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July 20, 2026

Legislative Committee on Administrative Rules
State House
Montpelier, Vermont

Subject: 25-P040, relating to Vermont Wetland Rules

Dear Committee:

Please hold firm on your objection of May 18, 2026 that the final proposed rule fails to meet legislative intent; that it exceeds statutory authority; and that it is arbitrary.

This letter provides additional comments based on ANR's memorandum of July 14, 2026. This letter is also a follow up to my letter posted to your site on June 15, 2026. (Unfortunately that letter can be found only under my name as a witness and is not associated with 25-P040.)

I acknowledge that probably I am not stating anything that you do not already know. However, I provide this information to support my request that you maintain your objection to the final proposed rule.

Why ANR's July 14 response still does not overcome your objections

Agency authority I believe that ANR still claims incorrectly to have authority to adopt the revised final proposed rule in its response of July 14, 2026. ANR cites as authority only two subdivisions of two sections in 10 V.S.A. Chapter 37 (sections 905b(18) and 913(a)). Section 905(b)(18), cited in the memorandum, requires that the rules also be adopted in accordance with 3 V.S.A. chapter 25.

Section 841 of 3 V.S.A. chapter 25 requires (through reference to section 838) that the final proposed rule contain a scientific information statement and an economic impact analysis. There still is no scientific information statement and the submitted economic impact analysis still lacks any information on the economic impacts.

I pointed out these deficiencies in my letter of June 15 to you. That letter also refers to my January 14 comments to DEC on the proposed rule. The relevant portions of that letter are on pages 338 through 340 of the final proposed rule package submitted to you on April 8.

Conclusion ANR lacks authority to adopt the final proposed rule, because of its failure to provide all information required by 3 V.S.A. §841.

Legislative intent I believe that ANR still claims incorrectly that the final proposed rule is consistent with legislative intent.

Approval of wetland delineations

I have found nothing in either statutes or the revised final proposed rule that authorizes the Secretary to approve wetland delineations. This the revision to section 6.26 c. 2) appears to prevent using field delineations. The proposed revision is

No drainage, dredging, filling, grading, or vegetation clearing will occur nor will the residential housing project be located: within, or within 25 feet of, a class II wetland delineated within the past 10 years, provided that the delineation is or was approved by the Secretary.

The problem here is that neither statute nor the proposed rule gives the Secretary authority to approve wetland delineations. I acknowledge that wetland delineations are used in determining the limits of wetlands in permits. However using the delineations in the permits is not the same as approving them. Thus, no wetlands determinations can be used to void the allowed use of section 6.26 And of course, the proposed revision still has the same problem that contributed to your objection on May 21 (encroaching on the buffer of a Class II wetland).

My other comments on legislative intent from June 15 still apply to my interpretation that the revised final proposed rule is not consistent with legislative intent.

Arbitrary I still find that the proposed rule satisfies all three components of being arbitrary.

ANR's revised final proposed rule is arbitrary in limiting wetland delineations to those "approved" by the Secretary, when the Secretary lacks authority to "approve" delineations.

The purpose and applicability (section 1.1) submitted with the July 14 memo now strikes additional words that had been added in the previous version.. I am not sure where to put this comment so I have put it under arbitrary. Additions have been changed to deletions. The first paragraph of section 1.1 will now read:

It is the policy of the State of Vermont to identify, protect and significant wetlands and the values and functions which they serve in such a manner that net of such wetlands and their functions is achieved.

The proposed rule meets all three conditions for being arbitrary, even though only one condition is needed to be found arbitrary.

- (i) The claimed factual basis for section 6.26 of the rule is faulty because it fails to include the evaluations (facts) required by statutes and filing information. One of the missing documents is the scientific information study. Thus the basis used for the proposed rule does not rise to the level of a factual basis.
- (ii) The faulty factual basis for the proposed rule means that the proposed rule is not rationally connected to the required factual basis.
- (iii) I am a civil engineer whose experience includes permitting and wetlands. My background is one of many that would qualify an individual as a reasonable person. The decision made in the proposed rule does not make sense to me.

Conclusion I recommend that you find that ANR's response of July 14 does not overcome your objections of May 21, 2026.

Sincerely,
Thomas Weiss, P. E.