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**Act No. 32 (H.108). Conservation and land development; water quality; water quality standards; certification**

**An act relating to Vermont standards for issuing a Clean Water Act section 401 certification**

This act establishes standards by which the Agency of Natural Resources (ANR) shall issue a federal Clean Water Act (CWA) Section 401 certification for an activity that requires a federal permit or license when the activity may cause a discharge to State waters. The act requires ANR in issuing a CWA Section 401 certification to ensure that a proposed activity complies with the Vermont Water Quality Standards (VWQS) and other appropriate State laws. ANR shall not grant a CWA Section 401 certification unless the applicant demonstrates all of the following: there is no practicable alternative to the proposed activity that would have a less adverse impact on State waters and wetlands, the proposed activity will not violate applicable VWQS water quality criteria, and the proposed activity will not violate the State's antidegradation policy. An alternative is practicable if it is available and capable of being completed after taking into consideration cost, existing technology, and logistics of the proposed activity. ANR may issue a CWA Section 401 certification to any federal general permit or authorization, and compliance with that federal permit or authorization shall be presumed to comply with the ANR certification.

The act requires ANR to amend the VWQS to clarify that the uses of Class I and II wetlands to be protected include all functions and values of wetlands set forth in the Vermont Wetland Rules. ANR is required to amend the VWQS to clarify that the antidegradation policy shall apply to wetlands and their functions and values. The act exempts railroad projects or State or municipal road or highway projects that require a certification under CWA Section 401 from an alternatives analysis.

The act provides requirements for implementation. ANR shall file draft rules with the Secretary of State within 90 days from the act's effective date. By January 15, 2022, ANR shall submit to the General Assembly a report regarding the status of the required rulemaking required by Sec. 2. On or before March 1, 2022, ANR shall file final rules with the Secretary of State.

Multiple effective dates, beginning on May 18, 2021