

H.731

Introduced by Representative Sheldon of Middlebury

Referred to Committee on

Date:

Subject: Conservation and development; water quality; lakes; classification;
antidegradation

Statement of purpose of bill as introduced: This bill proposes to codify the
State antidegradation implementation policy in order to comply with federal
law, protect the waters of the State, and prevent degradation of waters. The
bill also establishes a new surface water classification system for inland lakes
and ponds to ensure that management of those waters serves the public good
by maximizing the functioning and health of littoral ecosystems.

An act relating to the water quality of the State

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

Sec. 1. 10 V.S.A. chapter 47, subchapter 1A is redesignated to read:

Subchapter ~~1A~~ 1B. Notification of Sewage and Wastewater Discharges

Sec. 2. 10 V.S.A. chapter 47, subchapter 1A is added to read:

Subchapter 1A. Antidegradation Policy and Implementation

§ 1286. DEFINITIONS

As used in this subchapter:

1 (1) “Agency” means the Agency of Natural Resources.

2 (2) “Application” means any request for a permit required by State or
3 federal law when filed with, and deemed complete by, the reviewing authority.

4 (3) “Assimilative capacity” means a measure of the capacity of the
5 receiving waters to assimilate wastes without lowering their quality below the
6 applicable water quality criteria.

7 (4) “Cumulative impact” means the collective impact of all past and
8 present legal discharges within the watershed, upstream of the proposed point
9 of discharge and evaluated on an individual parameter basis.

10 (5) “Designated use” means any value or use, whether presently
11 occurring or not, that is specified in the management objectives for each class
12 of water as set forth in the Vermont Water Quality Standards or for each lake
13 class set forth under a lake classification under chapter 49, subchapter 2 of this
14 title.

15 (6) “Equilibrium conditions” means a balance between the water flow,
16 sediment and woody debris supplied to the stream system, and the stream
17 capacity to transport the sediment and debris loads. Equilibrium exists when
18 the stream maintains its dimension, pattern, and profile without unnaturally
19 aggrading or degrading at the river reach or valley segment scales.

1 (7) “Existing discharge” means any discharge to the extent authorized
2 by a valid permit issued under section 1263 or 1265 of this title before January
3 7, 1985.

4 (8) “Existing use” means a use that has actually occurred on or after
5 November 28, 1975, in or on waters, whether or not the use is included in the
6 standard for classification of the waters, and whether or not the use is presently
7 occurring.

8 (9) “High quality waters” means those waters the existing quality of
9 which exceeds any applicable water quality criteria and that provide important
10 environmental, economic, social, and other benefits to the persons of the State.

11 (10) “New discharge” means any discharge not authorized under section
12 1263 of this title as of January 7, 1985, or any increased pollutant loading or
13 demand on the assimilative capacity of the receiving waters from an existing
14 discharge that requires the issuance of a new or amended permit.

15 (11) “NPDES” means the National Pollutant Discharge Elimination
16 System Program established by the federal Clean Water Act to permit certain
17 discharges of pollutants to waters.

18 (12) “Outstanding resource waters” means those waters designated
19 under section 1424a of this title.

1 (13) “Parameter” means a chemical, physical, or biological
2 characteristic that is used to assess conditions and that is contained as narrative
3 or numeric criteria in Vermont’s Water Quality Standards.

4 (14) “Permit” means a certification, order, or other authorization in
5 which, during the application review process, compliance with the Vermont
6 Water Quality Standards is evaluated pursuant to applicable State or federal
7 law.

8 (15) “Policy” means Vermont’s antidegradation policy set forth in this
9 subchapter.

10 (16) “Practicable” means an alternative is available and capable of being
11 completed after taking into consideration cost, existing technology, and
12 logistics in light of the overall purposes of the proposed activity.

13 (17) “Run-of-river” means flow downstream from a project or activity
14 that is equal to inflow on an instantaneous basis. A run-of-river project or
15 activity does not operate out of storage and, therefore, does not artificially
16 regulate flows downstream.

17 (18) “Standards” means the Vermont Water Quality Standards required
18 under this chapter and adopted by the Secretary by rule.

19 § 1287. ANTIDEGRADATION POLICY; PURPOSE

20 (a) Purpose.

1 (1) Pursuant to the federal regulations for the Clean Water Act under
2 40 C.F.R. § 131.12, Vermont is required to adopt and implement a statewide
3 antidegradation policy to protect and maintain water quality and existing and
4 designated uses of the State's waters.

