

ENVIRONMENTAL PROTECTION RULE

CHAPTER 27

VERMONT STREAM ALTERATION RULE

**State of Vermont
Agency of Natural Resources
Department of Environmental Conservation**

**Watershed Management Division
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Vermont Stream Alteration Rule

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Subchapter 1 - Purpose; Policy; Authority; Enforcement

§27-101 Purpose

The purpose of this Rule is to clarify how the Agency shall manage stream alterations during emergencies and otherwise.

§27-102 Policy

- (a) Streams move by nature, changing in elevation, shape, and lateral location over time. Stream change occurs through natural stream processes primarily during high runoff events when deeper water has the power to erode and deposit the bed and banks of a stream. Natural changes generally do not have a damaging effect on fish life or wildlife populations. Aquatic and wildlife communities adapt and thrive in changeable streams due in part to the hydrologic and hydraulic processes that balance and evenly distribute stream bed erosion and deposition to form complex stream habitats. The unique dynamic equilibrium condition of each stream embodies both the changeability of stream location and the natural stability of general stream forms and processes.

It is the policy of the State to promote and protect the natural maintenance and natural restoration of dynamic equilibrium conditions and to minimize fluvial erosion hazards (10 V.S.A. §§ 1021 and 1022). The Agency assesses the geomorphic condition and sensitivity of streams and rivers and delineates the corridor necessary to accommodate dynamic equilibrium, naturally stable conditions, and the natural stream processes that would occur in a given location.

- (b) Properties within river corridors are highly vulnerable to fluvial erosion hazards. Stream alterations implemented to protect these properties may affect the balance of stream processes and the distribution of erosion and deposition elsewhere along the corridor (i.e., alterations to stop erosion in one place may increase erosion in another place). Stream alterations that change the course, current, or cross-section of a stream and that cause the stream to significantly depart from or further depart from its equilibrium condition, or that alter the connectivity of the stream in its vertical and horizontal dimensions, increase risks to aquatic life, riparian property, and public safety.
- (c) Many of Vermont's cities, towns, villages, highways, and other critical infrastructure have been built next to streams, and are therefore vulnerable to flooding and erosion. The State recognizes that particular stream reaches must be managed in a non-equilibrium condition to protect pre-existing improved property.

Threats to life, public health, and safety or the threat of severe damage to existing improved property are emergencies and may justify stream alterations that may impede the attainment and maintenance of equilibrium conditions and may potentially result in or significantly contribute to damage to fish life, wildlife, or the rights of riparian owners. This Rule acknowledges the tension in some circumstances between threats to life and existing property and the policy of establishing and maintaining stream equilibrium conditions and connectivity to protect fish and aquatic life.

- (d) Streams create a tremendous amount of power, sediment, and debris during floods and damaging floods may become more frequent because of climate change. It is essential that the State regulate stream alterations to attain and maintain equilibrium conditions within stream and river corridors and floodplains upstream and downstream of settled areas so streams can overtop their banks and release their flood energy and materials in these less-developed areas.

§27-103 Authority

- (a) This Rule is adopted by the Vermont Agency of Natural Resources pursuant to 10 V.S.A. § 1027 and 10 V.S.A. Chapter ~~165~~ 41. This Rule applies to stream alterations in both emergency and non-emergency circumstances.
- (b) Except as provided in subpart 27-302 of this Rule, this Rule shall apply to all activities that change, alter, or modify the course, current, or cross section of a watercourse within Vermont.

§27-104 Enforcement

Violations of this Rule are subject to enforcement under applicable Vermont law, including 10 V.S.A. Chapter 41 and 10 V.S.A. Chapters 201 and 211. Failure to comply with the notification requirements of this Rule or to receive authorization for stream alterations and emergency protective measures under a stream alteration general permit (“general permit”) or stream alteration individual permit (“individual permit”) shall constitute a violation of this Rule.

Subchapter 2 – Definitions

§27-201 Definitions

For the purposes of this Rule, the following terms shall have the specified meaning:

- (1) “**Activity**” means a stream alteration.
- (2) “**Agency**” means the Vermont Agency of Natural Resources.
- (3) “**Aggrading ~~Channel Bed~~ channel bed**” means the deposit of instream materials and a raising of the channel bed elevation that occurs at the reach scale with a decrease in stream power, brought about by a change in channel dimensions, slope, and/or roughness characteristics.
- (4) “**Annual ~~Flood~~ flood**” means a discharge (Q) or flood flow event that occurs at a high frequency, i.e., there is a greater than a 50% chance of a flood stage ($<Q_2$) of at least this level occurring in any given year.
- (5) “**Aquatic ~~Life~~ life**” means all organisms that, as a part of their natural life cycle, live in or on waters. Aquatic life is synonymous with “Aquatic Biota” as defined in the Vermont Water Quality Standards.
- (6) “**Bank ~~Full Width~~ full width**” means the top surface width of the stream channel at a discharge corresponding to a water stage that occurs at a frequency of every one to two years ($Q_{1.5}$ to Q_2 , i.e., there is a 50 to 66% chance of this high flow occurring in a given year). Bank full widths are measured from the crest of the right streambank to the crest of the left streambank for streams in equilibrium condition, from field scour and deposition indicators of bank full stage for incised channels, or, when field measurements are not available, as calculated from reference data such as the Vermont Hydraulic Geometry Curves¹.
- (7) “**Berm**” means a linear fill of earthen material on or adjacent to the bank of a watercourse that constrains waters from entering a “flood hazard area” or “river corridor,” as those terms are defined in 10 V.S.A. §§ 752(3) and (11). For the purposes of this Rule, the Secretary shall classify linear fill as a regulated berm when earthen material is pushed or excavated from a stream bed or adjacent lands into a raised barrier between a watercourse and adjacent lands.

