

**VERMONT AGENCY OF NATURAL RESOURCES
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
WATERSHED MANAGEMENT DIVISION**

**PERMIT APPLICATION GUIDE FOR
§401 WATER QUALITY CERTIFICATION**

Purpose:

The Watershed Management Division (Division) has prepared this guide to assist applicants for a Water Quality Certification pursuant to §401 of the federal Clean Water Act (CWA), 33 USC §1341. Section 401 provides that any applicant for a Federal license or permit to conduct any activity which may result in a discharge into waters of the United States shall provide the federal licensing or permitting agency a certification from the state in which the discharge will originate that the discharge will comply with Sections 301, 302, 303, 306 and 307 of the CWA. Under §401, a federal agency cannot issue a permit or license for an activity that may result in a discharge to waters of the United States unless the state in which the discharge occurs has granted or waived certification. An applicant for the following Federal licenses or permits to conduct an activity that may result in a discharge to waters of the United States is required to obtain a §401 certification or waiver:

- i. A permit from the U.S. Army Corps of Engineers (USACE) pursuant to §9 or §10 of the Rivers and Harbors Act for work or structures in or affecting navigable waters;
- ii. A permit from the USACE pursuant to §404 of the CWA for the placement of fill or discharge of dredged materials into waters of the United States;
- iii. A Federal Energy Regulatory Commission (FERC) hydropower license;
- iv. Although FERC does not require a §401 certification before acting on a FERC exemption application, the Secretary of the Agency of Natural Resources deems certification necessary to fulfill the Secretary's obligations in the FERC process as a fish and wildlife resource agency;
- v. A discharge permit issued by the U.S Environmental Protection Agency (EPA) pursuant to §402 of the CWA and the National Pollutant Discharge and Elimination System (NPDES) program for a point source discharge of pollutant(s) into waters of the United States;
- vi. Licenses issued by the Nuclear Regulatory Commission (NRC); and

- vii. Any other federal license or permit to conduct any activity, including, but not limited to, the construction or operation of facilities, which may result in any discharge into waters of the United States

Discharges requiring a §401 certification fall into two categories: those that may be authorized under a general permit and those that require an application for an individual §401 certification. For projects in Vermont, the USACE has issued a general permit that includes categorical §401 certification for specified categories of discharges. A copy of the USACE permit, with its limitations and exclusions for coverage, is available at http://www.nae.usace.army.mil/Regulatory/SGP/VT_PGP.pdf. All other discharges that require §401 certification must apply to the Division for an individual certification or obtain a waiver from certification requirements. An application form for individual §401 certification is available at www.vtwaterquality.org.

Format of Application:

These guidelines are to be used to complete the individual §401 application form. The information in this guide is listed in the same order as the questions on the application. Following each section number is a list of topics that the Division requires to be addressed, and a brief explanation of the kind of information that section should include.

Information needed on Application:

Sections 1 – 7 and 13 should be completed on the Application form.

Sections 8 – 12 should be completed on separate sheets.

Section 1: Applicant information

- Applicant's name: enter the name of the responsible party or parties. If the responsible party is an agency, company, or other organization, also provide the name of the responsible officer and title.
- Applicant's complete mailing address and phone number are required.
- Provide the phone number where the applicant can be reached during normal business hours.
- E-mail addresses are useful in allowing prompt transfer of information and can help speed up the application process.

Section 2: Alternate contact within your organization

If there is a project manager or person more intimately familiar with the project within the applicant's organization, provide appropriate contact information.

Section 3: Consultant information

If a consultant is to actively participate in the permitting process, the information requested of the applicant must be provided for the consultant.

Section 4: Fee

There are currently no fees associated with an individual §401 application. However, an applicant should be aware that pursuant to 3 V.S.A. §2809, the Secretary may require an applicant to pay the cost of research, scientific or engineering expertise or services that the Agency does not have when such expertise or services are required for the processing of the §401 application. The Secretary shall follow the procedure specified in 3 V.S.A. §2809 when seeking reimbursement of any such costs.