5 (2) Because the Agency of Natural Resources repeatedly has failed to
6 comply with legislative directives to adopt a rule to implement the State's
7 antidegradation policy, this subchapter declares the State's antidegradation
8 policy and the requirements for implementation of the antidegradation policy
9 in order to protect water quality in outstanding resource waters, protect and
10 maintain water quality in high quality waters, and identify and protect the
11 existing uses of all waters of the State.

12 (b) Antidegradation policy.

13 (1) General policy. All waters of the State shall be managed in
14 accordance with the requirements of this subchapter and the Standards to
15 protect, maintain, and improve water quality.

16 (2) Protection and determination of existing uses. Existing uses of State
17 waters and the level of water quality necessary to protect the existing uses of
18 each water shall be maintained and protected regardless of the water's
19 classification.

20 (A) A determination of what constitutes the existing uses of a
21 particular water shall be made during the basin planning process; during lake

1 classification under chapter 49, subchapter 2 of this title; or on a case-by-case
2 basis during consideration of a petition for a classification or reclassification.
3 The use of waters to receive or transport discharges of waste shall not
4 constitute an existing use for purposes of the State antidegradation policy or
5 implementation of this subchapter.

6 (B) In determining the existing uses to be protected and maintained
7 under this subchapter and under the Standards, the Secretary shall consider the
8 designated uses, and at least the following factors:

- 9 (i) aquatic biota and wildlife that utilize or are present in waters;
10 (ii) habitat that supports or is capable of supporting aquatic biota,
11 wildlife, or plant life;
12 (iii) the use of the waters for recreation or fishing;
13 (iv) the use of the water for a public water source or commercial
14 activity that depends directly on the preservation of an existing high level of
15 water quality; and
16 (v) evidence of the use's ecological significance in the functioning
17 of the ecosystem or evidence of the use's rarity.

18 (C) Waters the existing quality of which exceed any applicable water
19 quality criteria provide important environmental, economic, social, and other
20 benefits to the persons of the State. Except as provided in subdivision (D) of
21 this subdivision (2), waters shall be managed to maintain and protect the higher

1 water quality and minimize risk to existing and designated uses. In all cases,
2 the level of water quality necessary to maintain and protect all existing uses as
3 well as applicable water quality criteria shall be maintained.

4 (D) A limited reduction in the existing higher quality of waters that
5 exceed existing applicable water quality criteria may be allowed only when it
6 is shown that:

7 (i) through the applicable permitting or approval process, the
8 Secretary has provided public notice of the draft decision and an opportunity
9 for public comment on the decision;

10 (ii) after an analysis of alternatives, allowing lower water quality
11 is necessary to prevent substantial adverse economic or social impacts on the
12 persons of the State; and

13 (iii) there shall be achieved the highest statutory and regulatory
14 requirements for all new or existing point sources, and all cost-effective and
15 reasonable best management practices for nonpoint source control, consistent
16 with State law.

17 (E)(i) The analysis of alternatives required under subdivision (D)(ii)
18 of this subdivision (b)(2) shall evaluate a range of alternatives that would
19 prevent or lessen the degradation associated with the proposed activity. When
20 the analysis identifies one or more practicable alternatives, the Secretary shall

1 only find that a lowering is necessary if one practicable alternative is selected
2 for implementation.

3 (ii) To the extent any reduction in the quality of high quality
4 waters is allowed, the reduction shall be limited to that which complies with
5 subdivision (D) of this subdivision (b)(2).

6 (3) Protection of outstanding resource waters and natural condition
7 lakes. The Secretary may under section 1424a of this title designate certain
8 waters as outstanding resource waters or under chapter 49, subchapter 2 of this
9 title designate natural condition lakes. Where the Secretary designates waters
10 for specific exceptional natural, recreational, cultural, or scenic values, their
11 existing quality, associated with the values for which they have been
12 designated, shall, at a minimum, be protected and maintained.

13 (4) Protection of wetlands. Wetlands and their functions and values
14 shall be protected as described by the Vermont Wetland Rules.

15 § 1288. REQUIRED IMPLEMENTATION OF ANTIDEGRADATION

16 POLICY; APPLICABILITY

17 (a) Applicability. The Secretary shall apply the Antidegradation Policy set
18 forth in section 1287 of this title during the review of any application for any
19 permit for a new discharge for which compliance with the Standards is
20 evaluated. Discharges that do not require a permit are not subject to the
21 Antidegradation Policy.

