

H.828 Background Information

Clean Water Act—Required State Water Quality Standards

- Under CWA § 303, all states are required to adopt water quality standards for waters within the state.¹
- The standards must ensure full support of designated uses of the water. The designated uses are:
 - public water supply; fishing; aesthetics; irrigation; boating; aquatic biota; swimming; and aquatic habitat
- Vermont adopted water quality standards known as the Vermont Water Quality Standards (VWQS).

Clean Water Act § 401 Certifications

- CWA § 401 requires an applicant for a **federal** license or permit for an activity that may result in a discharge to a navigable water to provide the **federal** permitting agency a certificate **from the State** that the discharge will comply with the CWA.²
- The state certificate must provide that the proposed discharge complies with the VWQS, water quality effluent limitations, and national standards of performance.³
- A state CWA § 401 certification shall include conditions necessary to ensure the water quality standards are met.
- Any CWA § 401 certification issued by a state becomes a condition of any relevant federal license or permit.⁴
- No federal license or permit that involves a discharge to state waters may be granted until the CWA § 401 certification has been obtained or has been waived.⁵
- No license or permit shall be granted if a CWA § 401 certification is denied by the State.⁶

Clean Water Act § 401 and Wetlands

- In 1988, the National Wetlands Policy Forum recommended that States “make more aggressive use of their certification authorities under CWA § 401” to protect wetlands from discharges and alterations.
- In 1989, EPA issued a handbook for States and Tribes on applying CWA § 401 certification to protect wetlands. In 1990, EPA issued guidance on developing water quality standards for wetlands.

Clean Water Act § 404 Dredge and Fill Permit

- CWA § 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands that fall under that definition, unless the activity is exempt from Section 404 regulation (e.g. certain farming and forestry activities).⁷
- State statutes and water quality standards can apply to more than just the waters of the United States, including wetlands.⁸

¹ 33 U.S.C. § 1313.

² 33 U.S.C. § 1341(a).

³ Id.

⁴ 33 U.S.C. § 1341(d).

⁵ 33 U.S.C. § 1341(a)(1).

⁶ Id.

⁷ EPA Wetlands Regulatory Authority, https://www.epa.gov/sites/production/files/2015-03/documents/404_reg_authority_fact_sheet.pdf

⁸ U.S. EPA, National Guidance Water Quality Standards for Wetlands, available at <https://www.epa.gov/cwa-404/national-guidance-water-quality-standards-wetlands>

Vermont Definition of Waters

- 10 V.S.A. § 1251: "Waters" includes all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs, and all bodies of surface waters, artificial or natural, that are contained within, flow through, or border upon the State or any portion of it.
- VWQS § 29A-102: "Waters" include all rivers, streams, creeks, brooks, reservoirs, ponds, lakes, springs and all bodies of surface waters, artificial or natural, which are contained within, flow through, or border upon the State or any portion of it.

Discharges to Wetlands

- 10 V.S.A. § 1272: §Regulation of activities causing discharge or affecting significant wetlands
If the Secretary finds that any person's action, or an activity, results in the construction, installation, operation, or maintenance of any facility or condition that reasonably can be expected to create or cause a discharge to waters in violation of this subchapter, or to violate the Secretary's rules under section 905b of this title relating to significant wetlands, the Secretary may issue an order establishing reasonable and proper methods and procedures for the control of that activity and the management of substances used therein that cause discharges or violations of the Secretary's rules with respect to significant wetlands in order to reduce or eliminate those discharges and rule violations with respect to significant wetlands.
- 10 V.S.A. § 913. Prohibition

(a) 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.