Section 5: Project Details

- Provide the name of the project or site, *e.g.*, Thrush Lane Subdivision.
- Provide the address or closest point of reference.
- Provide the county (or counties) in which the project is located.
- Indicate the resource(s) proposed for alteration (*e.g.* stream/river, wetland, lake/pond/reservoir).
- Provide the name of any stream proposed for alteration as shown on a United States Geologic Survey (USGS) topographic quad map. If the stream is unnamed, indicate that the stream is unnamed and give the name of the named stream into which it flows (*e.g.*, unnamed tributary to Whites Creek).
- Provide the precise coordinates of the proposed alteration(s) as latitude and longitude in decimal degrees (*e.g.*, 36.1234 °N, -86.1234 °W). NAD83 datum is preferred. If another datum source is used, it must be indicated.
- Check the appropriate check box (es) under the type of proposed alteration that most closely describes the change(s) to waters for which you are seeking a permit. If no box describes your alteration(s), then check “other” and write in your alteration.
- Give a brief description of the project, *e.g.*, proposed installation of a road; installation of utility line crossings.
- List all approvals needed to complete your proposed project and their status, such as: USACE §404 permits, §10 navigation permit, FERC license, etc. In the description of the status of these approvals, provide the permit or application number for all applicable permits.

Section 6: Directions to project site

- Provide directions to the project site starting from the nearest major highway or landmark.

Section 7: Project schedule

- Give the date or time frame in which you propose to begin the activity, if permitted.

- Give the date or time frame in which you expect to complete the activity for which a permit is required.
- If any portion of the project was started, check “Yes” and provide a description of the extent of the work and the dates the work started and stopped. If any portion of the activity was authorized under a previous permit, please provide the permit tracking number.

Section 8: Project description

8.1 A narrative description of the scope of the project

- Give a written explanation of the proposed project.
- Provide a description(s) of the discharges/alterations to the aquatic resources for which the application is being submitted.

8.2 USGS topographical map indicating the exact location of the project (can be a photocopy)

- Depict the location of the project on a topographic map. Topographic maps are available at libraries and on-line.

8.3 Photographs of site with location description (photo locations should be noted on a site map)

- Photographs are essential to describe the work and to gauge the impact of the proposed activities on the aquatic resource(s). Digital photographs are acceptable. Submit numbered photographs of all surface water areas (including wetlands) and associated vegetative buffers to be impacted, including photographs of directly adjacent land. Include reference map showing photo locations and directional arrows. Include the dates the photos were taken.

8.4 A narrative description of existing stream, wetland or lake characteristics

- Streams: Provide a description of each stream on the site, including channel length, width, and depth; water depth; and substrate. Describe type, age and width of vegetation buffer adjacent to the watercourse(s). Provide the linear footage of each stream potentially impacted by the project. Describe present and proposed adjacent land uses, to the extent known. The site plans (required in section 12.1) must have a figure showing location(s) of all streams.
- Wetlands: Provide the acreage of each wetland potentially impacted by the project. Provide descriptions of the wetlands including the type of wetland (forested, emergent, etc.), the source of hydrology, and the dominant vegetation. Describe present and proposed adjacent land uses, to the extent known. The site plans (required in section 12.1) must have a figure showing location(s) of all wetlands.
- Lakes/Ponds: Provide the name of the lake or pond and the stream that flows in or out of the water body, if any. Provide the size (in acres) and describe the

adjacent vegetation. Provide the depth of the waterbody in the project area. Describe present and proposed adjacent land uses, to the extent known. The site plans (required in section 12.1) must have a figure showing the location of all water features.

8.5 A narrative description of the proposed stream, lake and/or wetland characteristics

- Streams: Provide information on the proposed alterations to the stream channel's length, width, depth, substrate, in-stream habitat, or riparian vegetation. Each aspect of the stream that will be altered must be described in this section. Indicate if any of these changes are temporary in nature.
- Wetlands: Provide information on the proposed changes to the existing wetland's size, type of wetland, source of hydrology, amount of water, or vegetation. Indicate if any of these changes are temporary in nature. Descriptions of wetland mitigation should be discussed in section 11.
- Lakes and Ponds: Provide information on changes to the water body's depth, length, volume, or habitat.

8.6 In the case of wetlands, include a wetland delineation with delineation forms and site map denoting location of data points

- The delineation should have the acreage of each individual wetland, as well as the total wetland acreage on site.
- The delineation forms and related instructions that you should use are available at www.vtwaterquality.org.

Section 9: Purpose and Justification

- Describe why you are proposing the project and the alterations.
- The response to this section is essential for the evaluation of alternatives and avoidance and minimization of impacts.

Section 10: Alternatives

All permit applications require a description of the alternatives considered, including what was done to avoid or minimize impacts to the aquatic resources.

Section 11: Mitigation

11.1 A detailed discussion of any proposed mitigation, if required

Wetland Mitigation:

- Describe where the mitigation is proposed.
- Label the mitigation site and the impact site on a USGS quadrangle.

