

VERMONT AGENCY OF TRANSPORTATION	ORIGINAL POLICY ADOPTED N/A	ORIGINAL POLICY IDENTIFIER N/A
POLICY MANUAL	EFFECTIVE DATE January 15, 2022	IDENTIFIER 3025
	RESPONSIBLE SECTION DMF Technical Services Pollution Prevention & Compliance Section	SUPERSEDES N/A
SUBJECT: Prohibition on Illicit (non-stormwater) discharges into VTrans TS4	SCREEN/PAGE 1 OF 5	

STATUTORY REFERENCE/OTHER AUTHORITY:

19 V.S.A. Section 1111(b) Driveway entrances, highway grades; drainage.

VTrans has common-law authority to prohibit significant unnatural flows on to any property that it owns or controls.

- Common Law Trespass (See Restatement (Second) of Torts § 158; *Harris v. Carbonneau*, 165 Vt. 433, 437, 685 A.2d 296, 299 (1996))
- Common Law Nuisance (See Restatement (Second) of Torts § 833; *Canton v. Graniteville Fire Dist. No. 4*, 171 Vt. 551, 552, 762 A.2d 808, 810 (2000))

Various federal regulations require VTrans to keep its highway rights of way free and clear of non-transportation uses, subject to limited exceptions. See, e.g., 23 C.F.R. §§ 1.23, 710.401 to 710.409.

Transportation Separate Storm Sewer System (TS4) Permit:

The TS4 permit is issued pursuant to the Vermont Water Pollution Control statute, 10 V.S.A. Chapter 47, specifically §§ 1258 and 1264; the Vermont Water Pollution Control Permit Regulations (Environmental Protection Rules, Chapter 13), including the rule governing general permits in Section 13.12; the Vermont Stormwater Management Rule (Environmental Protection Rules, Chapter 18); the Vermont Stormwater Management Rule for Stormwater-Impaired Waters (Environmental Protection Rules, Chapter 22); the federal Clean Water Act (CWA), as amended, 33 U.S.C. § 1251 *et seq.*; and related regulations of the United States Environmental Protection Agency (U.S. EPA) at 40 C.F.R. Part 122. The TS4 permit meets the minimum requirements for stormwater permits issued by the State of Vermont as the delegated authority to administer the federal National Pollutant Discharge Elimination System (NPDES) and also complies with state-specific permitting requirements for regulated stormwater runoff from impervious surfaces.

DISCUSSION:

An investigation into the need for Legislative action, Rule Making under Title 19 Section 1111 or Policy has resulted in the following findings:

1. Section 1111 is limited to highway ROW and does not regulate discharges to VTrans parcel-based development.
2. Section 1111 is clear on when a permit is necessary but does not specifically prohibit illicit discharges.
3. VTrans has sufficient legal authority under Common Law to regulate non-highway/ROW land holdings (no need for new/amended law or rule).
4. TS4 Permit requires policy adoption.
5. A written policy is the most appropriate next step to comply with the TS4 Permit.

APPROVAL DATE: January 15, 2022 **APPROVED BY:** Joe Flynn, Secretary of Transportation

PURPOSE:

The purpose of this policy is to establish an Agency of Transportation (VTrans) policy, applicable to statewide VTrans TS4, prohibiting illicit (non-stormwater) discharges into the state highway rights-of-way, into its stormwater collection, conveyance and treatment systems (“stormwater management systems”), and onto its other non-highway land holdings as required under VTrans TS4 Permit from the State of Vermont Agency of Natural Resources (VTANR)

Regarding compliance with state and federal law. The Vermont Department of Environmental Conservation’s TS4 General Permit states under Minimum Control Measure #3, relating to Illicit Discharge Detection and Elimination (IDDE), as follows:

VTrans shall develop, implement, and enforce a program to detect and eliminate illicit discharges into the stormwater systems of the TS4. As a part of VTrans’ program to detect and eliminate illicit discharges, VTrans shall Adopt a policy prohibiting non-stormwater discharges, except for those listed in Subpart 2.2.B of the Permit, into the stormwater systems of the TS4 and implement appropriate enforcement procedures and actions.

This policy proposes to:

1. Provide for the health, safety, and general welfare of the citizens of Vermont.
2. Reduce water quality impairment and prevent the degradation of receiving water quality.
3. Protect aquatic, wildlife, and human health.
4. Comply with Federal & State Regulations in the designated VTrans TS4 under the NPDES Phase II Final Rule MS4 (TS4) General Permit.
5. Limit VTrans’ liability.
6. Protect transportation infrastructure.
7. Create a consistent statewide approach to managing illicit (non-stormwater) discharges.
8. Satisfy FHWA’s requirement that highway rights-of-way be preserved for transportation use.
9. Support the VTrans efforts to prohibit illegal connections and illicit discharges under the Title 19, Section 1111 “Highway Access Permit” provisions.

APPLICABILITY AND JURISDICTIONAL LIMITS:

This policy applies to VTrans ROW and other Land Holdings covered under the TS4 ([permit link](#)), including:

1. VTrans-owned or -controlled state highways, sidewalks, multi-use pedestrian paths, welcome centers, airports, gravel pits, mineral mining, maintenance facilities, park & rides, truck weigh stations, and other impervious surfaces.
2. VTrans-owned facilities leased to third parties, including welcome centers and airport facilities (hangers and terminals)

This policy does not apply to VTrans-owned rail lines, rail yards, public transit facilities, and rail trails leased to third parties.

