



Illustration by Libby Walker Davidson

WETLANDS FACT SHEET

Department of Environmental Conservation
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Topic: Federal Wetland Regulations

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Wetlands in Vermont can be protected at federal, state, and local levels. This fact sheet provides an overview of the two main federal wetland protection programs. Specific questions regarding federal regulations should be addressed to the contacts given on the back of this sheet.

CLEAN WATER ACT §404: OVERVIEW

Section 404 of the Clean Water Act establishes a program to regulate the discharge of dredged and fill material and mechanized land clearing in waters of the United States, including wetlands. Activities that are typically regulated under Section 404 include fill for development, water resources projects (e.g., dams and levees), infrastructure development (e.g., highways and airports), and conversion of wetlands to uplands for farming and forestry.

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 the Vermont Agency of Natural Resources have important advisory roles.

WETLAND DETERMINATIONS

The EPA and the Corps are currently using the 1987 Corps of Engineers Wetlands Delineation Manual to delineate wetlands for the Section 404 program. The 1987 manual organizes field indicators into three categories- soils, vegetation, and hydrology- and establishes criteria for each category. An area that meets all three criteria is considered a wetland. The Corps makes wetland determinations in non-agricultural areas, and the Natural Resources Conservation Service (NRCS) has jurisdiction over wetland determinations on land involved in farming operations.

PROGRAM REQUIREMENTS

The purpose of Section 404 is to restore and maintain the chemical, physical, and biological integrity of waters of the United States through the control of discharges of dredged or fill material. The Section 404 guidelines state 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.

Applicants must first demonstrate that steps have been taken to avoid wetland impacts to the maximum extent possible. Additionally, applicants are required to minimize potential impacts to wetlands and provide compensatory mitigation for any remaining unavoidable impacts.

For projects involving more than minimal impacts, authorization must be sought through an "**individual permit**" review process. However, for the great majority of projects whose activities will have only minimal environmental effects, authorization is often granted through a "**General Permit.**"

TYPES OF §404 PERMITS

INDIVIDUAL PERMIT - Section 404(a)	GENERAL PERMIT (GP) - Section 404(e)
<p>A site specific application and site plans must be submitted for review.</p> <p>Public interest review and compliance with Section 404(b)(1) guidelines, which include:</p> <ul style="list-style-type: none"> • Mitigation sequence <ol style="list-style-type: none"> 1. Avoidance of impacts through practicable alternatives, 2. Minimization of impacts, and 3. Compensatory mitigation for unavoidable impacts. • No significant degradation • Compliance with other laws (i.e. National Historic Preservation Act, Endangered Species Act, etc.) 	<p>Activities with minimal impacts, as specified by the terms and conditions of the GP, are either:</p> <p>Category A: eligible without screening, non-reporting to the Corps, or</p> <p>Category B: determination of eligibility made through interagency screening coordination.</p> <p>During screening, the Corps will determine whether applications are eligible for a general permit or will require additional information, modification, mitigation, special conditions or individual permit review.</p>

Neither individual or general permits are valid in Vermont without first obtaining a 401 Water Quality Certification. Under Section 401 of the Clean Water Act, states have the authority to certify, condition, or deny water quality certification for all Federal permits or licenses that might result in a discharge to state waters, including wetlands. States make their decision to deny, certify, condition or waive 401 Water Quality Certifications primarily by determining whether the activity will comply with state water quality standards.

EXEMPTIONS

Section 404(f) exempts some activities from regulation, including many silviculture and farming practices such as plowing, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products. This exemption pertains to normal farming and harvesting activities that are part of an established, ongoing farming or forestry operation.

If an activity involving a discharge of dredged or fill material represents a new use of the wetland, or if the activity would result in a reduction of the reach or impairment of flow or circulation of regulated waters, including wetlands, the activity is not exempt. Activities that bring a wetland into farm production where that wetland is not currently in farm production are also not exempt.

RIVERS AND HARBORS ACT OF 1899: OVERVIEW

Section 10 of the Rivers and Harbors Act authorizes the Corps to regulate work in, over, under or affecting navigable waters of the United States. A Corps permit is required for all work (structures, etc.) below the ordinary high water line of any navigable water. Navigable waters include rivers, lakes and other waters that are used, have been used, or are likely to be used, to transport interstate or foreign commerce. A few examples in Vermont include Lake Champlain, Lake Memphremagog, and portions of the Battenkill, Lamoille, Missisquoi, Nulhegan, Winooski, and White Rivers.

CAUTION: The regulations described above are federal wetland regulations. State or local regulations may differ significantly. You should contact the Vermont Wetlands Office at (802)241-3770 and your town to ensure that your project is in compliance with all applicable regulations.

FOR MORE INFORMATION CONTACT:

Army Corps of Engineers, Vermont Field Office
 8 Carmichael Street Suite 205
 Essex Junction, VT 05452
 (802) 872-2893 Fax (802) 879-7638
 Or call the EPA WETLANDS HOTLINE at 1-800-832-7828