

Definitions Chapter 100

Env-Wt 102.33 “Corduroy road” means logs, limbs or branches placed to provide support for logging equipment crossing a wet area that has no standing water and no defined channels.

Comments:

No change proposed. See “Fill” -- noun

Env-Wt 103.01 “Fill” as a noun means any rock, soil, gravel, sand, or other natural or man-made material that has been deposited or caused to be deposited by human activity. “Fill” shall not include “Corduroy” when used as a Best Management Practice (BMP) for forest management activities.

Comments:

This additional language provides clarity for forest owners and managers that corduroy can be left in place to decompose.

Env-Wt 103.52 “Priority resource area” means a jurisdictional area that:

- (a) Has documented occurrences or protected species or habitat for such species;
- (b) Is a bog;
- (c) Is a floodplain wetland 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.

Comments:

This is an existing definition I am including for reference purposes. The department needs to fix the typo in (f).

Proposed new definition

Env-Wt 102.XX “skid trail” means a temporary, unsurfaced, single lane trail used for skidding harvested forest products.

Comments:

This is a new definition will assist the Department in distinguishing between a truck road and a skid trail. This will be important when it comes to BMP use.

Chapter 300

Env-Wt 307.04 Protection of Fisheries and Breeding Areas Required. Work such as excavations, deposition of dredged or fill material, or suspended sediment-producing activities 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 appropriate water quality protection techniques in Env-Wt 307 and timing of project as provided by Env-Wt 307.10(g) and Env-Wt 307.10(h), as applicable;
- (b) Suspend activities that might discharge sediment to spawning or nursery areas or to amphibian and migratory bird breeding areas during spawning or breeding seasons, as applicable; and
- (c) Protect high quality waters as specified in Env-Wq 1708.06.

Comments:

This clarifies that the forest management BMPs apply to the timing of projects in fish spawning and breeding areas. The time restrictions in Env-Wt 301.10(g) (October 1 to March 1) will not work for forestry as it will prohibit any work during the prime logging weather.

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 provide the required notification by submitting the following to the department on or with the applicable information collection document as listed in Env-Wt 308.06, table 308-1:

- (1) The information specified in the applicable statutory provision; and
- (2) Proof that the project conforms to the statutory requirements and limitations, including but not necessarily limited to the following:
 - a. The identification number of an NHB DataCheck, including any recommendations that are necessary for the project to proceed as an SPN or affirmation that recommendations have been received in (b) (2)(b) below; and
 - b. If the activity, except for minimum impact utility projects, is within a prime wetland or a duly-established 100-foot buffer, a map to scale of the designated prime wetland or duly established 100-foot buffer with the location of the activity clearly delineated.

(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, other than activities that meet the requirements of Env-Wt 308.04(e) and Env-Wt 308.04(b), is not located in a priority resource area, except as provided for in Env Wt- 407;

Comments:

We need to include this reference as forest management under 308.04(b) can occur in a priority resource area

(d) If the department determines that an SPN form is complete and that the project as described meets the requirements for an SPN, the department shall notify the town electronically to view the approval on its website where it shall post:

(1) A notice that the notification form 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 notification is posted by the department on its website.

Comments:

This change removes a bureaucratic requirement for applicants. If an electronic notice is sufficient for the applicant, then it should be for the town.

Env-Wt 308.07 Post-Notification for SPNs other than Utilities

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Comments:

This adds another administrative burden to the applicant.
It is unnecessary as the permit expires in 2 years anyway.

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:

...

Comments:

This new restriction adds an administrative burden to the applicant for land managers managing timber in a flood plain forest. NHDES has failed to demonstrate why this additional requirement for forest management activities is necessary. Moreover, there are other parts of New Hampshire's timber harvesting laws, specifically the basal area laws that provide additional protections to floodplain forests.

Chapter 400

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 Env-Wt 520, however such projects remain subject to Env-Wt 307 and all other qualifying criteria.

Comment/recommendation:

This will insure forestry crossings are granted "Project-Type Exemptions" based on the size of the crossing

(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 of slip lining, of existing legal stream crossings;

(3) Any projects that meet the requirements for an SPN under Env-Wt 308 and Env-Wt 520, however such projects remain subject to Env-Wt 307 and all other qualifying criteria

Comments:

This will insure forestry crossings are granted "Project-Type Exemptions" based on the size of the resources impacted (e.g. priority resource area)

Chapter 500

Env-Wt 520.02 Criteria for Approval. The following criteria shall apply to forestry activities:

....

