

# Vermont Wetland General Permit

## I. Purpose

The Secretary is issuing this general permit pursuant to 10 V.S.A. §905b and §9.7 of the Vermont Wetland Rules (VWR) for certain specified activities within certain wetlands and buffers in order to more effectively and efficiently regulate and protect Vermont's wetlands. The Secretary reserves the right in Section IX.J of this general permit to require an individual permit if deemed necessary to protect wetlands or buffers.

## II. Definitions

Unless otherwise defined herein, all terms used in this general permit shall have the meanings set forth in the Vermont Wetland Rules, effective August 1, 2010, the Wetlands statute, 10 V.S.A. Chapter 37, or if not defined in the Vermont Wetland Rules or Wetlands statute, shall have their common meaning.

## III. Limitations on Coverage

The following activities are not eligible for coverage under this general permit:

- A. Activities that are allowed uses under Section 6 of the Vermont Wetland Rules.
- B. Activities that the Secretary finds will have an undue adverse impact on protected wetland functions and values, or that need additional conditions beyond those in this general permit in order to protect functions and values.
- C. Activities within a Class I wetland or buffer zone.
- D. Activities affecting rare, threatened or endangered (RTE) species as demonstrated by the presence of a RTE species in the Vermont Natural Heritage Information Project (NHIP) database. This limitation may be waived if the applicant has received approval from the Department of Fish and Wildlife NHIP.
- E. Activities located in or adjacent to bogs, fens, or vernal pools.
- F. Activities in or adjacent to wetlands that are significant for the Exemplary Wetland Natural Community function pursuant to §5.5 of the Vermont Wetland Rules. This limitation may be waived if the applicant has received approval from the Department of Fish and Wildlife NHIP.
- G. Activities in or adjacent to wetlands at or above 2,500' in elevation (headwaters wetland).

- H. Unpermitted as-built projects that that required a permit and did not obtain one in violation of the Vermont Wetland Rules.
- I. Activities that have not demonstrated sufficient avoidance and minimization of impacts to the wetland and buffer zone, in accordance with § 9.7a(4) of the VWR.
- J. Activities that are components of a single project and/or planned phases of a multi-phased project, where the entire project exceeds the eligibility thresholds in Section III of this general permit.

#### **IV. Activities Eligible for Coverage**

A. The Secretary has determined that activities eligible for authorization under this general permit will comply with the Vermont Wetland Rules and will have no undue adverse effect on protected functions and values. In making this determination, the Secretary has evaluated the potential direct and immediate effects of eligible activities as well as the potential cumulative or ongoing effects on wetland function and value. This determination is achieved by limiting the impact threshold of eligible activities based on the condition and use of the wetland and buffer zone, and the nature of the activity. Furthermore, activity-specific Best Management Practices required by this permit for eligible activities will limit the potential impacts to wetlands, buffer zones and associated waters.

B. **Eligible Activity Thresholds:** To qualify for the general permit, the proposed activity must not exceed the threshold limit (in square feet) for each category of wetland and buffer, and each category of project. In calculating the areal extent of impact, an applicant should include filling, dredging, cutting woody vegetation, and temporary and permanent impacts. Indirect impacts such as draining should also be included in the threshold calculation. Eligible activity thresholds for the different project categories are listed in Table 1. Categories of projects are described below:

1. **Linear Projects** are projects associated with linear facilities, including but not limited to roads, highways, bike paths, railroads, overhead utility lines, underground utility lines, and/or pipelines.
2. **Non-linear Projects** are any projects that are not Linear Projects.
3. **Managed Areas** are wetland and buffer areas that include but are not limited to mowed lawns, mowed road shoulders, parking areas, roads and/or croplands
4. **Natural Areas** are wetland and buffer areas that are naturally vegetated or minimally managed.
5. **Adjacent Surface Waterbodies** are open water wetlands, lakes, ponds, streams or other natural surface waters adjacent to the wetland or buffer zone at issue. No more than 150 square feet of combined wetland

and buffer zone impact is allowed in or adjacent to a surface waterbody in order to be eligible for coverage under this general permit.

