

**House Committee on Agriculture and Forestry
Wetland Regulation: Current and Proposed Permitting Requirements**

	Current Statute	Draft Proposal
Definition of a Wetland:	<p>“Wetlands” means those areas of the State that are inundated by surface or groundwater at 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.</p>	<p>“Wetlands” means those areas of the State that are inundated <u>or saturated</u> by surface or groundwater at a frequency <u>and duration</u> sufficient to support, <u>and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.</u> <u>Wetlands generally include swamps, marshes, bogs, and similar areas.</u></p> <p><i>*This is the federal definition of a wetland, provided in 33 C.F.R. § 328.3(c)(4). Class D soils are not necessarily wetlands; hydric soils are only one element used to define wetlands.</i></p>
Definition of a Class I wetland:	<p>(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.</p>	<p>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 <u>913(b)</u> of this title, determines is exceptional or irreplaceable in its contribution to Vermont’s natural heritage and, therefore, merits the highest level of protection. <u>Class I wetlands shall be designated by rule.</u></p> <p><i>*The functions and values assessed in determining whether a wetland is “exceptional or irreplaceable” would not change.</i></p>

<p>Definition of a Class II wetland:</p>	<p>“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.</p> <p><i>*Wetlands are determined to be Class II based on an evaluation of their functions and values. Those functions and values are currently listed in statute at 10 V.S.A. §905b(18)(A).</i></p>	<p>“Class II wetland” means a wetland other than a Class I or Class III wetland that <u>exhibits one or more of the following physical characteristics:</u></p> <p>(A) <u>The wetland is equal to or greater than 0.5 acres, or 21,780 square feet, in size.</u></p> <p>(B) <u>The wetland is greater than 5,000 square feet in size and contiguous with a stream or open body of surface water, or the wetland is within a river corridor or flood hazard area.</u></p> <p>(C) <u>The wetland is over 2,500 feet in elevation and contiguous with a stream.</u></p> <p>(D) <u>The wetland is greater than 2,000 square feet and contiguous with an impaired surface water;</u></p> <p>(E) <u>The wetland itself is an impaired surface water.</u></p> <p>(F) <u>The wetland is or contains peatland.</u></p> <p>(G) <u>The wetland is greater than 5,000 square feet in size and is a natural hillside seep.</u></p> <p>(H) <u>The wetland is a vernal pool.</u></p> <p>(I) <u>The wetland has a known occurrence of a wetland-dependent rare, threatened, or endangered species.</u></p> <p>(J) <u>The wetland has a known occurrence of a State-significant natural community.</u></p> <p>(K) <u>The wetland was determined to be Class II after October 1, 2020, and a permit was issued authorizing impacts to that wetland.</u></p> <p><i>*Under this proposed definition of Class II wetland, any wetland exhibiting one or more of the listed characteristics would be considered Class II. No individual assessment of function and value would be conducted to determine wetland classification.</i></p>
<p>Definition of a Class III wetland:</p>	<p>“Class III wetland” means a wetland that is neither a Class I wetland nor a Class II wetland.</p>	<p>“Class III wetland” means a wetland that is neither a Class I wetland nor a Class II wetland.</p>

<p>When is a permit required?</p>	<p>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.</p> <p><i>*All Activities in Class I and II wetlands and buffers that are not otherwise allowed uses require permits.</i></p>	<p><u>Except as provided in subsection (e) below, the following alterations within a Class I or Class II wetland or its buffer zone are prohibited without an individual permit, authorization under a general permit, or an order issued by the Secretary:</u></p> <p><u>(1) dredging or removing soil or other material;</u> <u>(2) draining, dewatering, or otherwise altering the hydrology of the wetland;</u> <u>(3) filling; and</u> <u>(4) cutting or removing vegetation.</u></p> <p><i>*EXCEPT for exempt activities identified in subsection (e) of the proposed language (which include the growing of food or crops) the above listed alterations, when conducted in Class I or II wetlands and buffers, require permits.</i></p>
<p>What is the permit fee?</p>	<p>For individual wetland permits, for general conditional use determinations issued under 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit, an administrative processing fee assessed under subdivision (2) of this subsection and an application fee of:</p> <p>(A) \$0.75 per square foot of proposed impact to Class I or II wetlands. (B) \$0.25 per square foot of proposed impact to Class I or II wetland buffers.</p> <p>(C) Maximum fee, for the conversion of Class II wetlands or wetland buffers to cropland use or for installation of a pipeline in a wetland for the transport of manure for the purpose of farming, as that term is defined in 10 V.S.A. § 6001(22), when the pipeline will serve or implement a water quality or conservation practice, \$200.00 per application. As used in this subdivision, “cropland” means land that is used for the production of agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing bushes, trees, or vines, and the production of Christmas trees.</p>	<p>Fees remain the same, but in addition, a maximum fee is established for the construction of any water quality improvement project, and for the construction of permanent structures used for farming. Water Quality Improvement Project is defined as follows:</p> <p><u>“Water Quality Improvement Project” means projects specifically designed and implemented to reduce pollutant loading in accordance with the requirements of a Total Maximum Daily Load Implementation Plan or Water Quality Remediation Plan, or pursuant to a plan for reducing pollutant loading to a waterbody. These projects include:</u></p> <p><u>(A) the retrofit of impervious surfaces in existence as of January 1, 2019 for the purpose of addressing stormwater runoff;</u></p> <p><u>(B) the replacement of stream-crossing structures necessary to improve aquatic organism passage, stream flow, or flood capacity;</u></p>

