



JAMES S. KENNEDY

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To: Mary Ann Tilton
NHDES Wetlands Bureau
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603-271-2929

Date: 1/15/2019

Project:

Subject: **Wetlands Rules Comments**

Dear Mary Ann,

I have reviewed the Env-Wt Initial Proposal dated 10-30-18, and have the following comments, with suggested deletions in ~~striketrough~~ and suggested revisions in ***bold italic***:

PART Env-Wt 519 PONDS:

Env-Wt 519.02 (a) No pond shall be constructed ~~unless it contains less than~~ ***if it impacts more than*** 15% ~~inclusions~~ of very poorly drained soils ~~within the poorly drained soils~~;

Comment: I realize that this wording was developed at the NHANRS work session on August 30, 2018. However, the final version does not read coherently. What are inclusions and why just within the poorly drained soils? I have had projects with very poorly drained soils located right next to uplands. Where are these soils in relation to the project? I prefer the above corrected wording that controls the impacts, and clearly allows ponds to contain 15% very poorly drained soils. This ties in nicely with:

Env-Wt 519.08 (e) The pond construction does not impact more than 15% very poorly drained soils ~~inclusions~~;

Env-Wt 519.08 (d) No new dams or berms ***greater than 2 feet in height*** within ~~streams or~~ wetlands will be erected to create the pond.

Comment: In many pond projects, wetlands have a sloping water table, and a low berm is necessary to maintain finished water levels and multiple wetland classes. These low berms would be similar to beaver dams, which will not permitted to be “erected” under this rule. Also, since ponds are not permitted in streams by rule 519.02 (b) (1), why mention streams at all?

Env-Wt 519.03 (c) (5) Proposed ~~bathymetry overview~~ ***water depths by plan*** and cross section.

Comment: “bathymetry” is not defined or limited in scope. Why not use water depths - a simpler, more direct term?

Env-Wt 519.04 (d) (3) [fish ponds] ~~Have adequate depth to ensure that wintertime dissolved oxygen will be adequate to support fish populations and that there will be unfrozen areas within the pond.~~

Comment: This is an unnecessary and burdensome requirement. Dissolved oxygen will be difficult to predict with any scientific accuracy. It would be nearly impossible to establish a naturally occurring unfrozen condition without mechanical devices.

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Living Shorelines: The NHDES "*Streamlined/Improved Process*" handout dated 2018-11-13 states that, along with wildlife ponds, living shorelines is a new project type, processed in 10 days. I have searched the Initial Proposal 300 and 500 sections and can find no mention of this project type. I remember seeing something about it, and a requirement that living shoreline projects be designed by a professional engineer. I want to make sure that a Certified Wetland Scientist or a Licensed Landscape Architect be able to design living shorelines.

Respectfully submitted,

James S. Kennedy
NH Certified Wetland Scientist #118
NH Licensed Landscape Architect #51