

TABLE OF CONTENTS

Pre-December 15, 2019, Rules. Refer to Administrative Rule Env-Wt 305.02 regarding applicability.

CHAPTER Env-Wt 100 ORGANIZATIONAL RULES

PART Env-Wt 101 DEFINITIONS

- Env-Wt 101.01 100-year Floodplain
- Env-Wt 101.02 Abandoned
- Env-Wt 101.03 Abutter
- Env-Wt 101.04 Accessory Docking Structure
- Env-Wt 101.05 Activity Sponsor
- Env-Wt 101.06 Applicant
- Env-Wt 101.07 Bank
- Env-Wt 101.08 Beach
- Env-Wt 101.09 Boathouse
- Env-Wt 101.10 Boatslip
- Env-Wt 101.11 Bog
- Env-Wt 101.12 Breakwater
- Env-Wt 101.13 Bulkhead
- Env-Wt 101.14 Bureau
- Env-Wt 101.15 Canopy
- Env-Wt 101.16 Certified Wetland Scientist
- Env-Wt 101.17 Commercial Use of Structures
- Env-Wt 101.18 Commissioner
- Env-Wt 101.19 Compensatory Mitigation
- Env-Wt 101.20 Conservation Area
- Env-Wt 101.21 Conservation Commission
- Env-Wt 101.22 Conservation Project
- Env-Wt 101.23 Continued Agricultural Use
- Env-Wt 101.24 Corduroy Road
- Env-Wt 101.25 Council
- Env-Wt 101.26 Cribs
- Env-Wt 101.27 Cropland
- Env-Wt 101.28 Department
- Env-Wt 101.29 Design Fetch
- Env-Wt 101.30 Developed Upland
- Env-Wt 101.31 Director
- Env-Wt 101.32 Dock
- Env-Wt 101.33 Dock
- Env-Wt 101.34 Dolphin
- Env-Wt 101.35 Drainage Swale
- Env-Wt 101.36 Dredge
- Env-Wt 101.37 Dredge Spoils
- Env-Wt 101.38 Dune Vegetation
- Env-Wt 101.39 Ephemeral Stream
- Env-Wt 101.40 Erosion Control
- Env-Wt 101.41 Excavate
- Env-Wt 101.42 Fetch
- Env-Wt 101.43 Fill
- Env-Wt 101.44 Fill
- Env-Wt 101.45 Flats
- Env-Wt 101.46 Float
- Env-Wt 101.47 Functional Assessment

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.48 Grandfathered Status
Env-Wt 101.49 Highest Observable Tide Line
Env-Wt 101.50 Hydric Soil
Env-Wt 101.51 Hydrophyte
Env-Wt 101.52 Intermittent Stream
Env-Wt 101.53 Jetty
Env-Wt 101.54 Jurisdiction
Env-Wt 101.55 Jurisdictional Area
Env-Wt 101.56 Maintenance of Structures
Env-Wt 101.57 Major Docking System
Env-Wt 101.58 Major Project
Env-Wt 101.59 Marina
Env-Wt 101.60 Marsh
Env-Wt 101.61 Minimum Impact Project
Env-Wt 101.62 Minor Project
Env-Wt 101.63 Mooring
Env-Wt 101.64 Navigable Frontage
Env-Wt 101.65 Nontidal Wetland
Env-Wt 101.66 Normal High Water
Env-Wt 101.67 Open Pile Construction
Env-Wt 101.68 Pasture
Env-Wt 101.69 Perennial Stream
Env-Wt 101.70 Permanent Dock
Env-Wt 101.71 Permit Action
Env-Wt 101.72 Pier
Env-Wt 101.73 Pile
Env-Wt 101.74 Practicable
Env-Wt 101.75 Preservation
Env-Wt 101.76 Primary Vernal Pool Indicators
Env-Wt 101.77 Public Hearing
Env-Wt 101.78 Repair
Env-Wt 101.79 Replacement
Env-Wt 101.80 Retaining Wall
Env-Wt 101.81 Revetment
Env-Wt 101.82 Rip-Rap
Env-Wt 101.83 Roadway
Env-Wt 101.84 Rocker Box
Env-Wt 101.85 Sand Dune
Env-Wt 101.86 Seasonal Dock or Seasonal Structure
Env-Wt 101.87 Secondary Vernal Pool Indicators
Env-Wt 101.88 Sedimentation Controls
Env-Wt 101.89 Service Area
Env-Wt 101.90 Shoal
Env-Wt 101.91 Shoreline Frontage
Env-Wt 101.92 Significant Environmental Impact
Env-Wt 101.93 Siltation Curtain
Env-Wt 101.94 Sluice
Env-Wt 101.95 Stream Crossing
Env-Wt 101.96 Stream Restoration
Env-Wt 101.97 Structure
Env-Wt 101.98 Substantial Public Interest

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.99 Surface Water Body or Surface Waters
Env-Wt 101.100 Swamp
Env-Wt 101.101 Tidal Buffer Zone
Env-Wt 101.102 Tidal Flat
Env-Wt 101.103 Tidal Flushing
Env-Wt 101.104 Tidal Wetland
Env-Wt 101.105 Unnecessary Hardship
Env-Wt 101.106 Upland
Env-Wt 101.107 Upland Buffer
Env-Wt 101.108 Vernal Pool
Env-Wt 101.109 Watercourse
Env-Wt 101.110 Watershed
Env-Wt 101.111 Weephole
Env-Wt 101.112 Wet Meadow
Env-Wt 101.113 Wetland
Env-Wt 101.114 Wetland Creation
Env-Wt 101.115 Wetland Enhancement
Env-Wt 101.116 Wetland Restoration
Env-Wt 101.117 Wharf

PART Env-Wt 102 STATEMENT F PURPOSE AND ACCESS TO FILES

Env-Wt 102.01 Purpose
Env-Wt 102.02 Access to Files

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 200 RULES OF PRACTICE AND PROCEDURE

PART Env-Wt 201 PURPOSE AND APPLICABILITY

Env-Wt 201.01 Purpose

Env-Wt 201.02 Applicability

PART Env-Wt 202 PERMIT APPLICATION HEARINGS

Env-Wt 202.01 Permit Application Hearings – When Held

Env-Wt 202.02 Permit Application Hearings: Procedures

PART Env-Wt 203 CHALLENGES TO DECISIONS MADE UNDER RSA 482-A

Env-Wt 203.01 Contesting an Enforcement Decision

Env-Wt 203.02 Contesting a Permitting Decision

PART Env-Wt 204 WAIVERS

Env-Wt 204.01 Purpose

Env-Wt 204.02 Procedures

Env-Wt 204.03 Content of Waiver Requests

Env-Wt 204.04 Signature Required

Env-Wt 204.05 Criteria for Waivers to Rules

Env-Wt 204.06 Criteria for Waivers under RSA 482-A:26, III(b)

Env-Wt 204.07 Decisions

Env-Wt 204.08 Suspension, Revocation, or Modifications of Waivers

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 300 CRITERIA AND CONDITIONS FOR PERMITS

PART Env-Wt 301 DELINEATION AND CLASSIFICATION OF WETLANDS

- Env-Wt 301.01 Delineation of Wetlands Boundaries
- Env-Wt 301.02 Classification of Wetland Types

PART Env-Wt 302 CRITERIA FOR EVALUATION

- Env-Wt 302.01 Statement of Purpose
- Env-Wt 302.02 Department Action
- Env-Wt 302.03 Avoidance, Minimization, and Mitigation
- Env-Wt 302.04 Requirements for Application Evaluation
- Env-Wt 302.05 After-the-Fact Application

PART Env-Wt 303 CLASSIFICATION OF PROJECTS

- Env-Wt 303.01 Assignment of Classification
- Env-Wt 303.02 Major Projects
- Env-Wt 303.03 Minor Projects
- Env-Wt 303.04 Minimum Impact Projects
- Env-Wt 303.05 Projects That Do Not Require a Permit

PART Env-Wt 304 APPROVAL CONDITIONS

- Env-Wt 304.01 Conditions Specified on Permit
- Env-Wt 304.02 Rock Removal
- Env-Wt 304.03 Timing of Projects
- Env-Wt 304.04 Setback from Property Lines
- Env-Wt 304.05 Logging Operations
- Env-Wt 304.06 Erosion and Siltation Control Measures
- Env-Wt 304.07 Embankments Adjacent to Culverts and other Stream Crossings
- Env-Wt 304.08 Beaches
- Env-Wt 304.09 Subdivisions
- Env-Wt 304.10 Shoreline Structures
- Env-Wt 304.11 Dredging Projects
- Env-Wt 304.12 Filling Projects
- Env-Wt 304.13 Utility Crossings
- Env-Wt 304.14 Gold Mining and Dredging
- Env-Wt 304.15 Cofferdams

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 400 SHORELINE STRUCTURES

PART Env-Wt 401 STATEMENT OF PURPOSE AND EVALUATION

Env-Wt 401.01 Purpose

Env-Wt 401.02 Evaluation

PART Env-Wt 402 DESIGN AND CONSTRUCTION CRITERIA

Env-Wt 402.01 Configuration

Env-Wt 402.02 Navigation Space

Env-Wt 402.03 Dimensions

Env-Wt 402.04 Setbacks

Env-Wt 402.05 Seasonal Docks

Env-Wt 402.06 Permanent Docks

Env-Wt 402.07 Breakwaters

Env-Wt 402.08 Canopies

Env-Wt 402.09 Structures Disallowed

Env-Wt 402.10 Stairways

Env-Wt 402.11 Maintenance

Env-Wt 402.12 Frontage Less Than 75'

Env-Wt 402.13 Frontage Over 75'

Env-Wt 402.14 Exceptions To Frontage Criteria

Env-Wt 402.15 Commercial Use – Municipal Review

Env-Wt 402.16 Marinas – Design Standards

Env-Wt 402.17 Contiguous Frontage

Env-Wt 402.18 Ownership

Env-Wt 402.19 Deed Restriction

Env-Wt 402.20 Registration

Env-Wt 402.21 Modification of Existing Structures

PART Env-Wt 403 CRITERIA FOR INTAKE AND OUTFLOW STRUCTURES

Env-Wt 403.01 Intake Structures

Env-Wt 403.02 Outflow Structures

Env-Wt 403.03 Dikes, Tide Dams, and Tide Gates

PART Env-Wt 404 CRITERIA FOR SHORELINE STABILIZATION

Env-Wt 404.01 Least Intrusive Method

Env-Wt 404.02 Diversion of Water

Env-Wt 404.03 Vegetative Stabilization

Env-Wt 404.04 Rip-rap

Env-Wt 404.05 Walls

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 500 PERMIT PROCEDURE

PART Env-Wt 501 APPLICATION PROCEDURES

- Env-Wt 501.01 Applications for Regular Review
- Env-Wt 501.02 Additional Data Requirements
- Env-Wt 501.03 Identification of Applications
- Env-Wt 501.04 Applications for Minimum Impact Projects
- Env-Wt 501.05 Mitigation Sequencing Process
- Env-Wt 501.06 Mitigation Proposal Completeness
- Env-Wt 501.07 Review of Compensatory Mitigation Proposals

PART Env-Wt 502 GENERAL CONDITIONS APPLICABLE TO ALL PERMITS

- Env-Wt 502.01 Duration of Permit
- Env-Wt 502.02 Transferability
- Env-Wt 502.03 Filing Certificate of Compliance
- Env-Wt 502.04 Repair or Rebuilding Structures
- Env-Wt 502.05 Permit Acceptance

PART Env-Wt 503 EMERGENCY PROCEDURES

- Env-Wt 503.01 Emergency Approvals
- Env-Wt 503.02 Action After Emergency

PART Env-Wt 504 SMALL MOTOR DREDGING PERMITS

- Env-Wt 504.01 Persons Requiring a Permit
- Env-Wt 504.02 Application Requirements
- Env-Wt 504.03 Conservation Commission Review
- Env-Wt 504.04 Dredging Criteria

PART Env-Wt 505 EXPEDITED MINIMUM IMPACT PERMITS

- Env-Wt 505.01 Application Completeness Requirements
- Env-Wt 505.02 Expedited Review Procedures
- Env-Wt 505.03 Expedited Permit Conditions
- Env-Wt 505.04 Expedited Repair Contingency

PART Env-Wt 506 PERMIT BY NOTIFICATION

- Env-Wt 506.01 Projects Qualifying for Permit by Notification
- Env-Wt 506.02 Permit by Notification Procedures for Qualifying Projects
- Env-Wt 506.03 Notification Completeness Requirements for Projects Qualifying for Permit by Notification in Env-Wt 506.01
- Env-Wt 506.04 Conditions for Permit by Notification for Qualifying Projects

PART Env-Wt 507 SEASONAL DOCK NOTIFICATION

- Env-Wt 507.01 Qualification for Seasonal Dock Notification
- Env-Wt 507.02 Notification Procedures for Qualifying Seasonal Dock Projects
- Env-Wt 507.03 Notification Completeness Requirements for Qualifying Seasonal Dock Projects

PART Env-Wt 508 SUSPENSION, REVOCATION, OR MODIFICATION OF PERMITS

- Env-Wt 508.01 Purpose
- Env-Wt 508.02 Suspension, Revocation, or Modification of Permits

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 600 TIDAL WETLANDS

PART Env-Wt 601 - REPEALED

PART Env-Wt 602 - REPEALED

PART Env-Wt 603 - REPEALED

PART Env-Wt 604 - REPEALED

PART Env-Wt 605 - REPEALED

PART Env-Wt 606 DESIGN AND CONSTRUCTION CRITERIA

Env-Wt 606.01 Fill Criteria

Env-Wt 606.02 Breakwater Criteria

Env-Wt 606.03 Piers, Docks, Wharves, and Floats Criteria

Env-Wt 606.04 Jetty Criteria

Env-Wt 606.05 Mooring and Marina Criteria

Env-Wt 606.06 Pile, Crib, and Caisson Criteria

Env-Wt 606.07 Utility Line, Pole, Tower, and Antennae Criteria

Env-Wt 606.08 Boardwalk Criteria

Env-Wt 606.09 Trails, Roadways, Access, and Boat Ramps

Env-Wt 606.10 Boathouses and Shoreline Slips

Env-Wt 606.11 Part Taking Precedence

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 700 PRIME WETLANDS

PART Env-Wt 701 CRITERIA AND EVALUATION

Env-Wt 701.01 Purpose

Env-Wt 701.02 Identification of Wetlands for Consideration as Prime

Env-Wt 701.03 Selection of Evaluation Criteria

Env-Wt 701.04 Selection of Designated Prime Wetlands

PART Env-Wt 702 SUBMISSION

Env-Wt 702.01 Report

Env-Wt 702.02 Map Format

Env-Wt 702.03 Acceptance

PART Env-Wt 703 PERMIT PROCESS

Env-Wt 703.01 Criteria for Approval

Env-Wt 703.02 Criteria for Mitigation and Compensation

Env-Wt 703.03 Public Hearing

Env-Wt 703.04 Delineation of Prime Wetland

PART Env-Wt 704 NOTIFICATION PERMIT ISSUANCE AND APPEAL

Env-Wt 704.01 Permit Issuance

Env-Wt 704.02 Appeal

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 800 COMPENSATORY MITIGATION

PART Env-Wt 801 PURPOSE, APPLICABILITY, AND TYPE OF COMPENSATORY
MITIGATION REQUIRED

- Env-Wt 801.01 Purpose
- Env-Wt 801.02 Applicability
- Env-Wt 801.03 Type of Compensatory Mitigation Required

PART Env-Wt 802 DEFINITIONS

- Env-Wt 802.01 Conservation Easement
- Env-Wt 802.02 Conservation Interest
- Env-Wt 802.03 In-Lieu Fee Payment
- Env-Wt 802.04 Permittee-Responsible Mitigation
- Env-Wt 802.05 Qualified Professional

PART Env-Wt 803 COMPENSATORY MITIGATION PROPOSALS

- Env-Wt 803.01 Permittee-Responsible Mitigation Proposals
- Env-Wt 803.02 In-Lieu Fee Mitigation Proposals
- Env-Wt 803.03 Compensatory Mitigation Site Location
- Env-Wt 803.04 Compensation Amount
- Env-Wt 803.05 Compensatory Mitigation Ratios
- Env-Wt 803.06 Alternative Compensatory Mitigation Proposals
- Env-Wt 803.07 Criteria for Acceptance of In-Lieu Fee Payments
- Env-Wt 803.08 Notification of Decision on a Proposed In-Lieu Fee Payment

PART Env-Wt 804 UPLAND BUFFER PRESERVATION

- Env-Wt 804.01 Location and Value
- Env-Wt 804.02 Dimensions
- Env-Wt 804.03 Incorporated Jurisdictional Areas
- Env-Wt 804.04 Criteria for Evaluation of an Upland Buffer

PART Env-Wt 805 WETLAND RESTORATION OR CREATION

- Env-Wt 805.01 Wetland Restoration or Creation
- Env-Wt 805.02 Criteria for Evaluation
- Env-Wt 805.03 Plans for Wetland Restoration or Creation Projects

PART Env-Wt 806 REQUIREMENTS UPON PERMITTING

- Env-Wt 806.01 Notification of Construction Completion
- Env-Wt 806.02 Annual Monitoring Report
- Env-Wt 806.03 Implementation of Remediation Plan
- Env-Wt 806.04 Notification of Recorded Conservation Interest
- Env-Wt 806.05 Submittal of In-Lieu Fee Payment

PART Env-Wt 807 AQUATIC RESOURCE COMPENSATORY MITIGATION FUND

- Env-Wt 807.01 Definitions
- Env-Wt 807.02 Use of Aquatic Resource Compensatory Mitigation Fund
- Env-Wt 807.03 Identification of Eligible Projects
- Env-Wt 807.04 Requirements for ARM Fund Applications
- Env-Wt 807.05 Processing of ARM Fund Applications
- Env-Wt 807.06 Eligibility Criteria for Wetland Restoration or Creation Projects
- Env-Wt 807.07 Eligibility Criteria for Land Protection Projects
- Env-Wt 807.08 Requirements Upon Determination of Eligibility
- Env-Wt 807.09 Environmental Site Assessment Requirements

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Env-Wt 807.10 Survey Requirements
- Env-Wt 807.11 Appraisal Requirements
- Env-Wt 807.12 Title Examination Requirements
- Env-Wt 807.13 Conservation Interest Instrument Requirements
- Env-Wt 807.14 Stewardship Requirements
- Env-Wt 807.15 Final Approval, Execution, and Deed Recordation
- Env-Wt 807.16 Site Selection Committee
- Env-Wt 807.17 Application Ranking and Selection by the Site Selection Committee
- Env-Wt 807.18 Project Evaluation
- Env-Wt 807.19 Annual Report

CHAPTER Env-Wt 900 STREAM CROSSINGS

PART Env-Wt 901 PURPOSE AND APPLICABILITY

- Env-Wt 901.01 Purpose
- Env-Wt 901.02 Applicability
- Env-Wt 901.03 Exemptions

PART Env-Wt 902 DEFINITIONS

- Env-Wt 902.01 Aggradation
- Env-Wt 902.02 Aquatic Life
- Env-Wt 902.03 Bankfull Flow
- Env-Wt 902.04 Bankfull Width
- Env-Wt 902.05 Closed Culvert
- Env-Wt 902.06 Connectivity
- Env-Wt 902.07 Designated River
- Env-Wt 902.08 Designated River Corridor
- Env-Wt 902.09 Embedded
- Env-Wt 902.10 Existing Legal Crossing
- Env-Wt 902.11 Forest Management Activities
- Env-Wt 902.12 Normal Agricultural Operations
- Env-Wt 902.13 Open-Bottom Culvert
- Env-Wt 902.14 Permanent Crossing
- Env-Wt 902.15 Pipe Arch
- Env-Wt 902.16 River Corridor
- Env-Wt 902.17 Span Structure
- Env-Wt 902.18 Stream Channel
- Env-Wt 902.19 Stream Enhancement
- Env-Wt 902.20 Stream Simulation
- Env-Wt 902.21 Temporary Crossing
- Env-Wt 902.22 Protected Species or Habitat
- Env-Wt 902.23 Tier One Stream Crossing
- Env-Wt 902.24 Tier 2 Stream Crossing
- Env-Wt 902.25 Tier 3 Stream Crossing
- Env-Wt 902.26 Trail Activities

PART Env-Wt 903 STREAM CROSSINGS: CLASSIFICATIONS AND APPLICATIONS

- Env-Wt 903.01 Classification of Stream Crossings and Stream Crossing Projects
- Env-Wt 903.02 Application Fees
- Env-Wt 903.03 Information Required for a Stream Crossing Application

PART Env-Wt 904 DESIGN AND CONSTRUCTION OF STREAM CROSSINGS

- Env-Wt 904.01 General Design Consideration
- Env-Wt 904.02 Tier One Stream Crossings
- Env-Wt 904.03 Tier 2 Stream Crossings
- Env-Wt 904.04 Tier 3 Stream Crossings
- Env-Wt 904.05 Design Criteria for Tier 2 and Tier 3 Stream Crossings
- Env-Wt 904.06 Repair or Rehabilitation of Tier One or Tier 2 Existing Legal Stream Crossings
- Env-Wt 904.07 In-Kind Replacement of Tier One or Tier 2 Existing Legal Stream Crossings
- Env-Wt 904.08 Replacing Tier 3 Existing Legal Stream Crossings
- Env-Wt 904.09 Alternate Designs

PART Env-Wt 905 CERTIFIED CULVERT MAINTAINER PROGRAM

- Env-Wt 905.01 Applicability

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- Env-Wt 905.02 Definitions
- Env-Wt 905.03 Qualifications for Initial Certificate
- Env-Wt 905.04 Application for Initial Certificate
- Env-Wt 905.05 Signature Required
- Env-Wt 905.06 Issuance of Certificate
- Env-Wt 905.07 Certificate Renewal; Continuing Education Required
- Env-Wt 905.08 Obligations and Responsibilities of Certified Individuals
- Env-Wt 905.09 Quarterly Reporting Required
- Env-Wt 905.10 Suspension, Revocation, or Refusal to Renew Certificate
- Env-Wt 905.11 Designation as Approved Provider

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 100 ORGANIZATIONAL RULES

REVISION NOTE #1:

Document #5536, effective 12-23-92, made extensive changes to the wording and numbering of rules containing definitions in Part Wt 101. Doc. #5536 superseded all prior filings for Parts Wt 101, Wt 102, and Wt 103. Doc. #5536 contained many definitions which amended or incorporated definitions from Part Wt 601, which subsequently was repealed by Doc. #5551, eff. 1-5-93.

