



Illustration by Libby Walker Davidson

# WETLANDS FACT SHEET

Department of Environmental Conservation  
Water Quality Division, Wetland Office  
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## **Topic: Policy of Enforcement of Wetland Rules February 1999**

### **BACKGROUND**

The Legislature adopted an act in 1986 (10 V.S.A., Chapter 37, Section(a)(7-9)) mandating that the Water Resources Board (Board) adopt rules to identify and protect Vermont's "significant wetlands". These rules, known as the Vermont Wetland Rules, became effective on February 23, 1990. The Wetlands Office of the Agency of Natural Resources assists the Secretary of the Agency of Natural Resources in implementing and enforcing these rules.

Unless specified as an allowed use under the Vermont Wetland Rules, any activity in a state-designated "significant" wetland is a conditional use. If a Conditional Use Determination has not been issued by the Secretary of the Agency of Natural Resources, such an activity is in violation of the Vermont Wetland Rules. See Fact Sheet No. 4 or Sections 3 and 4 of the Wetland Rules for identification and classification of wetlands and Sections 6.2 and 6.3 of the Wetland Rules for a full discussion of allowed and conditional uses.

Violations are subject to enforcement under applicable Vermont law, including but not limited to, the provisions of 10 V.S.A. Chapter 47, and 10 V.S.A. Chapters 201 and 211. If the Secretary of the Agency of Natural Resources finds that any person had failed to comply with the provisions of these rules, he or she may issue an order to abate the rule violations. Violators are exposed to potential administrative penalties of up to \$25,000 per violation plus \$10,000 for each day of the violation [10 V.S.A. Subsection 8010(c)]. Violators also risk civil penalties of up to \$50,000 per violation plus \$25,000 for each day the violation continues [10 V.S.A. Subsection 8221(b)(6)].

### **INVESTIGATION OF COMPLAINTS**

An investigator from the Wetlands Office is assigned to each case. The landowner and knowledgeable state and local officials are contacted, citizens with knowledge of the case are interviewed, and the site is visited by a Wetlands Office staff member. Under 10 V.S.A. Section 8005(a) Wetlands Office staff members may seek permission to inspect property for compliance with the Wetland Rules after presenting credentials and stating the purpose of the inspection. If permission is denied, Wetlands Office staff may seek an Access Order from the District or Superior Court. Wetlands Office staff cooperate with the Enforcement Division of the Department of Environmental Conservation in investigating alleged violations.

### **NOTICE OF ALLEGED VIOLATION**

If evidence of a violation is discovered, a Notice of Alleged Violation (NOAV) is sent to the person responsible. This is a letter which describes the alleged violation and specifies voluntary actions to be taken to bring the alleged violation into compliance with the Wetland Rules. In general, landowners are responsible for activities occurring on their property.

## **ASSURANCE OF DISCONTINUANCE**

As an alternative to an Administrative Order (see below), the Secretary may accept from a respondent an Assurance of Discontinuance of a violation. This contains a statement of facts, and a description of the alleged violation. It also includes an agreement by the respondent to prevent, abate, or alleviate environmental problems caused by the violation or to restore the environment to its condition before the violation, including financial responsibility for such actions. A penalty for the alleged violation may be included in the agreement. When signed by both parties and the Environmental Law Judge, the Assurance becomes a judicial order.

## **ADMINISTRATIVE ORDER**

If an Assurance of Discontinuance is not heeded, or if the alleged violator is unwilling to enter into an agreement to abate and resolve the violation, an Administrative Order may be issued by the Secretary of the Agency of Natural Resources. Actions to be taken are specified and penalties may be assessed.

## **APPEALS**

Any act or decision made under the Wetland Rules may be appealed to the Vermont Water Resources Board within 30 days (10 V.S.A. Section 1269). Decisions of the Board may be appealed to the Superior Court for the county in which the violation is located (10 V.S.A. Section 1270). Enforcement actions taken under 10 V.S.A. Chapters 201 and 211 have their own due process of appeal and review.

## **PENALTIES**

The Environmental Administrative Penalty Rules, effective July 28, 1990, standardize the administrative penalties assessed by the Secretary by establishing penalty classes and ranges. This procedure is used in calculating penalties for violations assessed in Administrative Orders. The rules also provide a guide for the penalty amount that may be negotiated in an Assurance of Discontinuance. Factors considered include the severity of the threat to human health, safety, and welfare; the degree of impact on the environment; knowledge on the part of the respondent; previous violations by the respondent; economic benefits realized by the respondent; mitigating circumstances; and the deterrent effect of the penalty.

## **DISCLAIMER**

This fact sheet is for informational purposes only. In any enforcement situation, the relevant Vermont statutes and regulations should be consulted.

For More Information Contact:

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