

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

2 § 902. DEFINITIONS

3 * * *

4 (5) “Wetlands” means those areas of the State that are inundated or
5 saturated by surface or groundwater at a frequency and duration sufficient to
6 support ~~significant vegetation or aquatic life that depend on saturated or~~
7 ~~seasonally saturated soil conditions for growth and reproduction.~~ Such areas
8 ~~include marshes, swamps, sloughs, potholes, fens, river and lake overflows,~~
9 ~~mud flats, bogs, and ponds, but excluding such areas as grow food or crops in~~
10 ~~connection with farming activities, and that under normal circumstances do~~
11 support, a prevalence of vegetation typically adapted for life in saturated soil
12 conditions. Wetlands generally include swamps, marshes, bogs, and similar
13 areas.

14 (6) “Class I wetland” means:

15 ~~(A) a wetland identified on the Vermont significant wetlands~~
16 ~~inventory maps as a Class I wetland;~~

17 ~~(B) a wetland that the former Water Resources Board identified in~~
18 ~~rules of the Board as a Class I wetland; or~~

19 ~~(C)~~ a wetland that the Secretary, based upon an evaluation of the
20 extent to which the wetland serves the functions and values set forth in
21 subdivision ~~905b(18)(A)~~ 913(b) of this title, determines is exceptional or
22 irreplaceable in its contribution to Vermont’s natural heritage and, therefore,

1 merits the highest level of protection. Class I wetlands shall be designated by
2 rule.

3 (7) “Class II wetland” means a wetland other than a Class I or Class III
4 wetland that exhibits one or more of the following physical characteristics:

5 (A) ~~is a wetland identified on the Vermont significant wetlands~~
6 ~~inventory maps; or~~ The wetland is equal to or greater than 1.0 ~~0.5~~ acres, or
7 43,560~~21,780~~ square feet, in size.

8 (B) ~~the Secretary determines to merit protection, pursuant to section~~
9 ~~914 of this title, based upon an evaluation of the extent to which it serves the~~
10 ~~functions and values set forth in subdivision 905b(18)(A) of this title and the~~
11 ~~rules of the Department~~ The wetland is greater than 7,500~~5,000~~ square feet in
12 size and is located contiguous with a perennial stream or an open body of
13 surface water. ~~contiguous with a stream or open body of surface water, or the~~
14 wetland is within a river corridor or flood hazard area.

15 (C) The wetland is a naturally occurring feature over 7,500~~2,500~~ feet
16 in elevation and directly contributes surface flow to a perennial or intermittent
17 stream. ~~contiguous with a stream.~~

18 (D) The wetland is greater than 7,500~~2,000~~ square feet and
19 contiguous with an impaired surface water ~~with a listed impairment related to~~
20 the wetland’s water quality functions;

21 (E) The wetland itself is an impaired surface water.

22 (F) The wetland is or contains peatland.

1 ~~(G) The wetland is greater than 5,000 square feet in size and is a~~
2 ~~natural hillside seep.~~

3 (H) The wetland is a known occurrence of a vernal pool.

4 (D) The wetland has a known occurrence of a wetland-dependent rare,
5 threatened, or endangered species.

6 (J) The wetland has a known occurrence of a State-significant
7 wetland-dependent natural community.

8 ~~(K) The wetland was determined to be Class II after October 1,~~
9 ~~2020, and a permit was issued authorizing impacts to that wetland.~~

10 (8) “Class III wetland” means a wetland that is neither a Class I wetland
11 nor a Class II wetland.

12 (9) “Buffer zone” means an area contiguous to a significant Class I or II
13 wetland that protects the wetland’s functions and values. The buffer zone for a
14 Class I wetland shall extend at least 100 feet from the border of the wetland,
15 unless the Department determines otherwise under section 915 of this title.
16 The buffer zone for a Class II wetland shall extend at least 50 feet from the
17 border of the wetland unless the Secretary determines otherwise under section
18 914 913 of this title.

19 (10) ~~“Panel” means the Water Resources Panel of the Agency of Natural~~
20 ~~Resources.~~ “Agricultural production area” means an area in existence as of
21 January 1, 2019 where animals, agricultural inputs, or raw agricultural
22 products are confined, housed, stored, or prepared within or without structures,

1 and includes a 200-foot buffer around such areas. Agricultural production
2 areas include barnyards, raw materials storage areas, heavy use areas, fertilizer
3 and pesticide storage areas, waste storage and containment areas, egg washing
4 or egg processing facilities, or milk houses. For the purpose of this chapter,
5 agricultural production areas do not include areas used in the storage, handling,
6 treatment, or disposal of mortalities.

