

1 Sec. 1. 10 V.S.A. § 913 is amended to read:

2 § 913. PROHIBITION

3 (a) Except for allowed uses ~~adopted by the Department by rule~~ authorized
4 under section 913a of this title, no person shall conduct or allow to be
5 conducted an activity in a significant wetland or buffer zone of a significant
6 wetland except in compliance with a permit, conditional use determination, or
7 order issued by the Secretary.

8 (b) A permit shall not be required under this section for:

9 (1) any activity that occurred before the effective date of this section
10 unless the activity occurred within:

11 (A) an area identified as a wetland on the Vermont significant
12 wetlands inventory maps;

13 (B) a wetland that was contiguous to an area identified as a wetland
14 on the Vermont significant wetlands inventory maps;

15 (C) the buffer zone of a wetland referred to in subdivision (A) or (B)
16 of this subdivision (1);

17 (2) any construction within a wetland that is identified on the Vermont
18 significant wetlands inventory maps or within the buffer zone of such a
19 wetland, provided that the construction was completed prior to February 23,
20 1992, and no action for which a permit is required under the rules of the
21 Department was taken or caused to be taken on or after February 23, 1992.

1 Sec. 2. 10 V.S.A. § 913 a is added to read:

2 § 913a. ALLOWED USES; EXEMPTION

3 The following uses shall be allowed in a Class I or Class II wetland and in
4 the buffer zone of Class I or Class II wetland without a permit under section
5 913 of this title, provided that the configuration of the wetland's outlet or the
6 flow of water into or out of the wetland is not altered and that no draining,
7 dredging, filling, or grading occurs in the wetland or its buffer zone except as
8 authorized in one or more of the following uses:

9 (1) Silvicultural activities that:

10 (A) comply with Acceptable Management Practices for Maintaining
11 Water Quality on Logging Jobs in Vermont adopted pursuant to section 1259
12 of this title;

13 (B) comply with silvicultural standards for deer wintering yards,
14 established jointly by the Department of Fish and Wildlife and the Department
15 of Forests, Parks and Recreation, when occurring in significant wetlands or
16 adjacent buffer zones containing deer wintering yards mapped by the
17 Department of Fish and Wildlife;

18 (C) restrict equipment maintenance and the storing or changing of
19 oil, grease, or other petroleum products to log landings; and

1 (D) restrict log landings to uplands or buffer zones except that
2 landings not requiring the placement of fill may be located within the wetland
3 when the ground is frozen.

4 (2) The restoration, reconstruction, rehabilitation, or upgrading of
5 existing roads used solely for silvicultural purposes provided that such roads
6 are not increased in width by more than 20 percent.

7 (3) The construction of new roads used solely for silvicultural purposes
8 in buffer zones.

9 (4) The removal of beaver dams to the extent necessary to prevent
10 impairment of the use of existing logging roads or ongoing silvicultural
11 management practices.

12 (5) Silvicultural activities including the uses allowed by subdivisions
13 (1)—(4) of this subsection, when occurring in any Class I wetland, the buffer
14 zone for any Class I wetland and in any Class II wetland specifically
15 designated by the Secretary to protect habitat for any species on the State or
16 federal list of threatened or endangered species, that comply with a plan
17 approved in writing by the Commissioner of Forests, Parks and Recreation.

18 (6) The growing of food or crops in connection with farming activities
19 when:

20 (A) threatened or endangered species are protected;

1 (B) no clearing of existing vegetation occurs in deer wintering yards
2 mapped by the Department of Fish and Wildlife; and

3 (C) in compliance with the most recent Required Agricultural
4 Practices adopted by the Agency of Agriculture, Food and Markets.

5 (7) The operation of existing hydroelectric facilities in accordance with
6 all applicable requirements established by federal and State agencies. This use
7 may involve dredging, draining, or altering the flow of water into or out of a
8 wetland.

9 (8) The routine repair and maintenance of utility poles, lines, and
10 corridors in a manner which minimizes adverse impacts and is accordance with
11 best management practices developed by the Secretary.

12 (9) Hunting, birdwatching, hiking, boating, trapping, fishing, horseback
13 riding, swimming, snowshoeing, skiing, and similar outdoor recreational
14 activities.

15 (10) Snowmobiling on trails designated by the Vermont Association of
16 Snow Travelers.

17 (11) Scientific research and educational activities.

