

RULEMAKING NOTICE

Env-Wt 300-900, various sections and paragraphs

Notice Number _____	Rule Number _____	Env-Wt 300-900, various sections and paragraphs
1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority: 3. Federal Authority: 4. Type of Action:	RSA 482-A:11, I <hr/> Adoption X Amendment X Repeal Readoption Readoption w/amendment X

5. Short Title: **Spring 2020 Amendments to Wetlands Rules**

6. (a) Summary of what the rule says and of any proposed amendments:

In June 2019, the Department adopted a comprehensive re-write of the Wetlands rules, subtitle Env-Wt, to be effective in December 2019. Preparation of training materials and other activities in anticipation of the rules taking effect highlighted several rules that needed to be clarified, and amendments were adopted effective December 24, 2019 and January 22, 2020. Since the effective date, implementation of the rules has identified additional provisions that are unclear or that are not working as intended, and has highlighted the need to make changes to some of the forms to clarify them. The proposed amendments to the rules in this compilation are intended to clarify certain rules, modify rules that are not working as intended, and change the date on the forms to accommodate needed revisions. In a separate rulemaking, certain definitions are being clarified.

Changes proposed in this rulemaking include the following:

- Local river management advisory committee (LAC) sign-off would only be required for routine roadway maintenance activities within LAC jurisdiction, not for all other project types.
- Certified wetlands scientists would not have to identify predominant resource functions of each wetlands in all cases.
- Projects solely for the removal of exotic aquatic weeds would be authorized by rule provided the listed conditions are met.
- Repair or replacement of a boat launch would be allowed under a permit-by-notification (PBN) if the minimum impact criteria are met.
- Conservation commission review and signoff would not be required for PBNs for (1) replenishment of an existing legal beach that complies with Env-Wt 511.07(a); (2) repair or replacement of an existing legal deck or patio that complies with Env-Wt 511.08; (3) repair or replacement of an existing legal docking structure that complies with Env-Wt 513.24(a); (4) repair or replacement of an existing legal wall that complies with Env-Wt 514.07(a)(3); (5) maintenance or repair of an existing legal boathouse that complies with Env-Wt 515.07(a); (6) maintenance of an existing legal tidal docking structure that complies with Env-Wt 606.17(b); (7) repair of an existing legal tier 1 or tier 2 stream crossing that complies with Env-Wt 903.01(e)(2); (8) repair of an existing legal tier 3 stream crossing that complies with Env-Wt 903.01(e)(3); and (9) replacement of an existing legal tier 1 stream crossing that complies with Env-Wt 903.01(e)(4).
- If a PBN application did not contain all information required, the Department would send a notice of incompleteness instead of denying the application; the applicant would have 20 days in which to provide the missing information.

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- Log foot bridges on hiking trails would be allowed to have sleepers on the soils and would be allowed to have 3,000 SF of area per crossing.
- Certified culvert maintainers would have to submit renewal applications no later than November 15 of the year of expiration instead of no later than December 15.
- Preliminary functional assessment results would have to be submitted with applications for standard permits for minor or major projects.
- Applicants would have to bring a narrative description of how avoidance and minimization and functional assessment have been addressed to the meeting required for projects for which compensatory mitigation is required.

6. (b) Brief description of the groups affected:

The rules affect any person who wishes to undertake, or who does undertake, any dredging, filling, or construction activities in areas that are subject to RSA 482-A.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statutes Implemented	Federal Statutes, Regulations Implemented
Env-Wt 305.02(b)(2); 306.02(d); 306.05(a)(1) intro; 307.04(b); 307.05(b); 307.10(b) & (g)(1); 307.11(i)(3); 307.12(e); 308.05(a)(3) & (c) intro; 308.06; 309.01(b)(3)b.; 309.02(c)(2) & (l) [new]; 309.04(b); 309.05(a); 309.06; 309.07 intro, (a), (b)(1), (f), (h), & (i); 309.08; 310.01 intro, (b)(1) & (h); 310.02 (a), (b), & (h); 310.03(c); 310.07(e); 311.01(e), (f), & (g) [new]; 311.02(e); 311.03(b)(6) & (10); 311.04 intro; 311.06(e); 311.07; 311.12(d) & (e) [new]; 311.13; 312.01; 312.04 intro; 312.05; 312.06 [new]; 313.03 (b) intro & (c) [new]; 313.04(a)(3)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 406.03(a); 407.02(c), 407.03(b)(3)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 510.02(e)(1); 510.04(b); 510.05(a)(4) intro; 511.02(b)(2); 511.04(c), (f)(2), (j), & (l); 511.06(a); 511.07; 511.08; 513.02(a); 513.03(a) intro; 513.04 (a) & (b); 513.05; 513.06 intro & (a)(5); 513.07(d); 513.08 intro & (b); 513.11(a) intro; 513.12; 513.15(a), (d)(1), & (g)(3); 513.20; 513.21; 513.24 - 513.27; 514.02(a) & (c)(3); 514.03(d) intro & (1); 514.07(a)(3) intro, (b)(1), & (c)(2); 515.02; 515.03(d)(4); 515.05(d); 515.06(c)(1); 516.03(e); 517.01; 517.05(g); 517.06 (c)(1), (d) intro, & (f); 517.07(a); 517.08(a); 518.02; 518.07; 519.05(c)(1); 519.08(a)(5) & (c)(4); 519.09;	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415

