

State of Vermont
Agency of Natural Resources
Department of Environmental Conservation

Procedure for Existing Constructed Features

August 2017

I. Introduction

This procedure is intended to clarify how the Wetlands Program (Program) determines when a feature shall not be regulated as a wetland under the Vermont Wetland Rules (VWR) in accordance with §3.1(b) of the VWR.

II. Definitions

Existing Constructed Features: Features which were human constructed by excavating, grading or filling and are functioning as a manmade feature listed in section 3.1b of the VWR.

Manmade Pond: Ponds that have not been created by beavers or other natural processes. Manmade ponds are those that have been actively constructed by excavating an area to create a depression to be filled with water. Manmade ponds may also include infrastructure such as berms or walls, dams, pond bottom linings, or other physical structures used to contain water. These include Wastewater treatment ponds, manure treatment ponds, stormwater ponds, snowmaking ponds and other similarly constructed ponds.

III. Exemption from the Vermont Wetland Rules

The VWR define instances were areas which have wetland soils, hydrology and plants shall be regulated as wetland:

“3.1 Exemptions

The following shall not be regulated as wetlands under the Vermont Wetland Rules, but may be subject to regulation under federal law:”

The VWR define certain wetland-like manmade features as exempt from being regulated as wetland so long as they were constructed in uplands:

“3.1b The following man-made features, which when constructed in uplands may exhibit wetland characteristics:

- (1) Stormwater conveyance, treatment and/or control systems.**
- (2) Wastewater treatment ponds and sludge lagoons.**
- (3) Manure storage and treatment ponds.**

- (4) Irrigation and active farming-related ponds.
- (5) Snowmaking ponds.
- (6) Other similar constructed ponds created in uplands.”

IV. Application of Exemption 3.1b

A. Determining wetland presence: The Wetlands Program evaluates the following characteristics in the field to determine whether a man-made feature was constructed within a wetland:

1. Whether the feature was constructed within an area of the landscape where water is expected to pool or to remain present for a longer period of time.
2. Whether the feature was constructed along or intersecting a stream that also has wetland vegetation along the stream or surrounding the constructed feature.
3. Whether the characteristics adjacent to the feature are wetland as determined by using the methodology outlined in section 3.2 of the VWR, which typically involves an investigation of soils, plants, and hydrology.
4. The extent of wetland fringe adjacent to the constructed feature and whether the feature may have caused the wetland condition.
5. Any site plans, permits, or photographs of the historical area.

B. Exempt Features: Any manmade pond or stormwater feature that has been created wholly within an upland area, outside of wetlands are considered non-wetland areas even when they exhibit certain wetland characteristics, and are therefore exempt from permitting. This includes manmade features that may be mistakenly identified as Class II wetlands on the VSWI Atlas layer.

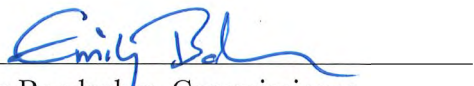
C. Mapped Features: Any manmade pond or stormwater features determined to have been constructed in a wetland, and that are mapped as Class II wetlands on the Vermont Significant Wetland Inventory (VSWI), are Class II wetlands and are jurisdictional until determined otherwise in accordance with section 8 of the VWR.

D. Unmapped Features: For any manmade pond or stormwater features that have been determined to have been built in a wetland, but are not mapped as Class II wetlands on the Vermont Significant Wetland Inventory (VSWI), an assessment of the functions and values of the wetland and feature will be made by the Vermont Wetlands Program to determine the classification.

E. Existing Constructed Features in Buffer Zones: Existing constructed features in buffer zones shall not be regulated as wetland. Alterations to such features shall be regulated as

activities within the buffer zone of a protected Class II wetland, unless the activity is considered an allowed use under section 6 of the VWR.

Signed this 9th of August, 2017

By  _____
Emily Boedecker, Commissioner
Department of Environmental Conservation