



The National Agricultural Law Center

nationalaglawcenter.org | nataglaw@uark.edu | [@nataglaw](https://twitter.com/nataglaw)

States' Wetlands Permitting Statutes:

Vermont



This material is based upon work supported by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture

A National Agricultural Law Center Research Publication
States' Wetlands Permitting Statutes: Vermont

Vt. Stat. tit. 10, Ch. 37

Current through Chapters 185 (end) and M-28 (end) of the Adjourned Session of the 2023-2024 Vermont General Assembly (2024).

Vt. Stat. tit. 10 § 901. Water resources management policy.

It is hereby declared to be the policy of the State that the water resources of the State shall be protected, regulated and, where necessary, controlled under authority of the State in the public interest and to promote the general welfare.

Vt. Stat. tit. 10 § 902. Definitions.

Wherever used or referred to in this chapter, unless a different meaning clearly appears from the context:

- (1) "Board" means the Natural Resources Board.
- (2) "Department" means Department of Environmental Conservation.
- (3) "Waters" means any and all rivers, streams, brooks, creeks, lakes, ponds, or stored water, and groundwaters, excluding municipal and farm water supplies.
- (4) "Water resources" means the waters and the values inherent or potential in waters and their uses.
- (5) "Wetlands" means those areas of the State that are inundated by surface or groundwater with a frequency sufficient to support significant vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. Such areas include marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs, and ponds, but excluding such areas as grow food or crops in connection with farming activities.
- (6) "Class I wetland" means:
 - (A) a wetland identified on the Vermont significant wetlands inventory maps as a Class I wetland;
 - (B) a wetland that the former Water Resources Board identified in rules of the Board as a Class I wetland; or



(C) a wetland that the Secretary, based upon an evaluation of the extent to which the wetland serves the functions and values set forth in subdivision 905b(18)(A) of this title, determines is exceptional or irreplaceable in its contribution to Vermont's natural heritage and, therefore, merits the highest level of protection.

(7) "Class II wetland" means a wetland other than a Class I or Class III wetland that:

(A) is a wetland identified on the Vermont significant wetlands inventory maps; or

(B) the Secretary determines to merit protection, pursuant to section 914 of this title, based upon an evaluation of the extent to which it serves the functions and values set forth in subdivision 905b(18)(A) of this title and the rules of the Department.

(8) "Class III wetland" means a wetland that is neither a Class I wetland nor a Class II wetland.

(9) "Buffer zone" means an area contiguous to a significant wetland that protects the wetland's functions and values. The buffer zone for a Class I wetland shall extend at least 100 feet from the border of the wetland, unless the Department determines otherwise under section 915 of this title. The buffer zone for a Class II wetland shall extend at least 50 feet from the border of the wetland unless the Secretary determines otherwise under section 914 of this title.

(10) "Panel" means the Water Resources Panel of the Agency of Natural Resources.

(11) "Significant wetland" means any Class I or Class II wetland.

(12) "Secretary" means the Secretary of Natural Resources or the Secretary's authorized representative.

Vt. Stat. tit. 10 § 905a. Department of Environmental Conservation.

There is created the Department of Environmental Conservation, to be administered by a Commissioner of Environmental Conservation.

Vt. Stat. tit. 10 § 905b. Duties; powers.

The Department shall protect and manage the water resources of the State in accordance with the provisions of this subchapter and shall:



- (1) Study and investigate the streams in the State and their basins and cooperate with federal agencies in mapping them and in collecting and compiling data relating to run off and stream flow.
- (2) Cooperate with natural resources conservation districts.
- (3) Have supervision over and act as the State's agency in all matters affecting flood control, channel clearing, and river bank protection. To discharge this responsibility, the Department shall:
 - (A) Develop flood control policies and a flood control program that balances the need to protect the environment with the need to protect public and private property. The policy and program shall direct appropriate remedial measures following significant flooding events and shall define appropriate flood hazard mitigation measures. These measures may include:
 - (i) flood debris removal and streambed and stream bank maintenance and restoration practices;
 - (ii) identification of disaster-prone areas;
 - (iii) land use planning assistance to minimize future damage from flooding;
 - (iv) flood proofing measures for existing vulnerable private or public structures;
 - (v) acquisition and relocation of structures away from hazard-prone areas;
 - (vi) development of State standards to protect public infrastructure from disaster damage;
 - (vii) structural hazard control, such as debris basins or floodwalls to protect critical facilities;
 - (viii) educating the public regarding the availability of flood insurance and the advisability of obtaining flood insurance.
 - (B) Develop and implement steps to incorporate into other programs administered by the Department measures that decrease the likelihood and impact of future flooding incidents.
- (4) Make studies and investigations or demonstrations of problems relating to water quality with respect to pollution and causes, prevention, control, and abatement thereof as it may deem advisable, and when appropriate propose remedies to the Legislature.



