



*Victoria F. Sheehan*  
*Commissioner*

**THE STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**



*William Cass, P.E.*  
*Assistant Commissioner*

January 16, 2019

MaryAnn Tilton  
Assistant Bureau Administrator  
Wetlands Bureau  
Land Resources Management Program  
NH Department of Environmental Services

Subject: NH Department of Transportation Comment on Draft Wetlands Rules

Dear Ms. Tilton,

The New Hampshire Department of Transportation (NHDOT) would like to acknowledge the time and effort you and your colleagues have put into the rewriting of the NH Department of Environmental Services (NHDES) wetlands rules (Env-Wt Part 100-900), the numerous opportunities you provided to participate on the rule-making workgroups, and for previous opportunities to provide input. We also recognize the challenges you faced in bringing together a diverse group of individuals to develop the rules, and your inability to always accommodate everyone's concerns/comments.

The NHDOT believes that, while you actively engaged stakeholders in the rule making process, the draft rules as written, continue to not meet your goal of providing a clear, consistent, and simplified approach to the permitting process. The proposed changes appear to have alleviated complexity in some areas, and have increased complexity in others, as outlined below:

1. There are many circular references throughout the rules which require referring to other portions of rule and law. This is a challenge even for skilled practitioners, which could result in non-compliance issues. Simplifying the language and making requirements more specific and direct would alleviate this concern.
2. The proposed rule changes will require additional time and cost to complete project efforts. This includes, but is not limited to the following:
  - a. Functional assessments for all wetland delineations,
  - b. Plans to be stamped by Licensed Land Surveyors,
  - c. Coastal Functional Assessment Reports for any tidal work to be completed by a Qualified Coastal Professional,
  - d. Additional tidal wetland delineation requirements,
  - e. Hydraulic Analysis Report for freshwater streams and tidal crossings, and
  - f. Pease Development Authority approval for tidal work.

As we have mentioned before, one revision that stands out as a marked improvement in the proposed rules is the section that allows for repair, rehabilitation and/or replacement of Tier 3 stream crossings.

The NHDOT provided specific comments on draft rules during the rulemaking process. While the rules reflect some of our prior comments, many appear to have gone unaddressed. The NHDOT will remain involved as these rules progress through the rulemaking process, and we would welcome the opportunity to meet with you prior to the Joint Legislative Committee on Administrative Rules (JLCAR) taking them up.

Throughout the remainder of the process and public vetting, our intent will be to identify the areas of the rules we can support, and advocate for revisions we feel are still needed. In addition, if the new rules are adopted, NHDOT would request to remain involved as you develop guidance documents and instructions that would accompany the rules.

Thank you again for the opportunity to provide comments on the draft rules.

Sincerely,



Matt Urban  
Chief, Operations Management Section  
Bureau of Environment

cc: Collis Adams, NHDES Wetlands Bureau Administrator  
Gino Infascelli, NHDES Public Works Permitting Officer  
Kevin Nyhan, NHDOT Bureau of Environment Administrator  
Peter Stannas, NHDOT Director of Project Development  
David Rodrigue, NHDOT Director of Operations  
William Cass, NHDOT Assistant Commissioner

S:\Environment\WETLANDS\2015-18 DES Rules Revisions\2019 Draft Rule Memo V3.docx