



Overview of Water Regulation

For Data Centers and Other Applicable Entities

Groundwater— Public Trust

- **It is the policy of the State that the groundwater resources of the State are held in trust for the public. 10 V.S.A. §1390(5)**
- **A public trust analysis is distinct from government regulation under the police power. The 2005 Groundwater Protection Rule and Strategy is a police power regulation, as is evident from its principle that “[g]roundwater is of critical importance to the State of Vermont and must be actively protected and managed in order to protect public health and welfare.” § 12-302(1)(a) (emphasis added). In re Omya Solid Waste Facility Final Certification, Env. Division (2011).**

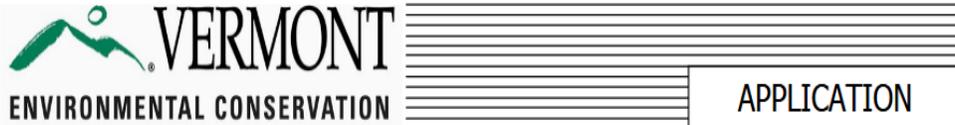
Groundwater Protection Rule and Strategy

§ 12-102 PURPOSE

It is the purpose of this Rule to establish the following:

- (1) a system of management for the different classes of groundwater;
- (2) a process for the reclassification of groundwater;
- (3) standards for the protection of groundwater quality;
- (4) processes that must be incorporated into regulatory programs to ensure that activities that present a potential threat to groundwater are designed, managed, and permitted to protect groundwater resources; and
- (5) a system to protect the groundwater resources that are held in trust for the public.

Permitting the Use of Groundwater



Drinking Water and Groundwater Protection Division

GROUNDWATER WITHDRAWAL PERMIT APPLICATION

This application initiates the Drinking Water and Groundwater Protection Division's review and permitting process for source development of a Groundwater Source to serve a Proposed or Existing Industrial/Commercial facility withdrawing greater than 57,600 gpd. Domestic Bottled or Bulk drinking water supply sources withdrawing any amount are required to obtain a separate permit. A site visit will be scheduled following receipt of a complete application. Following construction of the source the applicant shall submit a source testing proposal (on a form provided by the Secretary). After receiving state approval for the source testing proposal, the applicant shall conduct source testing and address undue adverse impact concerns. At the "draft" source evaluation report stage, the applicant and/or applicant's consultant shall notice and attend a public informational meeting for public comment. The applicant shall submit a final source evaluation report that addresses the relevant concerns. Once the applicant satisfies all administrative and technical requirements the state will issue a Groundwater Withdrawal Permit. The forms referenced above may be found on our website at www.vermontdrinkingwater.org

Wastewater System and Potable Water Supply Guidance Documents, Procedures, and Practices

Source Water Permitting

All Public Water Supply Systems (PCWS, NTNC, TNC, Domestic Bottled/Bulk Water) are required to have a source water permit for any new source, hydrofracturing or deepening of an existing source, or any increase in withdrawal of an existing source. Applicants for this permit must comply with the [Water Supply Rule Chapter 21](#) and if applying for a Domestic Bottled or Bulk Water Permit, it must also comply with the requirements of the [Groundwater Withdrawal Reporting and Permitting Rule-Chapter 24](#).

Please note that as of January 1, 2018 there is a change in the process for Source Permit applications following the enactment of Act 150 ([10 V.S.A. Chapter 170](#)). Under the new rule, permit applicants must notify adjoining property owners of their application prior to submitting the application to the department. The Department has created an official notice which applicants are required to use to make this notification - this notice is available as a [form template](#) for your convenience. The applicant must include a signed certification to the Department that they have sent notification to the adjoining property owners via US mail. For more information on what Act 150 means for applicants, please visit: <http://dec.vermont.gov/permits>. The permit application type for public notice purposes is indicated in [] parenthesis.

Legislative Duties, Authority, and Administration of Environmental Law

A. Duties; Public Trust Doctrine

1. Surface Water

- Under the common law public trust doctrine, the State, as trustee, holds navigable waters and submerged land beneath navigable waters in trust for the benefit of the people.¹
- The purpose of the public trust doctrine is to preserve for the public access to navigable waters for navigation, commerce, and fishing free from obstruction by private parties.²
- The Vermont Supreme Court has recognized the public trust doctrine and the authority of the State to supervise and control navigable waters and the lands lying under the waters.³
- The core of the public trust doctrine is the State's authority as sovereign to exercise supervision and control over the navigable waters of the State and the underlying lands.
- Generally, lands held subject to the public trust may only be used for purposes approved by the General Assembly as public uses. E.g., Burlington harbor lands.
- The General Assembly may delegate its public trust authority to another body, such as a State agency or city, but the General Assembly always retains the right to revoke the delegated powers and exercise them in a more direct manner.
- When the General Assembly delegates the legislative approval process under the public trust doctrine, the delegation must be clear and express.
- See 29 V.S.A. Ch. 11, the General Assembly expressly delegated the public trust legislative approval process for encroachments to the Agency of Natural Resources.

