

Effective December 15, 2019, Env-Wt 300 reads as follows:

CHAPTER Env-Wt 300 PERMITS AND OTHER AUTHORIZATIONS; CONDITIONS APPLICABLE TO ALL WORK IN JURISDICTIONAL AREAS

PART Env-Wt 301 RESERVED

PART Env-Wt 302 RESERVED

PART Env-Wt 303 RESERVED

PART Env-Wt 304 RESERVED

PART Env-Wt 305 PURPOSE; APPLICABILITY; ABBREVIATIONS AND ACRONYMS

Env-Wt 305.01 Purpose. The purpose of this chapter is to:

- (a) Identify dredge, fill, and construction activities that are:
 - (1) Allowed by RSA 482-A without a permit or notification;
 - (2) Prohibited or limited by RSA 482-A;
 - (3) Allowed by RSA 482-A provided the specified conditions are met, including notification for SPNs;
 - (4) Allowed under a lower scrutiny approval (LSA), which includes registrations and PBNs;
 - (5) Allowed under an expedited permit (EXP); or
 - (6) Allowed only if a standard permit is obtained;
- (b) Establish conditions that apply to all dredge, fill, and construction activities, whether or not allowed by RSA 482-A with or without notification or covered by a standard permit, an EXP, or an LSA;
- (c) Establish procedures and criteria for filing a notification or registration for an LSA;
- (d) Establish procedures and criteria for applying for an EXP;
- (e) Establish procedures and criteria for filing an application for a standard permit;
- (f) Establish procedures and criteria for the department's review of submissions and decisions;
- (g) Establish post-issuance requirements, including but not limited to permit acceptance, recordation, duration, transfer, and procedures and criteria for permit amendments;
- (h) Establish procedures for emergency situations; and
- (i) Establish the criteria and procedures for suspending, revoking, or modifying an LSA, EXP, or standard permit.

Env-Wt 305.02 Applicability.

(a) Subject to (b)-(f), below, this chapter shall apply as of the 2019 effective date of the chapter to any person who undertakes or proposes to undertake any dredge, fill, or construction activities, or any combination thereof, in a jurisdictional area.

(b) The approval criteria in this chapter shall apply to:

- (1) Any application filed on or after the 2019 effective date of this chapter; and
- (2) Any application filed prior to the 2019 effective date of this chapter that is not complete, as determined under Env-Wt 310.02 or Env-Wt 312.02, as applicable, as of the 2019 effective date of this chapter, regardless of when the completeness determination is made.

(c) NH DOT projects that qualify for a statutory permit by notification (SPN) or the registration process established in Env-Wt 309.03 and Env-Wt 309.04 but have not been initiated prior to the 2019 effective date of this chapter shall be undertaken pursuant to the requirements of this chapter.

(d) NH DOT projects for which an application has been filed prior to the 2019 effective date of this chapter shall be subject to the design, approval, and construction criteria in effect on the date of filing, provided the application is complete within 6 months of the 2019 effective date of this chapter, regardless of when the completeness determination is made.

(e) If NH DOT believes that one or more projects in the planning stages for which an application has not been filed as of the 2019 effective date of this chapter should be subject to the design, approval, and construction criteria in effect prior to the 2019 effective date of this chapter, NH DOT shall submit a list in writing to the department of all such projects, that includes for each project:

- (1) The location of the proposed project;
- (2) A brief description of the project and the purpose of the project, outlining the anticipated scope of work to be performed and whether impacts are expected to be temporary or permanent;
- (3) The anticipated dates on which:
 - a. An application for the project will be filed; and
 - b. The project will be advertised to bid; and
- (4) The specific requirements in the 2019 rules that are not practicable to comply with and for each, the reason(s) why compliance is not practicable.

(f) If NH DOT submits a list pursuant to (e), above, the department shall consult with NH DOT to reach a mutual agreement regarding the design features or other aspects of each project that are not practicable to redesign or otherwise change to meet the requirements of the 2019 rules and so will be subject to the rules in effect prior to the 2019 effective date of this chapter.

(g) For each project submitted by NH DOT, the agreement reached pursuant to (f), above, shall be memorialized in writing signed by authorized officials of the department and NH DOT.

(h) NH DOT shall submit a copy of the signed agreement required by (g), above, with the relevant application so that the agreement becomes part of the public file.

Env-Wt 305.03 Abbreviations and Acronyms. Abbreviations and acronyms used throughout this chapter shall have the meaning assigned in Env-Wt 100, as summarized in Appendix E.

PART Env-Wt 306 ACTIVITIES REQUIRING A PERMIT OR OTHER AUTHORIZATION; REQUIRED PLANNING FOR ALL PROJECTS; WHEN ABUTTER NOTIFICATION REQUIRED

Env-Wt 306.01 Activities Eligible for a Statutory Permit by Notification (SPN). A project shall be eligible to submit a notification for a statutory permit-by-notification (SPN) if:

- (a) The project qualifies under Env-Wt 308.04; and
- (b) All applicable requirements and conditions are met.

Env-Wt 306.02 Activities Eligible For a Lower Scrutiny Approval (LSA). Any project classified as minimum impact and listed in Env-Wt 309.05(a) shall be eligible to apply for a lower scrutiny approval (LSA) as authorized by RSA 482-A:11, VI-a or VII and as described in Env-Wt 309 unless:

- (a) The project includes activities that:

- (1) Do not comply with all standard conditions for the project as specified in Env-Wt 307;
- (2) Are prohibited under RSA 482-A; or
- (3) Do not follow applicable best management practices;
- (b) Any work in any jurisdictional area was commenced prior to obtaining the applicable approval;
- (c) The application has not been signed to indicate the right to intervene has been waived by:
 - (1) The conservation commission; or
 - (2) If the town in which the project is proposed does not have a conservation commission, the local governing body; or
- (d) If a PBN is sought for a project that is within LAC jurisdiction, the application has not been signed to indicate the right to intervene has been waived by the applicable LAC.

Env-Wt 306.03 Activities Eligible for an Expedited Permit (EXP). Any project classified as minimum impact shall be eligible to apply for an expedited permit (EXP) as authorized by RSA 482-A:11, VI and as described in Env-Wt 310 unless:

- (a) The project includes activities that are prohibited under RSA 482-A;
- (b) Any work in any jurisdictional area was commenced prior to obtaining the applicable approval;
- (c) The application has not been signed to indicate the right to intervene has been waived by:
 - (1) The conservation commission; or
 - (2) If the town in which the project is proposed does not have a conservation commission, the local governing body; or
- (d) If an EXP is sought for a project that is within LAC jurisdiction, the application has not been signed to indicate the right to intervene has been waived by the applicable LAC.

Env-Wt 306.04 Activities Requiring a Standard Permit; When Standard Permits Are An Option.

- (a) A standard permit as authorized by RSA 482-A:3, I, shall be obtained from the department prior to undertaking any dredging, filling, or construction activity in any jurisdictional area that:
 - (1) Is not prohibited or exempted by RSA 482-A;
 - (2) Does not qualify for a statutory permit-by-notification (SPN); and
 - (3) Is not eligible for an LSA under Env-Wt 306.02 or an EXP under Env-Wt 306.03.
- (b) An applicant may choose to apply for a standard permit for any project that is eligible for an SPN, PBN, or EXP.

Env-Wt 306.05 Required Planning For All Projects.

- (a) In order to determine the appropriate impact classification of a project and the type of approval required, if any, the person responsible for a proposed project shall:
 - (1) Have all jurisdictional areas delineated and classified by a certified wetland scientist, who also shall identify the predominant resource functions of each jurisdictional area, unless:
 - a. The project is conditionally exempt under Env-Wt 309.02; or
 - b. The project is exempt from delineation requirements under Env-Wt 406.03;

- (2) Determine whether the subject property is or contains a priority resource area, by determining whether the subject property:
- a. Contains any documented occurrences of protected species or habitat for such species, using the DataCheck tool at https://www2.des.state.nh.us/nhb_datacheck/;
 - b. Is a bog;
 - c. Is a floodplain wetland contiguous to a tier 3 or higher watercourse;
 - d. Is a designated prime wetlands or a duly-established 100-foot buffer; or
 - e. Is a sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone;
- (3) For projects that are subject to Env-Wt 600, conduct the data screening required by Env-Wt 603.03;
- (4) Also determine whether the subject property:
- a. Is within LAC jurisdiction, unless the project will be conducted pursuant to a notification for minimum impact activities under RSA 482-A:3, V, RSA 482-A:3, XII, or RSA 482-A:3, XVI on land used for agricultural purposes as provided in RSA 483:12-a; or
 - b. Is within or contains any areas that are subject to time of year restrictions under Env-Wt 307;
- (5) For stream crossing projects, also determine the size of the watershed;
- (6) For dredge projects, also determine whether the subject property is contaminated; and
- (7) For projects for which a standard permit will be sought, also determine whether the project has potential to impact impaired waters, class A waters, or outstanding resource waters.
- (b) Unless otherwise specified, the determinations required by (a), above, may be made using:
- (1) The wetlands permit planning tool, available at http://des3.sr.unh.edu/Html5Viewer/Index.html?configBase=http://jointagencyvm.sr.unh.edu/Geocortex/Essentials/des3.sr.unh.edu/REST/sites/NH_DES/viewers/gvh/virtualdirectory/Resources/Config/Default; or
 - (2) Any other database or source that provides the requisite information.

Env-Wt 306.06 Abutter Notification.

- (a) Unless exempted pursuant to (c), below, the applicant shall notify abutters prior to filing an application.
- (b) As required by RSA 482-A:3, I(d)(1), notice shall be provided in writing by certified mail or other delivery method that provides proof of receipt.
- (c) Abutter notification shall not be required for:
- (1) Any project conducted under an SPN;
 - (2) Any project conducted under a PBN or registration, unless specifically required;
 - (3) Public highway maintenance or repair projects; or
 - (4) Utility maintenance or repair projects within a utility right-of-way.

PART Env-Wt 307 CONDITIONS APPLICABLE TO ALL ACTIVITIES IN JURISDICTIONAL AREAS

Env-Wt 307.01 Purpose and Applicability.

(a) The purpose of this part is to establish conditions that apply to all dredging, filling, and construction activities in jurisdictional areas, regardless of the primary purpose of such activities.

(b) This part shall apply to any activity being conducted in any jurisdictional area, whether or not a standard permit, LSA, EXP, PBN, SPN, registration, or waiver is required or has been obtained for the activity.

Env-Wt 307.02 Requirements for Coverage Under State General Permits. In order to be in compliance with federal requirements, all work in areas under the jurisdiction of the U.S. Army Corps of Engineers (US ACE) shall comply with all conditions of the applicable state general permit, available at <http://www.nae.usace.army.mil/portals/74/docs/regulatory/StateGeneralPermits/NH/NH%20General%20Permit%2018August2017.pdf>.

Env-Wt 307.03 Protection of Water Quality Required.

(a) No activity shall be conducted in such a way as to cause or contribute to any violation of:

- (1) The surface water quality standards specified in RSA 485-A:8 or Env-Wq 1700;
- (2) The ambient groundwater quality standards established under RSA 485-C;
- (3) The limitations on activities in a sanitary protective area established under Env-Dw 302.10 or Env-Dw 305.10; or
- (4) Any provision of RSA 485-A, Env-Wq 1000, RSA 483-B, or Env-Wq 1400 that protects water quality.

(b) All work, including management of soil stockpiles, shall be conducted so as to minimize erosion, minimize sediment transfer to surface waters or wetlands, and minimize turbidity in surface waters and wetlands using the techniques described in:

- (1) Env-Wq 1505.02, Env-Wq 1505.04, Env-Wq 1506, and Env-Wq 1508;
- (2) The applicable BMP manual, available as noted in Appendix B:
 - a. For forestry projects, the Forestry BMPs;
 - b. For SPN utility projects, the Utility BMPs;
 - c. For trail projects, whether under an SPN or other approval, the Trail BMPs; or
 - d. For roadway maintenance projects, whether under an SPN, registration, or other approval, the Routine Roadway BMPs; or
- (3) The applicable BMP manual supplemented by the portions of Env-Wq 1500 listed in (1), above, if the applicable BMP manual provides less protection to jurisdictional areas than the provisions of Env-Wq 1500 listed in (1), above.

(c) Water quality control measures shall:

- (1) Be selected and implemented based on the size and nature of the project and the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to jurisdictional areas;
- (2) Be comprised of wildlife-friendly erosion control materials when:
 - a. Erosion control blankets are used;
 - b. A protected species or habitat is documented;

- c. The proposed work is in or adjacent to a PRA;
 - d. Specifically requested by NHB or NHF&G; or
 - e. Any combination of a. through d., above, applies;
- (3) Be installed prior to start of work and in accordance with the manufacturer's recommended specifications or, if none, the applicable requirements of Env-Wq 1506 or Env-Wq 1508;
- (4) Be capable of:
- a. Minimizing erosion;
 - b. Collecting sediment and suspended and floating materials; and
 - c. Filtering fine sediment;
- (5) Be maintained so as to ensure continued effectiveness in minimizing erosion and retaining sediment on-site during and after construction;
- (6) Remain in place until all disturbed surfaces are stabilized to a condition in which soils on the site will not experience accelerated or unnatural erosion, using techniques such as:
- a. Achieving and maintaining a minimum of 85% vegetative cover using an erosion control seed mix, whether applied in a blanket or otherwise, that is certified by its manufacturer as not containing any invasive species; or
 - b. Placing and maintaining a minimum of 3 inches of non-erosive material such as stone; and
- (7) If designed and installed as temporary methods, be removed upon completion of work when compliance with (6), above, is achieved;
- (d) Any sediment collected by water quality control measures shall be:
- (1) Removed with sufficient frequency to prevent the discharge of sediment; and
 - (2) Placed in an upland location in a manner that prevents its erosion into a surface water or wetland.
- (e) All exposed soils and other fills shall be permanently stabilized within 3 days following final grading.
- (f) A coffer dam or other turbidity control shall be:
- (1) Used to enclose a dredging project conducted in or along the shoreline of a bog, marsh, lake, pond, stream, river, creek, or any other surface water, provided that a coffer dam shall not be installed during periods of high flow; and
 - (2) Removed after work within the coffer dam or other turbidity control is completed, the contained water has returned to background clarity, and removing the structure will not cause or contribute to a violation of (c)(6), above.
- (g) The person in charge of construction equipment shall:
- (1) Inspect such equipment for leaking fuel, oil, and hydraulic fluid each day prior to entering surface waters or wetlands or operating in an area where such fluids could reach groundwater, surface waters, or wetlands;
 - (2) Repair any leaks prior to using the equipment in an area where such fluids could reach groundwater, surface waters, or wetlands;

- (3) Maintain oil spill kits and diesel fuel spill kits, as applicable to the type(s) and amount(s) of oil and diesel fuel used, on site so as to be readily accessible at all times during construction; and
- (4) Train each equipment operator in the use of the spill kits.

(h) Equipment shall be staged and refueled in accordance with Env-Wt 307.15.

Env-Wt 307.04 Protection of Fisheries and Breeding Areas Required. Work such as excavations, deposition of dredged or fill material, or other activities that produce suspended sediment in jurisdictional areas that provide value as bird migratory areas or fish and shellfish spawning or nursery areas, shall be done so as to:

- (a) Avoid and minimize discharges of dredged material or placement of fill material during spawning or breeding seasons by using water quality protection techniques as specified in Env-Wt 307 and timing of project as specified in Env-Wt 307.10(g) or (h), as applicable;
- (b) Not discharge sediment to spawning or nursery areas or to amphibian and migratory bird breeding areas during spawning or breeding seasons, as applicable, which could necessitate suspending the activities; and
- (c) Protect high quality waters as specified in Env-Wq 1708.06.

Env-Wt 307.05 Protection Against Invasive Species Required.

- (a) Prior to the installation of swamp mats, the mats and any heavy machinery used to install them shall be inspected for and cleaned of all vegetative matter by a method and in a location that prevents the spread of the vegetative matter to jurisdictional areas.
- (b) Equipment to be used in surface waters shall be completely free of all aquatic and terrestrial invasive plants and all exotic aquatic species of wildlife as defined in RSA 487:16, I-a.
- (c) All applicable requirements of RSA 487:15-25 shall be met.
- (d) No boat washing or rinsing shall occur in jurisdictional areas or in a location where run-off is likely to flow to any jurisdictional area.
- (e) To prevent the use of soil or seed stock containing nuisance or invasive species, the contractor responsible for work shall follow the Invasive Plant BMPs, available as noted in Appendix B.

Env-Wt 307.06 Protection of Rare, Threatened or Endangered Species and Critical Habitat. No activity shall jeopardize the continued existence of a threatened or endangered species, a species proposed for listing as threatened or endangered, or designated or proposed critical habitat under the:

- (a) Federal Endangered Species Act, 16 U.S.C. §1531 et seq.;
- (b) State Endangered Species Conservation Act, RSA 212-A; or
- (c) New Hampshire Native Plant Protection Act, RSA 217-A.

Env-Wt 307.07 Consistency Required with Shoreland Water Quality Protection Act. All development activities associated with any project shall be conducted in compliance with applicable requirements of RSA 483-B and Env-Wq 1400 during and after construction.

Env-Wt 307.08 Protection of Designated Prime Wetlands and Duly-Established 100-Foot Buffers.