The prior filings for former Part Wt 101 included the following documents:

#2271, eff 1-10-83	#4039, eff 4-10-86
#2923, eff 12-10-84	#4292, eff 7-13-87
#2924, eff 12-11-84	#4386, eff 3-10-88
#3072, eff 7-26-85	#5028, eff 12-20-90

Note that some of the rules in former part Wt 101 had EXPIRED between 12-11-90 and 12-20-90.

REVISION NOTE #2:

Doc. #8340, eff. 4-25-05, readopted, or readopted with amendments and renumbered, all the definitions in Part Wt 101. Doc. #8340 superseded all prior filings for the sections in this part.

The filings for former Part Wt 101 after Doc. #5536 and prior to Doc. #8340 included the following.:

#5739, eff 11-23-93	#7071, eff 8-13-99
#6199, eff 2-29-96	#7855, eff 3-21-03
#6404, INTERIM, eff 12-21-96, EXPIRED 4-20-97	#8053, eff 2-28-04
#6498-A, eff 4-23-97	

REVISION NOTE #3:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 100 filed under Doc. #8340, effective 4-25-05, or under prior documents that were still in effect, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 101 DEFINITIONS

Env-Wt 101.01 “100-year floodplain” means those areas identified as a 100-year floodplain on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps.

Source. #9713, eff 5-12-10

Env-Wt 101.02 “Abandoned” means the failure, for a period of 5 years, to maintain an existing structure in a condition so that it is functional and intact.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.01 to 101.02)

Env-Wt 101.03 “Abutter” means any person who owns property immediately adjacent and contiguous to the property on which the project will take place. This does not include those properties across a public road. An abutter includes an owner of any flowage rights on or immediately adjacent to the property on which the project will take place. If the project is located on waterfront or another area which by its configuration would cause the project to affect non-contiguous properties, owners of those properties are considered as abutters. The term does not include the owner of a parcel of land located more than one-quarter mile from the limits of the proposed project.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.02 to 101.03)

Env-Wt 101.04 “Accessory docking structure” means a structure supplementary to a dock or wharf that assists in securing watercraft or protecting the dock or watercraft such as, for example, an ice cluster, piling, boat lift, or canopy.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.03 to 101.04)

Env-Wt 101.05 “Activity sponsor” means an entity, including, but not limited to a new hampshire department of transportation (NHDOT) maintenance district, a municipality, or the maintenance department of a railway or private roadway, proposing routine roadway or railway maintenance activities within jurisdictional surface waters and wetlands, including, but not limited to, existing culvert replacements, extensions, or orientations; headwall construction, repair, replacement, or stabilization; and roadside ditch maintenance.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.04 to 101.05)

Env-Wt 101.06 “Applicant” means a person having an interest in the land on which a project is to be located that is sufficient for the person to legally proceed with the project who has applied for a permit, permit modification, waiver, or other approval pursuant to Env-Wt 200 through Env-Wt 800, or the duly-authorized agent of such a person.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.05 to 101.06)

Env-Wt 101.07 “Bank” means the transitional slope immediately adjacent to the edge of a surface water body, the upper limit of which is usually defined by a break in slope, or, for a wetland, where a line delineated in accordance with Env-Wt 301.01 indicates a change from wetland to upland.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.06 to 101.07)

Env-Wt 101.08 “Beach” means a sloping shore of a surface water body consisting of sand, gravel, or cobble extending from adjacent upland/wetland to or in a surface water body.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.07 to 101.08)

Env-Wt 101.09 "Boathouse" means a docking facility which has a permanent roof with or without sides covering the boat slip or slips.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.08 to 101.09)

Env-Wt 101.10 “Boat slip” means “boat slip” as defined by RSA 482-A:2,VIII, namely:

“(a) On water bodies over 10,000 acres, means a volume of water 25 feet long, 8 feet wide, and 3 feet deep as measured at normal high water and located adjacent to a structure to which a watercraft may be secured.

(b) On water bodies of 10,000 acres or less, a volume of water 20 feet long, 6 feet wide, and 3 feet deep as measured at normal high water mark and located adjacent to a structure to which a watercraft may be secured.”

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9713 (from 101.09 to 101.10)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.11 “Bog” means a wetland distinguished by stunted evergreen trees and shrubs, peat deposits, poor drainage, and/or highly acidic soil and/or water conditions.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.10 to 101.11)

Env-Wt 101.12 “Breakwater” means a structure extending generally perpendicular from the shore into surface waters of the state that is designed to protect sections of shoreline, docks, wharves or anchorage areas from erosion or damage from waves or currents.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.11 to 101.12)

Env-Wt 101.13 “Bulkhead” means a vertical retaining wall built along a waterfront to contain fill.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.12 to 101.13)

Env-Wt 101.14 “Bureau” means the wetlands bureau within the water division of the department of environmental services.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.13 to 101.14)

Env-Wt 101.15 “Canopy” means a seasonal open structure with a flexible fabric roof not able to withstand the expected snow load and without side walls, which is erected to shelter watercraft during the boating season.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.14 to 101.15)

Env-Wt 101.16 “Certified wetland scientist” means “certified wetlands scientist” as defined in RSA 310-A:76, II-a, as reprinted in Appendix B.

Source. #10999, *eff 12-23-15*

Env-Wt 101.17 “Commercial use of structures” means use with compensation or other consideration to the owner of the structure(s). This includes but is not limited to, the transfer, lease, sale, rent, or other temporary or permanent conveyance, of an interest in such a structure when such action(s) is not also applied to the property to which it is appurtenant.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.15 to 101.16); renumbered by #10999 (from 101.16)

Env-Wt 101.18 “Commissioner” means the commissioner of the department of environmental services.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.16 to 101.17); renumbered by #10999 (from 101.17)

Env-Wt 101.19 “Compensatory mitigation” means creation of a new wetland, restoration of a wetland, or preservation of land to offset the impact of a project by replacing or partially replacing wetlands functions and values lost due to the project, or by substituting the value added to a wetland or wetland system for the functions or values lost.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.17 to 101.18); renumbered by #10999 (from 101.18)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.20 “Conservation area” means an area of land protected by a conservation easement that restricts the future use of the property in perpetuity.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.18 to 101.19); renumbered by #10999 (from 101.19)

Env-Wt 101.21 “Conservation commission” means a municipal body established under RSA 36-A with statutory standing before the department under RSA 482-A:11, III, which provides a local source of assistance to both the department and applicants.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.19 to 101.20); renumbered by #10999 (from Env-Wt 101.20)

Env-Wt 101.22 “Conservation project” means a project to access, maintain, or improve a conservation area.

Source. #9713, *eff 5-12-10*; renumbered by #10999 (from 101.21)

Env-Wt 101.23 “Continued agricultural use” means that a wetland has been used as cropland or pasture with sufficient frequency, and sufficient recentness, that the land has not reverted to a scrub-shrub wetland, emergent marsh, or forested wetland.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.20 to 101.22); renumbered by #10999 (from 101.22)

Env-Wt 101.24 “Corduoy road” means logs, limbs or branches placed to provide support for logging equipment crossing a wet area which has no standing water and no defined channels.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.21 to 101.23); renumbered by #10999 (from 101.23)

Env-Wt 101.25 "Council" means the wetlands council established by RSA 21-O:5-a.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.22 to 101.24); renumbered by #10999 (from 101.24)

Env-Wt 101.26 “Cribs” means an enclosure or framework of timber or prefabricated concrete which is securely fastened together and filled with stone ballast and which is typically used to support a structure in the water.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.23 to 101.25); renumbered by #10999 (from 101.25)

Env-Wt 101.27 “Cropland” means land used to produce plant species adapted for harvest, alone or in rotation with grasses and legumes, and includes areas dedicated to vegetables, grain, hay, pasture, fodder, sod, nursery stock, orchards and similar produce.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.24 to 101.26); renumbered by #10999 (from 101.26)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.28 “Department” means the department of environmental services.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9713 (from 101.25 to 101.27); renumbered by #10999 (from 101.27)

Env-Wt 101.29 “Design fetch” means the average of at least 11 radials evenly distributed across a 30 degree arc.

Source. #9094, *eff 2-23-08*; renumbered by #9713 (from 101.26 to 101.28); renumbered by #10999 (from 101.28)

Env-Wt 101.30 “Developed upland” means upland areas within the tidal buffer zone where:

(a) The natural soil and vegetation characteristics over a majority of the lot have been legally altered and have not returned to a natural state; and

(b) The area contains at least 2 of the following criteria:

- (1) Filled or excavated land;
- (2) Paved or graded land in use as a parking lot or a roadway;
- (3) A lot occupied by residential or commercial buildings; or
- (4) A lot which is surrounded by residentially or commercially developed lots on at least 2 sides.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.26 to 101.27); renumbered by #9713 (from 101.27 to 101.29); renumbered by #10999 (from 101.29)

Env-Wt 101.31 “Director” means the director of the water division within the department.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.27 to 101.28); renumbered by #9713 (from 101.28 to 101.30); renumbered by #10999 (from 101.30)

Env-Wt 101.32 “Dock” as a noun or “docking facility” means a structure intended for securing of watercraft and/or to discharge and load passengers, freight, and other goods whether the structure is in the water or not.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.28 to 101.29); renumbered by #9713 (from 101.29 to 101.31); renumbered by #10999 (from 101.31)

Env-Wt 101.33 “Dock” as a verb means to secure watercraft adjacent to a structure.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.29 to 101.30); renumbered by #9713 (from 101.30 to 101.32); renumbered by #10999 (from 101.32)

Env-Wt 101.34 “Dolphin” means a rigid permanent structure installed in a beach, bank, or the bottom of a water body, for such purposes as securing watercraft or protecting an area from ice floes. Dolphins can be constructed with piles, pile clusters, caissons, concrete pillars, or structures of a similar nature.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.30 to 101.31); renumbered by #9713 (from 101.31 to 101.33); renumbered by #10999 (from 101.33)

Env-Wt 101.35 “Drainage swale” means a shallow vegetated trough where water flows during runoff and which is insufficient to create a defined channel or to maintain wetlands vegetation.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.31 to 101.32); renumbered by #9713 (from 101.32 to 101.34); renumbered by #10999 (from 101.34)

Env-Wt 101.36 “Dredge” means to dig, excavate, or otherwise disturb the contour or integrity of sediments in the bank or bed of a wetland, a surface water body, or other area within the department's jurisdiction.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.32 to 101.33); renumbered by #9713 (from 101.33 to 101.35); renumbered by #10999 (from 101.35)

Env-Wt 101.37 “Dredge spoils” means material removed as the result of dredging.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.33 to 101.34); renumbered by #9713 (from 101.34 to 101.36); renumbered by #10999 (from 101.36)

Env-Wt 101.38 “Dune vegetation” means vegetation that is commonly found in sand dunes and includes but is not limited to:

- (a) Ammophila breviligulata (American Beach Grass);
- (b) Arenaria peploides (Seabeach Sandwort);
- (c) Artemesia stellarina (Dusty Miller);
- (d) Euphorbia polygonifolia (Seaside Spurge);
- (e) Hudsonia tomentosa (Beach Heather);
- (f) Hudsonia ericoides (Beach Heather);
- (g) Lathyrus japonica (Beach Pea);
- (h) Myrica pennsylvanica (Bayberry);
- (i) Prunus maritima (Beach Plum); and
- (j) Rosa rugosa (Salt Spray Rose).

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.34 to 101.35); renumbered by #9713 (from 101.35 to 101.37); renumbered by #10999 (from 101.37)

Env-Wt 101.39 “Ephemeral stream” means a watercourse that is located above the water table year-round and is not fed by groundwater, such that runoff from rainfall and snowmelt is the primary source of

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

stream flow and so the stream has flowing water only during, and for a short duration after, precipitation or spring thaw events.

Source. #9713, eff 5-12-10; renumbered by #10999 (from 101.38)

Env-Wt 101.40 “Erosion control” means the utilization of methods to contain soil particles and to prevent them from being displaced or washed down slopes by rainfall or run-off and include, but are not limited to:

- (a) Seeding;
- (b) Mulching; or
- (c) Using haybales, siltation fences, or impermeable material.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.35 to 101.36); renumbered by #9713 (from 101.36 to 101.39); renumbered by #10999 (from 101.39)

Env-Wt 101.41 “Excavate” means to dig, remove, or form a cavity or a hole in an area within the department’s jurisdiction.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.36 to 101.37); renumbered by #9713 (from 101.37 to 101.40); renumbered by #10999 (from 101.40)

Env-Wt 101.42 “Fetch” means the length of uninterrupted water surface over which the wind blows in a constant direction.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.37 to 101.38); renumbered by #9713 (from 101.38 to 101.41); renumbered by #10999 (from 101.41)

Env-Wt 101.43 “Fill” as a noun means any rock, soil, gravel, sand or other such material that has been deposited or caused to be deposited by human activity.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.38 to 101.39); renumbered by #9713 (from 101.39 to 101.42); renumbered by #10999 (from 101.42)

Env-Wt 101.44 “Fill” as a verb means to place or deposit materials in or on a wetland, surface water body, bank or otherwise in or on an area within the jurisdiction of the department.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.39 to 101.40); renumbered by #9713 (from 101.40 to 101.43); renumbered by #10999 (from 101.43)

Env-Wt 101.45 “Flats” means relatively level landforms composed of unconsolidated mineral and organic sediments, usually mud or sand, that are alternately flooded and exposed by the tides and that usually are continuous with the shore.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.40 to 101.41); renumbered

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

by #9713 (from 101.41 to 101.44); renumbered by #10999 (from 101.44)

Env-Wt 101.46 “Float” means a platform anchored near a shoreline for watercraft, commercial or recreational use that is supported by buoyancy devices.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.41 to 101.42); renumbered by #9713 (from 101.42 to 101.45); renumbered by #10999 (from 101.45)

Env-Wt 101.47 “Functional assessment” means an evaluation of a wetland to determine the functions and values it performs within the context of the broader landscape for the purpose of establishing compensatory mitigation under Chapter Env-Wt 800.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.42 to 101.43); renumbered by #9713 (from 101.43 to 101.46); renumbered by #10999 (from 101.46)

Env-Wt 101.48 “Grandfathered status” means that a structure:

(a) Was in place before permit jurisdiction under RSA 482-A:3, I or its predecessor statute, RSA 483-A:1, I, took effect, which for areas in or adjacent to tidal waters means June 22, 1967 and for all other jurisdictional areas means July 2, 1969;

(b) Has remained unaltered in location, size and configuration; and

(c) Has not been abandoned.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.43 to 101.44); renumbered by #9713 (from 101.44 to 101.47); renumbered by #10999 (from 101.47)

Env-Wt 101.49 “Highest observable tide line” means a line defining the farthest landward limit of tidal flow, not including storm events, that can be recognized by indicators such as the presence of a strand line of flotsam and debris, the landward margin of salt tolerant vegetation, or a physical barrier that blocks farther flow of the tide.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.44 to 101.45); renumbered by #9713 (from 101.45 to 101.48); renumbered by #10999 (from 101.48)

Env-Wt 101.50 “Hydric soil” means soil that is saturated or flooded during a sufficient portion of the growing season to develop anaerobic conditions in the upper soil layers.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.45 to 101.46); renumbered by #9713 (from 101.46 to 101.49); renumbered by #10999 (from 101.49)

Env-Wt 101.51 “Hydrophyte” means a plant adapted for life in water or saturated soils.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.46 to 101.47); renumbered

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

by #9713 (from 101.47 to 101.50); renumbered by #10999 (from 101.50)

Env-Wt 101.52 “Intermittent stream” means a watercourse that is fed by groundwater but is not in the groundwater table throughout the year, with runoff from rainfall and snowmelt as a supplemental source of water for flow, such that it typically does not have flowing water during dry portions of the year.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.47 to 101.48); *ss and renumbered by #9713, eff 5-12-10* (from 101.48 to 101.51); renumbered by #10999 (from 101.51)

Env-Wt 101.53 “Jetty” means a structure extending generally perpendicular to the shore into tidal waters or a surface water body and designed to protect sections of shoreline, docks, wharves or anchorage areas from erosion or damage from waves or currents.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.48 to 101.49); renumbered by #9713 (from 101.49 to 101.52); renumbered by #10999 (from 101.52)

Env-Wt 101.54 “Jurisdiction” means the regulatory authority under RSA 482-A.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.49 to 101.50); renumbered by #9713 (from 101.50 to 101.53); renumbered by #10999 (from 101.53)

Env-Wt 101.55 “Jurisdictional area” means an area that is subject to regulation under RSA 482-A, as described therein.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.50 to 101.51); renumbered by #9713 (from 101.51 to 101.54); renumbered by #10999 (from 101.54)

Env-Wt 101.56 “Maintenance of structures” means the repair or replacement of existing legal structures.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.51 to 101.52); renumbered by #9713 (from 101.52 to 101.55); renumbered by #10999 (from 101.55)

Env-Wt 101.57 “Major docking system” means a large and complex docking facility that requires utilization of more than 100 feet of waterfront or provides a total of 5 or more boat slips, including those previously existing and proposed.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.52 to 101.53); renumbered by #9713 (from 101.53 to 101.56); renumbered by #10999 (from 101.56)

Env-Wt 101.58 “Major project” means a project of such size and scope that it has the potential to create a significant impact on wetlands or waters of the state, pursuant to Env-Wt 303.02.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.53 to 101.54); renumbered

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

by #9713 (from 101.54 to 101.57); renumbered by #10999 (from 101.57)

Env-Wt 101.59 “Marina” means a commercial waterfront facility whose principal use is the provision of publicly available services such as the securing, launching, storing, fueling, servicing and repairing of watercraft.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.54 to 101.55); renumbered by #9713 (from 101.55 to 101.58); renumbered by #10999 (from 101.58)

Env-Wt 101.60 “Marsh” means a wetland:

- (a) That is distinguished by the absence of trees and shrubs;
- (b) Dominated by soft-stemmed herbaceous plants such as grasses, reeds, and sedges; and
- (c) Where the water table is at or above the surface throughout the year, but can fluctuate seasonally.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.55 to 101.56); renumbered by #9713 (from 101.56 to 101.59); renumbered by #10999 (from 101.59)

Env-Wt 101.61 “Minimum impact project” means a minor project that by virtue of its size and nature is likely to have a negligible impact by itself or in the aggregate pursuant to Env-Wt 303.04, provided adequate measures are employed to protect the environment.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.56 to 101.57); renumbered by #9713 (from 101.57 to 101.60); renumbered by #10999 (from 101.60)

Env-Wt 101.62 “Minor project” means a project of such size, scope or nature that it has the potential of having more than a negligible impact upon wetlands or waters of the state or other areas within the department's jurisdiction pursuant to Env-Wt 303.03, unless adequate measures are employed to protect the environment.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.57 to 101.58); renumbered by #9713 (from 101.58 to 101.61); renumbered by #10999 (from 101.61)

Env-Wt 101.63 “Mooring” means a temporary, removable or permanent device, such as a buoy, to which watercraft can be secured.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.58 to 101.59); renumbered by #9713 (from 101.59 to 101.62); renumbered by #10999 (from 101.62)

Env-Wt 101.64 “Navigable frontage” means the frontage that can be accessed by a boat having at least a 6 foot beam and 2 foot draft at normal high water.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.59 to 101.60); renumbered by #9713 (from 101.60 to 101.63); renumbered by #10999 (from 101.63)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.65 “Nontidal wetland” means a wetland not subject to periodic inundation by tidal waters.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.60 to 101.61); renumbered by #9713 (from 101.61 to 101.64); renumbered by #10999 (from 101.64)

Env-Wt 101.66 “Normal high water” for lakes or ponds means the full lake elevation as determined by the director.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.61 to 101.62); renumbered by #9713 (from 101.62 to 101.65); renumbered by #10999 (from 101.65)

Env-Wt 101.67 “Open pile construction” means piles installed far enough apart to allow free flow and passage of water and marine life.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.62 to 101.63); renumbered by #9713 (from 101.63 to 101.66); renumbered by #10999 (from 101.66)

Env-Wt 101.68 “Pasture” means a form of cropland devoted to the production of native or introduced forage which is normally harvested by grazing.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.63 to 101.64); renumbered by #9713 (from 101.64 to 101.67); renumbered by #10999 (from 101.67)

Env-Wt 101.69 “Perennial stream” means a watercourse that is in the groundwater table for most of the year and so has groundwater as its primary source of water for stream flow, with runoff from rainfall and snowmelt as a supplemental source of water, so that it contains flowing water year-round during a typical year.