**Table 1: Eligible Activity Thresholds:** The project must not result in impacts greater than the thresholds listed for each category of wetland and activity.

Wetland or Buffer Type	Linear Projects – Total Area Impacted	Non-Linear Projects – Total Area Impacted
<b>Managed Areas</b>	<3000 square feet	<1000 square feet
<b>Natural Areas</b>	<1500 square feet	<500 square feet
<b>Adjacent Waterbodies</b>	<150 square feet – included in above totals	<150 square feet – included in above totals

C. Authorizations under this general permit shall not be issued for piecemeal projects and shall be applied to single and complete projects. All components of a single project shall be treated together as constituting one single and complete project for purposes of determining eligibility. All planned phases of multi-phased projects shall be treated together as constituting one single and complete project for purposes of determining eligibility. Authorizations under this general permit shall not be issued for any activity that is part of an overall project for which an individual permit is required.

## V. Required Best Management Practices

### A. Best Management Practices Applicable to All Eligible Projects:

1. Steps shall be taken to prevent the transport of sediment into any wetland or waterway and to promote re-vegetation following the completion of work:
  - a) If a construction stormwater permit is required (over an acre of soil disturbance), the permittee shall follow the terms and conditions of that permit. Otherwise, the permittee shall utilize other recommended sediment and erosion controls as needed and as described in the ANR Low Risk Handbook or other equivalent controls.
  - b) All sediment controls and construction fencing shall be installed prior to beginning any earthwork for the project and removed following the successful establishment of vegetation.
  - c) Disturbed soils shall be seeded and mulched within 48 hours of final grading.
2. If the impact is temporary in nature, stockpiling of material shall be done on filter fabric in the buffer zone and matting in the wetlands. Temporarily removed wetland soils shall be replaced in kind.

3. Removed materials and other wastes shall be disposed of outside of the wetland and buffer zone and at least 100 feet from surface waters with appropriate erosion controls measures as described above.
4. Impacts from equipment access to the project site shall be limited by utilizing existing or low impact routes using the following sequence of options in order of preference:
  - a) Access should be limited to upland areas or existing maintained roads to the extent practicable;
  - b) Access on other existing primitive roads or existing managed areas (as defined in Section III.b.3) in wetlands or buffer zone;
  - c) Where existing roads are not an option for access, minimize rutting or earth disturbing activities by:
    - (1) Accessing wetland areas with mats or under frozen or dry conditions. Winter construction under frozen conditions may minimize ground disturbance and reduce impacts to wildlife;
    - (2) Memorializing the limits of disturbance using a combination silt fence, flagging, and/or snow fence;
    - (3) Using of low-ground pressure or track vehicles in wetlands to minimize compaction and rutting;
    - (4) Minimizing equipment use in the wetland and limiting vehicle trips; and,
    - (5) Restoring the project site in order to reverse soil compaction, stabilize the soil on the site and replant the site if vegetation has been destroyed.
5. Waste disposal and equipment refueling shall be limited to areas outside the wetland and at least 50 feet from wetlands and surface waters.
6. Final earthwork shall return the wetland and buffer zone to the original grade.
7. The potential for the introduction of invasive species into the wetland and buffer shall be decreased by using the following methods:
  - a) Any equipment shall be cleaned so as to contain no observable soil or vegetation prior to work in wetlands and buffer zones to prevent the spread of invasive species;
  - b) If removed material contains invasive species, care should be taken to dispose of the material in a manner that does not spread the invasive species to new areas.
8. Notwithstanding 1-7 above, if there is an existing management plan in place that is more protective of the wetland resources, it may supersede these BMPs.