- (a) Water quality and environmental minimization measures shall be in place to ensure that functions and values of prime wetlands and duly-established 100-foot buffers are protected.

(b) Duly-established 100-foot buffers shall not be disturbed unless specifically authorized under RSA 482-A.

Env-Wt 307.09 Shoreline Structures. No structure shall be built over public trust surface waters, except:

- (a) To provide docking for watercraft in accordance with Env-Wt 500;
- (b) To construct or replace a bridge for public travel; or
- (c) To provide seating for dining establishments in:
 - (1) Areas exempted from RSA 483-B pursuant to RSA 483-B:12; and
 - (2) Historic commercial tidal areas as allowed under Env-Wt 600.

Env-Wt 307.10 Dredging Activity Conditions. In addition to all other applicable conditions in this part, the following conditions shall apply to all dredging activities:

- (a) No dredging shall occur that would create violations of any set-backs specified in:
 - (1) RSA 485-A or 483-B relative to protecting water quality; or
 - (2) Env-Wq 1000 relative to septic systems;
- (b) Work shall be done during low flow or in the dry unless a dredge dewatering, diversion, or cofferdam plan has been approved as part of the project;
- (c) Turbidity controls shall:
 - (1) Be installed prior to construction and maintained during construction such that no turbidity escapes the immediate dredge area; and
 - (2) Remain in place until suspended particles have settled and water at the work site has returned to normal clarity;
- (d) Dredged materials shall be disposed of out of jurisdictional areas, unless other disposition is specifically permitted pursuant to (e), below;
- (e) If an applicant wishes to use dredged materials as part of the proposed project or dispose of dredged materials in a jurisdictional area, the applicant shall specifically request authorization to do so as part of the application filed pursuant to Env-Wt 311;
- (f) Dredged materials to be stockpiled in uplands shall be dewatered in sedimentation basins that are:
 - (1) Contained within turbidity controls that prevent turbid water from leaving the basins; and
 - (2) Located outside of any jurisdictional area;
- (g) Subject to (h), below, in non-tidal waters, no dredging shall occur:
 - (1) Between October 1 and March 31 for any fish migration or larval settling area of cold water fish; or
 - (2) In March or April for any area that is habitat for rainbow smelt;
- (h) For logging projects, work shall be done to protect water quality in accordance with the Forestry BMPs, available as noted in Appendix B;

(i) In addition to the limitations on tidal dredging in Env-Wt 600, no dredging shall occur in tidal waters during a fish migration or larval setting stage of fish and shellfish, which is between November 15 and March 15;

(j) In addition to the limitations on tidal dredging in Env-Wt 600, dredging projects in tidal waters shall be designed and implemented to ensure that there is no disruption of tidal flushing. Tidal flushing means the influx or outflow of water that is associated with the normal ebb and flow of the tide;

(k) Dredging shall not impede fish migrations or interfere with spawning areas for fish;

(l) Dredging shall not disturb contaminated sediment unless dredging of such sediment is specifically identified in the application, authorized in the issued permit, and implemented with such protective conditions as are necessary to ensure that the contaminated sediment is properly managed;

(m) Dredging operations that are not related to the operation of a public water supply (PWS) shall be no closer than 250 feet from an active intake for the PWS; and

(n) The permittee shall send prior notification of dredging activities to the PWS owner/operator by registered mail at least 30 days prior to dredging when done in a waterbody or other jurisdictional area within 500 feet of a public water supply intake.

Env-Wt 307.11 Filling Activity Conditions. In addition to all other applicable conditions in this part, the following conditions shall apply to all temporary and permanent filling activities:

(a) Fill shall be clean sand, gravel, rock, or other material that:

(1) Meets the project's specifications for its use; and

(2) Does not contain any material that could contaminate surface or groundwater or otherwise adversely affect the ecosystem in which it is used;

(b) Limits of fill shall be clearly identified prior to commencement of work and controlled in accordance with Env-Wt 307.03 to ensure that fill does not spill over or erode into any area where filling is not authorized;

(c) Slopes shall be immediately stabilized by a method specified in Env-Wq 1506 or Env-Wq 1508, as applicable, to prevent erosion into adjacent wetlands or surface waters;

(d) No fill shall be allowed to achieve setbacks to septic systems specified in Env-Wq 1000;

(e) Fill shall be not placed so as to direct flows onto adjacent or down-current property;

(f) Swamp mats and construction mats shall be deemed temporary fill for new authorizations only if they meet the requirements of (h)(1) and (h)(2), below;

(g) Authorized temporary fill other than swamp mats, construction mats, and corduroy shall be placed on geotextile fabric laid on preconstruction wetland grade;

(h) Subject to (i), below, temporary fill shall be:

(1) In place no longer than one growing season;

(2) Removed immediately upon work completion; and

(3) Disposed of at an upland location in a manner that prevents its erosion into a surface water or wetland;

(i) Corduroy shall be deemed temporary fill that may be left in place if it:

(1) Is installed as part of a skid trail in accordance with the Forestry BMPs;

- (2) Does not exceed 1,000 LF and 20,000 SF per crossing; and
- (3) Does not cross or otherwise impact a perennial stream, marsh, PRA, or vernal pool;
- (j) Wetlands and surface waters shall be restored to pre-impact conditions and elevation as specified in Env-Wt 307.12(i), below, unless otherwise authorized in an issued permit;
- (k) Swamp mats shall be:
 - (1) Properly installed, not dragged into position; and
 - (2) Removed immediately upon the completion of work; and
- (l) No fill shall take place in a PRA unless:
 - (1) Specifically authorized by the department in an issued permit; or
 - (2) Authorized under applicable project-specific provisions.

Env-Wt 307.12 Restoring Temporary Impacts; Site Stabilization. In addition to all other applicable conditions in this part, the following conditions shall apply to restoring all temporary impacts:

- (a) Within 3 days of final grading or temporary suspension of work in an area that is in or adjacent to surface waters, all exposed soil areas shall be stabilized by:
 - (1) Seeding and mulching, if during the growing season; or
 - (2) Mulching with tackifiers on slopes less than 3:1 or netting and pinning on slopes steeper than 3:1 if not within the growing season;
- (b) Upon completion of construction, all disturbed wetland areas shall be stabilized with wetland seed mix containing non-invasive plant species only;
- (c) Any seed mix used shall not contain plant species that are exotic aquatic weeds;
- (d) Mulch used within an area being restored shall be natural straw or equivalent non-toxic, non-seed-bearing organic material;
- (e) Wetland soils from areas vegetated with purple loosestrife or other invasive plant species shall not be used in the area being restored;
- (f) If any temporary impact area that is stabilized with seeding or plantings does not have at least 75% successful establishment of wetlands vegetation after 2 growing seasons, the area shall be replanted or reseeded, as applicable;
- (g) If a temporary impact area is restored by seeding or plantings, then:
 - (1) The work shall not be deemed successful if the area is invaded by nuisance species such as common reed or purple loosestrife during the first full growing season following the completion of construction; and
 - (2) The person responsible for the work shall submit a remediation plan to the department that proposes measures to be taken to eradicate nuisance species during this same period;
- (h) Unless otherwise authorized, any trees cut in an area of authorized temporary impacts shall be cut at ground level with the shrub and tree roots left intact, to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area; and
- (i) Unless otherwise authorized, wetland areas where permanent impacts are not authorized shall be restored to their pre-impact conditions and elevation by replacing the removed soil and vegetation in their

pre-construction location and elevation such that post-construction soil layering and vegetation schemes are as close as practicable to pre-construction conditions.

Env-Wt 307.13 Property Line Setbacks.

(a) As required by RSA 482-A:3, XIII(a), all boat docking facilities shall be at least 20 feet from the abutting property line, whether in tidal or in non-tidal waters.

(b) Subject to (c) and (d), below, dredging, filling, or construction activity within a jurisdictional area that is not covered by (a), above, that is covered by an LSA or for which an EXP or standard permit is required shall occur at least 10 feet from an abutting property line.

(c) The set-back established in (b), above, shall not apply to utility projects in a utility right-of-way if a boundary survey has been or will be completed prior to initiation of work.

(d) Subject to (e), below, if an applicant wishes to extend an activity that is covered by (b), above, closer than 10 feet to an abutting property line, the applicant shall obtain written consent from the affected abutter.

(e) An applicant shall not be required to obtain consent from the affected abutter to extend work closer than 10 feet to the property line for:

- (1) A bank stabilization project; or
- (2) Stream crossing projects undertaken by a public agency in conformance with the Routine Roadway BMPs, available as noted in Appendix B.

(f) The department shall inform the applicant that an increase to the setback to property lines is required if the department determines during the review process that the location proposed for an activity:

- (1) Represents a danger to other waterfront activities due to its size or character, or both, being inconsistent with the size and character of the surrounding area;
- (2) Is likely to create a navigation hazard due to its size or proximity to other existing legal structures; or
- (3) Is likely to interfere with an abutter's access to or use of the abutter's property.

(g) If the department determines pursuant to (f), above, that a larger set-back is required, the department shall increase the set-back only the distance required to abate the danger, hazard, or interference, as applicable.

Env-Wt 307.14 Rock Removal. In addition to all other applicable conditions in this part or in Env-Wt 500, the following conditions shall apply to removal of rocks from surface waters:

(a) No rocks shall be blasted or otherwise removed unless doing so is necessary to provide public access or to abate an immediate navigable hazard;

(b) No rocks shall be removed during fish spawning;

(c) Subject to (e), below, rocks removed from the bed of a surface water shall be relocated within 10 feet to 20 feet of their current location and at a similar depth unless otherwise specifically allowed pursuant to (d), below;

(d) If an applicant cannot relocate rocks that need to be removed as required by (c), above, the applicant shall specifically request authorization to remove the rocks to another location as part of the application filed pursuant to Env-Wt 311; and

(e) Rocks that are necessary to protect fish spawning areas or critical wildlife habitat in shallow streams or lakes shall not be relocated.

Env-Wt 307.15 Use of Heavy Equipment in Wetlands. In addition to all other applicable conditions in this part or in Env-Wt 500 or Env-Wt 600, the following conditions shall apply to the use of heavy equipment in wetlands:

(a) Heavy equipment shall not be operated in any jurisdictional area unless specifically authorized in the permit for the project;

(b) Mobile heavy equipment working in wetlands shall not be stored, maintained, or repaired in wetlands, except that repairing or refueling in a wetland is allowed if equipment cannot practicably be removed and secondary containment is provided;

(c) Where construction requires the operation of heavy equipment in wetlands, the equipment shall:

(1) Either have low ground pressure, namely less than 4 psi, or not be located directly on wetland soils and vegetation; or

(2) Be placed on timber or swamp mats that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation;

(d) Timber and swamp mats shall be:

(1) In good condition to ensure proper installation, use and removal; and

(2) Thoroughly cleaned before re-use; and

(e) Swamp mats shall:

(1) Be placed in the wetland from the upland or from equipment positioned on swamp mats if working within a wetland;

(2) Be installed, used, and removed so as to minimize impacts to wetland areas; and

(3) Be installed with adequate erosion and sediment controls at approaches to the mats to promote a smooth transition to, and minimize sediment tracking onto, the mats.

Env-Wt 307.16 Adherence to Approved Plans Required. For any project for which plans were submitted and an SPN, PBN, LSA, EXP, or standard permit was issued, all work on the project shall be done in accordance with the approved plans.

Env-Wt 307.17 Unpermitted Activities. The following activities shall be deemed to be work done without a permit in violation of RSA 482-A:3:

(a) Any work done that:

(1) Is not covered by an SPN under Env-Wt 308, a registration under Env-Wt 309, or an SMMD permit under Env-Wt 310.04 through Env-Wt 310.09;

(2) Is in an area that is subject to the jurisdiction of the federal Clean Water Act for which an LSA, EXP, or standard permit has not been obtained; or

(3) Causes impacts to jurisdictional areas that are not authorized by an SPN, registration, LSA, EXP, SMMD permit, or standard permit;

(b) Any work that is subject to an LSA, EXP, SMMD permit, or standard permit that is carried out prior to receiving the applicable authorization; and

- (c) Any work that is subject to an SPN that does not comply with all requirements for the SPN.

Env-Wt 307.18 Reports. The following plans and reports shall be submitted to the department, where applicable:

- (a) Compensatory mitigation project monitoring reports in accordance with Env-Wt 803.04;
- (b) A construction monitoring plan with inspection reports, water quality reports, and a wetland planting plan prepared by a CPESC specialist or certified wetland scientist;
- (c) A report that describes the monitoring conducted and date(s) of inspections, and includes photos showing the extent of jurisdictional impacts, areas of restoration, and progress of any plantings;
- (d) A report that describes the stability of and status of stream or wetland systems, including a description of any necessary adjustments; and
- (e) A schedule and description of measures to be taken during construction and after completion of the project.

PART Env-Wt 308 ACTIVITIES ALLOWED OR PROHIBITED BY STATUTE

Env-Wt 308.01 Activities Exempted By Statute from Permit Requirement. A permit under RSA 482-A shall not be required prior to undertaking any of the following activities in any jurisdictional area:

- (a) As specified in RSA 482-A:3, IV(a) and as clarified in Env-Wt 308.02(a) and (b), the replacement or repair of existing structures in or adjacent to any waters of the state that does not involve excavation, removal, filling, or dredging in any waters or of any bank, flat, marsh, or swamp;
- (b) As specified in RSA 482-A:3, IV(b) and subject to the conditions listed in Env-Wt 308.02(c), the maintenance, repair, replacement, or modification so as to preserve usefulness of:
 - (1) Man-made non-tidal drainage ditches;
 - (2) Roadside and railroad ditches;
 - (3) Detention basins, ponds, and wetlands that have been legally constructed to collect, convey, treat, or control storm water and spring run-off;
 - (4) Legally constructed ponds on active farms;
 - (5) Erosional features caused by proximate human activity;
 - (6) Fire ponds and intake areas of dry hydrants that have been legally constructed to provide water for municipal firefighting purposes as approved by a local fire chief; and
 - (7) Aggregate wash ponds, sluiceways, and other legally constructed man-made water conveyance systems that are used for the commercial or industrial purpose of collecting, conveying, storing, and recycling water;
- (c) As specified in RSA 482-A:3, IV(c), the cleaning of legally constructed culverts as necessary to preserve their usefulness, provided:
 - (1) The conditions stated in Env-Wt 308.02(c) are met; and
 - (2) Any repair, replacement, or modification of a culvert is in accordance with RSA 482-A:3, XVI, reprinted in Appendix D;
- (d) As specified in RSA 482-A:3, VII and as clarified in Env-Wt 308.02(d), the removal of sand that has blown or drifted onto any lawn, driveway, walkway, parking or storage area, or boat ramp, or that has blown or drifted in, on, or around buildings or other structures owned by the person;

(e) As provided in the definition of “structure” in RSA 482-A:2, IX, the construction or installation of a bench, a landing with dimensions no larger than 10 feet wide by 10 feet long, or stairs with a width not exceeding 6 feet, provided that:

- (1) The construction or installation is done without regrading or recontouring the shoreline; and
- (2) No portion of the bench, landing, or stairs is over water;

(f) As provided in RSA 482-A:3, XI(b), activities associated with the manual search for minerals in a river bed by panning, without the use of motorized equipment, provided that any person who intends to engage in any panning activity obtains prior written permission to engage in such activity from the riverbed landowner on whose property the activity is to be conducted, as required by RSA 482-A:3, XI(f); and

(g) As provided in RSA 210:9, II, the destruction or removal of a beaver dam or the installation of beaver pipes or beaver fences as defined in RSA 210:9, II-a by a landowner, the landowner’s agent, or any town or municipal or state official or employee on property under that person’s control to protect property, public highways, or bridges from damage or submersion, subject to the following conditions:

- (1) Removal of the dam shall be done in a gradual manner such that it does not allow a sudden release of impounded water so as to cause erosion, siltation, or a safety hazard downstream;
- (2) No machinery shall enter the water or otherwise create any disturbance by filling or dredging in or adjacent to surface waters, wetlands, or the banks thereof; and
- (3) All dredged materials shall be placed out of jurisdictional areas.

Env-Wt 308.02 Clarification of Statutory Exemptions.

(a) If a structure that will be repaired or replaced pursuant to RSA 482-A:3, IV(a) has a portion located below the water surface at time of such repair or replacement and the below-water portion will also be repaired or replaced, a permit shall be obtained prior to undertaking any work on the below-water portion.

(b) If a permit is required by (a), above, the applicant shall submit, with the application for the permit, proof that the structure the applicant is proposing to repair or replace is an existing legal structure as defined in Env-Wt 102.

(c) As specified in RSA 482-A:3, IV(b), the activities listed in Env-Wt 308.01(b), may be undertaken without a permit only if:

- (1) The exempted facility, area, or feature was not constructed as compensatory mitigation under a wetlands permit or as part of a settlement agreement;
- (2) The exempted facility, area, or feature is not extended into any jurisdictional area;
- (3) Dredged materials are deposited outside of all jurisdictional areas;
- (4) Wetlands or surface waters outside the limits of the exempted facility, area, or feature are not disturbed or degraded;
- (5) Best management practices are followed; and
- (6) The work does not infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners;

(d) Sand that has blown or drifted from a sand dune onto a lawn, driveway, walkway, parking area, storage area, or boat ramp, or that has blown or drifted into, onto, or around any structure may be removed by the owner without a permit pursuant to RSA 482-A:3, VII, provided only hand-held equipment is used.

