

Effective December 15, 2019, Env-Wt 400 reads as follows:CHAPTER Env-Wt 400 DELINEATION AND CLASSIFICATION OF JURISDICTIONAL AREAS;
CLASSIFICATION OF PROJECTS

Env-Wt 401 RESERVED

Env-Wt 402 RESERVED

Env-Wt 403 RESERVED

Env-Wt 404 RESERVED

PART Env-Wt 405 PURPOSE; APPLICABILITY; ABBREVIATIONS AND ACRONYMS

Env-Wt 405.01 Purpose. The purpose of this part is to establish:

- (a) The criteria for delineating and classifying jurisdictional areas; and
- (b) The criteria for classifying the various kinds of projects that impact jurisdictional areas.

Env-Wt 405.02 Applicability. This part shall apply to all dredging, filling, or construction activities, or any combination thereof, undertaken or proposed to be undertaken in any jurisdictional area.

Env-Wt 405.03 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 406 DELINEATION AND CLASSIFICATION OF JURISDICTIONAL AREAS

Env-Wt 406.01 References for Delineation of Wetlands Boundaries.

(a) Subject to (b) through (d), below, the individual performing the wetlands delineation on behalf of the applicant shall base the delineation on the presence of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the federal delineation method, available as noted in Appendix B.

(b) The hydrophytic vegetation component of the delineation shall be done in accordance with the Northcentral and Northeast 2016 Regional Wetland Plant List, Version 3.3, 2016, published by the US ACE and available as noted in Appendix B.

(c) The hydric soils component of delineations shall be determined in accordance with the New England Hydric Soils Technical Committee's "Field Indicators for Identifying Hydric Soils in New England", Version 4, 2017, published by the New England Interstate Water Pollution Control Commission and available as noted in Appendix B.

(d) Delineations of vernal pools shall be based on the characteristics listed in the definition of "vernal pool" in Env-Wt 104. To assist in the delineation, individuals may use either of the following references:

- (1) "Identification and Documentation of Vernal Pools in New Hampshire", 3rd Ed., 2016, published by NHF&G and available as noted in Appendix B; or
- (2) The US ACE "Vernal Pool Assessment" guidance and form dated 9-6-2016, Appendix L of the USACE New England District Compensatory Mitigation Guidance, available as noted in Appendix B.

Env-Wt 406.02 Delineation of Wetlands Boundaries.

(a) For projects for which a wetlands delineation is required, wetlands boundaries shall be delineated by a certified wetland scientist except in the circumstances listed in RSA 310-A:79, reprinted in Appendix D.

(b) Wetlands delineations shall remain valid for 5 years, unless:

- (1) There is a reasonable basis to believe the original delineation might be incorrect according to the reference(s) cited in Env-Wt 406.01, as applicable;
- (2) The property or adjacent property has been disturbed in such a way as to increase or decrease stormwater or surface water run-off or groundwater flow to any portion of the property for which the delineation was done;
- (3) Any other information becomes available that warrants a review of the delineation; or
- (4) If vernal pools might be present:
 - a. The delineation of the vernal pool(s) was not done to coincide with the use of vernal pools by primary indicator species; or
 - b. One or more primary indicator species were not representative of the species' normal biological cycle.

(c) If a wetlands delineation is more than 5 years old or if any of the criteria listed in (b), above, are met, the delineation shall be:

- (1) Verified through field observations and documentation to be the same as the original delineation; or
- (2) Replaced with a new delineation, if the original delineation cannot be verified.

(d) If delineation of vernal pools is done under the conditions identified in (b)(4), above, the applicant shall provide such additional information and documents, including photographs, as are necessary to clarify vernal pool boundaries.

Env-Wt 406.03 Wetlands Delineation Not Required for Certain Projects.

(a) Delineation of wetlands, including vernal pools, shall not be required for the following projects:

- (1) Any project that qualifies for a statutory permit-by-notification (SPN);
- (2) Minimum impact exotic aquatic weed control or minimum impact native aquatic vegetation removal projects as provided in Env-Wt 510;
- (3) Agriculture projects impacting less than 3 acres of wet meadow, provided the application and plan are prepared by the NRCS or a certified wetland scientist;
- (4) Access to a single-family dwelling under the exemption in RSA 310-A:79, V; and
- (5) Minimum impact projects at the shoreline of open water, such as a seasonal dock or beach.

