

PART Env-Wt 306 ACTIVITIES REQUIRING A PERMIT OR OTHER AUTHORIZATION

Env-Wt 306.01 Activities Eligible For a Lower Scrutiny Approval (LSA). Any project classified as **CAT1/low impact¹** shall be eligible for a lower scrutiny approval (LSA) **as authorized by RSA 482-A:11, VI-a or VII and** as described in Env-Wt 309 unless:

(a) The project includes activities that do not comply with all standard conditions for the project as specified in Env-Wt 307;

(b) The project includes activities that:

- (1) Are prohibited under RSA 482-A; or
- (2) Do not follow applicable best management practices;~~or~~

(c) Any work **in any jurisdictional area** was commenced prior to ~~the effective date of the LSA~~ **obtaining the applicable approval; or**

(d) The work is a restoration/enhancement project as described in Env-Wt 530 for which the proposed impacts exceed the CAT1/low impact size limits specified in Env-Wt 407.

Env-Wt 306.02 Activities Eligible for an Expedited Permit (EXP). Any project classified as CAT1/low impact shall be eligible for an expedited permit (EXP) **as authorized by RSA 482-A:11, VI and** as described in Env-Wt 310 unless:

(a) The project includes activities that are prohibited under RSA 482-A; or

(b) Any work **in any jurisdictional area** was commenced prior to ~~the effective date of the LSA~~ **obtaining the applicable approval.**

Env-Wt 306.03 Activities Requiring a Standard Permit. A standard permit as authorized by RSA 482-A:3, I, shall be obtained from the department prior to undertaking any dredging, filling, or construction activity in any jurisdictional area that:

- (a) Is not prohibited or exempted by RSA 482-A;
- (b) Is not subject to a statutory permit by notification (SPN); and
- (c) Is not eligible for an LSA under Env-Wt 306.01 or an EXP under Env-Wt 306.02.

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PART Env-Wt 309 LOWER SCRUTINY APPROVALS (LSAs)

Env-Wt 309.01 Applicability; Types of LSAs.

(a) This part shall apply to those activities that:

- (1) **Are not prohibited or exempted by RSA 482-A;**
- (2) **Are not subject to a statutory permit by notification (SPN); and**
- (3) **Can be undertaken without an EXP or a standard permit.**

(b) LSAs shall be classified based on the type of activity authorized, as follows:

(1) Activities authorized by rule to be undertaken without notice to the department provided the specified conditions are met, as specified in Env-Wt 309.02;

(2) Activities that may be undertaken provided a registration is filed and the specified conditions are met, as specified in Env-Wt 309.03 through Env-Wt 309.05;

¹ “Low impact” is proposed to replace “minimum impact”; those terms and the term “CAT1” are used interchangeably in these rules.

(3) Routine roadway/railway maintenance activities not covered by the SPN that may be undertaken provided a registration is filed and the specified conditions are met, as specified in Env-Wt 309.06 through Env-Wt 309.08; and

(4) CAT1/low impact activities, other than restoration/enhancement projects under Env-Wt 530, that have no deviations from the standards and conditions specified in Env-Wt 307 or the applicable provisions of Env-Wt 500, Env-Wt 600, or Env-Wt 900 and that do not impact a special resource area, that may be undertaken under a PBN as specified in Env-Wt 309.09 through Env-Wt 309.14.

Env-Wt 309.02 Projects Conditionally Authorized By Rule. As authorized by RSA 482-A:11, VII, the following activities that are not prohibited or exempted by RSA 482-A and are not subject to an SPN may be undertaken without notifying the department or registering the activity with the department and without obtaining a standard permit or an EXP, provided the conditions stated in Env-Wt 307 and the conditions stated below are met:

(a) Mowing or other cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, or white pine swamp, subject to the following conditions:

- (1) The roots of the vegetation shall not be disturbed;
- (2) The ground shall be frozen or sufficiently dry to avoid making ruts;
- (3) If the work is done when the ground is frozen, all disturbed area shall be stabilized once thawed; and
- (4) The project shall not be located in an area having very poorly drained soils or in a special resource area;

