

**STATE OF VERMONT
AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

**WETLANDS GENERAL PERMIT
3-9026**

Water Quality Improvement Projects in Significant Wetlands and Buffers

I. Introduction

The Secretary of the Vermont Agency of Natural Resources (Secretary) hereby issues this general permit pursuant to 10 V.S.A. § 905b and §§ 9.8 and 9.9 of the Vermont Wetland Rules (VWR) (effective August 15, 2018), for the purpose of expediting the permitting process for certain specified water quality improvement projects conducted in Class II wetlands and their buffer zones.

Should any project proponent be uncertain with regard to the interpretation of, application of, or compliance with the provisions of this General Permit, the project proponent should engage the services of a qualified consultant or contact a Department of Environmental Conservation Wetlands Ecologist. Department contact information is located at: <http://dec.vermont.gov/watershed/wetlands/contact>

II. Findings

Pursuant to 10 V.S.A. § 913 and Section 9 of the Vermont Wetland Rules (VWR), any activity in a Class II wetland or its associated buffer zone is prohibited unless it is an allowed use, or it is authorized by a permit, conditional use determination, or order issued by the Secretary. Pursuant to Section 9.8 of the VWR, the Secretary may issue general permits authorizing discrete categories of activities or uses in discrete categories of Class II wetlands. The Secretary may, at his or her discretion, issue a nonreporting general permit (VWR § 9.9(g)). Activities and uses eligible for authorization under a general permit must be found to comply with the VWR and have no undue adverse effect on the protected functions and values of the impacted wetland. This finding must be based on an evaluation of both the direct and immediate effects of the proposed activity on the wetland, as well as the cumulative or ongoing effects of the activity on the wetland.

Activities eligible for coverage under this general permit are limited to specific practices that are intended to improve water quality either by mitigating known pollution sources, or by reducing flood hazards. These projects are designed to reduce discharges from known pollution sources to functioning wetlands. Reductions are achieved by treating waters before they enter the wetland, creating concentrated corridors for livestock and vehicle travel where there was diffuse travel with associated erosion, grazing, and animal waste, and improving stream crossings to reconnect natural wetland flows and wildlife travel. Although many water quality improvement projects can take place outside of Class II wetlands and their buffer zones, the Secretary finds that there is a need for some encroachments into the

resource to meet water quality goals. Both water quality improvements and prevention of wetland loss are goals of the Agency of Natural Resources.

Eligible activities are limited by square footage thresholds, and by the type of impacted wetland. If eligible projects are conducted in accordance with the terms and conditions of this permit, there will be no undue adverse impact to the following functions: water storage for flood water and storm runoff (VWR §5.1), surface and groundwater protection (§5.2), fisheries habitat (§5.3), wildlife and migratory bird habitat (§5.4), and erosion control through binding and stabilizing the soil (§5.10). Potential impacts to exemplary wetland natural communities (§5.5), and threatened and endangered species habitat (§5.6), are limited through the Limitations on Coverage in Part V of this general permit. Given the limited nature of the activities eligible for coverage under this general permit, no potential impacts are predicted for education and research in natural science (§5.7), recreational value and economic benefits (§5.8), and open space and aesthetics (§5.9). Based on the factors described above, if an eligible project is conducted in accordance with the terms and conditions of this general permit, the Secretary has determined that the classes of eligible activities will comply with the Vermont Wetland Rules and will not result in undue adverse impacts to wetland functions and values. In determining whether coverage under this general permit should be granted, the Secretary has evaluated the classes of eligible activities and their potential effect on significant wetlands, considering both their direct and immediate effects as well as any cumulative or on-going effects.

