



The Clean Water Act: 50 Years in Vermont's History

1950s

In Vermont and across the country, raw sewage being dumped into waterways began to be addressed by the construction of wastewater treatment facilities (WWTF). The 1948 Federal Water Pollution Control Act (FWPCA) provided funding to help states address these water quality problems. However, the FWPCA did not require that states address water pollution or prohibit discharges to our waters. For example, the City of Burlington constructed a WWTF in the early 1950s. But most untreated and uncontrolled discharges of sewage in Vermont and nationwide continued.

1969

The Cuyahoga River in Cleveland, Ohio had caught fire several times since the late 1800s. But a raging fire in 1969 on a section of the river, caused by industrial pollution, seemed to galvanize Americans to demand action on clean water. The fire received broad media coverage and sparked outrage.

1970

Vermont sues International Paper Company (IPC) facility in Ticonderoga New York for polluting Lake Champlain with sewage sludge from the facility. IPC paid \$750,000 and Vermont used the money to create a fund to monitor the environmental practices of IPC's new paper mill. Because the CWA was not yet enacted, there were no regulations or permit requirements that addressed the pollution being discharged from the IPC facility.

Vermont enacts Act 250, its landmark land use law, in large part in response to uncontrolled wastewater discharges from a significant increase in development.

1972

The Clean Water Act (CWA) is enacted. The CWA represented a comprehensive approach to water quality that included prohibiting discharges to waters of the United States (WOTUS) without a federal permit (National Pollutant Discharge Elimination System Permits (NPDES)), requiring that all unauthorized discharges be eliminated by 1985, that basic uses like swimming, fishing, and boating be safe in all waters by 1983, and that all states adopted water quality standards that had to be approved by the Environmental Protection Agency (EPA). These NPDES discharges – mostly discharges of municipal and industrial wastewater – are known under the CWA as “point sources” of pollution.

Section 404 of the CWA required a permit from the Army Corp. of Engineers for activities in waters, such as dredging and filling, including significant impacts to wetlands. Section 401 authorized states to issue a certificate to ensure a project complies with state water quality standards whenever a federal license or permit is required. Importantly, this authorized Vermont to require permits for the first time for significant impacts to wetlands and the water quality impacts of hydroelectric projects.

The Vermont Water Resources Board (WRB), a five-member citizen board, is charged with adopting the Vermont Water Quality Standards (VWQS) to ensure they meet the minimum requirements of the CWA. The WRB is charged with hearing appeals of ANR water permits, including NPDES permits and making decisions regarding the classification of Vermont's waters.

1972-1974

Vermont updates its water pollution control act to implement the CWA and adopts the VWQS. In certain respects, Vermont laws are more stringent than the CWA. For example, Vermont's definition of waters that are protected is broader than the CWA.

1974

EPA formally delegates the authority to Vermont to implement the CWA NPDES program to address discharges to Vermont's waters.

Based on water quality assessments required by the CWA, Vermont conducts extensive evaluation of the impact of “nonpoint pollution” on Vermont's waters, especially stormwater, erosion from Vermont's back roads, and runoff from farming and logging. These assessments recognize the significant impact that nonpoint source pollution has on Vermont's waters.

1974-2000

Vermont requires municipalities and industrial facilities to control wastewater unpermitted discharges to Vermont's waters. These discharges are mostly addressed through the construction and NPDES permitting of WWTFs.

1987

Vermont adopts Accepted Management Practices (AMPs) to address water pollution from logging.

1989

EPA Adopts Combined Sewer Overflow (CSO) Strategy — During periods of heavy rainfall the volume of wastewater exceeds the capacity of the combined wastewater and stormwater system at POTWs resulting in the overflow of raw or partially treated sewage into receiving waterways. Such overflow events are called CSOs. The CWA recognized the harm that CSOs cause to water quality, and EPA's response was a strategy to minimize the harm caused by CSOs and a requirement that CSOs be phased out.

The Vermont Legislature enacts a wetland protection program and authorizes the WRB to adopt wetland protection rules.

1990

The Vermont Agency of Natural Resources (ANR) Adopts CSO Policy — Vermont has over a dozen WWTFs with CSOs. ANR adopted a policy similar to the EPA strategy to address CSOs.

1993

ANR and the Agency of Agriculture, Foods, and Markets (AAFM) enter into a Memorandum of Understanding (MOU) to allow AAFM to administer agricultural water pollution programs.

1994

The WRB issues a decision in the Lamoille Hydroelectric CWA 401 appeal that holds that the applicant did not prove that the Peterson dam could operate in a manner that meets the VWQS.

1995

The AAFM adopts Acceptable Management Practices (AAPs) to address water pollution from farming.

1999

Stratton Water Quality Remediation Plan — VNRC challenges the Act 250 permit for Stratton Mountain Resort because streams do not meet the VWQS. This Act 250 decision acknowledges that new discharges that contribute to violation of the VWQS violate the CWA and Vermont law. The decision was brought on by CWA requirement that all states assess water quality every two years, and list waters that do not meet water quality standards. These are called "impaired waters" under the CWA.

2001

The WRB Hannaford/Lowes Decision — The WRB rules in favor of appeal of a stormwater permit by Conservation Law Foundation (CLF) arguing that, just like in the Stratton case, permits may not be issued that will contribute to impaired waters. VNRC supports the appeal that is challenged by the State of Vermont and numerous groups representing commercial and residential developers. As a result of the decision, all impacts of discharges to impaired waters must be offset.