(b) Placement of a boat mooring, swim raft, or swim line in waters of the state, provided that the mooring, raft, or line has a permit from the department of safety or the harbor master, as applicable;

(c) Temporary placement of a fabric barrier on the bottom of a lake or pond by or under the direction of the department for the control of exotic aquatic weeds as authorized by RSA 487:17, subject to the following conditions:

- (1) The area shall not exceed 10,000 square feet (SF); and
- (2) The project shall not be located in a marsh of any size or a special resource area as defined in Env-Wt 100;

(d) Installation of a stream crossing in an ephemeral stream that is not connected to any jurisdictional area;

(e) Use of piezometers, staff gauges, flow meters, or hand tools such as augers or tile spades for:

- (1) Determining limits of jurisdictional wetlands;
- (2) Determining stability of shoreline for data to be included in a wetlands application;
- (3) Educational purposes; or
- (4) Monitoring hydrology;

(f) Hand raking of leaves or other organic debris from the shoreline or lake bed, subject to the following conditions:

- (1) All raking shall be done in an area exposed by drawdown or other low-water conditions;
- (2) The raking shall not disturb vegetative roots; and

- (3) The raking shall be limited to an area no larger than 900 SF;
- (g) The planting of native non-invasive vegetation to enhance wetlands using hand-held, non-motorized tools; and
- (h) Any stream crossing built landward of the top of one bank to landward of the top of the opposite bank with no impact to underlying or adjacent jurisdictional areas.

Env-Wt 309.03 Activity Registrations For Geotechnical Drilling, Wells, Test Pits, and Site Remediation.

(a) As authorized by RSA 482-A:11, VII, the activities specified in (b), below, may be undertaken after registering as specified in Env-Wt 309.05 provided:

- (1) The conditions listed in Env-Wt 309.04 are met, together with any project-specific conditions or limitations specified in (b), below;
 - (2) The entity undertaking the project provides the landowner, the local governing body, and the municipal conservation commission, if any, with written notification of the general location and the type of work to be conducted not less than 5 working days prior to commencing the work; and
 - (3) If the entity undertaking the project does not own the property on which the work will take place, the entity provides the department and the local governing body with a copy of the written access agreement signed by the landowner or the landowner's authorized agent or the court order granting access.
- (b) The registrations established by this section shall apply to the following activities:
- (1) Drilling geotechnical borings during the design of a public project or for a dug-in basin for a boathouse as provided in Env-Wt 519;
 - (2) Test pitting by backhoe or other heavy equipment in the banks of surface waters or in the upland tidal buffer zone for the purpose of gathering geotechnical information for the design of a public project;
 - (3) Drilling test wells or installing monitoring wells for purposes of exploring for public water supplies or soil or groundwater contamination;
 - (4) Drilling drinking water wells for public or private use; and
 - (5) Undertaking site remediation activities approved by the department pursuant to Env-Or 600, subject to the following additional conditions:
 - a. The information submitted to the department on which the approval for the activities was issued shall have:
 1. Clearly identified all jurisdictional areas; and
 2. Clearly described the activities that will occur within jurisdictional areas; and
 - b. The entity undertaking the activities shall provide the department's wetlands bureau and the local governing body with written notification of the commencement of work as soon as practicable, but in no event later than 5 working days after commencing work.

