces (e.g. rooftops, driveways and sidewalks) that contribute stormwater runoff to the stormwater management system.

**20. I live in a subdivision where all the lots have been sold by the developer to individual homeowners. The town does not own the roads and there is no homeowners association. Who is responsible for the existing stormwater system?**

In determining who is responsible for a stormwater discharge, the Stormwater Program will look to all who benefit from the stormwater system. In the case of a subdivision, this would include all homeowners in that subdivision. General Permit 3-9010 Amended provides that a homeowners association should be formed as part of the permit application process and that the homeowners association should apply as the permittee. In this way, all who benefit from that system will share the cost of maintaining the stormwater system.

**21. When my consultant compared my existing stormwater system with the stormwater system that was approved in the old individual stormwater permit, he found that the existing system was not built exactly as required by the permit. What do I do now? Can I still apply for coverage under General Permit 3-9010 Amended?**

General Permit 3-9010 Amended provides that a permittee shall comply with the requirements set forth in the most recent previously issued discharge permit, unless the stormwater system has substantially deteriorated or was never built. The Stormwater Program recognizes that some existing stormwater systems may not have been built in exact conformance with the previous permit. In light of this, the Stormwater Program has decided that it will consider a system to be in compliance with the design requirements of its previously issued permit if: the stormwater system was built prior to the effective date of General Permit 3-9010 Amended and if the stormwater system is in substantial compliance with the technical design requirements of the previous permit and provides the same level of treatment as that required in the previous permit.

**22. The old stormwater permit for my property was issued for three acres of impervious surfaces. However, my property now has five acres of impervious surfaces. I never obtained a permit amendment to cover the additional acreage. Can all five acres of impervious surfaces be covered under General Permit 3-9010 Amended?**

Coverage under General Permit 3-9010 Amended will be allowed for the original and any additional existing impervious surfaces, provided that:

- written certification is submitted, to the satisfaction of the Agency, indicating that the previously permitted stormwater system currently provides treatment equivalent to that required by the previous permit for both the stormwater runoff from the original permitted impervious surfaces and the unpermitted impervious surfaces, or
- if the previously permitted stormwater system cannot provide equivalent treatment for the additional unpermitted impervious surfaces, then the stormwater system will be treated as if it is “substantially deteriorated” and it must be upgraded in accordance with the flowchart attached to General Permit 3-9010 Amended for the stormwater runoff from the original and the additional impervious surfaces, or;
- In the alternative, the current owner/operator may choose to separate the additional unpermitted stormwater runoff and obtain separate permit coverage for this additional flow, which must be treated to fully meet the Vermont Stormwater Management Manual.

**23. General Permit 3-9010 Amended says that I must send a copy of my NOI to the municipal clerk of the municipality in which the discharge is located. However,**

**the application instructions for General Permit 3-9010 Amended state that the Agency will do this for me. Which is correct?**

In order to simplify the application process, the Stormwater Program will file notice with the municipal clerk of the municipality in which the discharge is located on behalf of the applicant.

**24. What were the permitting thresholds for requiring a stormwater permit, and when were they changed?**

There have been four major changes in permitting thresholds over the past 20 years; 1980, 1987, 1997, and 2005. The specific requirements for permitting are described in Appendix B.

**APPENDIX A. LIST OF WATERS THAT ARE STORMWATER IMPAIRED**

<b>Waterbody ID</b>	<b>Segment Name/ Description</b>	<b>Pollutant(s)</b>	<b>Surface Water Quality Problem(s)</b>
VT03-06	MOON BROOK, MOUTH TO RM 2.3	STORMWATER	STORMWATER RUNOFF; EROSION; NO MONITORING DATA ON POLLUTANTS
VT05-07	RUGG BROOK, RM 4.3 (CROSBY ST) UPSTREAM 0.4 MILES	STORMWATER	STORMWATER RUNOFF
VT05-07	STEVENS BROOK, RM 6.8 (PEARL ST) TO RM 9.3	STORMWATER	STORMWATER RUNOFF, EROSION/SEDIMENTATION, MORPHOLOGICAL INSTABILITY
VT05-09	INDIAN BROOK, RM 5.8 (SUZIE WILSON RD) TO RM 9.8	STORMWATER	STORMWATER RUNOFF, LAND DEVELOPMENT, EROSION
VT05-10	ENGLESBY BROOK, MOUTH TO RM 1.3	STORMWATER, E. COLI	STORMWATER RUNOFF, BLANCHARD BEACH CLOSURE
VT05-11	BARTLETT BROOK, MOUTH TO RM 0.7	STORMWATER	STORMWATER RUNOFF, LAND DEVELOPMENT, EROSION
VT05-11	MUNROE BROOK, MOUTH TO RM 2.8	STORMWATER	STORMWATER RUNOFF, EROSION, LAND DEVELOPMENT
VT05-11	POTASH BROOK, MOUTH TO RM 5.2	STORMWATER, E. COLI	STORMWATER RUNOFF, LAND DEVELOPMENT, EROSION; BEACH CLOSURES (RED ROCKS)
VT08-02	ALLEN BROOK, RM 2.4 TO RM 7.6	STORMWATER, E. COLI	STORMWATER RUNOFF, LAND DEVELOPMENT, EROSION
VT08-02	CENTENNIAL BROOK, MOUTH TO RM 1.2	STORMWATER	STORMWATER RUNOFF, LAND DEVELOPMENT, EROSION
VT08-02	MOREHOUSE BROOK, MOUTH TO RM 0.6	STORMWATER	STORMWATER RUNOFF, EROSION
VT08-02	SUNDERLAND BROOK, RM 3.5 (RT. 7) TO RM 5.3	STORMWATER	STORMWATER RUNOFF, LAND DEVELOPMENT, EROSION
VT08-20	CLAY BROOK, RM 1.8 UPSTREAM 0.1 MILES	STORMWATER, IRON	STORMWATER RUNOFF, EROSION FROM CONSTRUCTION ACTIVITIES & GRAVEL PARKING LOT; INCREASED PEAK STORMWATER FLOWS
VT08-20	RICE BROOK, MOUTH TO RM 0.6	STORMWATER	STORMWATER RUNOFF, EROSION FROM UPSTREAM AREAS, LAND DEVELOPMENT