1 (b) Activities subject to review. Activities authorized by the following
2 permits are subject to review under the antidegradation policy:

3 (1) NPDES direct discharge permits issued pursuant to section 1263 of
4 this title and the rules adopted under this chapter;

5 (2) NPDES direct discharge permits for thermal discharges issued
6 pursuant to section 1263 of this title;

7 (3) Concentrated Animal Feeding Operation (CAFO) permits issued
8 under federal rules or under chapter 47, subchapter 3A of this title;

9 (4) stormwater permits issued under section 1264 of this title, including
10 NPDES discharge permits;

11 (5) wetland permits issued pursuant to chapter 37 of this title;

12 (6) water quality certifications issued pursuant to section 401 of the
13 federal Clean Water Act for a federal license or permit, including shoreland
14 activities, lake encroachments, and stream alterations;

15 (7) dam orders issued pursuant to section 1082 of this title;

16 (8) indirect discharge permits issued pursuant to sections 1251, 1259,
17 and 1263 of this title;

18 (9) groundwater withdrawal permits issued pursuant to section 1418 of
19 this title; and

20 (10) any other NPDES permit issued by the Agency.

1 (c) Exemptions. The following permits are exempt from review under the
2 antidegradation policy:

3 (1) permits for response actions taken pursuant to section 1283, 1941,
4 6615, or 6615b of this title or chapter 159, subchapter 3 of this title in response
5 to a release of hazardous materials that may be hazardous to human health or
6 that caused an existing water quality impairment;

7 (2) orders issued pursuant to section 1272 of this title;

8 (3) permits for discharges from wastewater treatment facilities that are
9 designed to eliminate unpermitted discharges that pose a threat to public
10 health, or which caused an existing water quality impairment;

11 (4) permits for stormwater remediation projects installed to mitigate the
12 impact of existing stormwater discharges to receiving waters; and

13 (5) dam orders issued pursuant to section 1095 of this title that authorize
14 actions necessary to abate a threat to human life or property.

15 (d) Application to general permits. If a general permit issued by the
16 Secretary of Natural Resources is reviewed under the antidegradation policy,
17 an authorization issued under the general permit is exempt from subsequent
18 review under the antidegradation policy unless the Secretary determines, based
19 on credible and relevant information and best professional judgment, that the
20 proposed activity, due to its potential impact, requires a site-specific Tier 2
21 analysis through the use of an individual permit.

1 § 1289. INFORMATION REQUIRED FROM APPLICANT

2 (a)(1) The Secretary shall require an applicant for a permit or authorization
3 subject to the antidegradation policy as set forth in section 1287 of this title to
4 provide the necessary information to make a determination under the
5 antidegradation policy.

6 (2) When the Secretary determines there is insufficient information to
7 make a determination under the antidegradation policy and the applicant fails
8 to provide the required information, the Secretary shall deny the application for
9 the relevant permit or authorization.

10 (3) All technical, scientific, social, and economic data and analyses
11 provided to the Secretary shall be developed by qualified professionals.

12 (b) The Secretary may require an applicant for a permit or authorization
13 subject to the antidegradation policy to provide the following information, as
14 the Secretary deems appropriate:

15 (1) an analysis of alternatives to the proposed discharge;

16 (2) a description of the proposed activity, discharge, and facility
17 operations, and their locations;

18 (3) physical, chemical, and biological data for the receiving waters and
19 the characteristics of any proposed discharge;

- 1 (4) water quality modeling analyses;
- 2 (5) the presence of existing uses;
- 3 (6) the level of treatment and control necessary to maintain and protect
4 existing and designated uses in a receiving water;
- 5 (7) the magnitude, duration, and extent of any lowering of water quality
6 due to the proposed discharge or activity by itself and in combination with
7 other presently occurring legal discharges;
- 8 (8) the potential impacts, including cumulative impacts, on designated
9 and existing uses and on high quality waters due to the proposed discharge;
10 and
- 11 (9) social and economic data and analyses, including:
 - 12 (A) median household income of affected community;
 - 13 (B) comparison of existing and expected economic conditions and
14 social services when the proposed activity is fully implemented;
 - 15 (C) economic gains or losses attributable to the proposed activity;
 - 16 (D) contribution to social services;
 - 17 (E) prevention or remediation of environmental or public health
18 threats;
 - 19 (F) value of the water resources;
 - 20 (G) effect on environmental justice focus populations as defined in 3
21 V.S.A. § 6002; and

1 (H) other relevant environmental, social, and economic impacts of
2 the proposed activity.

