

**State of Vermont  
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TO: Jim Pease, Analyst/Biologist, Vermont DEC Water Quality Division

DATE: 29 November 2007

RE: Small Municipal Separate Storm Sewer System (MS4) under GP-3-9014  
[as amended 2/29/2004 and supplemented by Water Resources Board Memorandum of Decision dated 7/21/2005]

SUBJECT: Response to Section 4.2.5.1.2.1  
[requiring submittal addressing the legal authority or strategies in place to protect and regulate development in the stream corridors of stormwater impaired waters as defined by 10 V.S.A. Sec. 1264(f)(3)]

In response to the above noted requirements, VTTrans has very little if any 'legal authority' to protect and regulate development in the stream corridors of stormwater impaired waters. The Agency is not like Municipalities or the Agency of Natural Resources in that it can not adopt and enforce rules, regulations, or zoning codes to protect resources and manage growth.

The one legal tool VTTrans does have comes from V.S.A. Title 19 "Highways", Chapter 11 "Protection of Highways" under Section 1111 "Permitted Uses of the Right-of-Way" (*see attached copy of this Statute*). Under this Statute, VTTrans does regulate development and access within the highway right-of-way, by requiring an application, review and permit process for anyone wishing to perform work within or gain access to the highway right-of-way. It is within this process where VTTrans takes a proactive approach to help protect and regulate development in the stream corridors of stormwater impaired waters, not only in the MS4 area but statewide.

VTTrans is in the process of updating the "Special Conditions" that accompany the Section 1111 Permit issued by VTTrans Utilities Section. The updates proposed clarify the requirements for Permittees to obtain, comply with, and provide copies of all required Local, State and Federal Permits and Guidance Documents (ie. Act 250, Stream Alteration Permits, Army Corps Permits, Local Zoning Review & Permitting, to name a few). These changes, to a process which already calls attention to the need for Local, State, and Federal Permitting, will increase the awareness level of those applying for and reviewing Section 1111 Permits that there are other permitting programs out there that regulate development in stream buffers, stormwater management, and others.

We can not review and issue the permits for development within stream buffers, but we are doing our best to raise awareness of the programs that do and can require those permits be in place prior to authorizing construction under Section 1111. Furthermore, we are considering our legal authority to withhold or deny the Section 1111 Permit for proposed improvements within designated riparian buffers if the buffer is located within the highway right-of-way.

In response to the above noted requirement, VTans has and continues to develop and implement 'strategies' to protect and regulate development in the stream corridors of stormwater impaired waters, not only in the MS4 area but statewide. The final version of the "VTrans Operations Tree and Brush Removal Best Management Practices (BMP) for Riparian Areas" (*copy attached*) was put into place in August of 2007 and will be implemented by VTrans District Personnel. This document was developed under the MS4 mandate but is being used statewide. The BMP is based in large part on the research and experience of Operations Personnel and was finalized in consultation with ANR, who provided technical assistance and is identified in the BMP for consultation in some instances.

The BMP is part of a larger environmental stewardship effort to prepare a statewide Agency Vegetation Management Plan. During the next several months we will be working with the District Personnel and consulting with ANR on the development of additional BMPs related to mowing, invasive species, guard rail maintenance, and seeding & landscaping in riparian areas as well as the entire roadway system. This work will, in addition to having water quality and habitat benefits, also save the agency money, conserve energy, reduce our carbon footprint, and address aesthetic concerns.

The riparian BMPs is being submitted at this time as part of the Agency's Management Plan for riparian areas under its MS4 Permit Mandate noted above. It is intended to be an evolving document that will take advantage of the latest practices and be updated to make adjustments for lessons learned. Other chapters to this Plan will be forthcoming as they are developed and finalized. Understanding this response is overdue, VTrans did not want to hold up submission under this MS4 requirement any longer as we work towards developing related BPS.

At this time, VTrans believes it has satisfied the requirements of Section 4.2.5.1.2.1 in the MS4 Permit as noted herein.

Attachments:

*V.S.A. Title 19 Chapter 11, Section 1111*

*VTrans Operations Tree and Brush Removal Best Management Practices (BMP) for Riparian Areas*