¹ http://www.anr.state.vt.us/dec/waterq/rivers/docs/rv_hydraulicgeocurves.pdf

- (8) “**Buffer zone**” means an undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the top of the bank of an adjacent river or stream, as determined by the Agency.
- (9) “**Channelized**” means the condition of a stream channel that has been straightened, bermed, dredged, and/or armored by human activity.
- (10) “**Channel ~~Incision~~ incision**” means an area of stream bed exhibiting vertical erosion or head-cutting.
- (11) “**Channel ~~Roughness~~ roughness**” means the frictional resistance, and its moderating effect on flow velocities, provided by: the sizes of instream material on stream beds and banks (i.e., channel boundaries); the undulations of stream bed forms; and the sinuous features along the channel planform.
- (12) “**Dam**” means any artificial structure on a stream or at the outlet of a pond or lake, which is utilized for holding back water by ponding or storage and may include any penstock, flume, piping, or other facility for transmitting water downstream to a point of discharge, or for diverting water from the natural watercourse to another point for utilization or storage.
- (13) “**Degrading ~~Channel Bed~~ channel bed**” means the erosion of instream bed materials and a lowering of the channel bed elevation that occurs at the reach scale with an increase in stream power, brought about by a change in channel dimensions, slope, and/or roughness characteristics.
- (14) “**Dredge**” means lowering the elevation of the stream bed profile or any clearing, deepening, widening, or excavating, either temporarily or permanently.
- (15) “**Emergency ~~Protective Measure~~ protective measure**” means an action necessary to preserve life or to prevent severe imminent damage to public or private property, or both.
- (16) “**Equilibrium ~~Conditions~~ condition**” means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.
- (17) “**Fill**” means any placed material that raises, either temporarily or permanently, the surface elevation of the stream bed, floodplain, or river corridor, or extends the limits of the streambank.
- (18) “**Flood ~~Hazard~~ hazard**” means those hazards to public safety or property from inundation damages.
- (19) “**Flood ~~Hazard Area~~ hazard area**” means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.
- (20) “**Flood ~~Flowage~~ flowage**” means any waters, sediment, and debris associated with a high discharge or flood flow event (Q1.5 or greater).
- (21) “**Floodplain ~~Connectivity~~ connectivity**” means that geomorphic condition in which flows, at or greater than the annual flood stage (Q1.5), will spill out of the stream channel and onto the floodplain.
- (22) “**Fluvial ~~Erosion Hazards~~ erosion hazards**” means those hazards to public safety or property related to the erosion or scouring of stream beds and banks during high flow conditions of a river.
- (23) “**Geomorphic ~~Condition~~ condition**” means the degree of departure, if any, from the dimensions, pattern, and profile associated with the naturally stable channel that result from the unique set of natural stream processes or dynamic equilibrium conditions of a stream or river segment.
- (24) “**Geomorphic ~~Sensitivity~~ sensitivity**” means the potential of a river, given its inherent characteristics and present geomorphic conditions, to be subject to a high rate of fluvial erosion and other river channel adjustments, including erosion, deposit of sediment, and flooding.
- (25) “**Headcutting**” means the erosive process of stream bed particles being washed off a steepened area of a stream bed, deepening the channel and resulting in a loss in vertical and floodplain connectivity.

- (26) “~~Horizontal Streambank Alignment~~ **streambank alignment**” means the location of the channel margins, or boundaries along right and left streambank lines from upstream to downstream, which may be altered by streambank fill and excavation activities.
- (27) “**Hydrologic Regime** regime” means the timing, volume, and duration of flow events throughout a defined period of time, which may be influenced by the climate, soils, geology, groundwater, watershed land cover, connectivity of the stream, riparian, and floodplain network, and valley and stream morphology.
- (28) “**Instream Materials** materials” means all gradations of sediment from silt to boulders; ledge rock; or large woody debris, as these materials exist in the bed of a watercourse, within the banks of a watercourse, or enter as placed-fill in the bed or on the banks of a watercourse.
- (29) “**Imminent Threat** threat” means there is a risk to life or a risk of severe property damage within the next 72 hours.
- (30) “**Improved Property** property” means a habitable structure, the property immediately surrounding a habitable structure, public utility or transportation infrastructure, and private bridges or culverts and associated infrastructure providing primary access to a habitable structure. For the purposes of this Rule, a habitable structure means any enclosed roofed structure; residential, commercial, or industrial; public or private, that is fit for people to enter and utilize.
- (31) “**Intermittent Stream** stream” means a seasonal stream that only flows for part of the year.
- (32) “~~Large Woody Debris~~ **woody debris**” means any piece of wood within a watercourse with a diameter of ten or more inches and a length of ten or more feet that is detached from the soil where it grew.
- (33) “~~Longitudinal Stream Bed Profile~~ **stream bed profile**” means the slope or vertical drop of the stream bed from upstream to downstream in relationship to adjacent floodplain features.
- (34) “~~Next Flood Threat~~ **flood threat**” means those risks to life or of severe damage to improved property posed by the next annual flood.
- (35) “~~Outstanding Resource Water~~ **resource water**” means any waters designated by the Secretary as having exceptional natural, recreational, cultural, or scenic values, pursuant to 10 V.S.A. § 1424a.
- (36) “**Perennial Stream** stream” means a watercourse or portion, segment, or reach of a watercourse, generally exceeding 0.5 square miles in watershed size, in which surface flows are not frequently or consistently interrupted during normal seasonal low flow periods. Perennial streams that begin flowing subsurface during low flow periods, due to natural geologic conditions, remain defined as perennial. All other streams, or stream segments of significant length, shall be termed intermittent. A perennial stream shall not include the standing waters in wetlands, lakes, and ponds.
- (37) “**Q**” means discharge, or the volume rate of water flow.
- (38) “~~River Corridor~~ **corridor**” means the land area adjacent to a stream or river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of dynamic equilibrium conditions, as that term is defined in 10 V.S.A. § 1422, and for minimization of fluvial erosion hazards, as delineated by the Agency in accordance with the ~~ANR River Corridor Protection Guide~~ DEC Flood Hazard Area and River Corridor Protection Procedures².
- (39) “**Secretary**” means the Secretary of the Agency of Natural Resources or the Secretary’s authorized representative.
- (40) “**Sediment Regime** regime” means the size, quantity, sorting, and distribution of sediments, which may differ between stream types due to their proximity to different sediment sources, their

² Available at: http://www.anr.state.vt.us/dec/waterq/rivers/docs/rv_RiverCorridorProtectionGuide.pdf
<http://dec.vermont.gov/sites/dec/files/documents/dec-fharcp-2014-12-5.pdf>

hydrologic regime, their stream, riparian and floodplain connectivity, and valley and stream morphology.

- (41) **“~~Significant Flooding Event~~ flooding event”** means a flood greater than the annual flood where flood flowages may result in significant erosion and depositional processes, i.e., a flooding event that may be in the order of a five-year recurrence interval (Q5 or a 20% chance of occurring in any given year).
- (42) **“Stream”** means the full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches, which experience perennial flow. “Stream” does not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.
- (43) **“~~Stream Bed Erosion~~ bed erosion”** means a stream process whereby stream power is sufficient to move even the largest stream bed sediments and transport the quantity of sediment flowing from upstream, leading to a deficit of sediment and a lowering of the vertical stream bed profile.
- (44) **“~~Stream Bed Deposition~~ bed deposition”** means a stream process whereby stream power is insufficient to move or transport the size and quantity of sediment flowing from upstream, leading to a buildup of sediment and a raising of the vertical stream bed profile.
- (45) **“Stream Forms forms”** means the width, depth, meander pattern, and longitudinal slope of a stream channel that vary little within a narrow range of values at the stream reach-scale, when larger-scale stream processes remain unchanged.
- (46) **“Stream Processes processes”** means the hydrologic, sediment, and large woody debris regimes of a particular stream reach and is a term used to describe stream channel hydraulics, or the erosion and deposition of instream materials by the power of flowing water, which may result in the vertical and lateral movement of stream bed and banks, and may change or be changed by stream forms and channel roughness.
- (47) **“~~Vertical Stream Channel Movement~~ stream channel movement”** means changes to the vertical stream bed profile caused by reach-scale changes in stream processes.
- (48) **“Watercourse”** means any perennial stream. “Watercourse” shall not include ditches or other constructed channels primarily associated with land drainage or water conveyance through or around private or public infrastructure.
- (49) **“~~Width to Depth Ratio~~ depth ratio”** means the channel width divided by the mean channel depth.
- (50) **“Windrowing”** means pushing and berming instream materials to the stream channel margins.

