

H.108

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

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 10 V.S.A. § 1253(h) is added to read:

(h)(1) The Secretary shall administer a Clean Water Act Section 401 certification program to review activities that require a federal license or permit to ensure that a proposed activity complies with the Vermont Water Quality Standards, as well as with any other appropriate requirement of State law, including:

- (A) 10 V.S.A. chapter 37 (wetlands protection and water quality management);
- (B) 10 V.S.A. chapter 41 (regulation of streamflow);
- ~~(C) 10 V.S.A. chapter 49A (lakeshore protection standards);~~
- ~~(D)(C) 10 V.S.A. § 1264 (stormwater management);~~
- ~~(E)(D) 29 V.S.A. chapter 11 (management of lakes and ponds); and~~
- ~~(F)(E) The Agency of Natural Resources Rules for Water Withdrawals for Snowmaking.~~

(2) The Secretary of Natural Resources ~~shall deny any~~ shall not grant an application for

certification under Section 401 of the Clean Water Act, unless the applicant demonstrates all of the following:

(A) there is no practicable alternative to the proposed activity that would have a less adverse impact on waters and wetlands of the State, and provided that any proposed alternative shall not have other significant adverse human health, safety, or environmental consequences;

(B) the proposed activity will not result in the violation of any applicable water quality criteria established in the Vermont Water Quality Standards; and

(C) the proposed activity will not result in a violation of the State's antidegradation policy.

(3)(A) An alternative is considered practicable under subdivision (2)(A) of this subsection (h) if it is available and capable of being completed after taking into consideration cost, existing technology, and logistics in light of overall purposes of the proposed activity.

(B) Failure to comply with the requirements of subdivision (2)(A) of this subsection (h) shall not be the basis for denial of an application for a certification under Section 401 of the Clean Water Act if the proposed activity is exempt from those requirements under a rule adopted by the Secretary.

(4) The Secretary may issue a certification required by this subsection to any general permit or authorization issued by a federal agency. An applicant's compliance with that federal permit or authorization shall be presumed to be in compliance with the certification, unless the Secretary determines that an

individual review of the applicant's activity is necessary to assure compliance with the Vermont Water Quality Standards and other applicable appropriate State laws.

Sec. 2. AGENCY OF NATURAL RESOURCES; VERMONT WATER
QUALITY STANDARDS; RULEMAKING

The Secretary of Natural Resources shall amend the Vermont Water Quality Standards (VWQS) to include the following:

- (1) An amendment to the Classification of State Waters to clarify that with regard to all Class I and II wetlands, as defined in 10 V.S.A. § 902, the uses to be protected include the functions and values of the wetland as described in Section 5 of the Vermont Wetland Rules.
- (2) An amendment to the antidegradation policy to clarify that wetlands and their functions and values shall be protected as described by the Vermont Wetland Rules.
- (3) Any additional provisions that the Secretary of Natural Resources determines are necessary to implement the requirements of 10 V.S.A. § 1253(h), including any exemptions to the requirements of 10 V.S.A. § 1253(h)(2)(A) for projects that are not likely to have significant impacts on water quality or wetland functions or values. State or municipal road or highway projects, **or railroad projects,** ~~that require a certification under Section 401 of the Clean~~

Water Act shall be exempt from the requirements of 10 V.S.A.

§ 1253(h)(2)(A) when a separate alternatives analysis is otherwise required under State or federal law.

Sec. 3. RULEMAKING IMPLEMENTATION; TIMING

(a) The Secretary of Natural Resources shall file with the Secretary of State under 3 V.S.A. § 838 a copy of the proposed rules required by Sec. 2 of this act within 90 days from the effective date of this act.

(b) On or before January 15, 2022, the Secretary of Natural Resources shall submit to the House Committee on Natural Resources, Fish, and Wildlife and the Senate Committee on Natural Resources and Energy a report regarding the status of the rulemaking required by Sec. 2 of this act. The report shall include a draft of the rules.

(c) On or before March 1, 2022, the Secretary of Natural Resources shall file with the Secretary of State under 3 V.S.A. § 841 a final proposal of the rules required by Sec. 2 of this act.

Sec. 4. EFFECTIVE DATES

(a) This section and Secs. 2 and 3, VWQS rulemaking, shall take effect on passage.

(b) Sec. 1, certification program, shall take effect on the effective date of the rules required to be adopted under Sec. 2.