18 (12) The maintenance, reconstruction, or routine repair of structures and
19 facilities, including ski trails, public transportation facilities, bulkheads, docks,
20 piers, pilings, paved areas, houses, or other buildings, in compliance with the
21 Vermont Wetland Rules in existence as of the date of their construction or in

1 existence as of February 23, 1990 or additions to such structures or facilities
2 that do not involve substantial expansion or modification in a wetland or buffer
3 zone.

4 (13) Emergency repair, cleanup, or maintenance of structures and
5 facilities, including utility poles and lines, public transportation facilities,
6 bulkheads, docks, piers, pilings, paved areas, houses, or other buildings, or
7 emergency actions required to provide for public health, safety, and welfare for
8 disaster relief in connection with a federal or State-designated disaster.

9 (14) The routine maintenance and upkeep, including the removal of
10 vegetation from, or maintenance dredging of constructed ponds in compliance
11 with best management practices developed by the Secretary. This use may
12 involve dredging, temporary draining, or temporarily altering the flow of water
13 into or out of a wetland.

14 (15) Wildlife or fisheries management activities, including the removal
15 of beaver dams that pose a significant hazard to public health or safety or to
16 public or private property, conducted in accordance with a written plan or
17 procedure adopted by the Secretary. This use may involve draining or altering
18 the flow of water into or out of a wetland.

19 (16) The placement, maintenance, or removal of duck blinds, ice fishing
20 shanties, fences, catwalks, footbridges, observation decks, docks, or exempt

1 similar structures, in compliance with best management practices developed by
2 the Secretary.

3 (17) The harvesting of wild foods and the collecting of scientific
4 specimens, not on the State or federal threatened or endangered species lists,
5 for noncommercial purposes.

6 (18) The control of non-native species of nuisance plants, including
7 Eurasian milfoil, water chestnut, purple loosestrife (*Lythrum salicaria*) and
8 reed grass (*Phragmites australis*), where such control is by hand pulling of
9 plants or according to a written plan approved by the Secretary and under any
10 applicable state law.

11 (19) Activities within existing lawns, including mowing, the placement
12 of barbecue pits, sand boxes, bird houses, and other similar activities incidental
13 to ordinary residential use.

14 (20) The use of pesticides or other biological agents to control
15 mosquitoes when applied according to all applicable State law.

16 (21) The operation of dams in accordance with the surface level rules
17 for lakes and ponds adopted under section 1424 of this title, provided that prior
18 to the adoption the Secretary finds in writing that the surface level rules will
19 not result in any undue adverse effect on the protected wetland functions. This
20 use may involve draining or altering the flow of water into or out of a wetland.

1 (22) The installation of a new overhead utility line that does not involve
2 extensive tree clearing, with three poles or fewer in the wetland or buffer zone,
3 in compliance with best management practices developed by the Secretary.

4 (23) Wetland restoration or stream restoration projects, including dam
5 removals, in accordance with a plan approved by the Secretary.

6 (24) Dry hydrants installed in constructed ponds, where the disturbance
7 is limited to the pond and previously disturbed or managed areas, such as
8 lawns and mowed fields.

9 (25) Cleanup activities for spills of oil or hazardous materials.

10 Sec. 3. REPEAL OF AGENCY OF NATURAL RESOURCES AUTHORITY
11 TO ADOPT ALLOWED USES BY RULE

12 (a) Section 6 (allowed uses) of the Department of Environmental
13 Conservation's Vermont Wetland Rules, Vt. Code R. 12 004 056, is repealed.

14 (b) The Secretary of Natural Resources or the Commissioner of
15 Environmental Conservation shall have no authority to adopt by rule allowed
16 uses that do not require a permit under 10 V.S.A. § 913.

17 (c) The Secretary of Natural Resources or the Commissioner of
18 Environmental Conservation shall have no authority to adopt by rule
19 exemptions to the permitting requirement of 10 V.S.A. § 913, provided that the
20 permit exemptions in existence on the effective date of this act under Section 3

1 of the Department of Environmental Conservation’s Vermont Wetland Rules,
2 Vt. Code R. 12 004 056, shall remain in effect.

3 (d) The Secretary of Natural Resources or Commissioner of Environmental
4 Conservation shall only establish or alter the width of a buffer zone for a Class
5 II wetlands during a site specific wetlands determination conducted under 10
6 V.S.A. § 914. Reduction of the buffer zone for Class II wetlands in any other
7 way is prohibited, including through rulemaking by the Secretary of Natural
8 Resources or the Commissioner of Environmental Conservation.

9 Sec. 4. EFFECTIVE DATE

10 Secs. 1—3 (repeal of DEC allowed use authority under rule) shall take
11 effect on passage.