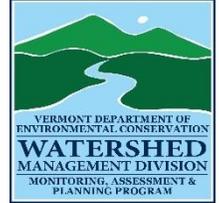


## FAQ - Regulatory Implications for designation of uses to Class A(1), pursuant to the 2016 Proposed Water Quality Standards Revisions.



Pursuant to Act 79 of 2016, the classification system for Vermont's surface waters have been revised to create four classifications {A(1), A(2), B(1), and B(2)}, and to specify that designated uses are to be independently classified. This means that a waterbody may in the future be classified at different levels for individual uses, so long as the Class B(2) minimum water quality conditions are maintained.

The proposed 2016 Water Quality Standards (WQS) Amendments modify the WQS to account for this change in the classification system, and also propose the reclassification of a number of surface waters in the Green Mountain National Forest to Class A(1) for one or more designated uses. In this document, the regulatory implications of classification of uses to Class A(1) are described, to provide supporting information regarding the proposed reclassifications.

When specific uses are designated to Class A(1), The management objectives for those surface waters are to provide for the designated uses listed below, typically in their natural condition. This does not, however, mean that there can be no land management in the watersheds, lakeshores, or stream corridors of Class A(1) surface waters. Rather, activities must be carried out in such a way as to maintain the natural condition of these surface waters.

### Management Objectives

The proposed 2016 Vermont Water Quality Standards articulate the following specific management objectives for uses designated to Class A(1):

#### ***Section 29A-306 Class A(1) Use-specific Management Objectives***

- a) **Aquatic Biota and Wildlife** - Waters shall be managed to achieve and maintain excellent biological integrity and aquatic biota and wildlife consistent with waters in their natural condition.
- b) **Aquatic Habitat** - Waters shall be managed to achieve and maintain excellent quality aquatic habitat. The physical structure, stream processes, and flow characteristics of rivers and streams and the physical character and water level of lakes and ponds shall be managed consistent with waters in their natural condition.

- c) **Aesthetics** - Waters shall be managed to achieve and maintain excellent aesthetic quality.
- d) **Recreation - Boating** - Waters shall be managed to achieve and maintain excellent quality boating as compatible with the natural condition.
- e) **Recreation - Fishing** - Waters shall be managed to achieve and maintain excellent quality fishing consistent with the natural condition.
- f) **Swimming and Other Primary Contact Recreation** - Waters shall be managed to achieve and maintain a level of water quality compatible with excellent quality swimming and other primary contact recreation with negligible risk of illness or injury from conditions that are a result of human activities.

### **Silvicultural Operations**

The Vermont [Accepted Management Practices](#) (AMP) for Logging Jobs in Vermont present a suite of practices which, when adhered to, provide to the operator or landowner the presumption of compliance with WQS, regardless of class (see §2-03.B of the WQS and 10 VSA §1259f). Logging jobs occur throughout Vermont in Class A(1) watersheds on a regular basis, in compliance with AMP's, with A(1) conditions maintained. ANR is in the process of updating the AMP's, which among other provisions will feature added surface water protections associated with stream crossings.

### **Agricultural Operations**

The [Vermont Required Agricultural Practices](#) (RAP) are currently under development. The RAPs will replace the Accepted Agricultural Practices (AAP) which have been in effect since 1995.

The Required Agricultural Practices (RAPs) are farm and land management practices that control and reduce agricultural nonpoint source pollution and subsequent nutrient losses from farm fields and production areas to surface and ground waters of the State or across property boundaries. The RAPs also establish minimum construction and siting requirements for farm structures in floodplains, floodways, river corridors, and flood hazard areas. Persons engaged in farming who are in compliance with these practices shall be presumed to not have a discharge of agricultural pollutants to waters of the State. RAPs shall be designed to protect water quality and shall be practical and cost-effective to implement, as determined by the Secretary.

The RAPs do not draw distinction between the protections afforded to Class B or Class A(1) streams.

