



Water, Water Everywhere...

An Overview of Vermont's Regulation of Water in All Its Forms

DEC Water Divisions

- Drinking Water and Groundwater
- Watershed Management
- Water Investment
- Vermont PFAS
- Village Wastewater Solutions

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Drinking Water and Groundwater

Drinking Water and Groundwater

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The MISSION of the Drinking Water and Groundwater Protection Division is to protect human health and the environment for current and future generations by managing Vermont's drinking water supplies; protecting the quality and quantity of Vermont's groundwater resources; and regulating wastewater disposal activities that could adversely affect groundwater. The Division accomplishes this mission through its outreach, education, assistance, and regulatory activities.

Water Investment

The Water Investment Division coordinates investment of State and federal funding in all types of clean water and drinking water infrastructure in Vermont.

The Division manages the federal Clean Water and Drinking Water State Revolving Funds (SRFs) for clean water and drinking water infrastructure, and the Department's proportion of annual State Clean Water Fund and Capital Fund dollars that support water infrastructure throughout Vermont.

The Division coordinates annual reporting for all funds, publishing annual State Revolving Fund, Clean Water Investment, and Tactical Basin Planning Reports, and serves to integrate other agencies of State Government that also participate in clean water funding, such as the Agencies of Agriculture, Food and Markets; Commerce and Community Development; and Transportation.

The Division provides project engineering and implementation services to the Agency for a variety of projects, including the construction and maintenance of State park facilities, fish culture stations, access areas, and dams.

The Division also operates the Dam Safety Program, which regulates nonpower, nonfederal dams and endeavors to protect public safety relative to dams.

Water Investment

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Watershed Management

Watershed Management

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Watershed Management Division Public Notices

Welcome to the Watershed Management Division

The Watershed Management Division is responsible for **protecting, maintaining, enhancing** and **restoring** the quality of Vermont's surface water resources. Inherent in this effort is the support of both healthy ecosystems and public uses in and on Vermont's 800 lakes and ponds, 23,000 miles of rivers and streams and 300,000 acres of wetlands.

The Division includes three media-specific programs, [Wetlands](#), [Rivers](#) and [Lakes](#), that provide for the comprehensive management of these resources through science-based management and permitting programs and activities. The Division also administers federally delegated [Stormwater](#) and [Wastewater](#) permitting programs that regulate discharges to surface waters. The [Monitoring and Assessment](#) program monitors and assesses surface water quality and supports the development of plans and reports that identify protection and restoration needs and actions. The [Business and Operational Support Services](#) program provides administrative, financial, and compliance services for the entire Division, with the goal of promoting efficiency, enhancing consistency, and better leveraging technology.

Summary of the Clean Water Act

33 U.S.C. §1251 et seq. (1972)

The Clean Water Act (CWA) establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters. The basis of the CWA was enacted in 1948 and was called the Federal Water Pollution Control Act, but the Act was significantly reorganized and expanded in 1972. "Clean Water Act" became the Act's common name with amendments in 1972.

Under the CWA, EPA has implemented pollution control programs such as setting wastewater standards for industry. EPA has also developed national water quality criteria recommendations for pollutants in surface waters.

The CWA made it unlawful to discharge any pollutant from a point source into navigable waters, unless a permit was obtained:

- EPA's [National Pollutant Discharge Elimination System \(NPDES\)](#) permit program controls discharges.
- Point sources are discrete conveyances such as pipes or man-made ditches.
 - Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need a NPDES permit;
 - Industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters.

Quick Links

- [2018 version of CWA from the U.S. Code](#) [🔗](#) (233 pp, 1.23 MB)
- The official text of the CWA continues to be available in [the United States Code](#) [🔗](#) from the US Government Printing Office

Summary of the Safe Drinking Water Act

42 U.S.C. §300f et seq. (1974)

The Safe Drinking Water Act (SDWA) was established to protect the quality of drinking water in the U.S. This law focuses on all waters actually or potentially designed for drinking use, whether from above ground or underground sources.

