

VERMONT WETLAND PERMIT AMENDMENTS

Issued: July 2017

The purpose of this document is to provide permittees guidance on when a permit amendment is needed and what type of amendment is needed in accordance with Section 9.7 of the 2017 Vermont Wetland Rules (VWR).

Ineligibility: Permits issued prior to April 1, 2017 are not eligible for a minor or major permit amendment. These permittees must submit a new permit application to receive authorization for changes.

General Permit Authorizations are not eligible for an amendment, other than administrative amendments. Permittees must submit a new general permit application to receive a new authorization or apply for an individual permit if the impacts exceed GP thresholds.

The overall project purpose is integral to the VT Wetlands Individual Permit review. If there is a change in the project purpose, an amendment cannot be obtained. The permittee will need to submit a new application and the existing permit will be superseded by any new permit.

Extensions: Permit extensions may or may not be granted without an amendment. Individual Permits may remain valid for one year from the date of issuance unless the Secretary specifies a longer period not to exceed five years. VWR§9.1. Permits are typically issued for five years. The Secretary may extend a permit for up to a total of ten years beyond the date of issuance of the original permit. VWR§9.1. A permittee may request an extension if the permit has not expired and if the permittee re-evaluates and re-delineates the wetland resources impacted by the authorized activity. If the Secretary determines that there will be no impact to Class I or Class II wetland or buffer beyond those impacts permitted under the original permit, then the extension may be granted. If any additional wetland or buffer will be impacted, the appropriate amendment (minor or major) must be applied for, concurrent with a permit extension.

Amendment Types: The 2017 Vermont Wetland Rules include three types of amendments to permits, which are described in Section 9.7: administrative, minor and major amendments.

An *administrative amendment* may be granted for any proposed change to an Individual Permit that corrects typographical errors, changes the name or mailing address of a permittee, or makes other similar changes to a permit that do not require technical review of the permitted activity or any changes to conditions or requirements. The transfer of an individual wetland permit constitutes an administrative amendment. No notice and comment is required for an administrative amendment.

A *minor amendment* may be granted for a change to a proposed Individual Permit that entails a change to a condition or requirement, does not necessitate technical review, and is not an administrative amendment. Noticing must take place on the environmental notice bulletin and a public comment period of at least 14 days is required.

A *major amendment* may be granted for a proposed change to an Individual Permit that necessitates detailed technical review. A major amendment shall be subject to the same Individual Permit review standards and public notice and comment requirements applicable to the original permit application, which is for at least 30 days.

Typographical Errors: As stated above, typographical errors are considered minor amendments. No minor amendment form is required, the Permittee need only contact the program via email at anr.wsmdwetlands@vermont.gov

Permit Transfers: Individual Permits are issued to an individual or organization and does not run with the land. If construction or conditions have not been completed prior to a change in ownership, the permit needs to be transferred to the new Permittee. This change constitutes an administrative amendment.

Changes in Conditions: Applicants should review the draft permit's conditions while it is out on public notice and discuss any issues with the Wetlands Program before the permit is finalized to prevent the need for an amendment for changes to conditions. When a condition needs to be changed for more than typographical reasons, the change is considered a minor amendment. In cases where the amendment of a condition would affect rare, threatened or endangered species, exemplary wetland natural communities, wildlife habitat, or surface waters, the changes may require a major amendment. The Program reserves the right to deny a request to amend a permit condition or bump the request into a major amendment if the change may result in an undue adverse impact on the wetland or functions.

Changes in Wetland or Buffer Impact Location or Square Footage: Permit approvals include adherence to site plans submitted in the application. Sometimes site conditions may require changes to the exact locations of impacts and other siting regulations may require additional changes or increases in wetland impacts. Applicants should review all local, federal, and state regulations applicable to their project before submitting a wetland permit application to prevent the need for a permit amendment. If impacts to wetland and buffer zones increase, a major amendment is automatically required. Changes which meet all the following requirements are eligible for a minor amendment:

- 1) Changes involve the same delineated wetland area. This is different from the same contiguous wetland, as the District Wetlands Ecologist may not have reviewed the area outside of the formal delineation (figure 1).

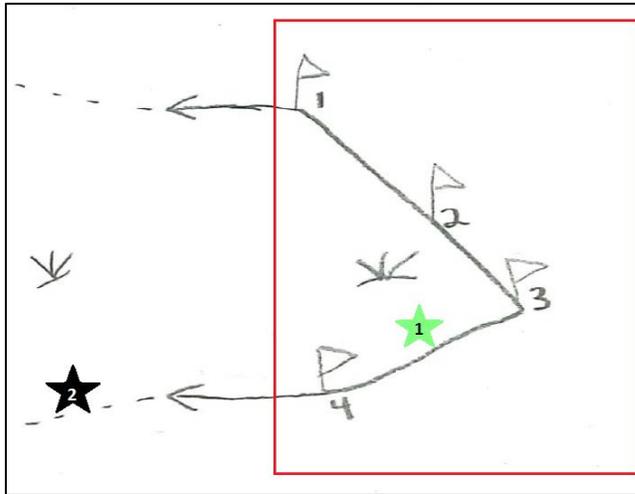


Figure 1: Red box indicates the area reviewed for wetlands for the initial wetlands permit. Flags depict the wetland boundary that was delineated. Outside of the original review area, there is additional wetland with a dotted line boundary. If the impacts move to the area by star “1”, then the activity is still eligible for a minor amendment. If the impacts move to the area by star “2”, the project cannot receive a minor amendment.