Source. #9713, *eff 5-12-10*; renumbered by #10999 (from 101.68)

Env-Wt 101.70 “Permanent dock” means a dock in which the dock, its supports, or both are designed to remain in the bank or surface water bottom throughout the non-boating season. Permanent docks can be supported by piles or cribs in the water or can be cantilevered from the bank.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.64 to 101.65); renumbered by #9713 (from 101.65 to 101.69); renumbered by #10999 (from 101.69)

Env-Wt 101.71 “Permit action” means approval, approval with conditions, partial approval, or denial of an application for a permit pursuant to RSA 482-A.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.65 to 101.66); renumbered by #9713 (from 101.66 to 101.70); renumbered by #10999 (from 101.70)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.72 “Pier” means a docking structure built generally perpendicular to the shore intended for securing watercraft and/or for discharging and loading passengers, freight, and other goods.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.66 to 101.67); renumbered by #9713 (from 101.67 to 101.71); renumbered by #10999 (from 101.71)

Env-Wt 101.73 “Pile” means a long, slender column of timber, steel, concrete, stone, or other rigid material driven or jetted into a beach, bank or bottom of a water body.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.67 to 101.68); renumbered by #9713 (from 101.68 to 101.72); renumbered by #10999 (from 101.72)

Env-Wt 101.74 “Practicable” means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.68 to 101.69); renumbered by #9713 (from 101.69 to 101.73); renumbered by #10999 (from 101.73)

Env-Wt 101.75 “Preservation” means the permanent protection of wetland and upland areas using legal and physical mechanisms so that the resource remains in a natural or undeveloped condition.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.69 to 101.70); renumbered by #9713 (from 101.70 to 101.74); renumbered by #10999 (from 101.74)

Env-Wt 101.76 “Primary vernal pool indicators” means the presence or physical evidence of breeding by marbled salamander, wood frog, spotted salamander, jefferson-blue spotted salamander complex, or fairy shrimp.

Source. #9131, *eff 4-19-08*; renumbered by #9713 (from 101.71 to 101.75); renumbered by #10999 (from 101.75)

Env-Wt 101.77 “Public hearing” means a public proceeding conducted for the purpose of acquiring information that will be considered in evaluating a proposed permit, a removal/restoration action, or both, and which affords the public the opportunity to present its views, opinions and information.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.70 to 101.71); renumbered by #9131 (from 101.71 to 101.72); renumbered by #9713 (from 101.72 to 101.76); renumbered by #10999 (from 101.76)

Env-Wt 101.78 “Repair” means the restoring of an existing legal structure by partial replacement of worn, broken, or unsound parts.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.71 to 101.72); renumbered by #9131 (from 101.72 to 101.73); renumbered by #9713 (from 101.73 to 101.77); renumbered by #10999 (from 101.77)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.79 “Replacement” means the substitution of a new structure for an existing legal structure with no change in size, dimensions, location, configuration, construction, or which conforms in all material aspects to the original structure.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.72 to 101.73); renumbered by #9131 (from 101.73 to 101.74); renumbered by #9713 (from 101.74 to 101.78); renumbered by #10999 (from 101.78)

Env-Wt 101.80 “Retaining wall” means a structure constructed generally parallel to and against the shoreline to sustain a bank or prevent erosion.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.73 to 101.74); renumbered by #9131 (from 101.74 to 101.75); renumbered by #9713 (from 101.75 to 101.79); renumbered by #10999 (from 101.79)

Env-Wt 101.81 “Revetment” means a sloped facing of layered stone, concrete, or other hard material built to protect a bank or embankments by dissipating wave energy.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.74 to 101.75); renumbered by #9131 (from 101.75 to 101.76); renumbered by #9713 (from 101.76 to 101.80); renumbered by #10999 (from 101.80)

Env-Wt 101.82 “Rip-rap” means cobble-sized and boulder-sized rocks placed on a bank to prevent erosion.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.75 to 101.76); renumbered by #9131 (from 101.76 to 101.77); renumbered by #9713 (from 101.77 to 101.81); renumbered by #10999 (from 101.81)

Env-Wt 101.83 “Roadway” means a legally existing structure that is designed, constructed, or improved to provide and support safe passage for public or private vehicular traffic.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.76 to 101.77); renumbered by #9131 (from 101.77 to 101.78); renumbered by #9713 (from 101.78 to 101.82); renumbered by #10999 (from 101.82)

Env-Wt 101.84 “Rocker box” means a mechanical device used to separate gold and other minerals from lighter sediments.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.77 to 101.78); renumbered by #9131 (from 101.78 to 101.79); renumbered by #9713 (from 101.79 to 101.83); renumbered by #10999 (from 101.83)

Env-Wt 101.85 “Sand dune” means “sand dune” as defined by RSA 482-A:2, VII.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.78 to 101.79); renumbered by #9131 (from 101.79 to 101.80); renumbered by #9713 (from 101.80 to 101.84); renumbered by #10999 (from 101.84)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.86 “Seasonal dock or seasonal structure” means a dock or any other structure that is designed and constructed such that the structure and all associated supports can be completely removed from the surface water and its bed during the non-boating season, including but not limited to pipe docks, floating docks, and watercraft lifts.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; ss and renumbered by #9094, eff 2-23-08 (from 101.79 to 101.80); renumbered by #9131 (from 101.80 to 101.81); renumbered by #9713 (from 101.81 to 101.85); renumbered by #10999 (from 101.85)

Env- Wt 101.87 “Secondary vernal pool indicators” means physical evidence used by wildlife biologists or certified wetlands scientists who are familiar with vernal pool habitats as evidence of the presence of a vernal pool, if primary vernal pool indicators are absent and other vernal pool characteristics suggest vernal pool habitat. Secondary vernal pool indicators include, but are not limited to, caddisfly larvae and cases (Limnephilidae, Phryganeidae, or Polycentropodidae), clam shrimp and their shells (Laevicaudata, Spinicaudata), fingernail clams and their shells (Sphaeriidae), aquatic beetle larvae (Dytiscidae, Gyrinidae, Haliplidae, and Hydrophilidae), dragonfly larvae and exuviae (Aeshnidae, Libellulidae), spire-shaped snails and their shells (Physidae, Lymnaeidae), flat-spire snails and their shells (Planorbidae), damselfly larvae and exuviae (Coenagrionidae, Lestidae), and true fly larvae and pupae (Culicidae, Chaoboridae, and Chironomidae).

Source. #9131, eff 4-19-08; renumbered by #9713 (from 101.82 to 101.86); renumbered by #10999 (from 101.86)

Env-Wt 101.88 “Sedimentation controls” means silt fences, hay bales, and other methods utilized to trap water-borne sediment and provide protection against erosion until properly installed erosion controls can take effect.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.80 to 101.81); renumbered by #9131 (from 101.81 to 101.83); renumbered by #9713 (from 101.83 to 101.87); renumbered by #10999 (from 101.87)

Env-Wt 101.89 “Service area” means the geographic area within which impacts can be mitigated using funds from the Aquatic Resource Mitigation Fund established by RSA 482-A:29, I.

Source. #10999, eff 12-23-15

Env-Wt 101.90 “Shoal” means a portion of a water body where the bottom is usually submerged, with insufficient depth to allow for safe navigation for some watercraft.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.81 to 101.82); renumbered by #9131 (from 101.82 to 101.84); renumbered by #9713 (from 101.84 to 101.88); renumbered by #10999 (from 101.88)

Env-Wt 101.91 “Shoreline frontage” means the average of the distances of the actual natural navigable shoreline footage and a straight line drawn between property lines, both of which are measured at the normal high water line.

Source. (See Revision Notes #2 and #3) #8340, eff 4-25-05; renumbered by #9094 (from 101.82 to 101.83); renumbered by #9131 (from 101.83 to 101.85); renumbered by #9713 (from 101.85 to 101.89); renumbered by #10999 (from 101.89)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.92 “Significant environmental impact” means that a proposed project is classified as a major project in accordance with Env-Wt 303.02 and the jurisdictional resources to be impacted by the proposed project are an important physical component of a wetland ecosystem or coastal zone ecosystem.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.83 to 101.84); renumbered by #9131 (from 101.84 to 101.86); renumbered by #9713 (from 101.86 to 101.90); renumbered by #10999 (from 101.90)

Env-Wt 101.93 “Siltation curtain” means an impervious barrier erected to prevent silt and sand and/or fines from being washed into a wetland, surface water body or other area of concern.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.84 to 101.85); renumbered by #9131 (from 101.85 to 101.87); renumbered by #9713 (from 101.87 to 101.91); renumbered by #10999 (from 101.91)

Env-Wt 101.94 “Sluice” means an inclined trough to conduct water to a rocker box for separating gold and other minerals from lighter sediments.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.85 to 101.86); renumbered by #9131 (from 101.86 to 101.88); renumbered by #9713 (from 101.88 to 101.92); renumbered by #10999 (from 101.92)

Env-Wt 101.95 “Stream crossing” means a structure placed within a watercourse or on its associated upland or wetland approaches, or both, that is intended to provide human, animal, or vehicular passage over the watercourse.

Source. #9713, *eff 5-12-10*; renumbered by #9713 (from Env-Wt 101.88 to Env-Wt 101.92); renumbered by #10999 (from Env-Wt 101.93)

Env-Wt 101.96 “Stream restoration” means the process of converting an unstable, altered, or degraded watercourse, including adjacent riparian zone and flood-prone areas, to a natural condition as found in reaches of the stream that have not been altered by human disturbances.

Source. #9713, *eff 5-12-10*; renumbered by #10999 (from 101.94)

Env-Wt 101.97 "Structure" means “structure” as defined by RSA 482-A:2, IX.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.86 to 101.87); renumbered by #9131 (from 101.87 to 101.89); renumbered by #9713 (from 101.89 to 101.95); renumbered by #10999 (from 101.95)

Env-Wt 101.98 "Substantial public interest" means where the jurisdictional resources to be impacted by the proposed project are of special value from a local, regional, or state perspective and issues are raised pursuant to RSA 482-A:1.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.87 to 101.88); renumbered by #9131 (from 101.88 to 101.90); renumbered by #9713 (from 101.90 to 101.96); renumbered by #10999 (from 101.96)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.99 “Surface water body” or “surface waters” means those portions of waters of the state, as defined by RSA 482-A:4, which have standing or flowing water at or on the surface of the ground. This includes but is not limited to rivers, streams, lakes, ponds and tidal waters.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.88 to 101.89); renumbered by #9131 (from 101.89 to 101.91); renumbered by #9713 (from 101.91 to 101.97); renumbered by #10999 (from 101.97)

Env-Wt 101.100 “Swamp” means a wetland that is dominated by trees and/or shrubs.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.89 to 101.90); renumbered by #9131 (from 101.90 to 101.92); renumbered by #9713 (from 101.92 to 101.98); renumbered by #10999 (from 101.98)

Env-Wt 101.101 “Tidal buffer zone” means the area extending landward 100 feet from the highest observable tide line. This area can contain wetlands, transitional areas, and natural and developed upland areas.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.90 to 101.91); renumbered by #9131 (from 101.91 to 101.93); renumbered by #9713 (from 101.93 to 101.99); renumbered by #10999 (from 101.99)

Env-Wt 101.102 “Tidal flat” means a relatively level landform composed of unconsolidated mineral and organic sediments, usually continuous with the shore, and that is alternately flooded and exposed by the tides.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.91 to 101.92); renumbered by #9131 (from 101.92 to 101.94); renumbered by #9713 (from 101.94 to 101.100); renumbered by #10999 (from 101.100)

Env-Wt 101.103 “Tidal flushing” means the influx and outflow of water associated with the ebb and flow of the tide.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.92 to 101.93); renumbered by #9131 (from 101.93 to 101.95); renumbered by #9713 (from 101.95 to 101.101); renumbered by #10999 (from 101.101)

Env-Wt 101.104 “Tidal wetland” means a wetland whose vegetation, hydrology or soils are influenced by periodic inundation of tidal waters.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.93 to 101.94); renumbered by #9131 (from 101.94 to 101.96); renumbered by #9713 (from 101.96 to 101.102); renumbered by #10999 (from 101.102)

Env-Wt 101.105 “Unnecessary hardship” means a hardship created by a special condition of the land which distinguishes it from other land in the same area. A hardship does not exist if it relates to the personal circumstances of the landowner rather than the land itself.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.94 to 101.95); renumbered by #9131 (from 101.95 to 101.97); renumbered by #9713 (from 101.97 to 101.103); renumbered by #10999 (from 101.103)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.106 “Upland” means an area of land that is not a jurisdictional area.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.95 to 101.96); renumbered by #9131 (from 101.96 to 101.98); renumbered by #9713 (from 101.98 to 101.104); renumbered by #10999 (from 101.104)

Env-Wt 101.107 “Upland buffer” means an area of land that is contiguous to a jurisdictional resource and that contributes to the functions and values of that resource.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.96 to 101.97); renumbered by #9131 (from 101.97 to 101.100); renumbered by #9713 (from 101.100 to 101.106); renumbered by #10999 (from 101.105)

Env- Wt 101.108 “Vernal pool” means a surface water or wetland, including an area intentionally created for purposes of compensatory mitigation, which provides breeding habitat for amphibians and invertebrates that have adapted to the unique environments provided by such pools and which:

(a) Is not the result of on-going anthropogenic activities that are not intended to provide compensatory mitigation, including but not limited to:

- (1) Gravel pit operations in a pit that has been mined at least every other year; and
- (2) Logging and agricultural operations conducted in accordance with all applicable New Hampshire statutes and rules; and

(b) Typically has the following characteristics:

- (1) Cycles annually from flooded to dry conditions, although the hydroperiod, size, and shape of the pool might vary from year to year;
- (2) Forms in a shallow depression or basin;
- (3) Has no permanently flowing outlet;
- (4) Holds water for at least 2 continuous months following spring ice-out;
- (5) Lacks a viable fish population; and
- (6) Supports one or more primary vernal pool indicators, or 3 or more secondary vernal pool indicators.

Source. #9131, *eff 4-19-08*; renumbered by #9713 (from 101.99 to 101.105); renumbered by #10999 (from 101.106)

Env-Wt 101.109 “Watercourse” means any surface water that:

(a) Develops and maintains a defined scoured channel, with evidence of sediment transport, that:

- (1) Is greater than 75 feet in length; or
- (2) Is of any length and connected to another jurisdictional area at either end; and

(b) Is not a drainage swale.

Source. #9713, *eff 5-12-10*; renumbered by #10999 (from 101.107)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.110 “Watershed” means a geographical area in which all water drains to a given stream, lake, wetland, estuary, or ocean.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.97 to 101.98); renumbered by #9131 (from 101.98 to 101.101); renumbered by #9713 (from 101.101 to 101.108); renumbered by #10999 (from 101.108)

Env-Wt 101.111 “Weephole” means a small drainage opening used to allow proper drainage and prevent frost and ice damage to retaining structures.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.98 to 101.99); renumbered by #9131 (from 101.99 to 101.102); renumbered by #9713 (from 101.102 to 101.109); renumbered by #10999 (from 101.109)

Env-Wt 101.112 “Wet meadow” means an herb-dominated area typically with non-woody vegetation less than 3 feet in height, saturated for long periods during the growing season, but seldom flooded. Wet meadows develop on predominantly poorly drained soils as described by Env-Ws 1014.02.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.102 to 101.103); renumbered by #9131 (from 101.103 to 101.106); renumbered by #9713 (from 101.106 to 101.113); renumbered by #10999 (from 101.113)

Env-Wt 101.113 “Wetland” means “wetlands”, as defined by RSA 482-A:2, X, namely “an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.” Wetlands include swamps, marshes, bogs and similar areas.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.99 to 101.100); renumbered by #9131 (from 101.100 to 101.103); renumbered by #9713 (from 101.103 to 101.110); renumbered by #10999 (from 101.110)

Env-Wt 101.114 “Wetland creation” means the transformation of upland to wetland at a site where the upland was not created by human activity such as by filling or water diversion.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.100 to 101.101); renumbered by #9131 (from 101.101 to 101.104); renumbered by #9713 (from 101.104 to 101.111); renumbered by #10999 (from 101.111)

Env-Wt 101.115 “Wetland enhancement” means the manipulation of the physical, chemical, or biological characteristics, or any combination thereof, of an aquatic resource to heighten, intensify, or improve one or more specific aquatic resource functions. Wetlands enhancement results in the gain of selected aquatic resource functions. Wetlands enhancement does not result in a gain in aquatic resource area.

Source. #10999, *eff 12-23-15*

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 101.116 "Wetland restoration" means the re-establishment of a filled, dredged, or drained wetland to its historic condition, so as to restore lost functions to the greatest extent practicable, by removal of fill, restoration of hydrology to the area, or by such other means as are necessary.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.101 to 101.102); renumbered by #9131 (from 101.102 to 101.105); renumbered by #9713 (from 101.105 to 101.112); renumbered by #10999 (from 101.112)

Env-Wt 101.117 "Wharf" means a docking structure built generally parallel to the shore and used to secure watercraft and/or to discharge and load passengers, freight and other goods.

Source. (See Revision Notes #2 and #3) #8340, *eff 4-25-05*; renumbered by #9094 (from 101.103 to 101.104); renumbered by #9131 (from 101.104 to 101.107); renumbered by #9713 (from 101.107 to 101.114); renumbered by #10999 (from 101.114)

PART Env-Wt 102 STATEMENT OF PURPOSE AND ACCESS TO FILES

Env-Wt 102.01 Purpose. The purpose of these rules is to support the finding of public purpose set forth in RSA 482-A:1. In addition, the department declares that the purpose of these rules shall be to afford the maximum degree of protection for the natural environment while allowing individual landowners the freedom to use and enjoy their land as is consistent with this public purpose.

Source. #2271, *eff 1-10-83*; ss by #2924, *eff 12-11-84*, EXPIRED: 12-11-90

New. #5028, *eff 12-20-90*; ss by #5536, *eff 12-23-92*; ss by #6404, INTERIM, *eff 12-21-96*, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; ss by #8340, *eff 4-25-05* (See Revision Note #3)

Env-Wt 102.02 Access to Files. The files of the department are open to public inspection upon reasonable request during normal working hours. Information which is available for public inspection may be copied. The actual cost of producing copies shall be the fee charged for copies made by the department.

Source. #2271, *eff 1-10-83*; ss by #2924, *eff 12-11-84*, EXPIRED: 12-11-90

New. #5028, *eff 12-20-90*; ss by #5536, *eff 12-23-92*; ss by #6498-A, *eff 4-23-97*; ss and moved by #8340, *eff 4-25-05* (from 102.03) (See Revision Note #3)

PART Env-Wt 103 SOURCE OF AUTHORITY

Env-Wt 103.01 Statute Granting Authority.

