

January 18, 2019

FILING VIA EMAIL

Mary Ann Tilton (MaryAnn.Tilton@des.nh.gov), Wetlands Bureau Assistant Administrator

RE: OLS Notice Number 2018-188

Env-Wt 500 Wetlands: Project-Specific Requirements

Comments On Proposed Rule Changes Specific To Dams (Env-Wt 526)

Dear Ms. Tilton:

Hull Street Hydro NH, LLC (“HSE Hydro”) owns and operates nine hydroelectric projects on the Merrimack, Pemigewasset, Androscoggin and Connecticut rivers in New Hampshire. HSE appreciates the opportunity to comment on the Department’s proposed rules changes.

HSE is primarily concerned with “new” proposed rules (Env-Wt 526) specifically for dams. We believe the current (existing; not proposed) rules adequately cover any proposed new construction projects or major dam repair projects. If adopted, the new proposed dam rules will be onerous and costly for existing dam owners.

Our specific comments are included in Attachment 1. Below is a bullet list of general concerns:

- Env-Wt 526.01 a: What defines a modification or repair?
- Env-Wt 526.01 b 1: Construction, Maintenance & Repair (C/M/R) projects should not be all encompassing; they should be broken out separately; repair project is not the same as a construction project; nor is a maintenance project the same as a repair project
- Env-Wt 526.02 c: FERC licenses and NHDES 401 WQC already dictate flow rates and fish passage requirements
- Env-Wt 526.03 b: This should be a requirement of the NHDES Wetlands Bureau to check with NHDES Dam Bureau; not the applicant. There could be decades (volumes of information)
 - Much of this information is CEII (Critical Energy Infrastructure Information) and CIP (Critical Infrastructure Protection) and has to be treated accordingly (i.e. non-public, secure storage, etc.)
- Env-Wt 526.03 g: What is the definition of modify/repair? The majority of this description would be covered by FERC and the NHDES Dam Bureau. FERC only requires a licensed professional engineer (any state) to perform certain work, requiring a NH-licensed professional engineer could add complications and cost to a FERC required project.
- Env-Wt 526.03 i: When is a sediment report actually needed? Most work we do is in the dry and does not affect jurisdictional wetlands. This requirement makes sense for a dam

- removal project. A more specific definition or category would be helpful.
- Env-Wt 526.03 l: This is currently covered with request for project review form with the New Hampshire Division of Historical Resources
 - Env-Wt 526.05 d: Why a meeting prior to commencing work? Especially for simple maintenance or repair projects
 - Env-Wt 526.05 d: Work in the dry should not be held to these requirements
 - Env-Wt 526.07 c: This list should include any work in the dry that does not change project operations, flow patterns, storage levels, etc.
 - Env-Wt 526.07 c: Item 1 should include inlets also

Since the Federal Energy Regulatory Commission and NHDES Dam Bureau are already directly involved with any construction, maintenance and/or repair activities associated with dams in New Hampshire, it seems unnecessary and redundant to have a special section for dams in the Wetlands rules.

HSE appreciates the opportunity to comment on the proposed new rules and hopes the Department will take them into consideration.

If you have any questions, please call me at (603) 744-8855 Ext. 2 or cmooney@centralriverspower.com.

Sincerely,

A handwritten signature in black ink that reads "Curtis R. Mooney". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Curtis R. Mooney
Manager, Regulatory Affairs

Attachment 1

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Text in bold italics is being added to the existing rules
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Initial Proposal 10-30-18 64

Explanatory comments in {bracketed blue italics}

- (3) The project is a minimum impact bioengineering project in accordance with Env-Wt 514.07.
- (b) A restoration and enhancement project shall be a minor project only if it:
 - (1) Meets the requirements in (a)(1), above; and
 - (2) Is either:
 - a. A living shoreline project in accordance with Env Wt 610; or
 - b. A minor impact bioengineering project in accordance with Env-Wt 514.07.
- (c) A restoration and enhancement project shall be a major impact project if it fails to meet the minimum impact and minor impact project criteria or otherwise requires a waiver of any of the approval criteria.

Adopt Env-Wt 526 to read as follows:

PART Env-Wt 526 DAMS

Env-Wt 526.01 Applicability; Definitions.

- (a) This part shall apply to the construction, modification, removal, repair, or replacement of a dam.
- (b) For purposes of this part, the following definitions shall apply:
 - (1) "C/M/R project" means a project to construct, modify, remove, repair, or replace a dam, or any combination thereof; and
 - (2) "Dam" means "dam" as defined in RSA 482:2, II, as reprinted in Appendix B.