(e) A structure shall qualify for a statutory exemption only if the structure:

- (1) Was legally constructed; and
- (2) Has been maintained so as to continue its intended use when originally constructed, and not abandoned or overgrown.

(f) An erosional feature, such as a small erosion gully or rill, may be smoothed and filled and stabilized as necessary to protect water quality where adjacent to a developed area, provided that if the erosional feature is within the area approved to be impacted by a permit, the work shall comply with the approved plans and permit.

(g) A legally-constructed ditch may be cleaned out and maintained to remove deposited silt or sediment, but shall not be lowered to drain or dewater adjacent wetlands or surface waters.

(h) All exempt activities shall be conducted in accordance with all applicable BMPs and Env-Wt 307.03.

Env-Wt 308.03 Activities Prohibited or Limited By Statute.

(a) As specified in RSA 482-A:3, VIII and IX, no person shall operate or ride any mechanized or off-highway recreational vehicle on any sand dune in the state of New Hampshire except for:

- (1) Police vehicles or fire vehicles;
- (2) Vehicles used in cases of emergency;
- (3) Authorized maintenance vehicles when performing maintenance duties; and
- (4) Vehicles used by commercial fishermen or commercial lobstermen when engaged in activities related to fishing or lobstering.

(b) As specified in RSA 482-A:16, no person shall place or cause to be placed any fill in any area below the mean high water level of any public waters, or below the artificially-created high water level of publicly-owned bodies of water in this state, with the intent or with the effect of creating or forming filled land adjacent to such bodies of water without obtaining a grant of right from the governor and executive council in accordance with RSA 482-A:17.

(c) As specified in RSA 482-A:21, I, no person shall excavate, remove, or dredge any bank, flat, marsh, swamp, or lake bed that lies below the natural mean high water level of any natural pond of more than 10 acres without obtaining a grant of right from the governor and executive council in accordance with RSA 482-A:22.

(d) As specified in RSA 482-A:26, I, no person shall construct any structure suitable for use as a dwelling if the structure or any part of the structure extends beyond the shoreline of any public water or publicly-owned water body.

(e) As specified in RSA 482-A:26, II, no person shall convert or modify any existing structure in order to make the structure suitable as a dwelling if the structure or any part of the structure extends beyond the shoreline of any public water or publicly-owned water body, subject to the exceptions specified in RSA 482-A:26, III.

Env-Wt 308.04 Statutory Permits-by-Notification (SPNs). The following activities may be undertaken in any jurisdictional area without obtaining an LSA, EXP, or standard permit provided the conditions identified below are met and the requirements of Env-Wt 308.05 through Env-Wt 308.08 are met:

(a) As provided in RSA 482-A:3, IV-a, the installation of a temporary seasonal dock on any lake or pond, provided that all requirements of RSA 482-A:3, IV-a, reprinted in Appendix D, are met;

(b) As provided in RSA 482-A:3, V, timber harvesting that meets the requirements for minimum impact activities, provided that the person undertaking the timber harvesting complies with all requirements specified in RSA 482-A:3, V, reprinted in Appendix D;

(c) As provided in RSA 482-A:3, XII, minimum impact projects to construct and maintain recreational trails, provided that all requirements of RSA 482-A:3, XII, reprinted in Appendix D, are met;

(d) As provided in RSA 482-A:3, XV, minimum impact projects by utility providers to maintain and repair existing utility services within existing rights of way, provided that all requirements of RSA 482-A:3, XV, reprinted in Appendix D, are met; and

(e) As provided in RSA 482-A:3, XVI, minimum impact projects to repair or replace culverts or stream crossing structures, including culverts up to and including 48 inches in diameter or the functional hydraulic equivalent, provided that all requirements of RSA 482-A:3, XVI, reprinted in Appendix D, are met.

Env-Wt 308.05 Activation of an SPN.

(a) The person responsible for a project that includes an activity listed in Env-Wt 308.04 shall activate the relevant SPN by submitting the following to the department on or with the applicable notification as listed in Env-Wt 308.06, Table 308-1:

- (1) The information specified in the applicable statutory provision;
- (2) Proof that the project conforms to the statutory criteria, including but not necessarily limited to the following:
 - a. The DataCheck tool identification number and an affirmation that recommendations have been received; and
 - b. Such information as is needed to demonstrate the criteria for minimum impact projects are met; and
- (3) Except for forestry SPNs under RSA 482-A:3, V, trail SPNs under RSA 482-A:3, XII, and routine roadway maintenance under RSA 482-A:3, XVI on land used for agricultural purposes, if the project is within LAC jurisdiction then the LAC has signed the notification to waive its right to intervene.

(b) The person responsible for the activity shall:

- (1) Sign and certify the notification in accordance with Env-Wt 311.11; and
- (2) Affirm that:
 - a. The project is not located in a PRA, except as provided in Env-Wt 407;
 - b. All recommendations of NHB and NHF&G have been received; and
 - c. The person responsible for the activity is aware of the limits of the SPN and BMPs for the project and will adhere to both.

(c) If the department determines that a notification is complete and that the project as described meets the requirements for an SPN, the department shall, within 5 working days of receipt of the notification, post on its website:

- (1) A notice that the notification was complete and that the project as described conforms with all applicable requirements; and
- (2) The effective date of the SPN, which shall be the date the SPN is posted by the department on its website.

(d) For any forestry SPN issued as noted in (c), above, the department shall provide:

- (1) A copy suitable for posting at the job site to the applicant;
- (2) A letter to the property owner confirming the forestry SPN and noting the applicable conditions; and
- (3) A copy of the letter required by (2), above, to the town municipal offices, conservation commission if any, and NH DNCR district forest ranger.

(e) If the department determines that a notification is incomplete or that the project as described does not meet the requirements for an SPN, the department shall send a written notice to the person responsible for the project that:

- (1) Identifies each deficiency; and
- (2) Informs the person that in order to proceed under the SPN, the person shall:
 - a. File a complete and correct notification, if the project as described appears to meet the requirements for an SPN; or
 - b. Obtain an LSA, EXP, or standard permit, if the project as described does not appear to meet the requirements for an SPN.

(f) If a person receives a notice under (e), above, and proceeds with the work covered by the notification without first filing a complete and correct SPN form or obtaining a different type of authorization, then:

- (1) All work done shall be deemed to have been done without a permit or exemption; and
- (2) The person shall file an application for an after-the-fact standard permit.

Env-Wt 308.06 SPN Notifications. The information required to activate an SPN specified in Env-Wt 308.05 shall be submitted on or with the applicable document identified in Table 308-1, below:

Table 308-1: SPN Notifications

| Cross-Reference | Type of SPN | Document Name, Identification | Document Date |
|------------------|------------------------------|---|---------------|
| Env-Wt 308.04(a) | Temporary seasonal dock | Seasonal Dock Notification, NHDES W-06-035 | May 2019 |
| Env-Wt 308.04(b) | Timber harvesting (Forestry) | Forestry Notification, NHDES W-06-008 | May 2019 |
| Env-Wt 308.04(c) | Recreational trails | Trails Notification, NHDES W-06-040 | May 2019 |
| Env-Wt 308.04(d) | Utilities | Utility Notification, NHDES W-06-042 | May 2019 |
| Env-Wt 308.04(e) | Culvert repair/replacement | Culvert Repair-Replacement Notification, NHDES W-06-033 | May 2019 |

Env-Wt 308.07 Post-Notification Requirements for SPNs other than Utility Project SPNs.

(a) Prior to commencing the work covered by the SPN, the person responsible for a project other than a utility project shall post at the site a copy of the SPN posted by the department on its web site or provided by the department pursuant to Env-Wt 308.05(d)(2).

(b) Within 10 days following completion of the work covered by an SPN other than a utility project, the person responsible for the project shall submit to the department confirmation of completion of the project, either by paper copy or electronically.

Env-Wt 308.08 Conditions for SPNs. All work done pursuant to an SPN shall be subject to the following conditions:

- (a) The work shall be done in compliance with all applicable conditions in Env-Wt 307;
- (b) Any work done in shoreland covered by RSA 483-B, the comprehensive water quality protection act, shall comply with all applicable conditions established therein; and
- (c) All SPN projects shall be carried out in accordance with the applicable BMPs.

PART Env-Wt 309 LOWER SCRUTINY APPROVALS (LSAs)

Env-Wt 309.01 Applicability; Types of LSAs.

- (a) This part shall apply to those activities that:
 - (1) Are not prohibited or exempted by RSA 482-A;
 - (2) Are not subject to an SPN; and
 - (3) May be undertaken without an EXP or a standard permit.
- (b) LSAs shall be classified based on the type of activity authorized, as follows:
 - (1) Activities authorized by rule to be undertaken without notice to the department provided the conditions specified in Env-Wt 309.02 are met;
 - (2) Routine roadway maintenance activities that may be undertaken provided a registration is filed and the conditions specified in Env-Wt 309.03 and Env-Wt 309.04 are met; and
 - (3) Minimum impact activities, other than restoration/enhancement projects under Env-Wt 525, that:
 - a. Have no deviations from the standards and conditions specified in Env-Wt 307 or the applicable provisions of Env-Wt 500, Env-Wt 600, or Env-Wt 900;
 - b. Do not impact a PRA; and
 - c. Qualify for a PBN as specified in Env-Wt 309.05 through Env-Wt 309.09.

Env-Wt 309.02 Projects Conditionally Authorized By Rule. As authorized by RSA 482-A:11, VII, the following activities that are not prohibited or exempted by RSA 482-A and are not subject to an SPN may be undertaken without notifying the department or registering the activity with the department and without obtaining a standard permit or an EXP, provided the conditions stated in Env-Wt 307 and the conditions stated below are met:

- (a) Mowing or other cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, or white pine swamp, subject to the following conditions:
 - (1) The roots of the vegetation shall not be disturbed;
 - (2) The ground shall be frozen or sufficiently dry to avoid making ruts; and
 - (3) The project shall not be located in a bog, designated prime wetland, duly-established 100-foot buffer, marsh, or tidal buffer zone;
- (b) Placement of a boat mooring, swim raft, or swim line in waters of the state, provided that the mooring, raft, or line has a permit from the department of safety or the harbor master, as applicable;

(c) Temporary placement of a fabric barrier on the bottom of a lake or pond by or under the direction of the department for the control of exotic aquatic weeds as authorized by RSA 487:17, subject to the following conditions:

- (1) The area shall not exceed 10,000 square feet (SF); and
- (2) The project shall not be located in a marsh of any size or a PRA;

(d) Installation of a stream crossing in an ephemeral stream;

(e) Use of piezometers, staff gauges, flow meters, or hand tools such as augers or tile spades for:

- (1) Determining limits of jurisdictional wetlands;
- (2) Determining stability of shoreline for data to be included in a wetlands application;
- (3) Educational purposes; or
- (4) Monitoring hydrology;

(f) Hand raking of leaves or other organic debris from the shoreline or lake bed, subject to the following conditions:

- (1) All raking shall be done in an area exposed by drawdown or other low-water conditions;
- (2) The raking shall not disturb vegetative roots; and
- (3) The raking shall be limited to an area no larger than 900 SF;

(g) The planting of non-invasive plants to enhance wetlands using hand-held, non-motorized tools;

(h) Any stream crossing built landward of the limits of one bank to landward of the limits of the opposite bank so as not to impact jurisdictional areas;

(i) Drilling geotechnical borings during the design of a project, borings and excavation for the purpose of wetland delineation or geologic sampling, drilling test wells or installing monitoring wells for purposes of exploring for public water supplies, drilling drinking water wells for public or private use, and drilling test wells or installing monitoring wells to investigate or monitor soil or groundwater contamination, provided:

- (1) The applicant provides the landowner, the department, the local governing body, and the municipal conservation commission, if any, with written notification of the general location and the type of work to be conducted prior to its commencement;
- (2) All applicable conditions from Env-Wt 307 are met;
- (3) Drill holes:
 - a. Do not exceed 8 inches in diameter; and
 - b. Are back-filled with drill spoil or are filled with clean material or grout;
- (4) Drill cuttings are removed out of department jurisdiction, unless they are used as provided in (3)b., above;
- (5) Any drilling in surface waters is done using machinery operated from a barge, from the ice, or from adjacent uplands; and
- (6) No work is done in bogs, marshes, tidal wetlands, prime wetlands, a duly-established 100-foot buffer, or in surface waters except as provided in (5), above;

(j) Test pitting by backhoe or other heavy equipment in the banks of surface waters or in the upland tidal buffer zone for the purpose of gathering geotechnical information for the design of a project; and

(k) Undertaking site remediation activities approved by the department pursuant to Env-Or 600, subject to the following additional conditions:

(1) The information submitted to the department on which the approval for the activities was issued shall have:

- a. Clearly identified all jurisdictional areas; and
- b. Clearly described the activities that will occur within jurisdictional areas; and

(2) The entity undertaking the activities shall provide the department's wetlands bureau and the local governing body with written notice of the commencement of work as soon as practicable, but in no event later than 5 working days after commencing work.

Env-Wt 309.03 Registrations for Routine Roadway Maintenance Activities. Routine roadway maintenance activities that are not covered by the SPN described in Env-Wt 308.04(e) but are included in the Routine Roadway BMPs may be undertaken pursuant to this section provided:

(a) The activities are conducted in accordance with the Routine Roadway BMPs, except that for projects in LAC jurisdiction as applied to routine roadway projects, a standard application shall not be required if a waiver of intervention is obtained from the LAC;

(b) The total project does not impact more than 50 LF of a watercourse or more than 3,000 SF of any other jurisdictional area;

(c) No work is done:

- (1) In or adjacent to prime wetlands;
- (2) In a bog, marsh, tidal wetlands, undisturbed tidal buffer zone, or sand dunes; or
- (3) On an existing stream crossing where erosion processes have scoured the toe of the stream bank to an extent that the upper portion of the stream bank has collapsed within 150 LF of the stream crossing;

(d) The work does not occur on property not owned by the responsible party unless the responsible party also:

- (1) Provides copies of a signed written release from each owner of the property on which the work will be done to the department with the registration; or
- (2) Provides a completed registration at least 5 calendar days prior to start of work to each owner of property that will be impacted by the work; and

(e) A copy of the completed registration is posted in a prominent location at the worksite prior to initiation of work at the worksite.

Env-Wt 309.04 Information Required for Routine Roadway Maintenance Registrations.

(a) To register routine roadway maintenance activities, the responsible party shall provide the information in (c), below, to the department on the applicable Routine Roadway Activity Registration as listed in (b), below, that has been signed and certified as specified in Env-Wt 311.11.

(b) The registrations required by (a), above, shall be as specified in Table 309-1, below:

Table 309-1: Routine Roadway Maintenance Registrations

| Registration | Document Identification | Document Date |
|--|--------------------------------|----------------------|
| RR-1: Culvert replacement or repair | NHDES W-06-033A | May 2019 |
| RR-2: Culvert extension | NHDES W-06-033B | May 2019 |
| RR-3: Culvert relocation | NHDES W-06-033C | May 2019 |
| RR-4: Embankment stabilization | NHDES W-06-033D | May 2019 |
| RR-5: In-kind headwall repair only; any size culvert | NHDES W-06-033E | May 2019 |
| RR-6: Headwall construction, repair, or replacement | NHDES W-06-033F | May 2019 |
| RR-7: Roadside ditch maintenance | NHDES W-06-033G | May 2019 |
| RR-8: Culvert inlet and outlet maintenance | NHDES W-06-033H | May 2019 |
| RR-9: Temporary scaffolding | NHDES W-06-033 I | May 2019 |

- (c) The responsible party shall provide the following to the department in writing:
- (1) The name, mailing address, and web site URL, if any, of the person responsible for the activity and, if the person is other than an individual, the name, daytime telephone number, and e-mail address of an individual who will serve as the person's point of contact for the activity;
 - (2) The type of activity to be undertaken;
 - (3) The location of the activity; and
 - (4) The estimated start date for the activity and the anticipated length of time the activity will take to complete.

Env-Wt 309.05 Availability of Permit-by-Notification (PBN). Any person intending to undertake activities in a jurisdictional area may do so under a PBN as authorized by RSA 482-A:11, VI if the project is:

- (a) A minimum impact project that is:
- (1) Exotic aquatic weed control activities not exceeding one acre that comply with Env-Wt 510.08(a)(3);
 - (2) Replenishment of an existing beach that complies with Env-Wt 511.07(a);
 - (3) Repair of a deck or patio that complies with Env-Wt 511.08;
 - (4) Installation of a new seasonal dock that:
 - a. Is not eligible for an SPN; and
 - b. Complies with Env-Wt 513.24(a);
 - (5) Repair of an existing legal docking structure that complies with Env-Wt 513.24(a);
 - (6) Installation of a dock anchoring pad that complies with Env-Wt 513.24(a)(3);
 - (7) Installation of a watercraft lift that complies with Env-Wt 513.24(a)(4);
 - (8) Installation of a new canopy that complies with Env-Wt 513.27(a);
 - (9) Repair of an existing wall that complies with Env-Wt 514.07(a)(3);
 - (10) Maintenance or repair of a legally-existing boathouse that complies with Env-Wt 515.07(a);
 - (11) Installation of a dry hydrant that complies with Env-Wt 518.07(a);
 - (12) Forestry activities that:
 - a. Are not eligible for an SPN; and

- b. Comply with Env-Wt 520.05(a);
- (13) Utility activities that:
 - a. Are not eligible for an SPN; and
 - b. Comply with Env-Wt 521.06(a);
- (14) Installation of residential utilities to a single-family home that complies with Env-Wt 521.06(a)(7);
- (15) Agricultural activities that comply with Env-Wt 522.06(a);
- (16) A temporary coffer dam that complies with Env-Wt 526.06(f);
- (17) Maintenance of a tidal docking structure that complies with Env-Wt 606.17(b);
- (18) Repair of a legally-existing tier 1 or tier 2 stream crossing that complies with Env-Wt 903.01(e)(2);
- (19) Repair of a legally-existing tier 3 stream crossing that complies with Env-Wt 903.01(e)(3);
- (20) Replacement of a tier 1 stream crossing that complies with Env-Wt 903.01(e)(4); and
- (21) Installation of a temporary tier 1 or tier 2 crossing that complies with Env-Wt 903.01(e)(5); and
- (b) Has no deviations from the standards and conditions specified in Env-Wt 307 or the applicable provisions of Env-Wt 500, Env-Wt 600, or Env-Wt 900.