B. Activity Specific Best Management Practices:

a) Placement, relocation, removal or upgrade of overhead utility lines in wetland or buffer zone:

(1) Poles and wires shall be located in such a way as to minimize the clearing of vegetation to the extent practicable;

(2) Maintenance of woody vegetation in the wetland and buffer zone shall occur only within an existing ROW for the utility, or for removal of danger trees outside of the maintained ROW:

(a) Vegetation management shall be limited to clearing necessary to maintain the line in a safe and efficient manner;

(b) If cutting of wetland vegetation cannot be avoided, the work shall be completed by hand (chain or hand saw) instead of using large equipment to preserve wetland soils; and,

(c) Vegetation shall be cut at ground level, leaving root systems intact.

b) Installation of underground facilities in the wetland or buffer zone including but not limited to utilities, dry hydrants, foundation drains, directional bore, and wells:

(1) the trench shall be filled, mulched, and seeded immediately or upon final inspection of the line;

(2) if a directional bore is required, the depth of the bore beneath the wetland shall not puncture a confining layer essential to maintain wetland hydrology;

(3) if drilling or boring is required, drilling fluid shall be composed of bentonite clay, clean water and only appropriate additives (e.g., “environmentally safe” drill soap or polymers); and,

c) Activities in or adjacent to surface water bodies:

(1) Soil and vegetation disturbance shall be minimized to avoid unnecessary impacts to waterbodies:

(a) Avoid removing vegetation until just before beginning construction to disturb the soil;

(b) Minimize the area of bare soil within the approved work zone as much as possible;

- (c) Maintain a buffer of natural vegetation around wetlands to slow runoff and trap sediments;
  - (d) Provide as much of a naturally vegetated area next to the surface water as possible
  - (e) Phase construction to minimize the extent of disturbed soils;
  - (f) Dredged material shall be properly disposed of and dewatering of dredged material must take place such that a discharge to waters of the state does not occur;
- (2) Minimize the alteration of natural hydrology:
- (a) Maintain historic water level unless otherwise permitted;
  - (b) Time your work in streams and rivers to occur during low flow season (between July 1 and October 1) when streams are the driest and potential to impact spawning fish is minimized;
  - (c) Any change to hydrology that will obstruct fish passage shall get prior approval from the Department of Fish and Wildlife;
  - (d) All in-stream work (intermittent or perennial) shall be performed in a dry work zone. An adequate de-watering plan shall be in place to keep the work zone dry during construction. In doing so, to the maximum extent practicable, all efforts shall be taken to maintain the normal downstream flow conditions at all times.

## VI. Findings

A. Under 10 V.S.A. §905b and §9 of the Vermont Wetland Rules, effective August 1, 2010, activity in a Class II wetland or its associated buffer zone is prohibited unless it is an allowed use or authorized by a permit, conditional use determination or order issued by the Secretary. Section 9.7 of the Vermont Wetland Rules provides that activities eligible for authorization under a general permit must have no undue adverse impact on protected functions and values. In evaluating whether any wetland is a Class II or a Class I wetland, the Secretary or Panel shall evaluate the functions that the wetland serves both as a discrete wetland and in conjunction with other wetlands by considering the following functional criteria. Consideration shall be given to the number of and/or extent to which protected functions and values are provided by a wetland or wetland complex including the following: water storage for flood water and storm runoff

(§5.1), surface and groundwater protection (§5.2), fisheries habitat (§5.3), wildlife and migratory bird habitat (§5.4), exemplary wetland natural communities (§5.5), threatened and endangered species habitat (§5.6), education and research in natural science (§5.7), recreational value and economic benefits (§5.8), open space and aesthetics (§5.9), and erosion control through binding and stabilizing the soil (§5.10).