- Develop a scaled plan (preferably with 6-inch contours) and sections to illustrate the size, shape, and depth variation of the proposed mitigation.
- Describe the source of hydrology and demonstrate that there will be sufficient water to sustain the wetland mitigation in perpetuity.
- Describe the soil type in the mitigation area and if soil amendments will be necessary.
- Describe how and what vegetation will be established.
- Describe when the mitigation will be constructed and completed.
- Describe Best Management Practices to be used. This may include, but is not limited to, erosion control and low-impact equipment in existing wetland areas.
- Describe how the mitigation will be monitored, who will be conducting the monitoring, and the qualifications of the person/company selected to conduct the monitoring.
- Describe how water quality functions will be replaced with the proposed mitigation.
- Identify who will manage the mitigation area, who will retain ownership, and how the mitigation area will be protected in the future.

11.2 If you believe mitigation is not required, state the reason or cite the statute/regulation to support this position.

- It is your responsibility to support that claim with justification, data, case history or other evidence.

Section 12: Technical Information

12.1 Detailed plans, blueprints, or legible sketches of present site conditions and the proposed activity. Plans must be 8.5 x 11 inches. Additional larger plans may also be submitted to aid in application review. The detailed plans need to include dimensions of the existing and proposed stream or wetland such as depth, length, average width, substrate and riparian vegetation.

- Many of these items were described in Section 8, but these should be enhanced with physical plans and illustrations.
- Many projects do not necessarily require detailed engineering plans. In that case, submit drawings or sketches that accurately depict the proposed structure or activity to scale. Please include all dimensions. These plans must be of sufficient detail to accurately describe the project, aquatic resource alterations, and any proposed compensatory mitigation.
- When the Division prepares its public notice, all materials must be converted to fit 8.5 x 11-inch paper. Therefore, you should prepare a version of your plans to scale on 8.5 x 11 sizes. More complicated projects may be split on separate sheets to avoid overcrowding.

- If your project involves a large-scale impact or several separate impacts in a larger development, full-size plans will aid in the technical review of your proposal. However, the 8.5 x 11 version is still required.
- If your project involves dredging or filling, provide the number of cubic yards and type of material proposed to be removed from or placed in the stream or wetland.

12.2 If mitigation is proposed, submit detailed plans, blueprints, or legible sketches of the proposed mitigation

- These plans should be a part of the overall mitigation plan as described in Section 11, but submitted as part of the application in a format that could be used by contractors or other technical personnel on the project site. These figures may also be used in the public notice for your project.
- When the Division prepares its public notice, all materials must be converted to fit 8.5 x 11-inch paper. Therefore, you must prepare a version of your plans (to scale) on 8.5 x 11 sizes. More complicated projects may be split on separate sheets to avoid overcrowding.

12.3 For both the proposed activity and mitigation, provide a discussion regarding the sequencing of events

- Provide descriptions of all implementation steps. This discussion is key to understanding the feasibility of constructing the proposed alterations.

12.4 Location and type of erosion prevention and sediment control measures for the proposed alterations

- Give a description, using diagrams where necessary, of the type of erosion prevention and the type or kind of sediment controls that would be used in direct association with the stream or wetland alteration.
- Describe, using diagrams where necessary, any other type of pollution controls that you plan or are required to use on the project. These include, temporary check dams, pump around, diversion channels, cofferdams, etc.

12.5 A discussion of how the proposed activity will be performed (construction methods)

- Description of methods of excavation, grading or fill, and the materials to be excavated or placed.
- Description of any specific equipment or techniques that will be utilized for the resource alteration or mitigation.

12.6 Additional Technical Information for Discharge-Specific Activities

- Provide all additional information required for discharge-specific activities. In some cases, this information may be the same as that required in an application for other permits/licenses (e.g. wetland permit, stream alteration permit, FERC license) and will not need to be submitted separately. If you

have any questions, please contact the Division in order to determine if additional discharge-specific information is required.

12.7 Information Required for Anti-Degradation Review

- Prior to issuing a §401 certification, any new or increased discharge must be reviewed pursuant to Vermont's Anti-Degradation Policy (§1-03 of the Vermont Water Quality Standards). During review of the §401 application, the Division will determine whether it needs additional information, including but not limited to information relating to the socio-economic impact of the proposed project, in order to conduct this anti-degradation review. The applicant shall submit this information as requested.

Section 13: Certification and Signature

- "Printed Name:" Please type or print your name legibly.
- If the applicant (from section 1) is an agency, company, or other organization, then the official title of the signatory is required.
- Original signatures are required.

Section 14: Where to Send Application

- If your application is for an individual permit, send your completed, signed application directly to: Vermont Department of Environmental Conservation, Watershed Management Division, 103 South Main Street, Building 10 North, Waterbury, Vermont 05671-0408.
- If you are unsure about the type of permit application (general or individual) that your project may require, please contact the Division.