- The Act authorizes EPA to establish minimum standards to protect tap water and requires all owners or operators of public water systems to comply with these primary (health-related) standards.
- The 1996 amendments to SDWA require that EPA consider a detailed risk and cost assessment, and best available peer-reviewed science, when developing these standards.
- State governments, which can be approved to implement these rules for EPA, also encourage attainment of secondary standards (nuisance-related).
- Under the Act, EPA also establishes minimum standards for state programs to protect underground sources of drinking water from endangerment by underground injection of fluids.

Quick Links

- The official text of SDWA is available in [the United States Code](#) [🔗](#), from the U.S. Government Printing Office

Why? Largely, Because Congress Says So.

The Clean Water Act (CWA)

The CWA aims to prevent, reduce, and eliminate pollution in the nation's water in order to “restore and maintain the chemical, physical, and biological integrity of the Nation's waters.” 33 U.S.C. § 1251 (CWA § 101).

The CWA achieves these purposes in multiple ways—water quality requirements on states, permitting requirements, wetlands regulation, funding, and others.

CWA Requirements- NPDES Permitting



- Discharge of pollutants from a point source into a navigable water-e.g., wastewater treatment, industrial discharge, etc.
- The construction stormwater permit for disturbance of more than one acre of land.
- The multisector general permit for stormwater runoff from industrial sites.
- The municipal separate storm sewer permit for stormwater control in specified towns.
- The concentrated animal feeding operation permit for certain farms that have an actual discharge or are proposing an actual discharge.

Residual Designation Authority (RDA)

- EPA has "residual designation" authority to require permits for other discharges or categories of discharges on a case-by-case basis when it determines that:
 - the discharge contributes to a violation of water quality standards;
 - the discharge is a significant contributor of pollutant to a water; or
 - controls are needed for the discharge based on wasteload allocations that are part of a TMDL that address the pollutant(s) of concern.

40 CFR 122.26(a)(9)(i)(C) and (D)



CWA Permitting



- EPA's enforcement of the CWA operates largely through the CWA permitting programs with RDA as a hook.
- EPA may delegate a state agency as the permitting and enforcement authority in the state.
- In 1974, EPA delegated ANR as the CWA permitting authority for Vermont.
 - Approximately 47 states have been delegated.
- EPA retains oversight over permit issuance and may make recommendations and require conditions for federally required permits such as wastewater permits.

Vermont-Specific Permitting

Vermont has enacted permitting requirements in addition to the federal CWA, including:

- State stormwater operating permits for construction or expansion of ½ acre of impervious surface (2022);
- State permitting for activities in a significant wetland or buffer of a significant wetland;
- Stream alteration permits for altering the course of a watercourse by moving, filling, or excavating 10 cubic yards of instream material in any year;
- Lake shoreland permits for cleared area or impervious surface in a lake shoreland area; and
- State large farm and medium farm permitting.



CWA and Quality

The CWA also establishes requirements for States to:

- 1) establish water quality standards for State waters (CWA §303(a));
- 2) regularly assess whether State waters meet the standards (CWA §303(d)(1)(A)); and
- 3) develop plans (TMDLs) to clean up waters that don't meet standards. (CWA §303(d)(1)(C)).

CWA and Quality

- The standards must ensure full support of designated uses of the water. The designated uses are:

Public Water Supply	Aesthetics
Fishing	Irrigation
Boating	Aquatic Biota
Swimming	Aquatic Habitat

- States can designate other uses for protection, but to remove a use for a water requires completion of a CWA use attainability analysis.

CWA and Quality

- A surface water is classified for each designated use. The class of the water determines the management objectives and the minimum water quality criteria. There are four possible classes of Vermont surface waters:
 - Class A(1) – waters in their natural condition that have significant ecological value;
 - Class A(2) – waters that are suitable for a public water source with filtration and disinfection or other required treatment;
 - Class B(1) – waters in which one or more uses are of demonstrably and consistently higher quality than Class B(2) waters; and
 - Class B(2) – good quality waters that support all designated uses.