Vermont Stormwater Law Overhaul — In response to the WRB Hannaford/Lowes decision the Vermont Legislature enacted significant revisions to Vermont's stormwater law. Importantly, the revisions required pollution offsets unless a clean up plan for impaired waters is developed and the discharge is consistent with the clean up plan. The cleanup plans are called Total Maximum Daily Load (TMDL) plans (TMDL measures the pollution reduction necessary to restore a water so it meets water quality standards), required by the CWA to restore impaired waters. The law also allows water quality remediation plans approved by EPA to be used for these stormwater impaired waters, using the approach the to Act 250 decision in the Stratton Act 250 decision.

2002

Lake Champlain TMDL Approved by EPA — In the 1990s, Lake Champlain was listed as impaired for Phosphorous. After advocacy by VNRC and partner organizations and seeing the decisions in the Stratton and Hannaford/Lowes cases, ANR and EPA worked to issue the clean-up plan. VNRC acknowledged issuing the TMDL was a step forward but raised concerns that the TMDL did not have an implementation plan and, in particular, did not require enough to address stormwater and farm pollution.

2004

Stormwater NPDES Decision — VNRC and CLF appeal ANR denial of petition to designate stormwater discharges to certain impaired waters in Chittenden County as requiring NPDES permits under the CWA. The WRB rules in VNRC and CLF's favor and requires ANR to regulate the discharges under the NPDES program.

The WRB is eliminated by the Vermont Legislature and its responsibilities are transferred to the new Water Resources Panel of the Natural Resources Board, except the WRB appellate authority was transferred to the Environmental Court.

2009

Montpelier WWTF Decision – CLF appeals the NPDES permit for the Montpelier WWTF on the grounds that ANR may not assume that the Phosphorous limits for WWTFs in the 2002 Lake Champlain TMDL will restore water quality in the lake.

2011

EPA Withdraws Lake Champlain TMDL - The withdrawal was based on a CLF lawsuit alleging that the TMDL violated the CWA. Two of the main reasons that the EPA withdrew the TMDL were that there was no implementation plan or funding to ensure pollution would be reduced and the TMDL did not account for the effects of climate change.

2012

The Water Resources Panel is eliminated and its authority is transferred to ANR.

2015

EPA issues a new Lake Champlain TMDL – The TMDL includes an implementation plan, requires Vermont to fund implementation, revise the targets for pollution reduction from wastewater, stormwater, farm pollution and logging pollution, and factor the impacts of climate change into the targets.

Vermont Adopts The Vermont Clean Water Act (Act 64) - In response to the updated Lake Champlain TMDL, Vermont enacts the most significant overhaul of our water quality laws since the CWA was enacted in 1972. Act 64 required that stormwater and farm pollution laws be strengthened, the AMPs for logging be updated, and strengthen requirements that municipal WWTF comply with Phosphorous limits.

Obama Administration proposes amendments to the WOTUS rule – The amendments clarified that the CWA applied to smaller water bodies connected to larger navigable in fact waters. This leads to industries challenging the WOTUS amendments in the Supreme Court of the United States (SCOTUS), the Trump Administration repealing the rule and proposing its own rule, legal challenges from environmental groups to the Trump Administration rule, and the Biden Administration repealing the Trump rule and Biden proposing a new rule.

2016

Vermont Adopts CSO Rule – The CSO rule mostly tracks EPA's CSO policy that requires minimum steps to abate CSOs and a long-term plan to eliminate CSOs.

2019

Vermont Creates Clean Water Fund – As required by the revised Lake Champlain TMDL, Vermont implements funding for clean water. The funds come from a surcharge on the rooms and meals tax, a percentage of the property transfer tax, and from unclaimed deposit bottles. The fund is designed to raise approximately \$25 million a year to supplement the existing federal and state funding for pollution reduction. The supplemental funds are targeted at pollution not addressed by the CWA or Vermont law. A scheme to distribute the funds is also put in place.

2022

CLF, VNRC and the Lake Champlain Committee file a petition with EPA to address the agricultural water pollution programs in Vermont that are not being properly implemented or withdraw EPA's delegation of the NPDES program to Vermont.

VNRC Appeals CSO Condition in NPDES Permit – Despite the implementation of the EPA CSO policy and Vermont CSO policy and rule, more than 40 CSO outfalls still existed in Vermont as of 2022. In 2022, VNRC challenges the CSO conditions in Rutland NPDES permit for not complying with CWA enforcement provisions and because there is no final plan to eliminate the CSOs at the facility. The same issues must be addressed at other WWTF in Vermont. The case is pending before the Environmental Division of the Vermont Superior Court.

ANR Expected to Propose Antidegradation Rule – A key provision in the CWA is the requirement that high quality waters that exceed minimum water quality standards be protected against degradation. The VWQS have an antidegradation policy that tracks the CWA. However, the policy has never been implemented through a rule as required by state law and has not been effective in protecting our high quality waters. In 2022 ANR is expected to propose a rule that implements this policy.

Sackett v. EPA - The Supreme Court of the United States hears case on definition of WOTUS stemming from EPA's denial of a permit to fill a wetland. This decision could affect the Biden WOTUS rule. Fortunately, Vermont's definition of waters is broader than the CWA WOTUS definition and Vermont's wetland rules are more protective than the CWA.