Subchapter 3 – Applicability; Exemptions; Prohibitions

§27-301 Applicability

- (a) A person shall not change, alter, or modify the course, current, or cross section of any watercourse or designated outstanding resource waters, within or along the boundaries of the State either by movement, fill, or excavation of ten cubic yards or more of instream material in any year, unless authorized by the Secretary in accordance with this Rule (10 V.S.A. § 1021(a)).
- (b) For purposes of determining which activities require approval pursuant to this Rule, the Secretary will apply the following interpretations:

± (1) Watercourses.

A “watercourse” is a perennial stream with surface flows that are not frequently or consistently interrupted during normal seasonal low flow periods. Perennial streams that begin flowing sub-surface during low flow periods, due to natural geologic conditions, remain defined as perennial.

All other streams, or stream segments of significant length, shall be presumed as intermittent. A watercourse is contained horizontally by its cross-section; including the stream bed and banks. Human caused interruptions of flow (e.g. flow fluctuations associated with hydroelectric facility operations or water withdrawals) shall not influence the Secretary's determination of a perennial stream. A perennial stream shall not include the standing waters in wetlands, lakes, and ponds. For purposes of this Rule, the exclusion of "ditches or other constructed channels primarily associated with land drainage or water conveyance" from the definition of "watercourse" in this Rule shall not be interpreted to include perennial streams that have been excavated and re-formed into a straightened, channelized condition.

~~2.~~ (2) River Corridors.

A river corridor will be delineated for the purpose of identifying those riparian lands that are required to accommodate the dimensions, slope, planform, and buffer of a naturally stable channel, necessary for the natural maintenance or natural restoration of dynamic equilibrium conditions and for minimization of fluvial erosion hazards. River corridors shall be delineated by the Agency in accordance with river corridor protection procedures (10 V.S.A. § 1422(12)).

~~3.~~ (3) Flood Hazard Areas.

Flood hazard areas will be delineated in a manner consistent with the federal definition of an "area of special flood hazard" (44 C.F.R § 59.1), i.e., that land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year (10 V.S.A. § 752(3)).

§27-302 Exemptions

Pursuant to 10 V.S.A. § 1021, the following activities shall not require a stream alteration permit:

- ~~1.~~ (1) Emergency protective measures necessary to preserve life or to prevent severe imminent damage to public or private property, or both, if such measures meet the requirements of Subchapter 7 of this Rule;
- ~~2.~~ (2) Projects involving movement, fill, or excavation of less than ten cubic yards of instream materials in any year within the limits of the watercourse;
- ~~3.~~ (3) Removal of up to 50 cubic yards of gravel per year from that portion of a watercourse running through or bordering on the owner's property, provided:
 - ~~a)~~ (A) The material shall be removed only for the owner's use on the owner's property;
 - ~~b)~~ (B) The material removed shall be above the waterline; and
 - ~~e)~~ (C) At least 72 hours prior to the removal of ten cubic yards, or more, the landowner shall notify the Secretary;
 - ~~d)~~ (D) However, if the portion of the watercourse in question has been designated as outstanding resource waters, then the riparian owner may so remove no more than ten cubic yards of gravel per year, and must notify the Secretary at least 72 hours prior to the removal of any gravel.
- ~~4.~~ (4) Dam related projects subject to 10 V.S.A. Chapter 43;
- ~~5.~~ (5) State transportation infrastructure projects subject to 19 V.S.A. § 10(12);
- ~~6.~~ (6) ~~Accepted agricultural or silvicultural practices, as defined by the Secretary of Agriculture, Food and Markets, or the Commissioner of Forests, Parks and Recreation, respectively~~ Accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner

of Forests, Parks and Recreation;

- ~~(7) An approved U.S. Department of Agriculture Natural Resource Conservation Service streambank stabilization project or a streambank stabilization project approved by the Secretary of Agriculture, Food and Markets that is consistent with policies adopted by the Secretary of Natural Resources to reduce fluvial erosion hazards; and~~
~~7. (8) Hand panning prospecting techniques.~~

§27-303 Prohibitions

- (a) No person shall remove gravel from any watercourse primarily for construction or for sale (10 V.S.A. § 1021(c)).
- (b) A person shall not establish or construct a berm in a flood hazard area or river corridor, unless permitted by the Secretary or constructed as an emergency protective measure under this Rule (10 V.S.A. § 1021(a)).

Subchapter 4 – Investigation; Standards for the Issuance of Stream Alteration Permits and Authorization for Stream Alterations under a General Permit that Do Not Qualify as Protective Measures Necessary to Address Next-Flood Threats or Emergencies

§27-401 Investigation

- (a) Upon receipt of an application for a stream alteration permit or a report of a proposed stream alteration requiring the Secretary's authorization, the Secretary shall investigate the proposed stream alteration to determine whether it complies with this Rule and applicable statutes (10 V.S.A. § 1023(a)).
- (b) The Secretary shall issue a written decision on proposed stream alterations that addresses the effect of the proposal on the watercourse (10 V.S.A. § 1023(a)).

§27-402 Standards for the Issuance of Stream Alteration Permits and Authorization for Stream Alterations under a General Permit that Do Not Qualify as Protective Measures Necessary to Address Next-Flood Threats or Emergencies

- (a) As provided by 10 V.S.A. § 1023(a), an individual stream alteration permit or authorization under a stream alteration general permit shall be granted, subject to such conditions determined to be warranted by the Secretary, if the Secretary concludes that the change:

- ~~1. (1) Will not adversely affect the public safety by increasing flood or fluvial erosion hazards;~~
~~2. (2) Will not significantly damage fish life or wildlife;~~
~~3. (3) Will not significantly damage the rights of riparian owners; and~~
~~4. (4) In the case of any waters designated as outstanding resource waters under 10 V.S.A. § 1424a, will not adversely affect the values sought to be protected by the designation.~~

- (b) In determining whether or not a proposed activity meets the criteria for permit issuance in 10 V.S.A. § 1023(a), the Secretary shall apply the following performance standards:

- ~~1. (1) Equilibrium Standard~~
~~a. (A) An activity shall not change the physical integrity of the stream in a manner that causes~~

it to depart from, further depart from, or impedes its attainment of the channel width, depth, meander pattern, and slope associated with the stream processes and the equilibrium conditions of a given reach of stream.

- ~~b.~~ (B) The equilibrium standard is met when it can be shown that, following the stream alteration, the water flow, sediment, and woody debris produced by the watershed will be transported by the stream channel in such a manner that the stream maintains its dimension, general pattern, and slope with no unnatural aggrading (raising) or degrading (lowering) of the channel bed elevation along the longitudinal stream bed profile.