Env-Wt 526.02 Approval Criteria. In addition to meeting all applicable criteria established elsewhere in subtitle Env-Wt, the applicant for a permit under RSA 482-A for a C/M/R project shall demonstrate that the project meets the following criteria:

- (a) For a project to repair, replace in kind, or maintain a dam:
 - (1) The dam is an existing legal structure; and
 - (2) There will be no expansion or change in use as a result of the project;
- (b) No flooding or de-watering associated with the C/M/R project will damage or destroy indigenous hydrophytic vegetation or habitat of finfish, crustacea, or wildlife;
- (c) Adequate passage and rate of flow will be maintained at appropriate times to allow migration of fish and passage of other aquatic organisms;
- (d) Runoff and flood waters will not be impeded or increased during or as a result of the C/M/R project;
- (e) For a project to construct a dam where no functional dam currently exists:
 - (1) If a permit under RSA 482 and Env-Wr 100 et seq. has not been issued, the application for such permit has been filed;
 - (2) The dam has been designed to minimize downstream impacts that would infringe on property owners contrary to RSA 482-A:11, II; and
 - (3) If the ecological benefit of the new dam will not offset the loss of wetland or stream functions from the proposed impoundment, compensatory mitigation will be provided; and

Commented [BS1]: What defines a modification or repair? Work with this classification can and does occur often where there is no impact to wetland jurisdiction criteria. If this type of work does occur within a wetland, jurisdictional permits are obtained. There needs to be better description and classification for these two items.

Commented [CM2]: Shouldn't these criteria be broken out separate. An existing dam would then only fall under maintenance or repair; construction would be the more stringent project.

Commented [CM3]: Defined as registered at NH Dam Bureau?

Commented [BS4]: Section(c) is duplicative to any FERC dam where approval is needed by USFW.

Commented [CM5]: Should there be a reference to the NHFGD and USFWS since they are the "experts" in fish passage?

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Explanatory comments in *bracketed blue italics*!

- (f) The C/M/R project will not impound, convert, or drain any priority resource area;

Env-Wt 526.03 Application Requirements. In addition to the information, maps, and plans required by Env-Wt 313, the applicant for a C/M project shall provide the following:

- (a) A description of the status of the existing dam structure, such as whether it currently functions as intended or is an historic dam;
- (b) Copies of any correspondence from the department's dam bureau relative to the dam;
- (c) A narrative description of the project that explains the reason for the proposed project;
- (d) The extent of the existing footprint of resource impact;
- (e) A description of the structure's design or proposed design, or both if different, and the rationale for the design;
- (f) A description of the methods that will be used to complete the project, including a construction sequence and methods to control in-stream turbidity during the work;
- (g) For any C/M/R project that will result in a low, significant, or high hazard dam as those terms are defined in Env-Wr 100, plans prepared by a NH-licensed professional engineer showing the design, existing site conditions, and proposed site modifications in an overhead view and a cross-section of the dam;
- (h) Narrative descriptions of:
- (1) Direct impacts to the river and its adjacent banks and wetlands from dredging or filling, or both, associated with the C/M/R project, including the work on the dam itself, including whether the impacts are temporary or permanent and why each impact is necessary to complete the project;
 - (2) Indirect impacts to wetlands and streams associated with the drawdown of the impoundment created by the dam, including the location and type of wetland and stream that may be affected by the drawdown of the impoundment; and
 - (3) Overall project impacts on:
 - a. Wetlands, including whether existing wetlands could be drained or flooded;
 - b. Plants, fish, and wildlife and associated critical habitat or migratory pathways;
 - c. Public commerce, navigation, and recreation;
 - d. The availability and quality of surface and ground water, including potential impacts to surface water withdrawals and nearby public and private water supply wells;
 - e. Abutting property owners, including those abutting the impoundment;
 - f. Local fire suppression systems, and whether local fire officials have been contacted to learn if dry hydrants or other fire-fighting supplies may be affected by the project; and
 - 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;
- (i) A sediment report that includes:
- (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;
 - (2) An estimate of the volume of sediment that has accumulated above the dam;

Commented [BS6]: Again what does "modification" include?

Commented [CM7]: This should be a requirement/reference for wetlands personnel to check with the Dam Bureau not the applicant.

Commented [BS8]: How much correspondence is required? There could be decades of information. Critical Infrastructure Protection (CIP) rules would apply to all who review this information. Critical Energy Infrastructure Information (CEII) would also be included in this correspondence which is not public information. How would that be handled?

Commented [BS9]: What is the definition of Modify or Repair? The majority of this description would be covered by the FERC & NH dam bureau.

Commented [CM10]: Again, this should be for "new construction of a dam".

Commented [BS11]: When is a sediment report actually needed? Most work we do is in the dry and does not affect wetland jurisdictional areas.