7 (11) ~~“Significant wetland” means any Class I or Class II wetland.~~

8 “Farming” means:

9 (A) the cultivation or other use of land for growing food, fiber,

10 Christmas trees, maple sap, or horticultural and orchard crops;

11 (B) the raising, feeding, or management of livestock, poultry, fish,

12 or bees;

13 (C) the operation of greenhouses; or

14 (D) the production of maple syrup.

15 (12) “Permanent structure” means a nonmovable structure that is
16 designed, planned, and constructed to remain at one location and that is
17 securely attached to its location, including residential dwellings, commercial
18 and industrial buildings, farm structures, and wastewater systems.

19 ~~(12)~~(13) “Secretary” means the Secretary of Natural Resources or the
20 Secretary’s authorized representative.

21 (14) “Structure” means a human-made construction installed in or on a
22 property for occupancy or use.

1 (15) “Waste storage facility” means an impoundment made for the
2 purpose of storing agricultural waste by constructing an embankment,
3 excavating a pit or dugout, fabricating an in-ground or aboveground structure,
4 or any combination thereof.

5 (16) “Water Quality Improvement Project” means projects specifically
6 designed and implemented to reduce pollutant loading in accordance with the
7 requirements of a Total Maximum Daily Load Implementation Plan or Water
8 Quality Remediation Plan, or pursuant to a plan for reducing pollutant loading
9 to a waterbody. These projects include:

10 (A) the retrofit of impervious surfaces in existence as of January 1,
11 2019 for the purpose of addressing stormwater runoff;

12 (B) the replacement of stream-crossing structures necessary to
13 improve aquatic organism passage, stream flow, or flood capacity;

14 (C) construction of the following conservation practices on farms,
15 when constructed and maintained in accordance with Natural Resources
16 Conservation Service Conservation Practice Standards for Vermont and the
17 Agency of Agriculture, Food and Markets’ Required Agricultural Practices:

18 (i) construction of animal trails and walkways;

19 (ii) construction of access roads;

20 (iii) designation and construction of a heavy use protection area;

21 (iv) construction of artificial wetlands; and

- 1 ~~result from an evaluation of at least the following functions and values which a~~
2 ~~wetland serves:~~
- 3 ~~(i) provides temporary water storage for flood water and storm~~
4 ~~runoff;~~
 - 5 ~~(ii) contributes to the quality of surface and groundwater through~~
6 ~~chemical action;~~
 - 7 ~~(iii) naturally controls the effects of erosion and runoff, filtering~~
8 ~~silt, and organic matter;~~
 - 9 ~~(iv) contributes to the viability of fisheries by providing spawning,~~
10 ~~feeding, and general habitat for freshwater fish;~~
 - 11 ~~(v) provides habitat for breeding, feeding, resting, and shelter to~~
12 ~~both game and nongame species of wildlife;~~
 - 13 ~~(vi) provides stopover habitat for migratory birds;~~
 - 14 ~~(vii) contributes to an exemplary wetland natural community, in~~
15 ~~accordance with the rules of the Secretary;~~
 - 16 ~~(viii) provides for threatened and endangered species habitat;~~
 - 17 ~~(ix) provides valuable resources for education and research in~~
18 ~~natural sciences;~~
 - 19 ~~(x) provides direct and indirect recreational value and substantial~~
20 ~~economic benefits; and~~
 - 21 ~~(xi) contributes to the open space character and overall beauty of~~
22 ~~the landscape.~~

1 (2) draining, dewatering, or otherwise measurably altering the
2 hydrology of the wetland;

3 (3) filling (excluding structures that do not act as fill); and

4 (4) cutting or removing tree or shrub vegetation.

5 (b) ~~A permit shall not be required under this section for:~~ Before issuing a
6 permit or authorization, the Secretary shall consider the extent to which a
7 wetland serves the following functions and values, and the extent to which the
8 proposed alteration adversely affects the functions and values served by the
9 wetland:

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

12 ~~(A) an area identified as a wetland on the Vermont significant~~
13 ~~wetlands inventory maps;~~

14 ~~(B) a wetland that was contiguous to an area identified as a wetland~~
15 ~~on the Vermont significant wetlands inventory maps;~~

16 ~~(C) the buffer zone of a wetland referred to in subdivision (A) or (B)~~
17 ~~of this subdivision (1);~~ water storage for flood water and storm runoff;

