

**WETLAND PERMIT FEES  
FOR PROJECTS THAT PROVIDE A WATER QUALITY BENEFIT OR  
IMPLEMENT A CONSERVATION PRACTICE**

**2018 Act 194 § 8b**

**Submitted to the**

House Committee on Appropriations  
House Committee on Ways and Means  
House Committee on Natural Resources, Fish and Wildlife  
Senate Committee on Appropriations  
Senate Committee on Finance  
Senate Committee on Natural Resources and Energy

Department of Environmental Conservation

Vermont Agency of Natural Resources

January 15, 2019

## Executive Summary

Section 8b of 2018 Act 194 mandates the Vermont Agency of Natural Resources to submit a report on “whether and how the State should provide lower fees for activity or disturbance in a wetland or wetland buffer when the activity or disturbance provides a water quality benefit or implements a conservation practice.”

The Agency recommends a maximum wetland permit fee of \$500 for activities or disturbances in a wetland or wetland buffer when the activity or disturbance qualifies as a water quality improvement project, as defined in statute. To effect this change, the Agency suggests the following statutory changes:

### **3 V.S.A. § § 2822(j)(26):**

(D) Maximum fee, for the construction of any Water Quality Improvement Project as defined in 10 V.S.A. § 902(12), in any Class II wetland or buffer, \$500 per application.

### **10 V.S.A. §902:**

(12) “Water Quality Improvement Project” means the following projects, specifically designed and implemented to reduce pollutant loading in accordance with the requirements of a Total Maximum Daily Load (TMDL) Implementation Plan or Water Quality Remediation Plan (WQRP), or pursuant to a plan for reducing pollutant loading to a waterbody:

(A) The retrofit of impervious surfaces in existence as of January 1, 2019, for the purpose of addressing stormwater runoff;

(B) The replacement of stream-crossing structures necessary to improve aquatic organism passage, stream flow or flood capacity;

(D) Construction of the following conservation practices on farms, when constructed and maintained in accordance with Natural Resources Conservation Service (NRCS) Conservation Practice Standards for Vermont:

(i) Construction of stream crossings;

(ii) Construction of animal trails and walkways;

(iii) Construction of access roads;

(iv) Designation and construction of a heavy use protection area; and

(v) Construction of artificial wetlands.

**Repeal sunset provision of 3 V.S.A. § § 2822(j)(26)(C) and alternative language effective July 1, 2019, so that 3 V.S.A. § § 2822(j)(26)(C) permanently reads:**

(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.

## WETLAND FEE REPORT JANUARY 2019

**BACKGROUND:** Title 10, Section 913 of the Vermont Statutes Annotated requires all persons to obtain a state wetlands permit for activities within a wetland and its protected buffer zone, with the exception of certain allowed uses and exemptions. To obtain a wetlands permit, applicants must establish that the proposed activity will not have an undue adverse impact to the wetland's functions and values, including flood storage, water quality protection and wildlife habitat.



The Vermont Department of Environmental Conservation's (DEC) wetlands program (program), within the Agency of Natural Resources (Agency), has six full-time employees (FTEs) dedicated to administering the Vermont Wetland Rules for over 300,000 acres of wetland. To pay for the program's review of permit applications and pre-application work, there are application fees based on the square footage of wetland or buffer area impacted.

Permit fees account for 70% of the DEC wetland program's funding. The program typically receives around 100 applications a year for wetland permits. While permit applications for activities on active farms are rare (only one in 2018), the program frequently receives applications for stormwater retrofit projects. As a result of the Vermont Clean Water Act (2015 Act 64), DEC anticipates an increase in wetland permit applications for water quality projects and conservation practices within areas of protected wetland and buffer zone, but no specific numbers are forecasted.

Not all water quality benefit projects currently require wetland permitting fees. Wetland or stream restoration projects are allowed uses which require an approved plan and do not require a permit or associated fees. In November 2018, the program issued a non-reporting general permit for certain water quality practices with limited wetland and buffer zone impacts. The non-reporting general permit does not require a fee because it is self-certifying.

**ANALYSIS:** There are multiple ways to incentivize water quality practices in wetlands, such as lowering permit fees, providing grants, creating exemptions, and creating non-reporting permits.

The Agency recommends tightly defining the water quality practices that are eligible for lower wetland permit fees. It is important to note that a poorly sited water quality practice may not actually provide a water quality benefit. The creation of a water quality practice that reduces the size of a wetland or its buffer may not realize the full water quality benefit had the practice been located entirely outside of the wetland. On the other hand, trail and road conservation practices constructed within an actively farmed area would provide a net water quality benefit by

excluding livestock and farm equipment from a larger area of wetland than would be impacted by the laneway itself.

Compared to other methods of incentivizing water quality practices, lower permit fees will have a direct impact on the revenues that support the agency's wetlands program. The Agency therefore supports lower wetland permit fees only for those projects that will have a significant water quality benefit.

### **CURRENT FEE SCHEDULE IN 3 V.S.A. §2822(j)(26):**

"For individual conditional use determinations, 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:

- (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.
- (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.
- (D) \$0.25 per square foot of proposed impact to Class I or II wetlands or Class I or II wetland buffer for utility line, pipeline, and ski trail projects when the proposed impact is limited to clearing forested wetlands in a corridor and maintaining a cleared condition in that corridor for the project life.
- (E) \$1.50 per square foot of impact to Class I or II wetlands when the permit is sought after the impact has taken place.
- (F) \$100.00 per revision to an application for an individual wetland permit or authorization under a general permit when the supplement is due to a change to the project that was not requested by the Secretary.
- (G) Minimum fee, \$50.00 per application."

**CONCLUSION:** Establishing a maximum \$500 wetland permit fee for water quality improvement projects and conservation practices within protected wetland or buffer zone would likely increase the number of practices on the landscape. The Agency is also pursuing other tools, such as exemptions and non-reporting general permits, to incentivize water quality improvements in wetland areas.