B. Activities eligible for coverage under this permit are limited by activity type, square footage thresholds and existing wetland and buffer zone condition. Linear projects are generally limited to areas adjacent to existing facilities with impacts to the protected wetland functions limited by the required BMPs and the square footage limits for both managed and natural wetland and buffer zone areas. Non-linear are generally more limited in scope and with impacts to the protected wetland functions minimized by the required BMPs and the square footage limits for both managed and natural wetland and buffer zone areas. If eligible projects are conducted in accordance with the terms and conditions of this permit, there will be minimal or no alteration of the physical and vegetative characteristics that provide the following functions: water storage for flood water and storm runoff (§5.1), surface and groundwater protection (§5.2), fisheries habitat (§5.3), wildlife and migratory bird habitat (§5.4), and erosion control through binding and stabilizing the soil (§5.10). Minimization of impacts is in part due to the 150-foot threshold for impacts to wetlands adjacent to surface waters. The presence of emergent and woody vegetation in wetlands directly adjacent to streams, rivers, ponds and lakes provides an important means of slowing and storing flood water; providing a filter by retaining water and associated chemical action; and preventing erosion from flood events and adjacent runoff. Wetlands adjacent to aquatic resources also have the potential to contribute to fisheries and provide important wildlife habitat. Potential impacts to exemplary wetland natural communities (§5.5), threatened and endangered species habitat (§5.6), are limited through the Limitations on Coverage in Sections II.D, II.E and II.F of this general permit. Given the limited nature of the activities eligible for coverage under this general permit, no potential impacts are predicted for education and research in natural science (§5.7), recreational value and economic benefits (§5.8), open space and aesthetics (§5.9). Based on the factors described above, if an eligible project is conducted in accordance with the terms and conditions of this general permit, it will comply with the Vermont Wetland Rules and will not result in undue adverse impacts to wetland functions and values. In determining whether coverage under this general permit should be granted, the Secretary will evaluate the potential effect of the eligible activities on the basis of both their direct and immediate effects as well as on the basis of any cumulative or on-going effects.

C. If the eligible activity is undertaken in accordance with the terms and conditions of this permit, it is not expected to result in a violation of the Vermont Water Quality Standards.

## **VII. Relation to Other Permits**

Activities eligible for coverage under this general permit may also require a permit pursuant to other local, state, and federal laws, including but not limited to a federal wetlands permit pursuant to Section 404 of the Clean Water Act, 33 FWPCA Section 1344. Applicants are responsible for determining if any such permits apply to their proposed activities.

## **VIII. Application for Authorization**

### **A. Application.**

1. An applicant for authorization under this general permit shall submit a completed Vermont Wetland Permit Application, General Permit NOI Sections, with all necessary attachments and fees, if any, and all other application information required by the Secretary.
2. The Secretary may require an applicant to submit any additional information that the Secretary considers necessary in order to make a decision on the issuance or denial of an authorization under this general permit. The Secretary may deny coverage if the requested information is not provided within sixty (60) days of the Secretary's request.

### **B. Public Notice of Application**

1. Once the Secretary determines that an application for authorization under this general permit is complete, the Secretary shall provide public notice to the clerk of the municipality in which the proposed activity and affected wetland area and buffer are located, shall post notice on the Environmental Notice Bulletin, and shall provide notice to a list of interested persons, if any. The Secretary shall request that the notice be posted by the municipality for no less than ten (10) days.

### **C. Public Comment**

1. For a period of ten (10) days following the Secretary's completion of the public notice requirements above, the Secretary shall provide an opportunity to the public to provide written comment regarding whether the application complies with the terms and conditions of this general permit. The Secretary shall maintain an interested persons list for those individuals/groups that wish to receive copies of notices of all general permit applications within the State or within a certain geographic area. Such notices may be distributed electronically instead of via mail.
2. The period for public comment may be extended at the sole discretion of the Secretary.

### **D. Issuance or Denial of Authorization**

1. Following the ten day public notice period, and upon a determination by the Secretary that the application is complete and that the proposed

activity meets the terms and conditions of this general permit, the Secretary shall issue an authorization unless the Secretary determines that an individual permit is required pursuant to §9.8(e) of the Vermont Wetland Rules.

2. Denials of an authorization shall be issued in writing, stating the reasons for the denial. If an application is denied for lack of technical or other information, the Secretary will provide appropriate information to help the applicant correct the deficiencies and re-apply for an authorization.

