



## Vermont Wetlands Program Emergency Allowed Use Guidance

### Emergency Actions within Wetlands

#### Introduction:

This guide is intended to clarify what activities are covered under the Vermont Wetland Rules (VWR) Allowed Use Section 6.13 for emergencies like flood disasters.

**The following use shall be allowed in a Class I or II wetland and its buffer zone without a permit: VWR§6.13 Emergency repair, cleanup, or maintenance of structures and facilities (including utility poles and lines, public transportation facilities, bulkheads, docks, piers, pilings, paved areas, houses, or other buildings), or emergency actions required to provide for public health, safety and welfare for disaster relief in connection with a federal or state-designated disaster.**

This document does not contain an exhaustive list of all possible actions covered by the allowed use. Questions about action eligibility may be answered by your District Wetlands Ecologist. Activities described as qualifying for allowed use 6.13 do not need Program sign off or approval before proceeding. You are advised to document the damaged structure with photographs before proceeding and inform the District Wetlands Ecologist of any work happening outside of the original structure area.

#### A. Definitions

**Emergency repair** means the unexpected fixing, mending, demolishing, or replacement of an existing structure or facility that requires immediate action (weeks to months) in order to mitigate a threat to property or public health and safety. This includes repairs to address damage to lifeline infrastructure, such as roads, bridges, and utilities, necessary to provide emergency services. The need to start or complete a project more quickly than the permit timeline allows simply to avoid costs or Agency review is not an emergency. For example, building a wastewater line/system so you can close on a land sale is not considered

Activities within Class I, Class II wetlands and their buffer zones are regulated by the Vermont Wetland Rules. Class II wetlands include one or more of the following characteristics:

- It is identified on the [Vermont Significant Wetlands Inventory](#).
- >0.5 acres in size
- adjacent to a watercourse or waterbody and is over 2,500sqft in size.
- a vernal pool.
- a headwater.
- contains rare, threatened endangered or uncommon species; or is an exemplary natural community mapped by VT Natural Heritage Inventory.

an emergency, and requires a permit prior to construction.

Expansion beyond the original area of a structure may require a permit, unless the repair is for a stream crossing and:

- the repair expansion is needed to meet the stream connectivity standard through coverage under the Stream Alteration General Permit, or
- the repair expansion is a Title 19 project for a flood resilient structure that is constructed in compliance with aquatic organism passage standards<sup>1</sup>, or.
- the repair expansion does not require a Stream Alteration permit and meets or exceeds the Active Channel Width as measured using the DEC intermittent stream crossing sizing guidance<sup>2</sup>.

**Emergency access routes** outside of the original damaged access route(s) may be constructed to provide access for health and safety purposes. Examples include the temporary reroute around a bridge washout, or construction of a temporary access route to repair a broken sewer pipe. The construction of an access route for routine repair and maintenance (eg. to clean out a stormwater pond, reestablish a naturalized road) is not considered an emergency access route and would likely need a permit. The construction of an access route to dig sediment out of a wetland is not considered an emergency access route.

**Emergency Cleanup** means the removal of spilled oil, hazardous materials, road washouts and waste related to a disaster. Cleanups also include breaking logjams that pose an imminent threat. Cleanup does not mean the removal of beaver dams, non-contaminated wetland soils or plants or conversion to another land use such as a lawn, pond, or crop field.

**Maintenance** means scheduled and unscheduled activity, including tests, measurements, cleanings, replacements, adjustments and repairs, intended to maintain functionality or correct deficiencies in an existing functional structure or facility so it may continue to be used for its intended purpose at its original or designed capacity and efficiency. Maintenance does not apply to structures or facilities that have been abandoned and for which the features of the original intended structure or facility are no longer evident as the intended structure, and does not include the expansion of an existing structure or facility. Maintenance includes vegetation management within and adjacent to (within 10 feet) the structure or facility.