(5) Encourage the construction of sewage disposal plants by municipalities and encourage the construction of septic tanks and other proper methods of waste and sewage disposal in rural and industrial areas.

(6) After the construction or major reconstruction of sewage disposal plants and attendant facilities, and at least once every three years, and once in any 12-month period upon petition by 10 or more people in interest from the municipality or an adjacent municipality, inspect the facilities so constructed, and similar facilities constructed for the purpose, to determine the efficiency of operation and maintenance, and submit a report to the appropriate municipal officials.

(7) Foster and encourage recreational uses of the waters of the State and for this and other purposes cooperate with municipalities of the State and with agencies of the State concerned.

(8) Accept and acquire in the name of the State by purchase, gift, or donation property rights in the waters of the State and facilities or improvements therein and for the purposes aforesaid improve and maintain the same.

(9) Administer loans, grants, and contracts from the federal, State, and local governments and from other sources, public and private, with the approval of the Governor, for furthering the water resources program of the State as embodied in the statutes.

(10), (11) [Repealed.]

(12) Make available to any municipality in the State, to the extent funds are available, assistance relating to surveys, studies, and plans for pollution abatement works.

(13) Undertake a continuing study and investigation of the groundwater in the State and cooperate with other governmental agencies in collecting and compiling data relating to the quantity, quality and location of groundwater.

(14) Subject to the approval of the Governor, enter into contracts and agreements with the United States as are considered necessary and advisable to provide, subject to legislative authority, assurances of State and local cooperation when those assurances are required by the United States for the purpose of providing protection against floods under federal flood protection projects.

(15) In order to adequately protect the interests of the State in its water resources, and subject to limitations of duties otherwise provided by law, cooperate with the appropriate agencies of the federal and Canadian governments or of this or other states, or any interstate bureau, group,



division, or agency with respect to the use of water from lakes and ponds, which are without or wholly or partially contained within this State, and to endeavor to harmonize any conflicting claims that might arise therefrom.

(16) Assist municipalities in the development of water supplies and in the construction of facilities for storage, distribution, and treatment of potable water supplies and approve all plans for the construction of such facilities. The Department may provide planning and engineering assistance as requested in matters relating to preliminary surveys, studies, and plans, if such assistance is not otherwise available.

(17) Adopt in accord with the Administrative Procedure Act those rules necessary for the proper administration of its duties.

(18) Study and investigate the wetlands of the State and cooperate with municipalities, the general public, other agencies, and the Board in collecting and compiling data relating to wetlands, propose to the Board specific wetlands to be designated as Class I wetlands, issue or deny permits pursuant to section 913 of this title and the rules authorized by this subdivision, issue wetland determinations pursuant to section 914 of this title, issue orders pursuant to section 1272 of this title, and in accordance with 3 V.S.A. chapter 25, adopt rules to address the following:

(A) The identification of wetlands that are so significant they merit protection. Any determination that a particular wetland is significant will result from an evaluation of at least the following functions and values that a wetland serves:

- (i) provides temporary water storage for flood water and storm runoff;
- (ii) contributes to the quality of surface and groundwater through chemical action;
- (iii) naturally controls the effects of erosion and runoff, filtering silt, and organic matter;
- (iv) contributes to the viability of fisheries by providing spawning, feeding, and general habitat for freshwater fish;
- (v) provides habitat for breeding, feeding, resting, and shelter to both game and nongame species of wildlife;
- (vi) provides stopover habitat for migratory birds;
- (vii) contributes to an exemplary wetland natural community, in accordance with the rules of the Secretary;



- (viii) provides for threatened and endangered species habitat;
- (ix) provides valuable resources for education and research in natural sciences;
- (x) provides direct and indirect recreational value and substantial economic benefits; and
- (xi) contributes to the open-space character and overall beauty of the landscape.

(B) The ability to reclassify wetlands, in general, or on a case-by-case basis.

(C) The protection of wetlands that have been determined under subdivision (A) or (B) of this subdivision (18) to be significant, including rules that provide for the issuance or denial of permits and the issuance of wetland determinations by the Department under this chapter; provided, however, that the rules may only protect the values and functions sought to be preserved by the designation. The Department shall not adopt rules that restrain agricultural activities without the consent of the Secretary of Agriculture, Food and Markets and shall not adopt rules that restrain silvicultural activities without the consent of the Commissioner of Forests, Parks and Recreation.