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Explanatory comments in {bracketed blue italics}

(3) If the dam is to be removed, the estimated volume of impounded sediment that could be transported downstream due to dam removal;

(4) A description of the physical characteristics of impounded sediment, including grain size distribution and organic content; and

(5) An assessment of whether the C/M/R project might cause or increase erosion or sedimentation, including whether downstream or upstream banks could erode as a result of the C/M/R project and what measures will be taken to stabilize exposed sediments;

(j) An assessment of whether the C/M/R project will reflect or redirect current or wave energy that might cause damage or hazards;

(k) If an existing dam is to be removed, an explanation of whether the dam provides any flood control benefits and, if so, an explanation of how removing the dam might affect flooding upstream and downstream of the project site;

(l) For an existing dam, a description of any historical assets associated with the dam and how the assets were identified, such as a consultation with the department of natural and cultural resources or a local historical society; and

(m) The location of any potential or known contaminants that may be released or impacted from the work on the construction of a new dam.

Env-Wt 526.04 Design Requirements.

(a) The dam shall meet all applicable standards established in Env-Wr 100 et seq.

(b) If the purpose of the C/M/R project is to provide fire protection to adjacent structures, the dam has been designed and will be constructed in an area with sufficient base flows to keep the pond filled even during dry periods.

Env-Wt 526.05 Construction Requirements.

(a) All work shall comply with the applicable standards in Env-Wt 307.

(b) The permittee shall develop and implement a water quality monitoring program.

(c) Not less than 5 state business days prior to starting work authorized by this permit, the permittee shall notify the department and the local conservation commission in writing of the date on which work under this permit is expected to start.

(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, including but not limited to those issued under RSA 482-A, RSA 483-B, and RSA 485-A:17. The permittee may request that the meeting be held on-site or at the department offices in Concord or the Pease International Tradeport. The meeting shall be attended by the applicant, his/her professional engineer(s), wetlands scientist(s), and the contractor(s) responsible for performing the work.

(e) Prior to commencing construction, the applicant shall:

(1) Clearly mark all wetland and surface water boundaries adjacent to the construction areas to prevent unintentional encroachment on adjacent jurisdictional areas;

(2) Place orange construction fencing at the limits of construction to prevent unintentional encroachment on adjacent jurisdictional areas;

Commented [BS12]: Isn't this covered with the Army Corps process?

Commented [CM13]: The current wetland permitting process requires "project review" by the NH Division of Historical Resources. This should be sufficient without having to reinvent the wheel and go to "local" historical societies.

Commented [CM14]: This is new? Why? Water Quality monitoring program may not be necessary.

Commented [CM15]: Why for a simple maintenance project?

Commented [BS16]: Work in the dry should not be held to these requirements.

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Explanatory comments in *{bracketed blue italics}*

(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;

Commented [BS17]: This is already required by FERC license.

(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, adequate siltation and erosion controls are properly implemented, and no water quality violations occur. A follow-up report including photographs of all stages of construction shall be submitted to the department within 60 days of final site stabilization.

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

Env-Wt 526.06 Construction Classification. Projects shall be classified in accordance with Env-Wt 407 and the following:

(a) Construction or modification of dam shall be a major project;

(b) Projects that impact a priority resource area, 200 LF or more of a surface water, or 10,000 SF or greater of a wetland are major projects; and

(c) Temporary cofferdams and other water control devices constructed in flowing water or adjacent to dams in conjunction with the repair or maintenance of existing structures shall be minimum impact projects.

Commented [BS18]: What is the definition of a modification?

Commented [BS19]: This item is contradictory to the requirements of any modification or repair.

Env-Wt 526.07 Maintenance and Repair Classification.

(a) Repair, patching or maintenance that involves less than 50 % surface area of the dam structure, shall be considered a minimum impact project.

(b) Maintenance projects that involve 50 % or greater surface area of the dam structure, shall be classified as a minor impact project unless the project involves removal, modification, or constitutes a total replacement of the dam.

Commented [CM20]: If work is out of the water on existing structures and there is no potential impact this activity should be exempt.

(c) Maintenance or repairs performed by a dam owner or their authorized agent shall not require a permit if the maintenance involves:

(1) The removal of debris blocking an outlet ~~or~~ structure, including beaver dam debris or flotsam such as logs, floats, dock parts, or boats;

(2) The filling of cracks where the surface area filled is less than 10% of the surface of the dam;

(3) The removal and replacement of stop logs or dam flash boards as part of ~~required safety~~ a dam safety required schedule, if appropriate;

(4) Repair in kind of any minor structural element such as fasteners or supports that is performed in the dry under normal operating schedule; or

(5) Replacement of dislodged rocks on an existing rip-rap earthen portion of a legally existing permitted dam used to stabilize the structure.

Commented [BS21]: This list should include any work in the dry that does not change project footprint flow patterns, operations, storage levels, etc...

Commented [CM22]: Inlet should be added.

Adopt Env-Wt 527 to read as follows:

PART Env-Wt 527 PUBLIC HIGHWAYS

Env-Wt 527.01 Applicability.

(a) This part shall apply to construction and maintenance projects for public highways in jurisdictional areas.