DEFINITIONS:

Illicit Discharge – means any discharge not composed entirely of stormwater runoff to VTrans TS4 that is not authorized under the TS4 Permit or another Federal or State Discharge Permit.

The result of illicit discharges is untreated water that could contribute pollutants to Vermont surface receiving waters and groundwater.

Sources of Illicit Discharges include, but are not limited to: sanitary wastewater, effluent from septic tanks, car wash wastewaters, improper oil disposal, radiator flushing disposal, laundry wastewaters, spills from roadway accidents, floor drain connections, industrial process wastewater, and improper disposal of auto and household toxics.

Types of Illicit Discharges include three (3) categories based on frequency of discharge:

1. **Transitory Illicit Discharge:** These are typically a one-time event. They can result from spills, dumping, and line breaks.
2. **Intermittent Illicit Discharge:** These are typically discharges that occur occasionally. They can occur several hours per day, week or over the course of a year. They can happen as the result of line breaks or cross connections.
3. **Continuous Illicit Discharge:** These direct connections into the MS4/TS4 can be from sanitary sewers, cross connections, infrastructure problems with a sanitary sewer system, or malfunctioning household sewage treatment systems.

Reference resource: EPA Stormwater Phase II Final Rule Fact Sheet addressing Illicit Discharges. <https://www3.epa.gov/npdes/pubs/fact2-5.pdf>

Pollutant – means anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquids and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects and accumulations so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from construction practices; and noxious or offensive matter of any kind.

Stormwater – means stormwater runoff, snow melt runoff, and surface runoff and drainage [40 CFR 122.26(b)(13)].

VTrans Stormwater Management System – means VTrans-owned and operated drainage facilities by which stormwater is collected, treated, conveyed, and/or discharged, including but not limited to: curbs, inlets, piped storm drains, retention and detention basins, natural and human-made or altered drainage ditches, swales, culverts, and other drainage structures.

POLICY STATEMENT:

VTrans prohibits illicit (non-stormwater) discharges into the state highway rights-of-way, into its stormwater collection, conveyance and treatment systems (“stormwater management systems”), and onto its other land holdings, except for those discharges listed in Subpart 2.2.B of the Transportation Separate Storm Sewer System (TS4) Permit and noted below under Policy Exclusions.

No person shall discharge or cause to be discharged into the VTrans statewide stormwater management system, rights-of-way or other land holdings any materials, including but not limited to pollutants or waters containing pollutants, other than stormwater (subject to Title 19 Section 1111 review and permitting and any other Federal, State, or Local regulations). Exceptions do apply and are noted below under Policy Exclusions.

VTrans will not connect, reconnect, nor allow known or discovered connections of any illicit discharges to the VTrans statewide stormwater management system, rights-of-way or other land holdings. This prohibition expressly includes, without limitation, illicit connections or discharges made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

More specifically, this prohibition applies to:

- 1. VTrans-owned or -controlled state highways, sidewalks, multi-use pedestrian paths, welcome centers, airports, gravel pits, mineral mining, maintenance facilities, park & rides, truck weigh stations, and other impervious surfaces.*
- 2. VTrans-owned facilities leased to third parties, including welcome centers and airport facilities (hangers and terminals)*

This policy does not apply to VTrans-owned rail lines, rail yards, public transit facilities, and rail trails leased to third parties.

POLICY EXCLUSIONS:

This policy does not apply to:

1. VTrans-owned rail lines, rail yards, public transit facilities, and rail trails leased to third parties.
2. Commingled discharges from the following non-stormwater sources with discharges of stormwater, provided that these sources are not substantial contributors of pollutants to the waters of the State as determined by VTrans and/or directed by Vermont ANR.

Non-Stormwater Discharges: The following discharges are exempt from this policy. However, they may be subject to other Federal, State, or Local Regulations or VTrans Policies or Procedures and may require prior written approval under VTrans Title 19, Section 1111 “Highway Access” Authority.

- a) Potable water, including water line flushings;
- b) Landscape watering, provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
- c) Diverted stream flows;
- d) Uncontaminated ground water, including pumped ground water, or spring water;
- e) Foundation or footing drains where flows are not contaminated with process materials, and to which there are no floor drain, septic wastewater, or grey water connections;

- f) Uncontaminated condensate from air conditioners, coolers/chillers, and other compressors and from the outside storage of refrigerated gases or liquids;
- g) Irrigation drainage;
- h) Uncontaminated water from crawl space pumps;
- i) Flows from riparian habitats and wetlands;
- j) Discharges from emergency/unplanned fire-fighting activities;
- k) Fire hydrant flushing;
- l) Pavement wash waters where no detergents or hazardous cleaning products are used (e.g., bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols), and the wash waters do not come into contact with oil and grease deposits, sources of pollutants associated with industrial activities, or any other toxic or hazardous materials, unless residues are first cleaned-up using dry clean-up methods (e.g., applying absorbent materials and sweeping, using hydrophobic mops/rags) and where appropriate control measures have been implemented to minimize discharges of mobilized solids and other pollutants (e.g., filtration, detention; settlement);
- m) Routine external building washdown/power wash water that does not use detergents or hazardous cleaning products (e.g., those containing bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols); and
- n) Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of a facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

DocuSigned by:
APPROVED: Joe Flynn **DATE** 12/27/2021
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Joe Flynn, Secretary of Transportation

POLICY HISTORY

ORIGINAL POLICY ADOPTION DATE: January 15, 2022

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