3. Authorizations issued by the Secretary pursuant to this general permit shall be valid for a specified period of time not to exceed five (5) years.

## **IX. General Conditions**

A. All activity shall be completed, operated and maintained in accordance with the permittee's Notice of Intent and the conditions of this general permit. No material or substantial changes shall be made in the project without the written approval of the Vermont Wetlands Section.

B. The permittee shall notify the Vermont Wetlands Section in writing prior to the start of this project and upon completion of the project. The notification of completion shall include a statement that the project was constructed in compliance with the conditions of this general permit and the authorization issued thereunder.

C. The Required Best Management Practices in Section V of this general permit shall be used.

D. The permittee shall record its authorization under this general permit in the land records of the town(s) in which all affected lands are located. Any future deed for such lands shall reference the authorization. Within 30 days of the date of issuance of the authorization under this general permit, the permittee shall supply the Vermont Wetlands Office with a copy of correspondence with the town(s) certifying that the required recordings have been made.

E. The Agency maintains continuing jurisdiction over a project authorized under this general permit and may at any time order remedial measures if it appears likely that undue adverse impacts to protected wetland functions and values are or will occur.

F. Authorization under this general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, and local laws, regulations, and permits.

G. By acceptance of an authorization under this general permit, the permittee agrees to allow Agency representatives access to the property covered by the authorization, at reasonable times and upon presentation of credentials, for the purpose of ascertaining compliance with the authorization, this general permit, the Vermont Wetland Rules and the Vermont Water Quality Standards and for the

purpose of reviewing and copying all records required to be prepared pursuant to this general permit.

H. The Department, by issuing this general permit and any authorization hereunder, accepts no legal responsibility for any damage direct or indirect of whatever nature and by whomever suffered arising out of the approved project.

I. The Secretary may, after notice and opportunity for a hearing, revoke or suspend, in whole or in part, an authorization under this general permit for cause, including, but not limited to:

1. Violation of the terms or conditions of this general permit;
2. Obtaining authorization by misrepresentation or failure to fully disclose all relevant facts;
3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized activity.

J. The Secretary may require a person applying for an authorization under this general permit to apply for an individual permit. Cases where an individual conditional permit may be required include, but are not limited to, the following:

1. The applicant is not in compliance with the terms and conditions of this general permit;
2. The activity does not qualify for authorization under this general permit taking into account the location of the activity, the size of the activity, or the impact of the activity on the functions of the wetland or buffer zone in question.

K. The Secretary may require a person applying for an individual permit to apply for authorization under this general permit provided the Secretary finds that the activity complies with all conditions of this general permit and the activity is more appropriately covered under this general permit.

## **X. Term**

This general permit shall be effective for a period of five years after signature

## **XI. Appeals**

Pursuant to 10 V.S.A. Chapter 220, any appeal of this decision must be filed with the clerk of the Environmental Court within 30 days of the date of the decision. The appellant must attach to the Notice of Appeal the entry fee of \$225.00, payable to the state of Vermont.

The Notice of Appeal must specify the parties taking the appeal and the statutory provision under which each party claims party status; must designate the act or decision appealed from; must name the Environmental Court; and must be signed by the appellant or their attorney. In addition, the appeal must give the address or location and description of the property, project or facility with which the appeal is concerned; and the name of the applicant, and any permit involved in the appeal.

The appellant must also serve a copy of the Notice of Appeal in accordance with Rule 5(b)(4)(B) of the Vermont Rules for Environmental Court Proceedings.

For further information, see the Vermont Rules for Environmental Court Proceedings, available on line at [www.vermontjudiciary.org](http://www.vermontjudiciary.org). The address for the Environmental Court is 2418 Airport Road, Suite 1, Barre, VT 05641 (tel. 802-828-1660).

Justin G. Johnson, Commissioner  
Department of Environmental Conservation

by: \_\_\_\_\_  
Pete LaFlamme  
Director, Water Quality Division

Dated at Waterbury, Vermont  
this \_\_\_\_ day of \_\_\_\_\_, 2010