



IMPORTANT NOTICE

TO ALL ESSEX RESIDENTS AND BUSINESSES REGARDING FUTURE INCREASES IN STORMWATER COMPLIANCE COSTS

The State of Vermont Agency of Natural Resources has issued a draft version of a revised federally mandated NPDES MS4 Phase 2 Municipal Stormwater Permit to a number of communities in Chittenden County, the Burlington Airport, the University of Vermont and the Vermont Agency of Transportation. It also includes communities in the St Albans and Rutland areas. An MS4 permit will be issued to the Town of Essex and the Village of Essex Junction.

The permit is not new. It has been in existence since 2002 and both the Village and the Town have complied yearly with the six major areas of the permit – public education, public participation, illicit discharge detection and elimination, construction site runoff control, post-construction stormwater management for new development and redevelopment and pollution prevention/good housekeeping for municipal operations.

The existing permit requires the affected communities to identify and improve stormwater discharges once the State has determined the level of impairment of certain streams. In the case of Essex, the two streams are Indian Brook and Sunderland Brook. The main channel of Indian Brook starts in the Town, flows through the Village and then back into the Town on the western side of the community. Sunderland Brook principally starts in the Village and then enters the Town in the area of Susie Wilson Road. Both streams flow into Colchester before discharging into Lake Champlain. The State has now identified the specific allowable pollutant load called the Total Maximum Daily Load (TMDL) for each impaired waterway.

With this information and as a result of recent court cases, the State has determined that responsibility for the stream clean-up will fall on the NPDES Phase 2 Permit holders – essentially, the municipalities. The Town and Village will have to develop and obtain approval for their own comprehensive stormwater plan to affect the clean-up as well as a collective (regional) effort including every MS4 entity in the watersheds. In some cases, small individual stormwater discharges can be discontinued or infiltrated into the ground. However, larger systems that carry stormwater from both municipal streets and private properties will require that adequate, new stormwater treatment facilities be built. There is no past precedence to guide the communities in determining how to allocate costs or responsibility and this by itself presents a host of potential issues.

No costs have been programmed into the FYE2011 proposed Town budget to perform the full stormwater planning effort required nor have any costs been estimated for all the systems that will need to be built. There are also additional requirements in the draft permit that are being forced onto the local community because of the inability to pay for these items at the state level. The most egregious of these is the ongoing flow monitoring that occurs in the streams and the data collection needed to determine not only the measured stream flow but also changes to the stream flow as new stormwater treatment systems are constructed. In the past this cost, on the order of \$150,000 to \$200,000 per year for all the watersheds, was borne by the State. The draft permit assigns this responsibility and cost to the MS4 permit holders. This is only one of many areas in the permit where the Town and Village responsibilities will increase without any accompanying funding assistance.

The permit is currently in draft form under a 90-day comment period. Both the Town and Village staff are actively engaged along with other communities in trying to limit the scope of community involvement to compliance on essential elements. After the final permit is issued later this spring, each impacted MS4 party will have to determine if the requirements are acceptable or whether the permit should be appealed. Even if an appeal is filed, compliance has to be made with the permit until such time as it is settled.

It is a given that the legal language in Federal and State law will force the affected communities into becoming the legal entities responsible for the stream clean-ups. Because the streams and watersheds do not recognize political boundaries, it is also clear that much if not all of the planning and implementation needs to be done in a collaborative effort between the Town and the Village, and to a lesser degree involvement with VTRANS and Colchester. How this will be done has not yet been discussed but the issues will become much clearer after the final permit is issued.

Prior to the end of the 90-day comment period on April 22, 2010, review comments and suggestions for changes to the permit will be filed by the Town and the Village with the State. It is anticipated that the final permit will be issued around July 1, 2010. If the proposed schedule in the draft permit holds, each community will have 18 months to submit their individual stormwater management plan, three years from permit issuance to provide a detailed watershed stream restoration plan and ten years from date of issuance to complete all the required improvements. A copy of the 41-page draft NPDES MS4 Phase 2 Stormwater permit can be found on the Town's webpage @ www.essex.org.

