



Wood Products Manufacturers Act 250 Permitting Supplemental Guidance

Purpose

The State of Vermont envisions an ecologically functional landscape that supports working forests with sustainable natural resource production. Some natural resource-based industries are subject to regulation under Vermont's land use and development law, Act 250. This supplemental guidance provides general information about special allowances and opportunities that are available to facilitate Act 250 permitting for projects in the wood products manufacturing sector.¹ Such projects often require an Act 250 land use permit.²

Definitions

Act 250³ defines "wood product" as follows:

Logs, pulpwood, veneer wood, bolt wood, wood chips, stud wood, poles, pilings, biomass, fuel wood, maple sap, and bark."

Act 250⁴ defines "wood products manufacturer" as follows:

"A manufacturer that aggregates wood products from forestry operations and adds value through processing or marketing in the wood products supply chain or directly to consumers through retail sales. "Wood products manufacturer" includes sawmills; veneer mills; pulp mills; pellet mills; producers of firewood, woodchips, mulch, and fuel wood; and log and pulp concentration yards. "Wood products manufacturer" does not include facilities that purchase, market, and resell finished goods, such as wood furniture, wood pellets, and milled lumber, without first receiving wood products from forestry operations."

Special allowances for wood products manufacturers

The Vermont Legislature has established laws to facilitate the Act 250 permitting process for wood products manufacturers as outlined below.

Minor Application Process

By default, if a project fits one of the following descriptions, then the Act 250 district commission (the "Commission") will publish notice of this application for review without a hearing⁵:

- (1) a sawmill that produces three and one-half million board feet or less annually; or
- (2) a forest product processing facility that annually produces:
 - (A) 3,500 cords or less of firewood or cordwood; or



(B) 10,000 tons or less of bole wood, whole tree chips, or wood pellets.

Applications can still be subject to a hearing if a party requests it and the Commission approves the request.

1:1 Primary Agricultural Soils Mitigation Ratio

All projects must demonstrate that they will not reduce the potential of Vermont's best agricultural soils pursuant to Act 250 Criterion 9(B). Projects that impact such soils must mitigate for those impacts. Act 250 allows wood products manufacturing projects to do so at a ratio of 1 acre of primary soils impacted to 1 acre of primary soils protected, which is a lower ratio than that required for some other project types.⁶ Contact the Vermont Agency of Agriculture's [Senior Agricultural Development Coordinator](#) or the [Act 250 district coordinator](#) for details.

Special Provisions for Hours of Operation and Delivery

Act 250 recognizes that harvesting timber and delivering wood or wood products can require a unique set of seasonal, weather-dependent, and land-dependent conditions to serve markets while protecting the environment. Specifically, timber must often be harvested during frozen or dry ground conditions, and wood deliveries must sometimes occur early in the morning or late at night. Act 250 permits may set conditions restricting hours of operation for wood products manufacturers, but only for the purposes of addressing traffic impacts, protecting air quality, and preventing undue noise or other aesthetic impacts.⁷

Even with such conditions, permits must allow flexibility for raw timber deliveries from forestry operations to manufacturers outside of the permitted hours of operation. To take advantage of this flexibility, applicants must request a specific number of delivery days during an Act 250 permit review process and demonstrate why that number of days is necessary. The maximum permissible number of days of after-hours deliveries per year is 90.⁸

For wood products manufacturers that produce wood chips, pellets, cord wood, or other fuel wood used for heat, or for the end users of those products, Act 250 allows for even more flexibility. Manufacturers may deliver these products to end users outside of permitted hours of operation, including nights, weekends, and holidays, from October 1 through April 30 of each year. Permits for these facilities may establish conditions to mitigate the noise and traffic impacts of after-hours deliveries while still enabling them.⁹

Any wood products manufacturer with an existing Act 250 land use permit can [apply for a permit amendment](#) to change their existing permit conditions related to hours of operation consistent with the special parameters outlined above. In addition, such amendment applications do not need to go through an analysis to

prove that the facility's existing operating hours conditions were not critical to issuance of the permit (i.e., such amendment applications do not need to include a "Stowe Club Highlands Analysis" as part of the request to modify previously established hours of operation.)¹⁰

Stonybrook

There is existing case law, the "Stonybrook"¹¹ precedent, under which Act 250 jurisdiction may be limited to a defined project area (rather than to the entire tract or tracts of land). As part of its application, an applicant may request that a district commission limit the permitted portion of the project tract in accordance with the Stonybrook case. Such a request must include a detailed evaluation of the resources on the project tract and the project's actual impacts on those resources under the Act 250 criteria. It should also include a site plan or survey plan and other evidence that definitively establishes the extent of such impacts or effects. Detailed information might be required to document the project's impacts without holding a hearing, in accordance with Act 250's minor application process provisions for wood products manufacturers.¹² If a Stonybrook request is granted and a land use permit is issued, then permit conditions will only apply to the subset of land within the defined "Stonybrook project area." Future land uses on portions of the tract or tracts located outside of this area will not require permit amendments unless they trigger Act 250 jurisdiction independently from the original permitted project. Consult the [Stonybrook Guidance](#) and the [district coordinator](#) for further information.