Env-Wt 309.06 PBN Application Requirements. To obtain a PBN, the applicant shall submit to the department the following, on or with a PBN Application, NHDES W-06-27, dated the 2019 effective date of this chapter:

- (a) The applicant's name, mailing address, and daytime telephone number;
- (b) Information on the proposed project location, including:
 - (1) The location of proposed project by street address, tax map and lot number, and latitude and longitude as DDMMSS.s;
 - (2) A copy of the town tax map showing the location of the proposed project in relation to abutters;
 - (3) A copy of the appropriate US geological survey map with the property and project located;
 - (4) Name of water body, wetland, or other jurisdictional area where work is proposed;
 - (5) Original or digital photos, clearly showing the area to be impacted, mounted no more than 2 per sheet, on 8.5 inches by 11 inches paper and annotated to explain impact; and
 - (6) The results and identification number of the DataCheck;
- (c) Information on the proposed project, including:
 - (1) Identification of the applicable minimum project provision in Env-Wt 500, Env-Wt 600, or Env-Wt 900, as applicable, and any required project-specific information;
 - (2) A description of the project, including a list of the work items to be performed and detailed dimensions of the size of the impacts in jurisdictional areas;

- (3) Identification of the type of landform to be affected, including the type of wetland and type of soils;
 - (4) An accurate drawing with dimensions clearly shown to document existing site conditions and to show the location of the property;
 - (5) An accurate drawing to show the impact of the proposed activity on jurisdictional areas, including the following:
 - a. An overview of the property and proposed impact areas in relation to property lines;
 - b. The scale, if any, used on the plan;
 - c. If the drawing is not to scale, the dimensions of all existing and proposed structures and all other relevant features necessary to clearly define the project;
 - d. A labeled north-pointing arrow to indicate orientation
 - e. A legend that clearly indicates all symbols, line types, and shading used on the plan;
 - f. The location of jurisdictional areas delineated in accordance with Env-Wt 400;
 - g. Proposed sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work;
 - h. The location and type of siltation and turbidity controls indicated graphically and labeled, or annotated as necessary; and
 - i. For any project using a temporary coffer dam and for any repair of a tier 3 stream crossing, the date, signature, and seal of the licensed professional engineer who prepared or had responsibility for the plan(s);
 - (6) The number of linear feet of shoreline frontage for projects located on water bodies;
 - (7) The linear distance of the project from abutting property boundaries; and
 - (8) Any additional information required by the applicable section in Env-Wt 500, Env-Wt 600, or Env-Wt 900;
- (d) A signed statement by the applicant certifying, in addition to the certifications specified in Env-Wt 311.11, that:
- (1) The proposed project meets the conditions and limits of Env-Wt 307 and the applicable minimum impact project rule;
 - (2) If the project is to repair or replace a docking structure, the docking structure is an existing legal structure;
 - (3) The proposal is the alternative with the least adverse impact to jurisdictional areas, as required by Env-Wt 311.10(c);
 - (4) The project is not located in a PRA; and
 - (5) The applicant is aware of the limits of the PBN and understands and will comply with all conditions in the PBN and all applicable conditions in Env-Wt 307;
- (e) The application fee for minimum impact projects as required by RSA 482-A:3, I;
- (f) A signed statement by the county conservation district or certified wetland scientist, if required by the appropriate minimum impact project rule, certifying compliance with all conditions of that rule;
- (g) A signed statement from the conservation commission or, if there is no conservation commission, the local governing body, certifying that the municipality waives its right to intervene on the project; and

(h) A signed statement from the LAC, if the project is within LAC jurisdiction, certifying that the LAC waives its right to intervene on the project.

Env-Wt 309.07 PBN Review Procedures.

(a) The department shall review an application for a PBN for completeness within 2 working days of receipt.

(b) If the PBN application does not contain all information and certifications required by Env-Wt 309.06, the department shall deny the application and notify the applicant of the reason(s) for the denial in writing within 2 working days of determining the application was not complete.

(c) The department shall review a complete application for a PBN for compliance with all applicable requirements within 2 working days of determining the application is complete.

(d) Within 5 working days of receiving a complete application for a PBN, the department shall:

(1) Post a permit for the project on its website, if the application complies with applicable requirements; or

(2) Deny the application if the project covered by the application does not comply with applicable requirements and inform the applicant in writing of the reason(s) for the denial.

(e) If an application was denied because it was incomplete and the applicant wishes to proceed under a PBN, the applicant shall submit a new application for an PBN in accordance with Env-Wt 309.06.

(f) If an application was denied because the proposed project did not comply with applicable requirements and the applicant wishes to proceed, the applicant shall file:

(1) A PBN application for a project that has been modified to conform to applicable requirements; or

(2) An application for an EXP under Env-Wt 310 or a standard permit under Env-Wt 311.

Env-Wt 309.08 Conditions for PBNs.

(a) All work authorized by a PBN shall comply with all applicable conditions specified in Env-Wt 307 and the applicable provisions of Env-Wt 500, Env-Wt 600, or Env-Wt 900.

(b) Subject to Env-Wt 309.09, after the completion of work authorized by a PBN no other work that would require any permit or other authorization under RSA 482-A or subtitle Env-Wt shall be undertaken on the subject property pursuant to another PBN or EXP, or pursuant to an SPN, for a period of 12 months from the date the PBN was issued.

(c) Within 10 days following completion of the work covered by a PBN, the person responsible for the project shall submit to the department confirmation of completion of the project, either on paper or electronically.

Env-Wt 309.09 Work Subsequent to Work Under a PBN; Reclassification.

(a) Work that is wholly unrelated to the work covered by the PBN may be done within 12 months of the date the PBN was issued under another PBN or EXP, or pursuant to an SPN, if the property owner submits information, including a plan, to demonstrate that:

(1) The proposed work is wholly unrelated to and separate from the work already done under the prior PBN, EXP, or SPN; and

(2) The proposed work and the work already done under the prior PBN, EXP, or SPN do not, when combined, constitute a project for which a standard permit is required.

(b) If the property owner wishes to undertake work that is related to the work covered by the PBN within 12 months of the date the PBN was issued, the owner shall submit information about the proposed work and the department shall evaluate the proposed work together with the work covered by the PBN to assess the cumulative impact to determine whether the project as a whole meets a different classification under Env-Wt 400, Env-Wt 500, Env-Wt 600, or Env-Wt 900, as applicable.

PART Env-Wt 310 SUBMISSIONS FOR EXPEDITED PERMITS (EXPs)

Env-Wt 310.01 EXP Submission Requirements. To obtain an EXP, the applicant shall submit to the department the following, on or with an EXP Application, NHDES W-06-012, dated the 2019 effective date of this chapter:

(a) The name, mailing address, and daytime telephone number including area code of the applicant, the applicant's agent if any, and the owner of the subject property if not the applicant;

(b) Information on the proposed project location, including:

- (1) The location of proposed project by street address, tax map and lot number, and latitude and longitude as DDMMSS.s;
- (2) A copy of town tax map showing the location of the proposed project in relation to abutters;
- (3) A list of abutters' names and mailing addresses to cross-reference with the tax map;
- (4) A copy of the appropriate USGS map with the property and project clearly marked;
- (5) Name of water body, wetland, or other jurisdictional area where work is proposed;
- (6) Photos that:
 - a. Clearly show the area to be impacted;
 - b. Are mounted or printed no more than 2 per sheet on 8.5 inches x 11 inches paper; and
 - c. Are annotated to explain impact;
- (7) Whether the proposed project location is in a PRA; and
- (8) The results and identification number of the DataCheck;

(c) Information on the proposed project, including:

- (1) Identification of the applicable minimum impact provision(s) in Env-Wt 500, Env-Wt 600, or Env-Wt 900 and the project-specific information required by those provision(s);
- (2) A brief description of the project and the purpose of the project, outlining the scope of work to be performed and whether impacts are temporary or permanent, including the dimensions of the impacts in jurisdictional areas;
- (3) Identification of the type of landform to be affected, including the type of wetland;
- (4) An accurate drawing showing the precise location, with detailed dimensions clearly annotated to document existing site conditions and to show the proposed impacts to the jurisdictional areas;
- (5) An accurate drawing to show the impact of the proposed activity on jurisdictional areas, including the following:
 - a. An overview of the property and proposed impact areas in relation to property lines;

- b. The scale, if any, used on the drawing;
 - c. If the drawing is not to scale, the dimensions of all existing and proposed structures and all other relevant features necessary to clearly define the project;
 - d. A labeled north-pointing arrow to indicate orientation;
 - e. A legend that clearly indicates all symbols, line types, and shading used on the plan;
 - f. The location of the jurisdictional areas delineated in accordance with Env-Wt 400;
 - g. Proposed sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work;
 - h. The location and type of siltation and turbidity controls indicated graphically and labeled or annotated as necessary;
 - i. For any project using a temporary coffer dam and for any repair of a tier 3 stream crossing, the date, signature, and seal of the licensed professional engineer who prepared or had responsibility for the plan(s);
 - k. For restoration/enhancement projects, the information required to be shown on a map by Env-Wt 525;
 - l. For tidal minimum impact projects, the information required to be shown on a map by Env-Wt 600; and
 - m. For minimum impact stream crossing projects, the information required to be shown on a map by Env-Wt 900;
- (6) The number of linear feet of shoreline frontage for projects located on water bodies;
- (7) The linear distance of the project from abutting property boundaries;
- (8) As applicable:
- a. The type of dock construction;
 - b. The diameter of culvert(s) to be used for road or driveway crossings;
 - c. The additional information specified in Env-Wt 522 for minimum impact agricultural applications;
 - d. Plans for maintenance of retaining walls, as specified in Env-Wt 514;
 - e. Specifications and plans for maintenance of rip-rap, as required by Env-Wt 514; and
 - f. Any other project-specific plan or information required under Env-Wt 500;
- (d) A signed statement by the applicant certifying, in addition to the certifications specified in Env-Wt 311.11, that:
- (1) The proposed project meets the conditions and limits of the applicable minimum impact project rule;
 - (2) All abutters have been notified;
 - (3) If the project is to repair or replace a docking structure, the docking structure is an existing legal structure;
 - (4) The proposal is the alternative with the least adverse impact to jurisdictional areas, as required by Env-Wt 313.03;

- (5) The project is not an after-the-fact application;
- (6) The project is:
 - a. Not located in a PRA; or
 - b. Is located in a PRA but is subject to a classification adjustment under Env-Wt 407.02 or a project-type exception (PTE) under Env-Wt 407.04; and
- (7) The applicant is aware of the limits of the EXP and understands and will comply with all conditions in the EXP and all applicable conditions in Env-Wt 307;
- (e) The application fee for minimum impact projects as required by RSA 482-A:3, I;
- (f) A signed statement by the county conservation district or certified wetland scientist, where required by the appropriate minimum impact project rule, certifying compliance with all conditions of that rule;
- (g) A signed statement from the municipal conservation commission or, if there is no conservation commission, the local governing body, certifying that the municipality waives its right to intervene on the project; and
- (h) A signed statement from the LAC, if the project is within LAC jurisdiction, certifying that the LAC waives its right to intervene on the project.

Env-Wt 310.02 EXP Review Procedures.

- (a) The department shall review the application for an EXP for completeness and compliance with applicable department rules within 30 calendar days of receipt if the application has been signed as required by Env-Wt 310.01(g) and (h).
- (b) If the application is complete, complies with applicable requirements, and has the signed statements required by Env-Wt 310.01(g) and (h), the department shall issue an EXP and post the information on its website within one working day of determining that the application was complete and in compliance with all applicable requirements.
- (c) If the application is lacking anything other than the signed statements required by Env-Wt 310.01(g) and (h), or if the project covered by the application does not comply with applicable requirements, the department shall:
 - (1) Deny the application within one working day of determining that the application was incomplete or not in compliance; and
 - (2) Inform the applicant in writing of the reason(s) for the denial.
- (d) If the original EXP application was denied because it was incomplete as described in (c), above, and the applicant wishes to proceed under a EXP, the applicant shall submit a new application for an EXP that provides all of the required information, certifications, and fee.
- (e) If the original EXP application was denied because the proposed project did not comply with applicable requirements and the applicant wishes to proceed, the applicant shall file:
 - (1) An EXP application for a project that has been modified to conform to applicable requirements; or
 - (2) An application for a standard permit pursuant to Env-Wt 311.
- (f) If the application was complete except for one or both of the signed statements required by Env-Wt 310.01(g) and (h), the application shall be processed as a standard application under Env-Wt 312, provided that no additional fee shall be required.

Env-Wt 310.03 Conditions for EXPs. The following conditions shall apply to all work done pursuant to an EXP:

(a) No other work shall be done on the subject property pursuant to another EXP or an SPN for a period of 12 months from the date the EXP was issued unless the property owner submits information, including a plan, to demonstrate that:

- (1) The proposed work is wholly unrelated to and separate from the work already done under the EXP or SPN; and
- (2) The proposed work and the work already done under the EXP or SPN do not, when combined, constitute a project for which a standard permit is required;

(b) The work shall comply with all applicable conditions specified in Env-Wt 307; and

(c) Any work shall be timed and carried out to protect documented cold water, threatened or endangered fisheries.

Env-Wt 310.04 Permit Required for Small Motor Mineral Dredging (SMMD).

(a) As required by RSA 482-A:3, XI(b), any person who wishes to engage in small motor mineral dredging (SMMD) shall obtain a permit from the department prior to engaging in such dredging. The permit shall be obtained as specified in Env-Wt 310.05 through Env-Wt 310.08.

(b) As provided in RSA 482-A:3, XI(a), SMMD shall be limited to minimum impact projects that do not exceed the following limits:

- (1) Power equipment shall be limited to 5 horsepower;
- (2) Suction dredges shall be limited to a single 4-inch diameter intake nozzle; and
- (3) Sluice and rocker boxes shall be limited to 10 SF.

(c) As provided in RSA 482-A:3, XI(c), any person wishing to engage in mineral dredging that in any way exceeds the limits specified in (b), above, shall first obtain, in addition to a standard permit under Env-Wt 311, a mining permit from the department of natural and cultural resources pursuant to RSA 12-E.

(d) As required by RSA 482-A:3, XI(f), any person who has obtained a SMMD permit from the department shall, prior to engaging in any SMMD, obtain the written permission to engage in such activity from the riverbed landowner on whose property the activity is to be conducted.

Env-Wt 310.05 Applications for SMMD Permits.

(a) To apply for an SMMD permit, the applicant shall submit the following to the department on or with a "Small Motor Mineral Dredging" application, NHDES W-06-030:

- (1) The applicant's name, mailing address, and e-mail address or daytime telephone number;
- (2) The calendar year for which the application is being made;
- (3) Whether the applicant is a New Hampshire resident and if so, proof of New Hampshire residency as specified in (b), below;
- (4) Proof of age as specified in (c), below, if New Hampshire residency is not claimed;
- (5) A signed statement certifying that, in addition to the certifications specified in Env-Wt 311.11:
 - a. The applicant's intended activities do not exceed any of the limits established in RSA 482-A:3, XI(a), as restated in Env-Wt 310.04(b); and

b. The applicant has read and will comply with Env-Wt 307 relative to those conditions that apply to all activities and those that apply specifically to dredging activities;

(6) The location(s) where the dredging will occur; and

(7) A check or money order for the filing fee required by RSA 482-A:3, XI(h), currently \$25 for residents of the state of New Hampshire and \$50 for out-of-state applicants.

(b) Any applicant claiming New Hampshire residency shall:

(1) Provide a clear photocopy of his or her New Hampshire driver's license or New Hampshire non-driver ID; and

(2) Clearly print the license or ID number on the application.

(c) If the applicant is not claiming New Hampshire residency, the applicant shall submit a clear photocopy of his or her driver's license, non-driver ID, or other documentation issued by a government entity that shows the applicant's date of birth or otherwise establishes that the applicant is 18 years old or older.

Env-Wt 310.06 Submission to Municipality and Conservation Commission Review Not Required. As provided in RSA 482-A:3, XI(b):

(a) An application for a SMMD permit shall be filed directly with the department; and

(b) The application shall not be subject to:

(1) The requirements of RSA 482-A:3, I relative to notice and fees; or

(2) The requirements of RSA 482-A:11, III relative to conservation commission intervention review.

