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NHDES Wetland Rule Comments – 12/4/18 Keene, NH

From:

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Thank you for the opportunity to provide comments on the proposed wetlands rules. I am a licensed forester and our firm also consults widely to assist those in the forest products industry and renewable energy. Additionally, I have been a lead auditor for 2 decades for the various forest certification programs in North America including the Sustainable Forestry Initiative, Forest Stewardship Council, and the American Tree Farm System. In that capacity, I have had the opportunity to see in action wetlands regulations relative to forestry operations in over 20 states in the U.S.

At the highest level overview as they relate to forestry operations, if adopted, the rules would be among the most onerous, costly and difficult wetland rules affecting forestry east of the Mississippi. The existing administrative wetland rules affecting forestry in New Hampshire today work well and are understood by those in forestry and the forest products industry.

I ask at the outset – what is going wrong with the current system of wetlands rules for forestry that DES feels they must be made so much more strict and onerous? If there is a problem that needs to be fixed, that is one thing, but I have not heard of wetlands problems in the woods in New Hampshire caused by forestry operations. And I think that is because, as in many other states, using Best Management Practices (BMPs) has become the norm and is part of the culture of most forestry operations. It is simply how we do things in the woods to protect water quality.

And there is a need for much more time to review these lengthy, onerous rules. I have spent hours going through them and haven't gotten much into the details.

Having said that, and making it clear that I am urging DES to keep the current wetlands rules for forestry in place and not adopt this new proposal, I have some general comments on the proposal specifics:

1. **Make forestry requirements clear** – If DES feels it needs to adopt new rules for forestry in wetlands, please make a separate section with everything that covers just forestry. If the rules remain as complex as they appear in this proposal, no one will understand them and, consequently, no one will follow them.
2. **New permit requirements for forestry** – In the new proposed rules, there are new permit requirements for forestry conducted in floodplains – we have done well by water quality in these areas using BMPs. Again, what is the problem? And if there is a “hit” on a Natural Heritage Bureau element – it appears that DES can withhold a permit or at least grant one or a waiver very subjectively. Permits need to treat everyone the same. This system does not appear to have clear criteria when Heritage elements are found in the area.

3. **End of pole fords and wood corduroy** – Under the new rules it appears that forestry operations cannot use pole fords to cross cold-water fisheries for at least half the year. Pole fords are a very low-cost Best Management Practice that work and they should not be considered “fill”. These are temporary BMPs to protect water quality. What is the problem with pole fords? In this proposal, use of pole fords & corduroy (laying wood poles down in wet areas to drive machines over to protect soil and water) pretty much signify a new permit requirement. Using woody material (natural local material) to cross wet areas or streams has been a BMP for decades. It is used throughout the US and rarely requires a permit. Why in NH? These permit requirements will be expensive. The question remains – what is the problem that DES is trying to fix with these changes?
4. **Administrative requirements are onerous, costly and unnecessary** – The proposed rules appear to add costly permit and filing requirements including:
 - Requiring the permit applicant to file copies of the permit application to town clerks. Surely town clerks are not going to comment on these applications. If you must notify the town, why not an e-mail when the electronic permit is issued so that this is not a burden on the applicant.
 - “confirmation of completion” notice – Forestry operations go on for long periods, sometimes years for a single operation. Why require an added administrative burden for notification when the operation is complete? There is no sense to this requirement and it just adds additional cost to the operation.
 - NHDES must post the “approval” of the permit on the website before operations can begin – Requiring that the permit be approved before operations begin makes sense. But there should be no requirement to have this posted on the DES website since this is open-ended and the rules do not require DES to post the permit notice within a timeframe certain once the permit is granted. This is an unreasonable administrative burden.

This is a first scan of the rules and an overview of high level concerns. I will attempt to get to more details before the rulemaking process is completed.

Conclusion:

In summary, as it relates to forestry operations, the proposed wetlands rules are onerous, and will add substantial administrative and cost requirements on operations – for no clear reason. In our review, these are not business friendly changes to the way forestry operations must comply with wetlands regulations. When substantial changes to laws and regulations are being proposed, we must ask “what is not working” and where are wetlands being negatively impacted by current forestry operations? There is no data or information that suggests something is wrong with current forest practices and regulatory processes in the NH woods.

We ask, again, that DES keep the current regulations for forestry operations and not adopt these changes.



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