

Hoyle, Tanner & Associates, Inc.
Comments to NHDES Wetlands Rules
January 18, 2019

102.04(b)	Road projects, specifically stream crossings, have difficulty identifying the “subject property” – consider adding “transportation ROW” where utility ROW is, as they have similar difficulties
102.06	Consider adding golf course irrigation ponds
102.24	Add s to wetland so that it reads “certified wetlands scientist” to match RSA and other Env-Wt text
103.35	Other Env-WT chapters use non-tidal instead of nontidal
103.37	How does this relate to dammed water bodies, is there any additional language needed regarding that?
104.18	Suggest “the average of the LENGTH of the natural lakeside.....” and consider clarification of this definition for stream crossing projects
104.49	Include Cowardin classifications?
306.01(b)(2)	Feels like there needs to be a reference for “best management practices”
306.01(d)	Doesn’t seem to be a 530? And, if it exceeds the minimum impact size limits, doesn’t that already kick it out in the first sentence “any project classified as minimum impact?”
307.03(a)	Including the new AGQS for PFOS? Will this result in issues concerning potentially contaminated sediment, increasing needs for soil or water testing?
307.04(a)	What does “as applicable” mean- is this a NHF&G determination? It seems like most wetlands are spawning or nursery areas for amphibians or migratory birds.
307.12 (d)	Is this intended for areas of temporary impact? The first section is confusing. This seems excessive for transportation projects or stream crossings which need temporary impacts to the bank for site access, or have already disturbed bank areas. Requesting replacement of shrubs and trees/saplings will increase substantially the cost of these projects.
307.13(d)	Request consideration of adding stream crossing projects to this, most abutters to a bridge or culvert are aware of the need for the project, and such projects have little recourse if the bridge or culvert is failing, and this is a step that spends time and effort getting abutter signatures
307.15(b)	Even for permanent wetland impacts? No need to protect the resource under the equipment if it’s going to be filled or permanently altered anyway.
309.03(b)(3)(b)	This feels clunky, does it mean no work is done in a Tier 2 or Tier 3 stream that is within 250-feet of a Designated River and has a direct surface water connection?
309.03(b)(5)	Meaning, if work on the culvert extends beyond the ROW then permission is needed, this can be time consuming, consider waiving this for municipal or NHDOT projects
309.10(a) and 310.03(a)	No notes about location in any of the wording, does this mean within the same Town, within the same water body, or along the same road? How does this work for stream crossings? Example, a Town replaces a culvert, want to do so again on either the same water body or same road, but different locations, can they do that?
310.01(c)	There are two subnumber 5’s
310.01(c)(7)(d)	What would “maintenance of rip-rap mean”? No reference to rip-rap maintenance in Env-Wt 514
311.01(b)	Contaminated link in the table and topic needs better clarification, this is quite a wide open issue, potential for contamination or known contaminants? How much soil/water testing will need to happen, given PFOS in soil potential and new water levels?
311.01(g)	“to the greatest extent practicable” is very wide and subjective
311.02(f)(6)	Why DHR review? There is no nexus to their review under state laws
311.03 and	I’m not sure why these are separated, and they seem to overlap, could be reduced into

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311.04	one list
311.05(a)(14)	Excessive commas
311.06(a)	Allow for digital copies of maps for towns that have maps available online
311.07	“to the maximum extent practicable” subjective
311.09(b)	“property” is difficult to define for linear transportation projects or bridge/culvert projects that cross properties, does it mean ROW or project boundaries?
313.03(b)(1)	Allow for relief from this should NHHNB or NHF&G determine that even though documented listed-species habitat exist on-site, the project will not impact such habitat
315.01(a)	By ending with “if:” it seems that all of these must apply, consider adding “if any of the conditions below apply”
406.04	This does not state that a CWS is needed to delineate the water course, thus, for stream projects, could the surveyor delineate TOB and OHW, and if there are not wetlands on site above TOB, then do we need a CWS to visit the site and/or stamp the plans? Surveyors often ID TOB and/or OHW, but shouldn’t we specify here that if those are jurisdictional resource boundaries then a CWS needs to do that? Or maybe reference or copy the language in 406.02(a)?
406.04(a)(3)	What is the channel bank, and how is it different from limit of the bank? Channel bank is not in 100
406.04(a)(2)	“on the bank” is confusing, the definition states OHW is a line on the shore, and for identifying different NHDES jurisdictional areas, the OHW line is the lower or bottom line of the bank area and TOB is the upper or top
407.02(b)(1)	How does this fit with stream crossings, are all projects impacting a perennial stream a minor or major? Doesn’t this conflict with the guidance in 300 and 900 that allows certain types of stream crossing projects able to be permitted as a Minimum or PBN?
518.05(c)(3)	Riprap should be rip-rap
524.02(a)	Maybe revise to “shall require CONSIDERATION of off-site alternatives”
524.02(d)	Unless NHHNB or NHF&G has determined that the listed species habitat will not be affected
527.04(f)	Requesting that the area be revegetated with similar species composition is excessive; unless that vegetation is unique or exceptional, asking for planting of shrubs or trees would increase construction, monitoring and maintenance costs.
801.03	It would help to have some clarity as to how many times you have to go back to the Con Com if they don’t have an existing list. The effort you have to go through to get to the point of being allowed to pay the ARM fee should be very clear for the applicant and the Town, and there should be consideration of the Town asking for use of the in-lieu fee or stating that they would prefer this be done for certain projects. This would prevent any Con Com from delaying a project with trying to put forward ideas that will not work just to try to keep the funds in the Town.
903.04(e) and (f) and 903.05 (d) and (e)	The contractors are responsible for the dewatering and erosion control plans, as this is a part of means and methods, and dictating it to them will increase costs. Submittal of these plans is typically a condition of the permit.
903.01 (a) Table 903-1	MOST stream crossings need an alternative design request, but can still be designed to be self-mitigating per the new definition, does the way the Tier 2 cell is worded mean a structure needing an alternative design request for a Tier 2 crossing can ask for a waiver of criteria in order to avoid mitigation? How does this factor in the self-mitigating concept?
903.06(c)	Why the emphasis on Narrative Assessment or Analysis when so much of this can be

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	shown with calculations? What is asked for feels like a stand-alone report and seems excessive in an application, particularly when the Hydraulic Report usually covers this
904.01(a)(5)(c)	Asking that all stream crossings accommodate the entrenchment ratio means that most, if not all, projects will need an alternative design. Making entrenchment ratio a part of the general design considerations is a hardship. Most existing crossings do not and will not be able to meet this without considerable cost and additional impacts to infrastructure and private property. There can be substantial improvement in the crossing design (increasing hydraulic opening, improving aquatic organism passage, improving or enhancing watercourse connectivity) while still not meeting the entrenchment ratio width. If a crossing doesn't meet 904.01 and a request for an alternative design is needed, doesn't that mean that trigger the requirement for mitigation for all Tier 3 crossings per 904.05(f)(2)?
904.08(a)(2)	Why not put (b) here instead of refer to it?
904.10(c)(2)(a)	Most designs will not be able to accommodate entrenchment ratio, thus unable to meet 904.01, and in fact is usually what the alternative design is being requested for, so if meeting 904.01 is a requirement for approval of the alternative design, the alternative design request process is ineffective. Maybe add "to the extent practicable"