	<p>(C) Maximum fee, for the conversion of Class II wetlands or wetland buffers to cropland use, \$200.00 per application. As used in this subdivision, “cropland” means land that is used for the production of agricultural crops, including row crops, fibrous plants, pasture, fruit-bearing bushes, trees, or vines, and the production of Christmas trees.</p>	<p><u>(C) construction of the following conservation practices on farms, when constructed and maintained in accordance with Natural Resources Conservation Service Conservation Practice Standards for Vermont and the Agency of Agriculture, Food and Markets’ Required Agricultural Practices:</u></p> <ul style="list-style-type: none"> <u>(i) construction of animal trails and walkways;</u> <u>(ii) construction of access roads;</u> <u>(iii) designation and construction of a heavy use protection area;</u> <u>(iv) construction of artificial wetlands;</u> <p><u>and</u></p> <ul style="list-style-type: none"> <u>(v) the relocation of structures, when necessary, to allow for the management and treatment of agricultural waste, as defined in the Required Agricultural Practices Rule.</u> <p>As mentioned above, a maximum fee is also established for the construction of permanent structures used for farming:</p> <p><u>Maximum fee for the construction of a permanent structure used for farming, \$5,000.00, provided that the maximum fee for waste storage facility or bunker silo shall be \$200.00 when constructed and maintained in accordance with Natural Resources Conservation Service Conservation Practice Standards for Vermont and the Agency of Agriculture, Food and Markets’ Required Agricultural Practices.</u></p> <p><i>*The above water quality improvement practices are currently subject to the standard permit fee of \$0.75 per square foot of proposed impact to Class I or II wetlands and \$0.25 per square foot of proposed impact to Class I or II wetland buffers.</i></p>
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<p>Do I need a permit to grow food or crops?</p>	<p>No; all area used to grow food or crops in connection with farming are excluded from the definition of a wetland; therefore a permit is not needed for the growing of food or crops in regular rotation because the Agency only exercises jurisdiction over wetlands as defined in statute.</p>	<p>No; The growing of food or crops when conducted in connection with farming, on land that has been converted for the purpose of growing food or crops in ordinary rotation is exempt from wetland permitting requirements.</p>
<p>What constitutes “the growing of food or crops?”</p>	<p>Currently undefined in statute and rules; the Vermont Superior Court has determined that “[The] exemption does not apply to mere grazing, without more active cultivation . . . The verb “grow” in the definition of “farming activities” is used in its transitive sense: the crops are grown, and the farmer grows them. Merely <i>allowing</i> vegetation to grow, even if this entails annual brush-hogging, is too passive to amount to “growing” the vegetation, as the word is used in Section 3.1(a)(2).”</p> <p><i>*the growing of food or crops does not include the construction of new structures.</i></p>	<p><u>The growing of food or crops includes cultivating, harvesting, plowing, grazing, and seeding, but does not include the construction of any permanent structure located partially or wholly outside an agricultural production area and its associated buffer. A permanent structure includes a barn, bunker silo, waste storage facility, or sugarhouse.</u></p> <p><i>*cultivating, harvesting, plowing, grazing and seeding will be defined in the Wetland Rules, in a manner consistent with the federal definitions. Consistent with the federal regulations, “cultivation” includes physical methods of soil treatment employed within established farming lands to improve their growth, quality or yield.</i></p>
<p>Do I need a permit to implement Best Management Practices consistent with the RAPs in a Class II wetland?</p>	<p>Likely yes. A narrow exemption exists for RAPs conducted in areas used to grow food or crops that do <i>not</i> constitute a change in land use from the growing of food or crops. The maintenance of existing facilities such as ditches and trails is also currently an allowed use, and can be conducted in a Class II wetland without a permit. Otherwise, a permit is required for activities within Class II wetlands.</p> <p><i>*For context, there are 60 (of 102 total) NRCS Conservation Practices that can currently be conducted in a wetland without a permit.</i></p>	<p>It depends. The following BMPs when implemented on farms are explicitly exempt from wetland permitting:</p> <p><u>Activities conducted entirely within an agricultural production area and its associated buffer;</u> <u>installation of fencing, including livestock watering systems;</u> <u>construction or maintenance of trails and walkways up to 16 feet wide, including attendant stream crossings;</u> <u>maintenance of existing trails and walkways, including attendant stream crossings, or maintenance, but not construction, of drainage ditches;</u> <u>maintenance of existing buildings and structures;</u> <u>maintenance, restoration, reconstruction, rehabilitation, or upgrading of existing</u></p>

