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CHAPTER Env-Wt 200 RULES OF PRACTICE AND PROCEDURE

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 200 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 201 PURPOSE AND APPLICABILITY

Env-Wt 201.01 Purpose. The purpose of this chapter is to establish procedures for hearings and waiver requests under RSA 482-A.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, eff 6-26-13

Env-Wt 201.02 Applicability. This chapter shall apply to hearings and waiver requests under RSA 482-A.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, eff 6-26-13

PART Env-Wt 202 PERMIT APPLICATION HEARINGS

Env-Wt 202.01 Permit Application Hearings: When Held. The department shall conduct a hearing on a permit application:

(a) On its own initiative, when the department determines that a hearing would be beneficial to a decision due to the complexity of the issues involved; or

(b) As required by RSA 482-A:8, for projects:

(1) With a significant environmental impact on the resources protected by RSA 482-A, as defined by Env-Wt 101.83; or

(2) Of substantial public interest, as defined by Env-Wt 101.87.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4585, eff 3-8-89; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, eff 6-26-13

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Env-Wt 202.02 Permit Application Hearings: Procedures. The department shall conduct any hearing held pursuant to Env-Wt 202.01 as specified in the provisions of Env-C 200 that apply to non-adjudicative proceedings.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; rpld by #6404, eff 12-21-96

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, *eff 6-26-13*

PART Env-Wt 203 CHALLENGES TO DECISIONS MADE UNDER RSA 482-A

Env-Wt 203.01 Contesting an Enforcement Decision. Any person aggrieved by a department enforcement decision, as defined in RSA 21-O:14, I(b), that is issued under authority established in RSA 482-A who wishes to contest the decision shall proceed as specified in RSA 482-A:10 and RSA 21-O:14.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, *eff 6-26-13*

Env-Wt 203.02 Contesting a Permitting Decision. Any person aggrieved by a department permitting decision, as defined in RSA 21-O:14, I(a), that is made under RSA 482-A who wishes to contest the decision shall proceed as specified in RSA 482-A:10 and RSA 21-O:14.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4585, eff 3-8-89; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, *eff 6-26-13*

PART Env-Wt 204 WAIVERS

Env-Wt 204.01 Purpose. The purpose of these rules is to establish the procedures for requesting and the criteria for granting or denying the following:

(a) Waivers to Env-Wt 200 through Env-Wt 900, to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the environment; and

(b) Waivers requested under RSA 482-A:26, III(b).

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.01), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); amd by #10366-A, *eff 6-26-13*, intro., & para (a); amd by #10366-B, eff 6-26-13, para (b)

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Env-Wt 204.02 Procedures.

(a) A request for a waiver shall be filed in accordance with this part by:

- (1) A person who is or would be directly and adversely affected by the strict application of a rule in Env-Wt 200 through Env-Wt 900; or
- (2) A person seeking a waiver under RSA 482-A:26, III(b).

(b) Each request for a waiver shall be submitted in writing to the following address:

DES Wetlands Bureau
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

(c) Each request for a waiver shall:

- (1) Include the information specified in Env-Wt 204.03; and
- (2) Be signed as specified in Env-Wt 204.04.

(d) Any request submitted in conjunction with an application for a permit under RSA 482-A:3 or RSA 483-B:5-b shall be submitted with the permit application or as soon thereafter as the need for the waiver to a rule in Env-Wt 200 through Env-Wt 900 is identified by the applicant or the department.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); amd by #10366-A, eff 6-26-13, para (a)(1) & (b)-(d); amd by #10366-B, eff 6-26-13, para (a)(2)

Env-Wt 204.03 Content of Waiver Requests. The person requesting the waiver (requestor) shall provide the following information:

(a) The name, mailing address, and daytime telephone number of the requestor and, if available, the requestor's email address and fax number;

(b) If the requestor is making the request on behalf of someone else, the name, mailing address, and daytime telephone number of the person the requestor represents and, if available, an email address and fax number of that person;

(c) The location of the property to which the waiver request relates, if other than the mailing address of the requestor or the person the requestor represents;

(d) If the request is for a rule in Env-Wt 200 through Env-Wt 900, the number(s) of the specific section(s) of the rule for which a waiver is sought;

(e) If the request is for a waiver under RSA 482-A:26, III(b), identification of the specific standard(s) to which a waiver is being requested;

(f) A complete explanation of why a waiver is being requested, including:

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- (1) For a waiver to a rule, an explanation of the operational and economic costs of complying with the rule and, if the requested waiver would extend the duration of a permit, the reason(s) why the permit holder was not able to complete the project within the specified time; or
 - (2) For a waiver under RSA 482-A:26, III(b), a complete explanation of how the statutory criteria of RSA 482-A:26, III(b) will be met;
- (g) If applicable, a complete explanation of the alternate that is proposed to be substituted for the requirement in the rule, including written documentation or data, or both, to support the alternative;
- (h) Whether the waiver is needed for a limited duration and, if so, an estimate of when the waiver will no longer be needed; and
- (i) A complete explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Wt 204.05 or Env-Wt 204.06, as applicable.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.03), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200) amd by #10366-A, *eff 6-26-13*, para (a)(d) and (f)-(1), & (g)-(i); #10366-B, eff 6-26-13, para (e), & (f)(2)

Env-Wt 204.04 Signature Required.

