



**TO: Legislative Study Committee on Wetlands**  
**FROM: Julie Moore, Secretary, Vermont Agency of Natural Resources**  
**DATE: September 20, 2019**  
**RE: Proposed Revisions to Title 10, Chapter 37 – Wetland Protection and Regulation**

The Agency of Natural Resources (ANR) is providing the attached draft amendments to Chapter 37 of Title 10, Vermont Statutes Annotated. This draft represents the Administration’s proposed statutory amendments as modified during Committee discussion in the Senate Committee on Agriculture during the 2019 Legislative Session.

ANR initially developed draft amendments to Chapter 37 with the intention of clarifying the Vermont Wetlands Program’s permitting jurisdiction in two critical ways:

- Defining Class II wetlands according to a set of objective physical characteristics thereby making it easier to identify those wetlands on the landscape; and,
- Narrowing the scope of activities requiring a permit to four distinct types of alterations.

Both of those proposed changes are reflected in the attached draft. The intent was to make it easier for the regulated community to know when a permit is needed, and allow Agency resources currently dedicated to identifying Class II wetlands to be refocused on restoration efforts. It’s important to note that the proposed amendments do not eliminate the assessment of wetland functions and values; as proposed the functions are evaluated during the permitting process instead of being used to determine if a wetland is Class II (see Page 9, Line 1 - Page 10, Line 18).

The attached draft also proposes a revised definition of “wetlands” consistent with the federal definition used by the U.S. Army Corps of Engineers (40 C.F.R. § 232.2). This amended definition would not significantly change the way wetlands are identified from a scientific standpoint, but it would remove the existing agricultural “exclusion” from the definition (see Page 1, lines 4-13). The Administration believes that the definition of a wetland should be science-based, and alterations are more appropriately exempted from permitting jurisdiction by a statutory or regulatory exemption.

The attached draft also contains explicit statutory exemptions for the growing of food or crops in connection with farming, and forestry operations (see Page 10, Line 19 - Page 14, Line 11). The language of the exemption for the growing of food or crops in connection with farming was developed over the course of the legislative session last year, in response to Committee discussion.

ANR has identified two corrections that we request be considered in reviewing this draft:



- The language in Sections 8 and 9 regarding permit fees and Section 11 regarding wetland scientist licensure were adopted into statute last session in Act 64 (H.525) and therefore could be removed from the working draft;
- The definition of “Agricultural production area” on page 3, beginning line 16, includes a 200-foot buffer. The definition of Production Area in the Required Agricultural Practices Rule does not include a 200-foot buffer, and the Agency believes the 200-foot buffer language should be removed from the attached proposal so that production areas are delineated consistently by both ANR and the Agency of Agriculture, Food and Markets.