Env-Wt 310.07 Issuance of SMMD Permit.

(a) The department shall issue a SMMD permit to any individual who:

(1) Submits a complete application as specified in Env-Wt 310.03(a); and

(2) Demonstrates that he or she is 18 years of age or older.

(b) Each individual 18 years of age or older who is participating in SMMD shall have his or her own permit.

(c) Individuals who are 17 years of age or younger may participate in SMMD only if accompanied by an individual who possesses a valid SMMD permit and only to the extent allowed by such individual.

(d) As authorized by RSA 482-A:3, XI(e), the department shall include in the permit such conditions and restrictions on timing and location as are necessary to protect the public interest in the environment and wildlife protection.

(e) The department shall not issue an SMMD permit for dredging in a cold water fishery spawning or nursery area or protected species area.

(f) As provided in RSA 482-A:3, XI(b), any permit issued by the department for SMMD shall expire at the end of the calendar year in which it is issued.

Env-Wt 310.08 Post-Issuance Requirements for SMMD Permits.

(a) Subject to (b), below, any individual operating under an SMMD permit shall post the permit in the immediate vicinity of the dredging operation where it can be seen by anyone approaching the activity.

(b) If it is not practical to post the permit, the permittee shall have the original permit or a clear copy thereof available for inspection by anyone who requests to see it.

PART Env-Wt 311 APPLICATIONS AND PROCEDURES FOR STANDARD PERMITS

Env-Wt 311.01 Application Preparation for All Projects. Prior to finalizing the details of a proposed project for which a standard permit is needed, the applicant shall:

- (a) Complete the required planning for all projects established in Env-Wt 306.05;
- (b) If the DataCheck identifies any areas of concern relative to protected species or habitat, determine how to avoid and minimize project-related impacts on the resource by coordinating with:
 - (1) The NHF&G for rare or protected animal species and habitat; and
 - (2) The NHB for protected plants or exemplary natural communities;
- (c) If the proposed activity impacts a PRA, then:
 - (1) Review and complete the standard application criteria and design requirements and provide any additional minimization and avoidance design features; or
 - (2) Propose compensatory mitigation in accordance with Env Wt 800;
- (e) For work proposed within LAC jurisdiction, provide a copy of the final application and plans to the LAC prior to filing the application with the department; and
- (f) Ensure that impacts have been avoided and minimized to the greatest extent practicable, as specified in Env-Wt 313.03.

Env-Wt 311.02 Pre-Application Requirements for Projects Requiring Compensatory Mitigation. Prior to finalizing the details of a proposed project that is required by Env-Wt 313.04 to provide compensatory mitigation, the applicant shall:

- (a) Undertake the reviews and responses required by Env-Wt 311.01;
- (b) Evaluate permittee-responsible compensatory mitigation as defined in Env-Wt 802.05;
- (c) If permittee-responsible compensatory mitigation is not feasible, prepare:
 - (1) An explanation of what was considered and why preservation of an upland buffer as specified in Env-Wt 803.10(b) is not a feasible alternative;
 - (2) An explanation of what was considered and why restoration, enhancement, or creation of wetlands on the subject property as specified in Env-Wt 803.10(c) and Env-Wt 803.10(d) is not a feasible alternative; and
 - (3) A statement that an in-lieu mitigation payment that can be provided in accordance with RSA 482-A:28 is the chosen form of compensatory mitigation, with the amount to be calculated in accordance with RSA 482-A:30 or RSA 482-A:30-a, as applicable;
- (d) Except for projects where the department of transportation is the applicant and at least 30 days but not more than 90 days before submitting the application schedule, attend a pre-application meeting with the department to discuss the proposed project and all applicable requirements and to coordinate the review of the compensatory mitigation proposal;
- (e) Bring all information collected or otherwise prepared pursuant to Env-Wt 311.01 and (a)-(c), above, to the meeting; and

(f) Provide the following information to the department at or prior to the meeting, as applicable to the type of compensatory mitigation proposed:

- (1) The location of the proposed project site and whether the project is located in any area designated in the WAP as highest-ranked habitat based on ecological conditions;
- (2) If the impact is to wetland resources, the wetland classification as identified on the national wetland inventory maps available from the New Hampshire statewide geographic information system clearinghouse, NH GRANIT, accessible at <http://www.granit.unh.edu/>;
- (3) The location of the proposed mitigation project, including whether the project is located in any area designated in the WAP as highest quality habitat in the state or biological region;
- (4) The type of compensatory mitigation proposed;
- (5) Aerial photographs of the proposed project site, compensatory mitigation site, and surrounding areas;
- (6) Division of historic resources information regarding the compensatory mitigation site;
- (7) A brief narrative explaining the project impacts and how the proposed compensatory mitigation will offset the loss of functions and values of the wetlands that would be impacted by the project for which the permit is sought;
- (8) An estimated date for submitting a complete compensatory mitigation proposal; and
- (9) Information, compensatory mitigation plans, and concepts discussed with the local conservation commission.

Env-Wt 311.03 Applications for Standard Permits.

(a) To apply for a standard permit, the applicant shall submit a complete application package, as specified in (b), below, in accordance with RSA 482-A:3, I(a)(1).

(b) A complete application package for a standard permit shall include the following:

- (1) A completed standard permit application as specified in Env-Wt 311.04, dated, signed, and certified as specified in Env-Wt 311.11;
- (2) The correct fee, determined as specified in RSA 482-A:3, I(b) or (c), as applicable, subject to any cap established by RSA 482-A:3, X;
- (3) The results of the actions required by Env-Wt 311.01(a)-(c);
- (4) The project plans described in Env-Wt 311.05;
- (5) The maps, or electronic shape files and meta data, and other attachments specified in Env-Wt 311.06;
- (6) An explanation of how the avoidance and minimization requirements of Env-Wt 313.03 have been met, as specified in Env-Wt 311.07;
- (7) An explanation as to methods, timing, and manner as to how the project will meet standard permit conditions specified in Env-Wt 307;
- (8) If applicable, the information regarding proposed compensatory mitigation specified in Env-Wt 311.08;
- (9) Any additional information specific to the type of resource as specified in Env-Wt 311.09;

(10) For minor and major projects, a functional assessment of all wetlands on the project site as specified in Env-Wt 311.10;

(11) Any additional project-specific information required by Env-Wt 500, Env-Wt 600, or Env-Wt 900, as applicable;

(12) A list containing the name, mailing address, and tax map/lot number(s) of each abutter to the subject property; and

(13) Copies of certified postal receipts or other proof of receipt of the notices that are required by RSA 482-A:3, I(d).

Env-Wt 311.04 Application Information. The applicant shall provide the following information on the wetlands standard permit application, NHDES W-06-012, dated the 2019 effective date of this chapter:

(a) Applicant name, trust, company name, mailing address, email or fax number, phone number and email address, and authorization for the department to communicate by email;

(b) Property owner information if different than the applicant; and all contact information required under (a), above;

(c) Authorized agent name, company name, mailing address, email address or fax number, and authorization to communicate by email;

(d) Property owner signature as required by Env-Wt 311.11;

(e) Municipal signatures, where required by application process;

(f) Town or clerk signature;

(g) The square feet of wetland impact areas and the linear feet of surface water impact areas for both temporary and permanent impacts based on type of jurisdiction area, including the following:

(1) Forested wetland;

(2) Scrub-shrub wetland;

(3) Emergent wetland;

(4) Wet meadow;

(5) Intermittent stream;

(6) Perennial stream or river;

(7) Stream bank;

(8) Lake or pond;

(9) Lake or pond bank or shoreline;

(10) Tidal waters;

(11) Tidal marsh;

(12) Sand dune;

(13) Prime wetland or duly-established 100-foot buffer;

(14) Tidal buffer zone, and whether it is developed;

(15) Docking for lake, river, or tidal water; and

(16) Vernal pool.

(h) How the application fee was calculated based on (g), above;

(i) A brief description of the project and the purpose of the project, outlining the scope of work to be performed and whether impacts are temporary or permanent;

(j) The narrative or checklist on avoidance and minimization required by Env-Wt 311.07, the wetland assessment required by Env-Wt 311.10, resource-specific information required by Env-Wt 311.09, and project design considerations required by Env-Wt 313; and

(k) Project-specific information required by Env-Wt 500, 600, 800, and 900, as applicable.

Env-Wt 311.05 Required Project Plans.

(a) The applicant shall provide the following information on one or more plan sheets that conform to (c), below:

(1) The name of the applicant;

(2) Except for the department of transportation, if the applicant has not yet acquired an enforceable proprietary interest in the property, each owner of the subject property as of the date the application is prepared;

(3) The tax map, block, unit, and lot number of each parcel in the subject property;

(4) The date each plan was originally prepared and the date of each revision, if any;

(5) The name and professional license number of the individual responsible for each portion of the plan, such as the wetland delineation, the survey, and the engineering where licensed or certified;

(6) An overview of the subject property and proposed impact areas in relation to property lines;

(7) All existing and proposed easement boundaries, including drainage and maintenance access easements, in relation to the property lines of the subject property;

(8) For department of transportation applications of over 400 linear feet, roadway stations shown every 100 feet;

(9) Any impacts proposed to a right-of-way over another's land;

(10) The footprint and vertical dimensions of each existing structure, each proposed structure, and all other relevant features necessary to clearly define the project;

(11) A labeled north-pointing arrow that points true or magnetic north to indicate orientation;

(12) A legend that clearly identifies all symbols, line types, and shading used on the plan;

(13) The location of jurisdictional areas delineated in accordance with Env-Wt 406, and whether any have been designated as prime wetlands in accordance with RSA 482-A:15;

(14) Except for the department of transportation, the name and professional license number of the individual responsible for the delineation of jurisdictional areas, including but not limited to wetlands, streams, and vernal pools on the property, if other than the individual identified as being responsible for the plan pursuant to (5), above;

(15) All shorelines and surface waters on or within 250 feet of the nearest impact area and, if applicable, all coastal features as described in Env-Wt 603 including but not limited to all sand dunes and all areas within 100 feet of the highest observable tideline;

- (16) The location of the 100-year floodplain, if on or within 100 feet of the subject property;
 - (17) If the topography of the subject property is to be permanently altered, existing and proposed final contours at intervals not greater than 2 feet in all areas to be disturbed and within 250 feet thereof on the subject property, and a reference elevation referenced to the North American Datum of 1983 (NAD 83) or its successor;
 - (18) Labeled and lightly shaded or stippled areas indicating limits of all temporary and permanent impacts in jurisdictional areas;
 - (19) Proposed methods of erosion, siltation, sedimentation, and turbidity control and management, indicated graphically and labeled with the type of control and the contractor responsible for monitoring the controls if known at the time of the application;
 - (20) If the project proposes the subdivision of land, the location of all proposed lot lines on one or more plans stamped by a land surveyor or a professional engineer licensed pursuant to RSA 310-A;
 - (21) If the project involves construction of vegetative stabilization, bioengineering, rip-rap slope, retaining wall, or other bank stabilization structure, the information required by Env-Wt 514 or Env-Wt 600, as applicable; and
 - (22) All information necessary to clearly delineate and describe the project, including any project-specific information specified in Env-Wt 500 or Env-Wt 600, as applicable.
- (b) Plans depicting wetland boundaries that are submitted with an application for a standard permit shall:
- (1) Show the location and number of the individual wetland boundary flags or other markings, as located by survey or by GPS;
 - (2) If prepared by a certified wetland scientist, be stamped by the certified wetland scientist who prepared the plan(s) or who oversaw the wetland boundary delineation if done by an apprentice or an associate who is not a certified wetland scientist;
 - (3) If not prepared by a certified wetland scientist, be accompanied by a report that includes an existing conditions plan that has been prepared and stamped by a certified wetland scientist;
 - (4) If prepared by a homeowner acting on his or her own behalf for the development of the homeowner's primary residence, be signed by the homeowner in accordance with Env-Wt 311.11;
 - (5) Include notes that specify:
 - a. The date(s) on which the wetlands delineation was performed; and
 - b. The method of delineation; and
 - (6) Be accompanied by:
 - a. A report of existing conditions, if the jurisdictional areas have not been disturbed; or
 - b. US Army Corps of Engineers data sheets, if disturbed conditions exist.
- (c) Each plan sheet shall:
- (1) Include a title block in the lower right-hand corner that contains:
 - a. The information specified in (a)(1)-(4), above; and
 - b. The scale of the plan as specified in (3), below, with a graphical scale bar;
 - (2) Be on white paper that is either 8.5 x 11 inches, 11 x 17 inches, or 22 x 34 inches;

- (3) Be at a scale of one inch equals 100 feet for subdivisions, otherwise at a scale of one inch equals 400 feet or a scale that provides greater detail;
- (4) Be numbered consecutively and include an index sheet if more than one sheet; and
- (5) If on paper that is larger than 8.5 x 11 inches, be folded as close to that size as possible with the title block facing up.

Env-Wt 311.06 Maps and Other Attachments. The applicant shall submit the following with the completed application form:

(a) A copy of a town tax map showing the subject property, the location of the project on the property, and the location of properties of abutters with each lot labeled with the name and mailing address of the abutter;

(b) Dated and labeled photographs that:

(1) Clearly depict:

- a. All jurisdictional areas, including but not limited to portions of wetland, shoreline, or surface water where impacts have or are proposed to occur; and
- b. All existing shoreline structures; and

(2) Are mounted or printed no more than 2 per sheet on 8.5 x 11 inch sheets;

(c) A copy of the appropriate USGS map or updated data based on LiDAR at a scale of one inch equals 2,000 feet showing the location of the subject property and proposed project;

(d) A narrative that describes the work sequence, including pre-construction through post-construction, and the relative timing and progression of all work;

(e) For all projects identified in Env-Wt 600, a copy of the recorded deed with book and page numbers for the property;

(f) If the applicant is not the owner in fee of the subject property, documentation of the applicant's legal interest in the subject property, provided that for utility projects in a utility corridor, such documentation may comprise a list that:

- (1) Identifies the county registry and book and page numbers of all of the easements or other recorded instruments that provide the necessary legal interest; and
- (2) Has been certified as complete and accurate by a knowledgeable representative of the applicant;

(g) The NHB memo containing the NHB identification number and results and recommendations from NHB as well as any written follow-up communications such as additional memos or email communications with either NHB or NHF&G;

(h) A statement of whether the applicant has received comments from the local conservation commission and, if so, how the applicant has addressed the comments;

(i) For projects in LAC jurisdiction, a statement of whether the applicant has received comments from the LAC and, if so, how the applicant has addressed the comments; and

(j) If the applicant is also seeking to be covered by the state general permits, a statement of whether comments have been received from any federal agency and, if so, how the applicant has addressed the comments.

Env-Wt 311.07 Demonstration of Avoidance and Minimization.

(a) Subject to (d), below, the applicant shall submit with the application a written narrative that explains how all impacts to functions and values of all jurisdictional areas have been avoided and minimized to the maximum extent practicable, as required by Env-Wt 313.03.

(b) The explanation required by (a), above, shall include the following:

- (1) Whether the primary purpose of the proposed project is to construct a water access structure or requires access through wetlands to reach a buildable lot or portion thereof;
- (2) For industrial or commercial development, project impacts that would be required to create a buildable lot, proposed impacts over one acre, or proposed projects that impact a PRA, whether any other properties reasonably available to the applicant, whether already owned or controlled by the applicant or not, could be used to achieve the project's purpose without altering the functions and values of any jurisdictional area, in particular wetlands, streams, and PRAs;
- (3) Whether alternative designs or techniques, such as different layouts, different construction sequencing, or alternative technologies could be used to avoid impacts to jurisdictional areas or their functions and values on the subject property or on other property that is reasonably available to the applicant as described in the A/M BMPs, available as noted in Appendix B; and
- (4) How the project conforms to Env-Wt 311.10(c).

(c) For a minimum impact project, the applicant may replace the explanation required by (b)(4), above, with a certification signed by a certified wetland scientist that the project is located and designed to minimize impacts to wetlands functions and values.

(d) In lieu of a written narrative, the applicant may submit a completed "Avoidance and Minimization Checklist" dated the 2019 effective date of this chapter, NHDES W-06-050.

Env-Wt 311.08 Required Information for Projects with Compensatory Mitigation. For any project for which compensatory mitigation is required, the applicant shall submit the following as part of the application:

(a) The type of compensatory mitigation to be proposed by the applicant and, if permittee-responsible mitigation will be proposed, the following preliminary information:

- (1) If preservation of an upland buffer is being proposed as compensatory mitigation:
 - a. A baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area; and
 - b. A summary of the conservation values and goals for the proposed preservation area that will be incorporated into the final conservation easement;
- (2) If wetland restoration, enhancement, or creation is being proposed as compensatory mitigation, a plan noting the location of the project and a summary of the proposed measures to achieve wetland restoration, enhancement, or creation; and
- (3) If restoration or enhancement of a stream is being proposed as compensatory mitigation, a plan showing the location of the project and a summary of the proposed measures to achieve stream restoration or enhancement; or

(b) A complete compensatory mitigation proposal as specified in Env-Wt 312.04.

Env-Wt 311.09 Required Resource-Specific Information.

(a) For projects in tidal areas, the applicant also shall submit the project-specific information required by Env-Wt 600, including but not limited to the datum and jurisdictional limits specified therein.