Title 29 : Public Property and Supplies

Chapter 011 : Management of Lakes and Ponds

Cite as: 29 V.S.A. § 401)

§ 401. Policy

Lakes and ponds that are public waters of Vermont and the lands lying thereunder are a public trust, and it is the policy of the State that these waters and lands shall be managed to serve the public good, as defined by section 405 of this title, to the extent authorized by statute. For the purposes of this chapter, the exercise of this management shall be limited to encroachments subject to section 403 of this title. The management of these waters and lands shall be exercised by the Department of Environmental Conservation in accordance with this chapter and the rules of the Department. For the purposes of this chapter, jurisdiction of the Department shall be construed as extending to all lakes and ponds that are public waters and the lands lying thereunder, which lie beyond the shoreline or shorelines delineated by the mean water level of any lake or pond that is a public water of the State, as such mean water level is determined by the Department. For the purposes of this chapter, jurisdiction shall include encroachments of docks and piers on the boatable tributaries of Lake Champlain and Lake Memphremagog upstream to the first barrier to navigation, and encroachments of docks and piers on the Connecticut River impoundments and boatable tributaries of such impoundments upstream to the first barrier to navigation. No provision of this chapter shall be construed to permit trespass on private lands without the permission of the owner. (Added 1967, No. 308 (Adj. Sess.), § 1, eff. March 22, 1968; amended 1969, No. 281 (Adj. Sess.), § 1; 1975, No. 162 (Adj. Sess.), § 1, eff. March 15, 1976; 1981, No. 222 (Adj. Sess.), § 41; 1987, No. 76, § 18; 2003, No. 115 (Adj. Sess.), § 110, eff. Jan. 31, 2005; 2009, No. 117 (Adj. Sess.), § 1.)

Surface Waters

Are Also Held in the Public Trust

Surface Water Permit Programs

DATA



VT ANR

SurfaceWater Source Protection Areas (SPAs)

 **ANR GIS**
Vermont Agency of Natural Resources

[View Map](#) [Download](#) [More ▾](#)

Summary

Surface water Source Protection Areas (SPA)

Source Protection Area (SPA) boundaries have been located on RF 24000 & RF 25000 scale USGS topographic maps by Water Supply Division (DEC) and VT Dept of Health (historical) personnel. Buffered SPAs are based on the point location of the water source(s) Refer to the SOURCE coverage documentation file for information on data sources used.

This GIS layer consists of the geographic location of the Source Protection Areas for active and inactive Public Community and Non-Transient Non-Community for surface water intakes labeled by the Water System Identification Number (WSID) and source number (i.e. WL001 or IN002). The SPA generally consists of a buffer around the upstream river and tributaries and watershed boundary. The source locations are drawn from the State Drinking Water database (SDWIS). The water sources are surface water intakes on lakes or rivers that predate regulations developed in the 1970s to new

Details

 **Dataset**
Feature Layer

 **Continual**
Info Updated: June 17, 2022 at 12:00:00 AM EDT

 **October 12, 2016 at 12:00:00 AM EDT**
Data Updated

 **October 12, 2016 at 4:06:46 PM EDT**
Published Date

 **Records: 112**
[View data table](#)

Vermonters Asked to Report Surface Water Withdrawals in January 2026

Montpelier, Vt. – As the year comes to a close, the Vermont Department of Environmental Conservation (DEC) is seeking annual reports on surface water withdrawals. Under Act 135 of 2022, any person withdrawing surface water must file an annual report with DEC by January 15, 2026. The purpose of Act 135 is to collect baseline data on the use of surface waters such as rivers, streams, brooks, creeks, lakes, ponds, and reservoirs.

Anyone who withdraws 10,000 gallons or more of surface water within 24 hours – or 150,000 gallons or more over 30 days – is required to fill out an [online form](#) to register and report their withdrawal.

“Our state’s surface waters provide Vermonters with vital benefits, from drinking water, recreation, and industrial uses to wildlife habitat and water quality,” said DEC Commissioner Misty Sinsigalli. “These annual reports will help us understand the extent and magnitude of surface water usage. This is critical to ensure enough water is available, especially in times of drought, like Vermont is currently experiencing.”

Those who withdraw surface water for farming uses like irrigation or livestock watering must report to the [Vermont Agency of Agriculture Food and Markets](#). Vermonters do not need to report usage for some [surface water withdrawals](#), such as those used for public emergencies or to suppress fire.

“Streams and other surface waters can transform after high or low water flow events as we have seen in Vermont over in the last three years that have brought flooding and extreme drought,” said Supervising River Ecologist Jeff Crocker. “Understanding extent and magnitude of surface water withdrawal will allow us to better manage this critical resource now and into the future.”

DEC offers resources and technical assistance and can help answer any questions about [Act 135](#) or [streamflow protection](#).

CWA

Requirements- NPDES Permitting



- Discharge of pollutants from a point source into a navigable water-e.g., wastewater treatment, industrial discharge, etc.
- The construction stormwater permit for disturbance of more than one acre of land.
- The multisector general permit for stormwater runoff from industrial sites.
- The municipal separate storm sewer permit for stormwater control in specified towns.
- The concentrated animal feeding operation permit for certain farms that have an actual discharge or are proposing an actual discharge.