Preapplication Guidance and Review

Act 250 staff are available to help wood product manufacturers with project scoping or pre-purchase site evaluation. For example, if a person is considering building or expanding a wood products manufacturing facility in a specific location, a district coordinator can meet with the developer to identify potential issues and strategies to avoid or minimize them in the permitting process. Contact the [Act 250 district coordinator](#) for this and other pre-application guidance about the Act 250 criteria and the permit application process.

Although Act 250 is not part of the Agency of Natural Resources ("ANR"), Act 250 coordinators are familiar with many ANR permitting programs, and can help guide developers to relevant ANR staff to incorporate ANR regulatory considerations into project designs to expedite permitting and review.

In addition, upon request, [ANR's Office of Planning](#) is available to advise, and if necessary, meet with any wood products manufacturer about a project that requires an Act 250 land use permit. ANR's Office of Planning staff serve as the Agency's contact for ANR questions and issues. They can guide and advise prospective applicants about ANR regulations and interests that are relevant to the Act 250 review process, as well as ANR regulatory requirements (such as the

DEC permits listed below) that are independent of Act 250.

To obtain an Act 250 land use permit, all projects must satisfy [the list of Act 250 criteria](#). [Act 250 Rule 19](#) allows applicants to satisfy parts of the law's air and water quality criteria by getting certain permits from ANR. Therefore, all applicants are encouraged to apply for ANR permits or approvals before, or at the same time, that they submit their Act 250 permit application. Local permitting (when applicable) may also be started before or at the same time as Act 250 permitting.

Other state and local permits that could be required for wood products manufacturing projects

- Wastewater System & Potable Water Supply Permit – [DEC Wastewater System and Potable Water Supply Program](#)
- Air Quality Construction Permit: Stationary Air Contaminant Sources – [DEC Air Quality & Climate Division](#)
- Air Quality Operating Permit: Stationary Sources – [DEC Air Quality & Climate Division](#)
- Stormwater General Permits for Construction Sites – [DEC Stormwater Program](#)
- Multi-Sector General Permit (MSGP) for Discharges from Industrial Activities – [DEC Stormwater Program](#)
- Discharge Permit: Industrial – [DEC Stormwater Program](#)
- Wetlands Permit – [DEC Wetlands Program](#)
- Construction Permit – [Department of Public Safety, Division of Fire Safety](#)
- Work in State Highway Right of Way (Section 1111 permit) – [Vermont Agency of Transportation](#)
- Local permit(s) – Contact the municipality directly.

Most forestry land uses are exempt, but wood products manufacturing projects are not.

Construction of improvements for logging and forestry purposes below 2,500 feet in elevation are exempt from Act 250 regulation,¹³ but log and pulp concentration yards, and the businesses that transform raw wood into products, often are not. Anyone who is uncertain about whether a specific project requires an Act 250 permit or permit amendment may ask the Act 250 district coordinator for a jurisdictional opinion by mailing or emailing a [JO Request Form](#). Contact your [district coordinator](#) for details or call our main number at (802) 828-3309.

¹ In the event of a conflict between the information in this guidance and any statute or rule, the statute or rule shall control.

² To find out whether a specific project requires an Act 250 permit, contact the [district coordinator](#) or submit a [JO Request Form](#).

³ 10 V.S.A. § 6001(43)

⁴ 10 V.S.A. § 6001(44)

⁵ (10 V.S.A. §6084(g))

⁶ 10 V.S.A. § 6093(a)(5)

⁷ 10 V.S.A. § 6086(c)(2)(B)

⁸ 10 V.S.A. § 6086(c)(2)(B)

⁹ 10 V.S.A. § 6086(c)(2)(C)

¹⁰ 10 V.S.A. § 6086(c)(2)(D), which references Act 250 Rule 34(E), Stowe Club Highlands Analysis

¹¹ *Re: Stonybrook Condominium Owners Association*, Declaratory Ruling #385, Findings of Fact, Conclusions of Law, and Order (May 18, 2001) (Stonybrook)

¹² (10 V.S.A. §6084(g))

¹³ 10 V.S.A. §6001(3)(D)(i)