(b) For projects affecting non-tidal surface water shoreline, the applicant also shall submit the following:

- (1) The general shape of the shoreline including the length of frontage and the normal high water elevation;
- (2) The footprint of all existing and proposed structures on the subject property;
- (3) The intended use of each proposed structure; and
- (4) The distance from existing and proposed work to abutting property lines.

(c) For projects within the protected shoreline as defined by RSA 483-B, the applicant also shall provide the following:

- (1) The reference line;
- (2) The location of all existing structures between the primary building line and the reference line;
- (3) The location of all proposed structures;
- (4) For projects adjacent to tidal waters, the landward limit of the 100-foot tidal buffer zone; and
- (5) The total disturbed area within the protected shoreline.

(d) For all stream crossing projects, the applicant also shall submit the information specified in Env-Wt 903.

Env-Wt 311.10 Functional Assessment.

(a) The functional assessment required by Env-Wt 311.03(b)(10) for minor or major projects impacting non-tidal wetlands and watercourses shall be:

- (1) Performed by a certified wetland scientist; and
- (2) Completed using one of the following methods:
 - a. US ACE Highway Methodology Workbook, dated 1993, together with the US ACE New England District Highway Method Workbook Supplement, dated 1999, both available as noted in Appendix B; or
 - b. An alternative scientifically-supported method with cited reference and the reasons for the alternative method substantiated.

(b) The functional assessment required by Env-Wt 311.03(b)(10) for minor or major projects impacting tidal areas shall be:

- (1) Performed by a certified wetland scientist who has knowledge and experience in evaluating tidal wetlands; and
- (2) Completed as specified in Env-Wt 600.

(c) After completing the functional assessment, the applicant shall:

- (1) Use the results of the functional assessment to select the location of the proposed project having the least impact to wetlands functions;

- (2) Design the proposed project to have the least impact to wetlands functions;
- (3) Where impact to wetland functions is unavoidable, limit the project impacts to the least valuable functions on the site while avoiding and minimizing impacts to the highest and most valuable functions; and
- (4) Include on-site minimization measures and construction management practices to protect aquatic resource functions.

(d) For minor or major projects requiring a standard permit without mitigation, the applicant shall submit a wetland evaluation report that includes completed checklists and information demonstrating the relative functions and values of each wetland evaluated.

Env-Wt 311.11 Required Signatures and Certifications. Any notice, registration, or application required to be filed under this chapter shall be signed, dated, and certified as follows:

- (a) If the applicant is an individual, the applicant shall sign and date the application;
- (b) If the applicant is an organization or other legal entity, the official of the applicant who has been authorized to sign the application shall sign and date the application and print or type his or her name and title on the application;
- (c) If the applicant has an authorized agent, the authorized agent also shall sign and date the application and print or type his or her name and title on the application;
- (d) Each signature provided pursuant to (a)-(c), above, shall constitute certification by the signer that:
 - (1) To the best of the signer's knowledge and belief, all required notifications have been provided;
 - (2) The information submitted on or with the application is true, complete, and not misleading to the best of the signer's knowledge and belief; and
 - (3) The signer understands that:
 - a. The submission of false, incomplete, or misleading information constitutes grounds for the department to:
 - 1. Deny the application;
 - 2. Revoke any approval that is granted based on the information; and
 - 3. If the signer is a certified wetland scientist, licensed surveyor, or professional engineer licensed to practice in New Hampshire, refer the matter to the joint board of licensure and certification established by RSA 310-A:1; and
 - b. The signer is subject to the penalties specified in New Hampshire law for falsification in official matters, currently RSA 641; and
- (e) Each signature provided pursuant to (a) or (b), above, shall constitute authorization for the municipal conservation commission and the department to inspect the site of the proposed project, except for minimum impact forestry SPN projects and minimum impact trail projects, where the signature shall authorize only the department to inspect the site pursuant to RSA 482-A:6, II.

Env-Wt 311.12 After-the-Fact Applications.

(a) In addition to a complete application package as specified in Env-Wt 311.03, an after-the-fact application shall include the following:

- (1) A current conditions plan that clearly identifies all disturbances and construction performed without a permit, delineated as specified in chapter 5 of the US ACE Regional Supplement, available as noted in Appendix B;
- (2) Copies of aerial photographs and other information to document the basis for the delineation;
- (3) A restoration plan for all impacted jurisdictional areas to be restored, prepared by a licensed professional, with a wetland delineation stamped by a certified wetland scientist;
- (4) A monitoring plan designed to ensure that the restoration is successful; and
- (5) An explanation as to why work was performed prior to having a permit.

(b) Applications received after work is completed shall be subjected to the same technical review and criteria as any other standard application.

(c) The department's acceptance of an after-the-fact application shall not in any way preclude or limit the exercise of any enforcement authority conferred by law on the department, the attorney general, or any other federal, state, or local authority.

Env-Wt 311.13 Amendments to Applications.

(a) Subject to (b), below, an applicant may revise a proposed project by submitting the information required by Env-Wt 311.03 to amend the application for the project prior to the department's issuance of a final decision on the application. The applicant shall provide notice to each person to whom notice of the original application was sent prior to filing the amended application with the department.

(b) If the proposed change constitutes a "significant amendment" as provided in RSA 482-A:3, XIV(e), reprinted in Appendix C, the applicant shall file a new application, not an amendment to an existing application.

PART Env-Wt 312 STANDARD PERMIT APPLICATION PROCESSING AND REVIEW

Env-Wt 312.01 Identification of Applications; Retention of Files.

(a) Upon receipt of a complete application, the department shall assign a file number and maintain a file on each application.

(b) The department shall retain files as specified in Env-Wt 105.01.

Env-Wt 312.02 Administrative Completeness Determination.

(a) Upon receipt of an application, the department shall:

- (1) Determine whether the application is administratively complete; and
- (2) Proceed in accordance with RSA 482-A:3, XIV(a)(1), as reprinted in Appendix C.

(b) An application shall be determined to be administratively complete if:

- (1) The application form required by Env-Wt 311.03(b)(1) is complete and signed as required;
- (2) The correct fee is submitted with the application;
- (3) The application package contains all information, plans, maps, and other attachments required by Env-Wt 311.03(b)(3)-(12), as applicable; and
- (4) The application package contains compensatory mitigation plans as required in Env-Wt 312.03 and Env-Wt 312.04.

Env-Wt 312.03 Completeness Determination of Compensatory Mitigation Proposals.

(a) If the applicant submits preliminary information pursuant to Env-Wt 310.08(a), the department shall review the information to determine whether the information is sufficient for the department to understand the nature and appropriateness of the proposed mitigation.

(b) If the applicant submits a complete mitigation proposal pursuant to Env-Wt 311.08(b) and Env-Wt 312.04, the department shall review the information to ensure the minimum necessary compensatory mitigation components are included for technical review of the project and shall be subject to the statutory requirements under RSA 482-A.

(c) The department shall notify the applicant in writing of its determination under (a) or (b), above, as applicable. If the information does not meet the standard specified in (a) or (b), above, as applicable, the written notice shall specify the reason(s).

Env-Wt 312.04 Complete Mitigation Proposal Components. The applicant shall provide the following information in order for a compensatory mitigation proposal to be deemed a complete mitigation proposal:

(a) An explanation supporting the type of mitigation proposed pursuant to Env-Wt 801.03;

(b) Where preservation of an upland buffer is being proposed, information showing that the proposal meets the criteria specified in Env-Wt 804 together with the following:

(1) A baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area;

(2) A copy of the proposed conservation easement language or language noting conveyance of fee simple ownership which protects the conservation values in perpetuity, in accordance with Env-Wt 808.14;

(3) A surveyed plan, in accordance with Env-Wt 808.11, showing the location of the proposed conservation area boundaries; and

(4) A statement from the landowner or prospective seller that it is willing to transfer the property, and proposed grantee indicating that the proposed grantee will accept the easement or fee simple deed;

(c) For any proposal calling for a transfer of easements or fee simple ownership, documentation showing that the proposed grantee is one of the following:

(1) A state natural resource agency such as NHF&G or NH DNCR;

(2) A municipality with a conservation commission in the town where the property is located;

(3) A conservation organization such as a state-wide, regional, or local conservation organization that can provide documentation from the United States Internal Revenue Service stating that it is an income tax-exempt, publicly supported corporation, pursuant to 501(c)(3) of the United States Internal Revenue Code; or

(4) A local river management advisory committee as established by RSA 483:8-a, authorized to accept and expend funds under RSA 483:13, that has tax exempt status pursuant to US Internal Revenue Code Section 170(a)(1);

(d) For any proposal calling for a transfer of easements or fee simple ownership to a conservation organization, documentation such as minutes of the meeting at which the standards and practices were adopted showing that the conservation organization has:

- (1) Accepted the Land Trust Alliance (LTA) standards and practices as specified in “LTA Standards and Practices”, revised 2017; or
 - (2) A record of holding easements and managing them in a manner that is consistent with the purposes of the easements;
- (e) Where restoration, enhancement, or creation is being proposed as compensatory mitigation, information showing that the proposal meets the criteria specified in Env-Wt 805 or Env-Wt 806, as applicable, together with all required plans and proposals; and
- (f) For an applicant who has determined that permittee-responsible mitigation is not feasible as specified in Env-Wt 801.03, the information required by Env-Wt 803 and a preliminary estimate of the in-lieu mitigation payment.

Env-Wt 312.05 Technical Review.

- (a) Once an application has been determined to be administratively complete, the department shall proceed with its technical review of the application as specified in RSA 482-A:3, XIV(a)(2)-(5), reprinted in Appendix C.
- (b) If the information submitted as part of the application is not sufficient for the department to determine that the criteria for issuing a permit specified in Env-Wt 313.01 are met, the department shall notify the applicant as specified in RSA 482-A:3, XIV(a)(2)-(5), reprinted in Appendix C.

PART Env-Wt 313 PROCEDURES AND CRITERIA FOR STANDARD PERMIT DECISIONS

Env-Wt 313.01 Criteria for Approving Standard Permit Applications.

- (a) The department shall not approve an application for a standard permit and issue a permit unless:
- (1) The applicant has:
 - a. Met the requirements of Env-Wt 311.10 regarding functional assessments;
 - b. Met the avoidance and minimization requirements specified in Env-Wt 313.03, subject to (c), below; and
 - c. Submitted a proposal for compensatory mitigation that meets the requirements of Env-Wt 800 for all permanent impacts that will remain after avoidance and minimization as described in a. and b., above, unless not required under Env-Wt 313.04;
 - (2) All applicable conditions specified in Env-Wt 307 have been met;
 - (3) All resource-specific criteria established in Env-Wt 400, Env-Wt 500, Env-Wt 600, Env-Wt 700, or Env-Wt 900 have been met;
 - (4) All project-specific criteria established in Env-Wt 500, Env-Wt 600, or Env-Wt 900 have been met; and
 - (5) As required by RSA 482-A:11, II for a permit to dredge or fill, the work will not “infringe on the property rights or unreasonably affect the value or enjoyment of property of abutting owners” based on documentation that the proposed dredge and fill activity will:
 - a. Be located entirely within the boundary of the applicant’s property interest; and
 - b. Not result in any observable change in off-site surface water levels or flows.
- (b) Unless a waiver is granted under Env-Wt 203, the department shall not grant a permit if the project proposes to place fill in a jurisdictional area to achieve a set-back established in Env-Wq 1000 or in

local ordinance between the jurisdictional area and the effluent disposal area of an individual sewage disposal system.

- (c) The requirements to avoid and minimize shall not be deemed to be met if:
 - (1) There is a practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;
 - (2) The project will cause random or unnecessary destruction of wetlands; or
 - (3) The project would cause or contribute to:
 - a. The significant degradation of waters of the state; or
 - b. The loss of any PRAs.

(d) The department shall deny an application if it is unable to determine that the criteria for issuing a permit as stated in (a), above, have been met.

(e) If the application is denied, the department shall notify the applicant in writing of the denial and identify the reason(s) for the denial.

Env-Wt 313.02 Permit Issuance; Permit Conditions.

(a) Subject to (b), below, if an application for a standard permit is approved, the department shall issue the permit to the named applicant provided the named applicant has an enforceable proprietary interest in the property.

(b) If the application is for a major project located in a great pond or public-owned water body, the department shall:

- (1) Submit the proposed permit to the governor and executive council as required by RSA 482-A:3, II(a); and
- (2) Proceed as directed in RSA 482-A:3, II(b) after such review.

(c) The issued permit shall include such conditions in the permit, including but not limited to time limits, as are required to ensure that the project's impacts are minimized.

(d) The conditions in the permit shall apply in addition to the applicable conditions in Env-Wt 307.

Env-Wt 313.03 Avoidance and Minimization.

(a) The department shall not approve any alteration of any jurisdictional area unless the applicant demonstrates that the potential impacts to jurisdictional areas have been avoided to the maximum extent practicable and that any unavoidable impacts have been minimized, as described in A/M BMPs, available as noted in Appendix B.

(b) For any major or minor project, the applicant shall demonstrate specifically that:

- (1) There is no practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;
- (2) The project avoids and minimizes impacts to tidal marshes and non-tidal marshes where documented to provide sources of nutrients for finfish, crustacea, shellfish, and wildlife of significant value;
- (3) The project maintains hydrologic connections between adjacent wetlands or stream systems;

- (4) The project avoids and minimizes impacts to wetlands and other areas of jurisdiction under RSA 482-A, especially those in which there are exemplary natural communities, vernal pools, protected species and habitat, documented fisheries, and habitat and reproduction areas for species of concern, or any combination thereof;
- (5) The project avoids and minimizes impacts that eliminate, depreciate, or obstruct public commerce, navigation, or recreation;
- (6) The project avoids and minimizes impacts to floodplain wetlands that provide flood storage;
- (7) The project avoids and minimizes impacts to natural riverine forested wetland systems and scrub-shrub marsh complexes of high ecological integrity;
- (8) The project avoids and minimizes impacts to wetlands that would be detrimental to adjacent drinking water supply and groundwater aquifer levels; and
- (9) The project avoids and minimizes impacts adverse impacts to stream channels and the ability of such channels to handle runoff of waters.

Env-Wt 313.04 Mitigation Requirements.

- (a) The applicant shall submit a compensatory mitigation proposal unless:
 - (1) There is no permanent impact to a PRA;
 - (2) The total project impacts less than 10,000 SF of non-tidal wetlands or less than the threshold for tidal wetlands established in Env-Wt 600; and
 - (3) The overall project:
 - a. Is limited to bank stabilization using rip-rap, bio-engineering methods, or other bank stabilization techniques to protect existing infrastructure such as highways, bridges, dams, or buildings, or includes such work in combination with other qualifying criteria;
 - b. Is limited to the installation of an accessory docking structure or the construction of a new or replacement shoreline structure or breakwater, or includes such work in combination with other qualifying criteria, provided the resulting dock surface area of all shoreline structures on the frontage is less than 2,000 SF; or
 - c. Involves the construction of a pond classified as a minimum impact or minor project in Env-Wt 519, either alone or in combination with other qualifying criteria.
- (b) Mitigation shall not be required for impacts that are not intended to remain after the project is completed, provided the areas are restored in accordance with provisions shown in the approved project plans.

Env-Wt 313.05 Processing of Related Wetlands and Shoreland Permit Applications.

- (a) For the projects listed in (d), below, that require both an EXP or standard permit under RSA 482-A and a shoreland permit under RSA 483-B, the applicant may file the individual permit applications for the project concurrently, with a written request to process the applications together.
- (b) If application processing timelines are different for each permit program under the 2 statutes and their implementing rules, concurrently filing the applications with a request to process the applications together shall constitute a waiver by the applicant of the shorter time frame.
- (c) The department shall concurrently process applications for projects listed in (d), below, that are filed together with a request to process the applications together.
- (d) The following projects shall be eligible for the optional process established by this section:

- (1) Non-tidal water access structures, provided the applicant has attended a pre-application meeting with the department and the department has determined that:
 - a. The shoreline and bank were previously modified in such a way that defining the jurisdictional limit under RSA 482-A is difficult;
 - b. The project proposes significant temporary impacts in protected shorelands for the exclusive purpose of accessing areas that will be impacted by activities subject to RSA 482-A; and
 - c. The project appears to comply with the applicable requirements of RSA 482-A, the wetlands rules, RSA 483-B, and Env-Wq 1400; and
- (2) Projects located within an upland portion of the tidal buffer zone.

PART Env-Wt 314 PERMIT ACCEPTANCE, RECORDATION, DURATION, EXTENSION, AND TRANSFER; POST-ISSUANCE REQUIREMENTS

Env-Wt 314.01 Acceptance of Standard Permit. A standard permit shall:

- (a) Be signed by the permittee and the principal contractor who will build or install the project prior to start of construction; and
- (b) Not be valid until signed as required by (a), above.

Env-Wt 314.02 Recordation of Certain Permits and Deed Restrictions.

- (a) As required by RSA 482-A:3, VI:
 - (1) The permittee shall record, in the registry of deeds for the county or counties in which the real estate is located, each permit granted under RSA 482-A for the installation, construction, or repair of a dock, docking facility, or marina, or for alteration of wetlands associated with a subdivision of 4 or more lots; and
 - (2) The permit shall not be effective until so recorded.
- (b) For projects in the coastal area, the permittee shall record any permit issued for overwater structures, shoreline stabilization, and any work in the tidal buffer zone, tidal wetlands, or sand dunes at the registry of deeds in the county in which the property is located. Any limitations or conditions in the permit so recorded shall run with the land beyond the expiration of the permit.
- (c) The permittee shall provide the department with a copy of the permit stamped by the registry with the book and page and date of receipt.
- (d) Upon receipt of a permit for a major docking structure in public waters, the permittee shall file a deed restriction with the appropriate registry of deeds to limit the use of the docking structure to permitted conditions and to dedicate the required amount of shore frontage to that structure.
- (e) The permittee shall provide a copy of the recorded deed restriction to the department.

