

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 0.5 acres, or
7 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 5,000 square feet in size
12 and contiguous with a stream or open body of surface water, or the wetland is
13 within a river corridor or flood hazard area.

14 (C) The wetland is over 2,500 feet in elevation and contiguous with a
15 stream.

16 (D) The wetland is greater than 2,000 square feet and contiguous
17 with an impaired surface water;

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

19 (F) The wetland is or contains peatland.

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

22 (H) The wetland is a vernal pool.

1 (I) The wetland has a known occurrence of a wetland-dependent rare,
2 threatened, or endangered species.

3 (J) The wetland has a known occurrence of a State-significant natural
4 community.

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

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

9 (9) “Buffer zone” means an area contiguous to a ~~significant~~ Class I or II
10 ~~wetland that protects the wetland’s functions and values.~~ The buffer zone for a
11 Class I wetland shall extend at least 100 feet from the border of the wetland,
12 unless the Department determines otherwise under section 915 of this title.

13 The buffer zone for a Class II wetland shall extend at least 50 feet from the
14 border of the wetland unless the Secretary determines otherwise under section
15 ~~914~~ 913 of this title.

16 ~~(10) “Panel” means the Water Resources Panel of the Agency of Natural~~
17 ~~Resources.~~ “Agricultural production area” means an area in existence as of
18 January 1, 2019 where animals, agricultural inputs, or raw agricultural
19 products are confined, housed, stored, or prepared within or without structures,
20 and includes a 200-foot buffer around such areas. Agricultural production
21 areas include barnyards, raw materials storage areas, heavy use areas, fertilizer
22 and pesticide storage areas, waste storage and containment areas, egg washing

1 or egg processing facilities, or milk houses. For the purpose of this chapter,
2 agricultural production areas do not include areas used in the storage, handling,
3 treatment, or disposal of mortalities.

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

5 “Farming” means:

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

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

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

9 or bees;

10 (C) the operation of greenhouses; or

11 (D) the production of maple syrup.

12 (12) “Permanent structure” means a nonmovable structure that is

13 designed, planned, and constructed to remain at one location and that is

14 securely attached to its location, including residential dwellings, commercial

15 and industrial buildings, farm structures, and wastewater systems.

16 ~~(12)~~(13) “Secretary” means the Secretary of Natural Resources or the

17 Secretary’s authorized representative.

18 (14) “Structure” means a human-made construction installed in or on a

19 property for occupancy or use.

20 (15) “Waste storage facility” means an impoundment made for the

21 purpose of storing agricultural waste by constructing an embankment,

1 excavating a pit or dugout, fabricating an in-ground or aboveground structure,
2 or any combination thereof.

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

8 (A) the retrofit of impervious surfaces in existence as of January 1,
9 2019 for the purpose of addressing stormwater runoff;

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

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

16 (i) construction of animal trails and walkways;

17 (ii) construction of access roads;

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

19 (iv) construction of artificial wetlands; and

20 (v) the relocation of structures, when necessary, to allow for the
21 management and treatment of agricultural waste, as defined in the Required
22 Agricultural Practices Rule.

1 Sec. 2. 10 V.S.A. § 905b is amended to read:

2 § 905b. DUTIES; POWERS

3 The Department shall protect and manage the water resources of the State in
4 accordance with the provisions of this subchapter and shall:

5 * * *

6 (18) Manage wetlands to maximize protection, minimize impact, and
7 facilitate restoration of wetlands to the greatest extent practicable. Study and
8 investigate the wetlands of the State and cooperate with municipalities, the
9 general public, and other agencies, ~~and the Board~~ in collecting and compiling
10 data relating to wetlands, share information with the public regarding the
11 wetlands of the State, propose ~~to the Board~~ specific wetlands to be designated
12 as Class I wetlands, issue or deny permits pursuant to section 913 of this title
13 and the rules authorized by this subdivision, ~~issue wetland determinations~~
14 ~~pursuant to section 914 of this title,~~ issue orders pursuant to section 1272 of
15 this title, and in accordance with 3 V.S.A. chapter 25, adopt rules to ~~address~~
16 ~~the following:~~

17 (A) ~~The identification of wetlands that are so significant they merit~~
18 ~~protection. Any determination that a particular wetland is significant will~~
19 ~~result from an evaluation of at least the following functions and values which a~~
20 ~~wetland serves:~~

21 (i) ~~provides temporary water storage for flood water and storm~~
22 ~~runoff;~~

1 ~~(ii) contributes to the quality of surface and groundwater through~~
2 ~~chemical action;~~

3 ~~(iii) naturally controls the effects of erosion and runoff, filtering~~
4 ~~silt, and organic matter;~~