Env-Wt 309.04 Conditions For Activity Registrations Established In Env-Wt 309.03. The following conditions shall apply to any activity undertaken pursuant to Env-Wt 309.03:

- (a) Any vehicle or equipment used for access to the site or for drilling or excavating shall be:
 - (1) Skid-mounted, portable, or otherwise designed to have low ground contact pressure; and
 - (2) Operated in a manner that minimizes disturbance to jurisdictional areas;

- (b) The number of ruts shall be minimized;
- (c) Ruts shall not exceed one foot in depth;
- (d) Drilling operations shall be managed so as to have no adverse impact on water quality;
- (e) Drill holes shall:
 - (1) Not exceed 8 inches in diameter; and
 - (2) Be permanently cased, if the hole is for a well that will remain in place, or back-filled with drill cuttings or with clean material or grout if the hole is temporary;
- (f) Drill cuttings and excavated materials not used for back-fill shall be removed from jurisdictional areas;
- (g) Equipment shall be operated and maintained to prevent spillage of fluids, including but not limited to oil, gas, antifreeze, and hydraulic fluids;
- (h) No filling of wetlands shall be allowed except to smooth or regrade ruts or to use vegetative cuttings as part of a base layer for an access road;
- (i) All impacts to jurisdictional areas shall be temporary and, upon completion of the work, all rutted areas shall be regraded and smoothed so they will naturally revegetate after one season;
- (j) Any drilling in surface waters shall be done:
 - (1) Using equipment operated from a barge, from the ice, or from adjacent uplands; and
 - (2) So as to not violate any water quality standards;
- (k) No work shall be done in surface waters except as provided in (j), above; and
- (l) No work shall be done in a marsh of any size or in a special resource area.

Env-Wt 309.05 Registrations for Activities Covered By Env-Wt 309.03. The person responsible for undertaking an activity covered by Env-Wt 309.03 shall register the activity by providing the following to the department in writing:

- (a) The name, mailing address, and web site URL, if any, of the person responsible for the activity and, if the person is other than an individual, the name, daytime telephone number, and email address of an individual who will serve as the person's point of contact for the activity;
- (b) The type of activity to be undertaken;
- (c) The location of the activity; and
- (d) The estimated start date for the activity and the anticipated length of time the activity will take to complete.

Env-Wt 309.06 Routine Roadway/Railway Maintenance Activities Not Subject to SPN. Routine roadway and railway maintenance activities that are not covered by the SPN described in Env-Wt 308.04(f) but are included in "Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire", published by the New Hampshire department of transportation, dated 2017 ("Routine Roadway Maintenance BMPs") may be undertaken ~~without obtaining an EXP or standard permit pursuant to the LSA described in Env-Wt 309.01(b)(3)~~, provided:

- (a) The person responsible for the activities (responsible party) files a registration form as specified in Env-Wt 309.08;

- (b) The activities are conducted in accordance with the Routine Roadway Maintenance BMPs;
- (c) The total project does not impact more than 50 linear feet or 3,000 sq. ft. of jurisdictional area; and
- (d) All conditions in Env-Wt 309.07 are met.

Env-Wt 309.07 Conditions for Routine Roadway and Railway Maintenance Activities. Any person undertaking routine roadway or railway maintenance activities pursuant to Env-Wt 309.05 shall comply with the following:

- (a) No work shall occur on property not owned by the responsible party unless the responsible party also:
 - (1) Provides copies of a signed written release from each owner of the property on which the work will be done to the department with the notification form; or
 - (2) Provides a completed notification form at least 5 calendar days prior to start of work to each owner of property that will be impacted by the work;
- (b) No work shall be done in excess of the activities described in the Routine Roadway Maintenance BMPs;
- (c) All work shall comply with the Routine Roadway Maintenance BMPs and the applicable provisions of Env-Wt 307;
- (d) No work shall be done:
 - (1) In excess of the activities described in the Routine Roadway Maintenance BMPs;
 - (2) In or adjacent to prime wetlands;
 - (3) Within ¼-mile of a New Hampshire river designated pursuant to RSA 483; or
 - (4) In bogs, marshes, tidal wetlands, undisturbed tidal buffer zone, or sand dunes; and
- (e) A copy of the completed registration form shall be posted in a prominent location at the worksite prior to initiation of work at the worksite.

Env-Wt 309.08 Registrations for Routine Roadway and Railway Maintenance Activities.

