



## Vermont Wetlands Program Guidance #2:

### Expiration of Wetland Evaluations

#### Introduction:

As part of the state wetland regulatory program, DEC Wetland's staff must determine the extent of the State's geographical jurisdiction over wetlands. Pursuant to state statute, DEC exercises wetland permitting jurisdiction over activities in significant wetlands or their buffer zones. The Vermont Wetland Rules (VWR) define "wetland", "significant", and "buffer zone", and prescribe how to determine the extent of such jurisdiction through the classification of wetlands and the delineation of wetland boundaries. Wetlands are affected over time by natural and human-made activities, often resulting in changes to wetland boundaries, and occasionally resulting in changes to wetland classification. As such, wetland boundary delineations do not remain valid for an indefinite period of time. A wetland's significance and boundaries may also change over time naturally, because of land use, or because of changes in wetland regulation (e.g. 2010 rule change). This document describes the process for delineating and classifying wetlands under the Vermont Wetland Rules.

#### Practice:

**Delineation validations:** All DEC staff validations of wetland boundary delineations produced by a third party shall be given in writing and shall include a statement that the validation is approved for a period of five years from the date of the letter. Staff are not required to provide a delineation validation for every project. Validations are generally provided by request.

Wetland delineations conducted within the last five years, and validated by the program at the time of delineation shall be presumed accurate and have their boundary and classification honored. This presumption can be rebutted by concrete evidence of a change to the wetland's characteristics or boundaries or new compelling data about the wetland's functions and values.

**Re-evaluation of wetland boundaries:** Any wetland boundary delineation over five years old must be reevaluated by a Wetland Consultant or Wetlands Ecologist for state jurisdictional purposes, except where there is an associated active wetland permit authorizing activity in the same wetland or buffer. In that situation, the most recent accurate wetland boundaries shall be used for permitting purposes.

**Wetland Permit-Associated Delineations:** Delineations associated with permit decisions are valid until the permit expires. Permits may only be extended if the permittee re-evaluates and re-delineates the wetland resources impacted by the authorized activity. VWR §9.1. At a minimum the re-evaluation must be documented in the extension request with current ACOE forms, photographs, mapping, or notes. Staff may request to review the re-evaluated delineation in the field.

**Last Program Evaluation Pre-2010:** Before 2010, the state only protected wetlands that were identified as Class II on the Vermont Significant Wetland Inventory (VSWI) or contiguous to wetlands on the VSWI. Wetlands delineated and classified before the 2010 VWR change need to be re-delineated and reevaluated for classification. The classification may change without any changes in the wetland boundary because of the VWR classification change.

**Last Program Evaluation 2010-2022:** Before February 2023, not all categorical Class II wetlands (§4.6 VWR) had been determined to be significant by the Program, based on a formal or informal evaluation of functions and values. If a Program classification validation is over five years old, the Ecologist will consider whether the wetland now meets the characteristics of a categorical Class II. If the Ecologist believes the wetland meets a Categorical Class II category but is not providing significant functions and values, the Ecologist, landowner, or project proponent may initiate a formal Class III determination following §8 of the VWR.

**Informal Class II, non-presumptive:** If a valid (<5yrs) Class II preliminary classification report includes a wetland that does not meet a Class II category in §4.6 and the landowner/project manager asks for classification again, Program staff may use the current Rule to deem the wetland Class III or would need to initiate a formal Class II determination process (§8).

**Other Land Use Permits:** Other permits (eg. Act 250, On site) sometimes include maps and findings associated with a wetland delineation and evaluation which occurred over five years ago. The issuance of those permits does not legacy<sup>1</sup> the old delineation or classification if the project was not built.

**Incomplete Project:** Projects that are under construction at the time the classification lapses must reevaluate the boundaries and classifications before continuing. Site preparation, such as forest clearing, is not considered built and wetlands in the prepared area need a redelineation and classification evaluation. If some structures were built, then those structures are an allowed use (6.12 VWR).

**Boundary Delineation for Violations:** Where a violation of the VWR occurs rendering the boundaries of the wetland difficult to discern, the Program may use any previous wetland

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<sup>1</sup> “Legacy” means exempting long-time activities under the Rule from new requirements. Previously known as “grandfathered”, which is a term that is no longer used due to it’s connection with past voting restrictions.

delineations as well as other tools to help identify the wetlands' approximate location before the violation occurred to determine the appropriate remediation measures or penalty.

**Classification Letters with no Expiration date:** Whenever an individual possesses a letter from wetland program staff stating the classification of a wetland which does not include the five-year expiration (circa 2014 and earlier), the Wetlands Ecologist will inform that individual of the 5-year expiration in writing. Enforcement discretion shall be used if the individual started work recently in the previously classified wetland unless it has since been mapped or until the individual receives a subsequent letter from the program with a new preliminary determination or notice that the classification needs to be evaluated. This means if an activity occurred in a wetland which was documented as a Class III in the past and was not reclassified as Class II before the activity occurred, program staff will not pursue it as a violation.