

**State of Vermont
WATER RESOURCES BOARD**

**Re: GS Precision Pond,
Town of Wilmington, Vermont
Docket No. WET-01-02**

DECISION

This decision pertains to a petition filed by the Department of Environmental Conservation, Agency of Natural Resources (“DEC”), with the Water Resources Board (“Board”), seeking reclassification of a wetland in the Town of Wilmington, Vermont, from Class Two to Class Three, pursuant to 10 V.S.A. §905(7) to (9) and Section 7 of the Vermont Wetland Rules (“VWR”). The wetland is a pond located adjacent to a building owned by GS Precision, Inc., on the north side of Vermont Route 9, about one mile west of the Center of Wilmington Village (“subject wetland”).

As explained below, the Board concludes that the subject wetland is not a significant wetland and therefore it reclassifies the wetland from Class Two to Class Three.

I. PROCEDURAL HISTORY

On March 19, 2001, DEC filed a petition with the Board, seeking reclassification of the subject wetland from Class Two to Class Three. The petition was filed by DEC at the request of the Town of Wilmington, a potential purchaser of the real property upon which the subject wetland is located.

On March 20, 2001, the Board’s Executive Officer determined that DEC’s petition was filed in substantial compliance with VWR § 7 and the Board’s Rules of Procedure, and he docketed the petition as WET-01-02. In his letter acknowledging receipt of the petition, dated March 22, 2001, the Board’s Executive Officer advised staff at DEC that, while the petition was substantially complete, additional information would need to be filed sufficient to enable the Board to determine whether or not the pond is in fact a wetland. The Executive Officer also sought clarification concerning ownership of the pond and the adjacent buffer zone.

On March 20, 2001, a Notice of Petition was sent to all persons required to receive notice pursuant to VWR §§ 7.3 and 7.4. The Notice of Petition was published by the Board in the *Brattleboro Reformer* on March 22, 2001. The Notice of Petition indicated that the Board was treating the petition as both a request to reclassify the subject wetland and, in the alternative, a petition for a declaratory ruling that the pond is not a wetland. The Notice of Petition set a deadline of April 23, 2001, for the filing of any written comments or requests for hearing or both, pursuant to VWR § 7.4.

On April 2, 2001, DEC filed a letter with the Board, providing the requested supplemental

information. No other written comments were filed by the April 23, 2001, deadline, nor did any person request a hearing.

Accordingly, the Board did not hold a public hearing in this matter, but instead considered the petition in deliberations on May 15, 2001, based solely on the information filed by DEC. As discussed in more detail below, the Board determines that the subject pond is a wetland, but that it lacks significance for all ten of the wetland functions identified in VWR §5. Therefore, the Board concludes that reclassification of the subject wetland from Class Two to Class Three is warranted and it so orders, along with other appropriate relief.

II. FINDINGS OF FACT

1. The subject wetland is an isolated man-made pond, approximately 3500 square feet in area. It was constructed prior to the adoption of the Vermont Wetland Rules, February 7, 1990.
2. The subject wetland is located in the Town of Wilmington, adjacent to the GS Precision building, on the north side of Vermont Route 9, about one mile west of the center of Wilmington Village.
3. The real property on which the subject wetland and associated 50-foot buffer zone are located is owned by GS Precision, Inc., and Deerfield Valley Supply a/k/a Harraseeket, LLC.
4. The subject wetland appears on Vermont Significant Wetland Inventory Map #29B ("VSWI Map"), but the VSWI Map incorrectly represents both the location and size of the subject wetland. The VSWI Map incorrectly indicates that the subject wetland is much larger than it actually is and, when compared with other area maps, it suggests that the GS Precision building is located *in* the wetland.
5. The subject wetland is permanently inundated. The source of the hydrology for the subject wetland is the cooling system of the GS Precision.
6. The subject wetland is largely devoid of plants, except for a fringe of cattails and sedges, obligate wetland plants, along the wetland's edge.
7. The substrate or bottom of the subject wetland is composed of saturated mineral soil. The soils directly adjacent to the wetland are upland soils.

8. The wetland buffer zone is largely occupied by mowed lawn, the GS Precision building, and Vermont Route 9.
9. The DEC staff conducted a site visit of the subject wetland and evaluated it with regard to each of the ten functions identified in VWR §5. The Board finds, based on the DEC's evaluation, that the wetland does not serve the following ten functions at a significant level:

Function 5.1 (Water storage for flood water and storm runoff) - The subject wetland does not intercept flood water or stormwater for treatment or storage. The drainage area of the wetland is very small and limited to the GS Precision lawn immediately adjacent to the wetland.

