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WETLANDS FACT SHEET

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Topic: Class Three Wetlands

February 1999

VERMONT WETLAND RULES

The Vermont Wetland Rules were adopted in 1990 by the Water Resources Board. The Wetland Rules classify wetlands into three categories.

Class One wetlands are those wetlands the Board determines are exceptional or irreplaceable and merit the highest level of protection. Class One wetlands must be specifically designated by the Board. A 100-foot buffer zone is designated adjacent to Class One wetlands.

Class Two wetlands are presumed to serve one or more wetland functions at a significant level. The Wetland Rules designate most wetlands on the National Wetland Inventory (NWI) maps and those wetlands contiguous to mapped wetlands as Class Two wetlands. A contiguous wetland is a wetland which shares a boundary with or touches a mapped wetland. A 50-foot buffer zone is designated adjacent to all Class Two wetlands.

Class Three wetlands are those wetlands that have not been mapped on the NWI maps or have been found by the Board to be not significant for providing any wetland functions when last evaluated. Class Three wetlands are not protected under the Wetland Rules. Petitions can be presented to the Board to upgrade a Class Three wetland based on an evaluation of its functions. Class Three wetlands are, however, protected by other federal, state, and local regulations.

ACT 250

The Wetlands Office of the Agency of Natural Resources reviews all Act 250 permit applications and makes recommendations to the District Environmental Commissions and the Environmental Board to protect wetlands when appropriate. Several criteria of Act 250 relate directly to the protection of wetlands. For Act 250 projects, Class Three wetlands are reviewed under the following Act 250 criteria: 1-Undue Water Pollution, 1B-Waste Disposal, 1D-Floodways, 1E-Streams, 1F-Shorelines, 4-Erosion Control, 8-Rare and Irreplaceable Natural Areas and Aesthetics, 8A-Necessary Wildlife Habitat, and 9K-Public Investments.

FEDERAL WETLAND REGULATIONS

The federal wetland regulations do not classify wetlands into three categories. Therefore, under federal law, all wetlands receive the same level of review. Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material, excavation, and mechanized land clearing in waters of the United States, which includes wetlands. The Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) jointly administer the Section 404 program. In addition, the U.S. Fish and Wildlife Service and Vermont Agency of Natural Resources have important advisory roles.

The basic premise of the Section 404 program is that no discharge of dredged or fill material can be permitted if there is a practicable alternative that is less damaging to the aquatic environment or if the discharge would result in significant degradation of our nation's waters, including wetlands.

Applicants must demonstrate that steps have been taken to avoid wetland impacts to the maximum extent possible. In addition, applicants are required to minimize potential impacts to wetlands, and finally to provide compensation for any remaining unavoidable impacts through wetland restoration or creation.

Contact the U.S. Army Corps of Engineers Vermont Field Office at (802) 872-2893 for more information about the federal wetland regulations.

VERMONT WATER QUALITY CERTIFICATION

Federal wetland permits are not valid in Vermont without first obtaining a **401 Water Quality Certification**. Under Section 401 of the Clean Water Act, states have the authority to review and certify, condition, or deny all Federal permits or licenses that

might result in a discharge to state waters, including wetlands. States make their decision to certify, deny, condition or waive 401 Water Quality Certifications primarily by determining whether the activity will comply with state water quality standards.

The Vermont Water Quality Standards apply to all waters of the United States, including all wetlands with or without standing water (Section 1-01A.1.). The Vermont Water Quality Standards protect both water quality and the existing uses of wetlands. Thus the applicant must show that the wetland's existing uses and values, and the level of water quality necessary to protect those uses and values, is maintained.

There is no application form to obtain a water quality certification. Applicants should instead send a letter to the Vermont Wetlands Office requesting certification with the information described below under Review Process.

IDENTIFYING WETLANDS

Wetlands are identified in the field by three parameters: vegetation, soils, and hydrology. The wetland/upland boundaries for Class Three wetlands are determined by the methodology described in the 1987 Corps of Engineers Wetlands Delineation Manual. Class One and Class Two wetlands are delineated under the Vermont Wetland Rules using the methodology described in the 1989 Federal Manual for Identifying and Delineating Jurisdictional Wetlands.

REVIEW PROCESS

The Wetlands Office makes technical recommendations regarding wetlands on project applications. Design changes to protect wetlands may be requested to reduce wetland impacts. To save time and money, the Agency strongly encourages landowners and developers to work with the Wetlands Office early in the planning process prior to submitting an application to the Wetlands Office or to Act 250. Wetland concerns can then be identified and conflicts often resolved early in the process.

If a project involves wetlands, contact the Wetlands Office and request a site visit by sending a location map (taken preferably from a USGS quad or a NWI map) and a copy of the site plan with contour information. The wetlands staff will try to set up a site visit within three weeks of receipt of the plans.

For projects involving wetlands, the Wetlands Office commonly recommends that wetlands be delineated and shown on the site plan in areas where development is proposed. To expedite the permit review process, an applicant can hire a wetland consultant to identify and delineate wetlands at the project site prior to a site review by the Wetlands Office. When the delineation is complete, the wetland staff will review the delineation and make comments on the project design.

For project review requests, the applicant should include at least the following:

- C a location map of the proposed project;
- C a description of any proposed impacts, including the amount of wetland impact in square feet;
- a site plan or sketch which accurately shows all wetlands, the location of the proposed discharge, the limits of disturbance, and erosion control measures; and
- if Water Quality Certification is being sought, the applicant must also provide information sufficient to determine that any discharge will comply with the applicable provisions of the Water Quality Standards.

For projects involving minor discharges, less detailed information may be acceptable. Contact the Wetlands Office to discuss requirements for specific projects.

In all cases, **projects must be designed to avoid and minimize impacts to wetlands and buffer zones to the maximum extent practicable.**