18 ~~(2) any construction within a wetland that is identified on the Vermont~~
19 ~~significant wetlands inventory maps or within the buffer zone of such a~~
20 ~~wetland, provided that the construction was completed prior to February 23,~~
21 ~~1992, and no action for which a permit is required under the rules of the~~

1 ~~Department was taken or caused to be taken on or after February 23, 1992.~~

2 protection of surface waters and groundwater;

3 (3) contribution to fish habitat;

4 (4) contribution to wildlife habitat, including resting, feeding, staging, or
5 roosting habitat for migratory birds;

6 (5) designation as a wetland Natural Community Type, as recognized by
7 the Nongame and Natural Heritage Inventory of the Vermont Fish and Wildlife
8 Department;

9 (6) contribution to habitat for rare, threatened, and endangered species;

10 (7) provides or is likely to provide resources for education or scientific
11 resources;

12 (8) recreational value and economic benefits;

13 (9) contribution to the open space and aesthetic character of the
14 landscape; and

15 (10) erosion control through binding and stabilizing the soil.

16 (c) If the proposed alteration would result in an undue adverse impact to
17 any of the functions and values listed in subsection (b), the Secretary shall not
18 issue a permit under this section unless the applicant demonstrates that they
19 have met the requirements of the wetland mitigation sequence set forth in rule.

20 (d) The Secretary may establish the necessary width of the buffer zone of
21 any Class II wetland, pursuant to the rules of the Department. The buffer zone

1 of any Class II wetland shall be 50 feet, unless otherwise determined by the
2 Secretary.

3 (e) The Department may, by rule, exempt from the requirements of this
4 subsection any class of alteration that it determines will meet the requirements
5 of subsection (b) of this section. Such exemptions may be conditioned on
6 adherence to Best Management Practices published by the Secretary.

7 (e) A permit shall not be required under this section for:

8 (1) The growing of food or crops in connection with farming, consistent
9 with the following requirements:

10 (A) The growing of food or crops when conducted in connection with
11 farming, on land that has been converted for the purpose of growing food or
12 crops in ordinary rotation, provided that the conversion of a Class II wetland to
13 an area used to grow food or crops is not exempt and shall require a wetland
14 permit under this section.

15 (B) As used in this section, the growing of food or crops includes
16 cultivating, harvesting, plowing, grazing, and seeding, but does not include the
17 construction of any permanent structure located partially or wholly outside an
18 agricultural production area and its associated buffer. A permanent structure
19 includes a barn, bunker silo, waste storage facility, or sugarhouse.

20 (C) Land is no longer considered to be growing food or crops in
21 ordinary rotation if it is converted to a use other than the growing of food or
22 crops, or requires mechanized clearing or modifications to the hydrological

1 regime to resume the growing of food or crops. The development of a
2 renewable energy facility on such lands shall not be considered conversion
3 provided that the hydrology of the wetland is maintained and a
4 decommissioning plan approved by the PUC is prepared which will maintain
5 the agricultural capability of soils within the wetland.

6 (2) Activities conducted entirely within an agricultural production area
7 and its associated buffer.

8 (3) The implementation of best management practices on farms for the
9 purpose of improving water quality, when those practices are implemented in
10 compliance with the required agricultural practices or the Natural Resources
11 Conservation Service Conservation Practice Standards. Exempt practices
12 include:

13 (A) installation of fencing, including livestock watering systems;

14 (B) construction or maintenance of trails and walkways up to 16 feet
15 wide, including attendant stream crossings;

16 (C) maintenance of existing trails and walkways, including attendant
17 stream crossings, or maintenance, but not construction, of drainage ditches;

18 (D) maintenance of existing buildings and structures;

19 (E) maintenance, restoration, reconstruction, rehabilitation, or
20 upgrading of existing roads in wetlands, provided that work on existing roads
21 results in an overall net increase in road width of no more than 20 percent
22 beyond the original road width;

1 (F) construction or maintenance of farm ponds;

2 (G) construction or maintenance of grassed waterways;

3 (H) construction of stream crossings; and

4 (I) the installation of manure pipelines or other temporary impacts

5 that do not result in any change to the original grade of the wetland and that

6 allow for the impacted area to revert back to wetland, including the

7 reestablishment of the existing wetland vegetation, within one year.

8 (4) Forestry operations conducted in Class I or II wetlands and their

9 buffer zones, consistent with the following requirements:

10 (A) The forestry operation shall be conducted in accordance with the

11 Acceptable Management Practices for Maintaining Water Quality on Logging

12 Jobs as adopted by the Department of Forests, Parks and Recreation. The

13 removal of trees for other land uses, including commercial or residential

14 development or conversion to agricultural production, is not exempt and may

15 require a wetland permit.