Source. #2271, *eff 1-10-83*; ss by #2924, *eff 12-11-84*, EXPIRED: 12-11-90

New. #5028, *eff 12-20-90*; ss by #5536, *eff 12-23-92*; ss by #6404, INTERIM, *eff 12-21-96*, EXPIRED: 4-20-97

New. #6498-A, *eff 4-23-97*; rpld by #8340, *eff 4-25-05*

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

APPENDIX A: STATUTES IMPLEMENTED

Rule Section(s)	State Statute Implemented
Env-Wt 101.01 - 101.09	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.10	RSA 482-A:2, VIII
Env-Wt 101.11 - 101.15	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.16	RSA 482-A:3, I; RSA 482-A:28-33
Env-Wt 101.17 - 101.20	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.21	RSA 482-A:11, III
Env-Wt 101.22 - 101.23	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.24	RSA 21-O:5-a
Env-Wt 101.25 - 101.35	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.36 - 101.45	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.48	RSA 482-A:3, I
Env-Wt 101.49 - 101.80	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.81 - 101.88	RSA 482-A:3, I; RSA 482-A:2, VII
Env-Wt 101.89	RSA 482-A:3, I; RSA 482-A:28-33
Env-Wt 101.90	RSA 482-A:2, IX
Env-Wt 101.91	RSA 482-A:1
Env-Wt 101.92	RSA 482-A:4
Env-Wt 101.93 - 101.104	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.105	RSA 482-A:2, X
Env-Wt 101.106 - 101.110	RSA 482-A:3, I and RSA 482-A:11, II
Env-Wt 101.114	RSA 482-A:3, I; RSA 482-A:28-33
Env-Wt 102.01	RSA 482-A:1
Env-Wt 102.02	RSA 91-A

APPENDIX B: STATUTORY DEFINITION

RSA 310-A:76:

II-a. “Certified wetland scientist” means a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and to prepare wetland maps; to classify wetlands; to prepare wetland function and value assessments; to design wetland mitigation; to implement wetland mitigation; to monitor wetlands functions and values; and to prepare associated reports, all in accordance with standards for identification of wetlands adopted by the New Hampshire department of environmental services or the United States Army Corps of Engineers or their successors, and who has been duly certified by the board.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 200 RULES OF PRACTICE AND PROCEDURE

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 200 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 201 PURPOSE AND APPLICABILITY

Env-Wt 201.01 Purpose. The purpose of this chapter is to establish procedures for hearings and waiver requests under RSA 482-A.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, eff 6-26-13

Env-Wt 201.02 Applicability. This chapter shall apply to hearings and waiver requests under RSA 482-A.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, eff 6-26-13

PART Env-Wt 202 PERMIT APPLICATION HEARINGS

Env-Wt 202.01 Permit Application Hearings: When Held. The department shall conduct a hearing on a permit application:

(a) On its own initiative, when the department determines that a hearing would be beneficial to a decision due to the complexity of the issues involved; or

(b) As required by RSA 482-A:8, for projects:

(1) With a significant environmental impact on the resources protected by RSA 482-A, as defined by Env-Wt 101.83; or

(2) Of substantial public interest, as defined by Env-Wt 101.87.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4585, eff 3-8-89; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, eff 6-26-13

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 202.02 Permit Application Hearings: Procedures. The department shall conduct any hearing held pursuant to Env-Wt 202.01 as specified in the provisions of Env-C 200 that apply to non-adjudicative proceedings.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; rpld by #6404, eff 12-21-96

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, *eff 6-26-13*

PART Env-Wt 203 CHALLENGES TO DECISIONS MADE UNDER RSA 482-A

Env-Wt 203.01 Contesting an Enforcement Decision. Any person aggrieved by a department enforcement decision, as defined in RSA 21-O:14, I(b), that is issued under authority established in RSA 482-A who wishes to contest the decision shall proceed as specified in RSA 482-A:10 and RSA 21-O:14.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, *eff 6-26-13*

Env-Wt 203.02 Contesting a Permitting Decision. Any person aggrieved by a department permitting decision, as defined in RSA 21-O:14, I(a), that is made under RSA 482-A who wishes to contest the decision shall proceed as specified in RSA 482-A:10 and RSA 21-O:14.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4585, eff 3-8-89; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, *eff 6-26-13*

PART Env-Wt 204 WAIVERS

Env-Wt 204.01 Purpose. The purpose of these rules is to establish the procedures for requesting and the criteria for granting or denying the following:

(a) Waivers to Env-Wt 200 through Env-Wt 900, to accommodate those situations where strict adherence to the rules would not be in the best interest of the public or the environment; and

(b) Waivers requested under RSA 482-A:26, III(b).

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.01), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); amd by #10366-A, *eff 6-26-13*, intro., & para (a); amd by #10366-B, eff 6-26-13, para (b)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 204.02 Procedures.

(a) A request for a waiver shall be filed in accordance with this part by:

- (1) A person who is or would be directly and adversely affected by the strict application of a rule in Env-Wt 200 through Env-Wt 900; or
- (2) A person seeking a waiver under RSA 482-A:26, III(b).

(b) Each request for a waiver shall be submitted in writing to the following address:

DES Wetlands Bureau
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

(c) Each request for a waiver shall:

- (1) Include the information specified in Env-Wt 204.03; and
- (2) Be signed as specified in Env-Wt 204.04.

(d) Any request submitted in conjunction with an application for a permit under RSA 482-A:3 or RSA 483-B:5-b shall be submitted with the permit application or as soon thereafter as the need for the waiver to a rule in Env-Wt 200 through Env-Wt 900 is identified by the applicant or the department.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); amd by #10366-A, eff 6-26-13, para (a)(1) & (b)-(d); amd by #10366-B, eff 6-26-13, para (a)(2)

Env-Wt 204.03 Content of Waiver Requests. The person requesting the waiver (requestor) shall provide the following information:

(a) The name, mailing address, and daytime telephone number of the requestor and, if available, the requestor's email address and fax number;

(b) If the requestor is making the request on behalf of someone else, the name, mailing address, and daytime telephone number of the person the requestor represents and, if available, an email address and fax number of that person;

(c) The location of the property to which the waiver request relates, if other than the mailing address of the requestor or the person the requestor represents;

(d) If the request is for a rule in Env-Wt 200 through Env-Wt 900, the number(s) of the specific section(s) of the rule for which a waiver is sought;

(e) If the request is for a waiver under RSA 482-A:26, III(b), identification of the specific standard(s) to which a waiver is being requested;

(f) A complete explanation of why a waiver is being requested, including:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) For a waiver to a rule, an explanation of the operational and economic costs of complying with the rule and, if the requested waiver would extend the duration of a permit, the reason(s) why the permit holder was not able to complete the project within the specified time; or
 - (2) For a waiver under RSA 482-A:26, III(b), a complete explanation of how the statutory criteria of RSA 482-A:26, III(b) will be met;
- (g) If applicable, a complete explanation of the alternate that is proposed to be substituted for the requirement in the rule, including written documentation or data, or both, to support the alternative;
- (h) Whether the waiver is needed for a limited duration and, if so, an estimate of when the waiver will no longer be needed; and
- (i) A complete explanation of why the applicant believes that having the waiver granted will meet the criteria in Env-Wt 204.05 or Env-Wt 204.06, as applicable.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.03), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200) amd by #10366-A, *eff 6-26-13*, para (a)(d) and (f)-(1), & (g)-(i); #10366-B, eff 6-26-13, para (e), & (f)(2)

Env-Wt 204.04 Signature Required.

- (a) The requestor shall sign and date the request.
- (b) If the requestor is making the request on behalf of someone else, the person represented shall:
 - (1) Sign and date the request; or
 - (2) Sign and date a separate authorization for the requestor to act on the person's behalf in connection with the request.
- (c) The signature(s) shall constitute certification that:
 - (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
 - (2) The signer understands that any waiver granted based on false, incomplete, or misleading information shall be subject to revocation. 

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.04), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); amd by #10366-A, *eff 6-26-13*; amd by #10366-B, eff 6-26-13, para (b)&(c)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 204.05 Criteria for Waivers to Rules.

(a) The department shall grant a waiver to a rule in Env-Wt 200 through Env-Wt 900 that will not extend the duration of a wetlands permit if:

(1) Granting a waiver will not result in:

- a. An avoidable adverse impact on the environment or natural resources of the state, public health, or public safety;
- b. An impact on abutting properties that is more significant than that which would result from complying with the rule; or
- c. A statutory requirement being waived; and

(2) Any benefit to the public or the environment from complying with the rule is outweighed by the operational or economic costs to the applicant.

(b) The department shall grant a waiver that has the effect of extending the duration of a wetlands permit that does not qualify for the statutory extension under RSA 482-A:3, XIV-a if:

(1) The permit holder:

- a. Was precluded from proceeding under the permit due to actions taken by persons opposed to the project; or
- b. Rationally refrained from proceeding under the permit due to reasonable uncertainties surrounding the project's legal viability, which shall not include uncertainties regarding the project's financial viability;

(2) If other permits are required for the project, at least one other permit already has a duration that extends beyond the expiration of the wetlands permit or, if the other permit expires concurrently or prior to the wetlands permit, the permit holder reasonably anticipates that an extension will be obtained; and

(3) Extending the permit will not result in:

- a. Adverse impacts on public health or safety, or the environment or natural resources of the state, that would be greater than those accounted for in the permit that was issued; or
- b. Adverse impacts on abutting properties that is more significant than that which would have resulted if the project had been initiated in time to be completed during the permit term.

Source. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-A, eff 6-26-13

Env-Wt 204.06 Criteria for Waivers under RSA 482-A:26, III(b). The department shall grant a waiver under RSA 482-A:26, III(b) if:

(a) The waiver will not result in:

(1) An avoidable adverse impact on the environment or natural resources of the state, public health, or public safety;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Any interference with the public trust in waters held by the state; or
 - (3) An adverse impact on abutting properties that is more significant than that which would result from complying with the rule; and
- (b) The following criteria from RSA 482-A:26, III(b) are met:
- (1) The effect of the requested repair or reconstruction represents greater protection of public water or the environment;
 - (2) Such repair or reconstruction does not change a recreational, water-based activity to a land-based, residential or commercial activity;
 - (3) There will be no expansion of the existing footprint, outside dimensions, or square footage of floor space; and
 - (4) There will be a net reduction in the total square footage of kitchen, bathroom, shower, and toilet facilities.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97 (formerly Env-Wt 205.06), EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 200); ss by #10366-B, eff 6-26-13 (from Env-Wt 204.04)

Env-Wt 204.07 Decisions.

(a) The department shall notify the requestor of the decision in writing. If the request is denied, the department shall identify the specific reason(s) for the denial.

(b) If a waiver is granted, the department shall impose such conditions, including time limitations, as the department deems necessary to ensure that the activities conducted pursuant to the waiver will be consistent with the applicable criteria.

Source. #10366-A, eff 6-26-13 (from Env-Wt 204.05)

Env-Wt 204.08 Suspension, Revocation, or Modifications of Waivers.

(a) Any waiver to a rule or under RSA 482-A:26, III(b) that is issued by the department shall be issued based on the presumption that the information submitted to obtain the approval is true, complete, and not misleading.

(b) If the department receives credible information, after the time has run for requesting reconsideration, which indicates that the information upon which the waiver was based was false, incomplete, or misleading, the department shall notify the person to whom the waiver was issued of:

- (1) The department's intention to suspend, revoke, or modify the waiver, as applicable;
- (2) The basis for the proposed action; and
- (3) The date, time, and place of a hearing on the proposed action at which the person to whom the waiver was issued shall be given an opportunity to show cause why the proposed action should not be taken.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) The hearing shall be conducted in accordance with RSA 541-A:31 and the provisions of Env-C 200 that apply to adjudicative proceedings.

(d) After the hearing, the department shall revoke the waiver if the department determines that:

- (1) The waiver would not have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project or activities to which the waiver relates cannot be conducted lawfully even with the waiver.

(e) After the hearing, the department shall suspend the waiver if the department determines that:

- (1) The waiver would have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project or activities to which the waiver relates can be conducted lawfully with the waiver.

(f) If a waiver is suspended pursuant to (e), above, the department shall reinstate the waiver upon receiving proof from the recipient that the project meets applicable requirements for approval.

(g) If as a result of the hearing the department determines that a modification to the waiver is required in order to bring the waiver and the project into compliance with applicable requirements, the department shall issue a modified waiver.

(h) The department shall notify the recipient in writing of its decision. If the decision is to suspend, revoke, or modify the waiver, the department shall specify the reason(s) for the decision.

(i) Any person aggrieved by the decision who wishes to contest the decision shall proceed as specified in RSA 482-A:10 and RSA 21-O:14.

Source. #10366-A, eff 6-26-13 (from Env-Wt 204.06)

Appendix

Rule Section(s)	State Statute Implemented
Env-Wt 200 (see additional statutes for specific Parts below)	RSA 482-A:1; RSA 482-A:3; RSA 482-A:11
Env-Wt 202	RSA 482-A:8
Env-Wt 203	RSA 482-A:10
Env-Wt 204	RSA 482-A:26, III(b); RSA 541-A:16, I(b); RSA 541-A:22, IV

CHAPTER Env-Wt 300 CRITERIA AND CONDITIONS FOR PERMITS

REVISION NOTE:

Document #5186, effective 7-23-91, made extensive changes to the wording, format, and structure of Env-Wt 300. Document #5186 supersedes all prior filings for the sections in this chapter. The prior filings for former Env-Wt 300 included the following documents:

#2271, eff 1-10-83	#4297, eff 7-23-87
#2924, eff 12-11-84	#4352, eff 1-4-88
#3074, eff 7-26-85	#5028, eff 12-20-90

See the revision note at the head of Chapter Env-Wt 600 relative to the deletion of former rules under that chapter by Document #5185, effective 7-23-91 and the incorporation of those former rules into Env-Wt 300 by Document #5186.

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 300 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 301 DELINEATION AND CLASSIFICATION OF WETLANDS

Env-Wt 301.01 Delineation of Wetlands Boundaries.

(a) Wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetlands hydrology in accordance with the techniques outlined in the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January, 1987.

(b) Delineation of wetlands based on hydrophytic vegetation or hydric soils alone shall be sufficient for any minimum impact project that meets the criteria of Env-Wt 303.04, provided the vegetation or soil has not been disrupted by artificial planting or past dredging or filling.

(c) The hydric soils component of delineations produced under (a) or (b), above, shall be determined in accordance with the manual Field Indicators for Identifying Hydric Soils in New England (Version 3, April 2004), published by the New England Interstate Water Pollution Control Commission.

(d) For the purposes of determining the hydrology component of delineations produced under (a) or (b), above, the term “soil surface” shall be defined as follows:

- (1) For Histosols and Histic Epipedons, organic soils, and soils with a thick organic surface horizon, the top of the uppermost soil horizon or the ground surface; and
- (2) For all mineral soils, the top of the mineral soil horizons.

(e) Delineations submitted in accordance with (d), above, shall comply with the delineation methods prescribed in Part 4 of the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January, 1987.

(f) Delineations of vernal pools shall be based on the characteristics listed in the definition of “vernal pool” in Env-Wt 100. To assist in the delineation, individuals may use “Identification and Documentation of Vernal Pools in New Hampshire”, 2nd Ed., 2004, published by the New Hampshire fish and game department.

(g) Any plan required by RSA 482-A that is submitted in support of an application for dredge and fill of wetlands that presents a major or minor project in accordance with Env-Wt 303.02 or Env-Wt 303.03, respectively, shall be:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when that individual prepares the plan(s);
- (2) Accompanied by a report that includes an existing conditions plan stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when another individual has prepared the plan(s); or
- (3) Signed by a homeowner acting on his or her own behalf, when the homeowner prepares the plan for the development of the homeowner's primary residence, showing the impacts resulting from such development.

(h) No delineation of wetlands, including vernal pools, shall be required outside the limits of impact for any permit application or forestry notification submitted in advance of the activity covered by the application or notification, provided the activity covered by the application or notification is:

- (1) Timber harvesting undertaken in compliance with RSA 227-J where no development or other change in land use will occur;
- (2) Agriculture that falls outside of the parameters of Env-Wt 303.04(u) only because the area of impact exceeds 3 acres or alteration will occur to other than wet meadows only, or both; or
- (3) A combination of timber harvesting and agriculture as described in (1) and (2), above.

(i) Nothing in this section shall prevent individuals permitted in accordance with RSA 485-A:36, and rules promulgated there under, from conducting wetland delineations in accordance with the exemptions provided under RSA 310-A:79, IV.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97; amd by #7047, eff 6-29-99; amd by #7896, eff 5-22-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #9132, eff 4-19-08

Env-Wt 301.02 Classification of Wetland Types.

(a) Wetlands shall be classified by the applicant in accordance with US Fish and Wildlife Service Manual FWS/OBS-79/31 Classification of Wetlands and Deepwater Habitats of the United States, Cowardin et al, 1979.

(b) Wetlands classification shall be identified on plans for all major projects involving dredge and/or fill of wetlands.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

PART Env-Wt 302 CRITERIA FOR EVALUATION

Env-Wt 302.01 Statement of Purpose.

(a) For tidal wetlands, need shall be demonstrated by the applicant prior to department approval of any alteration of tidal wetlands. No project shall be allowed that intrudes into a tidal wetland unless the department finds it to be for the public good as set out in RSA 482-A:1. Preserving the integrity of salt marshes and other tidal wetlands shall be given highest priority by the department, because of the high

productivity and rarity of such wetlands and the difficulty in restoration of value and function for those environments.

(b) For nontidal wetlands, need shall be demonstrated by the applicant prior to department approval of any alteration of nontidal wetlands. The department shall place emphasis on preserving bogs and marshes. This priority shall be based on the rarity of those environments and the difficulty in restoration of value and function for those environments.

(c) For tidal buffer zones, need shall be demonstrated by the applicant prior to department approval of any alteration of undeveloped tidal buffer zone. The department shall place its emphasis on preserving the ability of the buffer area to enhance habitat values in the adjoining tidal wetland and to protect tidal environments from potential sources of pollution.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 302.02 Department Action. The criteria in this part shall be used to meet the purpose expressed by RSA 482-A:1 when determining whether to approve, approve with conditions, approve-in-part with conditions, or deny applications.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 302.03 Avoidance, Minimization, and Mitigation.

(a) The applicant shall submit a statement describing the impact of the proposed project design and provide evidence which demonstrates that, subject to (b) below:

- (1) Potential impacts have been avoided to the maximum extent practicable; and
- (2) Any unavoidable impacts have been minimized.

(b) For all permanent impacts that will remain after avoidance and minimization measures have been addressed, the applicant shall submit a compensatory mitigation proposal in accordance with Env-Wt 800, unless exempted by (c) below.

(c) An applicant shall not be required to submit a compensatory mitigation proposal only if:

- (1) There is no impact, within a jurisdictional area, to:
 - a. An exemplary natural community as defined or identified by the natural heritage inventory; or
 - b. A state or federally listed endangered or threatened species or its habitat or reproduction areas; and
- (2) The total project meets one or more of the following qualifying criteria:
 - a. The project qualifies as minimum impact in accordance with Env-Wt 303.04;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- b. The project impacts less than 10,000 sq. ft. of wetlands but otherwise qualifies as minor impact in accordance with Env-Wt 303.03;
- c. The project involves only riprap or other bank stabilization to protect existing infrastructure such as highways, bridges, dams, or buildings, or includes such work in combination with other qualifying criteria;
- d. The project involves only bank stabilization by exclusively incorporating bio-engineering methods, or includes such work in combination with other qualifying criteria;
- e. The project involves only minor or minimum impacts to streams identified in Env-Wt 303.03 and Env-Wt 303.04, or includes such work in combination with other qualifying criteria;
- f. The project involves only the installation of accessory docking structures or the construction of new shoreline structures and breakwaters, or includes such work in combination with other qualifying criteria, provided the resulting dock surface area of all new shoreline structures on the frontage is less than 2,000 square feet; or
- g. The project involves only construction of a pond classified as a minor or minimum impact identified in Env-Wt 303.03 or Env-Wt 303.04, or includes such work in combination with other qualifying criteria.

(d) Mitigation shall not be required for impacts that are not intended to remain after the project is completed, provided the areas are restored in accordance with provisions shown in the approved project plans.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97,

New. #6498-B, eff 4-23-97; ss by #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 302.04 Requirements for Application Evaluation.