- (a) The requestor shall sign and date the request.
- (b) If the requestor is making the request on behalf of someone else, the person represented shall:
 - (1) Sign and date the request; or
 - (2) Sign and date a separate authorization for the requestor to act on the person's behalf in connection with the request.
- (c) The signature(s) shall constitute certification that:
 - (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
 - (2) The signer understands that any waiver granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.04), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); amd by #10366-A, *eff 6-26-13*; amd by #10366-B, eff 6-26-13, para (b)&(c)

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Env-Wt 204.05 Criteria for Waivers to Rules.

(a) The department shall grant a waiver to a rule in Env-Wt 200 through Env-Wt 900 that will not extend the duration of a wetlands permit if:

(1) Granting a waiver will not result in:

- a. An avoidable adverse impact on the environment or natural resources of the state, public health, or public safety;
- b. An impact on abutting properties that is more significant than that which would result from complying with the rule; or
- c. A statutory requirement being waived; and

(2) Any benefit to the public or the environment from complying with the rule is outweighed by the operational or economic costs to the applicant.

(b) The department shall grant a waiver that has the effect of extending the duration of a wetlands permit that does not qualify for the statutory extension under RSA 482-A:3, XIV-a if:

(1) The permit holder:

- a. Was precluded from proceeding under the permit due to actions taken by persons opposed to the project; or
- b. Rationally refrained from proceeding under the permit due to reasonable uncertainties surrounding the project's legal viability, which shall not include uncertainties regarding the project's financial viability;

(2) If other permits are required for the project, at least one other permit already has a duration that extends beyond the expiration of the wetlands permit or, if the other permit expires concurrently or prior to the wetlands permit, the permit holder reasonably anticipates that an extension will be obtained; and

(3) Extending the permit will not result in:

- a. Adverse impacts on public health or safety, or the environment or natural resources of the state, that would be greater than those accounted for in the permit that was issued; or
- b. Adverse impacts on abutting properties that is more significant than that which would have resulted if the project had been initiated in time to be completed during the permit term.

Source. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, eff 6-26-13

Env-Wt 204.06 Criteria for Waivers under RSA 482-A:26, III(b). The department shall grant a waiver under RSA 482-A:26, III(b) if:

(a) The waiver will not result in:

(1) An avoidable adverse impact on the environment or natural resources of the state, public health, or public safety;

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- (2) Any interference with the public trust in waters held by the state; or
 - (3) An adverse impact on abutting properties that is more significant than that which would result from complying with the rule; and
- (b) The following criteria from RSA 482-A:26, III(b) are met:
- (1) The effect of the requested repair or reconstruction represents greater protection of public water or the environment;
 - (2) Such repair or reconstruction does not change a recreational, water-based activity to a land-based, residential or commercial activity;
 - (3) There will be no expansion of the existing footprint, outside dimensions, or square footage of floor space; and
 - (4) There will be a net reduction in the total square footage of kitchen, bathroom, shower, and toilet facilities.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.06), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-B, eff 6-26-13 (from Env-Wt 204.04)

Env-Wt 204.07 Decisions.

(a) The department shall notify the requestor of the decision in writing. If the request is denied, the department shall identify the specific reason(s) for the denial.

(b) If a waiver is granted, the department shall impose such conditions, including time limitations, as the department deems necessary to ensure that the activities conducted pursuant to the waiver will be consistent with the applicable criteria.

Source. #10366-A, eff 6-26-13 (from Env-Wt 204.05)

Env-Wt 204.08 Suspension, Revocation, or Modifications of Waivers.

(a) Any waiver to a rule or under RSA 482-A:26, III(b) that is issued by the department shall be issued based on the presumption that the information submitted to obtain the approval is true, complete, and not misleading.

(b) If the department receives credible information, after the time has run for requesting reconsideration, which indicates that the information upon which the waiver was based was false, incomplete, or misleading, the department shall notify the person to whom the waiver was issued of:

- (1) The department's intention to suspend, revoke, or modify the waiver, as applicable;
- (2) The basis for the proposed action; and
- (3) The date, time, and place of a hearing on the proposed action at which the person to whom the waiver was issued shall be given an opportunity to show cause why the proposed action should not be taken.

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(c) The hearing shall be conducted in accordance with RSA 541-A:31 and the provisions of Env-C 200 that apply to adjudicative proceedings.

(d) After the hearing, the department shall revoke the waiver if the department determines that:

- (1) The waiver would not have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project or activities to which the waiver relates cannot be conducted lawfully even with the waiver.

(e) After the hearing, the department shall suspend the waiver if the department determines that:

- (1) The waiver would have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project or activities to which the waiver relates can be conducted lawfully with the waiver.

(f) If a waiver is suspended pursuant to (e), above, the department shall reinstate the waiver upon receiving proof from the recipient that the project meets applicable requirements for approval.

(g) If as a result of the hearing the department determines that a modification to the waiver is required in order to bring the waiver and the project into compliance with applicable requirements, the department shall issue a modified waiver.

(h) The department shall notify the recipient in writing of its decision. If the decision is to suspend, revoke, or modify the waiver, the department shall specify the reason(s) for the decision.

(i) Any person aggrieved by the decision who wishes to contest the decision shall proceed as specified in RSA 482-A:10 and RSA 21-O:14.

Source. #10366-A, eff 6-26-13 (from Env-Wt 204.06)

Appendix

Rule Section(s)	State Statute Implemented
Env-Wt 200 (see additional statutes for specific Parts below)	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11
Env-Wt 202	RSA 482-A:8
Env-Wt 203	RSA 482-A:10
Env-Wt 204	RSA 482-A:26, III(b); RSA 541-A:16, I(b); RSA 541-A:22, IV