## Stream Alterations

Chapter 27 of the Environmental Protection Rules address stream alterations. The Stream Alteration Rule (<http://dec.vermont.gov/watershed/rivers/river-management>) and general permit establish criteria and conditions for the alteration of stream channels to accommodate crossings or other stream channel structures, modifications, or stabilizations. The Rules do not draw distinction between the protections afforded to Class B or Class A(1) streams. Instead, they require that all structures be designed to promote the equilibrium condition of streams.

## Vermont's Act 250

Vermont's Development Control legislation known as Act 250 ([10 V.S.A. Chapter 151](#)) evaluates proposals for development and/or subdivision against ten criteria pertaining to environmental quality and certain socioeconomic factors. When Act 250 land-use permit applications are evaluated, the Agency of Natural Resources files comments pertaining to, among others, Criteria 1, subsections A-G which specifically seek to protect surface waters from degradation. For projects subject to Act 250 jurisdiction, under Criterion 1(E), the Agency will commonly seek, and the District Commissions of the Natural Resources Board may grant, preclusions to allowable activities in the buffers of streams. Typically, the Agency will seek a minimum of 50 feet of protection for stream buffers, and [Agency guidance](#) envisions minimum buffer widths of 100 feet for Class A(1) surface waters. In a land-use permit for a project in the vicinity of a Class 1(A) surface water, the Agency would seek to ensure maintenance of a buffer consistent with the guidance. Act 250 does not, however, universally apply to lands in Federal ownership.

## Wetlands Permits

The [Vermont Wetland Rules](#) address the important contribution of wetlands to the protection or enhancement of the quality of Vermont's surface waters and ground water. Development projects that will affect wetlands or their buffer zones (50 to 100 feet from the wetland boundary) may require a Vermont Wetland Permit. In determining whether a wetland is significant, and whether a permit can be issued, consideration is given to a wetland's contribution to the flows of Class A surface waters.

## Discharge Permits

The VWQS state that for Class A(1) waters:

- Except as provided for in 10 V.S.A. §1259(d) and (f), the discharge of wastes other than nonpolluting wastes and stormwater runoff is prohibited in Class A waters regardless of the degree of treatment provided.
- Mixing zones shall not be created in any Class A water.
- Waste management zones shall not be created in any Class A water.
- Changes from the natural flow regime shall not cause the natural flow regime to be diminished.

- Manipulation of the water level of lakes, ponds, reservoirs, riverine impoundments, and any other waters shall result in no more than a minimal deviation from the natural flow regime.
- No change from the natural flow regime that would result in more than a minimal impact upon these waters.

The Secretary under the reclassification rule may grant permits for only a portion of the assimilative capacity of the receiving waters, or may permit only indirect discharges from on-site disposal systems, or both. 10 V.S.A. § 1253(g)

There are three types of discharge permits administered by the State of VT, each with specific requirements with respect to Class A(1) waters.

### **Stormwater Permits issued under State or delegated Federal NPDES authority.**

Stormwater discharges can be authorized in Class A(1) surface waters subject to provisions of the Vermont State Stormwater Manual, and these discharges may be regulated under “construction” or “operational” permits.

Construction General Permit 3-9020 authorizes permittees to discharge stormwater runoff from construction activities provided the project is in compliance with the requirements of the permit. The permitting requirements for projects authorized under this general permit depend upon the risk of stormwater discharge from the construction site. There are two risk categories authorized by the general permit: Low Risk and Moderate Risk. Projects that pose a higher risk are ineligible to use the general permit, and must instead obtain coverage under an Individual Permit. Projects that are proposed in Class A(1) watersheds are subject to the same risk evaluation as projects in any other surface water. If a project as proposed is not in the low-risk category, then the location of the project in a Class A(1) watershed becomes one of several risk factors that are examined in the determination of project risk and necessary coverage under permit 3-9020. See <http://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees>.