Function 5.2 (Surface and ground water protection) - The subject wetland does not contribute to the protection or enhancement of the quality of surface or of ground water. The drainage area of the subject wetland is very small and limited to the GS Precision lawn.

Function 5.3 (Fisheries habitat) - The subject wetland does not provide spawning, feeding or cover habitat for fish. The wetland is very small and not connected to other surface water that could provide fish habitat.

Function 5.4 (Wildlife and migratory bird habitat) - The subject wetland does not provide significant habitat for wildlife. The wetland is very small and does not have extensive development of wetland vegetation or a naturally vegetated buffer zone to support wetland dependent wildlife.

Function 5.5 (Hydrophytic vegetation habitat) - The subject wetland does not provide hydrophytic vegetation habitat. It is not a bog, fen, alpine peatland or black gum swamp. It is not an important wetland community type. It does not contain a disjunct rare plant population or a plant species at its range limit.

Function 5.6 (Threatened and endangered species habitat) - There is no documentation of rare, threatened, or endangered species at this wetland, nor does the wetland have important habitat to support any known occurrence of rare, threatened, or endangered species at the site.

Function 5.7 (Education and research in the natural sciences) - The subject wetland has no significance for education and research in the natural sciences.

Function 5.8 (Recreational value and economic benefits) - The subject wetland has no recreational or economic value.

Function 5.9 (Open space and aesthetics) - Although the subject wetland can be observed by the public from Vermont Route 9, it does not provide significant open space or possess unique or special aesthetic qualities.

Function 5.10 (Erosion control through binding and stabilizing the soil) - The subject wetland does not provide an erosion control function as there are no erosive forces present in or adjacent to the wetland.

III. CONCLUSIONS OF LAW

According to the DEC, the pond adjacent to the GS Precision building is a wetland within the meaning of VWR § 2.29, but not a significant wetland meriting protection under the VWR. Based on the uncontroverted evidence, the Board agrees that the pond is a wetland. The question, then, is how should this wetland be classified.

The Board may determine whether to reclassify any wetland to a higher or lower classification. VWR §§ 4.4 and 7.1. It may do so upon receipt of a petition from a state agency. VWR §7.1. The DEC, a department of the Agency of Natural Resources, qualifies as a state agency for purposes of VWR § 7.1. See, e.g. 1 V.S.A. § 317(a) (“‘agency’ means any agency, board, *department*, commission, committee, branch, instrumentality or authority of the state....”); 3 V.S.A. § 801(a)(1) (“‘agency’ means a state board, commission, *department*, agency or other entity or officer of state government, ... authorized by law to make rules or to determine contested cases.”) (Emphasis added.)

A wetland appearing on a National Wetlands Inventory map for the State of Vermont (1978) is presumed to be a Class Two wetland, unless determined otherwise by the Board as provided by VWR § 7. VWR §4.2.b. The National Wetlands Inventory map for the Wilmington area is VSWI Map #29B and the subject wetland appears on this map.

A Class Two wetland is presumed, unless the Board determines otherwise, to serve all the functions specified in VWR § 5. VWR § 4.2.b(2). Accordingly, unless otherwise determined by the Board, the subject wetland is presumed to serve all the functions in VWR § 5 at a significant level.

A Class Three wetland, on the other hand, is a wetland “determined not to be sufficiently significant to merit protection” under the VWR. VWR § 4.1.c. The Board may determine that a

mapped, Class Two wetland is not sufficiently significant to merit protection under the VWR based on an evaluation of that wetland's functions. If the Board concludes that the wetland does not serve any of the ten functions at a significant level, it may reclassify the Class Two wetland to a Class Three wetland. See Re: Crystal Haven Road Wetland, Docket No. WET-00-06, Decision and Order Reclassifying Wetland (Jan. 2, 2001); Re: Hogback/ Hollister Wetland, Docket No. WET-90-05, Administrative Determination (July 23, 1991).

The Board has considered the uncontroverted evaluation of the wetland functions performed by DEC and concludes that the subject wetland is not a significant wetland meriting protection under the VWR. Accordingly, the Board determines that the subject wetland should be reclassified from Class Two to Class Three and that the Wetlands Office, DEC, should remove the subject wetland from VSWI Map #29B.

IV. ORDER

It is hereby ordered:

1. The subject wetland adjacent to the GS Precision building in the Town of Wilmington is a Class Three Wetland; and
2. The Wetlands Office, DEC, is directed to remove the subject wetland from VSWI Map #29B.

Dated at Montpelier, Vermont, this 15th day of May, 2001.

WATER RESOURCES BOARD

/s/ David J. Blythe
David J. Blythe, Chair

Concurring:
Lawrence H. Bruce, Jr.
Jane Potvin
John D.E. Roberts
Mardee Sánchez

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