

## Administrative Procedures – Final Proposed Rule Coversheet

**Instructions:**

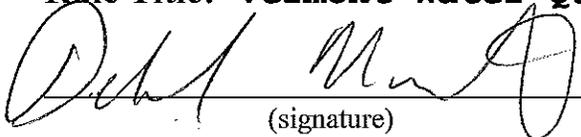
In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” adopted by the Office of the Secretary of State, this final proposed filing will be considered complete upon the submission and acceptance of the following components to the Office of the Secretary of State and to the Legislative Committee on Administrative Rules:

- Final Proposed Rule Coversheet
- Adopting Page
- Economic Impact Statement
- Public Input Statement
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)
- Copy of ICAR acceptance e-mail
- A copy of comments received during the Public Notice and Comment Period.
- Responsiveness Summary (detailing agency’s decisions to reject or adopt suggested changes received as public comment).

All forms submitted to the Office of the Secretary of State, requiring a signature shall be hand signed original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted, no later than 3:30 pm on the last scheduled day of the work week.

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**Rule Title: Vermont Water Quality Standards**

 \_\_\_\_\_, on 9-29-16  
 (signature) (date)

Printed Name and Title:  
 Deb Markowitz, Secretary  
 Agency of Natural Resources

RECEIVED BY: \_\_\_\_\_

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- Clean text of the rule (Amended text without annotation)
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- ICAR Approval received by E-mail.
- Copy of Comments
- Responsiveness Summary

1. TITLE OF RULE FILING:

Vermont Water Quality Standards

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

16P-030

3. ADOPTING AGENCY:

Agency of Natural Resources

4. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Neil Kamman, Manager, Monitoring, Assessment and Planning Program

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Dr., Main 2, Montpelier, VT 05620-3522

Telephone: 802 490 - 6137 Fax: 802 828 - 1544

E-Mail: neil.kamman@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<http://dec.vermont.gov/watershed/laws>

5. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Elizabeth Schilling, Esq.

Agency: Agency of Natural Resources

Mailing Address: 1 National Life Dr., Davis 2, Montpelier, VT 05620-3522

Telephone: 802 490 - 6102 Fax: 802 828 - 1544

E-Mail: elizabeth.schilling@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

10 V.S.A. §§ 1251(a) and 1252(e)

8. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.
9. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.
10. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.
11. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.
12. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.
13. **CONCISE SUMMARY (150 WORDS OR LESS):**

The Vermont Water Quality Standards (VWQS) are being amended to reflect amendments to 10 V.S.A. §§ 1252 and 1253, enacted under Act 79 of 2016; updates to federal requirements; and updates to state policy concerning the management of rivers under Act 110 of 2010 and Act 138 of 2012. The changes to the Rule include:

  1. Pursuant to Act 79, addition of Class B(1) criteria and reorganization of water quality criteria to allow for designating individual uses in a single water as different classes;
  2. Incorporation of the concept of dynamic stream equilibrium;
  3. Improved water temperature criteria;
  4. Incorporation of previously-authorized biological assessment procedures;
  5. Updates to toxic chemical criteria consistent with EPA criteria and regulations;
  6. Reclassification of specific uses of certain surface waters to Class A(1);
  7. Updates to the Antidegradation Policy consistent with federal regulations; and

8. Updates to formatting, style, and grammar consistent with Department drafting conventions.

**14. EXPLANATION OF WHY THE RULE IS NECESSARY:**

Federal law, including 33 U.S.C. § 1313 and 40 C.F.R. § 131.6, and the state Water Pollution Control Chapter, specifically 10 V.S.A. §§ 1250-1252, require the State to adopt water quality standards. The VWQS satisfy these requirements. Pursuant to 33 U.S.C. § 1313 and 40 C.F.R. § 131.20, the State must conduct triennial reviews of the VWQS. The purpose of the triennial review is for the State to update its water quality standards, as appropriate, consistent with new information and federally promulgated standards and regulations. This revision to the VWQS satisfies the triennial review requirement, while also updating the Rule consistent with state law, including 10 V.S.A. §§ 1252 and 1253, as amended by Act 79 of 2016.

To further explain the restructuring authorized by Act 79, the Agency provides the following background. Prior to Act 79, waters were classified as Class A(1), A(2), or B for all designated uses (i.e. swimming, fishing, aquatic biota, etc.). This change in statute establishes a new Class B(1) that is intermediary in quality between the old Class B and A waters, and also now allows for individual uses of a water to be reclassified to a higher level than Class B(2) (Class B(2) is the old Class B). As such, a surface water may be Class B(2) for most uses, but may be designated as B(1) for one specific use, where that use demonstrably and consistently attains the higher B(1) criteria. The criteria for Class B(2) remain the same as those previously promulgated in the existing rule for Class B. The Class B(1) criteria recognize that certain waters may be attaining a higher level of use and water quality than Class B(2), and that level of quality should be protected and maintained at that level.

**15. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

State and federal agencies and departments, particularly the Agency of Natural Resources; the Vermont Agency of Agriculture, Food & Markets; the

Vermont Agency of Transportation; and the Vermont Agency of Human Services, Department of Health. These agencies and departments work in partnership to implement the VWQS.

Municipalities with permits requiring compliance with the VWQS.

Private enterprises, businesses, and individual citizens whose operations, development, or land-use activities require a permit to ensure compliance with the VWQS.

**16. BRIEF SUMMARY OF ECONOMIC IMPACT(150 WORDS OR LESS):**

1. The addition of Class B(1) may have future positive economic impacts because it will ensure uses meeting those criteria are protected to maintain that higher quality.
2. The amendment of the Rule consistent with Acts 110/138 is expected to have negligible economic impacts because it simply incorporates existing state flood resiliency policy.
3. The changes to the temperature standard may have impacts on dischargers to cold water fish habitat designated as Class A(1) or B(1) for fishing if they have to implement practices to maintain water quality.
4. EPA may not consider economic impacts when updating human health criteria. The State may consider the economic impacts of the criteria through permitting decisions.
5. The reclassification of certain waters in the Green Mountain National Forest to Class A(1) may have positive economic impacts by further protecting those ecological waters.
6. The amendments to the Antidegradation Policy are intended to provide clarity not economic effects.

**17. A HEARING WAS HELD.**

**18. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 8/22/2016

Time: 09:00 AM

Street Address: Pavilion Auditorium, 109 State Street,  
Montpelier, VT

Zip Code: 05609

Date: 8/22/2016

Time: 05:30 PM

Street Address: Chittenden County Regional Planning  
Commission, Main Conference Room, 110 West Canal  
Street, Suite 202, Winooski, VT

Zip Code: 05404

Date: 8/24/2016

Time: 05:00 PM

Street Address: Arlington Free Library, 528 E. Arlington  
Rd., Arlington VT

Zip Code: 05250

Date: 8/31/2016

Time: 01:00 PM

Street Address: Londonderry Town Offices, 100 Old School  
Rd., South Londonderry, VT

Zip Code: 05155

Date:

Time: AM

Street Address:

Zip Code:

19. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

9/7/2016

20. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Water Quality Standards

VWQS

antidegradation

toxics

water quality classification

water pollution