Env-Wt 314.03 Notice Required Prior to Initiating Construction.

- (a) The permittee shall notify the department in writing at least one week prior to commencing any work under the permit.
- (b) The project shall be constructed in accordance with the approved plans and specifications.

Env-Wt 314.04 Permit Duration.

(a) As specified in RSA 482-A:3, XIV-a(a), a permit shall be valid for 5 years except as specified in (b) through (e), below.

(b) As specified in RSA 482-A:3, XIV-a(b), a permit issued to repair or replace shoreline structures to maintain the integrity and safety of such structures including, but not limited to docks, sea walls, breakwaters, rip-rap, access ramps and stairs, that are damaged by storms or ice, shall expire 10 years from the date the permit was issued as long as any work performed after the initial permitted work complies with the following:

- (1) The work is not in violation of the original permit or RSA 482-A:3, XIV-a(a)(1)-(4);
- (2) All structures are repaired or replaced to the original permitted location and configuration; and
- (3) All significant work is reported to the department in accordance with the reporting requirements for the original permit.

(c) Public transportation projects that exceed the limits of the US Army Corps General Permit shall receive one permit extension, to a total of 10 years, provided the permittee:

- (1) Receives an individual federal permit from the US Army Corps of Engineers; and
- (2) Requests such an extension in writing from the department prior to the expiration of the original permit.

(d) As specified in RSA 482-A:3, V(a), a minimum impact forestry SPN submitted as specified in RSA 482-A:3, V shall be valid for 2 years from date of the completeness letter issued by the department.

(e) As specified in RSA 482-A:3, XI, a permit for SMMD issued in accordance with RSA 482-A:3, XI shall expire at the end of the calendar year in which it is issued.

Env-Wt 314.05 Permit Extensions.

(a) As specified in RSA 482-A:3, XIV-a(a), a permittee may request an extension of a permit.

(b) To make the request, the permittee shall submit a written request to the department prior to the expiration of the permit.

(c) The request submitted pursuant to (b), above, shall include the following:

- (1) The length of the requested extension, not to exceed 5 years; and
- (2) A statement, signed and certified in accordance with Env-Wt 311.11, that:
 - a. The permit for which extension is sought has not been revoked or suspended without reinstatement;
 - b. Extension of the permit would not violate a condition of law or rule;
 - c. The project is proceeding towards completion in accordance with plans and other documentation referenced by the permit;
 - d. The applicant proposes reasonable mitigation measures to protect the public waters of the state from deterioration during the period of extension; and
 - e. The wetland delineation is still valid pursuant to Env-Wt 406.01(b).

(d) As specified in RSA 482-A:3, XIV-a(a), the department shall grant one extension of up to 5 additional years, provided:

- (1) The permittee has submitted the request as specified in (b) and (c), above; and
- (2) The mitigation measures proposed by the permittee are adequate to protect public waters from deterioration.

Env-Wt 314.06 Permit Transfers.

(a) For any project that has not been completed when ownership or legal authority to undertake the project is to be transferred, either the transferor or the transferee may initiate a transfer of the permit.

(b) To effect a transfer, the person initiating the transfer shall submit a written request to the department that contains:

- (1) The name, mailing address, and daytime telephone number of the transferee and, if available, an e-mail address for the transferee;
- (2) The name and other identifying information of the transferor as shown on the permit;
- (3) The permit number and date; and
- (4) The date on which the transfer is expected to occur or did occur.

(c) Subject to (d), below, the request submitted pursuant to (b), above, shall be signed and certified by the transferor and the transferee.

(d) If the transferor is no longer available to sign the request, the transferee shall submit a copy of the legal documentation that effected the transfer.

(e) The department shall transfer the permit within 5 working days after receipt of a request as specified in (b), above, unless:

- (1) An enforcement action is pending against the transferor or transferee, unless transferring the permit would facilitate a resolution of the action; or
- (2) The department has a reasonable basis to believe that grounds exist to suspend or revoke the permit due to non-compliance with the permit terms, unless transferring the permit would facilitate compliance.

(f) If the transfer is approved, the new permittee shall be advised of all conditions, limitations, and special considerations pertinent to the approved project.

(g) The department shall submit to the governor and executive council any request for the transfer of a permit for a major project that involves structures in great ponds or public-owned water bodies in the manner prescribed for permits under RSA 482-A:3, II.

Env-Wt 314.07 Permit Amendments.

(a) Subject to (b), below, a permittee may request an amendment to an issued permit by submitting the information required filed in the original permit application. The applicant shall provide notice to all who received notice of the original application prior to filing the amended application with the department.

(b) If the proposed change constitutes a “significant amendment” as provided in RSA 482-A:3, XIV(e), the applicant shall file a new application, not an amendment to an existing permit.

Env-Wt 314.08 Notice of Completion and Certificate of Compliance Required.

- (a) The permittee shall file a completed notice of completion and certificate of compliance with the department within 10 working days of completing the work authorized by the permit.
- (b) The notice of completion and certificate of compliance shall:
- (1) Identify the permit number and the date of permit issuance;
 - (2) Specify the date the work was completed;
 - (3) Be signed and certified by the permittee as specified in Env-Wt 311.11; and
 - (4) For projects other than forestry projects, provide photos showing resource impact areas upon completion.
- (c) In addition to the certifications in Env-Wt 311.11, the permittee's signature shall constitute certification that the project was completed in compliance with all conditions of the permit.

PART Env-Wt 315 PROCEDURES TO ADDRESS EMERGENCIES

Env-Wt 315.01 Definition. For purposes of this part, "public agency" means a federal or state agency or a municipal public works department that is responsible for maintaining public infrastructure.

Env-Wt 315.02 Emergency Authorizations for Private Property.

- (a) A property owner may request an authorization to act on an emergency basis prior to filing an application under Env-Wt 310 or Env-Wt 311 if:
- (1) A threat to public safety or public health exists or significant damage to private property is imminent as a result of an occurrence beyond the control of the property owner, such as a natural disaster;
 - (2) The request for the emergency authorization is made within 2 weeks of discovering the need for the emergency authorization;
 - (3) The emergency work shall be completed within 30 days, or 60 days for emergencies requiring approval from the department's waste management division; and
 - (4) Work covered by the emergency authorization is limited to that specified in (e), below.
- (b) The property owner or property owner's agent shall request an emergency authorization by providing the following information to the department by telephone, e-mail, or fax:
- (1) The name of the property owner and the address of the property where the emergency work will be done;
 - (2) The name and daytime telephone number of the individual requesting the authorization, and, if available, an e-mail address and fax number for that individual;
 - (3) A description of the reason the emergency authorization is being requested;
 - (4) A list of structures proposed to be repaired or otherwise stabilized; and
 - (5) A description of the work to be performed and a schedule for the work.
- (c) If a request is made by telephone, the property owner or property owner's agent shall provide the information required by (b), above, by e-mail or fax as soon as possible but no later than 24 hours after the initial request.

(d) The department shall issue an emergency authorization requested as specified in (a)-(c), above, no later than 3 working days after receipt of the written request when necessary to mitigate an immediate threat to public health or safety or to private property.

(e) The work done pursuant to an emergency authorization shall be limited to stabilization of the site or other mitigation of the immediate threat that does not create any new permanent impacts to any PRA or vernal pools.

(f) If any work performed pursuant to an emergency authorization under this section results in new permanent impacts to any PRA or vernal pool or exceeds work that is necessary to abate the emergency, then:

- (1) The work shall be deemed to be unpermitted activities as specified in Env-Wt 307.17; and
- (2) The property owner shall file an after-the-fact standard application for all work done.

Env-Wt 315.03 Emergency Authorizations for Repairs to Public Infrastructure.

(a) A public agency may request an authorization to repair public infrastructure on an emergency basis without first filing a notification under Env-Wt 308.04(e), a registration under Env-Wt 309.03, or an application under Env-Wt 311 if:

- (1) A threat to public safety exists due to public infrastructure being damaged as a result of a natural disaster or other emergency;
- (2) The public agency submits a request for the emergency authorization within 2 working days of discovering the need for the emergency authorization; and
- (3) Work covered by the emergency authorization is limited to that described in (e), below.

(b) The public agency shall request an emergency authorization by providing the following information to the department by telephone, e-mail, or fax:

- (1) The name of the public agency and the name and daytime telephone number of a contact individual, and, if available, an e-mail address and fax number for that individual;
- (2) A description of the reason the emergency authorization is being requested;
- (3) Identification of the location and type of infrastructure to be repaired; and
- (4) A description of the work to be performed and a schedule for the work.

(c) If a request is made by telephone, the public agency shall provide the information required by (b), above, by e-mail or fax as soon as possible but no later than one working day after the initial request.

(d) The department shall issue an emergency authorization requested as specified in (a)-(c), above, as soon as possible, but in no case later than 3 working days after receipt of the written request.

(e) Subject to (f), below, the work done pursuant to an emergency authorization shall be limited to stabilization of the site or other mitigation of the immediate threat and such work as is necessary to prevent or minimize additional damage to the public infrastructure.

(f) Permanent repairs to public infrastructure may be made by a public agency pursuant to an emergency authorization under this section if:

- (1) Repairs to stream crossings meet all applicable requirements of Env-Wt 900;
- (2) No permanent impacts to jurisdictional areas occur outside of the footprint of the area already impacted by the infrastructure being repaired unless necessary to comply with Env-Wt 900, provided that channel blockages may be removed so long as the removal minimizes the disturbance of sediments; and

(3) The public agency submits a notification under Env-Wt 308.04(e), a registration under Env-Wt 309.03, or an application under Env-Wt 310 or Env-Wt 311, as applicable, for the completed work within 30 calendar days of completing the work.

Env-Wt 315.04 Emergency Authorization Tracking, Follow-Up Work.

(a) The department shall create a record of each emergency authorization that includes a description of the emergency, the nature and location of the work to be performed, and a schedule for the work.

(b) Where a follow-up standard application or restoration is necessary to perform additional work beyond emergency abatement or to restore altered wetlands, the applicant shall submit a standard application and an as-built plan or restoration plan.

Env-Wt 315.05 Work During Emergencies Without Prior Authorization.

(a) Subject to (b), below, work without an SPN, registration, permit, or emergency authorization shall be allowed during a natural disaster if the work is strictly limited to that work necessary to mitigate an immediate threat or stabilize a property.

(b) If work is done pursuant to (a), above, on private property, the owner of the property where such work occurred, or the property owner's agent, shall report the following information to the department as soon as practicable but no later than 30 days after commencing the work:

- (1) The name of the property owner and the address of the property where the emergency work will be done;
- (2) The name and daytime telephone number of the individual reporting the information, and, if available, an e-mail address and fax number for that individual;
- (3) A description of the need for the work done on an emergency basis; and
- (4) A description of what work was done and when the work began and was completed.

(c) If work is done pursuant to (a), above, on public infrastructure, the public agency shall report the following information to the department as soon as practicable but no later than 10 working days after commencing the work:

- (1) The name of the public agency and the name and daytime telephone number of a contact individual, and, if available, an e-mail address and fax number for that individual;
- (2) An explanation of why the work had to be done without first filing for an SPN, registration, permit, or emergency authorization;
- (3) Identification of the location and type of work done on an emergency basis; and
- (4) The date when the work began and the date when the work was completed.

Env-Wt 315.06 Action After Emergency. Any permanent repairs, restoration, or other activities proposed to be conducted after the emergency has ended shall be undertaken pursuant to a statutory exemption, SPN, LSA, EXP, standard permit, or waiver.

Env-Wt 315.07 Authorizations under Federal Law.

(a) Nothing in this part shall relieve any person from the obligation to comply with federal law relative to work done on an emergency basis.

(b) The US ACE might require that a separate federal permit be obtained for:

- (1) Work that exceeds in-kind maintenance or repairs; and
- (2) Activities that exceed those classified as minimum impact.

PART Env-Wt 316 PERMIT SUSPENSION, REVOCATION, OR MODIFICATION

Env-Wt 316.01 Purpose. The purpose of this part is to establish the criteria and procedures for suspending, revoking, or modifying an approval issued under RSA 482-A or the wetlands rules.

Env-Wt 316.02 Definition. For purposes of this part, “approval” means an SPN, LSA, EXP, standard permit, or waiver, as applicable to the specific situation.

Env-Wt 316.03 Suspension or Revocation of Approvals.

(a) The department shall initiate a proceeding to suspend or revoke an approval whenever the department:

- (1) Receives credible information that supports a conclusion that the work being done under the approval does not comply with the terms of the approval and all other applicable requirements; and
- (2) Concludes that the department’s attempts to obtain compliance by other means have not been successful, subject to (b), below.

(b) If the work being done poses an immediate and substantial threat to the environment or to public health or safety, the department shall not be required to attempt to obtain compliance by other means.

(c) To initiate the proceeding, the department shall notify the owner of the property on which the work is occurring and the person(s) doing the work, if known to the department, in writing of:

- (1) The intention to suspend or revoke the approval, as applicable;
- (2) The facts on which the proposed action is based; and
- (3) The deadline for requesting a hearing to show cause why the proposed action should not be taken.

(d) If a hearing is requested, the hearing shall be conducted in accordance with the provisions of RSA 541-A and Env-C 200 that apply to adjudicative proceedings.

(e) After the hearing, if one is held, or after the deadline for requesting a hearing if a request is not received, the department shall:

- (1) Revoke the approval, if the department determines that:
 - a. The approval would not have been issued if the information submitted had been true, complete, and not misleading; and
 - b. The project for which the permit was obtained cannot be made to conform to applicable requirements; or
- (2) Suspend the permit, if the department determines that:
 - a. The approval would have been issued if the information submitted had been true, complete, and not misleading; and
 - b. The project for which the approval was obtained can be made to conform to applicable requirements.

(f) If an approval is suspended pursuant to (e)(2), above, the department shall reinstate the approval upon receiving proof from the respondent that the project meets applicable requirements.

Env-Wt 316.04 **Modification of Approvals.** The department shall issue a modified permit if it determines, as a result of a hearing conducted pursuant to Env-Wt 316.03, that:

- (a) A modification of the approval is necessary to bring the project into compliance with applicable requirements; and
- (b) The modified approval meets all applicable criteria for issuance and does not constitute a significant amendment as defined in RSA 482-A:3, XIV(e).

Env-Wt 316.05 **Notice of Decisions; Appeals.**

- (a) The department shall notify the respondent in writing of its decision. If the decision is to suspend, revoke, or modify the approval, the department shall specify the reason(s) for the decision.
- (b) Any person aggrieved by the decision who wishes to appeal the decision shall file an appeal with the wetlands council as specified in Env-Wt 203.