~~2.~~ (2) Connectivity Standard

- ~~a.~~ (A) An activity shall not change physical stream forms or alter local channel hydraulics, natural streambank stability, or floodplain connectivity in a manner such that changes in the erosion or deposition of instream materials results in localized, abrupt changes to or disconnects within the horizontal alignment of streambanks or the vertical profile of the stream bed.
- ~~b.~~ (B) A person shall not, unless authorized by the Secretary, change the course, current, or cross-section of a watercourse so as to create a physical obstruction or velocity barrier to the movement of aquatic organisms or change the vertical stream bed profile in a manner that impedes the movement of aquatic organisms.
- ~~c.~~ (C) A person shall not establish, construct, or maintain a berm in a flood hazard area or river corridor, as defined in this Rule, unless authorized as an emergency protective measure as prescribed in Subchapter 7 of this Rule.

Subchapter 5 – General Permits; Administration

§27-501 Purpose and Applicability

This subpart sets forth a process for the development and issuance of stream alteration general permits.

§27-502 Types of General Permits

- (a) The Secretary may issue general permits for discrete categories of stream alteration activities. The Secretary may issue general permits for both emergency and non-emergency stream alteration activities. Pursuant to 10 V.S.A. § 7501(a), the Secretary may issue general permits for non-emergency stream alteration activities that present a low risk to the environment and public health. For the purposes of non-emergency stream alteration general permits, low risk activities are those activities that comply with the standards set forth in subpart 27-402 of this Rule and that:

- ~~1.~~ (1) If non-reporting, the Secretary categorically determines are very low impact, or
- ~~2.~~ (2) If reporting, pursuant to subpart 27-506(h) of this Rule, the Secretary determines on a case-by-case basis are not high risk and not in need of an individual permit.

- (b) The Secretary may specify different types of reporting requirements in general permits, including reporting and non-reporting categories of activities. The Secretary may specify different types of reporting categories, including a reporting category for which an application shall be submitted for coverage under the general permit. Activities in a non-reporting category may proceed without the submission of an application and are considered covered by the permit if eligible as specified in the permit and if conducted in compliance with all the applicable terms and conditions of the general permit.

§27-503 Issuance of General Permits; Notice and Public Comment Period

- (a) The Secretary may prepare a draft general permit and shall provide notice of the draft within each geographic area to which the permit would apply and shall include at least all of the following:
- ~~1. (1)~~ Written notice to the clerks of the municipalities in the geographic area covered by the general permit;
 - ~~2. (2)~~ Written notice to each affected Vermont state agency and such other government agencies as the Secretary deems appropriate;
 - ~~3. Publication of notice of the proposed permit in a newspaper or newspapers that circulate generally within each geographic area to which the permit would apply;~~
 4. (3) Posting of the notice and a copy of the general permit on the Agency's webpage;
 - ~~5. (4)~~ Mailing notice and a copy of the proposed general permit to any individual, group, or organization upon request; and
 - ~~6. (5)~~ Mailing a copy of the notice and a copy of the proposed general permit to the chairs of the House Committees on Commerce and Economic Development; Fish, Wildlife and Water Resources; and Natural Resources and Energy; and the Senate Committees on Economic Development, Housing and General Affairs and on Natural Resources and Energy. With this mailing, the Secretary shall also include a brief summary of any scientific information on which the proposed general permit is based. If the Secretary proposes to amend a general permit previously issued under this Rule, the Secretary further shall include an annotated text showing changes from the existing permit.
- (b) The notice of the draft general permit shall:
- ~~1. (1)~~ Accurately summarize the proposed general permit, including a summary of eligible activities and its terms and conditions;
 - ~~2. (2)~~ Indicate how and where copies of the proposed permit can be obtained and information on the procedure for submitting comments and requesting a public information meeting;
 - ~~3. (3)~~ Contact information; and
 4. (4) The deadline for submission of comments and the request for a public information meeting.
- (c) The Secretary shall provide a period of not less than 30 days following the date of ~~publication in newspapers of general circulation~~ public notice during which any person may submit written comments on the proposed general permit.
- (d) Any request for a public meeting shall be submitted to the Secretary in writing no later than the end of the public comment period. The Secretary shall hold a public meeting if there is a request for such a meeting or if the Secretary decides to do so. The Secretary shall publish notice of any public meeting at least 30 days prior to the meeting. Notice shall be given in the same manner as notice of the draft general permit, except that the Secretary need not set a new comment deadline or provide, with the notice of the meeting, a copy of the proposed general permit to any person or entity to which the Secretary has already provided a copy. Any person shall be permitted to submit oral or written statements and data concerning the proposed general permit at the informational meeting. All statements, comments, and data presented at the meeting shall be retained by the Secretary and considered in the formulation of the Secretary's determinations regarding the final general permit.
- (e) The Secretary may adopt a final general permit following consideration of any written comments

submitted on the general permit and any statements, comments, and data presented at a public information meeting on the permit. Where the Secretary decides, in adopting a final general permit, to overrule substantial arguments and considerations raised for or against the original proposal, the Secretary's final adoption of the final general permit shall include a responsiveness summary stating the reasons for the Secretary's decision.

- (f) On adoption of a final general permit, the Secretary shall provide notice of the permit's final adoption and an accompanying responsiveness summary in at least the same manner as notice of the proposed general permit was issued, except that the Secretary need not set or include further deadlines for comment or requesting an informational meeting.

§27-504 Duration of General Permit

A general permit issued pursuant to this Rule shall be valid upon signing and shall remain in effect for a period of five years from the date of signing, unless the Secretary specifies a shorter period of time. The process described in subpart 27-503 shall be used when the Secretary reissues a general permit.

§27-505 Modification of General Permit

The Secretary may modify a general permit after providing an opportunity for public participation in the same manner as described in subpart 27-503 of this Rule. Grounds for modification include:

- ~~1-~~ (1) The statutes or rules on which the general permit is based have changed;
- ~~2-~~ (2) There is a change in any condition that requires redrafting or alteration of the boundaries of a designated geographic area covered by the general permit;
- ~~3-~~ (3) When required by the reopener conditions in the general permit;
- ~~4-~~ (4) To correct technical mistakes, such as errors in calculations or mistaken interpretations of law made in determining permit conditions;
- ~~5-~~ (5) Lessons learned from experience with the general permit; or
- ~~6-~~ (6) Advances in relevant fields of science.

§27-506 Authorizations under the General Permit

- (a) Purpose and Applicability - This section sets forth a process for the issuance of authorizations under a stream alteration general permit, except for authorizations under a general permit for emergency activities and next-flood protective measures issued pursuant to Subchapter 7 of this Rule.

- (b) Application for Coverage under a Stream Alteration General Permit

- ~~1-~~ (1) A person proposing to conduct an activity that is a non-reporting activity under the general permit does not need to submit an application to the Secretary if the activity is eligible as specified in the permit and if the activity is conducted in compliance with all the applicable terms and conditions of the general permit.
- ~~2-~~ (2) An applicant for coverage under a stream alteration general permit shall comply with all application requirements in the general permit that are applicable to the proposed activity.
- ~~3-~~ (3) A person proposing to conduct an activity that is listed in a reporting category that is eligi-

ble to proceed without a formal permit application shall contact the Secretary for a written authorization that the activity qualifies for coverage and will comply with all other applicable requirements in the general permit.