CWA Permitting



- EPA's enforcement of the CWA operates largely through the CWA permitting programs with RDA as a hook.
- EPA may delegate a state agency as the permitting and enforcement authority in the state.
- In 1974, EPA delegated ANR as the CWA permitting authority for Vermont.
 - Approximately 47 states have been delegated.
- EPA retains oversight over permit issuance and may make recommendations and require conditions for federally required permits such as wastewater permits.

Vermont-Specific Permitting



- Vermont has enacted permitting requirements in addition to the federal CWA, including:
 - State stormwater operating permits for construction or expansion of ½ acre of impervious surface (2022);
 - State permitting for activities in a significant wetland or buffer of a significant wetland;
 - Stream alteration permits for altering the course of a watercourse by moving, filling, or excavating 10 cubic yards of instream material in any year;
 - Lake shoreland permits for cleared area or impervious surface in a lake shoreland area; and
 - State large farm and medium farm permitting.

Land Use Regulation of Water—Act 250

Development means:

(x) Any withdrawal of more than 340,000 gallons of groundwater per day from any well or spring on a single tract of land or at a place of business, independently of the acreage of the tract of land or place of business, if the withdrawal requires a permit under section 1418 of this title or is by a bottled water facility regulated under chapter 56 of this title.

(b) Tier 1A area status requirements.

(1) To obtain a Tier 1A area status under this section, a municipality shall demonstrate to the Board that it has each of the following:

(H) Public water and wastewater systems or planned improvements have the capacity to support additional development within the Tier 1A area.

Land Use Conservation of Water—Act 250

(46) “Tier 3” means an area consisting of critical natural resources defined by the rules of the Board. The Board’s rules shall at a minimum determine whether and how to protect river corridors, headwater streams, habitat connectors of statewide significance, riparian areas, class A waters, natural communities, and other critical natural resources.

§ 6086. Issuance of permit; conditions and criteria.

(a) Before granting a permit, the District Commission shall find that the subdivision or development:

(1) Will not result in undue water or air pollution. In making this determination it shall at least consider: the elevation of land above sea level; and in relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; and the applicable Health and Environmental Conservation Department regulations.

(A) Headwaters. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable Health and Environmental Conservation Department regulation regarding reduction of the quality of the ground or surface waters flowing through or upon lands which are not devoted to intensive development, and which lands are:

- (i) headwaters of watersheds characterized by steep slopes and shallow soils; or
- (ii) drainage areas of 20 square miles or less; or
- (iii) above 1,500 feet elevation; or
- (iv) watersheds of public water supplies designated by the Agency of Natural Resources; or
- (v) areas supplying significant amounts of recharge waters to aquifers.

(B) Waste disposal. A permit will be granted whenever it is demonstrated by the applicant that, in addition to all other applicable criteria, the development or subdivision will meet any applicable Health and Environmental Conservation Department regulations regarding the disposal of wastes, and will not involve the injection of waste materials or any harmful or toxic substances into ground water or wells.

24 V.S.A. § 4302. PURPOSE; GOALS¶

***¶

(c) In addition, this chapter shall be used to further the following specific goals:¶

***¶

(5) To identify, protect, and preserve important natural and historic features of the Vermont landscape, including:¶

(A) significant natural and fragile areas;¶

(B) outstanding water resources, including lakes, rivers, aquifers, shorelands, and wetlands;¶

***¶

(6) To maintain and improve the quality of air, water, wildlife, forests, and other land resources.¶

(A) Vermont's air, water, wildlife, mineral, and land resources should be planned for use and development according to the principles set forth in 10 V.S.A. § 6086(a).¶

(B) Vermont's water quality should be maintained and improved according to the policies and actions developed in the basin plans established by the Secretary of Natural Resources under 10 V.S.A. § 1253.¶

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24 V.S.A. § 4414. ZONING; PERMISSIBLE TYPES OF REGULATION¶

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(D) Shorelands.¶

(i) A municipality may adopt bylaws to regulate shorelands as defined in 10 V.S.A. § 1422 to prevent and control water pollution; preserve and protect wetlands and other terrestrial and aquatic wildlife habitat; conserve the scenic beauty of shorelands; minimize shoreline erosion; reserve public access to public waters; and achieve other municipal, regional, or State shoreland conservation and development objectives.¶

(ii) Shoreland bylaws may regulate the design and maintenance of sanitary facilities; regulate filling of and other adverse alterations to wetlands and other wildlife habitat areas; control building location; require the provision and maintenance of vegetation; require provisions for access to public waters for all residents and owners of the development; and impose other requirements authorized by this chapter.¶

Land Use to Protect Water—Municipal Regulation



Site Specific Conditions

What may be required for any development or water use will depend on multiple site-specific conditions.



Where is the use located?



What use is proposed?



Does the nature of the use require additional regulation—management of hazardous material?



How much water will be used? Where will the water go?



How big is the site? How many people will use it?