

# **VERMONT DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

## **Procedure For Phase I Of A Program For Funding Upgrades to Existing "Orphaned" Stormwater Management Systems in State Waters That Are Not Principally Impaired Due to Stormwater Runoff**

*May 23, 2006*

### **Introduction**

There are currently a number of residential subdivisions with expired stormwater permits and for which there is no currently responsible developer or other party ("orphan" systems). This procedure describes the first phase of a program by which the Department of Environmental Conservation (DEC) will award funding to address this problem.

### **Background**

Existing stormwater management systems in waters that are not principally impaired due to stormwater runoff must be properly operated and maintained in order to ensure the stability and health of Vermont streams. A number of existing stormwater systems treat runoff from residential subdivisions of widely varying sizes. Many of these subdivisions received DEC stormwater permits that were issued long ago to the original developer, and these permits were then allowed to expire and/or were never transferred as the individual homes or lots were sold. In many cases the current homeowners have no idea that a stormwater permit was previously issued. Many systems may need maintenance, repairs or upgrades in order to meet eligibility requirements for permit renewal under current stormwater regulations.

Currently, there are approximately 67 residential subdivisions with expired permits, consisting of approximately 1100 individual homeowners in 33 towns/municipalities across the state. These permits were issued between 1978 and 2000 and typically were issued for a five year permit term. The existence of an expired stormwater permit constitutes an encumbrance on property and affects the marketability of title for each homeowner's property. This situation is often not discovered until the property is about to be sold or refinanced.

Permit renewal is available through application for coverage under DEC General Permit 3-9010 entitled "Previously Permitted Stormwater Discharges to Waters that are Not Principally Impaired by Collected Stormwater Runoff." General Permit 3-9010 requires that a consultant certify that the existing stormwater system is in compliance with the original permit and in a good state of repair. If the system has "substantially deteriorated" as defined in the permit, a new "best fit" system must be constructed to meet as closely as possible the treatment and control requirements in the Vermont Stormwater Management Manual.

Phase I of the program involves seeding a fund of \$600,000 (the Fund) within the existing Local Community Implementation Fund (LCIF), managed by DEC's Facilities Engineering Division. Monies from the Fund would be available statewide on a competitive basis to municipalities that currently contain residential subdivisions with expired stormwater permits, where those systems discharge to waters that are not principally impaired due to stormwater runoff.

## Process for Awarding Fund Monies

1. Fund monies will be distributed as 100% grant awards to municipalities for costs associated with all necessary work involved in the renewal of permits for residential sub-divisions subject to the following criteria.
2. DEC will identify and notify by mail all current individual homeowners in each residential subdivision with an orphaned system and their respective towns/municipalities of the existence of this fund.
3. The notification to towns/municipalities shall include fund application materials. An application shall include, at a minimum:
  - a. total number of impervious acres covered by the expired permit;
  - b. a description of the existing system and its current state of repair;
  - c. a description of necessary repairs and construction required to qualify for permit coverage;
  - d. a list of all current homeowners and their residence status as determined by the Vermont Department of Taxes homestead exemption process;
  - e. the average equalized grand list value of the subdivision - the average equalized grand list value is defined as the summation of individual equalized grand list property values within the subdivision, divided by the total number of individual properties within the subdivision;
  - f. the amount of funding sought and a description and cost breakdown of the estimated costs, including permit fees, legal costs, and repair, maintenance and construction costs;
  - g. an estimate of the time needed to complete necessary maintenance, repairs and construction and to file a complete permit application;
  - h. a description of individual and local contributions and/or in-kind services provided; and
  - i. a certification by the appropriate authorized town/municipal officials that the town/municipality will, prior to the award of the grant:
    - i. apply as the sole permittee; or
    - ii. apply as a co-permittee with a homeowners association on behalf of the individual homeowners; and
    - iii. acquire all necessary easements or access agreements necessary to inspect, maintain, repair and construct the stormwater system
4. DEC will accept applications for a 6 month period after initial notification of the towns/municipalities.
5. Following the close of the application period, DEC will numerically rank applications received based upon: a ratio of impervious acres originally permitted divided by dollars requested, then multiplied by a ratio of primary residence homeowners divided by the total homeowners within the affected subdivision, and then multiplied by the ratio of the overall average equalized grand list value for all subdivisions proposed for funding divided by the average equalized grand list value of each individual subdivision. The average equalized grand list value is defined as the summation of equalized grand list property values within the subdivision, divided by the total number of individual properties within the subdivision.

The overall formula to determine an individual applications ranking position can be expressed mathematically as:

Relative Ranking (dimensionless)	# impervious acres grant \$ requested (in units of \$10k)	X	# of primary residence homeowners total # of homeowners in subdivision	X	overall average equalized grand list value for all applications received average equalized grand list value of the subdivision
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6. Prior to any award determination, the Secretary will evaluate the list of current property owners for the existence of any association between the original permittee and the current owners of the subdivision proposed for grant funding. At the Secretary's discretion, any such association may render a subdivision ineligible for consideration of grant funding under this program.
7. The Fund will be distributed to towns/municipalities in their respective order of numerical ranking until such time as Fund monies are exhausted.
8. Prior to the actual award of fund monies to a town/municipality the following information must be provided:
  - a. a certification by appropriate authorized town/municipal officials that the town/municipality has obtained all necessary approvals for the town/municipality to apply as the sole permittee for coverage under General Permit 3-9010; or
  - b. a certification by appropriate authorized town/municipal officials that the town/municipality will apply as a co-permittee, including documentation evidencing the creation of a homeowner's association of the individual homeowners, which association will apply as a co-permittee with the town/municipality for coverage under General Permit 3-9010; and
  - c. a certification by appropriate authorized town/municipal officials that the town will accept all future responsibility for performing necessary repair and maintenance of the stormwater system; and
  - d. a copy of all necessary easements or access agreements to ensure that the town/municipality has adequate access to perform all necessary ongoing maintenance and repair of the system and to comply with all other permit conditions applicable to the town/municipality; and
  - e. a certification that the town/municipality will submit an administratively and technically complete application for coverage under General Permit 3-9010 within the time period specified in Part 3(g) of the application, but in no case longer than two years from the date of the grant award.
9. A municipality's required performance under an individual grant of Fund monies will be considered complete upon DEC's receipt of an administratively and technically complete application from the town/municipality for coverage under General Permit 3-9010.

Signed this 23<sup>rd</sup> day of May, 2006.

  
 Jeffrey Weinberg, Commissioner