4. ~~(4)~~ Activities that are listed in a reporting category that are required to submit an application, shall submit a completed application form with all necessary attachments and fees and all other application information required by the general permit and the Secretary.
5. ~~(5)~~ 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 authorization. The Secretary may deny authorization under the general permit if the project proponent does not provide the requested information to the Secretary within 60 days of the Secretary's request.

(c) Public Notice of Applications under a General Permit; Issuance of Authorization

1. ~~(1)~~ Once the Secretary determines that an application is complete, the applicant shall provide notice, on a form provided by the Secretary, to the clerk and selectpersons of the municipality in which the activity is proposed, to the local and regional planning commissions, and to the owners of property which abuts or is opposite the land where the alteration is to take place.
2. ~~(2)~~ The applicant shall provide a copy of this notice to the Secretary, with such confirmation as the Secretary deems adequate to demonstrate that the clerk and selectpersons, planning commissions, and landowners have received the notice.
3. ~~(3)~~ Following receipt of the notice required in ~~(e)2.~~ ~~(c)(2)~~ of this subpart, the Secretary shall post the notice on the Agency's website and shall provide an opportunity of at least ~~ten~~ 14 working days for written comment regarding whether the application complies with the terms and conditions of the general permit under which coverage is sought.

(d) Issuance or Denial of Authorizations under a General Permit

1. ~~(1)~~ General Permit Review Standards – Proponents of activities for coverage under a stream alteration general permit shall have the burden to show that a proposed activity complies with this Rule, the standards set forth in subpart 27-402 of this Rule, and any requirements in the general permit applicable to the proposed activity. However, pursuant to subparts 27-701(c) and 27-706(b) of this Rule, the requirements of Subchapter 4 of this Rule shall not apply to those emergency and next-flood protective measures authorized under a general permit. In determining whether this burden has been met, the potential effect of any proposed activity shall be evaluated on the basis of both its direct and immediate effects as well as on the basis of any cumulative or on-going effects on the watercourse.
2. ~~(2)~~ Notwithstanding ~~(d)1.~~ ~~(d)(1)~~ of this subpart, an authorization under a stream alteration general permit required to repair an existing instream structure (e.g., stream crossings and dams) may allow the structure to continue to impede the attainment of equilibrium conditions provided the repaired structure will not create a further departure from equilibrium conditions or create a greater discontinuity in the vertical or horizontal dimensions than existed prior to the need for repair. The Secretary shall not authorize an activity under a stream alteration general permit for repairs that do not comply with the statutory criteria in 10 V.S.A. § 1023(a).
3. ~~(3)~~ The Secretary may issue an authorization under a general permit after determining that each of the following applies:
 - a. ~~(A)~~ The filings required in subparts 27-506(b) and (c) of this Rule are complete; and
 - b. ~~(B)~~ The activity is eligible for coverage under and will meet the terms and conditions of the general permit, this Rule, and applicable statutes.

- ~~4.~~ (4) The Secretary may deny a request for a general permit authorization and require application for an individual permit as provided in Subchapter 6 of this Rule.
- ~~5.~~ (5) Denials of an authorization under a general permit shall be issued in writing, stating the reasons for the denial.
- ~~6.~~ (6) For an activity requiring an application, the Secretary shall provide notice of an authorization or a denial under a general permit to the clerk and select persons of the municipality in which the activity is proposed, to the local and regional planning commissions, to the owners of property which abuts or is opposite the land where the alteration is to take place, and on the Agency's website.
- (e) Transfer of Authorization - A permittee may transfer an authorization by submitting a notice of transfer on a form provided by the Secretary. The notice shall be submitted at least ten days prior to transfer and shall include, at a minimum, the name and address of the new permittee, the name and address of the former permittee, the date of transfer, and a statement signed by the new permittee stating that he/she had read and is familiar with the terms and conditions of the general permit and the authorization and agrees to comply with the general permit and authorization to discharge.
- (f) Changes to Authorized Activity - The permittee shall notify the Secretary of any planned changes to the authorized activity prior to carrying out such changes. The Secretary may require the permittee to submit additional information on the proposed change. The Secretary shall determine the appropriateness of continued authorization under the general permit and may require an amendment to the authorization, including re-noticing the project for public comment, or may require that the permittee apply for an individual permit.
- (g) Revocation of Authorization - The Secretary may, after notice and opportunity for a hearing, revoke or suspend, in whole or in part, an authorization under a general permit for cause, including:
- ~~1.~~ (1) Violation of the terms or conditions of the general permit;
 - ~~2.~~ (2) Obtaining authorization by misrepresentation or failure to fully disclose all relevant facts;
 - ~~3.~~ (3) A change in any condition or new information that requires either a temporary or permanent reduction or elimination of the authorized activity.
- (h) Requiring Coverage under an Individual Permit - The Secretary may require any applicant for or permittee authorized under a general permit to apply for an individual permit. The Secretary may require an individual permit after consideration of the:
- ~~1.~~ (1) Current biological condition, geomorphic condition, and geomorphic sensitivity of the stream within which the activity would occur;
 - ~~2.~~ (2) Size and scope of the applicant's or permittee's activities or operation;
 - ~~3.~~ (3) Qualifications and compliance record of the applicant, permittee, and/or contractors involved with the activity;
 - ~~4.~~ (4) Proximity and potential for damage to improved property and other riparian owners;
 - ~~5.~~ (5) Extent and nature of the stream alteration;
 - ~~6.~~ (6) Margins of safety incorporated into a project design;
 - ~~7.~~ (7) Compliance of the permittee with the terms and conditions of the general permit;
 - ~~8.~~ (8) Qualification of the project for coverage under a general permit issued by the Secretary;
 - ~~9.~~ (9) Availability of demonstrated technology or practices for the activity; and
 - ~~10.~~ (10) Other relevant factors.

- (i) Notification - If the Secretary finds that a permittee authorized by a general permit is required to apply for an individual permit, the Secretary shall so notify the permittee. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the permittee to file the application, and a statement that on the effective date of the individual permit, if issued, the permittee's general permit authorization shall automatically terminate. The Secretary may grant additional time upon request of the applicant.
- (j) Requiring Authorization under a General Permit
 - ~~1.~~ (1) The Secretary may require any person applying for an individual permit to report the activity for coverage under a general permit provided the Secretary finds the activity complies with all terms and conditions of the general permit and the activity is more appropriately covered under the general permit.
 - ~~2.~~ (2) Any permittee subject to an individual permit shall be authorized under the terms of a general permit upon issuance of a notice by the Secretary authorizing the activity under the general permit. The individual permit's applicability to the permittee shall be automatically terminated on the effective date of the authorization under the general permit.