- (a) To register the activities, the responsible party shall provide the following to the department on or with a Notification of Routine Roadway and Railway Maintenance Activities form that has been signed and certified as specified in Env-Wt 311.11:
 - (1) The name and mailing address of the responsible party;
 - (2) The name, title, and daytime telephone number of an individual who has been authorized by the responsible party to serve as the department's point of contact for the activities;
 - (3) The location of the proposed activity(ies), including:
 - a. The name of the road and the numbers of the nearest utility poles on either side of the location; and
 - b. The name of the stream or, if unnamed, the name of the surface water to which the stream is tributary;
 - (4) A description of the proposed activity(ies);
 - (5) Reference to the section of the Routine Roadway Maintenance BMPs that applies to the activity;

- (6) A copy of the USGS topographical map on which the location of the proposed activity(ies) is clearly marked;
- (7) Sketches of the proposed construction design, if applicable; and
- (8) Color photographs of the proposed work site showing existing structures, surrounding land, and the subject surface water.

(b) The responsible party shall provide a copy of the completed notification form and all attachments thereto to the local governing body and to the municipal conservation commission, if any, at least 5 calendar days prior to commencement of work.

ALL SUBSEQUENT SECTIONS ARE NEW:

Env-Wt 309.09 Availability of Permit-by-Notification (PBN). Any person intending to undertake activities in a jurisdictional area may do so under a PBN as authorized by RSA 482-A:11, VI-a if the project is:

- (a) A low impact/CAT1 project having no deviations from the standards and conditions specified in Env-Wt 307 or the applicable provisions of Env-Wt 500, Env-Wt 600, or Env-Wt 900;
- (b) Not located in a special resource area; and
- (c) Not a restoration/enhancement project as described in Env-Wt 530.

Env-Wt 309.10 PBN Submission Requirements. To obtain a PBN, the applicant shall submit to the department the following, on or with a document to facilitate submitting the information, obtained from the department:

- (a) The applicant's name, mailing address, and daytime telephone number;
- (b) Information on the proposed project location, including:
 - (1) The location of proposed project by street address and tax map and lot number;
 - (2) A copy of town tax map showing the location of the proposed project in relation to abutters;
 - (3) A copy of the appropriate US geological survey map with the property and project located;
 - (4) Name of water body, wetland, or other jurisdictional area where work is proposed;
 - (5) Original photos, clearly showing the area to be impacted, mounted on 8½" x 11" paper and annotated to explain impact; and
 - (6) The results and identification number of the NHB DataCheck;
- (c) Information on the proposed project, including:
 - (1) Identification of the applicable CAT1 provision in Env-Wt 500, Env-Wt 600, or Env-Wt 900, as applicable;
 - (2) A description of the project, including a list of the work items to be performed and detailed dimensions of the size of the impacts in jurisdictional areas;
 - (3) Identification of the type of landform to be affected, including the type of wetland and type of soils, from the list in Env-Wt [insert xref when available];
 - (4) An accurate drawing with dimensions clearly shown to document existing site conditions and to show the location of the property;
 - (5) An accurate drawing to show the impact of the proposed activity on jurisdictional areas, including the following:
 - a. An overview of the property and proposed impact areas in relation to property lines;