3 (c)(1) In reviewing an application for a new discharge, the Secretary shall
4 utilize all credible and relevant information and the best professional judgment
5 of Agency staff.

6 (2) Upon completion of review of an application for a new discharge,
7 the Secretary shall post a draft decision for public review and comment for at
8 least 30 days.

9 § 1290. PUBLIC PARTICIPATION REQUIREMENTS

10 (a) The Secretary shall provide an opportunity for meaningful participation
11 for all individuals in accordance with the applicable permit or rulemaking
12 notice requirements and civil rights requirements.

13 (b) Public notice for the permit or rule, and the fact sheet, if applicable,
14 shall include a statement that the permit or rule is consistent with the
15 antidegradation policy and shall describe how the public can obtain materials
16 used in the determination.

17 (c) The Secretary shall provide for intergovernmental coordination,
18 including contacting local municipal governments, federal entities, or
19 downstream states or tribes that may be impacted by a change in water quality.

1 § 1291. ANTIDegradation ANALYSIS; TIER 3 PROTECTION OF
2 OUTSTANDING RESOURCE WATERS

3 (a) For outstanding resource waters or natural condition lakes designated
4 for their specific exceptional natural, recreational, cultural, or scenic values,
5 their existing water quality associated with the values for which they have been
6 designated shall be maintained and protected.

7 (b) The impact of the proposed discharge to the existing water quality of an
8 outstanding resource water or natural condition lake shall be evaluated on a
9 parameter-by-parameter basis necessary to protect the values for which the
10 outstanding resource water or natural condition lake was designated.

11 (c) The Secretary shall evaluate applications for proposed discharges. Only
12 proposed discharges that meet one or both of the following criteria shall be
13 eligible for permitting:

14 (1) The proposed discharge will improve water quality or is necessary
15 for the maintenance of current environmental conditions.

16 (2) The proposed discharge is temporary, and it is expected that water
17 quality in the receiving water will be equal to or better than that which existed
18 prior to commencement of the discharge. In order to be considered temporary,
19 the duration of the discharge shall typically occur over a period of days or
20 months, not years.

1 (d) A discharge that results in no measurable reduction in the physical,
2 chemical, or biological quality of the outstanding resource water shall not be
3 subject to review under Tier 3.

4 § 1292. ANTIDEGRADATION ANALYSIS; TIER 2 PROTECTION OF
5 HIGH QUALITY WATERS

6 (a) Applicability. This section applies to high quality waters the existing
7 quality of which exceeds any applicable water quality criteria and that provide
8 important environmental, economic, social, and other benefits to the persons of
9 the State.

10 (b) Limited reduction in quality. A limited reduction in the existing quality
11 of high quality waters may be allowed only when it is shown that:

12 (1) through the applicable permitting or approval process, the Secretary
13 has provided public notice of the draft permit decision and an opportunity for
14 public comment on the draft permit decision;

15 (2) after an analysis of alternatives, allowing lower water quality is
16 necessary to prevent substantial adverse economic or social impacts on the
17 persons of the State; and

18 (3) there shall be achieved the highest statutory and regulatory
19 requirements for all new or existing point sources, and all cost-effective and
20 reasonable best management practices for nonpoint source control, consistent
21 with State law.

1 (c) Alternatives. The Secretary shall evaluate alternatives to the proposed
2 activity, including the location and method of discharge, that would have the
3 least adverse impact on waters and wetlands of the State, and provided that any
4 proposed alternative shall not have other significant adverse human health,
5 safety, or environmental consequences.

6 (d) Areas not subject to Tier 2 analyses. In evaluating the impact of a
7 proposed discharge, and considering the nature, persistence, and potential
8 effects of pollutants contained within the discharge, the Secretary may
9 determine that the following are not subject to Tier 2 analysis:

10 (1) a discharge that would result in no measurable reduction in the
11 physical, chemical, or biological quality of a water;

12 (2) the portion of a discharge that consists of a specific pollutant when
13 the pollutant would not be capable of being detected in the applicable receiving
14 water;

15 (3) flow modifying activities that would meet one or more of the
16 following criteria:

17 (A) no impoundment of water or no impoundment that would alter
18 the riverine characteristics of the aquatic habitat;

19 (B) bypass flows that meet or exceed U.S. Fish and Wildlife seasonal
20 conservation flows (0.5/1.0/4.0);