16 (B) The forestry operation shall be conducted in compliance with the

17 Management Guidelines for Deer Wintering Areas in Vermont, established

18 jointly by the Department of Fish and Wildlife and the Department of Forests,

19 Parks and Recreation, when occurring in wetlands or buffer zones containing

20 deer wintering areas mapped by the Fish and Wildlife Department.

1 (C) Log landings shall be restricted to upland or buffer zones, except
2 that landings not requiring the placement of fill may be located within Class II
3 wetlands when the ground is frozen.

4 (D) Equipment maintenance and the storing or changing of oil,
5 grease, or other petroleum products shall be restricted to log landings.

6 (E) The construction of new truck roads in buffer zones when
7 necessary, and the maintenance, restoration, reconstruction, rehabilitation, or
8 upgrade of existing truck roads in buffer zones, when used solely for forestry
9 operations.

10 (F) Existing truck roads in wetlands may be maintained, restored,
11 reconstructed, rehabilitated, or upgraded, provided that work on existing truck
12 roads results in an overall net increase in road width of no more than 20
13 percent beyond the original road width, that includes the combined total width
14 of the shoulders, roadbed, and ditches.

15 (G) The construction of permanent buildings in Class I or II wetlands
16 and buffer zones, and the construction of new truck roads in Class I or II
17 wetlands, is not exempt and requires a wetland permit.

18 (H) The removal of beaver dams may be allowed to the extent
19 necessary to allow for the use of existing logging roads or ongoing forestry
20 operations.

21 (I) Forestry operations conducted in any Class I wetland or its buffer
22 zones, or any Class II wetland specifically designated by the Secretary as

1 providing habitat for any species on the state or federal list of threatened or
2 endangered species, shall comply with a plan approved in writing by the
3 Commissioner of Forests, Parks and Recreation.

4 (5) Any activity exempted by the Department in rule, adopted according
5 to the provisions of 3 V.S.A. chapter 25.

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

11 Sec. 4. 10 V.S.A. § 914 is amended to read:

12 § 914. ~~WETLANDS DETERMINATIONS~~

13 ~~(a) The Secretary may, upon a petition or on his or her own motion,~~
14 ~~determine whether any wetland is a Class II or Class III wetland. Such~~
15 ~~determinations shall be based on an evaluation of the functions and values set~~
16 ~~forth in subdivision 905b(18)(A) of this title and the rules of the Department.~~

17 ~~(b) The Secretary may establish the necessary width of the buffer zone of~~
18 ~~any Class II wetland as part of any wetland determination pursuant to the rules~~
19 ~~of the Department.~~

20 ~~(c) The provisions of chapter 170 of this title shall apply to issuance of~~
21 ~~determinations under this section.~~

22 ~~(d) [Repealed.]~~

1 ~~(e) The Secretary may recommend to the panel that a wetland be classified~~
2 ~~as a Class I wetland under section 915 of this title. [Repealed.]~~

3 Sec. 5. 10 V.S.A. § 916 is amended to read:

4 § 916. ~~REVISION OF VERMONT SIGNIFICANT WETLANDS~~

5 ~~INVENTORY MAPS~~

6 ~~The Secretary shall revise the Vermont significant wetlands inventory maps~~
7 ~~to reflect wetland determinations issued under section 914 of this title and~~
8 ~~rulemaking by the panel under section 915 of this title. [Repealed.]~~

9 Sec. 6. 10 V.S.A. § 918 is added to read:

10 § 918. COORDINATION; COOPERATION; FARMING ACTIVITIES IN

11 WETLANDS

12 The Secretary of Natural Resources and the Secretary of Agriculture, Food
13 and Markets shall adopt a memorandum of understanding to formalize a
14 process for coordinating the review of whether farming or an activity related to
15 farming requires a permit under this subchapter. The memorandum of
16 understanding shall address: how coordination shall occur; the timing of
17 coordination, including how coordination shall be conducted at the earliest
18 possible time; when a permit may be required; how a person engaged in
19 farming would obtain a permit; and enforcement of any required permit.

