

Matt Chapman, General Counsel

Agency of Natural Resources

Framework for the Vermont Wetlands Program

Why do we protect wetlands?

- Flood storage and erosion control;
- Filtration and improvement of surface and groundwater quality;
- Habitat for game / nongame wildlife species, migratory bird habitat, and fisheries;
- Threatened and endangered species habitat; and
- Recreational value for humans.

Regulation and protection of wetlands

- Wetlands are protected by the State and the Federal Governments.
- Federal protection of wetlands is under Section 404 of the Clean Water Act and administered by the Army Corps of Engineers.
- Permits are required when there is dredging or filling of wetlands with a significant nexus to / direct connection to a Water of the United States.
- Federal rules around WOTUS have been unclear since Supreme Court's decision in *Rapanos v. United States*, 547 U.S. 715 (2006). There have been several EPA / ACE rules to clarify, all have been appealed.

History of Wetland Regulation in Vermont

- Originally, wetlands were regulated under Criterion 1(G). 10 V.S.A. § 6086(a)(1)(G)
- Around 1990, the State adopted a wetlands permitting program administered by the Water Resources Board. Permits were issued and administered by the Board and the Agency of Natural Resources housed the technical expertise.
- In 2010, the permit administration authority was transferred from the Water Resources Panel to ANR.

Protection of Wetlands in Vermont

- Vermont protects significant wetlands – not required to have a relationship to a water of the US or State. Do need to have the three components of a wetland: hydrology, soils, vegetation.
- Wetlands are significant if they promote:
 - Water Storage for Flood Water and Storm Runoff
 - Surface and Ground Water Protection
 - Fish Habitat
 - Wildlife Habitat
 - Exemplary Wetland Natural Community
 - Rare, Threatened, and Endangered Species Habitat
 - Education and Research in Natural Sciences
 - Open Space and Aesthetics
 - 0 Erosion Control through Binding and Stabilizing the Soil



Class I Wetlands

- The wetland is exceptional or irreplaceable in its contribution to Vermont's natural heritage, and therefore merits the highest level of protection.
 - Class I wetlands are identified on the Vermont State Wetlands Inventory (VSWI) Map.
 - Class I wetlands have a default 100' buffer.
 - State adopts or designates a Class I wetland by rule.
 - No permitted activity in a Class I wetland unless it is necessary to meet a compelling public need to protect public health or safety.
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Class II Wetlands

- A Class II Wetland is one that is:
 - Identified on the VSWI Map;
 - Contiguous to a wetland identified on the VSWI map;
 - Determined to be a wetland under the process outlined under 10 V.S.A. § 914 or
 - Subject to a presumption under VWR § 4.6
- Class II Wetlands have a default 50' buffer.
- A person cannot conduct an activity in a Class II wetland without a permit from the ANR or it being an allowed use.

Allowed Uses

- Allowed Use = Exemption.
- Allowed uses are adopted by rule. There is a list of allowed uses in Section 6 the wetlands rule. They include some silvicultural activities, some agricultural activities, removal of beaver dams, and recreational activities (hiking and birdwatching) in wetlands.
- Not all agriculture is exempt under the wetlands rule. The “growing of food or crops in connection with farming activities” is definitely excluded from being a wetland



Wetlands Permitting

- In order to obtain a permit to perform an activity in a Class II wetland you have to:
 - Avoid the wetland to the maximum extent practicable;
 - Mitigate the activity's impacts to any protected function or value; and
 - Compensate for any permitted adverse wetland impact.