1 (C) instantaneous run-of-river mode of operation;

2 (D) surface water withdrawals that qualify as de minimis under the
3 Agency of Natural Resources' Procedure for Determining Acceptable
4 Minimum Streamflows; or

5 (E) snowmaking water withdrawals that meet the general or de
6 minimis standards in the Agency of Natural Resources' Rules for Water
7 Withdrawals for Snowmaking;

8 (4) stream alteration activities that would result in channel geometry and
9 fluvial processes where bed and bank erosion are neither increased nor
10 transferred to other stream locations, and where floodplain function is
11 maintained or restored over time; or

12 (5) activities in waters of the United States, including navigable waters,
13 within the boundaries of the State subject to the general permits of the U.S.
14 Army Corps of Engineers.

15 (e) Determination of receiving water quality.

16 (1) Waters whose existing ambient water quality exceeds the applicable
17 minimum water quality criteria and indices for the class to which the
18 waterbody is assigned shall be considered high quality water.

19 (2) A waterbody will be assessed as high quality on a parameter-by-
20 parameter basis.

1 (3) The Secretary will presume that all waters are high quality for at
2 least one criterion or index for some portion of the year. This presumption
3 may be rebutted by credible and relevant information obtained by or provided
4 to the Secretary.

5 (4) Any determination of receiving water quality shall include a
6 consideration of cumulative impacts.

7 (5) Depending on the nature of the proposed discharge, factors that may
8 be considered in the evaluation of receiving water quality and assessment of
9 cumulative impacts include:

10 (A) existing physical, chemical, and biological data for the receiving
11 water;

12 (B) nature of resource impacted, such as stream, lake, river, wetland,
13 or watershed;

14 (C) class of the water;

15 (D) presence of rare, threatened, or endangered species;

16 (E) presence of salmonid spawning areas;

17 (F) current legally authorized activities and discharges in the affected
18 receiving water or watershed;

19 (G) effect of the proposed activity or discharge;

20 (H) percent of impervious cover in the associated watershed;

1 (I) percent of wetland impacted;

2 (J) stream equilibrium condition, including geomorphic condition,
3 channel adjustment processes, and sensitivity, at the reach and valley segment
4 scales;

5 (K) degree of flow or water level regulation;

6 (L) change in land cover relative to natural cover;

7 (M) percent of cover of jurisdictional lake surface area with docks
8 and other encroachments;

9 (N) riparian conditions, including percent of lake shoreline length
10 with structural stabilizations and development within 50 feet of the shore;

11 (O) number and type of activities and extent of development in
12 stream or river corridors, floodplains, and watershed;

13 (P) program-specific activities, such as river corridor planning or
14 offset programs, intended to reduce current cumulative impacts and create
15 assimilative capacity; and

16 (Q) biomonitoring data, including results from targeted monitoring
17 plans for at-risk watersheds.

18 (f) Determination of reduction of receiving water quality resulting from the
19 proposed activity.

20 (1) In the course of reviewing an application for an individual permit or
21 in the development of a general permit, the Secretary shall determine the extent

1 to which a proposed discharge will result in a reduction in receiving water
2 quality by utilizing all credible and relevant information and the best
3 professional judgment of Agency staff.

4 (2) For discharges subject to this section, the Secretary may consider,
5 when appropriate, one or more of the following factors when determining if a
6 proposed new discharge will result in a reduction in water quality:

7 (A) the predicted change in ambient water quality criteria at the
8 appropriate critical conditions;

9 (B) percent and total change in loadings;

10 (C) nature, persistence, and potential effects of the pollutant;

11 (D) ratio of stream flow to discharge flow (dilution ratio);

12 (E) duration of discharge;

13 (F) measurable impacts to aquatic biota or habitat;

14 (G) existing physical, chemical, and biological data for the receiving
15 water;

16 (H) degree of hydrologic or sediment regime modifications; and

17 (I) any other flow modifications.

18 (g) Determination of socioeconomic impact. The Secretary shall consider
19 the following factors as appropriate in determining the anticipated economic or
20 social changes resulting from the proposed activity:

1 (1) measurable changes in economic and social conditions, specifically
2 tax base and number and types of jobs created or impacted;

3 (2) measurable direct and indirect economic benefits;

4 (3) correction of an environmental, public health, or public safety
5 problem;

6 (4) consistency with the Environmental Justice State Policy as set forth
7 in 3 V.S.A. § 6003;

8 (5) environmental, economic, and other benefits of maintaining the
9 higher water quality;

10 (6) value of the water resources;

11 (7) reduction of aquatic biota, aquatic habitat, aesthetics, and
12 recreational value that may result from lower water quality;

13 (8) information provided by other government agencies and public
14 participation;

15 (9) public use or accessibility of a resource; and

16 (10) proposed mitigating measures that reduce the impact of the
17 resulting lower water quality or increase the economic and social benefits, or
18 both.