III. Definitions

- a. “Managed areas” are wetland and buffer areas where land use results in diminished function, including mowed lawns, mowed road shoulders, parking areas, roads, managed pasture, hay fields, and/or croplands.
- b. “Natural areas” are wetland and buffer areas that are naturally vegetated or minimally managed areas where the land use does not result in diminished function, including but not limited to natural areas, areas used for silviculture, and/or old fields.
- c. “Practice” means any activity eligible for coverage under this general permit.
- d. “Project” means a plan proposed by a person that includes the construction of one or more practices eligible for coverage under this general permit. A project shall specify the location and design of the practices that will be constructed, as well as the timeframe within which construction shall take place. For stormwater treatment practice (STP) projects described in subpart IV(b), the retrofits for a parcel or specified development are considered a single project. A Flow Restoration Plan may consist of multiple projects and shall not be considered a single project for the purposes of this permit. For work done pursuant to the Stormwater Municipal Roads General Permit, all retrofits designed to bring a single hydrologically-connected road segment, or contiguous hydrologically-connected road segments, into compliance with the MRGP are considered a single project. A person shall not intentionally subdivide the components of a project in order to qualify for coverage under this general permit.

IV. Activities Eligible for Coverage Under this General Permit

Activities eligible for coverage under this general permit include certain water quality improvement projects on farms, certain stormwater treatment retrofit projects, replacement of stream crossing structures, and failed onsite wastewater treatment systems. To be eligible for coverage under this general permit, an activity must meet the conditions and criteria listed in subparts (a), (b), (c), or (d) of this part, as well as the General Conditions listed in Part VI. Permitting thresholds for activities except for subsection (c) of this part (Stream crossing structure replacement) are based on whether the proposed activity takes place in a “managed” or “natural” wetland. All projects and activities covered under this general permit must be conducted in accordance with the terms and conditions of this general permit including the Required Best Management Practices in Part VIII and the General Conditions in Part IX. The impact thresholds are summarized in Table 1.

- a. **Water quality improvement projects on farms.** The Secretary has determined that certain water quality improvement practices, when conducted according to the standards listed below, are designed to reduce impact to significant wetlands, and a reduction in pollutant loading to waters of the state. When conducted on land that is actively used for the growing of food or crops in connection with farming activities as defined in Section 3.1(a) of the Vermont Wetland Rules¹, the activities listed below may be eligible for coverage under this general permit and may proceed without notification to the Secretary. To be eligible for non-reporting coverage, project activities must comply with the impact thresholds summarized in the table below and identified in each section below and must be conducted in accordance with the Natural Resources Conservation Service (NRCS) Conservation Practice Standards for Vermont, specified below. NRCS Conservation Practice Standards for Vermont may be found at: https://efotg.sc.egov.usda.gov/references/public/VT/TABLE_OF_CONSERVATION_PRACTICES.pdf The activities eligible for non-reporting coverage are as follows:
 - i. Construction of stream crossings and trails and walkways on farms:
 1. Construction of stream crossings, when constructed in accordance with NRCS Practice Standard and Implementation Requirements #578. Individual stream crossings shall impact no more than 500 square feet of natural wetland or buffer, or 5,000 square feet of managed wetland or buffer, resulting in impacts of no more than 5,000 square feet total to managed or natural wetland and buffer.
 2. Construction of trails and walkways, when constructed in accordance with NRCS Practice Standard and Implementation Requirements #575. Individual trails and walkways shall impact no more than 500 square feet of natural wetland or buffer, or 5,000 square feet of managed wetland or buffer, resulting in impacts of

¹ Farming activities means the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; and the growing of food and crops in connection with the raising, feeding, or management of livestock, poultry, equines, fish farms, or bees for profit. VWR §3.1(a)(2).

no more than 5,000 square feet total to managed or natural wetland and buffer.