CWA and Quality

- Most waters of the State have been designated by the General Assembly as B(2) unless reclassified by DEC by rule.
- According to ANR, as of April 2023, 139 waters currently meet the standard for reclassification from B(2) or other existing classification. See DEC 2022-2023 Water Quality Monitoring and Assessment Report.
- If a water meets a standard for an existing use, the use must be maintained and protected. If a water does not meet the standard for an existing use, the water is impaired for that use.
- This maintenance and protection of standards is not a concept, but a requirement of the CWA known as the Antidegradation Policy.
- State water quality standards are required to include an Antidegradation Policy and a methodology to implement the policy. The VWQS currently lack the methodology.
- The General Assembly enacted statute requiring DEC to adopt the implementation policy by rule by 2016, see 10 V.S.A. §1251(c), but DEC has not.

Status of Vermont Water Quality

- The CWA requires states to report every two years on the quality of state waters.
- 7,100 miles of rivers and streams.
- 446 lakes, reservoirs, or ponds over 10 acres. 206 over 6 acres. Total 242,219 acres of lakes, reservoirs, and ponds.
- Approximately 300,000 acres of freshwater wetlands.
- Most waters meet State standards, but some do not and are designated as impaired or altered.
 - Impaired waters require a TMDL or other remediation.
 - Altered waters occur when designated uses are affected by aquatic nuisance species or flow issues.

Watershed Management Division
2022-2023 Water Quality Monitoring and Assessment Summary
Report



A large orange circle on the left side of the slide, partially cut off by the edge.

But, It's Not All Hunky Dory

- Water quality issues remain, many of which likely will endure.
 - Some of the outstanding issues have already been discussed—CAFO permitting, three-acre permitting, antidegradation implementation, and reclassification of waters.
 - Other issues need to be addressed by the General Assembly, the courts, or the relevant agencies (EPA, DEC, AAFM).
- 
- A series of four blue curved line segments in the bottom right corner, arranged in a roughly circular pattern.

Section 401 Certification

The Clean Water Act gives states and authorized Tribes the authority to grant, deny, or waive certification of proposed federal licenses or permits that may discharge into waters of the United States.

§1341. Certification

(a) Compliance with applicable requirements; application; procedures; license suspension

(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

CWA §401 and Water Quality Standards

Water Quality Certification (Section 401)



Under Section [401\(a\)\(1\)](#) of the Clean Water Act ([33 USC § 1341](#)), states have the authority to review and approve, condition, waive, or deny water quality certification for any activity that is subject to a Federal permit or license and may result in a discharge to waters of the United States.

In Vermont, Section 401 Water Quality Certification (WQC) applications are reviewed to determine if the proposed activity will comply with the [Vermont Water Quality Standards](#) and other requirements of State law. Section 401 authority applies, for example, to projects requiring a permit from the U.S. Army Corps of Engineers (USACE) or a hydropower license from the Federal Energy Regulatory Commission (FERC).

For information regarding Section 401 Water Quality Certifications for activities requiring a permit from USACE, contact: ANR.WSMD401@vermont.gov; 802-490-6131

For information regarding Section 401 Water Quality Certifications for activities requiring a license from FERC, contact: [Jeff Crocker](#); 802-490-6151

Examples of Federal permits / licenses that may require Section 401 Water Quality Certification:

- A permit from the USACE pursuant to [§9](#) or [§10](#) of the Rivers and Harbors Act for work or structures in or affecting navigable waters.
- A permit from the USACE pursuant to [§404](#) of the [Clean Water Act \(CWA\)](#) Pollutant for the placement of fill or discharge of dredged materials into waters of the United States.
- [FERC](#) hydropower license. FERC does not require a [§401 certification](#) before acting on a FERC exemption application, the Secretary deems certification necessary to fulfill the Secretary's obligations in the FERC process as a fish and wildlife resource agency.
- A discharge permit issued by the U.S. Environmental Protection Agency (EPA) pursuant to [§402](#) of the CWA and the National Pollutant Discharge and Elimination System (NPDES) program for a point source discharge of pollutant(s) into waters of the United States (visit the [Vermont Stormwater Program page](#) for information regarding NPDES permit programs).
- A license issued by the [Nuclear Regulatory Commission \(NRC\)](#).
- Any other federal license or permit to conduct any activity, including, but not limited to, the construction or operation of facilities, which may result in any discharge into waters of the United States.