(b) Delineation of wetlands, including vernal pools, shall not be required outside the limits of wetland impact if:

- (1) No work is done prior to a complete and accurate application being submitted for the activity; and
- (2) The activity covered by the application is:
 - a. Timber harvesting undertaken in compliance with RSA 227-J or trail construction or maintenance pursuant to Env-Wt 517 where:
 1. No development or other change in land use will occur;
 2. The project qualifies as a minimum impact project under the criteria in Env-Wt 407

and Env-Wt 408; and

3. The application includes the location(s) and type(s) of wetlands crossed on a USGS map and on an NRCS soils drainage class map, and demonstrates that the wetland dimensions and project impacts meet the minimum impact thresholds;
- b. Agriculture that falls outside of the parameters of (a)(3), above, only because:
 1. The area of impact exceeds 3 acres;
 2. Alteration will occur to other than wet meadows only; or
 3. A combination of a. and b.; or
 - c. A minimum impact utility maintenance project in accordance with Env-Wt 521 where:
 1. No new permanent access roads will be established;
 2. No permanent crossings of streams or wetlands will be installed;
 3. Maintenance will be through existing utility corridors;
 4. Work will be temporary or maintenance; and
 5. The application includes the location(s), and types(s) of wetlands crossed on the most recent National Wetland Inventory map, USGS map or an annotated aerial photograph in accordance with the Utility BMPs, available as noted in Appendix B.

Env-Wt 406.04 Delineation of Water Courses. Water courses shall be delineated as follows:

- (a) For perennial streams, by identifying on each side:
 - (1) The limit of the bank; and
 - (2) The ordinary high water mark on the bank; and
- (b) For intermittent streams, by the ordinary high water mark.

Env-Wt 406.05 Identification of Other Jurisdictional Areas. Jurisdictional areas not subject to delineation as described in Env-Wt 406.01, Env-Wt 406.02, or Env-Wt 406.04 shall be identified as described below, as applicable:

- (a) Any features subject to Env-Wt 600 shall be delineated based on their definitions;
- (b) Surface water bodies such as lakes and ponds shall be delineated to the limit of the bank and include the normal high water line; and
- (c) For any project in a prime wetlands or a duly-established 100-foot buffer for which a delineation has been submitted to the department pursuant to Env-Wt 703, the delineation identified in Env-Wt 703.06 shall be used.

Env-Wt 406.06 Classification of Wetlands.

- (a) Each wetland shall be classified by the applicant in accordance with the federal classification method.
- (b) The wetland classification of each wetland shall be identified on plans submitted with an application for a standard permit.
- (c) For major projects with permanent impacts to any watercourse, each watercourse shall be classified in accordance with Applied River Morphology, 2nd edition, 1996, available as noted in Appendix B.

PART Env-Wt 407 BASIS FOR CLASSIFICATION OF PROJECTS

Env-Wt 407.01 Basis for Impact Classification. Unless otherwise specified in this part or in Env-Wt 408, a project shall be classified as a minimum impact, minor impact, or major impact project based on:

- (a) The type of jurisdictional area proposed to be impacted by the project;
- (b) The size of the proposed impact on jurisdictional areas; or
- (c) A combination of (a) and (b), above.

Env-Wt 407.02 Impact Classification Adjustments.

(a) A project that impacts a PRA and that does not qualify for a project-type exception (PTE) under Env-Wt 407.04 shall be classified as a major project regardless of the size of the impact.

(b) A project shall be classified as a minor or major project, as applicable based on the other qualifying criteria, regardless of the size of the impact if it does not qualify for a PTE under Env-Wt 407.04 and it impacts:

- (1) A perennial stream, unless otherwise classified in Env-Wt 900;
- (2) A marsh; or
- (3) A scrub-shrub wetland adjacent to a surface water that:
 - a. Is not located in a gravel pit, highway right-of-way, utility right-of-way, or residential or commercial development; or
 - b. Contains at least 50 LF, measured parallel to the shoreline, of obligate wetland shrub species.

(c) A project that is classified as a major project based solely on the documented occurrence of protected species or habitat and would otherwise qualify for an LSA, PBN, or EXP shall be processed as a minimum or minor impact project, as applicable based on the other qualifying criteria, only if the applicant provides written documentation committing to implementation of recommendations from NHB or NHF&G, or both, as applicable, regarding the protected species or habitat.

(d) A project that is classified as a major project based solely on the documented occurrence of protected species or habitat shall be processed as a minimum impact project where the project would otherwise qualify as an SPN, only if the person responsible for the SPN project obtains recommendations from NHB or NHF&G, or both, as applicable, regarding the protected species or habitat.

Env-Wt 407.03 Jurisdictional Area Size Thresholds; Measuring Watercourse Length.

(a) Subject to (b), below, projects shall be classified based on size as shown in Table 407-1, below:

Table 407-1: Classification Based on Size of Impact

Type of Jurisdictional Area	Minimum	Minor	Major
Other than watercourse	< 3,000 square feet (SF)	≥ 3,000 SF to < 10,000 SF	≥ 10,000 SF
Watercourse	< 50 linear feet (LF)	≥ 50 LF to < 200 LF	≥ 200 LF

(b) Projects shall not be classified based on Table 407-1 if the project:

- (1) Is subject to an adjustment under Env-Wt 407.02;
- (2) Qualifies for a PTE under Env-Wt 407.04; or

(3) Qualifies for project-specific size criteria as identified in Env-Wt 407.04, Table 407-2.

