



THE PUBLIC TRUST DOCTRINE

Public Trust Doctrine

The States hold title to submerged lands in their sovereign capacity “in trust for the people of the state, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties.”

Illinois Central Railroad Company v. Illinois, 146 U.S. 387, 452 (1892).

State v. Central Vermont Railway, 571 A.2d 1128

For centuries, land below the low water mark has been recognized as having a peculiar nature, subject to varying degrees of public demand for rights of navigation, passage, portage, commerce, fishing, recreation, conservation and aesthetics. Historically, no developed western civilization has recognized absolute rights of private ownership in such land as a means of allocating this scarce and precious resource among the competing public demands.



The Vermont Statutes Online

Title 10: Conservation And Development

Chapter 48: Groundwater Protection

It is the policy of the state that the groundwater resources of the state are held in trust for the public. The state shall manage its groundwater resources in accordance with the policy of this section, the requirements of subchapter 6 of this chapter, and section 1392 of this title for the benefit of citizens who hold and share rights in such waters. The designation of the groundwater resources of the state as a public trust resource shall not be construed to allow a new right of legal action by an individual other than the state of Vermont, except to remedy injury to a particularized interest related to water quantity protected under this subchapter.

10 VSA § 1394. Classification of groundwater

(a) The state adopts, for purposes of classifying its groundwater, the following classes and definitions thereof:

(1) Class I. Suitable for public water supply. Character uniformly excellent. No exposure to activities which pose a risk to its current or potential use as a public water supply.

(2) Class II. Suitable for public water supply. Character uniformly excellent but exposed to activities which may pose a risk to its current or potential use as a public water supply.

(3) Class III. Suitable as a source of water for individual domestic water supply, irrigation, agricultural use and general industrial and commercial use.

(4) Class IV. Not suitable as a source of potable water but suitable for some agricultural, industrial and commercial use.

(b) All groundwater of the state is hereby classified as Class III water unless reclassified by the secretary.

10 VSA § 1410. Groundwater; right of action

- (a) Findings and policy. The general assembly hereby finds and declares that:
- (1) surface and subsurface water are inherently interrelated in both quality and quantity;
 - (2) groundwater hydrology is a science that allows groundwater quality and quantity to be mapped and forecast;
 - (3) groundwater is a mobile resource that is necessarily shared among all users;
 - (4) all persons have a right to the beneficial use and enjoyment of groundwater free from unreasonable interference by other persons; and
 - (5) it is the policy of the state that the common-law doctrine of absolute ownership of groundwater is hereby abolished.

10 VSA §1410 (cont.)

(b) Definitions. As used in this section:

(1) "Groundwater" means water below the land surface.

(2) "Surface water" means any water on the land surface.

(3) "Person" means any individual, partnership, company, corporation, association, unincorporated association, joint venture, trust, municipality, the state of Vermont, or any agency, department or subdivision of the state, federal agency, or any other legal or commercial entity

10 VSA §1410 (cont.)

(c) Cause of action. Any person may maintain under this section an action for equitable relief or an action in tort to recover damages, or both, for the unreasonable harm caused by another person withdrawing, diverting or altering the character or quality of groundwater.

(d) Scope of liability. Notwithstanding the provisions of subsection (c) of this section, a person who alters groundwater quality or character as a result of agricultural or silvicultural activities, or other activities regulated by the secretary of agriculture, food and markets, shall be liable only if that alteration was either negligent, reckless or intentional.

In re Omya Solid Waste Facility Final Certification, No. 69-6-10 Vtec., 2011 WL 1055575 (Feb. 28, 2011)

Nothing about the language or structure of that statute [*10 VSA §1390*] restricts the public trust to groundwater quantity alone. To the contrary (the statute) explicitly mandates that the state manage its groundwater resources for the benefit of its citizens, both with regard to groundwater quantity and quality.

In re OMYA SOLID WASTE FACILITY FINAL CERTIFICATION.

No. 96-6-10 Vtec., 2011 WL 2610151 (May 16, 2011)

It is entirely up to the ANR how it wishes to proceed with the statutory public trust analysis it is required to do for the present case. There are undoubtedly many different ways in which the ANR could approach this task, including but not limited to doing a public trust analysis specifically for this case, even though it may also wish to adopt some rebuttable presumptions or general permits by rule or to update its 2005 Groundwater Protection Rule and Strategy for use in future cases.

Groundwater Protection Rule and Strategy 2005

10 V.S.A. 1390-1394

12-102 Policy

It is the policy of the State of Vermont that it shall protect its groundwater resources to maintain high quality drinking water. It shall manage its groundwater resources to minimize the risks of groundwater quality deterioration by limiting human activities that present unreasonable risks to the use classifications of groundwater in the vicinities of such activities. The state's groundwater policy shall be balanced with the need to maintain and promote a healthy and prosperous agricultural community.



Groundwater Contamination (Tritium) at Nuclear Plants

Tritium is a mildly radioactive type of hydrogen that occurs both naturally and during the operation of nuclear power plants. Water containing tritium and other radioactive substances is normally released from nuclear plants under controlled, monitored conditions the NRC mandates to protect public health and safety. The NRC recently identified several instances of unintended tritium releases, and all available information shows no threat to the public.

MEMORANDUM OF UNDERSTANDING BETWEEN THE ENVIRONMENTAL PROTECTION AGENCY AND THE NUCLEAR REGULATORY COMMISSION CONSULTATION AND FINALITY ON DECOMMISSIONING AND DECONTAMINATION OF CONTAMINATED SITES

For NRC-licensed sites at which NRC determines during the license termination process that there is radioactive ground-water contamination in excess of EPA's MCLs,* or for which NRC contemplates either restricted release (10 CFR 20.1403) or the use of alternate criteria for license termination (10 CFR 20.1404), NRC will seek EPA's expertise to assist in NRC's review of a decommissioning or license termination plan.

*** MCL for Tritium is 20,000 pCi/L; Strontium 8 pCi/L**