DEPARTMENT OF ENVIRONMENTAL CONSERVATION LEGISLATIVE REPORT

Green River Reservoir Dam and Dike Study

Year: 2025

Date reported: August 29, 2025

Authorizing statute: 2022 Acts and Resolves, No. 83, Section 46, amended in 2024 Acts and Resolves No. 121, Section 24, amended in 2025 Acts and Resolves No. 319, Section 18

Committees: House Committees on Environment and Energy and on Appropriations and the Senate Committee on Natural Resources and Energy and on Appropriations

In 2010, the Morrisville Hydroelectric Project (multi-dam project including Cadys Falls, Morrisville, Green River, and Lake Elmore) was required to go through a FERC relicensing process which resulted in ANR issuing a Section 401 Water Quality Certification ("401 WQC") for the Green River hydro-facility. The 401 WQC governs how the facility can be operated in accordance with the Federal Clean Water Act. MW&L evaluated operating the facility under the new 401 WQC and determined doing so would result in a financial loss and an unfair economic burden being placed on their rate payers. This finding led to the MW&L board of trustees writing a letter to the Governor's Office asking the State to consider purchasing the Green River facility. In order to engage in any such discussion, it is imperative for the State to have a comprehensive understanding of the current condition of the dam and dike and the costs and benefits that would likely accrue with ownership, which resulted in this study being performed.



May 21, 2025

MEMORANDUM

SUBJECT: Clarification regarding the Application of Clean Water Act Section 401 Certification

FROM: Peggy S. Browne, Acting Assistant Administrator

Browne,
Peggy

Digitally signed by
Browne, Peggy
Date: 2025.05.21
17:51:21 -04'00'

Consistent with the overall cooperative federalism framework of the Clean Water Act, Section 401 authorizes states and authorized Tribes to play a role, but a specific and limited one, in the federal licensing or permitting process. The U.S. Environmental Protection Agency, as the lead federal agency for administering the CWA, is responsible for developing regulations and guidance to ensure effective implementation of CWA programs, including Section 401. The agency promulgated regulations on CWA Section 401 certifications in September 2023 (2023 Rule). Recently, some stakeholders have raised questions about potential applications of the 2023 Rule's scope of certification.¹ The purpose of this document² is to reiterate the EPA's longstanding position that states and Tribes must utilize CWA Section 401 only for its statutory purpose – to protect water quality – and not as a weapon to shut down projects for reasons with no basis in the statute or applicable regulations. A certifying authority's evaluation is limited to considering adverse impacts to water quality, and only such impacts insofar as they prevent compliance with applicable water quality requirements.

Ten members of Congress representing New York districts have petitioned Gov. Kathy Hochul to withhold the state's water quality certification needed for a natural gas pipeline in New York waters.

"If you want regulatory certainty, I encourage you not to whipsaw the country back to the 2020 Rule," advised Kelly Wood, senior counsel with the Washington state attorney general's office. He urged EPA to look back at the feedback the agency received in lead up to both the 2020 Rule and the 2023 Rule. "People around the country that actually implement Section 401 are almost universally opposed to making sweeping changes. That is for the simple reason that the interpretation of Section 401 that had successfully governed that work without problem or controversy for 50 years prior to the 2020 rule, and was restored in the 2023 rule, simply works. Almost all Section 401 certifications are granted on time, without controversy, without fanfare."