(c) Unless otherwise specified for a particular purpose, watercourse length measurements shall be made as follows:

- (1) For intermittent watercourses, the distance shall be measured along the thread of the channel; and
- (2) For perennial watercourses, the total distance shall be calculated by summing the lengths of the disturbance to the channel and the banks.

Env-Wt 407.04 Project-Type Exceptions (PTEs).

(a) Classification based on size as established in Env-Wt 407.03 shall not apply to any project that meets the requirements for an SPN under Env-Wt 308 and the applicable provisions in Env-Wt 500, however such projects remain subject to Env-Wt 307 and all other qualifying criteria.

(b) Classification based on resource type impacted shall not apply to a restoration/enhancement project under Env-Wt 525 that:

- (1) Is funded in whole or in part with public funds, whether from a federal, state, or local agency;
- (2) Is conducted under the supervision of a New Hampshire state agency established to manage or protect natural resources, the university of New Hampshire, the US Environmental Protection Agency, the US ACE, NRCS, the National Oceanic and Atmospheric Administration (NOAA), the US Forest Service, or the US Fish and Wildlife Service; and
- (3) Is not done to restore any area that is subject to a removal or restoration order.

(c) Classification based on resource type impacted shall not apply to:

- (1) Maintenance, repair, and replacement in-kind of existing legal shoreline structures, whether tidal or non-tidal;
- (2) Repair, but not replacement or slip lining, of existing legal stream crossings; or
- (3) The projects listed in Table 407-2, below, which shall be classified as specified in Table 407-2, below:

Table 407-2: Classification Criteria For Specified Projects

Type of Project	Classification Criteria Specified In
Aquatic vegetation control	Env-Wt 510
Water access structures	Env-Wt 511
Breakwaters	Env-Wt 512
Docking structures and accessory docking structures	Env-Wt 513
Ponds	Env-Wt 519
Forestry	Env-Wt 520
Utility projects	Env-Wt 521
Agriculture	Env-Wt 522
Non-tidal Dredging	Env Wt 523
Tidal projects including tidal docks, tidal dredging, tidal bank stabilization, sand dunes, coastal lands, and beach maintenance projects	Env-Wt 600
Stream crossings	Env-Wt 900

PART Env-Wt 408 PRIORITY RESOURCE AREAS; FILL IN PUBLIC WATERS; AGGREGATION

Env-Wt 408.01 Projects In Priority Resource Areas (PRAs). A project shall be classified as major impact if any part of the project impacts a priority resource area (PRA), which classification shall take precedence over any lower classification, unless the project:

- (a) Is subject to a lower classification under Env-Wt 407.02; or
- (b) Qualifies for a PTE under Env-Wt 407.04.

Env-Wt 408.02 Fill in Public Waters to Make Land.

(a) A project shall be classified as major impact if, as any part of the project, fill will be placed in public waters for the purpose of making land.

- (b) Classification as a major impact project based on (a), above, shall:
 - (1) Take precedence over any lower classification; and
 - (2) Not be eligible for a waiver or downgrade of the classification.

Env-Wt 408.03 Aggregation of Projects: Consistent Scheme of Development.

(a) As authorized by RSA 482-A:11, V, a series of minor or minimum impact projects, or any combination thereof, undertaken by a single developer or several developers within the 5 years preceding the application for the current project shall constitute a major impact project if the projects, when taken in the aggregate, meet any of the criteria for a major impact project as identified in Env-Wt 407.02 or Env-Wt 407.03, and:

- (1) The subject properties are abutting;
- (2) The projects are a part of an overall scheme of development; or
- (3) The projects are otherwise consistent parts of an eventual whole.
- (b) Classification as a major impact project based on (a), above, shall:
 - (1) Take precedence over any lower classification; and
 - (2) Not be eligible for a waiver or downgrade of the classification.

Env-Wt 408.04 Aggregation of Projects: Same Property.

(a) A project shall be classified as major impact if the totality of all impacts of all projects on the subject property within the 5 years preceding the application for the current project meets any of the criteria for a major project listed in Env-Wt 407.02 or Env-Wt 407.03.

- (b) For purposes of (a), above, the following shall apply:
 - (1) The subject property shall include any lots that have been subdivided from the property if the lots were part of the same property when one or more of the prior projects occurred; and
 - (2) Previous work on the subject property shall include all dredging, filling, and construction activities on the property, regardless of whether the work was done pursuant to an exemption or any form of approval from the department, or was done illegally.
- (c) Classification as a major impact project based on (a) or (b), above, shall:
 - (1) Take precedence over any lower classification; and
 - (2) Not be eligible for a waiver or downgrade of the classification.