Subchapter 6 – Individual Permits

§27-601 Purpose; Application; Public Notice

- (a) Purpose - This section sets forth a process for the issuance of individual stream alteration permits ~~for both emergency and non-emergency stream alteration activities, except for individual permits for emergency activities and next-flood protective measures issued pursuant to Subchapter 7 of this Rule.~~
- (b) Application
 - ~~1.~~ (1) An applicant for an individual permit shall submit a completed application form with all necessary attachments and fees.
 - ~~2.~~ (2) The Secretary may require an applicant to submit additional information that the Secretary considers necessary in order to make a decision on the issuance or denial of an individual permit. The Secretary may deny the individual permit if the requested information is not provided within 60 days of the Secretary's request.
- (c) Public Notice - Upon a determination by the Secretary that an application is complete, the applicant shall file a copy of the application for posting by the town clerk of the town in which the proposed alteration is located, and shall mail a copy of the application to the selectpersons of the town and to each abutting owner upstream, downstream, and across the stream from the project location. The names of these property owners shall be provided on the application.
- (d) Public Comment on Individual Permit Application - The applicant shall notify the Secretary that the applicant has provided notice to the town clerk, selectpersons, and abutting landowners as provided in (c) of this subpart. The Secretary shall post notice on the Agency's website and shall provide an opportunity for public comment on the application for no less than ~~ten~~ 30 days. At the Secretary's sole discretion, the Secretary may provide additional notice of the permit application and may conduct a public meeting to receive additional public comment.

- (e) Notice of Issuance or Denial of Permit - The Secretary shall provide notice of the issuance or denial of the permit to the clerk of the town in which the project is located, to the selectpersons, to each abutting landowner, to any person who files written comments on the application, and on the Agency's website.
- (f) Individual Permit Review Standards - Applicants for an individual stream alteration permit shall have the burden to show that a proposed activity complies with this Rule and any design requirements set by the Secretary to meet the standards set forth in subpart 27-402 of this Rule. However, pursuant to subparts 27-701(c) and 27-706(b) of this Rule, the requirements of Subchapter 4 of this Rule shall not apply to those emergency and next-flood protective measures authorized under an individual permit. In determining whether this burden has been met, the potential effect of any proposed activity shall be evaluated on the basis of both its direct and immediate effects and on the basis of any cumulative or on-going effects on the watercourse.
- (g) Design requirements for bridges and culverts. The design requirements for the construction of new bridges and culverts or the replacement of existing bridges and culverts set forth in a stream alteration general permit, adopted pursuant to this Rule, shall apply to the construction of new bridges and culverts and the replacement of existing bridges and culverts authorized pursuant to an individual permit except where achieving the design requirements in the general permit is not feasible or has been deemed inadequate by the Secretary because the bridge or culvert is or will be located: (i) in an urban setting confined by unmovable public infrastructure or habitable structures, or (ii) in a setting with a sediment transport-dominated stream with a very high volume of coarse bedload (i.e., prone to high deposition and scour).
- ~~(g)~~ (h) Notwithstanding (f) above, an individual stream alteration permit required to repair an existing instream structure (e.g., stream crossings and dams) may allow the structure to continue to impede the attainment of equilibrium conditions provided the repaired structure will not create a further departure from equilibrium conditions or create a greater discontinuity in the vertical or horizontal dimensions than existed prior to the need for repair. The Secretary shall not issue an individual stream alteration permit for repairs that do not comply with the statutory criteria in 10 V.S.A. § 1023(a).
- ~~(h)~~ (i) Transfer of Individual Permit - A permittee may transfer an individual permit by submitting a notice of transfer on a form provided by the Secretary. The notice shall be submitted at least ten days prior to transfer and shall include, at a minimum, the name and address of the new permittee, the name and address of the former permittee, the date of transfer, and a statement signed by the new permittee stating that he/she had read and is familiar with the terms and conditions of the individual permit and agrees to comply with the individual permit.
- ~~(i)~~ (j) Changes to Authorized Activity - The permittee shall notify the Secretary of any planned changes to the authorized activity prior to carrying out such changes. The Secretary may require the permittee to submit additional information on the proposed change. The Secretary may require an amendment to the individual permit, which may include re-noticing the project for public comment.
- ~~(j)~~ (k) Revocation of Authorization - The Secretary may, after notice and opportunity for a hearing, revoke or suspend, in whole or in part, an individual permit for cause, including:
- ~~1-~~ (1) Violation of the terms or conditions of the individual permit;
 - ~~2-~~ (2) Obtaining authorization by misrepresentation or failure to fully disclose all relevant facts;

- ~~3-~~ (3) A change in any condition or new information that requires either a temporary or permanent reduction or elimination of the authorized activity.

Subchapter 7 – Emergency and Next-Flood Protective Measures

§27-701 Purpose and Applicability of Emergency Protective Measures

- (a) This Subchapter sets forth criteria for coverage as an emergency protective measure and establishes a permitting process for such measures.

- (b) Pursuant to 10 V.S.A. § 1027(b), emergency protective measures to preserve life or to prevent severe imminent damage to public or private property, or both, may be authorized:

~~1-~~ (1) During a state of emergency declared under 20 V.S.A. Chapter 1;

~~2-~~ (2) During or after a non-declared flooding event; or

~~3-~~ (3) As a result of other emergency conditions where a stream-related imminent threat to life or an imminent threat of severe damage to property would exist without emergency protective measures as described in subpart 27-703 of this Rule.

- (c) Pursuant to 10 V.S.A. § 1021(b), the requirements of Subchapter 4 of this Rule shall not apply to those emergency protective measures undertaken to preserve life or to prevent severe imminent damage to an improved property; except that emergency measures shall not be authorized in cases where the municipality or State has determined that the measure would pose an imminent threat to life, public health, or safety.

- (d) Stream alterations may be authorized under a general permit or with an individual permit during emergency conditions, but only those meeting the criteria for coverage as listed below in subpart 27-702 of this Rule qualify as emergency protective measures that may be authorized under this Subchapter.

§27-702 Criteria for Coverage as an Emergency Protective Measure

- (a) An activity may be authorized as an emergency protective measure, when it meets the following criteria:

~~1-~~ (1) The emergency protective measure shall be necessary to preserve life or to prevent severe imminent damage to public or private property;

~~2-~~ (2) The determination shall be made by a state or municipal governmental representative or entity that has legal authority to make a public health or safety determination;

~~3-~~ (3) The emergency protective measure shall be limited to the minimum amount necessary to remove imminent threats to life or property. To meet this criterion, the emergency measures must be proportional to the threat and shall cease when the threat to life or threat of severe damage to a property has ended;

~~4-~~ (4) The emergency protective measure falls within one of the categories of measures set forth in subpart 27-703 of this Rule; and

~~5-~~ (5) The emergency protective measure is implemented in a manner consistent with the general permit adopted under this Rule regarding stream alterations during emergencies.

