

ANR Stream Alteration General Permit

Public Responsiveness Summary

April 15, 2013

A draft of the Stream Alteration General Permit was put on public notice on March 8, 2013. The notice included an announcement of a public information meeting that was held in Montpelier, Vermont on April 11, 2013. The Notice also extended the public comment period to the close-of-business on April 12, 2013.

During the public comment period, the Agency of Natural Resources received the following formal comments. An Agency response follows each comment.

1. Comment: *Very few people understand and appreciate the extent of these (stream crossing) regulations or the future financial implications associated with compliance.*

Response: The standards established by the Stream Alteration General Permit are not new, in either Vermont or the region, and are based on legislative mandate.

The performance standards are based on public policy legislatively established in 2010 (Act 110) and reaffirmed in 2012 (Act 138). These laws were passed based on the testimony that Vermont has established the long-term economic and public safety benefits and a stronger scientific-basis for managing streams toward their natural stability, avoiding fluvial erosion hazards, and ensuring fish passage. The Agency has been assessing the causes and effects of stream instability, including undersized stream crossings, since 2003. Each watershed-scale assessment (over 120 of them) has been sponsored by local citizenry, conservation districts, municipalities, and/or the regional planning commission. It is principally through these stream assessments, and the technical or regulatory assistance provided by the River Management Engineers, that the Agency has worked to build a broader understanding and appreciation for both the science and economic benefits of best management practices to minimize erosion hazards and the costs of flood recovery.

The Agency has partnered with the many organizations, including the Local Roads Program, the Better Back Roads Program, and VTrans to hold numerous training sessions each year and is now structuring a set of introductory, intermediate, and advanced level trainings to offer VTrans and local public works professionals.

The Standards included in this General Permit track very closely with those established in the previous 2011 version of the Vermont Stream Alteration General Permit, the regulations established in the Army Corps General and Individual Permits (jurisdictional over stream crossings in Vermont), and the stream crossing regulations adopted in Maine, New Hampshire, Massachusetts, Connecticut and New York.

The regulations include performance standards and, in the case of stream crossings, specific design requirements, that are technical in nature. An understanding and appreciation of the standards does require some experience or training. While extensive notice and outreach was made by the Agency to invite dialogue and discussion during the permit drafting and adoption process, it is often the case that the regulated public learns about a regulatory standard when they

have a project requiring a permit. The understanding and appreciation comes from working with, in this case, the River Management Engineer to complete the stream alteration permit application process.

2. ***Comment: Although I appreciate the goals and objectives, from the perspective of a practitioner who must work with the financial realities of managing public works infrastructure, hoping for a future discussion as to how we pay for compliance after enactment of the requirements is discomfoting at best.***

Response: This comment stems from a discussion that ensued during the public information meeting on April 11, 2013. The Rivers Program acknowledged that, while the long-term costs of a right-sized stream crossing is lower, on average, than an undersized structure; towns have difficulty making the substantial up-front investment. The savings in O & M and downstream flood damages and the longer lifespan of a structure matching stream dimensions are only fully appreciated when capital budgeting has transitioned to anticipate the higher upfront costs. The Rivers Program Manager, in acknowledging this reality, suggested that Vermont should continue exploring ways to help towns with this budgeting transition.

These standards are not brand new and have been required as a part of the federal 404 permitting process for a number of years, and yet Vermont continues to learn about opportunities to ensure adequate funding to ease the burden of compliance. This revised GP is such a case, and results from trying to address programmatic issues that arose during the aftermath of Tropical Storm Irene.

Municipalities may have access to a 75-95% federal/state cost share on replacing destroyed stream crossings through FEMA's Public Assistance Program, but only where municipalities and the state have codes and standards that have been adopted before the disaster and have been consistently applied. FEMA has been denying Public Assistance funds after Irene, arguing that these regulatory conditions did not exist. While the Vermont Attorney General's Office has twice appealed FEMA's ruling; the ANR, VTrans, and the legislature have worked over the past year to reaffirm Vermont policy and revise language within the stream alteration regulations and the recommended Town Road and Bridge Standards to try and ensure federal funding for municipal infrastructure after a disaster.

The ANR, Vtrans, and the legislature should continue exploring ways to adequately support ongoing municipal transportation infrastructure needs. However, many stream crossings meet their end during a flood disaster (over 1,500 damaged or destroyed during Irene). Therefore, it incumbent on the State to do everything possible to make sure federal dollars, available during recovery, are in fact available to the State and Vermont municipalities during recovery.

3. ***Comment: Increasing the 0.5 sq. mi threshold may ameliorate this some and achieve a more practical balance between goals and needs.***

Response: The state has jurisdiction over stream alterations in all perennial streams. The River Program has established 0.5 sq. miles in its technical guidance as a rough threshold for stream flow intermittency. Drainage less than 0.5 sq. miles is likely to be intermittent; flows from drainages greater than 0.5 sq. miles is likely to be perennial (i.e., flow year round). This is

explanation to clarify that 0.5 sq. miles is not a hard jurisdictional threshold as suggested by the comment. Rather, “perennial stream” is the state jurisdictional threshold.

Stream alteration jurisdiction was changed in state law in 2010 with the passage of Act 110. Prior to Act 110, stream alterations were regulated in streams with drainages at or greater than 10 sq. miles (i.e., for reference: a stream > 35 ft. wide). The law changed in recognition that the threats and actual damages to public safety, the environment, and property of riparian owners from ill-advised stream alterations on small streams were significant, and certainly greater from a cumulative standpoint, than those on larger streams or rivers.

Research and field assessment of Vermont hydrologic and fluvial geomorphologic conditions over the past 15 years have demonstrated that stream alterations and hydrologic modifications at specific sites (e.g., a stream crossing) cannot be made in isolation of the larger spatial and temporal scales at which stream and watershed systems work. Hundreds of millions of dollars have been spent from the failure to recognize that erosion, flood damages, and environmental degradation (e.g., sediment and nutrient loading to Lake Champlain) could be minimized if stream alterations are properly conducted or avoided in headwater streams.

The commenter’s suggestion that a higher threshold would create a better balance between benefits and costs has indeed been the experiment over the past half century. There is now a much greater awareness that an imbalance occurred when cost savings in headwater activities (often serving very few interests), exacted much larger costs due to higher failure rates, ongoing maintenance, and systemic stream degradation (i.e., downstream damages) that was shifted to society as a whole. The current jurisdictional thresholds and regulations are re-shifting these costs trying to correct a prior imbalance.