Coverage under general permit 3-9015 is required for discharges of regulated stormwater runoff from the construction, expansion, and redevelopment of impervious surfaces, regardless of classification. The requirement to obtain a stormwater discharge permit for discharges from regulated impervious surface is contained in the Stormwater Management Rule. Detailed descriptions of stormwater permitting for 3-9015 are located at <http://dec.vermont.gov/watershed/stormwater/permit-information-applications-fees>. In general, coverage is required when:

- A discharge from new development equal to or greater than one (1) acre;
- A discharge from the expansion of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one (1) acre, except that a

permit is not required for an expansion that meets the exemption in subsection 18-304(a)(4) of this Stormwater Management Rule;

- A discharge from the redevelopment of an existing impervious surface if the redeveloped portion of the existing impervious surface is equal to or greater than one (1) acre;
- A discharge from a combination of expansion and redevelopment of an existing impervious surface, such that the total resulting impervious surface is equal to or greater than one (1) acre, except that a permit is not required if the exemptions in subsections 18-304(a)(4) and (5) of this Stormwater Management Rule are met;
- A discharge from any size of impervious surface if the Secretary determines that treatment is necessary to reduce the adverse impacts of the discharge due to the size of the impervious surface, drainage pattern, hydraulic connectivity, installation or modification of drainage or conveyance structures, location of the discharge, existing stormwater treatment, or other factors identified by the Secretary; and
- A discharge from an existing impervious surface of equal to or greater than one (1) acre if the Secretary has previously issued an individual stormwater discharge permit or individual temporary pollution permit for the discharge or has previously granted coverage for the discharge under a stormwater discharge general permit.

#### **Direct discharge permits issued under State or delegated Federal NPDES authority.**

Title 10 VSA §1259 and the Vermont Water Quality Standards establish a prohibition against authorization of direct discharges of treated sewage to Class A(1) watersheds. As such, neither a State nor Federal NPDES permit could be issued for a direct discharge to surface waters classified as A(1).

#### **Wastewater and Potable Water Supply discharge permits issued under State authority.**

Title 10 VSA §1259 sets a maximum size for an indirect discharge system (e.g., in-ground septic system) at 1,000 gallons per day. The design flow of an existing soil based system that discharges to Class A waters may not be increased if the total design flow will exceed 1,000 gallons per day. In addition, in order for a permit to be issued, there must be no more than one soil-based disposal system per lot and no more than one lot per application. The use of completely contained waste treatment systems such as composting toilets or other means for managing sewage may eliminate the need for coverage under the Wastewater and Potable Water Supply Rules. See

<http://www.vermontdrinkingwater.org/wastewater/pdf/finalwspwsrules.effective2007.09.29.pdf>.

#### **Lake Shoreland and Encroachment Permits**

The Vermont Legislature passed the Shoreland Protection Act, effective July 1, 2014, that regulates activities within 250 feet of the mean water level of lakes greater than 10 acres in

size. The intent of the Shoreland Protection Act is to allow reasonable development on shorelands of lakes and ponds while protecting aquatic habitat, water quality, and maintaining the natural stability of shorelines. Standards for the creation of impervious surfaces (such as buildings and driveways) and cleared areas within the shoreland area are intended to preserve functioning lake ecosystems, protect water quality, bank stability, conserve aquatic and wildlife habitat, and further the economic benefits of lakes and their shorelands. Shoreland permits do not have separately applicable criteria for Class A(1) or Class B waters.

Lake Encroachment Permits (LEP) are issued under [29 V.S.A. Chapter 11](#) (Management of Lakes and Ponds), which regulates encroachment in public waters. The goals of this [program](#) are to minimize the encroachment on public waters as well as ensure that projects do not adversely affect the public good and are consistent with the Public Trust Doctrine.

All lakes and ponds are regulated similarly under these two permit programs. There are no specific provisions applicable to Class A(1) waters.

### **Solid Waste Rules**

The following are prohibited from being sited in a watershed for Class A Waters:

- Solid Waste Disposal Facilities
- Diffuse Disposal Facilities
- Categorical Disposal
- Composting Categorical Certifications