5 ~~(iv) contributes to the viability of fisheries by providing spawning,~~
6 ~~feeding, and general habitat for freshwater fish;~~

7 ~~(v) provides habitat for breeding, feeding, resting, and shelter to~~
8 ~~both game and nongame species of wildlife;~~

9 ~~(vi) provides stopover habitat for migratory birds;~~

10 ~~(vii) contributes to an exemplary wetland natural community, in~~
11 ~~accordance with the rules of the Secretary;~~

12 ~~(viii) provides for threatened and endangered species habitat;~~

13 ~~(ix) provides valuable resources for education and research in~~
14 ~~natural sciences;~~

15 ~~(x) provides direct and indirect recreational value and substantial~~
16 ~~economic benefits; and~~

17 ~~(xi) contributes to the open space character and overall beauty of~~
18 ~~the landscape.~~

19 ~~(B) The ability to reclassify wetlands, in general, or on a case by-~~
20 ~~case basis.~~

21 ~~(C) The protection of wetlands that have been determined under~~
22 ~~subdivision (A) or (B) of this subdivision (18) to be significant, including rules~~

1 ~~that provide for the issuance or denial of permits and the issuance of wetland~~
2 ~~determinations by the Department under this chapter; provided, however, that~~
3 ~~the rules may only protect the values and functions sought to be preserved by~~
4 ~~the designation~~ implement the requirements of this chapter. The Department
5 shall not adopt rules that restrain agricultural activities without the written
6 consent of the Secretary of Agriculture, Food and Markets and shall not adopt
7 rules that restrain ~~silvicultural activities~~ forestry operations without the written
8 consent of the Commissioner of Forests, Parks and Recreation.

9 * * *

10 Sec. 3. 10 V.S.A. § 913 is amended to read:

11 (a) ~~Except for allowed uses adopted by the Department by rule, no person~~
12 ~~shall conduct or allow to be conducted an activity in a significant wetland or~~
13 ~~buffer zone of a significant wetland except in compliance with a permit,~~
14 ~~conditional use determination,~~ Except as provided in subsection (e) below, the
15 following alterations within a Class I or Class II wetland or its buffer zone are
16 prohibited without an individual permit, authorization under a general permit,
17 or an order issued by the Secretary:

18 (1) dredging or removing soil or other material;

19 (2) draining, dewatering, or otherwise altering the hydrology of the
20 wetland;

21 (3) filling; and

22 (4) cutting or removing vegetation.

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

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

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

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

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

14 (2) ~~any construction within a wetland that is identified on the Vermont~~
15 ~~significant wetlands inventory maps or within the buffer zone of such a~~
16 ~~wetland, provided that the construction was completed prior to February 23,~~
17 ~~1992, and no action for which a permit is required under the rules of the~~
18 ~~Department was taken or caused to be taken on or after February 23, 1992.~~
19 protection of surface waters and groundwater;

20 (3) contribution to fish habitat;

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

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

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

5 (7) provides or is likely to provide resources for education or scientific
6 resources;

7 (8) recreational value and economic benefits;

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

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

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

15 (d) The Secretary may establish the necessary width of the buffer zone of
16 any Class II wetland, pursuant to the rules of the Department. The buffer zone
17 of any Class II wetland shall be 50 feet, unless otherwise determined by the
18 Secretary.

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

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

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

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

11 (C) Land is no longer considered to be growing food or crops in
12 ordinary rotation if it is converted to a use other than the growing of food or
13 crops, or requires mechanized clearing or modifications to the hydrological
14 regime to resume the growing of food or crops.

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

17 (3) The implementation of best management practices on farms for the
18 purpose of improving water quality, when those practices are implemented in
19 compliance with the required agricultural practices or the Natural Resources
20 Conservation Service Conservation Practice Standards. Exempt practices
21 include:

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

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

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

5 (D) maintenance of existing buildings and structures;

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

10 (F) construction or maintenance of farm ponds;

11 (G) construction or maintenance of grassed waterways;

12 (H) construction of stream crossings; and

13 (I) the installation of manure pipelines or other temporary impacts
14 that do not result in any change to the original grade of the wetland and that
15 allow for the impacted area to revert back to wetland, including the
16 reestablishment of the existing wetland vegetation, within one year.

17 (4) Forestry operations conducted in Class I or II wetlands and their
18 buffer zones, consistent with the following requirements:

19 (A) The forestry operation shall be conducted in accordance with the
20 Acceptable Management Practices for Maintaining Water Quality on Logging
21 Jobs as adopted by the Department of Forests, Parks and Recreation. The
22 removal of trees for other land uses, including commercial or residential

1 development or conversion to agricultural production, is not exempt and may
2 require a wetland permit.