19 (h) Determination of allowable reduction of water quality.

20 (1) In determining if the reduction of water quality is allowable, the
21 Secretary shall consider:

1 (A) reduction of water quality resulting from the proposed activity;

2 (B) the importance of the anticipated socioeconomic impacts; and

3 (C) the availability of funding programs to alleviate potential

4 financial burdens resulting from the maintenance of higher water quality in

5 environmental justice focus populations as defined in 3 V.S.A. § 6002.

6 (2) The Secretary shall allow a limited reduction in the existing water

7 quality only to the extent necessary to prevent substantial adverse

8 socioeconomic impacts on the persons of the State.

9 (i) Best management practices or permitting criteria; presumption of Tier 2

10 compliance. For proposed activities that may discharge to waters of the State,

11 the Secretary shall consider the effectiveness of best management practices or

12 permitting criteria relative to their socioeconomic impacts and require the

13 implementation of those best management practices that are cost-effective and

14 reasonable. The following permits shall require implementation of best

15 management practices determined by the Secretary to be cost-effective and

16 reasonable, and therefore projects that comply with the following permit

17 requirements shall be presumed to meet the Tier 2 requirements unless credible

18 and relevant project or site-specific information rebuts the presumption:

19 (1) Concentrated Animal Feeding Operation (CAFO) permits;

20 (2) NPDES stormwater permits;

1 (3) stormwater permits issued pursuant to section 1264 of this title;

2 (4) wetland permits issued pursuant to chapter 37 of this title;

3 (5) groundwater withdrawals that meet the no-undue-adverse-effect

4 criteria pursuant to the Agency of Natural Resources' Groundwater

5 Withdrawal Reporting and Permitting Rules;

6 (6) indirect discharge permits issued pursuant to the Agency of Natural

7 Resources' Indirect Discharge Rules; and

8 (7) any other NPDES or State permits that depend on best management

9 practices issued by the Agency for waters of the State.

10 (j) Reclassifying B(1) waters. For proposed activities that may discharge to

11 waters where the Secretary determines water quality data meets or exceeds the

12 minimum criteria for B(1) waters or to waters where the Secretary has received

13 an administratively and technically complete petition to reclassify the water to

14 B(1), the Secretary shall evaluate the proposed activity relative to the B(1)

15 criteria.

16 § 1293. ANTIDegradation Analysis; Waters Classified as

17 A(1)

18 (a) Applicability. This section applies to proposed activities that may

19 discharge to:

1 (1) waters classified as A(1);

2 (2) waters where the Secretary determines water quality data meets or
3 exceeds the minimum criteria for A(1); or

4 (3) waters where the Secretary has received an administratively and
5 technically complete petition to reclassify to A(1); and when proposed
6 activities would result in a measurable reduction in the physical, chemical, or
7 biological quality of such waters due to their location, size, and scale.

8 (b) Individual permits. For any activity subject to this section, the
9 Secretary shall require individual permit review and shall evaluate the
10 proposed activity relative to the A(1) criteria.

11 § 1294. TIER 1; PROTECTION OF EXISTING USES

12 (a) The existing uses of waters, and the level of water quality necessary to
13 protect those existing uses, shall be maintained and protected. Existing uses
14 are a confirmation of the set of designated uses in the Standards regardless of
15 the class of the water.

16 (b) In making a determination of existing uses to be protected and
17 maintained under the antidegradation policy set forth in this subchapter, the
18 Secretary shall consider the designated uses and at least the following factors:

19 (1) aquatic biota and wildlife that utilize or are present in the waters;

20 (2) habitat that supports existing aquatic biota, wildlife, or plant life;

1 (3) the use of the waters for recreation or fishing;

2 (4) the use of the water for water supply, or commercial activity that
3 depends directly on the preservation of an existing high level of water quality;
4 and

5 (5) with regard to the factors considered under subdivisions (1) and (2)
6 of this subsection, evidence of the uses' ecological significance in the
7 functioning of the ecosystem or evidence of the uses' rarity.