20 Sec. 7. ADOPTION OF MEMORANDUM OF UNDERSTANDING;

21 FARMING IN WETLANDS

1 (a) On or before January 15, 2020, the Secretary of Natural Resources, after
2 consultation with the Secretary of Agriculture, Food and Markets, shall submit
3 a copy or draft of the memorandum of understanding required under 10 V.S.A.
4 § 918 to the Senate Committees on Agriculture and on Natural Resources and
5 Energy and to the House Committees on Agriculture and Forestry and on
6 Natural Resources, Fish, and Wildlife.

7 (b) On or before February 1, 2020, the Secretary of Natural Resources and
8 the Secretary of Agriculture, Food and Markets shall adopt the memorandum
9 of understanding required under 10 V.S.A. § 918.

10 Sec. 8. 3 V.S.A. § 2822(j) is amended to read:

11 (j) In accordance with subsection (i) of this section, the following fees are
12 established for permits, licenses, certifications, approvals, registrations, orders,
13 and other actions taken by the Agency of Natural Resources.

14 * * *

15 (26) For individual conditional use determinations, for individual
16 wetland permits, for general conditional use determinations issued under
17 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit,
18 an administrative processing fee assessed under subdivision (2) of this
19 subsection and an application fee of:

20 (A) \$0.75 per square foot of proposed impact to Class I or II
21 wetlands.

1 (B) \$0.25 per square foot of proposed impact to Class I or II wetland
2 buffers.

3 (C) Maximum fee, for the conversion of Class II wetlands or wetland
4 buffers to cropland use or for installation of a pipeline in a wetland for the
5 transport of manure for the purpose of farming, as that term is defined in 10
6 V.S.A. § 6001(22), when the pipeline will serve or implement a water quality
7 or conservation practice, \$200.00 per application. As used in this subdivision,
8 “cropland” means land that is used for the production of agricultural crops,
9 including row crops, fibrous plants, pasture, fruit-bearing bushes, trees, or
10 vines, and the production of Christmas trees.

11 * * *

12 (H) Maximum fee, for the construction of any Water Quality
13 Improvement Project as defined in 10 V.S.A. § 902(13), in any Class II
14 wetland or buffer, \$200.00 per application.

15 (I) Maximum fee for the construction of a permanent structure used
16 for farming, \$5,000.00, provided that the maximum fee for waste storage
17 facility or bunker silo shall be \$200.00 when constructed and maintained in
18 accordance with Natural Resources Conservation Service Conservation
19 Practice Standards for Vermont and the Agency of Agriculture, Food and
20 Markets’ Required Agricultural Practices. As used in this subdivision,
21 “permanent structure”, “farming”, and “waste storage facility” have the same
22 meaning as in 10 V.S.A. § 902.

1 Sec. 9. REPEAL

2 2018 Acts and Resolves No. 194, Sec. 8a (sunset of maximum fee for
3 manure pipeline in wetland) is repealed.

4 Sec. 10. PREVIOUSLY ISSUED WETLAND CLASSIFICATION

5 DECISIONS

6 (a) If a wetland was determined by the Secretary to be a Class II wetland
7 prior to October 1, 2020, and a formal determination issued pursuant to 10
8 V.S.A. § 914 was issued for the wetland less than five years prior to October 1,
9 2020, that determination shall remain in effect and the wetland shall be
10 considered a Class II wetland until five years from the effective date of
11 issuance of the formal determination.

12 (b) If a wetland was determined by the Secretary to be a Class III wetland
13 five years prior to October 1, 2020, and that determination was documented
14 either as a formal or preliminary determination, that determination shall remain
15 in effect until five years from the date of that decision.

16 (c) Duly authorized permits for impacts to Class I or II wetlands or buffers
17 shall remain in effect without regard to any subsequent change in wetland
18 classification.

19 Sec. 11. WETLAND SCIENTIST LICENSURE REQUIREMENTS

20 The Agency of Natural Resources shall commence a study of potential
21 approaches to licensing and certifying qualified wetlands scientists, including
22 developing a set of standard qualifications required for all professional wetland

1 scientists. On or before January 1, 2024, the Agency shall submit a report to
2 the Legislature summarizing its findings and providing recommendations for
3 the development of a professional certification program for wetland scientists.

4 * * * Effective Dates * * *

5 Sec. 12. EFFECTIVE DATES

6 (a) This section and Sec. 9 (repeal of sunset on wetlands permitting fee;
7 manure pipelines) shall take effect on passage.

8 (b) Secs. 1–5, Sec. 8, and Secs. 10 and 11 (wetlands permitting) shall take
9 effect October 1, 2020.

10 (c) Secs. 6 and 7 (wetlands coordination MOU) shall take effect July 1,
11 2019.