- ii. Other water quality improvement projects on farms, as follows, provided that in addition to each of the caps identified in the subparts below, the sum of all practices on a project shall not cumulatively result in impacts of more than 5,000 square feet total to any wetland or buffer:
 - 1. Construction of access roads, when constructed in accordance with NRCS Practice Standard and Implementation Requirements #560, impacts no more than 500 square feet of natural wetland or buffer, or 5,000 square feet of managed wetland or buffer, resulting in impacts of no more than 5,000 square feet total to managed or natural wetland and buffer.
 - 2. Designation and construction of a heavy use protection area, when constructed in accordance with NRCS Practice Standard #561, impacting no more than 5,000 square feet of managed buffer, with no impacts to natural or managed wetland.
 - 3. Construction of artificial wetlands, when constructed in accordance with NRCS Practice Standard #656, provided that the constructed wetland is built in a managed buffer and does not impact more than 5,000 square feet of managed buffer, with no impacts to natural or managed wetlands.

b. **Retrofit of stormwater treatment practices.** The installation of certain STPs to address stormwater runoff from existing impervious surface is a critical step in implementing Total Maximum Daily Loads (TMDLs) in stormwater impaired watersheds, and the phosphorus impairment in Lake Champlain and Lake Memphremagog. Additionally, existing sites with three or more acres of existing impervious surface will require installation of STPs in order to meet the requirements of the forthcoming stormwater developed lands general permit, which is critical for meeting the Lake Champlain TMDL. The retrofit of stormwater infrastructure with STPs can result in improved water quality in these watersheds. Unless otherwise specified in this general permit, projects retrofitting existing impervious surfaces with STPs according to the terms of a validly-issued operational stormwater permit, authorization under the MS4 General Permit, TS4 General Permit, or Municipal Roads General Permit, may be eligible for coverage under this general permit, and may proceed with construction following registration of the project. To be clear, construction of STPs for the treatment and control of stormwater runoff from new or expanded impervious surface is not eligible for coverage under this General Permit. To be eligible for coverage, projects must avoid impact to wetlands and buffer zones to the greatest extent practicable, and must comply with the following conditions:

- i. Installation of STPs, including installation of multiple STPs that are part of a single retrofit project, must impact no more than 500 square feet of natural wetland or buffer, no more than 2,000 square feet of managed wetland, and no more than 5,000 square feet of managed buffer, resulting in no more than 5,000 total square feet of impact to any wetland or buffer.

- ii. Permittees must register the location and type of STPs to be constructed prior to commencing construction.
- iii. No new impervious surface shall be constructed within the wetland or buffer zone.

c. Stream crossing structure replacement for public safety, aquatic organism passage (AOP), or for flood resiliency improvements. The Secretary has determined that certain impacts associated with stream crossing structure replacements that do not qualify as allowed uses under VWR §§ 6.2², 6.8³ and 6.12⁴ are necessary to improve public safety, aquatic organism passage design, and improvements to stream flow and flood capacity. The expansion of a crossing structure is often necessary to improve AOP and flood resiliency. Furthermore, temporary access to make improvements or to allow for continued public use of the road is often necessary to implement the replacement.

In order to be eligible for coverage under this general permit for stream crossing structure replacement activities outside of the footprint of an existing structure, replacements must be a Title 19 project that is a declared disaster or damaged crossing or if the project is not a Title 19 project replacements must obtain authorization from one of the following under the Vermont Department of Environmental Conservation Stream Alteration General Permit: E. General Permit Coverage for Emergency Protective Measures, or F. General Permit Coverage of Next-Flood Protective Measures or Reporting Activities (for the replacement of stream crossing structures damaged beyond repair during a flood). To be eligible for coverage projects must comply with the following conditions:

- i. Permanent expansion of the existing structure (expansion of culvert length, installation of wing walls, replacement with wider structure etc.) shall not result in more than 1,000 square feet of impact in wetland or buffer zone; and
- ii. Temporary reroutes to allow for public travel and temporary access for construction purposes shall not result in more than 5,000 square feet of impact to wetland and buffer zone. All impacted area shall be promptly restored (return grade, seed, and mulch) upon the completion of the project, and shall be in place no longer than 12 months. Where temporary reroutes are necessary over forested wetland and buffer, stumps shall remain in place; and
- iii. A combined impact not exceeding 5,000 square feet.

² The allowed use in Section 6.2 of the VWR allows for the restoration, reconstruction, rehabilitation, or upgrade of existing roads used solely for silvicultural purposes provided that such roads are not increased in width by more than 20% of the original road width.