- (b) A member of a municipal legislative body may approve an emergency protective measure, which may proceed without prior authorization from the Agency, but which must receive preliminary

and final authorization from the Agency pursuant to subpart 27-705 of this Rule, when:

- ~~1.~~ (1) The emergency protective measure shall be necessary to preserve life or to prevent severe imminent damage to public or private property, when such property has experienced damage or is under threat of imminent failure within the next 72 hours;
- ~~2.~~ (2) The municipality shall notify the Secretary by written and verbal communications within 24 hours of approving the emergency protective measure. Notifications to the Secretary shall include:
 - ~~a.~~ (A) The location (i.e., nearest street address) of the emergency measures;
 - ~~b.~~ (B) A description of the emergency protective measure; and
 - ~~c.~~ (C) A description of the imminent threat to life or threat of severe damage to property and how the emergency protective measure minimizes that threat.

§27-703 Categories of Emergency Protective Measures Covered

Emergency protective measures necessary to preserve life or to prevent severe imminent damage to public or private property, or both, shall be limited to the following types of activities:

- ~~1.~~ (1) Removal of flood-related deposits of instream materials and/or creation of stream channel conveyance;
- ~~2.~~ (2) Stream bed or streambank fills necessary to provide access to public facilities or infrastructure or limit further vertical or lateral stream channel movement;
- ~~3.~~ (3) Repair of infrastructure, the loss of which would represent an imminent threat to public health and safety; and
- ~~4.~~ (4) Temporary berming to protect public safety by preventing stream flows (i.e., including those below flood stage) from causing severe imminent damage to an improved property.

§27-704 Standards for Implementing Emergency Protective Measures

- (a) Emergency protective measures deemed necessary to prevent severe imminent damage to an unimproved property, where threats to public safety do not exist, shall meet the stream alteration standards set forth in subpart 27-402 of this Rule.
- (b) Emergency protective measures necessary to preserve life or to prevent severe imminent damage to an improved property shall be authorized where they conform to the standards detailed in the following subparts, and when the Secretary has determined that the measure will not pose an imminent threat to life, public health, or safety.
- (c) Removal of Instream Materials

- ~~1.~~ (1) Removal of instream material, as a next-flood or emergency protective measure, is conducted for the purpose of creating critical stream channel conveyance by means of excavating flood deposited instream materials from a watercourse, and thereby preserving life or preventing severe damage to an improved property if stream flows were to become blocked and diverted from the channel;
- ~~2.~~ (2) Where the stream is filled with sediment and debris, to the point where an annual flood flowage will not be carried in a river channel, sediment and debris excavation will be authorized to at least a pre-flood cross-section (i.e., the pre-flood level of safety) or excavated to a width and depth along a stable vertical profile necessary to meet the stream equilibrium standard;

- ~~3.~~ (3) Extending sediment and debris removal, horizontally or vertically, beyond that necessary to preserve life or to prevent severe damage to improved property is not a next-flood or emergency protective measure and must have prior authorization from the Secretary.
- ~~4.~~ (4) Windrowing sediment and debris to the margins of the channel may be authorized as a temporary measure where immediate access and mobilization for off-site transport of excavated materials is not possible. Channel excavation shall not result in a bed profile (elevation) lower than the pre-flood condition. The project proponent shall be responsible for the removal of any windrowed material placed on the channel banks and within the river corridor or floodplain as directed by the Secretary;
- ~~5.~~ (5) Where the post-disaster stream channel has the capacity to convey the annual flood flow-age (~Q1.5), and threats to life or severe damage to improved property related to channel conveyance do not exist, excavation of instream material will only constitute a next-flood or emergency protective measure where relocation of a stream channel is necessary to address further vertical or lateral stream channel movement that would otherwise represent a threat to life or severe damage to improved property; and
- ~~6.~~ (6) Excavating new channels that did not exist immediately prior to the flood event is not permitted without prior approval from the Secretary and a determination that doing so would be consistent with the equilibrium standard.

(d) Stream bed and Streambank Protection

- ~~1.~~ (1) Placing fill material within the stream channel to align and/or armor the vertical stream bed profile or the horizontal streambank alignment may be conducted to address a next-flood or imminent threat. Bed or bank protection is a next-flood or emergency protective measure when conducted to protect a property from further damage or resist flow velocities acting on the stream bed or banks at the annual flood stage (~Q1.5) that would otherwise cause fluvial erosion hazards and threats to life or severe damages to public or private property.
- ~~2.~~ (2) Fills placed to establish or re-establish streambank armor as a next-flood or emergency protective measure shall not encroach into and narrow the bank full width of the stream channel, or create an acute horizontal streambank misalignment.
- ~~3.~~ (3) Where the natural bed armor has been scoured during a flood, next-flood or emergency protective measures may be necessary to reduce the risk of the stream bed continuing to down-cut (i.e., channel incision) and erode upstream through a headcutting process. Channel incision and the streambank failure that results during a flood may undermine and cause failure of immediately adjacent improved property. The Secretary shall require the construction oversight of a qualified river engineer or their designee to raise and stabilize a stream bed, in a manner that:
 - ~~a.~~ (A) Aligns the vertical stream bed profile with that of upstream and downstream segments;
 - ~~b.~~ (B) Establishes a channel width to depth ratio consistent with equilibrium conditions;
 - ~~c.~~ (C) Increases floodplain connectivity; and
 - ~~d.~~ (D) Restores or re-establishes resistance to bed scour.

(e) Temporary Stabilization / Restoration of Infrastructure

- ~~1.~~ (1) Where critical infrastructure, including bridges, culverts, roadways, wastewater, or water systems, and electric and telecommunications facilities, has been damaged and immediate restoration of services is necessary to address an imminent threat to life or property, and in-stream construction activities are necessary to create a temporary facility and restore service, such in-stream work is considered and may be authorized as an emergency protective measure in a post-flood context;

- ~~2.~~ (2) As may be necessary to temporarily establish or stabilize infrastructure, the removal of instream material, stream bed and streambank protection, and temporary berming shall meet the requirements set in subparts 27-704(c), (d), and (f) of this Rule respectively;
- ~~3.~~ (3) The final authorization of emergency measures to establish or stabilize temporary facilities shall include requirements for the permanent repair or replacement of infrastructure, including a date when any permanent repair or replacement work must be completed. A stream crossing structure is considered repairable when damages do not exceed 50 percent of the cost of replacing the crossing as it existed prior to the emergency, and it is feasible to repair the crossing so that it can perform the function for which it was being used. All stream crossings deemed by the Secretary not to be repairable shall be removed in a manner, as allowed by federal and state law or shall be replaced with a permanent structure that meets the standards set forth in subpart 27-402 of this Rule; and
- ~~4.~~ (4) The stabilization and restoration of infrastructure may require fills within the footprint of the infrastructure as it existed prior to the emergency. These fills shall not encroach into and narrow the bank full width of the stream channel, create an acute horizontal streambank misalignment, and/or use undersized or otherwise unsuitable materials for streambank and/or roadway embankment stabilization; except as temporary construction-related fills as necessary for infrastructure restoration. Wherever fill material is not adequately sized to effect permanent stability of the stream bed or bank, the Secretary may require undersized materials be replaced or stabilized with appropriately sized material.