(19) Cooperate with the agencies of the federal government and of the province of Quebec, adjoining states, and states through which water from Vermont streams flow in all matters relating to interstate streams.

(20) [Repealed.]

(21) Act as the Vermont Secretary of Natural Resources mentioned in the act of Congress, entitled “An act authorizing the construction of certain public works on rivers and harbors for flood control and for other purposes,” approved December 22, 1944. In this connection, the Department shall carry out the policy of the State as defined by section 1100 of this title.

Vt. Stat. tit. 10 § 906. Investigators.

Investigators employed by the Department of Environmental Conservation when designated in writing by the Commissioner of Environmental Conservation shall enforce the provisions of chapters 37, 39, 41, 43, 47 and 49 and subchapter 3 of chapter 48 of this title; Title 29, chapter 11; sections 1215 and 1217 of Title 18; section 2201 of Title 24 and sections 4411 and 4444 of Title 24 insofar as those chapters and sections contain enforceable provisions and may summons or arrest violators thereof. In those matters, they may serve criminal process and subpoenas. They shall have the



same powers as other informing officers to make and subscribe to complaints for violation thereof.

Vt. Stat. tit. 10 § 911. Entrance upon lands; records, maintenance.

The Department employee or agent may enter upon lands for the purposes of inspecting and investigating conditions relating to sources of pollution of the waters of the State or the potential pollution thereof, and to determine whether the rules and orders of the Department are being complied with. Any authorized representative of the Department may examine any records or memoranda pertaining to the operation of disposal systems or related water quality projects. The Department may require the maintenance of records relating to the operation of disposal systems. Copies of these records shall be submitted to the Department on request.

Vt. Stat. tit. 10 § 912. Temporary emergency permits.

The Secretary or the Secretary's designee shall expedite and may authorize temporary emergency permits under this title, pursuant to 3 V.S.A. § 2822(c).

Vt. Stat. tit. 10 § 913. Prohibition.

(a) Except for allowed uses adopted by the Department by rule, no person shall conduct or allow to be conducted an activity in a significant wetland or buffer zone of a significant wetland except in compliance with a permit, conditional use determination, or order issued by the Secretary.

(b) A permit shall not be required under this section for:

(1) any activity that occurred before the effective date of this section unless the activity occurred within:

(A) an area identified as a wetland on the Vermont significant wetlands inventory maps;

(B) a wetland that was contiguous to an area identified as a wetland on the Vermont significant wetlands inventory maps;

(C) the buffer zone of a wetland referred to in subdivision (A) or (B) of this subdivision (1);

(2) any construction within a wetland that is identified on the Vermont significant wetlands inventory maps or within the buffer zone of such a wetland, provided that the construction was completed prior to February 23, 1992, and no action for which a permit is required under the rules of the Department was taken or caused to be taken on or after February 23, 1992.



Vt. Stat. tit. 10 § 914. Wetland determinations.

(a) The Secretary may, upon a petition or on his or her own motion, determine whether any wetland is a Class II or Class III wetland. Such determinations shall be based on an evaluation of the functions and values set forth in subdivision 905b(18)(A) of this title and the rules of the Department.

(b) The Secretary may establish the necessary width of the buffer zone of any Class II wetland as part of any wetland determination pursuant to the rules of the Department.

(c) The provisions of chapter 170 of this title shall apply to issuance of determinations under this section.

(d) [Repealed.]

(e) The Secretary may recommend to the panel that a wetland be classified as a Class I wetland under section 915 of this title.

Vt. Stat. tit. 10 § 915. Class I wetlands.

The classification of any wetland as a Class I wetland, the reclassification of a Class I wetland as a Class II or III wetland, the reclassification of any Class II or III wetland as a Class I wetland, or the modification of the buffer zone of a Class I wetland shall be made by the Department pursuant to the rulemaking provisions of 3 V.S.A. chapter 25.

Vt. Stat. tit. 10 § 916. Revision of Vermont significant wetlands inventory maps.

The Secretary shall revise the Vermont significant wetlands inventory maps to reflect wetland determinations issued under section 914 of this title and rulemaking by the panel under section 915 of this title.

Vt. Stat. tit. 10 § 917. Appeals.

Any act or decision of the Secretary under this subchapter may be appealed in accordance with chapter 220 of this title.

Vt. Stat. tit. 10 § 918. Net gain of wetlands; State goal; rulemaking.