8 (c) In identifying existing uses, the Secretary shall:

9 (1) for contact and noncontact recreation, fishing, and public surface
10 water supplies, consider the information that the applicant submitted in
11 accordance with the Agency's process for determining recreational uses;
12 information gathered in accordance with the Agency's basin planning
13 procedure for determination of existing uses during the development of basin
14 plans; any relevant information from an applicable basin plan; and any other
15 relevant information regarding use of the receiving waters for contact and
16 noncontact recreation, fishing, and public surface water supplies; and

17 (2) for all other uses, including aquatic habitat and aquatic biota and
18 wildlife, presume that if the designated uses of the receiving waters are
19 currently being achieved and will continue to be achieved after evaluation of
20 the proposed activity, then any identified existing uses will also be maintained
21 and protected.

(e) For waters where the Secretary determines water quality data meets or exceeds the minimum criteria for a higher class for one or more designated uses, or the Secretary has received an administratively and technically complete petition to reclassify waters, any permit issued by the Secretary shall ensure the maintenance of water quality necessary to protect that existing use.

Sec. 3. 10 V.S.A. chapter 49 is amended to read:

Subchapter 1. General Use of Waters

VT LEG #386539 v.1

1 § 1424a. OUTSTANDING RESOURCE WATERS

2 (a) The Secretary, on his or her own motion, may hold a public hearing on
3 the question of whether particular waters should be designated as outstanding
4 resource waters, or whether an existing designation should be amended or
5 repealed. On receipt of a signed written request, the Secretary shall consider
6 the adoption, amendment, or repeal of rules regarding outstanding resource
7 water designation and shall take appropriate action as required under 3 V.S.A.
8 § 806. Any hearing shall be held convenient to the waters in question, or in a
9 county where the waters are located.

10 (b) Any hearing shall be conducted as part of the rulemaking process
11 established under 3 V.S.A. chapter 25.

12 (c) [Repealed.]

13 (d) In making its rulemaking decision, the Secretary may consider, but
14 shall not be limited to considering, the following:

15 (1) existing water quality and current water quality classification,
16 including classifications of lakes and ponds under section 1432 of this title;

17 (2) the presence of aquifer protection areas;

18 (3) the waters' value in providing temporary water storage for flood
19 water and storm runoff;

1 (4) the waters' value as fish habitat;

2 (5) the waters' value in providing or maintaining habitat for threatened
3 or endangered plants or animals;

4 (6) the waters' value in providing habitat for wildlife, including stopover
5 habitat for migratory birds;

6 (7) the presence of gorges, rapids, waterfalls, or other significant
7 geologic features;

8 (8) the presence of scenic areas and sites;

9 (9) the presence of rare and irreplaceable natural areas;

10 (10) the presence of known archeological sites;

11 (11) the presence of historic resources, including those designated as
12 historic districts or structures;

13 (12) existing usage and accessibility of the waters for recreational,
14 educational, and research purposes and for other public uses;

15 (13) studies, inventories, and plans prepared by local, regional,
16 statewide, national, or international groups or agencies; that indicate the waters
17 in question merit protection as outstanding resource waters; and

18 (14) existing alterations, diversions, or impoundments by permit holders
19 under State or federal law.

20 (e) After consideration of all relevant information, the Secretary shall adopt
21 rules designating the waters as outstanding resource waters if it finds that they

1 have exceptional natural, recreational, cultural, or scenic values. Designation
2 as outstanding resource waters shall not invalidate the terms of existing permits
3 issued by the State or federal government.

4 * * *

5 Subchapter 2. Classification of Lakes and Ponds

6 § 1431. POLICY

7 The General Assembly finds that:

8 (1) under the Vermont Constitution and 29 V.S.A. § 401, lakes and
9 ponds that are public waters of Vermont and the lands lying thereunder are
10 held by the State in a public trust for the citizens of the State;

11 (2) the proper management of the State's lakes and ponds is of great
12 public interest and concern to the State in promoting the general welfare; in
13 preventing disease; in promoting health; in providing habitat for fish, shellfish,
14 and wildlife; as a source of recreational opportunity; and as a resource for
15 commerce and industry; and

16 (3) it is the policy of the State that the lakes and ponds of the State and
17 lands thereunder shall be managed to serve the public good by maximizing the
18 functioning and health of littoral ecosystems.

