

1 Introduced by Committee on Agriculture and Forestry
2 Referred to Committee on
3 Date:
4 Subject: Agriculture; conservation and development; farming; wetlands
5 Statement of purpose of bill as introduced: This bill proposes to clarify and
6 expand those lands that are not wetlands subject to regulation by the State
7 because of the conduct of farming on the land.

8 An act relating to the regulation of farming in wetlands

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 Sec. 1. 10 V.S.A. § 902 is amended to read:

11 § 902. DEFINITIONS

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

14 (1) “Board” means the Natural Resources Board.

15 (2) “Department” means Department of Environmental Conservation.

16 (3) “Waters” or “surface waters” means any and all rivers, streams,
17 brooks, creeks, lakes, ponds, or stored water, ~~and groundwaters~~, excluding
18 municipal and farm water supplies.

19 (4) “Water resources” means the waters and groundwater of the State
20 and the values inherent or potential in waters and their uses.

1 (5) “Wetlands” means those areas of the State that are inundated by
 2 surface water or groundwater with a frequency sufficient to support significant
 3 vegetation or aquatic life that depend on saturated or seasonally saturated soil
 4 conditions for growth and reproduction. Such areas include marshes, swamps,
 5 sloughs, potholes, fens, river and lake overflows, mud flats, bogs, and ponds,
 6 but excluding ~~such areas as grow food or crops in connection with~~ used for
 7 farming activities, including farming on areas of a farm lying fallow or idle as
 8 part of a conventional rotational cycle, provided that the area lying fallow or
 9 idle is not converted to a use other than farming and does not, due to the time
 10 the area is left fallow or idle, require modifications to the hydrological regime
 11 to resume farming on the area.

12 * * *

13 (13) “Drainage” shall have the same meaning as “minor drainage” under
 14 33 C.F.R. § 323.4(a)(1)(iii)(C)(1).

15 (14) “Farm” means a parcel or parcels of land owned, leased, or
 16 managed by a person and devoted primarily to farming.

17 (15) “Farming” shall have the same meaning as defined in subdivision
 18 6001(22) of this title, provided that under this chapter “farming” shall also
 19 include:

20 (A) Cultivating, harvesting, seeding, and plowing consistent with the
 21 requirements of 33 C.F.R. § 323.4.

1 (B) Drainage, including all ditching authorized under 33 C.F.R.
2 § 323.4

3 (C) Maintenance, including emergency reconstruction, of a farm
4 structure consistent with the requirements of 33 C.F.R. § 323.4(a)(2);

5 (D) Construction or maintenance of a farm pond, stock pond, or
6 irrigation ditch, or the maintenance, but not construction, of drainage ditches,
7 consistent with the requirements of 33 C.F.R. § 323.4(a)(3);

8 (E) Construction or maintenance of farm roads or forest roads, where
9 such roads are constructed and maintained in accordance with best
10 management practices consistent with the requirements of 33 C.F.R.
11 § 323.4(a)(6).

12 (16) “Farm structure” means a structure that is used by a person for
13 farming that is subject to the required agricultural practices, including a silo, a
14 building to house livestock, a building to raise horticultural or agronomic
15 plants, a barnyard, a waste storage facility, or a waste management system,
16 either of which is created from an assembly of materials. “Farm structure”
17 shall not mean a dwelling for human habitation.

18 (17) “Groundwater” means water below the land surface, and does not
19 include surface waters.

20 Sec. 2. 10 V.S.A. § 905b is amended to read:

21 § 905b. DUTIES; POWERS

1 The Department shall protect and manage the surface water and
2 groundwater resources of the State in accordance with the provisions of this
3 subchapter and shall:

4 * * *

5 (15) In order to adequately protect the interest of the State in its surface
6 water and groundwater resources, and subject to limitations of duties otherwise
7 provided by law, cooperate with the appropriate agencies of the federal and
8 Canadian governments or of this or other states, or any interstate bureau,
9 group, division, or agency with respect to the use of water from lakes and
10 ponds, which are without or wholly or partially contained within this State, and
11 to endeavor to harmonize any conflicting claims ~~which~~ that might arise
12 ~~therefrom~~.

13 * * *

14 (18) Study and investigate the wetlands of the State and cooperate with
15 municipalities, the general public, other agencies, and the Board in collecting
16 and compiling data relating to wetlands, propose to the Board specific
17 wetlands to be designated as Class I wetlands, issue or deny permits pursuant
18 to section 913 of this title and the rules authorized by this subdivision, issue
19 wetland determinations pursuant to section 914 of this title, issue orders
20 pursuant to section 1272 of this title, and in accordance with 3 V.S.A. chapter
21 25, adopt rules to address the following:

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

5 (i) provides temporary ~~water~~ storage ~~for~~ of flood water and ~~storm~~
6 stormwater runoff;

7 (ii) contributes to the quality of surface waters and groundwater
8 through chemical action;

9 * * *

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

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

21 * * *

1 Sec. 3. 10 V.S.A. § 911 is amended to read:

2 § 911. ENTRANCE UPON LANDS; RECORDS, MAINTENANCE

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

13 Sec. 4. 10 V.S.A. § 913 is amended to read:

14 § 913. PROHIBITION; EXEMPTIONS

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

20 (b) A permit shall not be required under this section for any of the
21 following activities:

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

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

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

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

9 (2) any construction within a wetland that is identified on the Vermont
10 significant wetlands inventory maps or within the buffer zone of such a
11 wetland, provided that the construction was completed prior to February 23,
12 1992, and no action for which a permit is required under the rules of the
13 Department was taken or caused to be taken on or after February 23, 1992; or

14 (3) water quality or water conservation practices approved by the
15 Natural Resources Conservation Service or the Agency of Agriculture, Food,
16 and Markets, except for a water quality practice or a water conservation
17 practice that would require the construction of a new farm structure.

18 Sec. 5. REPEAL OF SUNSET OF FEE FOR PIPELINES IN WETLAND

19 2018 Acts and Resolves No. 194, Sec. 8a (sunset of maximum fee for
20 manure pipeline in wetland) is repealed.

- 1 Sec. 6. EFFECTIVE DATE
- 2 This act shall take effect on passage.