3 (B) The forestry operation shall be conducted in compliance with the
4 Management Guidelines for Deer Wintering Areas in Vermont, established
5 jointly by the Department of Fish and Wildlife and the Department of Forests,
6 Parks and Recreation, when occurring in wetlands or buffer zones containing
7 deer wintering areas mapped by the Fish and Wildlife Department.

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

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

13 (E) The construction of new truck roads in buffer zones when
14 necessary, and the maintenance, restoration, reconstruction, rehabilitation, or
15 upgrade of existing truck roads in buffer zones, when used solely for forestry
16 operations.

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

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

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

7 (I) Forestry operations conducted in any Class I wetland or its buffer
8 zones, or any Class II wetland specifically designated by the Secretary as
9 providing habitat for any species on the state or federal list of threatened or
10 endangered species, shall comply with a plan approved in writing by the
11 Commissioner of Forests, Parks and Recreation.

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

14 (6) Any construction within a wetland that is identified on the Vermont
15 significant wetlands inventory maps or within the buffer zone of such a
16 wetland, provided that the construction was completed prior to February 23,
17 1992, and no action for which a permit is required under the rules of the
18 Department was taken or caused to be taken on or after February 23, 1992.

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

20 § 914. ~~WETLANDS DETERMINATIONS~~

21 ~~(a) The Secretary may, upon a petition or on his or her own motion,~~
22 ~~determine whether any wetland is a Class II or Class III wetland. Such~~

1 ~~determinations shall be based on an evaluation of the functions and values set~~
2 ~~forth in subdivision 905b(18)(A) of this title and the rules of the Department.~~

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

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

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

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

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

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

13 ~~INVENTORY MAPS~~

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

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

18 § 918. COORDINATION; COOPERATION; FARMING ACTIVITIES IN

19 WETLANDS

20 The Secretary of Natural Resources and the Secretary of Agriculture, Food
21 and Markets shall adopt a memorandum of understanding to formalize a
22 process for coordinating the review of whether farming or an activity related to

1 farming requires a permit under this subchapter. The memorandum of
2 understanding shall address: how coordination shall occur; the timing of
3 coordination, including how coordination shall be conducted at the earliest
4 possible time; when a permit may be required; how a person engaged in
5 farming would obtain a permit; and enforcement of any required permit.

6 Sec. 7. ADOPTION OF MEMORANDUM OF UNDERSTANDING;

7 FARMING IN WETLANDS

8 (a) On or before January 15, 2020, the Secretary of Natural Resources, after
9 consultation with the Secretary of Agriculture, Food and Markets, shall submit
10 a copy or draft of the memorandum of understanding required under 10 V.S.A.
11 § 918 to the Senate Committees on Agriculture and on Natural Resources and
12 Energy and to the House Committees on Agriculture and Forestry and on
13 Natural Resources, Fish, and Wildlife.

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

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

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

21 * * *

1 (26) For individual conditional use determinations, for individual
2 wetland permits, for general conditional use determinations issued under
3 10 V.S.A. § 1272, or for wetland authorizations issued under a general permit,
4 an administrative processing fee assessed under subdivision (2) of this
5 subsection and an application fee of:

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

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

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

18 * * *

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

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

9 Sec. 9. REPEAL

10 2018 Acts and Resolves No. 194, Sec. 8a (sunset of maximum fee for
11 manure pipeline in wetland) is repealed.

12 Sec. 10. PREVIOUSLY ISSUED WETLAND CLASSIFICATION

13 DECISIONS

14 (a) If a wetland was determined by the Secretary to be a Class II wetland
15 prior to October 1, 2020, and a formal determination issued pursuant to 10
16 V.S.A. § 914 was issued for the wetland less than five years prior to October 1,
17 2020, that determination shall remain in effect and the wetland shall be
18 considered a Class II wetland until five years from the effective date of
19 issuance of the formal determination.

20 (b) If a wetland was determined by the Secretary to be a Class III wetland
21 five years prior to October 1, 2020, and that determination was documented

1 either as a formal or preliminary determination, that determination shall remain
2 in effect until five years from the date of that decision.

3 Sec. 11. WETLAND SCIENTIST LICENSURE REQUIREMENTS

4 The Agency of Natural Resources shall commence a study of potential
5 approaches to licensing and certifying qualified wetlands scientists, including
6 developing a set of standard qualifications required for all professional wetland
7 scientists. On or before January 1, 2024, the Agency shall submit a report to
8 the Legislature summarizing its findings and providing recommendations for
9 the development of a professional certification program for wetland scientists.

10 * * * Effective Dates * * *

11 Sec. 12. EFFECTIVE DATES

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

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

16 (c) Secs. 6 and 7 (wetlands coordination MOU) shall take effect July 1,
17 2019.