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Rule Section(s)	State Statutes Implemented	Federal Statutes, Regulations Implemented
521.03 intro & (d); 521.04(a)(2) & (b); 521.06(a)(4), (b), & (c); 522.06(a)(4) & (7) and (b); 523.04(b)(2) & (4) and (c)(2) & (4); 524.02(b); 524.03(a)(2) intro & (3) intro; 524.04(b); 524.06(b); 526.06(e); 526.07(a) & (b) intro		
Env-Wt 603.05 intro & (c); 604.02(c)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 706.02(a); 706.04(a)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 803.05 intro	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415
Env-Wt 904.04(b), (c), & (d)(3); 904.08(b) intro; 905.07(b)	RSA 482-A:1 - 4, 6, 8 - 34; RSA 483:8-a, III	Clean Water Act, 33 U.S.C. Chapter 26, Subchapter IV, § 1344 (Permits for Dredged or Fill Material); 33 CFR Parts 322 & 323; USACE Gen. Permit No. NAE-2016-02415

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Mary Ann Tilton	Title:	Assistant Administrator, Wetlands Bureau
Address:	Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-2929
		Fax#:	(603) 271-6588
		E-mail:	MaryAnn.Tilton@des.nh.gov

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, July 10, 2020**

YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Monday, June 29, 2020 at 1:00 PM**

Place: **This will be a virtual hearing via WebEx. Contact Kathryn Sanders at Kathryn.Sanders@des.nh.gov to obtain the link, meeting number, and password.**

You also may call in to the meeting:

Call in Number: +1-415-655-0001

Access Code: 476 128 402

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 20:042 , dated 05/07/2020:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules should result in reduced costs to certain political subdivisions, citizens and independently owned businesses by an indeterminable amount. There would also be an indeterminable reduction in application fee revenue deposited into the Wetlands Fee Account.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

RSA 482-A requires persons who wish to alter jurisdictional areas to obtain a permit prior to doing so. The rules identify the information needed by the Department to review and act on such applications. Most of the cost of completing and filing applications for Wetlands permits are attributable to the statute. The proposed rules should result in lower costs for those seeking a statutory permit-by-notification (SPN) or a permit-by-notification (PBN) for projects in a local river management advisory committee (LAC) jurisdiction other than routine roadway maintenance activities, as sign-off from the LAC will no longer be required. Other cost savings are expected to result from the proposed changes listed below:

- Projects solely for the removal of exotic aquatic weeds would be authorized by rule provided the listed conditions are met.
- Repair or replacement of a boat launch would be allowed under a permit-by-notification (PBN) if the minimum impact criteria are met.
- Conservation commission review and signoff would not be required for PBNs for:
 - Replenishment of an existing legal beach that complies with Env-Wt 511.07(a);
 - Repair or replacement of an existing legal deck or patio that complies with Env-Wt 511.08;
 - Repair or replacement of an existing legal docking structure that complies with Env-Wt 513.24(a);
 - Repair or replacement of an existing legal wall that complies with Env-Wt 514.07(a)(3);
 - Maintenance or repair of an existing legal boathouse that complies with Env-Wt 515.07(a);
 - Maintenance of an existing legal tidal docking structure that complies with Env- Wt 606.17(b);
 - Repair of an existing legal tier 1 or tier 2 stream crossing that complies with Env-Wt 903.01(e)(2);
 - Repair of an existing legal tier 3 stream crossing that complies with Env-Wt 903.01(e)(3); and
 - Replacement of an existing legal tier 1 stream crossing that complies with Env-Wt 903.01(e)(4).
- If a PBN application did not contain all information required, the Department would send a notice of incompleteness instead of denying the application and the applicant would have 20 days in which to provide the missing information.
- Log foot bridges on hiking trails would be allowed to have sleepers on the soils and would be allowed to have 3,000 SF of area per crossing.

Due to the number and variability of factors, an estimate of the savings cannot be made.

A. To State general or State special funds:

There will be no impact on the State general fund. There will be a reduction in revenue from application fees that are deposited into the Wetlands Fee Account.

B. To State citizens and political subdivisions:

See #3 above.

C. To independently owned businesses:

See #3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

To the extent any costs are attributable to the rules, the costs are expected to decrease. The rules thus do not mandate or assign any new, expanded or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision and so do not violate Part I, Article 28-a of the New Hampshire Constitution.