(a) For any major or minor project, the applicant shall demonstrate by plan and example that the following factors have been considered in the project's design in assessing the impact of the proposed project to areas and environments under the department's jurisdiction:

- (1) The need for the proposed impact;
- (2) The alternative proposed by the applicant is the one with the least impact to wetlands or surface waters on site;
- (3) The type and classification of the wetlands involved;
- (4) The relationship of the proposed wetlands to be impacted relative to nearby wetlands and surface waters;
- (5) The rarity of the wetland, surface water, sand dunes, or tidal buffer zone area;
- (6) The surface area of the wetlands that will be impacted;
- (7) The impact on plants, fish and wildlife including, but not limited to:
 - a. Rare, special concern species;
 - b. State and federally listed threatened and endangered species;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- c. Species at the extremities of their ranges;
- d. Migratory fish and wildlife;
- e. Exemplary natural communities identified by the DRED-NHB; and
- f. Vernal pools;

(8) The impact of the proposed project on public commerce, navigation and recreation;

(9) The extent to which a project interferes with the aesthetic interests of the general public. For example, where an applicant proposes the construction of a retaining wall on the bank of a lake, the applicant shall be required to indicate the type of material to be used and the effect of the construction of the wall on the view of other users of the lake;

(10) The extent to which a project interferes with or obstructs public rights of passage or access. For example, where the applicant proposes to construct a dock in a narrow channel, the applicant shall be required to document the extent to which the dock would block or interfere with the passage through this area;

(11) The impact upon abutting owners pursuant to RSA 482-A:11, II. For example, if an applicant is proposing to rip-rap a stream, the applicant shall be required to document the effect of such work on upstream and downstream abutting properties;

(12) The benefit of a project to the health, safety, and well being of the general public;

(13) The impact of a proposed project on quantity or quality of surface and ground water. For example, where an applicant proposes to fill wetlands the applicant shall be required to document the impact of the proposed fill on the amount of drainage entering the site versus the amount of drainage exiting the site and the difference in the quality of water entering and exiting the site;

(14) The potential of a proposed project to cause or increase flooding, erosion, or sedimentation;

(15) The extent to which a project that is located in surface waters reflects or redirects current or wave energy which might cause damage or hazards;

(16) The cumulative impact that would result if all parties owning or abutting a portion of the affected wetland or wetland complex were also permitted alterations to the wetland proportional to the extent of their property rights. For example, an applicant who owns only a portion of a wetland shall document the applicant's percentage of ownership of that wetland and the percentage of that ownership that would be impacted;

(17) The impact of the proposed project on the values and functions of the total wetland or wetland complex;

(18) The impact upon the value of the sites included in the latest published edition of the National Register of Natural Landmarks, or sites eligible for such publication;

(19) The impact upon the value of areas named in acts of congress or presidential proclamations as national rivers, national wilderness areas, national lakeshores, and such areas as may be established under federal, state, or municipal laws for similar and related purposes such as estuarine and marine sanctuaries; and

(20) The degree to which a project redirects water from one watershed to another.

(b) For all minimum impact projects, except for recreational mineral dredging activities permitted in accordance with Env-Wt 504, the applicant shall demonstrate by plan and example that the following factors

have been considered in the project's design in assessing the impact of the proposed project to areas and environments under the department's jurisdiction:

- (1) Type of wetland to be impacted;
- (2) Surface areas of wetlands impacted;
- (3) Relationship of the proposed wetlands to be impacted relative to nearby wetlands and surface waters;
- (4) The impact upon abutting owners pursuant to RSA 482-A:11, II; and
- (5) Lack of alternatives with lesser wetlands and surface water impacts.

(c) In addition to the requirements of (a) and (b), above, the applicant shall demonstrate by plan and example that the following factors have been considered in the project's design in assessing the impact of the proposed project to areas in and adjacent to tidal wetlands including the tidal buffer zone:

- (1) The extent to which a project impacts beach or tidal flat sediment replenishment and movement of sediments along a shore;
- (2) The impact on a tidal wetland's ability to dissipate wave energy and storm surge; and
- (3) The impact of project runoff on salinity levels in tidal environments.

(d) The department shall not grant a permit if:

- (1) There is a practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction;
- (2) The project would cause or contribute to significant degradation of waters of the state; or
- (3) The project will cause random or unnecessary destruction of wetlands.

(e) Unless a waiver is granted under Env-Wt 204, the department shall not grant a permit if:

- (1) The project proposes fill of a wetland to achieve septic set back from wetlands to meet department or local requirements; or
- (2) The requirements of Env-Wt 302.03 are not met or the applicant has failed to document consideration of factors as required in (a), (b), and (c), above.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by INTERIM #5400, eff 5-21-92 EXPIRED: 9-18-92; amd by #5548, eff 1-5-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); amd by #9132, eff 4-19-08; ss by #10367, eff 6-26-13

Env-Wt 302.05 After-the-Fact Application. Applications received after work is completed shall be subjected to the same review as any other application. Consideration of an after-the-fact application shall not preclude or limit the department's exercise of any enforcement powers it possesses.

Source. #8341, eff 4-25-05 (formerly Env-Wt 204.06) (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

PART Env-Wt 303 CLASSIFICATION OF PROJECTS

Env-Wt 303.01 Assignment of Classification. Projects shall be classified according to the criteria of this part.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 303.02 Major Projects. A major project shall be any project that meets any one or more of the following criteria:

(a) Projects in sand dunes, tidal wetlands, or bogs, except for repair of existing structures pursuant to Env-Wt 303.04(v);

(b) Projects within 100 feet of the highest observable tide line that alter any bank, flat, wetlands, surface water, or undeveloped uplands, except for repair of existing structures pursuant to Env-Wt 303.04(v);

(c) Projects that involve alteration of nontidal wetlands, nontidal surface waters, and banks adjacent to nontidal surface waters in excess of 20,000 square feet in the aggregate;

(d) Construction or modification of major docking system defined by Env-Wt 101.56, and any dock adjacent or attached to a breakwater;

(e) Construction or modification of retaining walls lakeward of the natural shoreline and below the natural mean high water level of great ponds, or lakeward of the normal shoreline and below the artificial high water level of lakes where the state has fee simple ownership or flowage rights. Refacing that does not add more than 6 inches to the width of the wall shall not in itself make a project major;

(f) Projects located in or adjacent to prime wetlands designated under RSA 482-A:15;

(g) Removal of more than 20 cubic yards of rock, gravel, sand, mud, or other material from public waters;

(h) Projects that disturb more than 200 linear feet, measured along the shoreline, of a lake or pond or its bank;

(i) Projects that alter the course of or disturb 200 or more linear feet of an intermittent or perennial nontidal stream or river channel or its banks. For intermittent streams, the distance shall be measured along the thread of the channel. For perennial streams or rivers, the total disturbance shall be calculated by summing the lengths of disturbances to the channel and the banks;

(j) Construction of a breakwater in public waters;

(k) Projects in a wetland that have been identified by Natural Heritage Inventory - Department of Resources and Economic Development as an exemplary natural community, and/or that has documented occurrences of state or federally listed Endangered or Threatened species;

(l) Projects which, when taken in the aggregate with previous work on the property within the last 5 years, would be considered major. For example, if previous work on the property was fill of 15,000 sq.ft. of nontidal wetlands and an individual applies to fill an additional 15,000 sq. ft. of nontidal wetlands on the property, the application shall be deemed to be for a major project;

(m) Any project that is related to other applications or permits in the wetlands area or wetlands complex in a manner such that if the proposed action were considered to be in a single application the

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

combined impact would be considered major. For example, if 2 individuals apply to rip-rap 150 linear feet of a stream that is part of the same wetlands complex, each application shall be deemed to be for a major project;

(n) Fill in public waters for the purposes of making land;

(o) Construction of or replenishment of a beach that does not meet the criteria for minimum impact under Env-Wt 303.04(d) or Env-Wt 303.04(aa), or minor impact under Env-Wt 303.03(f); and

(p) Any project that includes a new or replacement stream crossing which meets the criteria for a tier 3 stream crossing as specified in Env-Wt 904.04(a).

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); amd by #9717, eff 5-25-10); ss by #10367, eff 6-26-13

Env-Wt 303.03 Minor Projects. A minor project shall be any project that meets any of the following criteria and does not meet any of the criteria specified in Env-Wt 303.02:

(a) Projects in any bank, flat, marsh, or swamp or in and adjacent to any waters of the state or within 100 feet of the highest observable tide line that do not meet any of the criteria of Env-Wt 303.02, Env-Wt 303.04 or Env-Wt 303.05;

(b) Projects that involve work within 50 feet of a saltmarsh that do not meet the criteria of Env-Wt 303.02;

(c) Projects that involve dredge, fill, or construction of a permanent structure in a stream or marsh that do not meet the criteria of Env-Wt 303.02, except those projects in streams which meet the criteria of Env-Wt 303.04(g), (i), (j), (n), (x), (y), or (z);

(d) Construction or modification of any docking system that:

(1) Provides for 4 boat slips including previously existing boat slips;

(2) Uses no more than 100 feet of waterfront; and

(3) Exceeds the design and construction criteria discussed at Env-Wt 402.01 for minimum impact docks classified under Env-Wt 303.04;

(e) Construction of a pond with less than 20,000 square feet of impact in a wetland or surface waters, which does not meet the criteria of Env-Wt 303.04(p);

(f) Construction of or replenishment of a beach that does not exceed the criteria in Env-Wt 303.04(d) or the criteria in Env-Wt 303.04(aa) other than to propose:

(1) Replenishment in excess of the limit of one replenishment in a 6 year period; or

(2) The use of more than 10 cubic yards of sand, but not more than 20 cubic yards;

(g) Removal of no more than 20 cubic yards of rock, gravel, sand, mud, or other materials from public waters;

(h) Projects involving less than 20,000 square feet of alteration in the aggregate in nontidal wetlands, nontidal surface waters, or banks adjacent to nontidal surface waters which exceed the criteria of Env-Wt 303.04(f);

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(i) Projects involving the removal of emergent or submergent vegetation when the method used disturbs the bottom sediment of the water body, unless Env-Wt 303.04(r) applies;

(j) Repair or replacement of existing retaining walls that requires work in the water, but that results in no change in height, length, location, or configuration. If a wall is to be refaced, such additional width shall not exceed 6 inches;

(k) Projects that disturb between 50 and 200 linear feet, measured along the shoreline, of a lake or pond or its bank and do not meet the criteria of Env-Wt 303.02;

(l) Projects that alter the course of or disturb less than 200 linear feet of an intermittent or perennial nontidal stream or river channel or its banks and do not meet the criteria for minimum impact under Env-Wt 303.04(n). For intermittent streams, this distance shall be measured along the thread of the channel. For perennial streams or rivers, the total disturbance shall be calculated by summing the lengths of disturbances to the channel and the banks;

(m) Installation of new tie-off piles, ice clusters, or dolphins which do not, by their presence, add boat slips to an existing docking system;

(n) Any project located within the right-of-way of a public highway that meets the criteria of Env-Wt 303.04(j) except that the project includes more than one new tier one stream crossing; and

(o) Any project that qualifies as a minor impact project under Env-Wt 903.01(f).

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300)); amd by #9717, eff 5-25-10; ss by #10367, eff 6-26-13

Env-Wt 303.04 Minimum Impact Projects. A minimum impact project shall be any project that meets any of the following criteria and does not meet any of the criteria specified in Env-Wt 303.02 or Env-Wt 303.03:

(a) Construction or modification of a seasonal pier or wharf if no more than 2 slips, including previously existing slips, are proposed, and all criteria of Env-Wt 402 are met;

(b) Projects in previously-developed upland areas within 100 feet of the highest observable tide line unless they are major or minor as defined in Env-Wt 303.02 or Env-Wt 303.03, respectively;

(c) Repair or replacement of existing retaining walls that is performed “in the dry” during drawdown of waters, and that results in no change in height, length, location, or configuration. If a wall is to be refaced such additional width shall not exceed 6 inches;

(d) Construction of a beach provided:

(1) The beach shall serve a privately-owned single family residence;

(2) No fill or dredge shall occur below the high water line or full pond elevation;

(3) The total amount of dredge or fill shall not exceed 900 square feet;

(4) No work shall be conducted in a swamp, marsh, tidal buffer zone, bog, or in or adjacent to a prime wetland;

(5) The work shall not alter more than 20 percent of the applicant’s contiguous shoreline up to a maximum of 50 feet; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(6) No more than 10 cubic yards of sand shall be used;

(e) Roadway construction through forested wetlands for the purpose of conducting forest management activities, provided:

(1) Construction shall be done during frozen conditions;

(2) Roads shall be cleared by felling timber in and adjacent to the roadway;

(3) The road base shall be constructed using no fill other than:

a. Snow pushed on and frozen over the road base; or

b. Stumps, inverted in places where support of the road base is necessary;

(4) The minimum required ditches to obtain adequate drainage shall be constructed;

(5) Each road crossing shall be no more than 15 feet wide and no more than 200 feet long;

(6) Stream crossings shall incorporate pole fords with no stumping within the stream banks; and

(7) Spring retirement of the winter roads shall include soil stabilization and drainage, including water bars, as necessary on the site to prevent the roadway from becoming a channel for ground or surface water runoff;

(f) Projects involving alteration of less than 3,000 square feet in swamps or wet meadows that are not in prime wetlands or do not meet the requirements of Env-Wt 303.02(k), provided that no previous department permit has placed restrictions on the property of the applicant;

(g) Installation of a structure and associated fill to cross wetlands, including streams, to allow vehicular access to a piece of property for forest management, including the transportation of forest products, provided:

(1) Access shall not be used for subdivision, development, or other land conversion to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance, or both;

(2) Roadway width at the crossing shall not exceed 20 feet;

(3) Fill width, measured at toe of roadway side slopes, shall be minimized, and shall not exceed 50 feet;

(4) Fill for any single crossing shall not exceed 50 feet in length, measured along the proposed access way;

(5) Crossings of wetlands other than streams shall be limited to those that:

a. Do not impact bogs, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone;

b. Are not located in or within 100 feet of prime wetlands, unless a waiver has been granted pursuant to RSA 482-A:11, IV(b);

c. Do not meet the criteria of Env-Wt 303.02(k); and

d. If crossing a swamp or wet meadow, cross those that have no standing water for 10 months of the year;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(6) Temporary stream crossings that do not meet the requirements of Env-Wt 303.05(r) shall be subject to the following:

- a. The structure may cross a perennial stream or intermittent stream of any width;
- b. The structure may incorporate one or more in-stream piers or posts, limited to one pier or post per 15 feet of span;
- c. The structure may incorporate one or more abutments in the bank(s);
- d. The crossing shall be removed within 2 years of the date the permit by notification under RSA 482-A:3, V is issued by the department, provided that if weather conditions preclude the removal of the crossing when the work is completed, the crossing may remain in place until weather conditions allow its removal; and

(7) Permanent stream crossings that do not meet the requirements of Env-Wt 303.05(r) shall be subject to the following:

- a. The structure may have one or more abutments in the bank(s); and
- b. The structure shall only cross a perennial stream or intermittent stream having a scoured channel of 8 feet or less;

(h) Installation of a new bridge or replacement of an existing bridge that does not meet the requirements of Env-Wt 303.05(r) provided that:

- (1) No work is done in the water or in a wetland;
- (2) No fill is placed in the water or in a wetland;
- (3) Impacts to the banks of the watercourse, including bridge structural supports, do not exceed 3,000 square feet;
- (4) The bridge is not in a prime wetland, prime wetland buffer, bog, marsh, sand dune, or undisturbed tidal buffer zone; and
- (5) The project does not meet the criteria of Env Wt 303.02(k);

(i) Construction of a temporary crossing of a brook, stream, or river for the construction or maintenance of utility pipes or lines, provided the crossing:

- (1) Is not in or within 100 feet of prime wetlands, unless a waiver has been granted pursuant to RSA 482-A:11, IV(b);
- (2) Is not within 100 feet of the highest observable tide line;
- (3) Is removed within 2 years of the date the permit by notification under RSA 482-A:3, XV is issued by the department, provided that if weather conditions preclude the removal of the crossing when the work is completed, the crossing may remain in place until weather conditions allow its removal;
- (4) Does not meet the criteria of Env-Wt 303.02(k); and
- (5) Does not access property that has been converted from forestry uses to non-forestry uses, except that forestry uses may be combined with normal agricultural operations or trail construction or maintenance, or both;

(j) Any project not otherwise specified in this section that is located within the right-of-way of a public highway, provided the project:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Does not impact bogs, marshes, sand dunes, tidal wetlands, or undisturbed tidal buffer zone;
 - (2) Is not in or within 100 feet of prime wetlands, unless a waiver has been granted pursuant to RSA 482-A:11, IV(b);
 - (3) Does not meet the criteria of Env-Wt 303.02(k);
 - (4) Includes only:
 - a. Drainage structures that do not exceed 3,000 square feet of dredge or fill in area; and
 - b. Stream crossings that qualify as minimum impact under Env-Wt 903.01(e); and
 - (5) Meets the following criteria:
 - a. Swamps or wet meadows crossed shall have no standing water for 10 months of the year;
 - b. Fill for any single crossing shall not exceed 50 feet in length, measured along the roadway;
 - c. The fill width, measured at the base of the roadway side slopes, shall be minimized, and shall not exceed 50 feet; and
 - d. Shoulder widening shall not exceed 3 cubic yards of fill per linear foot in wetlands that have no standing water for 10 months of the year, and shall not exceed 10 feet of additional encroachment measured from base of slope;
- (k) Maintenance dredging, when necessary to provide continued usefulness of nontidal drainage ditches, man-made ponds, and spillways, provided that:
- (1) The work is done within the original bounds of a legally-constructed project;
 - (2) The project is not located in or adjacent to prime wetlands;
 - (3) The work does not exceed 20,000 square feet; and
 - (4) For man-made ponds, the pond has not been abandoned as defined in Env-Wt 101.02;
- (l) 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. Temporary cofferdams means temporary watertight enclosures built in the water and pumped dry to expose the bottom so that construction may be undertaken. All such work shall be designed and supervised by a professional engineer and shall be removed upon completion of repair and/or maintenance;
- (m) Projects that disturb less than 50 linear feet, measured along the shoreline, of a lake or pond or its bank and do not meet the criteria of Env-Wt 303.03 or Env-Wt 303.02;
- (n)  project located within the right-of-way of a public highway that meets the criteria of Env-Wt 303.04(j) except that the project includes more than one new tier one stream crossing;**
- (o) Projects deemed minimum impact by the department based on the degree of environmental impact;
- (p) Construction of a pond with less than 20,000 sq. ft. of wetlands impact, provided:
- (1) None of the wetlands have very poorly drained soil as defined in Env-Ws 1002.84;
 - (2) There are no streams into or out of the proposed pond site;
 - (3) The project is not located in prime wetlands; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) The project does not meet the requirements of Env-Wt 303.02(k);
- (q) Projects to control aquatic weeds by cutting above the roots and harvesting, provided:
 - (1) There is no mobilization of bottom sediments;
 - (2) The project is not located in prime wetlands, marshes, or bogs; and
 - (3) The project does not meet the requirements of Env-Wt 303.02(k);
- (r) Projects to control exotic aquatic weeds Cabomba carolina (fanwort) and/or Myriophyllum heterophyllum (exotic milfoil) as authorized by RSA 487:17, provided:
 - (1) Work is conducted under the supervision of the department unless included in Env-Wt 303.05;
 - (2) The project is not located in prime wetlands, marshes, bogs, or tidal wetlands; and
 - (3) The project does not meet the requirements of Env-Wt 303.02(k);
- (s) Dredging for gold or other minerals, provided:
 - (1) The criteria of Env-Wt 304.14 are not exceeded;
 - (2) The project is not located in prime wetlands, marshes, or bogs; and
 - (3) The project does not meet the requirements of Env-Wt 303.02(k);
- (t) Restoration of altered or degraded wetlands provided the project:
 - (1) Receives financial support and direct supervision of a New Hampshire state agency, the US Environmental Protection Agency, the US Army Corps of Engineers, the US Natural Resources Conservation Service, or the US Fish and Wildlife Service;
 - (2) Shall not be used to perform restoration in cases where the applicant is subject to a removal or restoration order;
 - (3) Is not located in or adjacent to prime wetlands; and
 - (4) Does not meet the criteria of Env-Wt 303.02(k).
- (u) Maintenance or improvement of existing crop or pasture land for continued agricultural use, provided:
 - (1) The applicant's county conservation district certifies in writing that:
 - a. The project is in accordance with a plan developed to standards of the "Best Management Wetland Practices for Agriculture", N.H. department of agriculture, dated July 16, 1993, amended September 1998;
 - b. The project is necessary for or incidental to a preexisting and ongoing bonafide agricultural operation as defined by RSA 21:34-a; and
 - c. The plan is limited to those items addressed by the "Best Management Wetlands Practices for Agriculture", N.H. department of agriculture, dated July 16, 1993, amended September 1998;
 - (2) The applicant accepts a permit condition stating that any change in use to a non-agricultural purpose will require further permitting by the department;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) The applicant shall record the permit at the registry of deeds;
 - (4) The improvement portion of the project does not impact more than 3 acres of wetland;
 - (5) The project is not in or adjacent to prime wetlands, is not in sand dunes, is not in the 100 foot tidal buffer zone, and does not meet the requirements of Env-Wt 303.02(k);
 - (6) The project will cause alteration only to wet meadows except where specifically described in "Best Management Wetlands Practices for Agriculture", N.H. department of agriculture, dated July 16, 1993, amended September 1998;
 - (7) The application includes:
 - a. A complete copy of the county conservation district's cooperator agreement;
 - b. Conservation plan with accompanying map;
 - c. A USDA soil conservation service soils map with the site located;
 - d. A soils legend identifying poorly drained and very poorly drained map units.
 - e. Dated, labeled photograph(s) mounted on 8 1/2" x 11" sheets depicting portions of wetland, shoreline, or surface waters where proposed impact will occur, and showing all existing structures;
 - (8) The project involves poorly drained soils with no greater than 15% inclusion of very poorly drained soils as specified in Env-Wq 1014.02; and
 - (9) The project does not include filling or draining of wetlands of greater than 3,000 sq. ft. for placement of parking lots, or lot development, or of buildings, with the exception of agricultural handling facility buildings.
- (v) Maintenance, repair, and replacement in-kind of existing docking structures, such as breakwaters, docks, boat houses, piers, wharves, walkways, boat ramps, tie-off pilings, ice clusters, dolphins, or other docking facilities, provided:
- (1) No work is proposed that would be prohibited under RSA 482-A:26;
 - (2) No change in location, configuration, construction type, or dimensions is proposed; and
 - (3) The applicant certifies in writing that:
 - a. The existing structures would be considered grandfathered in their current configuration pursuant to Env-Wt 101.47 and have not been abandoned pursuant to Env-Wt 101.02 or Env-Wt 303.05(a)(4); or
 - b. The existing structures have been constructed in accordance with a previously-issued wetlands permit and have not been abandoned pursuant to Env-Wt 101.02 or Env-Wt 303.05 (a)(4);
- (w) Excavation of less than 10 linear feet within the bank and bed of a surface water that does not exceed 200 square feet in total jurisdictional impact to the bed, for installation of a dry hydrant;
- (x) Maintenance, repair, or replacement of a nondocking structure such as a culvert, headwall, bridge, dam, residential utility line, or rip-rap slope of less than 50 linear feet, provided:
- (1) No change in location, configuration, construction type, or dimensions is proposed;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) Any stream crossing work qualifies as minimum impact under Env-Wt 903.01(e)(2) or (3); and