³ The allowed use in Section 6.8 allows for the maintenance of utility corridors according to Best Management Practices.

⁴ The allowed use in Section 6.12 of the VWR allows for the maintenance, reconstruction or routine repair of structures and facilities, if there is not substantial expansion beyond the existing footprint of the structure or additional impacts are not required to access the structure.

- d. **Replacement of failed wastewater systems in managed buffer zones.** The Secretary has determined that the prompt replacement of failed wastewater systems is necessary to abate health and environmental hazards associated with the discharge of contaminated water and sewage. To be eligible for coverage under this permit, there must be an immediate and ongoing health or environmental hazard associated with the failed system, the building structure serviced by the failed system in question must be occupied, and the system must still be in use at the time of failure. Projects must also meet the following criteria, and impacts from the new system installation shall not exceed 5,000 square feet of impact to managed buffer zone (e.g. lawn or other maintained buffer):
- i. There is no alternative location outside the wetland buffer that is reasonably available to the landowner that is adequately suited for wastewater disposal, including existing easements on adjoining property;
 - ii. The new system will comply with the Wastewater System and Potable Water Supply Rules including the variance section for “best fix.”

Table 1. Impact thresholds by project type:

General Permit Part	Practice or Project Type	Maximum Natural Wetland or Buffer Impact (sq. ft)	Maximum Managed Wetland Impact (sq. ft)	Maximum Managed Buffer Impact (sq. ft)	Maximum Total Allowed Impacts to Wetland and Buffer, natural or managed (sq. ft) ⁵
IV(d)	Replacement of failed wastewater system	0	0	5,000	5,000
IV(a)(ii)	Heavy use protection areas, constructed wetlands constructed in accordance with NRCS Practice Standards.	500, buffer only	0	5,000	5,000 per IV(a)(ii) project
IV(a)(ii)	Access roads constructed in accordance with NRCS Practice Standards.	500	5,000	5,000	
IV(a)(i)	Stream crossings, trails and walkways on Farms constructed in accordance with NRCS Practice Standards.	500	5,000	5,000	5,000 per NRCS practice
IV(b)	Retrofit of stormwater treatment practice projects	500	2,000	5,000	5,000
IV(c)(i)	Stream crossing structure replacement expansion of existing structure	1,000	1,000	1,000	5,000 per IV(c) project, not to exceed 1,000 of permanent impact
IV(c)(ii)	Temporary reroutes for travel and construction access for stream crossing structure	5,000	5,000	5,000	

V. Obtaining Authorization

- a. Non-reporting Coverage: Individuals conducting water quality improvement projects on farms, pursuant to Part IV(a) of this general permit, may proceed without application or notification to the Agency, provided that the project will meet the terms and conditions of this general permit.
- b. Registration of project: For all other eligible projects, pursuant to Part IV(b), (c), and (d) of this general permit, may proceed without application for coverage, but must register the project prior to beginning construction. Registration must include the title of the entity conducting the activity, the location of the activity, and a description of the activity. There is no fee associated with the registration.

⁵ Total allowed impacts include cumulative impacts to both natural and managed wetland and buffer.

VI. Limitations on coverage

The following activities are not eligible for coverage under this general permit:

- a. Activities that are allowed uses under Section 6 of the Vermont Wetland Rules.
- b. Activities within a Class I wetland or buffer zone.
- c. Water quality improvement projects impacting more than the allowable square footage for each wetland and buffer type, and eligible activity.
- d. Water quality improvement projects identified in Part IV (2)(a) on land that is not actively used for farming activities. A property is considered to be actively used for farming when farming activities are continuously conducted on the property.
- e. Activities affecting wetlands significant for the Rare, Threatened, or Endangered (RTE) Species Habitat function pursuant to Section 5.6 of the Vermont Wetland Rules. Known RTE locations are identified on the ANR Atlas, which is found at: <https://anrmaps.vermont.gov/websites/WetlandProjects/default.html>. This limitation may be waived if the applicant has received approval from the Department of Fish and Wildlife's Natural Heritage Inventory.
- f. Activities located in or adjacent to (within 50 feet of) bogs, fens, or vernal pools, as defined in Sections 2.4, 2.16, and 2.39 of the Vermont Wetlands Rules. Known bogs, fens, and vernal pools are identified on the ANR Atlas as significant natural communities or vernal pools.
- g. Activities in or adjacent (within 50 feet) to wetlands that are significant for the Exemplary Wetland Natural Community function pursuant to Section 5.5 of the Vermont Wetland Rules. Known exemplary wetland natural communities are identified on the ANR Atlas as significant natural communities. This limitation may be waived if the applicant has received approval from the Department of Fish and Wildlife's Natural Heritage Inventory Program.
- h. Activities in or adjacent (within 50 feet) to wetlands at or above 2,500 feet in elevation (headwaters wetlands).
- i. A project that required a permit but did not obtain one unless the person has full restored those impacts beyond the thresholds in this permit.
- j. With the exception of stream crossings and trails and walkways as defined in Part IV(a)(i) of this general permit, activities that are components of a single project or planned phases of a multiphase project, where the entire project exceeds the eligibility thresholds in Part IV of this general permit, are not eligible for coverage. A Flow Restoration Plan may consist of multiple projects and shall not be considered a single project for the purposes of this general permit.

VII. Relation to Other Permits

Activities eligible for coverage under this general permit may also require a permit pursuant to other local, state, and federal laws, including a federal wetlands permit pursuant to Section 404 of the Clean Water Act, 33 U.S.C. § 1344. Applicants are responsible for determining if any such permits apply to their proposed activities and obtaining any such permits.

VIII. Required Best Management Practices

- a. Best management practices applicable to all eligible projects:
 - i. Steps shall be taken to prevent the transport of sediment into any wetland or other surface water and to promote re-vegetation following the completion of work:
 - 1. If a construction stormwater permit is required (i.e. over an acre of soil disturbance), the permittee shall follow the terms and conditions of that permit. Otherwise, the permittee shall utilize recommended sediment and erosion controls as needed and as described in the DEC's Low Risk Handbook for Erosion Prevention and Sediment Control, or other equivalent controls as approved by the Agency.
 - 2. All sediment controls and construction fencing shall be installed prior to beginning any earthwork for the project, maintained, and removed following the successful establishment of vegetation.
 - 3. Disturbed soils shall be seeded and mulched within 48 hours of final grading. Appropriate wetland seed mixes shall be used within wetlands. Appropriate erosion control/conservation seed mixes shall be used within buffers. All areas shall be stabilized within wetlands and buffer zones and mulched with straw or weed-free hay to limit the spread of invasive species.
 - ii. If the impact is temporary in nature, stockpiling of material shall be done on filter fabric or equivalent in the wetland and buffer zone. Temporarily removed wetland soils shall be put back in place in the reverse order that they were removed and restored to their prior condition to match the original soil profile.
 - iii. Permanently removed and stockpiled materials shall be located outside of wetlands and buffer zones and at least 50 feet from surface waters, and appropriate erosion controls measures as described above shall be used.
 - iv. Impacts from equipment access to the project site shall be limited by utilizing existing or low impact routes using the following sequence of options listed in order of preference:
 - 1. Access should be limited to upland areas or existing maintained roads to the extent practicable;
 - 2. Access on other existing primitive roads or existing managed areas (as defined in Part III) in wetlands or buffer zones;
 - 3. Where existing roads are not an option for access, minimize rutting and earth disturbing activities by:
 - 4. Accessing wetland areas with mats or under frozen or dry conditions. Winter construction under frozen conditions may minimize ground disturbance and reduce impacts to wildlife;
 - 5. Delineating the limits of disturbance using a combination of silt fence, flagging, and/or snow fence;
 - 6. Using low-ground pressure or track vehicles in wetlands to minimize compaction and rutting;

