

January 18, 2019

Mary Ann Tilton  
New Hampshire DES  
Wetland Bureau  
PO Box 95  
Concord, NH 03302-0095

**RE : Comments on Proposed Wetlands Rules and Process**

Dear Ms. Tilton,

In response to the New Hampshire Department of Environmental Services (NHDES) Proposed Wetland Rules and Processes, Great Lake Hydro America, LLC (GLHA) hereby provides the following comments on the proposed changes to the language.

**Env-Wt 526.02(a):** *“There will be no expansion or change in use as a result of the project;”*

GLHA requests that NHDES please define “expansion” since repairs to existing dams often require the refacing of certain components that necessitate the need to extend the footprint of the structure 1-2 feet from its current footprint, particularly if the work is to be conducted in the wet to minimize the need for dewatering of habitat through the installation of a temporary coffer dam. We suggest that this de minimis amount of expansion be explicitly classified as a repair or replacement in-kind and not an expansion.

**526.02(c):** *“Adequate passage and rate of flow will be maintained at appropriate times to allow migration of fish and passage of other aquatic organisms;”*

GLHA requests that NHDES please clarify that this Rule does not require the passage of fish and aquatic organisms during construction where and when such passage would not otherwise exist at the dam in its normal mode of operation.

**526.02(d):** *“Runoff and flood waters will not be impeded or increased during or as a result of the C/M/R project;”*

GLHA requests that NHDES please clarify that this would not prevent the coordinated regulation of flows among upstream dams to facilitate construction at a distal dam facility if such flow regulation is consistent with an existing Water Quality Certification or Federal Energy Regulatory Commission (FERC) requirements.

**526.03 (h)(3)g:** *“The health, safety, and welfare of the general public, including how the project will alter the aesthetics of the site for the general public;”*

GLHA requests that NHDES clarify the authority of the Department to regulate and require opinions of aesthetics in Rules governing the impacts to wetlands? GLHA suggest that this is more appropriately and effectively addressed at the local level through local land use statutes or, if work is on an historic structure, through coordination and compliance with Section 106 requirements (which already exists in Rule).

**526.03 (i)(1):** *“An explanation of the known potential for current and historic sources of sediment pollution from upstream sources, including but not limited to wastewater discharges, hazardous waste sites, and existing and former manufacturing facilities and tanneries;”*

GLHA believes that the wording of this Rule is somewhat vague. GLHA requests that NHDES please clarify at what concentration of foreign constituents would the NHDES consider sediments to be polluted? Would the NHDES consider existing Department or EPA reports on the subject waterway as adequate characterization of such pollutants? Lastly, GLHA requests that NHDES please *allow* an applicant the option of collecting their own samples of the work areas if the applicant feels that existing agency reports do not offer site specific characterization of sediment pollution within the proposed work area.

**526.05(d):** *“At least 48 hours prior to commencing work, the permittee shall meet with the department to review the conditions of the permits issued by the department...”*

GLHA questions why a wetland scientist who may have only visited the site to delineate wetlands long before application preparation and had no further involvement in developing plans, construction sequence, or coordination with NHDES would be required to attend a pre-construction meeting? GLHA suggests that this wording be changed to “...wetland scientist or *qualified professional*”.

**526.05(e)(3):** *“Coordinate with the NH fish and game department, nongame and endangered species program, regarding the need for any additional species monitoring required before and during construction;”*

GLHA questions whether this Rule is intended to be applicable for any such species that New Hampshire Fish and Game would like to have monitored? Or is this limited to Threatened and Endangered (T&E) Species? If this Rule is applicable to non-T&E Species, are such suggested monitoring activities advisory only? For all species (T&E and non-T&E), would it apply only to species whose various life stages utilize the wetland jurisdictional area proposed for temporary or permanent impacts? GLHA believes additional clarification is necessary for this Rule.

**526.05(f):** *“A certified wetlands scientist or qualified professional, as applicable, shall verify all wetland or wetland-related work is done in accordance with the approved plans and narratives...”*

GLHA seeks clarity in the language of this Rule because the frequency of visits needed to document “all stages of construction” and verify that “no water quality violations occur” could be interpreted differently by differing parties. While GLHA concurs with the apparent intent of this provision of the Rule that leaves some flexibility in the frequency of visits to accommodate projects of differing size and complexity, GLHA questions whether the appropriate level of documentation will be specified in a permit condition by the permit reviewer who has a better grasp on the details and critical stages of the project? For dams, GLHA suggests that such observations and reporting be consistent with that required by FERC in its construction reporting requirements which is typically conducted monthly.