 **THE PACKER**

By **Kerry Halladay**
Updated July 31, 2025 12:40 PM

Wetlands— E.O. No. 06-25. Promoting Housing Construction and Rehabilitation

Section III: Environmental Review Streamlining

3.1 Wetlands Modification For residential housing and mixed use projects that include a housing component in designated areas, such as Downtowns, Village Centers, New Town Centers, Growth Centers, Neighborhood Development areas, and Opportunity Zone areas served by public sewer, or with soils that are adequate for wastewater disposal, or extending to the terminus of the areas served by public sewer or water services if beyond area of the development district; areas that receive a Tier 1A or 1B designation under 10 V.S.A. §6033, and locations meeting the eligibility requirements established in 10 V.S.A § 6081(z) for an interim exemption from Act 250 permit or permit amendment requirements:

- Class II wetlands are limited to those features identified on the most current VSWI maps and no state wetland permits are required for impacts to unmapped Class II wetlands.
- Protective buffer zones around Class II wetlands are reduced to 25 feet.

Projects must comply with federal wetland requirements. Additionally, no later than February 1, 2026, the Agency of Natural Resources shall commence rulemaking to ensure that these wetland provisions are established in rule prior to the expiration of this Executive Order.



INITIAL DEC IMPLEMENTATION GUIDANCE

Information Regarding Wetlands Permitting Modification

In developing interim guidance, ANR Secretary Moore determined the most prudent path forward is to fully implement the wetlands-related provisions of the EO through amendment to the Vermont Wetland Rules. The proposed rule amendment would create a new provision allowing certain residential housing projects in designated areas to proceed without a wetland permit. Certain projects may qualify when the project activity avoids Class I wetlands and their buffers, mapped Class II wetlands identified on the Vermont Significant Wetlands Inventory, and the first 25 feet of the contiguous buffer zone for those mapped Class II wetlands. This change supports Vermont's housing goals by reducing permitting requirements for qualifying projects while maintaining protections for mapped wetland resources.

Accordingly, certain changes to state wetland permitting under 3.1 of the EO are not effective immediately. In the interim, the current Vermont Wetland Rules (2023) remain in effect. As part of guidance linked above, DEC has provided information regarding wetland permitting and buffer protection widths in designated areas during the intervening time until the Rule is adopted.

But Statute Controls Over Rules

10 V.S.A. §913(a)

(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.

10 V.S.A. §902(11)

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

10 V.S.A. §902(7)

(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.

But Statute Controls Over Rules

10 V.S.A. §902(9)

(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 V.S.A. §914. Wetlands 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.

Attorney General Opinion on E.O. 06-25

c. Section 3.1 (Wetlands)

Section 3.1 states two objectives related to wetlands: relaxation of certain permitting requirements and reduction of certain buffer zones. Each is addressed below.

i. Permitting Limitations

Section 3.1 first provides that “Class II wetlands are limited to those features identified on the most current VSWI maps and no state wetland permits are required for impacts to unmapped Class II wetlands.” EO 06-25, § 3.1.

Wetlands permitting is required by 10 V.S.A. § 913(a). Unpermitted activity is prohibited, except as provided by Department of Conservation rule. *Id.* This statute applies to “significant wetlands,” which include a Class II wetland, *id.* § 902(11), defined as either one identified on the inventory maps or one that the Secretary determines requires protection. 10 V.S.A. § 902(7).

As authority for its objective, the Order points to the Secretary’s existing discretion. EO 06-25 at 3. It appears to construe the Secretary’s authority to make wetlands determinations as including the authority to categorically decline to classify certain, unmapped wetlands as Class II wetlands and thereby exempt them from permitting. *Id.* at 2-3 (citing 10 V.S.A. § 914(a), providing that Secretary may determine whether any wetland is a Class II or Class III wetland).