19 § 1432. CLASSIFICATION OF STATE LAKES AND PONDS

20 (a) Definition. As used in this subchapter, "lakes and ponds" means all
21 natural inland lakes and ponds within Vermont.

1 (b) Classifications of lakes. The Secretary of Natural Resources shall
2 review all lakes and ponds in the State for those criteria set forth under
3 subsection 1424a(d) of this title and shall classify each lake or pond according
4 to the following classifications:

5 (1) Natural condition lakes. Lakes or ponds that have exceptional
6 natural, recreational, cultural, or scenic values where recreation may be
7 allowed but where use for irrigation or public water supply should be limited
8 and where development should be limited due to the value provided by the lake
9 or pond or because adjacent lands have substantial constraints for
10 development, such as high water tables, exposed bedrock, and unsuitable soils.

11 (2) Moderate development lakes. Lakes or ponds that have certain
12 identified natural, recreational, cultural, or scenic value where recreation,
13 public water supply, or limited development has previously occurred and may
14 continue, provided that any use of the water or adjacent lands shall not degrade
15 the natural, recreational, cultural, or scenic value or water quality of the lake or
16 pond.

17 (3) General development lakes. Lakes or ponds that are generally large
18 lakes or ponds with high levels and mixes of existing development. These
19 lakes often are extensively used for recreation and are heavily developed
20 around the shore. Recreation and development may continue at general
21 development lakes, provided that use of the water or adjacent lands shall not

1 degrade the water quality of the lake or pond. Second and third tiers of
2 development are fairly common. The larger examples in this class can
3 accommodate additional development and use.

4 (c) Classification status.

5 (1) Until January 1, 2028, or reclassification under this section, lakes
6 and ponds shall retain the water quality classification identified for the water
7 under section 1253 of this title or the Vermont Water Quality Standards.

8 (2) A lake reclassified under this section shall maintain all uses and shall
9 retain all protection of water quality of the lake under its classification under
10 section 1253 of this title or the Vermont Water Quality Standards.
11 Reclassification under this section shall only improve protection of the uses
12 and water quality of the lake.

13 (3) Beginning on January 1, 2028, any lake or pond that the Secretary
14 has yet to reclassify under this section shall be classified as a natural condition
15 lake where development of adjacent lands shall be prohibited.

16 (d) Procedure for classification.

17 (1) The Secretary, upon a petition from any person or on the Secretary's
18 own motion, may reclassify any lake or pond in the State according to the
19 classifications set forth in subsection (b) of this section. The Secretary shall
20 base a reclassification on the factors set forth in section 1424a of this title and
21 the existing functions, values, and water quality of the lake or pond.

1 (2) The Secretary shall hold at least one public hearing in the area to be
2 affected by the reclassification of a lake or pond for the purposes of collecting
3 public input and presenting the proposed classification for the lake or pond.

4 (3) If a proposed reclassification of a lake or pond would limit or
5 prohibit a previous use of the water and adjacent lands, the Secretary shall
6 amend the Vermont Use of Public Waters Rules to specify the limits on the use
7 of the water and adjacent lands.

8 (4) If a proposed reclassification would prohibit a previous use of the
9 lake or pond or adjacent lands, the Secretary shall conduct a use attainability
10 analysis of the water according to the requirements of 40 C.F.R. Part 131 as
11 published on July 1, 2026. The Secretary shall propose a prohibition of a use
12 of a lake or pond if one or more of the following is occurring:

13 (A) the lake or pond is not supporting the use;

14 (B) the use is degrading the water quality of the lake or pond; or

15 (C) the use has potential to degrade the water quality of the water to
16 the point that other existing uses of the water will be diminished or impaired.

17 (e) Discharges.

18 (1) The Secretary shall not issue a permit for a direct discharge to a
19 natural condition lake, including stormwater discharge, application of a
20 pesticide under an aquatic nuisance permit, or a pesticide application according
21 to an authorization issued by the Agency of Natural Resources.

1 (2) The Secretary shall not issue a permit for a direct discharge to any
2 lake if the discharge by itself or in combination with other discharges or uses
3 of the water would result in the degradation of the water quality of the water or
4 would impair the uses of the water.

5 Sec. 4. IMPLEMENTATION

6 Beginning on January 1, 2027, the Secretary of Natural Resources shall
7 issue decisions implementing the antidegradation policy for the State under
8 10 V.S.A. chapter 47, subchapter 1A.

9 Sec. 5. EFFECTIVE DATE

10 This act shall take effect on July 1, 2026.