(b) Skid trails and truck roads associated with forestry projects shall be exclusively for the purpose of accessing viable tree stands and conducting forestry projects.

Comments:

Env-Wt 313 is the procedures and criteria for standard permit decisions. This part of the rules requires mitigation, and criteria for standard permit applications. These criteria, and mitigation requirements are inappropriate for forest management projects.

This clarifies that skid trails and truck roads are eligible for SPN status.

Env-Wt 520.03 Forestry Notice and Application Requirements.

- (a) For an SPN forestry project, the applicant shall submit the following to the department:
- (1) A forestry operation plan that shows:
 - a. Crossing locations;
 - b. Wetland or surface water types, such as marsh, swamp, bog, or stream, within the project area; and
 - c. Proposed log landing areas; and
 - (2) A NRCS soils map or USGS map on which property boundaries, access points, and proposed crossings are clearly marked; and
 - (3) For any work proposed to be performed within a designated prime wetland or duly established 100-foot buffer, a waiver issued in accordance with Env-Wt 706.
- (b) An applicant for a standard permit for a forestry project shall include the following:
- (1) Wetland delineation, functional assessment, and impact assessment as required by Env-Wt 311 and Env-Wt 313;
 - (2) Construction sequence, water quality techniques to be used, and schedule; and
 - (3) Narrative showing how the project meets the water quality techniques and avoidance and minimization techniques of the New Hampshire Best Management Practices for Erosion Control on Timber Harvesting Operations, department of natural and cultural resources, 2016 (2016 Logging BMPs) printed by UNH Cooperative Extension and available as noted in Appendix B.

Comments:

Why is NHDES requiring any standard permit applications be prepared by a forester or wetland scientist? Why couldn't a private landowner hire the necessary expertise and prepare the application? It should not matter who submits the application, just that it is technically correct and the resources are protected.

Env-Wt 520.05 Forestry Project Classification.

(a) The following forestry projects shall be considered minimum impact and are eligible for SPN, LSA, or EXP in accordance with Env-Wt 407 and as follows:

...

(2) Installation of a culvert, pole, or rock ford, and associated fill, to permit vehicular access to a parcel for forest management, only if:

a. Access is not used for subdivision, development, or other land conversion to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance, or both;

b. Roadway width at the crossing does not exceed 20 feet;

c. Fill width, measured at the toe of the roadway side slopes shall be minimized and not exceed 50 feet;

d. Fill for any single wetland crossing does not exceed 50 feet in length, measured along the proposed access way;

e. Wetland crossings shall be limited to those that:

1. Do not impact any bogs, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone;

2. Are not located in a prime wetlands or duly-established 100-foot buffer unless a prime wetlands waiver has been obtained in accordance with Env-Wt 700;

3. Only cross a swamp or wet meadow if such swamp or wet meadow has no standing water for 10 months per year or more; and

4. Are not located in a protected species habitat unless authorized under Env-Wt 407 or Env-Wt 308.05(a) and Env-Wt 308.05(b); and

f. For stream crossings, the scoured stream width is no wider than 8 feet;

(3) Construction of a temporary crossing of a non-tidal watercourse of any width for the transportation of forest products, only if the temporary crossing:

a. Is not in or adjacent to prime wetlands or a duly-established 100-foot buffer unless a prime wetlands waiver has been obtained in accordance with Env-Wt 700;

b. Is not located in a protected species habitat unless authorized under Env-Wt 407 or EnvWt 308.05(a) and Env-Wt 308.05(b);

(4) Construction or repair of an existing permanent structure to cross wetlands, including streams, only if:

a. Is not in or adjacent to prime wetlands or a duly-established 100-foot buffer unless a prime wetlands waiver has been obtained in accordance with Env-Wt 700;

b. Is not located in a protected species habitat unless authorized under Env-Wt 407 or EnvWt 308.05(a) and Env-Wt 308.05(b);

c. Is not used for access to property that has been converted to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance or both; and

d. The structure disturbs less than 3,000 SF.

Comments:

Adding the 308.05 (a) and (b) references makes the heritage reporting consistent for forestry projects (i.e. provide proof heritage was checked).

(4) is the bridge SPN language where the channel is greater than 8' wide. The 3,000 SF is consistent with what the department uses elsewhere to determine minimum impact.