- b. The scale, if any, used on the plan;
 - c. If the drawing is not to scale, the dimensions of all existing and proposed structures and all other relevant features necessary to clearly define the project;
 - d. A labeled north-pointing arrow to indicate orientation
 - e. A legend that clearly indicates all symbols, line types, and shading used on the plan;
 - f. The location of jurisdictional areas delineated in accordance with Env-Wt 400;
 - g. If the topography is to be permanently altered, the existing and proposed topography at 2-foot intervals, including a reference to elevation;
 - h. Proposed sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work;
 - i. The location and type of siltation and turbidity controls indicated graphically and labeled, or annotated as necessary; and
 - j. For any project using a temporary coffer dam and for any repair of a tier 3 stream crossing, the date, signature, and seal of the licensed professional engineer who prepared or had responsibility for the plan(s);
- (6) The number of linear feet of shoreline frontage for projects located on water bodies;
 - (7) The linear distance of the project from abutting property boundaries; and
 - (8) Any additional information required by the applicable section in Env-Wt 500, Env-Wt 600, or Env-Wt 900;
- (d) A signed statement by the applicant certifying that:
- (1) The proposed project meets the conditions and limits of Env-Wt 307 and the applicable low impact project rule;
 - (2) If the project is to repair or replace a docking structure, the docking structure is an existing legal structure;
 - (3) The proposal is the alternative with the least adverse impact to jurisdictional areas, as required by Env-Wt [insert xref];
 - (4) The project is not located in a special resource area; and
 - (5) The applicant is aware of the limits of the PBN and understands and will comply with all conditions in the PBN and all applicable conditions in Env-Wt 307;
- (e) The application fee for minimum impact projects as required by RSA 482-A:3, I; and
- (f) A signed statement by the county conservation district or certified wetland scientist, if required by the appropriate CAT1 project rule, certifying compliance with all conditions of that rule.

Env-Wt 309.11 Notification of Municipality. At the same time the applicant submits an application for a PBN to the department, the applicant shall submit a copy of the application to the clerk of the municipality in which the proposed project is located, provided that if the municipality requires more than one copy to be submitted, the applicant shall submit the required number of copies.

Env-Wt 309.12 PBN Review Procedures.

- (a) The department shall review the application for a PBN for completeness within 2 working days of receipt.

NOTE: All cross-references subject to verification.

(b) The department shall review the application for a PBN for compliance with all applicable requirements within 2 working days of determining the application is complete.

(b) If the application is complete and complies with applicable requirements, the department shall post a permit for the project on its website within one working day of determining that the PBN application complies with all applicable requirements.

(c) If the application is not complete or if the project covered by the application does not comply with applicable requirements, the department shall:

(1) Deny the application within one working day of determining that the application was incomplete or not in compliance; and

(2) Inform the applicant in writing of the reason(s) for the denial.

(d) If the original PBN application was denied because it was incomplete and the applicant wishes to proceed under a PBN, the applicant shall submit a new application for an PBN in accordance with Env-Wt 309.10.

(e) If the original PBN application was denied because the proposed project did not comply with applicable requirements and the applicant wishes to proceed, the applicant shall file:

(1) A PBN application for a project that has been modified to conform to applicable requirements; or

(2) An application for an EXP under Env-Wt 310 or a standard permit under Env-Wt 311.

Env-Wt 309.13 Conditions for PBNs.

(a) Subject to (c) and (d), below, after the completion of work authorized by a PBN no other work that would require any permit or other authorization under RSA 482-A or subtitle Env-Wt shall be undertaken on the subject property pursuant to another PBN or EXP, or pursuant to an SPN, for a period of 12 months from the date the PBN was issued.

(b) All work authorized by a PBN shall comply with all applicable conditions specified in Env-Wt 307 and the applicable provisions of Env-Wt 500, Env-Wt 600, or Env-Wt 900.

Env-Wt 309.14 Work Subsequent to Work Under a PBN; Reclassification.

(a) Work that is wholly unrelated to the work covered by the PBN may be done within 12 months of the date the PBN was issued under another PBN or EXP, or pursuant to an SPN, if the property owner submits information, including a plan, to demonstrate that:

(1) The proposed work is wholly unrelated to and separate from the work already done under the prior PBN, EXP, or SPN; and

(2) The proposed work and the work already done under the prior PBN, EXP, or SPN do not, when combined, constitute a project for which a standard permit is required.

(b) If the property owner wishes to undertake work that is related to the work covered by the PBN within 12 months of the date the PBN was issued, the owner shall submit information about the proposed work and the department shall evaluate the proposed work together with the work covered by the PBN to assess the cumulative impact to determine whether to reclassify the project.