APPENDIX A: STATE AND FEDERAL STATUTES, FEDERAL REGULATIONS IMPLEMENTED

| Rule Section(s) | State Statutes Implemented | Federal Statutes, Regulations Implemented |
|--|----------------------------|---|
| Env-Wt 300 (see additional statutes and federal statutes/regulations for specific rules below) | RSA 482-A:1 - 4, 6, 8 - 34 | 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 307.03 | RSA 485-A:8; RSA 485-C | |
| Env-Wt 307.05 | RSA 487:15 - 16-d | |
| Env-Wt 307.06 | RSA 212-A; RSA 217-A | Endangered Species Act, 16 U.S.C. §1531 <i>et seq.</i> |
| Env-Wt 307.07 | RSA 483-B | |
| Env-Wt 307.09 | RSA 483-B | |
| Env-Wt 308.08 | RSA 483-B | |
| Env-Wt 310.04 | RSA 12-E | |
| Env-Wt 313.04 | RSA 483-B | |
| Env-Wt 316 | RSA 541-A:30 | |
| Env-Wt 316.05 | RSA 21-O:14 | |

APPENDIX B: INCORPORATED REFERENCES

| Rule | Name (Date) | Available from |
|---|--|---|
| Env-Wt 307.03(b)(2)a. Env-Wt 307.10(h) | New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations (2016) | UNH Cooperative Extension Taylor Hall, 59 College Road Durham, NH 03824 Phone: (603)862-1520 Download at no cost from: https://extension.unh.edu/resources/files/Resource000247_Rep266.pdf |

| Rule | Name (Date) | Available from |
|--------------------------|--|---|
| Env-Wt 307.03(b)(2)b | Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire - Best Management Practices Manual (March 2019) | NH Department of Natural and Cultural Resources Division of Forests and Lands 172 Pembroke Road Concord, NH 03301 Tel: (603) 271-2214 Fax: (603) 271-6488 Download at no cost from: https://www.nhdfi.org/DRED/media/Documents/New_Final_UTILITY_BMP_Manual_3_8_19.pdf |
| Env-Wt 307.03(b)(2)c. | Best Management Practices for Erosion Control During NH Trail Maintenance and Construction (2017) | NH Department of Resources & Economic Development, Division of Parks & Recreation; Bureau of Trails 172 Pembroke Road Concord, NH 03301 Phone: (603) 271-3254 Fax: (603) 271-3553 Email: nhtrails@dncr.nh.gov Download at no cost from: https://www.nhstateparks.org/getmedia/3c45de00-e174-4df0-b678-4670b254290d/Best-Management-Practices-For-Erosion-Control-During-Trail-Maintenance-and-Construction.pdf |
| Env-Wt 307.05(e) | Best Management Practices For the Control of Invasive and Noxious Plant Species (2018) | NH Department of Transportation PO Box 483 7 Hazen Drive Concord, New Hampshire 03302-0483 Phone: (603) 271-3734 Fax: (603) 271-3914 Email: info@dot.nh.gov Download at no cost from: https://www.nh.gov/dot/org/projectdevelopment/environment/units/program-management/documents/FINAL-ENV1Manual1-InvasiveSpecies.pdf |
| Env-Wt 307.13(e)(2) | Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire (2019) | NH Department of Transportation PO Box 483 7 Hazen Drive Concord, New Hampshire 03302-0483 Phone: (603) 271-3734 Fax: (603) 271-3914 Email: info@dot.nh.gov Download at no cost from: https://www.nh.gov/dot/org/projectdevelopment/environment/units/program-management/documents/RR_V.9_FINAL_3-14-19.pdf |

| Rule | Name (Date) | Available from |
|---|---|---|
| Env-Wt 311.12(a)(1) | Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Northcentral and Northeast Region, Version 2.0 (January 2012) | U.S. Army Corps of Engineers New England District 696 Virginia Road Concord, MA 01742-2751 (978)318-8338 Download at no charge from: https://www.lrh.usace.army.mil/Portals/38/docs/USA_CE%2087%20Wetland%20Delineation%20Manual.pdf https://usace.contentdm.oclc.org/utills/getfile/collecti on/p266001coll1/id/7640 |
| Env-Wt 311.07(b)(3) Env-Wt 313.03(a) | Wetlands Best Management Practice Techniques for Avoidance, Minimization (2019) | New England Interstate Water Pollution Control Commission Wannalancit Mills 650 Suffolk Street, Suite 410 Lowell, MA 01854 Phone: (978) 323-7929 Fax: (978) 323-7919 General Email: mail@neiwpsc.org Download at no cost from: http://neiwpsc.org/wp-content/uploads/2019/03/Wetlands-BMP-Manual-2019.pdf |
| Env-Wt 311.10(a)(2)b. | The Highway Methodology Workbook (1993) New England District Highway Methodology Workbook Supplement (1999) | US Army Corps of Engineers New England District 696 Virginia Road Concord, MA 01742-2751 (978) 318-8338 Download at no charge from: http://www.nae.usace.army.mil/Portals/74/docs/regulatory/Forms/HighwayMethodBook.pdf https://www.nae.usace.army.mil/Portals/74/docs/regulatory/Forms/HighwaySupplement6Apr2015.pdf |

APPENDIX C: OTHER STATUTORY PROVISIONS

RSA 482-A:3:

I. ...

(d) At the time the applicant files the application with the department, the applicant shall provide written notice of the proposed project to:

(1) All abutters, as defined in the rules of the department, unless exempted in such rules, which shall be provided by certified mail or other delivery method that provides proof of receipt. The applicant shall retain such receipts and provide copies to the department upon request. The department shall have no obligation to verify the identity of abutters or their receipt of notice. Any abutter who has actual notice of the filing of an application shall have no cause to challenge the application based on failure to receive written notice.

Nothing in this subparagraph shall prevent the department from taking appropriate action in the event an applicant fails to provide the required notice or provides false information.

(2) The local river management advisory committee if the project is within a river corridor as defined in RSA 483:4, XVIII, or a river segment designated in RSA 483:15. Such notice shall be sent by certified mail or other delivery method that provides proof of receipt. The applicant shall retain such receipts and provide copies to the department upon request. The local river management advisory committee shall, under RSA 483:8-a, III(a)-(b), advise the commissioner and consider and comment on the permit application.

...

XIV. (a) In processing an application for permits under this chapter, except for a permit by notification, the department shall:

(1) Within 14 days of receipt by the department, issue a notice of administrative completeness or send notice to the applicant, at the address provided on the application, identifying any additional information required to make the application administratively complete and providing the applicant with the name and telephone number of the department employee to whom all correspondence shall be directed by the designated department employee regarding incompleteness of the application. Each receipt of additional information in response to any notice shall re-commence the 14-day period until the department issues a notice of administrative completeness. Any notice of incompleteness sent under this subparagraph shall specify that the applicant or authorized agent shall submit such information as soon as practicable and shall notify the applicant or authorized agent that if the requested information is not received within 60 days of the notice, the department shall deny the application.

(2) Within 75 days of the issuance of a notice of administrative completeness for projects where the applicant proposes under one acre of jurisdictional impact and 105 days for all other projects, request any additional information that the department is permitted by law to require to complete its evaluation of the application, together with any written technical comments the department deems necessary. Such request and technical comments may be sent by electronic means if the applicant or authorized agent has indicated an agreement to accept communications by electronic means, either by so indicating on the application or by a signed statement from the applicant or authorized agent that communicating by electronic means is acceptable. Any request for additional information under this subparagraph shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if the requested information is not received within 60 days of the request, the department shall deny the application. The department may grant an extension of this 60-day time period upon request of the applicant.

(3) Where the department requests additional information pursuant to subparagraph (a)(2), within 30 days of the department's receipt of a complete response to the department's information request:

- (A) Approve the application, in whole or in part, and issue a permit; or
- (B) Deny the application and issue written findings in support of the denial; or
- (C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant; or

(4) Where no request for additional information is made pursuant to subparagraph (a)(2), within 75 days from the issuance of the notice of administrative completeness for proposed projects under one acre of jurisdictional impact, or 105 days for all others:

- (A) Approve the application, in whole or in part, and issue a permit; or
- (B) Deny the application and issue written findings in support of the denial; or
- (C) Schedule a public hearing in accordance with this chapter and rules adopted by the commissioner; or

(D) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.

(5) Where the department has held a public hearing on an application filed under this chapter, within 60 days following the closure of the hearing record, approve the application in whole or in part, and issue a permit or deny the application and issue written findings in support of the denial.

...

(e) Any request for a significant amendment to a pending application or an existing permit which changes the footprint of the permitted fill or dredge area shall be deemed a new application subject to the provisions of RSA 482-A:3, I and the time limits prescribed by this paragraph. "Significant amendment" means an amendment which changes the proposed or previously approved acreage of the permitted fill or dredge area by 20 percent or more, relocates the proposed footprint of the permitted fill or dredge area, includes a prime wetland or surface waters of the state, includes a wetland of a different classification as classified by the department, or includes non-wetland areas requiring permits for filling and dredging. This meaning of "significant amendment" shall not apply to an application amendment that is in response to a request from the department.

APPENDIX D: STATUTORY PERMITS-BY-NOTIFICATION CONDITIONS

RSA 482-A:3:

IV-a. Temporary seasonal docks installed on any lake or pond shall be exempt from the permitting requirements of this section, provided that a notification is sent to the department by the owner of property that includes the name and address of the property owner, the municipality, the waterbody, and tax map and lot number on which the proposed dock will be located. To qualify for an exemption under this paragraph, a temporary seasonal dock shall be:

- (a) The only docking structure on the frontage;
- (b) Constructed to be removed during the non-boating season;
- (c) Removed from the lake bed for a minimum of 5 months of each year;
- (d) Configured to be narrow, rectangular, and erected perpendicular to the shoreline;
- (e) No more than 6 feet wide and no more than 40 feet long if the water body is 1,000 acres or larger, or no more than 30 feet long if the water body is less than 1,000 acres;
- (f) Located on a parcel of land that has 75 feet or more of shoreline frontage;
- (g) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;
- (h) Installed in a manner which requires no modification, regrading, or recontouring of the shoreline, such as installation of a concrete pad for construction of a hinged dock;
- (i) Installed in a manner which complies with RSA 483-B; and
- (j) Installed in a location that is not in, or adjacent to, an area that has been designated as a prime wetland in accordance with RSA 482-A:15.

V. (a) Persons who have complied with notice of intent to cut wood requirements under RSA 79:10, and who have filed an appropriate notice of intent with the department and the department of natural and cultural resources, shall have satisfied the permitting requirements of this section for minimum impact activities only as defined by rules adopted by the commissioner. Minimum impact notifications issued by the department shall be valid for 2 years.

(b) Appropriate notice to the department and the department of natural and cultural resources shall include the following information:

- (1) Name and address of property owner;
- (2) Name and address of logger or forester;
- (3) Town, tax map, number and lot number of job site; and
- (4) A copy of the appropriate United States Geological Survey topographic map, or a copy of the appropriate United States Natural Resources Conservation Service soils map, with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(d) The filing of an intent to cut form under RSA 79:10 shall be considered as permission to the department or the department of natural and cultural resources, or their agents, to enter the property for determining compliance with this chapter.

(e) The certificate issued under RSA 79:10 shall be posted upon receipt. Prior to receipt of such certificate, a copy of the intent to cut form, signed by the appropriate municipal official, shall be available on the job site, and shall be shown to any person who asks to see it.

XI. (b) ... Any person who engages in panning only shall not be required to obtain a permit but shall be subject to rules of the department. Panning shall include those activities associated with the manual search for minerals in a river bed without the use of motorized equipment.

XII. (a) Persons who construct and maintain recreational trails in accordance with the Best Management Practices for Erosion Control During Trail Maintenance and Construction published by the department of resources and economic development and who have filed an appropriate notice, as described in subparagraph (b), to construct or maintain such trails with the department and the department of resources and economic development shall have satisfied the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department and the department of resources and economic development shall include the following information:

- (1) Name and address of organization constructing or maintaining the recreational trail.
- (2) Name and address of property owner.
- (3) Town, tax map number, and lot number of property.
- (4) A copy of the appropriate United States Geological Survey topographic map with the type and location of all wetland and waterbody crossings clearly indicated.

(c) A \$25 filing fee shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

XV. (a) Utility providers who maintain and repair existing utility services within existing rights of way under the Best Management Practices Manual for Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire published by the department of resources and economic development, and who have complied with subparagraphs (b)-(e) shall satisfy the permitting requirements of this section, including any portion located in or adjacent to a prime wetland, for minimum impact activities as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department shall include the following information:

- (1) The name and address of the person, employed by the utility provider responsible for overseeing the maintenance.
- (2) A brief written description of the nature of the work to be conducted.
- (3) A copy of the appropriate United States Geological Survey topographic map with the locations of the projects indicated.

(c) Appropriate notice to the town clerk of each municipality in which work will occur shall include the name of a utility provider contact and a brief description of the work to be conducted.

(d) A one-time annual filing fee of \$200 per town, not to exceed a maximum of \$10,000, shall accompany the notice to the department. Such fees shall be held in accordance with paragraph III.

(e) No additional fee shall be required for amendments to the notification as long as additional towns are not included in the amendment. Additional towns included in the amendment shall be subject to an additional fee of \$200 per town, not to exceed the annual maximum under subparagraph (d).

XVI. (a) Except as provided in paragraph XVII, any person or political subdivision that repairs or replaces culverts or stream crossing structures in accordance with the best management practices for routine roadway maintenance in New Hampshire published by the department of transportation, including culverts up to and including 48 inches in diameter or the functional hydraulic equivalent, and files an appropriate notice under subparagraph (b), shall satisfy the permitting requirements of this section for minimum impact activities, as defined by rules adopted by the commissioner.

(b) Appropriate notice to the department shall include a completed routine roadway notification form as outlined in rules adopted by the commissioner pursuant to RSA 541-A including, at a minimum, the following information:

- (1) Name and mailing address of the applicant or authorized person.
- (2) Name and mailing address of the applicant or authorized agent, if any, representing the political subdivision.
- (3) Telephone number, and e-mail address and fax number if available.
- (4) A copy of the appropriate United States Geological Survey topographic map at its original scale on 8 1/2 x 11 sheets with the project locations clearly labeled.
- (5) Town tax map, number, and lot number, if any, of the project sites.
- (6) Project location including street name and address or distance from the nearest intersection to the project.
- (7) Information regarding the existing and proposed structure shown on plan sheets or equivalent plans as shown in the best management practices for routine roadway manual and a listing of the best management practices to be used during construction.
- (8) Color photographs depicting the proposed work sites showing existing structures, surrounding land, and jurisdictional areas in and adjacent to the work location.
- (9) A signed certification that information is accurate and correct and that work will conform to the best management practices for routine roadway maintenance.

(c) Appropriate notice to the department under subparagraphs (a) and (b) shall be mailed and received by department at least 5 days prior to the start of construction.

APPENDIX E: SUMMARY OF ABBREVIATIONS AND ACRONYMS

| Term | Meaning |
|-------------------------------|---|
| Agriculture BMWPs | “Best Management Wetlands Practices for Agriculture” dated 2019, published by the NH Department of Agriculture, Markets, and Food |
| A/M BMPs | “Wetlands Best Management Practice Techniques For Avoidance and Minimization” dated 2019, published by the New England Interstate Water Pollution Control Commission |
| CPESC specialist | Certified Professional Erosion and Sediment Control specialist - an individual certified by EnviroCert International, Inc.® as competent to develop and implement erosion and sediment control practices |
| CY | Cubic Yard |
| Federal classification method | Method established in “Classification of Wetlands and Deepwater Habitats of the United States”, adapted from Cowardin, Carter, Golet and LaRoe (1979), August 2013, FGDC- STD-004-2013 |
| Federal delineation method | Method established in “Wetlands Delineation Manual”, Technical Report Y-87-1, Corps of Engineers, January 1987, and “Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Northcentral and Northeast Region”, Version 2.0, U.S. Army Corps of Engineers, January 2012 |
| Forestry BMPs | “New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations” dated 2016, published by the University of New Hampshire Cooperative Extension |
| HOTL | Highest Observable Tide Line |
| Invasive Plant BMPs | “Best Management Practices For the Control of Invasive and Noxious Plant Species” dated 2018, published by the NHDOT |
| Marina BMPs | “Best Management Practices For New Hampshire Marinas” dated 2001, published by the NHDES Pollution Prevention Program |
| LAC | Local [River] Advisory Committee |

| Term | Meaning |
|-----------------------|--|
| LiDAR | Light Detection and Ranging - A surveying method that measures distance to a target by illuminating the target with pulsed laser light and measuring the reflected pulses with a sensor, with the differences in laser return times and wavelengths then being used to make digital 3-D representations of the target. |
| LF | Linear Foot |
| NH Method | “Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire” dated 2013 and revised 2015 and 2016, available at https://nhmethod.org/ |
| NHB | Natural Heritage Bureau of the NH DNCR |
| NH DNCR | NH Department of Natural and Cultural Resources |
| NHF&G | NH Fish and Game Department |
| NHDOT | NH Department of Transportation |
| NRCS | Natural Resources Conservation Service of the U.S. Department of Agriculture |
| PBN | Permit-by-Notification (created in the rules) |
| PRA | Priority Resource Area - a jurisdictional area that: (a) Has documented occurrences of protected species or habitat; (b) Is a bog; (c) Is a floodplain wetlands contiguous to a tier 3 or higher watercourse; (d) Is a designated prime wetland or a duly-established 100-foot buffer zone; (e) Is a sand dune, tidal wetland, tidal water, or undeveloped tidal buffer zone; or (f) Is any combination of (a) through (e), above. |
| Professional engineer | RSA 310-A:2, II. “Professional engineer” means a person who by reason of advanced knowledge of mathematics and the physical sciences, acquired by professional education and practical experience, is technically and legally qualified to practice engineering, and who is licensed by the board or otherwise authorized by this subdivision to engage in the practice of engineering. |
| Routine Roadway BMPs | “Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire” dated 2019, published by the NHDOT |
| SF | Square Foot |
| SPN | Statutory Permit-by-Notification (established in RSA 482-A) |
| Subject property | (a) For projects in surface water for which any kind of permit is required, the parcel(s) of land adjacent to and associated with the area in which the project will occur or has occurred; or (b) For all other projects for which any kind of permit is required, the parcel(s) of land on which the project will occur or has occurred. |
| Trail BMPs | “New Hampshire Best Management Practices for Erosion Control During Trail Maintenance and Construction” dated 2017, published by the NH DNCR |
| US ACE | U.S. Army Corps of Engineers |
| USGS | United States Geological Survey |
| Utility BMPs | “Best Management Practices Manual, Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire” dated 2019, published by the NH DNCR |
| WAP | Wildlife Action Plan prepared and published by NHF&G |
| Water Quality BMPs | Recommended practices for minimizing or preventing the direct or indirect discharge of sediment or other pollutants into surface waters and wetlands, including those listed in Env-Wt 307 and the Agriculture BMPs, Forestry BMPs, Marina BMPs, Invasive Plant BMPs, Roadway Maintenance BMPs, Trail BMPs, and Utility BMPs, as applicable |

| Term | Meaning |
|-------------|---|
| WPPT | Wetlands Permit Planning Tool - a GIS tool that provides access to data for planning projects near or in jurisdictional areas, available at http://des3.sr.unh.edu/Html5Viewer/Index.html?configBase=http://jointagencyvm.sr.unh.edu/Geocortex/Essentials/des3.sr.unh.edu/REST/sites/NH_DES/viewers/gvh/virtualdirectory/Resources/Config/Default |