(3) The applicant certifies in writing that the structure, in its current location, configuration, construction type and dimensions:

- a. Was previously permitted by the department and has not been abandoned; or
- b. Would be considered grandfathered under Env-Wt 101.47 and has not been abandoned;

(y) Construction or maintenance of trails, including construction or maintenance of crossings that are part of a trail, provided:

(1) All work is done in accordance with the “Best Management Practices for Erosion Control During Trail Maintenance and Construction”, N.H. department of resources and economic development, copyright 1994, updated 2004;

(2) Less than 3,000 square feet of jurisdictional area is impacted per crossing;

(3) The trail width at the crossing does not exceed 20 feet;

(4) Each new crossing is either:

- a. A bridge that meets the requirements of (h), above; or
- b. Any other crossing that meets all of the following conditions:
 - 1. The fill width, measured at toe of trail side slopes, shall be minimized, for example, by making the side slopes steeper and constructing walls, and not exceed 50 feet;
 - 2. Fill for any single wetland crossing shall not exceed 60 feet in length, measured along the centerline of the proposed access way;
 - 3. No impacts shall be allowed to bogs, marshes, sand dunes, tidal wetlands, cedar swamps, or undisturbed tidal buffer zone;
 - 4. The crossing is not located in or within 100 feet of prime wetlands, unless a waiver has been granted pursuant to RSA 482-A:11, IV(b);
 - 5. The project does not meet the criteria of Env-Wt 303.02(k);
 - 6. Any swamps or wet meadows crossed shall have no standing water for 10 months of the year; and
 - 7. Any new stream crossing of a perennial stream or intermittent stream shall cross only those streams having a scoured channel no more than 8 feet wide; and

(5) Any stream crossing work qualifies as minimum impact under Env-Wt 903.01(e);

(z) Installation of a stream crossing and associated fill to permit vehicular access to a piece of property for a single family building lot, for noncommercial recreational uses including conservation projects, or for normal agricultural operations, provided:

(1) The total jurisdictional impact shall not exceed 3,000 square feet;

(2) The roadway width at the crossing shall not exceed 20 feet;

(3) The fill width, measured at toe of roadway side slopes, shall be minimized, for example, by making the sideslopes steeper and constructing walls, and not exceed 50 feet;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) Fill for any single wetland crossing shall not exceed 60 feet in length, measured along the centerline of the proposed access way; and
- (5) Such projects shall be limited to crossings that:
 - a. Do not impact bogs, marshes, sand dunes, tidal wetlands, cedar swamps, or undisturbed tidal buffer zone;
 - b. Are not located in or within 100 feet of prime wetlands, unless a waiver has been granted pursuant to RSA 482-A:11, IV;
 - c. Do not meet the criteria of Env-Wt 303.02(k);
 - d. If crossing streams, qualify as minimum impact under Env-Wt 903.01(e); and
 - e. If crossing swamps or wet meadows, cross those that have no standing water for 10 months of the year;
- (aa) Replenishment of sand on an existing beach, provided:
 - (1) No sand shall be placed below the high water line or full pond elevation;
 - (2) No work shall be conducted in or adjacent to prime wetland;
 - (3) No more than 10 cubic yards of sand shall be used; and
 - (4) The beach replenishment shall not exceed the limit of one replenishment in any 6 year period;
- (ab) Construction of an anchoring pad for a seasonal dock provided:
 - (1) The pad shall be constructed landward of the high water line or full pond elevation;
 - (2) The pad shall not exceed 7 feet in width or impact more than 10 linear feet along the bank, with the bank fully stabilized upon completion of construction;
 - (3) Appropriate erosion, siltation, and turbidity control measures shall be installed and maintained to prevent any impacts to adjacent surface waters and those controls maintained until the site has stabilized; and
 - (4) The pad shall not be constructed in or adjacent to prime wetlands, and does not meet the requirements in Env-Wt 303.02(k);
- (ac) Installation of a seasonal boatlift in an existing grandfathered or legally-existing, permitted boat slip, provided the boatlift is:
 - (1) Installed such that no additional boat slip is created by installation of the lift;
 - (2) Removed during the non-boating season;
 - (3) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water; and
 - (4) Installed in a manner which requires no impact that would necessitate further permit action;
- (ad) Installation of a seasonal personal watercraft lift, provided the personal watercraft lift is:
 - (1) Installed immediately adjacent to a dock, and in a legally-existing boat slip, or, if there are no other personal watercraft lifts on the frontage, a maximum of 2 lifts installed immediately adjacent to one another and along the owner's shoreline;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Removed during the non-boating season;
- (3) Located at least 20 feet from an abutting property line or the imaginary extension of the property line over the water;
- (4) Installed in a manner that creates no impacts that would require further permit action; and
- (5) Located on a parcel of land that has 75 feet or more of shoreline frontage;

(ae) Installation of residential utility lines and associated temporary impacts to bring utility services to a single family building lot, provided:

- (1) The total jurisdictional impact shall not exceed 3,000 square feet;
- (2) The impact width at the crossing shall not exceed 20 feet;
- (3) Such projects shall be limited to those that:
 - a. Do not impact bogs, marshes, sand dunes, tidal wetlands, cedar swamps, or undisturbed tidal buffer zone;
 - b. Are not located in or within 100 feet of prime wetlands, unless a waiver has been granted pursuant to RSA 482-A:11, IV(b);
 - c. Do not meet the criteria of Env-Wt 303.02(k);
 - d. If crossing a stream, cross channels less than 8 feet wide measured bank to bank; and
 - e. If crossing swamps or wet meadows, cross those that have no standing water for 10 months of the year; and
- (4) All disturbed areas are regraded to original contours and stabilized within 72 hours following completion of work;

(af) Temporary impacts associated with the inspection, maintenance, and repair of existing utility lines within an existing utility right of way provided:

- (1) Total jurisdictional impacts shall not exceed one acre;
- (2) The equipment used shall be designed to have low ground contact pressure or placed on temporary swamp mats so as to minimize rutting of the soils;
- (3) The work shall be conducted under low flow or low groundwater conditions, or during frozen ground conditions;
- (4) Access routes through the right of way shall be designed to minimize impacts to jurisdictional areas;
- (5) The equipment shall be operated and maintained to avoid spillage of oil, gas, or hydraulic fluids;
- (6) Refueling of equipment shall occur a minimum of 100 feet away from wetland and surface waters or both;
- (7) All temporary impacts to wetlands shall be regraded to original contours and stabilized within 72 hours following the completion of work and within 30 days of the start of work;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(8) Stream impacts shall be limited to intermittent stream beds less than 10 feet in width and shall be conducted during low flow conditions;

(9) No work shall be done in or adjacent to prime wetlands; and

(10) The project does not meet the criteria of Env-Wt 303.02(k).

(ag) Replacement of an existing stream crossing to access a piece of property for a single family residence or building lot, for noncommercial recreational uses including conservation projects, or for normal agricultural operations, where the contributing watershed is 25 acres or less; or

(ah) Any project that includes any new stream crossing which qualifies as minimum impact under Env-Wt 903.01(e).

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #5444, eff 8-3-92; amd by #5739, eff 11-23-93; amd by #5904, eff 9-30-94; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); amd by #9717, eff 5-25-10; ss by #10367, eff 6-26-13

Env-Wt 303.05 Projects That Do Not Require a Permit. The following activities shall not require a permit or, unless explicitly stated, a notification to the department:

(a) Repair or reconstruction of an existing legal structure, other than a stream crossing, that meets the following conditions:

- (1) The size, location, configuration, and construction shall remain unchanged;
- (2) There shall be no work on any portion of the structure located in the water;
- (3) The work shall not require the use of tracked or wheeled equipment in the department's jurisdiction; and
- (4) The structure has not been abandoned;

(b) Mowing or cutting of vegetation in a wet meadow, red maple swamp, hemlock swamp, spruce/fir swamp, or white pine swamp, provided:

- (1) The roots of the vegetation are not disturbed;
- (2) The ground is frozen or sufficiently dry to avoid making ruts;
- (3) The area is stabilized once thawed; and
- (4) The project is not located in prime wetlands;

(c) 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 appropriate;

(d) Panning for gold or other minerals in sand or gravel stream beds, provided there is no use of mechanical equipment and no digging in the banks of the stream and provided written permission from the landowner is obtained;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(e) Hand removal of exotic aquatic plants or installation and maintenance of benthic barriers on the bottom of a surface water to control the growth of exotic aquatic plants as authorized by RSA 487:17, provided:

- (1) The work is conducted by SCUBA divers who have received weed control diver certification from the professional association of diving instructors;
- (2) The project is conducted in accordance with a long-term management plan designed pursuant to Env-Wq 1305.03;
- (3) The project is not located in prime wetlands, marshes, bogs, or tidal wetlands;
- (4) Diver-assisted harvesting of exotic aquatic weeds in flowing waters will be initiated only at the most upstream location of the infestation; and
- (5) The project does not meet the requirements of Env-Wt 303.02(k);

(f) Installation of a stream crossing in a drainage swale or in an ephemeral stream, or in any area located upstream of where the scouring starts for an intermittent stream or perennial stream;

(g) Use of hand tools such as augers or tile spades, monitoring wells, piezometers, staff gauges, and flow meters, 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;

(h) Hand raking of leaves or other organic debris from the shoreline or lakebed provided that:

- (1) At the time raking is done, the area raked is exposed by drawdown; or
- (2) Raking does not disturb vegetative roots and is limited to 900 square feet of area;

(i) Landscaping, gardening, or deck or stair construction in the upland tidal buffer zone;

(j) Removal of a beaver dam by hand or machine provided:

- (1) Machinery does not enter the water or create any disturbance by filling or dredging to adjacent surface waters, wetlands, or their banks;
- (2) All dredged materials are placed out of department jurisdiction; and
- (3) Removal of the dam is done in a gradual manner that does not allow a sudden release of impounded water so as to cause erosion or siltation;

(k) Addition of native vegetation to enhance wetlands, but not the removal of wetlands vegetation except as provided in (b), above. For the purposes of this rule, Phragmites sp. and similarly invasive species shall not be considered to “enhance” wetlands;

(l) Maintenance of public beaches in tidal waters for the purposes of removal of seaweed, algae or other debris provided:

- (1) Work is done during low tide;
- (2) No work is done in the water;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) Work is done by the state or local agency responsible for maintenance of a public beach and not by private land owners; and
- (4) No work shall be done which involves removal of sand and/or regrading or recontouring of the beach, except as provided in (m) below;
- (m) The regrading and recontouring of public beaches as necessary to maintain the integrity of seawalls and to insure the safety and protection of the public on beaches maintained by the state of New Hampshire department of resources and economic development;
- (n) Drilling geotechnical borings during the final design phase of public projects, provided:
 - (1) The applicant shall provide the landowner, the department, 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 prior to its commencement;
 - (2) Vehicles used shall be either skid-mounted, portable, or those designed to have low ground contact pressure;
 - (3) Ruts shall be minimized and shall not exceed one foot in depth;
 - (4) The type and manner of drilling shall be selected to minimize impact on water quality;
 - (5) Drill holes shall not exceed 8 inches in diameter;
 - (6) Drill holes shall be back-filled with drill spoil or, if conditions require, shall be filled with clean material or grout;
 - (7) Drill cuttings shall be removed out of department jurisdiction, unless they are used as provided in (6) above;
 - (8) Equipment shall be operated and maintained to avoid spillage of oil, gas, or hydraulic fluids;
 - (9) No filling of wetlands shall be allowed except to smooth or regrade ruts or to use vegetative cuttings as an access roadbase;
 - (10) All impacts to wetlands shall be temporary and upon completion of the drilling, the rutted areas shall be regraded and smoothed so they will naturally revegetate after one season;
 - (11) Any drilling in surface waters shall be done using machinery operated from a barge, from the ice, or from adjacent uplands, and department water quality standards shall be met; and
 - (12) No work shall be done in bogs, marshes, tidal wetlands, in or adjacent to prime wetlands, or in surface waters except as provided in (11) above;
- (o) 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 final design phase of public projects provided:
 - (1) The applicant shall provide the landowner, the department, 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 prior to its commencement;
 - (2) Equipment shall be operated and maintained to prevent spillage of oil, gas, or hydraulic fluids;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) All impacts shall be temporary and upon completion of test pitting the rutted and excavated areas shall be back filled with excavated material, regraded and smoothed so that the area will naturally revegetate after one season;
 - (4) Appropriate erosion control measures shall be installed and maintained to prevent any impacts to adjacent surface waters and those controls shall be maintained until the site has stabilized; and
 - (5) No work shall be done in or adjacent to prime wetlands;
- (p) Drilling of test wells by a public agency for purposes of exploring for public water supplies or hazardous waste materials, provided:
- (1) The agency shall provide the department with a copy of the written access agreement signed by the landowner or the landowner's authorized agent or the court order granting access;
 - (2) The agency shall provide the landowner, the department, 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 prior to its commencement;
 - (3) Only tracked or portable equipment shall be used for access to the site or for drilling;
 - (4) Ruts shall be minimized and shall not exceed 4 inches in depth;
 - (5) Any drilling in surface waters shall be done with portable equipment which does not require vehicles to enter the water, and shall be done in a manner which minimizes impact on water quality;
 - (6) Drill holes shall not exceed 8 inches in diameter;
 - (7) Drill holes shall be back filled with drill spoil or permanently cased;
 - (8) Drill cuttings not used to back fill drill holes shall be removed out of department jurisdiction;
 - (9) Equipment shall be operated and maintained to prevent spillage of oil, gas, or hydraulic fluids;
 - (10) All impacts to wetlands shall be temporary and upon completion of the drilling, all rutted areas shall be regraded and smoothed so they will naturally revegetate after one season;
 - (11) No work shall be done in bogs, marshes, tidal wetlands, or in or adjacent to prime wetlands;
- (q) Routine roadway and railway maintenance activities, including, but not limited to, existing culvert replacements, extensions, or orientations; headwall construction, repair, replacement, or stabilization; and roadside ditch maintenance, conducted in accordance with "Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire", published by the New Hampshire department of transportation, dated August 2001 ("BMPs for Routine Roadway Maintenance"), provided:
- (1) The activity sponsor shall:
 - a. Obtain a "Notification of Routine Roadway and Railway Maintenance Activities" form from the department by calling (603)271-2147 or by downloading a copy from <http://www.des.nh.gov/wetlands>;
 - b. File a properly completed notification form with the department, indicating that the proposed project meets the criteria for exemption from the permitting process, which completed form shall include:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

1. The name and mailing address of the activity sponsor;
 2. The name and daytime telephone number of an authorized representative of the activity sponsor;
 3. The location of the proposed activity;
 4. A description of the proposed activity;
 5. Reference to the applicable BMP section which applies to the activity;
 6. A copy of the USGS topographical map identifying the location of the proposed project;
 7. Sketches of the proposed construction design;
 8. Color photographs of the proposed work site showing existing structures, surrounding land, and the subject water body; and
 9. A signed certification that the information provided above is accurate and correct;
- c. Provide a copy of the completed notification form to the local governing body and to the municipal conservation commission, if any, at least 5 calendar days prior to commencement of work;
- (2) No work shall occur on property not owned by the activity sponsor without the activity sponsor, in addition to the requirements in (1) above, providing:
- a. A written release from all owners of the property on which the work will be done; or
 - b. 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;
- (3) No work shall be done in excess of the activities outlined in the “BMPs for Routine Roadway Maintenance”;
- (4) Siltation, erosion, and turbidity controls shall be:
- a. Installed in accordance with the “BMPs for Routine Roadway Maintenance”;
 - b. Maintained so as to maximize their effectiveness; and
 - c. Left in place until disturbed areas are fully stabilized;
- (5) Work shall not involve movement of tracked or wheeled equipment into or through surface waters or wetlands, but only on dry or frozen ground;
- (6) Work within surface waters shall be done “in the dry”, either during periods of low water or behind temporary diversions such as sandbag cofferdams designed and installed in accordance with the “BMPs for Routine Roadway Maintenance”;
- (7) Dredged materials shall be placed out of RSA 482-A jurisdiction;
- (8) All work shall be completed in accordance with RSA 483-B, the Comprehensive Shoreland Protection Act (“CSPA”);
- (9) No work shall be done:
- a. In or adjacent to municipally-designated prime wetlands;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- b. Within ¼-mile of a New Hampshire river designated pursuant to RSA 483; or
- c. In bogs, marshes, tidal wetlands, undisturbed tidal buffer zone, or sand dunes;

(10) A copy of the completed notification form shall be posted in a prominent location at the worksite prior to initiation of work at the worksite; and

(11) The activity sponsor shall comply with all other requirements as set forth in the “BMPs for Routine Roadway Maintenance.”

(r) Any stream crossing built landward of the top of one bank to landward of the top of the opposite bank so as not to impact jurisdictional areas.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7856, eff 3-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); amd by #9095, eff 2-23-08; amd by #9717, eff 5-25-10; ss by #10367, eff 6-26-13

PART Env-Wt 304 APPROVAL CONDITIONS

Env-Wt 304.01 Conditions Specified on Permit. Project approval by the department shall be subject to conditions as specified on the permit. The department shall impose conditions, as required, to assure that the project’s impacts are minimized. In addition to permit conditions, the conditions set forth in Env-Wt 304 shall be complied with as applicable.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.02 Rock Removal. Rocks removed from a lake bed shall be placed out of the department’s jurisdiction, or in the lake with at least 10 feet of water depth over the deposited rocks, unless another use is specifically permitted.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.03 Timing of Projects. The department shall place time limits on a project activity as a condition when the environmental impact of a project is reduced by doing so. For example, the department places conditions on dredging projects which require the project to be conducted either during drawdown or in a certain time period to account for spawning, fishery migration, and to decrease the degradation of the water quality.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.04 Setback From Property Lines.