APPENDIX A: STATE AND FEDERAL STATUTES, FEDERAL REGULATIONS IMPLEMENTED

Rule Section(s)	State Statutes Implemented	Federal Statutes, Regulations Implemented
Env-Wt 400	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

APPENDIX B: INCORPORATED REFERENCES

Rule	Title (Date)	Obtain from:
Env-Wt 406.01(a)	Wetlands Delineation Manual, Technical Report Y-87-1 (January 1987) Regional Supplement to the Wetlands 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 Available to download at no cost from: https://www.lrh.usace.army.mil/Portals/38/docs/USACE%2087%20Wetland%20Delineation%20Manual.pdf Available to download at no cost from: http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/NCNE_suppv2.pdf
Env-Wt 406.01(b)	Northcentral and Northeast 2016 Regional Wetland Plant List, Version 3.3 (2016)	Available to download at no cost from: http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/news/FS_NWP_PlantList_Apr2016_v2.pdf
Env-Wt 406.01(c)	Field Indicators for Identifying Hydric Soils in New England, Version 4 (2017)	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@neiwppcc.org Available to download at no cost from: http://www.neiwppcc.org/hydricsoils.asp
Env-Wt 406.01(d)(1)	Identification and Documentation of Vernal Pools in New Hampshire, 3 rd Ed. (2016)	NH Fish and Game Department 11 Hazen Drive Concord, NH 03301 Phone: (603) 271-3421 HQ Fax: (603) 271-5829 Available to download at no cost from: http://www.wildlife.state.nh.us/nongame/documents/vernal-pool-manual.pdf

Rule	Title (Date)	Obtain from:
Env-Wt 406.01(d)(2)	“Vernal Pool Assessment” guidance and form dated 9-6-2016, Appendix L of the USACE New England District Compensatory Mitigation Guidance	U.S Army Corps of Engineers New England District 696 Virginia Road Concord, MA 01742-2751 (978)318-8338 Available to download at no cost from: http://www.nae.usace.army.mil/portals/74/docs/regulatory/Mitigation/2016_New_England_Compensatory_Mitigation_Guidance.pdf
Env-Wt 406.03(b)(2)c.5.	Utility BMPs: Best Management Practices Manual – Utility Maintenance in and Adjacent to Wetlands and Waterbodies in New Hampshire (2019)	NH Department of Natural & Cultural Resources Division of Forests and Lands 172 Pembroke Road Concord, NH 03301 Tel: (603) 271-2214 Fax: (603) 271-6488 Available to download at no cost from: https://www.nhdf.org/DRED/media/Documents/New_Final_Utility_BMP_Manual_3_8_19.pdf
Env-Wt 406.06(c)	Applied River Morphology, 2nd edition (1996)	Wildland Hydrology 11210 N. County Road 19 Fort Collins, CO 80524 Phone: (970) 568-0002 Email: wildland@wildlandhydrology.com Available new for \$71.76 + \$10.00 shipping from https://wildlandhydrology.com/books/?id=32&course=Applied+River+Morphology Available used or new from Amazon.com and other sellers from ~\$63 (used) to ~\$155 (new).

APPENDIX C: EXEMPTIONS FROM REQUIREMENT FOR CERTIFIED WETLAND SCIENTIST

RSA 310-A:79 Exemption. – This subdivision shall not be construed to prevent or to affect:

I. The practice of soil science by a nonresident having no established place of business in this state when such practice does not exceed, in the aggregate, more than 30 working days in any calendar year, provided such person is legally qualified to practice in a state or country in which the requirements and qualifications for obtaining a certificate are not lower than those specified in this subdivision. Practice for any portion of a day shall be deemed to constitute practice for an entire day.

II. The work of an employee or a subordinate of a person holding a certificate under this subdivision, or any employee of a person practicing lawfully under paragraph I, done under the direct supervision of a person holding a certificate under this subdivision or a person practicing lawfully under paragraph I.

III. The practice of officers and employees of the government of the United States or of the state of New Hampshire while engaged within this state in the practice of the profession of soil science or wetland science for the government.

IV. The determination of a hydric soil boundary or test pit evaluation to the extent permitted pursuant to RSA 485-A:35 for the purposes of septic system design or subdivision application pursuant to RSA 485-A or rules adopted under RSA 485-A. For this work, a municipality shall not require qualifications different from those established pursuant to RSA 485-A:35.

V. A homeowner from preparing a plan to provide vehicular and utility access to the homeowner's primary residence within 50 feet from the edge of a traveled way; provided, that he or she complies with rules adopted by the department of environmental services and standards adopted by the board.

APPENDIX D: OTHER STATUTORY PROVISIONS

[NONE IN THIS CHAPTER]

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
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)

Term	Meaning
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 wetland contiguous to a tier 3 or higher watercourse; (d) Is a designated prime wetlands 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
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