<b>Waterbody ID</b>	<b>Segment Name/ Description</b>	<b>Pollutant(s)</b>	<b>Surface Water Quality Problem(s)</b>
VT10-06	EAST BRANCH ROARING BROOK, RM 0.1 TO RM 0.6	STORMWATER, IRON	STORMWATER RUNOFF, LAND DEVELOPMENT, EROSION
VT10-06	ROARING BROOK, RM 1.4 UPSTREAM 0.2 MILES	STORMWATER	STORMWATER RUNOFF, LAND DEVELOPMENT, EROSION
VT12-05	NO. BRANCH DEERFIELD RIVER, TANNERY BRK RD TO 0.2 MI ABOVE SNOW LAKE	STORMWATER	STORMWATER RUNOFF, LAND DEVELOPMENT & CONSTRUCTION RELATED EROSION

*Source: State of Vermont 2004 303(d) List of Waters*

## **APPENDIX B. STORMWATER PERMIT THRESHOLDS**

### **A. Permit Thresholds under 1980 Interim Stormwater Management Policy**

The permit threshold is as follows:

All stormwater runoff that is collected and piped, channeled or otherwise conveyed directly or indirectly or by connection to an existing stormwater drainage system (including existing municipal, state and federal systems), to waters of the State, including discharges to “wells,” requires a Temporary Pollution Permit pursuant to 10 V.S.A. §1265, prior to discharge.

### **B. Permit Thresholds under 1987 Stormwater Regulations**

Proposed stormwater discharges requiring a permit:

1. Stormwater discharges from new developments that have a total area of roads and parking lots of greater than 1 acre but less than or equal to 10 acres and a ration of watershed area (in square miles) to total area of roads and parking lots (in acres) of less than 3:1;
2. Stormwater discharges from any development which discharge directly to wetlands, lakes or ponds and has a total area of roads and parking lots of greater than 1 acre but less than or equal to 10 acres;
3. Stormwater discharges from a development that has a total area of roads and parking lots of greater than 10 acres.

### **C. Permit Thresholds under 1997 Stormwater Regulations**

Proposed stormwater discharges requiring a permit:

- a. Stormwater discharges from a development with greater than 2 acres of impervious surfaces;
- b. Stormwater discharges from a development with greater than 1 acre of impervious surfaces and the ratio of the area of the watershed at the point of discharge furthest downstream measured in square miles and the area of all impervious surfaces measured in acres is less than 3;
- c. Stormwater discharges from a development in which the area of all impervious surfaces contributing runoff to one or more stormwater discharge points exceeds 1 acre and the discharge is to:
  - i. a Class I wetland; or
  - ii. lakes and ponds that have drainage areas of less than 40 square miles and a drainage area to surface area ratio of less than 500, or tributaries of those lakes and ponds.
- d. Stormwater discharges to Class A waters;

- e. Stormwater discharges to an Outstanding Resource Water, as designated by the Vermont Water Resources Board because of its pristine physical and chemical water quality value;
- f. Stormwater discharges which the Secretary determines contribute to a violation of the Vermont Water Quality Standards or could be a significant contributor of pollutants to waters of the State;
- g. Stormwater discharges defined in basin plans as part of a strategy to achieve compliance with the Vermont Water Quality Standards and State water quality policy

D. Permit Thresholds under the 2005 Stormwater Management Rule for Unimpaired Waters

A state stormwater discharge permit is required for the following discharges of regulated stormwater runoff:

- (1) A discharge from new development equal to or greater than one (1) acre;
- (2) A discharge from the expansion of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one (1) acre, except that a permit is not required for an expansion that meets the exemption in subsection 18-304(a)(4) of this Rule;
- (3) A discharge from the redevelopment of an existing impervious surface if the redeveloped portion of the existing impervious surface is equal to or greater than one (1) acre;
- (4) A discharge from a combination of expansion and redevelopment of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one (1) acre, except that a permit is not required if the exemptions in subsections 18-304(a)(4) and (5) of this Rule are met;
- (5) A discharge from any size of impervious surface if the Secretary determines that treatment is necessary to reduce the adverse impacts of the discharge due to the size of the impervious surface, drainage pattern, hydraulic connectivity, installation or modification of drainage or conveyance structures, location of the discharge, existing stormwater treatment, or other factors identified by the Secretary; and
- (6) A discharge from an existing impervious surface of equal to or greater than one (1) acre if the Secretary has previously issued an individual stormwater discharge permit or individual temporary pollution permit for the discharge or has previously granted coverage for the discharge under a stormwater discharge general permit.