(f) Construction of Berms

- ~~1.~~ (1) A person shall not establish, construct, or maintain a berm in a flood hazard area or river corridor unless the construction is necessary to preserve life by preventing stream flows (i.e., including those below flood stage) from impinging directly on an improved property. Berms constructed for this purpose shall be considered temporary and shall be removed coincident with the removal of threats to public safety.
- ~~2.~~ (2) Berms may be constructed, or, in the case of an emergency protective measure, be allowed to remain in place, only upon the issuance of an individual stream alteration permit.

§27-705 Public Notice and Authorization of Emergency Protective Measures

(a) Purpose,

- ~~1.~~ The time, travel, and operational constraints that often exist during emergencies necessitate a two stage process to meet the statutory requirements for Agency authorization, documentation, interagency coordination, and public notice of emergency protective measures. Municipalities shall seek both preliminary and final authorization and comply with the public notice requirements set forth in this subpart and in any applicable general or individual permit issued by the Secretary.

(b) Preliminary authorization

- ~~1.~~ (1) Upon notification by a municipality pursuant to subpart 27-702 of this Rule, the Secretary shall determine whether an activity seeking authorization constitutes an emergency protective measure eligible for coverage under this Rule.
- ~~2.~~ (2) Upon making this determination, the Secretary shall either:
 - ~~a.~~ (A) Deny authorization;

- ~~b.~~ (B) Preliminarily approve (verbally and electronically) the emergency protective measure, either as planned or with conditions deemed necessary to address an imminent threat to life or property and to comply with the categorical standards in subpart 27-704 of this Rule; or
 - ~~e.~~ (C) Require that instream activities or berming cease immediately until a site visit can be made by the Secretary. The Secretary may then deny or issue preliminary authorization of an emergency protective measure, with explicit written conditions, consistent with the emergency provisions of a stream alteration general permit.
- ~~3.~~ (3) The Secretary may, at any time, require that emergency work cease. The Secretary may provide preliminary authorization (verbally and electronically) for the work to commence after setting conditions deemed necessary for the measures to qualify for final authorization under an individual or general permit.

(c) Final Authorization

- ~~1.~~ (1) All emergency protective measures must receive final authorization from the Secretary either in an individual permit or authorization under a general permit.
- ~~2.~~ (2) Within 30 days of completion of the emergency protective measure, a municipality shall submit to the Secretary the following documentation:
 - ~~a.~~ (A) Copies of all information provided by the municipality in its written notifications to the Secretary pursuant to subpart 27-702(b)(2) of this Rule;
 - ~~b.~~ (B) Copies of any preliminary authorizations issued by the Secretary;
 - ~~e.~~ (C) Written verification and photo documentation that the emergency protective measures were carried out to meet the standards established in subpart 27-704 of this Rule;
 - ~~d.~~ (D) Map documentation of the location where the emergency protective measure was completed depicting the approximate beginning and ending point of the stream segment in which the measure was taken. Narrative information should accompany the map explaining the approximate length of the stream segment where the work was completed; and
 - ~~e.~~ (E) Documentation of the types and quantities of instream material removed and/or the protective fills required. Narrative information describing the methods used to determine quantities should accompany the quantity calculations.
- ~~3.~~ (3) The Secretary may, upon request of the municipality, grant additional time for the submission of the required documentation for a period not to exceed 30 additional calendar days.

(d) Public Notice

- ~~1.~~ (1) Notifications, authorizations, and documentation, as they are issued, shall be placed:
 - ~~a.~~ (A) On-site where and when the emergency protective measures are being undertaken,
 - ~~b.~~ (B) On file at the municipal clerk's office of the town in which the measures are being undertaken, and
 - ~~e.~~ (C) On file with the Secretary, where they may be ~~publically~~ publicly viewed on a website maintained by the Agency.
- ~~2.~~ (2) The municipal clerk shall post the initial notification and preliminary authorization for emergency protective measures at the municipal offices during the emergency and until a final authorization is provided.
- ~~3.~~ (3) The Secretary shall post authorizations as they are made and documentation, as received, on an Agency webpage for a period of no less than 90 days after the final authorization is issued.

§27-706 Authorization of Next-Flood Protective Measures

- (a) Any person or municipal entity may carry out protective measures to address next-flood threats, but only with prior written authorization from the Secretary either in an individual permit or a general permit.
- (b) Pursuant to 10 V.S.A. § 1021(b), the requirements of Subchapter 4 of this Rule shall not apply to those next-flood protective measures undertaken to preserve life or to prevent severe imminent damage to an improved property; except that next-flood protective measures shall not be authorized in cases where the State has determined that the measure would pose an imminent threat to life, public health, or safety.
- (c) ~~Categories of next flood~~ Next-flood protective measures include: ~~the “removal of in-stream materials” (subpart are those measures in subparts 27-704(c) through (f) of this Rule) and “stream bed and streambank protections” (subpart 27-704(d) of this Rule) as necessary~~ required to preserve life or to prevent severe damage to an improved property.
- (d) Next-flood measures authorized by the Secretary shall:
- ~~1. (1)~~ Not result in a threat to life, public health, or safety;
 - ~~2. (2)~~ Meet the standards detailed in subparts 27-704(c) ~~and (d)~~ through (f) of this Rule;
 - ~~3. (3)~~ Meet the Stream Alteration Standards to the greatest extent possible recognizing that next-flood protective measures may potentially result in or significantly contribute to ongoing damage to fish life, wildlife, and the rights of riparian owners.
- (e) The Secretary shall, upon review of a proposed next-flood protective measure, require submittal of information, which may include:
- ~~1. (1)~~ The location (i.e., nearest street address) of the next-flood protective measures;
 - ~~2. (2)~~ A description of the next-flood protective measure;
 - ~~3. (3)~~ Photo documentation and a description of the threat to life or threat of severe damage to improved property and how the next-flood protective measure addresses that threat; and
 - ~~4. (4)~~ Any information, as determined by the Secretary, necessary to evaluate and document the proposed activity as qualifying for coverage as a next-flood protective measure, meeting the requirements under subparts 27-704(c) ~~and (d)~~ through (f) of this Rule, and meeting the Stream Alteration Standards to the greatest possible as outlined in subpart 27-402 of this Rule.
- (f) An activity reported to the Secretary and deemed to be a next-flood protective measure, meeting the requirements in subpart 27-706(c) of this Rule, may proceed after the Secretary’s issuance of an individual permit or written authorization under a general permit. The Secretary’s authorizations, including any required project documentation, shall be posted on the Agency’s website for 90 days or until the end of the calendar year in which the activity was posted, whichever is longer.
- (g) Condition of Authorization. If the Secretary determines that a stream crossing is “not repairable,” but authorizes a next-flood protective measure to address next-flood threats, the authorization shall include a date by which the stream crossing shall be removed, in compliance with state and federal law, or replaced with a permanent structure that meets the standards set forth in Subchapter 4 of this Rule. A stream crossing structure shall be considered “not repairable” when damages exceed 50 percent of the cost of replacing the crossing as it existed prior to the emergency, and it is not feasible to repair the crossing so that it can perform the function for which it was being

used.

Subchapter 8 – Appeals

Appeals from any act or decision of the Secretary under this Rule are governed by 10 V.S.A. § 8504.