

ANR's Role in the FERC Process

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Overview

- Legal foundation
- Vermont Water Quality Standards
- Potential issues at hydroelectric facilities
- Navigating the process

Public Trust Doctrine

The waters of Vermont are held in trust by the state for the benefit of all Vermonters

Clean Water Act

- Objective: “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”
- One of the goals is to provide “for the protection and propagation of fish, shellfish, and wildlife”

Section 401

- Section 401 requires “[a]ny applicant for a Federal license or permit to conduct any activity . . . which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certificate from the State . . . That any such discharge will comply with the applicable provisions of [the Clean Water Act].”
- Meaning – state certification is required if:
 - There is a federal license or permit
 - The project will result in a discharge to state waters

Certification

- ANR certifies that the project meets state water quality standards
- Contains conditions necessary to ensure standards are met
- Certification is only “permit” required by ANR for FERC-regulated projects

Vt Water Quality Standards

Class B Management Objectives

- Aquatic Biota, Wildlife and Aquatic Habitat – Aquatic biota and wildlife sustained by high quality habitat
- Aesthetics – Water character, flows, water level, bed and channel characteristics exhibiting good aesthetic value
- Boating, Fishing and Other Recreational Uses – Suitable for these uses



Aquatic Biota, Wildlife and Aquatic Habitat

- Bypass conservation flows
- Dissolved oxygen and temperature
- Sediment
- T&E species
- Impoundment impacts
- Riparian vegetation and wetlands
- Fish movement upstream and downstream

Aesthetics

- Bypass flows
- Location of discharge

Recreation

- Public access to the water for recreational purposes
- Canoe/kayak portage

Navigating the Process

Contact ANR early in the planning phase

- Identify potential issues
- Obtain existing information
- Identify study needs
- Establish central contact

www.anr.state.vt.us/dec/fed/dss.htm