(a) The department shall limit the location of a project to at least 20 feet from an abutting property line or imaginary extension thereof over surface water unless it receives written agreement from the affected abutter concurring with any impact that may result relative to the abutter's interests.

(b) The department shall increase the setback if it finds that the proposed location represents a danger to other waterfront activities, a navigation hazard, or interferes with an abutter's access to or use of the abutter's property.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.05 Logging Operations.

(a) Impacts to surface waters and wetlands shall be avoided or minimized in accordance with Env-Wt 302.04(b) and (c).

(b) All skid trails, truck roads, and log landings shall be located far enough from surface waters and wetlands so that waterborne soil particles will settle out before reaching the surface waters or wetlands.

(c) All skid trails, truck roads, and log landings shall be laid out using appropriate erosion control devices, as outlined in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, department of resources and economic development, 2004, so that the grade approaching a surface water or wetland is broken, and surface run-off is dispersed.

(d) Culverts, bridges, pole fords, or other crossings shall be installed on skid trails and temporary truck roads at all stream crossings in accordance with procedures outlined in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, department of resources and economic development, 2004, except when road and stream banks are sufficiently frozen to avoid rutting or destabilization. Said crossings shall be removed when logging is completed in the area serviced by the crossing. Corduroy crossings at locations where there is no defined channel may be left in place. Corduroy crossings means logs, limbs or branches placed to provide support for logging equipment crossing a wet area which has no standing water and no defined channels.

(e) All permanent crossings on truck roads shall be adequate to handle a 25-year flood, the peak flow that statistically would occur once in 25 years.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #9132, eff 4-19-08

Env-Wt 304.06 Erosion and Siltation Control Measures.

(a) Erosion and siltation control measures shall be installed prior to start of work, shall be maintained, and shall remain in place during construction until all disturbed surfaces are stabilized.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) Erosion and siltation control shall be appropriate to the size and nature of the project and to the physical characteristics of the site, including slope, soil type, vegetative cover, and proximity to wetlands or surface waters.

(c) A coffer dam or a curtain of a non-porous material shall be used to enclose a dredging project conducted in a marsh, lake, pond, stream, river, creek, or along the shoreline of other surface waters.

(d) Construction or modification shall not cause violations of surface water quality standards, specified in Env-Ws 1700.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.07 Embankments Adjacent to Culverts and Other Stream Crossings. Embankments adjacent to culverts and other stream crossings shall have appropriate slope protection, such as vegetated stabilization, rip-rap, or concrete or stone headwalls, where flowing water conditions exist.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #9717, eff 5-25-10

Env-Wt 304.08 Beaches.

(a) The size of a new beach serving a single residence shall not exceed 900 square feet.

(b) No new private beach shall use more than 20 percent of the applicant's contiguous shoreline up to a maximum of 50 feet of the applicant's contiguous shoreline.

(c) Replenishment of existing beaches shall be limited to one replenishment in a 6 year period.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.09 Subdivisions.

(a) Plans submitted with a wetlands application associated with a proposed subdivision shall indicate the boundaries of all wetlands and surface waters, the footprint of all proposed impacts, existing and proposed topography, and the location of all proposed lot lines. Plans shall be stamped by a licensed land surveyor or a professional engineer pursuant to RSA 310-A, and parties responsible for the wetlands delineation shall be recorded on the plan.

(b) The plans for major project subdivisions shall have wetlands classifications clearly indicated in accordance with Env-Wt 301.02.

(c) There shall be no further wetlands impact for lot development on any subdivision approval. If the approval is for a single phase of a multiphase subdivision, the applicant shall provide a master plan identifying all wetlands on the property and a conceptual layout for future phases of development.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(d) Permits for subdivisions of 4 or more lots shall not be effective until the permittee records the permit with the appropriate registry of deeds and a copy of the registered permit has been received by the department.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.10 Shoreline Structures.

(a) Shoreline structures shall meet the criteria of Env-Wt 400.

(b) Permits for structures that provide docking for watercraft shall not be valid until recorded with the appropriate registry of deeds.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.11 Dredging Projects.

(a) Dredge spoils shall be disposed of out of the areas under the jurisdiction of the department unless other disposition is specifically permitted. Dredge spoils means material removed as the result of dredging.

(b) Dredging in tidal waters shall be done between November 15 and March 15, and shall not be permitted during a fish migration or larval setting stage of shellfish.

(c) Dredging in freshwater lakes, ponds, streams, brooks, or rivers shall be done so as not to impede fish migrations or interfere with spawning areas for fish.

(d) Dredging shall not disturb contaminated layers of sediment, unless specifically identified and permitted with protective conditions.

(e) Dredging projects in tidal waters shall be designed to ensure that there is no disruption of tidal flushing. Tidal flushing means the influx or outflow of water which is associated with the ebb and flow of the tide.

(f) Appropriate controls, such as cofferdams, siltation curtains, or non porous curtains, shall be used to contain turbidity.

(g) Dredged material to be stockpiled in uplands shall be dewatered in sedimentation basins lined with siltation and erosion controls, and located outside jurisdiction to prevent water quality degradation.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97; amd by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.12 Filling Projects.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) Fill shall be clean sand, gravel, rock, or other suitable material, and shall not contain material not approvable by the department.

(b) Limits of fill shall be marked by construction fence or equivalent prior to commencement of work to assure that fill does not spill over into adjacent wetlands or surface waters.

(c) Slopes shall be immediately mulched or otherwise stabilized to prevent erosion into adjacent wetlands or surface waters.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.13 Utility Crossings.

(a) Crossings of surface waters or wetlands by utilities shall be kept to a minimum and shall be located to minimize impact in accordance with Env-Wt 302.04.

(b) The width of the impact shall be kept to that necessary for safe operation of machinery and safety of workers. Supplies and spoils shall not be stockpiled in wetlands. Spoils means the material that is removed as the result of dredging.

(c) Mats shall be used when their use will reduce the impact on the wetland.

(d) Projects shall not endanger navigation, recreation, or commerce of the general public.

(e) Siltation control devices shall be used in accordance with Env-Wt 304.06 as appropriate.

(f) Crossings shall be restored to natural grade, stabilized, and replanted with native vegetation.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.14 Gold Mining and Dredging.

(a) Power equipment for gold mining and dredging shall be limited to 5 horsepower and shall not have any fuel, oil, or hydraulic leaks.

(b) Suction dredges shall be limited to 4-inch diameter intake nozzle.

(c) Sluice and rocker boxes shall be limited to 10 square feet.

(d) Use of mercury or chemicals for extraction shall be prohibited.

(e) Streams shall not be dammed or altered.

(f) Written permission from the landowner shall be obtained by the applicant before dredging.

(g) Work shall be confined to the beds of streams with no disturbances to the banks adjacent to waters of the state.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #5549, eff 1-5-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

Env-Wt 304.15 Coffer Dams. Cofferdams and other temporary water control devices shall be removed upon completion of the project.

Source. (See first Revision Note at chapter heading for Env-Wt 300) #5186, eff 7-23-91; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See second Revision Note at chapter heading for Env-Wt 300); ss by #10367, eff 6-26-13

CHAPTER Env-Wt 400 SHORELINE STRUCTURES

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 400 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 401 STATEMENT OF PURPOSE AND EVALUATION

Env-Wt 401.01 Purpose. The purpose of this chapter is to protect the public trust and other interests of the state of New Hampshire, by:

(a) Establishing requirements for the design and construction of structures in order to prevent unreasonable encroachment on surface waters of the State;

(b) Preserving the integrity of the surface waters of the state by requiring all structures to be constructed so as to insure safe navigation, minimize alterations in prevailing currents, minimize the reduction of water area available for public use, avoid impacts that would be deleterious to fish and wildlife habitat, and avoid impacts that might cause erosion to abutting properties; and

(c) Ensuring that all projects are constructed using the least impacting alternatives, in a manner that meets the requirements of RSA 483-B and shoreline and bank alteration or stabilization requirements.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #9095, eff 2-23-08

Env-Wt 401.02 Evaluation. In addition to the requirements of this chapter, evaluation of applications for shoreline projects shall be subject to the applicable requirements of Env-Wt 300.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

PART Env-Wt 402 DESIGN AND CONSTRUCTION CRITERIA

Env-Wt 402.01 Configuration. Approvable configurations for all docks located on lakes, ponds, rivers, and streams shall include:

(a) A standard configuration that is narrow, rectangular, and:

(1) If in a lake or pond, erected perpendicular to the shoreline; and

(2) If in a river or stream, erected parallel to the bank; and

(b) A nonstandard configuration shaped like the letter L, T, F, or U, when the applicant establishes through documentation that:

(1) The standard configuration would cause a safety hazard due to wind, other weather conditions, or other natural conditions such as water depth unique to the property;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) The nonstandard configuration chosen for the dock provides the least environmental impact on shoreline and water body; and
- (3) The nonstandard configuration does not interfere with boat traffic safety.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #3075, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.02 Navigation Space. The design and construction of docking facilities shall allow for a maximum of 2 feet of navigation space between a boat slip and any other structure or boat slip.

Source. #9095, eff 2-23-08

Env-Wt 402.03 Dimensions.

(a) Approvable standard dimensions for a dock shall not exceed the following dimensions:

(1) In lakes and ponds of 1,000 acres or more:

- a. For seasonal docks, a deck width of 6 feet and deck length of 40 feet, measured from normal high water mark; and
- b. For permanent docks, a deck width of 6 feet and deck length of 30 feet, measured from normal high water mark;

(2) In lakes and ponds of less than 1,000 acres, for all docks a deck width of 6 feet and deck length of 30 feet, measured from normal high water mark;

(3) In rivers and streams, for seasonal docks a deck width of 6 feet and deck length of 40 feet, measured along the shoreline.

(b) The dimensions in (a) above may be exceeded when the department determines, based on information provided by the applicant, that:

(1) Application of the standard dimensions would represent a safety hazard due to wind or other weather conditions;

(2) The property has a unique physical hardship, such as, insufficient water depth, not shared generally by nearby properties, that requires larger dimensions;

(3) The applicant has a permanent disability that requires larger dimensions in order to safely use the water; or

(4) Exception from the standard maximum dimensions by use of clustering of structures in one location would result in less environmental impact to the shoreline and water body than would standard dimensions.

(c) For a property with less than 75 feet of water frontage, docks or piers shall be no longer than 4 feet by 24 feet, in accordance with Env-Wt 402.12.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.04 Setbacks. As required by RSA 482-A:3, XIII(a), all docks shall be located at least 20 feet from any abutting property line or imaginary extension of the property line over surface water, unless the provisions of RSA 482-A:3, XIII(c) or (d) are met.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.05 Seasonal Docks.

(a) A seasonal dock shall be:

- (1) Designed to be installed at the beginning and removed at the end of the boating season;
- (2) Removed from the water for a minimum of 5 months of every calendar year;
- (3) Designed and placed in the water so as not to obstruct navigation;
- (4) Removed from the water for the purpose of applying paint, stain, or other preservatives; and
- (5) Installed only if in compliance with RSA 482-A:3, IV-a or otherwise permitted under RSA 482-A.

(b) In order to qualify for permit by notification under Env-Wt 506, seasonal docks on rivers and streams shall, in addition to the requirements in (a) above:

- (1) Be located on a property having at least 75 feet of shoreline frontage;
- (2) Be the only structure on the property's shoreline frontage;
- (3) Conform with the standard configuration set forth in Env-Wt 402.01(a); and
- (4) Conform with the standard dimensional criteria set forth in Env-Wt 402.02(a)(3).

(c) Seasonal docks, once permitted, shall require no further action unless there is a change in size, location, or configuration.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 402.06 Permanent Docks.

(a) Subject to (b) and (m), below, an application for a permanent dock shall be approved only when an applicant establishes that:

- (1) The proposed permanent dock will be located on a lake of over 1,000 acres; and
- (2) The proposed site for the dock is exposed to a design fetch of at least 1 mile between compass headings 245 to 340 degrees, or a design fetch of at least 2 miles between compass headings 341 to 0 or 0 to 244 degrees, as measured from true north.

(b) When the applicant does not meet the requirements of (a), above, the department shall approve the permanent dock provided the applicant documents the occurrence of 1 foot high waves as measured from trough to crest in water at least 3 feet deep, at the location of the proposed dock on at least 4 separate occasions, lasting 4 hours each, between the dates of May 15 and October 15.

(c) To qualify under (b), above, the applicant shall provide the following:

- (1) Dated photographs and a summary of the wave heights measured, the dates measured, and the frequency of measurement during the 4 hour periods; or
- (3) Written site measurements completed during the relevant period and verified as accurate by department staff.

(d) The frequency of wave height measurements shall be high enough to show, in conjunction with the pictures, that the wave activity is essentially continuous throughout the 4-hour periods.

(e) All applications for permanent installations shall indicate that reasonable investigations have been undertaken to determine the impossibility of driving pilings before alternate construction methods shall be approved.

(f) Such investigations may include trial driving by commercial equipment, probings, and experience in construction of adjacent wharves or docks.

(g) The minimum spacing for pile bents shall be 12 feet center to center.

(h) After an applicant has demonstrated that pilings cannot be driven and that a seasonal structure cannot be maintained on the frontage, a crib dock shall be approved.

(i) The maximum size of cribs for water depths of up to 6 feet shall not exceed 6 feet long by 6 feet wide and of such height as is necessary to support the wharf above the water level.

(j) The crib itself shall be of timber, prefabricated concrete, or other approved materials securely fastened together and of such size and spacing necessary to completely contain the stone ballast or other fill material.

(k) The side dimensions of cribs may be increased one foot for every additional foot of water depth above 6 feet. The minimum clear spacing between cribs shall be 12 feet.

(l) Special designs such as caissons, concrete supports, or prefabricated cofferdams are of a highly specialized nature and shall be considered on an individual basis by the department.

(m) A permanent dock shall be approved regardless of the design fetch when at least one of the following requirements is met:

- (1) The dock will be located on an island accessible only by watercraft;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) The dock will be subjected to unusually heavy loading where a permanent dock is needed for safety, such as a dock at a commercial facility that is used to convey heavy equipment or freight; or

(3) The dock will provide a significant public benefit, such as a docking facility that is open to the general public for transient use.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7158, eff 12-17-99; rpld and rsvd by #7988, eff 11-21-03

New. #8341, eff 4-25-05 (from Env-Wt 402.06) (See Revision Note at chapter heading for Env-Wt 400); amd by #9095, eff 2-23-08; ss by #10367, eff 6-26-13

Env-Wt 402.07 Breakwaters.

(a) Breakwaters shall be considered major projects pursuant to Env-Wt 303.02.

(b) Subject to (c), below, breakwaters shall only be approved when an applicant establishes that the following requirements are met:

(1) The breakwater is proposed to be located in Lake Winnepesaukee;

(2) The proposed site for the breakwater is exposed to a single radial fetch of at least 4 miles between compass headings 300 and 330 degrees as measured from true north, as illustrated in a map of Lake Winnepesaukee showing areas that meet these criteria, in Appendix A, of which larger copies are available at the department's wetlands bureau or on the department's website;

(3) The breakwater is located in an area with no significant sand migration;

(4) The property associated with the breakwater contains a minimum of 100 feet of shoreline frontage pursuant to Env-Wt 101.83; and

(5) The breakwater is designed in accordance with the design and construction criteria in (d) through (l), below.

(c) When the applicant meets all requirements in paragraph (b), above, except for subparagraph (2), the department shall approve the breakwater provided:

(1) The applicant documents the occurrence of 2 foot high waves as measured from trough to crest in water at least 3 feet deep, at the location of the proposed breakwater on at least 4 separate occasions, lasting 4 hours each, between the dates of May 15 and October 15;

(2) The applicant provides documentation, including:

a. Dated photographs and a summary of the wave heights measured, the dates measured, and the frequency of measurement during the 4 hour periods; or

b. Written site measurements completed during the relevant period and verified as accurate by department staff; and

(3) The frequency of wave height measurements shall be high enough to show, in conjunction with the pictures, that the wave activity is essentially continuous throughout the 4 hour periods.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(d) Construction shall be of stone, concrete, wood, or other inert materials consistent with the individual conditions of each site.

(e) Breakwaters, when measured at normal full lake elevation, shall have:

- (1) No point more than 50 feet from the natural shoreline; and
- (2) A total length of no more than 70 feet.

(f) The approved configuration for breakwaters shall be the least impacting alternative of breakwater construction for that site.

(g) No portion of the breakwater, including any portion underwater, shall be placed within 20 feet of an abutting property line or its imaginary extension into the water.

(h) No stockpiling of rocks shall be allowed in jurisdiction unless the applicant documents that the limited and difficult access to the site precludes stockpiling outside of jurisdiction and stockpiling is temporary.

(i) Rocks from frontage may only be used as a source of breakwater material when removed from another structure on the frontage for the purpose of constructing the breakwater.

(j) Slope shall be 1:1.5, rise to run, or greater.

(k) Breakwaters shall have an irregular face to diffuse wave activity.

(l) Applicants for breakwaters shall provide the following information in plan or cross-section:

- (1) Toe of slope dimensions;
- (2) The dimensions visible at normal high water level;
- (3) The direction of prevailing wave activity;
- (4) A minimum gap of 6 feet between the breakwater and shoreline;
- (5) A reference line identifying the 50 foot distance from the shoreline;
- (6) All docking structures on the property or otherwise associated with the property;
- (7) Construction sequence;
- (8) Cross-sections showing:
 - a. The breakwater height;
 - b. The breakwater slope; and
 - c. Normal high water level; and

(9) A list of construction materials.

(m) The owner of a breakwater that causes significant adverse effects on abutting property owners or on public use of the water shall modify the breakwater so as to eliminate such adverse effects. If modification is impossible or ineffective, the owner of the breakwater shall remove the breakwater.

(n) Breakwaters shall not exceed 3 feet above normal full lake elevation, and shall not exceed 3 feet in width at the highest point of the structure.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84,
EXPIRED: 12-11-90

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

New. #5028, eff 12-20-90; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.07) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.08 Canopies. Canopies shall be constructed so as not to obstruct views from adjacent property or interfere with boating or swimming safety. The fabric covering of a canopy shall be removed from locations over surface waters during seasons of non-use.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7072, eff 8-13-99; amd by #7303, eff 6-8-00; ss and moved by #8341, eff 4-25-05 (from Env-Wt 402.08) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.09 Structures Disallowed.

- (a) Boathouses located in or over the waters shall not be approved.
- (b) A boathouse located over a dredged inlet within the property of the applicant shall not be approved unless the applicant has shown through data supplied to the department that the following conditions have been met:
- (1) The proposed construction shall not adversely impact the stability of the shoreline;
 - (2) The proposed construction sequence and techniques shall prevent water quality degradation;
 - (3) The proposed construction shall be performed in such a manner so as to prevent adverse impact to existing movements of currents or sediment along the shore;
 - (4) Alternative docking and storage solutions with less environmental impact do not exist; and
 - (5) The proposed construction shall not impact wetlands, streams or similar areas.
- (c) Structures over the waters shall not be allowed for the transfer of any activities usually associated with land, including but not limited to sunbathing and picnicking.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.09) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.10 Stairways. Stairways for access to or from legally-constructed docks shall be allowed as part of the dock permitting process, provided:

- (a) The stairway width does not exceed 6 feet; and
- (b) Construction over the bank does not require regrading or recontouring.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5740, eff 11-23-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.10) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.11 Maintenance. Any structure constructed under these criteria shall be maintained so as to be useable for its intended purpose.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by 3075, eff 7-26-85; ss by #5028, eff 12-20-90; rpld by #5740, eff 11-23-93; ss by #7158, eff 12-17-99; ss and moved by #8341, eff 4-25-05 (from Env-Wt 402.11) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.12 Frontage Less Than 75'. To lessen congestion, improve public safety and navigation, protect neighboring property values, and provide sufficient area for construction of facilities, docks or piers permitted on property with less than 75' of shoreline frontage shall be no larger than 4 feet x 24 feet.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.13) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.13 Frontage Over 75'. To lessen congestion, improve public safety and navigation, protect neighboring property values, provide sufficient area for construction of facilities, provide adequate area for boat maneuvering, and protect health, safety, and general welfare, there shall be a minimum of 75' of shoreline frontage on the property for the first 2-slip structure and an additional 75' of shoreline frontage on the property for each additional boating slip or securing location on a structure for non-commercial use. This section shall not be interpreted to prevent construction of a dock on lots with less than 75' of shoreline frontage as provided in Env-Wt 402.12.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; rpld by #4038, eff 4-10-86

New. #8341, eff 4-25-05 (from Env-Wt 402.14) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.14 Exceptions To Frontage Criteria. The standards in Env-Wt 402.12 and Env-Wt 402.13 shall be waived when evidence has been provided, in writing by the applicant, that:

- (a) Application of those standards would represent a hazard due to wind or other weather conditions;
- (b) The property has a hardship requiring the exception;
- (c) The sole practical method of transportation to the property is by boat;

(d) The applicant's use of the waters is in the public interest; or

(e) The construction has been modified to meet the considerations specified in Env-Wt 401.02, Env-Wt 402.12, and Env-Wt 402.13.