**526.05(g):** *“Upland and bank areas landward of the work area shall not be disturbed by regrading or filling.”*

GLHA believes this provision to be arbitrary and recommends it be struck or substantially revised to include under what conditions (i.e.: “...if not shown on approved plans” or “...without appropriate permits”) one may not disturb adjacent bank or upland areas by regrading or filling.

Such ancillary support work is often needed (if only temporary) to gain access to work areas from the adjacent steep landforms where dams typically exist.

**526.06(a):** *“Construction or modification of dam shall be a major project;”*

GLHA believes that the language of this Rule makes it unclear as to what level of modification to a dam structure would by itself cause a project to be classified as requiring a Major permit. GLHA feels that this provision seems unnecessary as other permit classification triggers exist in Rule and are more closely associated with the types and sizes of specific project features with a higher propensity for impacts to jurisdictional areas. If there is a latent need for this provision justifying its inclusion in the Rules, GLHA suggests that that it be limited to new dams or projects requiring a Dam Reconstruction permit from NHDES.

**Env-Wt 523.01(a):** *“This part shall apply to dredging projects in non-tidal jurisdictional areas.”*

GLHA requests that NHDES please clarify whether this part of the Rules apply to maintenance projects at dams where the temporary *relocation* of accumulated sediment is required to access certain projects for repair or reconstruction if such sediment is moved back to its original position against a spillway or other portion of the dam upon project completion, and if such sediment source and receipt areas are entirely contained within a cofferdam or turbidity barrier?

**Env-Wt 523.06(a):** *“Where not already exempt under RSA 482-A, maintenance dredging associated with existing infrastructure, a previously constructed maintenance dredge project, or an active man-made pond, shall be a minimum impact project provided the proposed dredging of public waters does not exceed 20 cubic yards and impacts less than 10,000 SF of wetland;”*

GLHA contends that the Rule is unclear as to why man-made sluiceways constructed for the purpose of conveying water to a dam penstock and which may be dredged in the dry would require a permit and not be exempt under RSA 482-A:3 IV (<http://www.gencourt.state.nh.us/rsa/html/L/482-A/482-A-mrg.htm>). While the original intent of the legislation can be debated, there has been some solace in knowing that in the past, up to 20,000 square feet of man-made sluiceways could be dredged if covered by a Minimum Impact Wetland permit. The proposed Rules would seem to elevate such activities to a higher permit category and further distance these maintenance dredge projects from other similar maintenance dredge projects which require no permit and yet have a similarly low risk to the natural environment due to the ability to take offline or isolate such work areas from river flow. If not made exempt in Rule, we question the need to elevate the classification of such projects beyond a Minimum Impact project and suggest such projects continue to be classified as Minimum Impact projects.

**Env-Wt 521.03:** *“Env-Wt 521.03 Criteria for Approval for Standard Utility Permits. In addition to the criteria established in Env-Wt 307, Env-Wt 311, and Env-Wt 313, the following criteria shall apply to utility projects: (a) The applicant shall be the owner of the property on which the project is proposed to be completed or holds an easement or other legal interest in property granting to the applicant the legal right to proceed with the proposed project; (b) A utility project that crosses multiple properties shall be considered a single and complete project and shall not be segmented into multiple proposed projects for the purpose of avoiding eligibility or classification requirements in this part; (c) A utility construction project shall, to the greatest extent practicable, be constructed within existing rights-of-way and developed areas and in the least environmentally impactful manner; and (d) A project that involves greater than one acre of contiguous permanent wetland or stream impact shall require off-site alternatives.”*

The proposed rules change the minimum impact threshold to allow unlimited temporary maintenance when specific conditions and applicable best management practices (BMPs) are met. This will allow utilities to proceed with a statutory permit by notice (SPN) instead of a standard dredge and fill permit. Utility projects meeting the requirements to proceed under an SPN would realize a significant reduction in costs. We ask that power producers, maintaining rights of way, be considered a utility for the criteria outlined above.

Please feel free to contact me at 207-755-5606 or via e-mail at [kyle.murphy@brookfieldrenewable.com](mailto:kyle.murphy@brookfieldrenewable.com) should you have any questions on these comments.

Sincerely,



Kelly Maloney  
Manager, Compliance - Northeast

Cc: S. Michaud, S. Gregg, N. Stevens, P. Mcdonough (GLHA)  
Rennie, C. Clark (NHDES)