**Structures and facilities** means an existing assembly of materials for occupancy or use, including the area above a buried pipe, extending to the toe of the exterior slope of a pond berm, and the

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<sup>1</sup> The “Guidelines for the Design of Stream/Road Crossings for Passage of Aquatic Organisms in Vermont” is located at <https://dec.vermont.gov/sites/dec/files/wsm/rivers/docs/Guidelines-for-the-Design-of-Stream-Road-Crossingsfor-Passage-of-Aquatic-Organisms-in-Vermont.pdf>

<sup>2</sup> The “Intermittent Stream Crossing Sizing Guidance” document is located in appendix C at <https://dec.vermont.gov/sites/dec/files/wsm/stormwater/docs/MRGP%202023%20Final.pdf>

edge of grading for any in-ground systems. Structures and facilities include ski trails, bulkheads, docks, piers, pilings, paved areas, houses, other structures or public transportation facilities, including roadways, runways, park-and-ride lots, sidewalks, recreation paths, curbs, and their associated ditches.

**Allowable temporary work zone.** Temporary impacts to Class II wetlands and buffers may be necessary in order to conduct emergency actions. Work associated with emergency actions for existing or damaged structures and facilities may be conducted in a temporary work zone extending up to 10 feet beyond the edge of an existing above-ground structure or 20 feet centered over an underground pipe without a wetland permit. All temporary work zones shall be restored to natural grade and revegetated upon project completion. The use of “swamp mats” for temporary access to perform the allowed activities is not considered in the calculation of the 10-foot temporary work zone, so long as there is no cutting of woody vegetation, minimal soil compaction, and the duration of use is less than one growing season.

## **B. Examples of Qualifying Activities:**

- **Emergency access routes** outside of the original damaged access route(s) may be constructed to provide access for health and safety purposes (see above). Temporary access outside of the footprint to repair culverts, access broken pipes, stabilize roadbeds and similar activities.
- Repairing slope failures.
- Cleaning out and repairing ditches.
- Removal of material deposited in wetlands from a storm if completed within 6 months. Removal will not include removal of the natural wetland surface or deeper. Any material removed must be placed in upland areas outside of any wetland, buffer zones, floodways or floodplains. Cleanup after 6 months may qualify under the wetland restoration allowed use 6.23 (see part C).

## **C. Other Allowed Uses:**

If your intended activity was not mentioned in this document, your activity may still qualify under a different VWR allowed use. There are 25 allowed uses in the VWR; these may be the most relevant:

- 6.12 The [maintenance, reconstruction, or routine repair of structures and facilities](#) (including ski trails, public transportation facilities, bulkheads, docks, piers, pilings, paved areas, houses, or other buildings) in compliance with the Vermont Wetland Rules in existence as of the date of their construction or in existence as of February 23, 1990 or additions to such structures or facilities which do not involve substantial expansion or modification in a wetland or buffer.
- There is a separate [guidance for applicability to road repair and maintenance](#) under 6.12.
- 6.14 The routine maintenance and upkeep, including the removal of vegetation from, or maintenance dredging of [constructed ponds](#) in compliance with Best Management Practices

developed by the Secretary. This use may involve dredging, temporary draining, and/or temporarily altering the flow of water into or out of a wetland.

- 6.23 Wetland restoration or stream restoration projects, including dam removals, in accordance with a plan approved by the Secretary.
- 6.7 The operation of existing hydroelectric facilities in accordance with all applicable requirements established by federal and state agencies.
- 6.8 The routine repair and maintenance of utility poles, lines and corridors in a manner which minimizes adverse impacts and is accordance with Best Management Practices developed by the Secretary.
- 3.1(a) Exclusion of areas that grow [food and crop](#) in connection with farming activities.
- 6.1-6.5: [Silvicultural Activities](#).

### C. Wetland Permits:

If your project does not qualify as an allowed use, you likely need a permit. Projects involving stream crossing replacements, septic failures, stormwater retrofits, and some agricultural projects may qualify for coverage under General Permit 3-9026; a free permit typically processed and issued the same day the registration application is received.

Activities with wetland and buffer zone impacts less than 3,000 sqft may qualify for coverage under general permit 3-9025. Activities that need a permit that do not qualify for general permit coverage will need to apply for an individual permit before starting work. To learn more about wetland permitting see the Programs [Permit Website](#).

### D. Wetland Program Review

Program staff prioritize review of projects that may need wetland permits related to disaster. You are not required to receive sign-off from Program staff before starting emergency repairs and actions under Section 6.13 qualifying activities. If you are unsure if your project qualifies as emergency repair or other Allowed Use, please [contact your District Wetland Ecologist](#).

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