The Secretary has discretion regarding wetlands classification in particular cases. Neither the Secretary nor the Governor, however, can unilaterally create a new, categorical exception to wetlands permitting requirements because statute requires that permitting exemptions be created by rule. See 10 V.S.A. § 913(a) (“[e]xcept for allowed uses adopted by the Department by rule,” permits required)

Attorney General Opinion on E.O. 06-25

ii. Buffer Zones

Section 3.1 purports to reduce to 25 feet the protective “buffer zones” around Class II wetlands impacted by housing projects in certain areas.

The width of buffer zones for Class II wetlands “shall extend at least 50 feet . . . Unless the Secretary determines otherwise under section 914” of title 10. 10 V.S.A. § 902(9); see also Vt. Wetland Rules § 4.2. Under § 914, 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.” 10 V.S.A. § 914(b); see also Vt. Wetland Rules § 4.3(b)(3).

These provisions afford the Secretary certain discretion. They do not, however, give the Secretary authority to immediately and categorically halve the statutory 50-foot presumptive buffer zone around Class II wetlands.

Draft ANR Rules in Response

626 Construction of residential housing projects and related required utilities, including draining, dredging, filling, grading, or vegetation clearing that meet the requirements of this subsection.

a. For the purposes of this subsection, “residential housing project” means a single-family, multi-unit, or multifamily housing project, a shelter project, or a mixed-use project that includes a residential housing component. This term does not include ancillary improvements to existing housing that are not necessary to the primary residential function.

b. The residential housing project is located within an area that is:

- 1) Designated under 24 V.S.A. Chapter 76A as a Downtown Development District, Village Center, New Town Center, Growth Center, or Neighborhood Development Area; or
- 2) Designated under 26 U.S.C. § 1400Z-1 as an Opportunity Zone; or
- 3) Outside of an area described in (b)(1) or (b)(2) of this section, and located along the extension or terminus of a public sewer or water line available for connection that serves the designated area; or
- 4) That has received Tier 1A or Tier 1B status from the Land Use Review Board under 10 V.S.A §§ 6033-6034; or
- 5) Eligible for the interim housing exemptions provided in 10 V.S.A. § 6081(z)(3)(dd); and

c. The residential housing project is located:

- 1) 25 feet or more outside of a Class II wetland mapped on the most current version of the Vermont Significant Wetlands Inventory, or

2) within any contiguous unmapped Class II wetland, or

3) within any unmapped Class II wetlands; and

d. For project sites described in (b)(1) and (b)(2) of this section, the project is:

1) Served by public sewer infrastructure; or

2) Located on soils adequate for wastewater disposal and capable of supporting one or more wastewater systems to serve all proposed units.

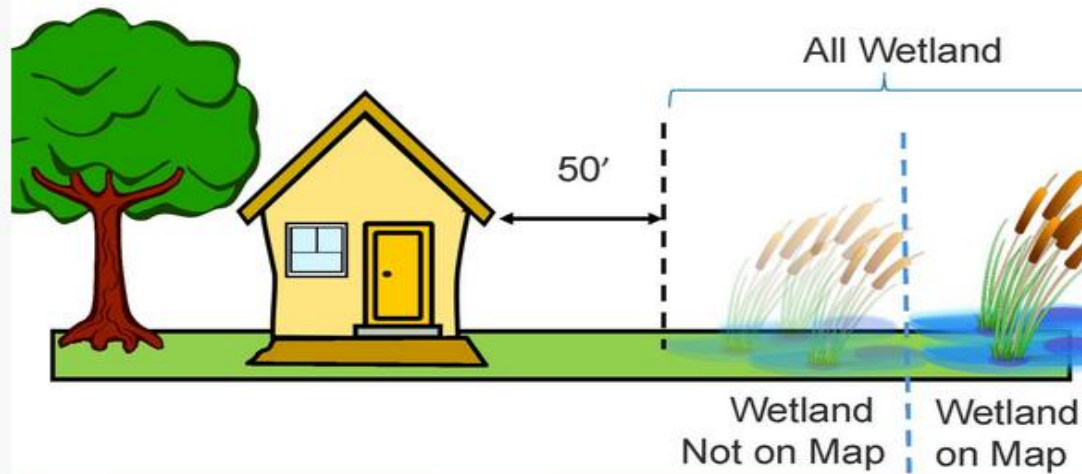
e. If a utility for a residential housing project that otherwise meets the criteria established by this section is proposed to cross a mapped Class II wetland or the area within 25 feet of a mapped Class II wetland, the utilities shall be:

- (i) Limited to linear utilities (defined for the purposes of this section as electricity, gas, water, sewer lateral, access road, driveway, or septic force main) that are necessary for the construction or use of the primary residential function of the project, for which crossing the wetland is practicably unavoidable, and that are proposed to be located at the narrowest portion of the wetland practicable; and
- (ii) Less than 5,000 square feet in permanent impact cumulatively, or, before project construction commences, offset credits have been purchased through the In Lieu Fee Program at a ratio following the U.S. Army Corps of Engineers’ New England District Compensatory Mitigation Standard Operating Procedures (April 26, 2024) as approved by the Secretary; and
- (iii) Designed, constructed, and maintained in compliance with Best Management Practices developed by the Secretary to prevent and minimize wetland loss.

f. No draining, dredging, filling, grading, or vegetation clearing will occur in any Class I wetland or its buffer zone.

Draft ANR Rules in Response

Existing VT Wetland Rules



Wetland area is determined by a wetland professional in the field (delineation). Residential housing projects must either avoid wetland and the fifty foot buffer zone or receive a permit. The wetland map, called the Vermont Significant Wetlands Inventory (VSWI) map, is used for planning purposes only.

Proposed VT Wetland Rules



Wetland area is not field reviewed by a wetland professional. Residential housing projects must either avoid VSWI and a 25-foot setback (unless it is a utility crossing) or receive a permit. The VSWI is used on the site plan instead of a delineation. Federal permitting requires field review of wetlands.

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

CONSERVATION LAW FOUNDATION,
INC. and VERMONT NATURAL
RESOURCES COUNCIL,

Plaintiffs,

v.

VORSTEVELD FARM, LLP

Defendant.

Case No. ____

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251–1389)

INTRODUCTION

1. This action is a citizen suit for declaratory relief, injunctive relief, and civil penalties brought by Plaintiffs Conservation Law Foundation (“CLF”) and Vermont Natural Resources Council (“VNRC”) (collectively, “Plaintiffs”) against Defendant Vorsteveld Farm, LLP (“Vorsteveld” or “Defendant”) for violations of the Federal Water Pollution Control Act (“Clean Water Act” or “CWA”), 33 U.S.C. §§ 1251–1389.
2. The CWA prohibits “any person” from discharging “any pollutant” from “any point source” to “navigable waters” unless authorized by a National Pollutant Discharge Elimination System (“NPDES”) permit. 33 U.S.C. §§ 1311(a), 1342.
3. In violation of the CWA, Defendant has discharged and continues to discharge pesticides and other pollutants into Dead Creek from at least eleven outfall pipes without a NPDES permit.
4. Dead Creek is a tributary of Lower Otter Creek and Lake Champlain. Defendant’s unpermitted discharges adversely affect all three waters and the ecosystems that they support.

Discharges from Farm Drainage

- CWA Citizen suit claiming that effluent from subsurface tile drains for agricultural use contain pesticides and other substances that constitute an unpermitted discharge of pollutants that should be permitted under a CWA NPDES permit.
- Case may present novel questions in Second Circuit regarding application of agricultural stormwater exception, irrigated return flow exception, and whether subsurface tile drainage is a point source or nonpoint source.

Other Issues—Are Everywhere with the Water

- Dam safety rules
- Riparian corridor rules
- State coordination of NFIP
- Wastewater system and potable water supply permitting for housing
- PFAS standards—drinking water and discharge
- Flood response and resilience
- Lake Champlain TMDL Implementation
- Three-acre General Permit
- Aquatic nuisance control
- Use of waters—wake boats, water supply, public access
- Drought—impacts on public water systems, agriculture