

1 S.190

2 Introduced by Senator Illuzzi

3 Referred to Committee on

4 Date:

5 Subject: Conservation; regulation of stream flow; hydroelectric certification

6 Statement of purpose: This bill proposes to require the secretary of natural
7 resources to issue a general permit for the operation of certain hydroelectric
8 projects in the state. The agency of natural resources would be required to
9 issue a Clean Water Act § 401 certification for the general permit. The bill
10 would also adopt as policy of the state that the generation of hydroelectric
11 power is a legitimate use of the waters of the state, and that beneficial and
12 environmentally sound hydroelectric generation projects shall be allowed in
13 the state when consistent with federal and state law.

14 An act relating to establishing a general permit for the certification of
15 hydroelectric projects

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. 10 V.S.A. § 1007 is added to read:

18 § 1007. GENERAL PERMITTING OF HYDROELECTRIC PROJECTS

19 (a) Findings. The general assembly finds and declares that:

20 (1) The generation of renewable power within Vermont is critical to the

1 economic development, energy independence, and financial security of the
2 state.

3 (2) The generation of hydroelectric power is a legitimate use of the
4 waters of the state, and it is the policy of Vermont to allow beneficial and
5 environmentally sound hydroelectric generation development, consistent with
6 applicable federal and state law.

7 (3) Section 401 of the federal Clean Water Act (CWA), 33 U.S.C.
8 § 1341, requires any applicant for a federal permit for an activity that may
9 involve a discharge to navigable waters to obtain certification from the state
10 that the permitted activity does not violate the state's water quality standards.

11 (4) As set forth in 10 V.S.A. § 1004, the secretary of natural resources is
12 the agent that the U.S. Environmental Protection Agency delegated to conduct
13 CWA § 401 certifications in the state of Vermont.

14 (5) The secretary of natural resources has implemented a simplified
15 process with defined standards for the issuance of a CWA § 401 certification
16 for projects that require a federal permit due to impacts on wetlands.

17 (6) Other states have issued CWA § 401 certifications in a timely
18 manner for general permits.

19 (7) The natural resources board as part of the stakeholder hydroelectric
20 interested parties process (SHIPP) required by No. 92 of the Acts of the 2007
21 Adj. Sess. (2008) recommended that the Vermont conservation flow standards
22 be applied to allow for a default conservation flow standard for certain new

1 hydroelectric power projects in the state.

2 (8) To further the policy of Vermont to allow beneficial and
3 environmentally sound hydroelectric generation development and to
4 implement the recommendations of the natural resources board to establish a
5 default conservation flow standard for certain hydroelectric power projects in
6 the state, the agency of natural resources shall be required to issue and
7 implement a general permit for hydroelectric facilities and shall issue a CWA
8 § 401 certification for the general permit.

9 (b) Definitions. As used in this section:

10 (1) "Conduit" means any tunnel, canal, pipeline, aqueduct, flume, ditch,
11 or similar constructed water conveyance that is operated for the distribution of
12 water for agricultural, municipal, or industrial consumption and not primarily
13 for the generation of electricity.

14 (2) "Hydroelectric project" means a run of river facility, site, or conduit
15 planned or operated for the generation of water-powered electricity that has a
16 generation capacity of no more than five megawatts and does not create a new
17 impoundment.

18 (3) "Impoundment" means "riverine impoundment" as defined in the
19 Vermont water quality standards adopted pursuant to chapter 47 and
20 subdivision 6025(d)(3) of this title.

1 (c) General permit requirement. On or before January 1, 2011, the
2 secretary of natural resources shall adopt by rule a general permit for the
3 operation of the following categories of hydroelectric projects:

4 (1) Hydroelectric projects where data provided by an applicant provide
5 reasonable assurance that the hydroelectric project will comply with the
6 Vermont water quality standards;

7 (2) Hydroelectric projects utilizing conduits;

8 (3) Hydroelectric projects without a bypass reach or a de minimis
9 bypass reach, as defined by the secretary of natural resources;

10 (4) Hydroelectric projects that were previously certified under CWA
11 § 401 and that are operating in compliance with such certification as
12 demonstrated by existing administrative, monitoring, reporting, or enforcement
13 data; and

14 (5) Other categories of hydroelectric projects that the secretary
15 concludes are suitable for coverage under a general permit.

16 (d) The general permit required by subsection (c) of this section shall:

17 (1) Set a Vermont-specific default conservation flow standard for
18 hydroelectric projects that is sufficient to protect aquatic habitat and that shall
19 serve as a substitute for site-specific flow studies.

20 (2) Include terms and conditions necessary to ensure that a hydroelectric
21 project seeking coverage under the permit complies with the Vermont water
22 quality standards.

1 (3) Satisfy the requirements for a stream alteration permit under section
2 1021 of this title, including the terms and conditions for the issuance of a
3 stream alteration permit.

4 (4) Include reasonable time frames for agency review of and response to
5 an application for coverage under a general permit.

6 (5) Include provisions consistent with the requirements of subsection
7 7503(b) of this title that require public notice of the fact that a hydroelectric
8 project has sought coverage under a general permit issued under this section.

9 (e) The secretary of natural resources shall issue a CWA § 401 certification
10 for a general permit adopted under this section. The secretary shall coordinate
11 issuance of the CWA § 401 certification for a general permit adopted under
12 this section in order to ensure implementation of the general permit upon
13 adoption.

14 (f) Duration of general permit. A general permit adopted pursuant to this
15 section shall have a term of no more than ten years. Prior to the expiration of
16 the general permit, the secretary shall review the terms and conditions of the
17 general permit and may issue subsequent general permits with the same or
18 different conditions as necessary to carry out the purposes of this subchapter.

19 (g) Development of draft general permit. The secretary of natural
20 resources shall convene a public stakeholder process of interested parties to
21 develop the draft rule of the general permit required under subsection (c) of
22 this section.

1 Sec. 2. 10 V.S.A. § 8003(a) is amended to read:

2 (a) The secretary may take action under this chapter to enforce the
3 following statutes:

4 * * *

5 (4) 10 V.S.A. chapters 41 and 43, relating to dams, operation of
6 hydroelectric projects, and stream alterations;

7 * * *

8 Sec. 3. 10 V.S.A. § 8503(a) is amended to read:

9 (a) This chapter shall govern all appeals of an act or decision of the
10 secretary, excluding enforcement actions under chapters 201 and 211 of this
11 title and rulemaking, under the following authorities and under the rules
12 adopted under those authorities:

13 (1) The following provisions of this title:

14 * * *

15 (C) chapter 41 (regulation of stream flow and operation of
16 hydroelectric projects).

17 * * *

18 Sec. 4. EFFECTIVE DATE

19 This act shall take effect upon passage.