7. Minimizing equipment use in wetlands and limiting vehicle trips; and
 8. Restoring the project site in order to reverse soil compaction and stabilize the soil on the site and replanting the site if vegetation has been destroyed.
- v. Waste disposal and equipment refueling shall be limited to areas outside wetlands and buffer zones and at least 50 feet from surface waters.
 - vi. Final earthwork shall return wetlands and buffer zones to the original grade for temporary impacts.
 - vii. The potential for the introduction and spread of invasive species in wetlands and buffer zones shall be decreased by using the following methods:
 1. All equipment shall be cleaned so as to contain no observable soil or vegetation prior to work in wetlands and buffer zones to prevent the spread of invasive species;
 2. If removed material contains invasive species, care should be taken to dispose of the material in a manner that does not spread the invasive species to new areas
- b. Activity-specific best management practices:
- i. Installation of underground facilities in wetlands or buffer zones:
 1. Trenches shall be filled, mulched, and seeded immediately or upon final inspection of the line;
 2. If a directional bore is required, the depth of the bore beneath the wetland shall not puncture a confining layer essential to maintain wetland hydrology;
 3. If drilling or boring is required, drilling fluid shall be composed of bentonite clay, clean water, and Agency approved additives (e.g., "environmentally safe" drill soap or polymers).
 - ii. Activities in surface water body margins:
 1. Soil and vegetation disturbance shall be minimized to avoid unnecessary impacts to waterbodies:
 - a. Avoid removing vegetation until just before beginning construction that disturbs the soil;
 - b. Minimize the area of bare soil within the approved work zone as much as possible;
 - c. Maintain as much of a naturally vegetated buffer as possible around wetlands and surface waters to slow runoff and trap sediments;
 - d. Phase construction to minimize the extent of soils disturbed simultaneously; and
 - e. Dredged material shall be properly disposed of and dewatering of dredged material must take place such that a turbid discharge to waters of the State does not occur;

IX. General Conditions

- a. All activities shall be completed, operated, and maintained in accordance with the conditions of this general permit. Any permit noncompliance constitutes a violation of 10 V.S.A. Chapter 37 and may be cause for an enforcement action or revocation and reissuance, modification, or termination of the permittee's authorization under this general permit.
- b. For projects requiring registration, the permittee shall register their project with the Vermont Wetlands Program prior to the start of construction.
- c. Activities must be designed and constructed to avoid and minimize impacts, both temporary and permanent, to wetlands, buffers and wetland functions and values to the maximum extent practicable at the project site. Consideration of mitigation (avoiding, minimizing, or restoring) is required to the extent necessary to ensure that the effects to protected wetland function and value are limited to the extent practicable. For NRCS practices, consideration of avoidance and minimization of impacts must be consistent with the Wetland Protection Policy required for all NRCS technical assistance and funding.
- d. Permittees must comply with the required best management practices listed in Part IV of this general permit.
- e. This permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, and local laws, regulations, and permits.
- f. The Agency maintains continuing jurisdiction over a project authorized under this general permit and may at any time order remedial measures if it appears likely that undue adverse impacts to protected wetland functions and values are or will occur.

X. Appeals

Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be filed with the clerk of the Environmental Division of the Superior Court within 30 days of the date of the decision. The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Division; and must be signed by the appellant or the appellant's attorney. In addition, the appeal must give the address or location and description of the property, project, or facility with which the appeal is concerned and the name of the applicant or any permit involved in the appeal. The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings. For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at www.vermontjudiciary.org. The address for the Environmental Division is: 32 Cherry St.; 2nd Floor, Suite 303; Burlington, VT 05401 (Tel. # 802-828-1660).

XI. Effective Date and Permit Term

This permit shall become effective upon signing and shall expire five years from the date of signing.

State of Vermont
Agency of Natural Resources

Emily Boedecker, Commissioner
Department of Environmental Conservation

By:  on November 19, 2018

Emily Boedecker, Commissioner
Department of Environmental Conservation