(a) On or before July 1, 2025, the Secretary of Natural Resources shall amend the Vermont Wetlands Rules pursuant to 3 V.S.A. chapter 25 to clarify that the goal of wetlands regulation and management in the State is the net gain of wetlands to be achieved through protection of existing wetlands and restoration of wetlands that were previously adversely affected. This condition shall not apply to wetland, river, and flood plain restoration projects, including dam removals.



(b) The Vermont Wetlands Rules shall prioritize the protection of existing intact wetlands from adverse effects. Where a permitted activity in a wetland will cause more than 5,000 square feet of adverse effects that cannot be avoided, the Secretary shall mandate that the permit applicant restore, enhance, or create wetlands or buffers to compensate for the adverse effects on a wetland. The amount of wetlands to be restored, enhanced, or created shall be calculated, at a minimum, by determining the acreage or square footage of wetlands permanently drained or filled as a result of the permitted activity and multiplying that acreage or square footage by two, to result in a ratio of 2:1 restoration to wetland loss. Establishment of a buffer zone contiguous to a wetland shall not substitute for the restoration, enhancement, or creation of wetlands. Adverse impacts to wetland buffers shall be compensated for based on the effects of the impact on wetland function.

(c) At a minimum, the Wetlands Rules shall be revised to:

(1) Require an applicant for a wetland permit that authorizes adverse impacts to more than 5,000 square feet of wetlands to compensate for those impacts through restoration, enhancement, or creation of wetland resources.

(2) Incorporate the net gain rule into requirements for permits issued after September 1, 2025.

(3) Establish a set of parameters and restoration ratios applicable to permittee-designed restored wetland restoration projects, including a minimum 2:1 ratio of restoration to loss to compensate for permanently filled or drained wetlands. These parameters shall include consideration of the following factors:

(A) the existing level of wetland function at the site prior to mitigation or restoration of wetlands;

(B) the amount of wetland acreage and wetland function lost as a result of the project;

(C) how the wetland acreage and functions will be restored at the proposed compensation site;

(D) the length of time before the compensation site will be fully functional;

(E) the risk that the compensation project may not succeed;



(F) the differences in the location of the adversely affected wetland and the wetland subject to compensation that affect the services and values offered; and

(G) the requirement that permittees conduct five years of post-restoration monitoring for the restored wetlands, at which time the Agency can decide if further action is needed.

(d) When amending the Vermont Wetlands Rules under this section, the Secretary shall establish a Vermont in-lieu fee (ILF) compensation program for wetlands impacts that may be authorized as compensation for an adverse effect on a wetland when the permittee cannot achieve restoration. The Secretary may implement a Vermont ILF compensation program through agreements with third-party entities such as the U.S. Army Corps of Engineers or environmental organizations, provided that any ILF monetary compensation authorized under the rules shall be expended on restoration, reestablishment, enhancement, or conservation projects within the State at the HUC 8 level of the adversely affected wetland when practicable.

Vt. Stat. tit. 10 § 919. Wetlands program reports.

(a) On or before April 30, 2025, and annually thereafter, the Secretary of Natural Resources shall submit to the House Committee on Environment and Energy and to the Senate Committee on Natural Resources and Energy a report on annual losses and gains of significant wetlands in the State. The report shall include:

- (1) the location and acreage of Class II wetland and buffer losses permitted by the Agency in accordance with section 913 of this title, for which construction of the permitted project has commenced;
- (2) the acreage of Class II wetlands and buffers gained through permit-related enhancement and restoration;
- (3) the number of site visits and technical assistance calls conducted by the Agency of Natural Resources, the number of permits processed by the Agency, and any enforcement actions that were taken by the Agency or the Office of the Attorney General in the previous year for violations of this chapter; and
- (4) an updated mitigation summary of the extent of wetlands restored on-site compared with compensation performed off-site, in-lieu fees paid, or conservation.

(b) On or before April 30, 2027, and every five years thereafter, the Agency of Natural Resources shall submit to the House Committee on Environment and



Energy and to the Senate Committee on Natural Resources and Energy a comprehensive report on the status of wetlands in the State. The report shall include:

- (1) an analysis of historical trends of wetlands, including data analyzing the projects for which wetland permits were issued by county and tactical basin;
- (2) the results of each NWI Plus Mapping Project, including net acres mapped, dominant vegetative composition, connected tributaries, locations of confirmed ground truthing, if applicable, and any other hydrologic soil or vegetative observations or trends noted; and
- (3) relevant updates related to Class I and Class II wetlands to include additional wetlands identified under these categories, their composition and general characteristics, potential threats, patterns of use, and other unique features.