		<p><u>roads in wetlands, provided that work on existing roads results in an overall net increase in road width of no more than 20 percent beyond the original road width;</u> <u>construction or maintenance of farm ponds;</u> <u>construction or maintenance of grassed waterways;</u> <u>construction of stream crossings; and</u> <u>the installation of manure pipelines or other temporary impacts that do not result in any change to the original grade of the wetland and that allow for the impacted area to revert back to wetland, including the reestablishment of the existing wetland vegetation, within one year.</u></p> <p><u>A maximum \$200 permit fee is also established for the following alterations when conducted in a Class II wetland on a farm:</u> <u>(i) construction of animal trails and walkways;</u> <u>(ii) construction of access roads;</u> <u>(iii) designation and construction of a heavy use protection area;</u> <u>(iv) construction of artificial wetlands;</u> <u>and</u> <u>(v) the relocation of structures, when necessary, to allow for the management and treatment of agricultural waste, as defined in the Required Agricultural Practices Rule.</u></p> <p>A permit <u>is</u> required for the construction of new permanent structures, including the construction of new roads and drainage ditches, built wholly or partially outside of agricultural production areas.</p>
<p>Do I need a permit to convert a Class I or II wetland to agricultural production?</p>	<p>Yes. The maximum fee for a permit to convert Class II wetland or buffer to cropland is \$200.</p>	<p>Yes. The maximum fee for a permit to convert Class II wetland or buffer to cropland is \$200.</p>

<p>Do I need a permit to conduct forestry operations?</p>	<p>The statute does not speak to forestry operations, but the following silvicultural activities are allowed uses that can be conducted without permits, pursuant to Section 6 of the Vermont Wetland Rules:</p> <p>6.1 Silvicultural activities which:</p> <p>a. Comply with Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont adopted pursuant to 10 V.S.A. § 1259;</p> <p>b. Comply with silvicultural standards for deer wintering yards, established jointly by the Departments of Fish and Wildlife and Forests, Parks and Recreation, when occurring in significant wetlands or adjacent buffer zones containing deer wintering yards mapped by the Fish and Wildlife Department; and</p> <p>c. Restrict equipment maintenance and the storing or changing of oil, grease, or other petroleum products to log landings; and d. Restrict log landings to uplands or buffer zones except that landings not requiring the placement of fill may be located within the wetland when the ground is frozen.</p> <p>6.2 The restoration, reconstruction, rehabilitation, or upgrading of existing roads used solely for silvicultural purposes provided that such roads are not increased in width by more than 20%.</p> <p>6.3 The construction of new roads used solely for silvicultural purposes in buffer zones. 6.4 The removal of beaver dams to the extent necessary to prevent impairment of the use of existing logging roads or ongoing silvicultural management practices.</p> <p>6.5 Silvicultural activities including the uses allowed by subsections b, c and d above, when occurring in any Class I wetland, the buffer zone for any Class I wetland and in any Class II wetland specifically designated by the Secretary or Panel to protect habitat for any species on the state or federal list of threatened or endangered species, that comply with</p>	<p>The following Forestry operations are exempt from permitting requirements:</p> <p><u>(4) Forestry operations conducted in Class I or II wetlands and their buffer zones, consistent with the following requirements:</u></p> <p><u>(A) The forestry operation shall be conducted in accordance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs as adopted by the Department of Forests, Parks and Recreation. The removal of trees for other land uses, including commercial or residential development or conversion to agricultural production, is not exempt and may require a wetland permit.</u></p> <p><u>(B) The forestry operation shall be conducted in compliance with the Management Guidelines for Deer Wintering Areas in Vermont, established jointly by the Department of Fish and Wildlife and the Department of Forests, Parks and Recreation, when occurring in wetlands or buffer zones containing deer wintering areas mapped by the Fish and Wildlife Department.</u></p> <p><u>(C) Log landings shall be restricted to upland or buffer zones, except that landings not requiring the placement of fill may be located within Class II wetlands when the ground is frozen.</u></p> <p><u>(D) Equipment maintenance and the storing or changing of oil, grease, or other petroleum products shall be restricted to log landings.</u></p> <p><u>(E) The construction of new truck roads in buffer zones when necessary, and the maintenance, restoration, reconstruction, rehabilitation, or upgrade of existing truck roads in buffer zones, when used solely for forestry operations.</u></p> <p><u>(F) Existing truck roads in wetlands may be maintained, restored, reconstructed, rehabilitated, or upgraded, provided that work on existing truck roads results in an overall net increase in road width of no more than 20 percent beyond the original road width, that includes the combined total width of the shoulders, roadbed, and ditches.</u></p>
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	<p>a plan approved in writing by the Commissioner of the Department of Forests, Parks and Recreation.</p>	<p><u>(G) The construction of permanent buildings in Class I or II wetlands and buffer zones, and the construction of new truck roads in Class I or II wetlands, is not exempt and requires a wetland permit.</u></p> <p><u>(H) The removal of beaver dams may be allowed to the extent necessary to allow for the use of existing logging roads or ongoing forestry operations.</u></p> <p><u>(I) Forestry operations conducted in any Class I wetland or its buffer zones, or any Class II wetland specifically designated by the Secretary as providing habitat for any species on the state or federal list of threatened or endangered species, shall comply with a plan approved in writing by the Commissioner of Forests, Parks and Recreation.</u></p>
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