

ACCELERATING THE IMPLEMENTATION OF WATER QUALITY IMPROVEMENT PROJECTS: WETLAND NON-REPORTING GENERAL PERMIT 3-9026

Vermont's wetlands are the critical interface between lands and deepwater habitats. These areas are commonly known as bogs, fens, marshes, wet meadows, shrub swamps, and wooded swamps and they provide a variety of functions and values that benefit the people of Vermont. Vermont has historically lost around 35% of its wetlands; today less than 4% of the state is identified as wetland.

Wetland protection is an essential component of achieving our clean water goals. The protection of healthy wetlands and the restoration of wetland function maintains and can enhance the capacity of the landscape to capture runoff and absorb phosphorus and a variety of other nutrients before they enter Lake Champlain. Any loss of wetland function that was assumed in the TMDL baseline modeling will require additional investment in other clean water projects to meet the required reduction in phosphorous loading.

Farmers are leaders in the fight against water pollution. Many farmers are helping to clean up Vermont's lakes, rivers, and streams by taking on water quality improvement projects.

ANR, AAFM and NRCS met in early 2018 to discuss the issues and potential remedies. Navigating the permits required to complete these projects can be confusing for farmers. A non-reporting general permit (NRGP) was proposed to simplify and reduce the cost of the permitting process for applicants while maintaining the obligation to avoid and minimize wetland impacts and maintain the vital water quality protection, flood control, and other benefits of wetlands.

A draft NRGPs was placed on notice in April of 2018, allowing for limited wetland encroachments for certain NRCS Conservation Practices on farms, including access roads, heavy use protection areas, stream crossings, trails and walkways, and artificial wetlands. The non-reporting general permit is consistent with existing wetland jurisdiction and is a tool for providing relief in the permitting process for activities which already require permits. **Practices eligible for coverage under the NRGPs can be constructed without submission of a wetlands permit application or fee.** DEC held three public meetings and solicited comment on the draft permit. Due to extensive comments and ongoing internal discussions, the permit was revised and issued in November 2018.

The NRGPs was appealed in December of 2018 and is currently in litigation. During this period, the permit is valid and a farmer may install practices covered by the permit. Should the pending appeals be resolved such that the non-reporting general permit is upheld, the Agency intends to continue to administer the NRGPs as written.

Case Study: Marquis Cattle Lane, Newport VT – Wetlands Project #2017-475

This cattle lane project qualifies for the non-reporting general permit (NRGP) and can be constructed without contacting the Wetlands Program or paying an application review fee.

NRCS contacted the Wetlands Program in July of 2017 for a wetland jurisdiction review of the construction of a cattle lane for rotational pasture on the Marquis Farm. The Program conducted a site visit the next week and determined that, consistent with the existing Vermont Wetland Rules (VWR), there were wetlands in the hayfield/pasture which may be contiguous to Class II wetland mapping and meeting two presumptions of significance (VWR 4.6 over half acre in size and connected to a stream) so were therefore Class II. The Program noted that the existing field had overused cattle paths, including a lot of rutting and generally wetter conditions/disturbed soils where this occurs.

The Program informed NRCS and the farmer that the laneway would need a permit. A permit was needed because, consistent with the existing statute, VWR and permit language, the area to be transformed from growing food and crop would be filled and used for livestock travel. Because the area of the laneway would no longer be 'growing food and crop in connection with farming activities', the area would no longer be excluded from the definition of wetland and would be protected under the Vermont Wetland Rules. The cost of the wetland permit review would be approximately \$4,000 which was considered a major hurdle in performing the project.

When the non-reporting general permit was issued in November of 2018, Mr. Marquis was contacted and told that the project qualifies and therefore no application or permit fee would need to be submitted to the Wetlands Program for the project to start. The project has not been built yet but is expected to be constructed in the spring of 2019.