- 2) Changes are within the same property boundaries.
- 3) Consist of no more additional impact. This is reviewed in net. If a project component increases its footprint in the wetland and another component is shifted outside of the wetland and the total square footage is the same or less, than the project may apply for a minor amendment.
- 4) Changes are within the same or lesser cover type in wetland or buffer. For example, if the permit is for impacts to a wet-meadow and the changes would shift impacts to a shrub-scrub wetland, a major amendment is needed.
- 5) Activity does not move from a managed area to a natural area (figure 3). “Managed area” means significant (Class I or II) wetland and buffer areas that have been managed to control the growth of vegetation, including mowed lawns, mowed road shoulders, parking areas, roads, hayfields, and croplands. “Managed” does not include managed forest or land which has grown fallow for three or more years and does not include areas that were recently cleared of woody vegetation without a wetlands permit. “Natural area” means significant wetland and buffer areas that are naturally vegetated and that have not been managed or have been minimally managed. “Natural” includes forested swamps, shrub swamps, marshes, thickets, and areas managed for silviculture.
- 6) Activity does not move to areas with rare, threatened or endangered species habitat or an exemplary wetland natural community (figure 3). Use the online [Wetlands Inventory Map's](#) Fish and Wildlife layers and your wetland consultant or District Wetlands Ecologist to help determine if these features exist in or near your project.

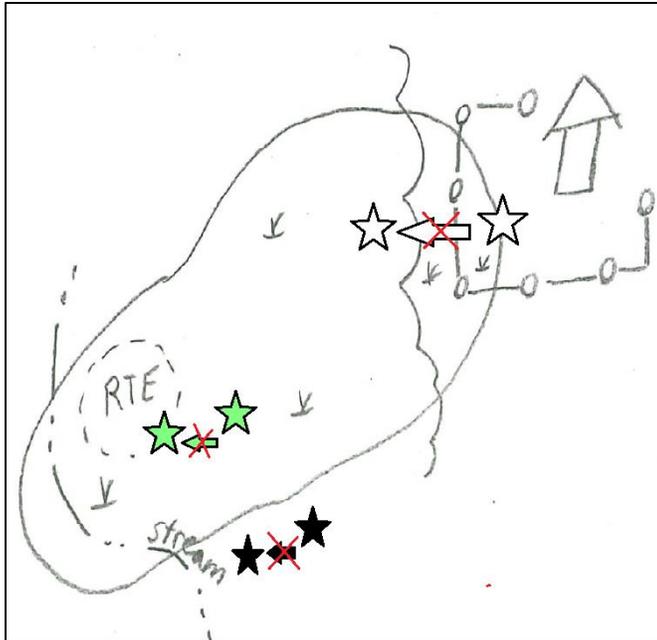


Figure 3: Examples of shifts in impacts which are not eligible for a minor amendment. White star: impacts shift from mowed lawn wetland to forested wetland; green star: impacts shift from forested wetland to within a rare plant population; black star: impacts shift from a forested wetland buffer to closer proximity with a stream.

- 7) Changes have no further encroachment into wildlife habitat. Use the online [Wetlands Inventory Map's](#) Fish and Wildlife layers and your wetland consultant or District Wetlands Ecologist to help determine if these features exist in or near your project.
- 8) Changes are no closer to surface water bodies which include lakes, ponds, rivers, streams, and wetland types with surface water such as a deepwater marsh (figure 3).

Applying for an Amendment: The Vermont Wetlands Program's permit information webpage includes all application forms for new permits and amendments. There is no application for amendments for typographical errors, the permittee need only contact the Program at: anr.wsmdwetlands@vermont.gov. All amendments should be sent electronically to the same email address. There are separate forms for permit transfers and permit extensions. Transfers and extensions associated with minor or major amendments need to include both amendment application and the appropriate transfer or extension form.

Minor amendments may be requested with the minor amendment application form, location map, and site plan. Due to the broad range of possible major amendment requests, there are two ways to request a major amendment. The major amendment form is generally for changes involving 5,000sqft or less. For changes over 5,000sqft, an applicant may choose to, or the Program may request, that they submit the changes in a new Individual Permit application form. It is recommended that you contact your District Wetlands Ecologist before completing a major amendment application to determine the appropriate form and make sure the project changes are supportable. Processing fees for additional impacts for major amendments, including after-the-fact rates, will be required at time of submittal.

Major, minor and permit extensions all have required materials which need to be submitted with the application. Extensions, major, and minor amendments require the submittal of an updated list of abutters and a location map for noticing. Major amendments also require the submittal of the originally approved site plans, the updated site plans, and ACOE forms and the Function and Values Checklist for any newly delineated wetlands. Since permit extensions require the re-evaluation of delineated wetlands, either the ACOE forms, field notes, photographs or updated mapping needs to be submitted with the application.

Amendments will be processed by the Wetlands Program in the same manner as other permit applications, with an emphasis on reviewing and issuing decisions for amendments in a shorter timeframe. Fees and notice periods for amendments are related to the level of review required for each permit type. See the table below for details.

Table 1: Administrative fees and required notice periods effective April 1, 2017

| Type | Fee | Notice Period |
|----------------|---------------------------|---------------|
| Administrative | \$50* | none |
| Extension | \$240 | 14 days |
| Minor | \$120 | 14 days |
| Major | \$240 + net impact fees** | 30 days |

* no charge for typographical errors

** including after-the-fact rates where applicable