Source. #3075, eff 7-26-85; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.15) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.15 Commercial Use - Municipal Review.

(a) Any new docking facility or additional docking or similar improvement, excluding repairs or replacements without expansion, that has any portion under commercial use shall comply with all local land-use controls for marinas, or appropriate non-residential land-use classification.

(b) The applicant shall submit a copy of the local permit or approval, or a letter from the applicable local land use board or local governing body indicating that a permit or approval is not required under local regulations, to the department with the application or otherwise prior to the department making a decision on the application.

(c) Local regulations shall not restrict the sole and exclusive authority of the state to permit construction over, or dredge and fill in, great ponds or state-owned water bodies. If a municipality forwards a denial or does not respond to the department, the applicant may request a public hearing to waive the provisions of this section.

Source. #3075, eff 7-26-85; ss by 4038, eff 4-10-86; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.16) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.16 Marinas - Design Standards.

(a) Applicants for marina construction or expansion shall provide the department with evidence showing compliance with the following design standards:

(1) All marinas shall be designed to:

a. Minimize visual impact;

b. Avoid damage to the environment due to leakage or spills of fuels, lubricants, waste products, or other pollutants; and

c. Not represent a hazard to navigation or interfere with abutting property values; and

(2) The standard for marinas shall be one slip for every 25' of shoreline. More slips shall be permitted if the marina is enclosed by land of the applicant, or other evidence is provided to the department which indicates that the increase is in the public interest. High demand for slips shall be insufficient to establish a public interest. If evidence is provided which shows that the project would pose a navigational hazard, fewer slips shall be permitted.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) Applicants for marina construction or expansion shall provide the department with plans showing the following:

- (1) Designated wash areas for seasonal vessel cleaning;
- (2) Storm water runoff and treatment designs;
- (3) Location of pumpout facility;
- (4) Location of abrasive blasting, painting operations, and hull sanding; and
- (5) Location and disposal method for oil or other waste products.

Source. #3075, eff 7-26-85; ss by #5028, eff 12-20-90;
EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss
by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.17) (See
Revision Note at chapter heading for Env-Wt 400); ss by
#10367, eff 6-26-13

Env-Wt 402.17 Contiguous Frontage. All frontage considered in the application of Env-Wt 402.12, Env-Wt 402.13 and Env-Wt 402.16 shall be contiguous and owned by the same person.

Source. #4038, eff 4-10-86; ss by #5028, eff 12-20-90; ss by
#6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.18) (See
Revision Note at chapter heading for Env-Wt 400); ss by
#10367, eff 6-26-13

Env-Wt 402.18 Ownership.

(a) An applicant for a shoreline structure defined as major shall be the owner in fee of the affected frontage, unless the applicant has leased the property from the state pursuant to RSA 228:57-a.

(b) If the applicant leases the property from the state pursuant to RSA 228:57-a, the applicant shall:

- (1) Provide a copy of the lease to the department with the application; and
- (2) Inform the department of any changes in the status of the lease, whether such changes occur while the application is pending or after a permit has been issued.

(c) If the lease does not explicitly state that the applicant may place a shoreland structure defined as major on the leased property, the applicant shall provide written authorization for placement of the proposed structure from the New Hampshire department of transportation.

(d) The recipient of a permit to construct a shoreline structure(s) on property leased from the state pursuant to RSA 228:57-a shall:

- (1) At the permittee's own cost and expense, remove the dock(s), all footings, appurtenances, related structures, equipment, and other personal property from any state land and the lake within 30 days of the earlier of:
 - a. The termination or expiration of the dock permit; or
 - b. A default under, termination, or expiration of the state lease; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Restore the lakebed and the leased state land to its original condition within 30 days of removing the dock(s), all footings, appurtenances, related structures, equipment, and other personal property from any state land and the lake.
- (e) No permit shall be effective unless approved by the governor and executive council.

Source. #4038, eff 4-10-86; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.19) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.19 Deed Restriction.

(a) Upon receipt of a permit, the applicant for a major docking facility in public waters shall file a deed restriction with the appropriate registry of deeds which limits the use of the docking facility to permitted conditions and dedicates an amount of shore frontage to that facility.

(b) The applicant shall provide a copy of the recorded deed restriction to the department.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 402.20) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.20 Registration.

(a) All permits for docking structures shall be recorded by the applicant with the appropriate registry of deeds in accordance with RSA 482-A:3, VI.

(b) The applicant shall provide the department with a copy of the permit stamped by the registry with the book and page and date of receipt.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #8067, eff 4-2-04; ss by #8341, eff 4-25-05 (from Env-Wt 402.21) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 402.21 Modification of Existing Structures. The department shall not approve any change in size, location, or configuration of an existing structure unless the applicant demonstrates, and the department finds, that the modification is less environmentally-impacting or provides for fewer boat slips and less construction surface area over public submerged lands than the current configuration.

Source. #4672, eff 9-14-89; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

New. #8341, eff 4-25-05 (from Env-Wt 402.22) (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

PART Env-Wt 403 CRITERIA FOR INTAKE AND OUTFLOW STRUCTURES

Env-Wt 403.01 Intake Structures. An applicant shall demonstrate that intake structures meet the following criteria:

- (a) Inflow shall not lower water levels so that the habitat of finfish, crustacean, or shellfish is harmed;
- (b) Inflow shall not cause scouring or endanger vegetation, finfish, crustacea, shellfish or wildlife; and
- (c) The structure shall not endanger navigation, recreation, or commerce.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 403.02 Outflow Structures. An applicant shall demonstrate that outflow structures shall meet the following criteria:

- (a) Outflow shall not cause scouring or endanger vegetation, finfish, crustacea, shellfish or wildlife; and
- (b) The structure shall not endanger navigation, recreation, or commerce.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 403.03 Dikes, Tide Dams, and Tide Gates. An applicant shall demonstrate that a project for a dike, tide dam, or tide gate meets the following criteria:

(a) Flooding, loss of salinity, or de-watering shall not damage or destroy indigenous hydrophytic vegetation or habitat of finfish, crustacea, shellfish, or wildlife;

(b) Adequate passage and rate of flow shall be maintained at appropriate times to allow migration of fish and other marine life;

(c) The conveyance of runoff and flood waters shall not be prevented;

(d) Projects shall not cause the permanent inundation of tidal wetlands; and

(e) Projects shall not interfere with the normal ebb and flow of waters in tidal wetlands.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

PART Env-Wt 404 CRITERIA FOR SHORELINE STABILIZATION

Env-Wt 404.01 Least Intrusive Method. Shoreline stabilization shall be by the least intrusive but practical method.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 404.02 Diversion of Water. Diversion of stormwater run-off often provides effective and low maintenance erosion protection, and shall be used to the maximum extent practical.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 404.03 Vegetative Stabilization.

(a) Natural vegetation shall be left intact to the maximum extent possible. If space and soil conditions allow, unstable banks shall be cut back to a flatter slope, seeded, and replanted with native, non-invasive trees and shrubs.

(b) If space relative to the highest observable tide line, water turbulence, and soil conditions allow, the project shall include vegetation of existing sand beach or dunes or construction of vegetated sand dunes.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 404.04 Rip-rap.

(a) Rip-rap applications shall be considered only where the applicant demonstrates that anticipated turbulence, flows, restricted space, or similar factors render vegetative and diversion methods physically impractical.

(b) Applications for rip-rap shall include:

- (1) Designation of a minimum and maximum stone size;
- (2) Gradation;
- (3) Minimum rip-rap thickness;
- (4) Type of bedding for stone;
- (5) Cross-section and plan views of the proposed installation;
- (6) Sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline; and
- (7) A description of anticipated turbulence, flows, restricted space, or similar factors that would render vegetative and diversion methods physically impractical.

(c) Applications to use rip-rap adjacent to great ponds or water bodies where the state holds fee simple ownership shall include a stamped surveyed plan showing the location of the normal high water shoreline and the footprint of the proposed project.

(d) Rip-rap shall be located shoreward of the normal high water shoreline, where practical, and shall not extend more than 2 feet lakeward of that line at any point.

(e) Stamped engineering plans shall be provided as part of any application for rip-rap in excess of 100 linear feet along the bank of a stream or river.

Source. #5740, eff 11-23-93; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

Env-Wt 404.05 Walls.

(a) The following requirements relative to walls shall apply to nontidal waters:

- (1) Walls shall be permitted only where lack of space or other limitations of the site make alternative stabilization methods impractical;
- (2) Applications for walls shall include cross-section and plan views of the proposed installation and sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline;
- (3) Walls on great ponds or water bodies where the state holds fee simple ownership shall be located on the shoreward side of the normal high-water shoreline;
- (4) Applications for walls adjacent to great ponds or water bodies where the state holds fee simple ownership shall include a stamped surveyed plan showing the location of the normal high water shoreline and the footprint of the proposed project.

(b) The following requirements relative to walls shall apply to tidal waters:

- (1) Walls shall be permitted only where lack of space or other limitations of the site make alternative stabilization methods impractical. Wherever sufficient room exists, slopes should be cut back to eliminate a need for a wall;
- (2) Applications for walls shall include cross-section and plan views of the proposed installation and sufficient plans to clearly indicate the relationship of the project to fixed points of reference, abutting properties, and features of the natural shoreline;
- (3) The face of a project shall be of angular texture to minimize reflected wave energy;
- (4) Only the minimal amount of fill shall be allowed to achieve stability of the structure;
- (5) Projects shall include weepholes to allow seepage of groundwater and to promote slope stability;
- (6) Projects shall not reflect or re-direct currents or wave energy towards adjacent wetlands or structures, or otherwise contribute to erosion; and
- (7) A seawall shall be recurved, or concave on the seaward side, to reflect wave energy where space limitations allow.

Source. #5740, eff 11-23-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 400); ss by #10367, eff 6-26-13

CHAPTER Env-Wt 500 PERMIT PROCEDURE

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 500 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. Title Wt has been discontinued.

PART Env-Wt 501 APPLICATION PROCEDURES

Env-Wt 501.01 Application for Regular Review.

(a) Prior to filing an application for a project for which compensatory mitigation will be required, the applicant shall meet with the department to coordinate the review of the compensatory mitigation proposal.

(b) The applicant shall provide the following information to the department at or prior to the meeting held pursuant to (a), above, as applicable to the type of mitigation proposed:

(1) The location of the proposed project site and whether the project is located in any area designated in the New Hampshire Fish & Game Department Wildlife Action Plan (WAP) as highest-ranked habitat based on ecological conditions;

(2) If the impact is to wetland resources, the wetland classification as identified on the national wetland inventory maps available from New Hampshire statewide geographic information system clearinghouse, NH GRANIT, accessible at <http://www.granit.unh.edu/>;

(3) The location of the proposed mitigation project, including whether the project is located in any area designated in the WAP;

(4) The type of compensatory mitigation proposed;

(5) Aerial photographs of the proposed project site and compensatory mitigation site and surrounding areas, if available;

(6) Historic information regarding the compensatory mitigation site, if available;

(7) A brief narrative explaining the project impacts and how the proposed compensatory mitigation will offset the loss of functions and values of the wetlands that would be impacted by the project for which the permit is sought; and

(8) An estimated date for submitting a complete mitigation proposal.

(c) Prior to filing an application, the applicant shall:

(1) Ensure that the application contains all information required by the applicable rules in Env-Wt 300 through Env-Wt 500, Env-Wt 800, and Env-Wt 900; and

(2) Sign the application as specified in (f), below.

(d) The applicant shall submit the application as specified in RSA 482-A:3, I, subject to (e), below.

(e) The notification required by RSA 482-A:3, I(d) shall not be required for minimum impact forestry, minimum impact agricultural projects, projects in utility rights-of-way, or public highway construction.

(f) If the applicant is an individual, the applicant shall sign and date the application. If the applicant is an organization or other legal entity, the official of the applicant who has been authorized to sign the application shall sign and date the application and print or type his or her name and title on the application.

- (g) The signature(s) provided pursuant to (f), above, shall constitute:
- (1) Certification that:
 - a. All required notifications have been provided;
 - b. The signer believes that all information submitted in or with the application is true, compete, and not misleading; and
 - c. The applicant understands that any permit issued based on false, incomplete, or misleading information is subject to suspension or revocation; and 
 - (2) Authorization for the municipal conservation commission to inspect the site of the proposed project.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by #3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13; ss by #11000, eff 2-1-16

Env-Wt 501.02 Additional Data Requirements.

- (a) The applicant shall submit the completed application to the department together with at least the following:
- (1) A copy or tracing of a town tax map showing the property of the applicant, the location of the proposed project on the property, and the location of properties of abutters with each lot labeled with the abutter's name(s) and mailing address(es);
 - (2) A drawing or drawings not to exceed 28 inches by 40 inches in size showing:
 - a. The name of the owner or applicant;
 - b. The tax map(s) and lot number(s);
 - c. The date of each plan and revision date if revised;
 - d. The person responsible for each portion of the plan, such as the wetland delineation, the survey, and the engineering;
 - e. An overview of the property and proposed impact areas in relation to the property lines;
 - f. The scale, if any, used on the plan, using standard measures of whole units such as an engineering rule of 1 to 10, metric engineering rule of 1 to 2.5, or architectural rule which clearly states the unit of measure;
 - g. 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;
 - h. A labeled north-pointing arrow to indicate orientation;
 - i. A legend that clearly indicates all symbols, line types, and shading used on the plan;
 - j. The location of wetlands delineated in accordance with Env-Wt 301.01, and whether any wetlands are designated as prime wetlands in accordance with RSA 482-A:15;
 - k. The name of the individual who did the wetlands delineation on the property;
 - l. The shoreline, surface waters, areas within 100 feet from the highest observable tideline, and sand dunes on site, and their relation to the proposed project;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- m. The location of the 100-year floodplain, if applicable to the proposed project;
 - n. If the topography is to be permanently altered, the existing proposed topography, including a reference elevation;
 - o. Labeled and lightly shaded or stippled areas indicating limits of all temporary and permanent impacts in jurisdiction, including wetlands, surface water and their banks, areas within 100 feet from the highest observable tide, and sand dunes;
 - p. The location of any wetland delineation observation plots if required by the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1, January 1987;
 - q. Proposed methods of erosion and siltation control indicated graphically and labeled, or annotated and necessary;
 - r. If the project proposes the subdivision of land, information required by Env-Wt 304.09; and
 - s. If the project involves construction of a shoreline rip-rap slope, retaining wall, or other bank stabilization structure, the information required by Env-Wt 404;
- (3) Dated, labeled photograph(s) mounted on 8½" x 11" sheets depicting portions of wetland, shoreline, or surface waters where proposed impact will occur, and showing all existing structures;
- (4) A copy of the appropriate US geological survey map showing the location of the property and proposed project;
- (5) A narrative that describes the sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work;
- (6) The type of compensatory mitigation to be proposed by applicant and, if permittee-responsible mitigation will be proposed, the following, subject to (7), below:
- a. Where preservation of an upland buffer is being proposed as compensatory mitigation:
 - 1. A draft baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area; and
 - 2. A summary of the conservation values and goals for the proposed preservation area that will be incorporated into the final conservation easement;
 - b. Where wetland restoration, enhancement, or creation is being proposed as compensatory mitigation, a draft plan noting the location of the project and a summary of the proposed measures to achieve wetland restoration, enhancement, or creation; and
 - c. Where restoration or enhancement of a stream is being proposed as compensatory mitigation, a draft plan showing the location of the project and a summary of the proposed measures to achieve stream restoration or enhancement; and
- (7) In lieu of submitting information pursuant to (6), above, the applicant may submit a complete mitigation proposal as specified in Env-Wt 501.06.
- (b) In addition to the information required in (a) above, for projects in tidal wetlands, the applicant shall supply the following:
- (1) The boundaries of the tidal buffer zone, edge of salt marsh vegetation, and sand dunes in the project vicinity shown on the drawing required in (a)(2) above;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) If the proposed project is located within 200 feet of any Federal Navigation Project, the distance between any structure(s) associated with the proposed project and the Federal Navigation Project site; and

(3) The name of the individual who conducted the delineation on the property.

(c) In addition to the information required in (a) above, for projects affecting surface water shoreline, the applicant shall supply the following:

(1) The general shape of the shoreline including the length of frontage and either:

- a. The full water body elevation; or
- b. The highest observable tidal line for tidal waters;

(2) The footprint of all existing and proposed structures on the property;

(3) The intended use of each proposed structure; and

(4) The distance from existing and proposed work to abutting property lines.

(d) In addition to the information required in (a), above, for projects within the protected shoreline as defined by RSA 483-B, the applicant shall supply the following information:

(1) The reference line;

(2) The location of all existing structures between the primary building line and the reference line;

(3) The location of all proposed structures; and

(4) The total disturbed area within the protected shoreline.

(e) In addition to the information required in (a), above, for all stream crossing projects the applicant shall supply the information specified in Env-Wt 903.03.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97; amd by #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7896, eff 5-22-03; amd by #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); amd by #8911, eff 6-20-07; amd by #9717, eff 5-25-10; ss by #10367, eff 6-26-13; amd by #11000, eff 2-1-16

Env-Wt 501.03 Identification of Applications. The bureau shall assign a file number and maintain a file on each application. This file shall be maintained for a minimum of 4 years from the date of the final decision on the application.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 501.04 Applications for Minimum Impact Projects.

- (a) Applications shall be either expedited or regular.
- (b) Any minimum impact project that meets the criteria specified in Env-Wt 303.04(a) through (ah) shall be subject to expedited review.
- (c) Expedited review shall not occur unless applications are complete as set out in Env-Wt 505.01 and conform to department rules and RSA 482-A.
- (d) The procedure for expedited review shall be followed as outlined in Env-Wt 505.02 and Env-Wt 506.02.
- (e) All minimum impact projects that do not comply with application completeness requirements for either the expedited review criteria for minimum impact projects under Env-Wt 505.01 or the application completeness requirements for seasonal dock projects under Env-Wt 506.01 and expedited review criteria for seasonal dock projects under Env-Wt 402.05 shall be subject to regular review pursuant to Env-Wt 501.
- (f) After-the-fact applications shall not be expedited.

Source. #8341, eff 4-25-05 (from Env-Wt 202.03) (See Revision Note at chapter heading for Env-Wt 500); amd by #9717, eff 5-25-10; ss by #10367, eff 6-26-13

Env-Wt 501.05 Mitigation Sequencing Process. For a proposed project that is required to provide compensatory mitigation in accordance with Env-Wt 302.03, the applicant shall:

- (a) Evaluate permittee-responsible mitigation as defined in Env-Wt 802.05; and
- (b) If permittee-responsible mitigation is not feasible, provide:
 - (1) An explanation of what was considered and why preservation of an upland buffer as specified in Env-Wt 803.10(b) is not a feasible alternative;
 - (2) An explanation of what was considered and why restoration, enhancement, or creation of wetlands on the subject property as specified in Env-Wt 803.10(c) and Env-Wt 803.10(d) is not a feasible alternative; and
 - (3) A statement that an in-lieu mitigation payment that can be pooled with similar payments from other projects as contemplated by RSA 482-A:28 is the chosen form of mitigation, with the amount to be calculated in accordance with RSA 482-A:30 or RSA 482-A:30-a, as applicable.

Source. #8911, eff 6-20-07; ss by #11000, eff 2-1-16

Env-Wt 501.06 Mitigation Proposal Completeness. The applicant shall provide the following information in order for a compensatory mitigation proposal to be deemed complete such that the department can commence its technical review of the proposal:

- (a) Where preservation of an upland buffer is being proposed, information showing that the proposal meets the criteria specified in Env-Wt 804 together with the following:
 - (1) A final baseline documentation report that describes current property conditions and includes photographs that have been taken in the absence of snow cover that clearly and accurately show the nature and condition of the buffer area;
 - (2) A copy of the proposed conservation easement language or language noting conveyance of fee simple ownership which protects the conservation values in perpetuity, in accordance with Env-Wt 808.14;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) A surveyed plan, in accordance with Env-Wt 808.11, showing the location of the proposed conservation area boundaries; and
 - (4) A statement from the proposed grantee indicating that the proposed grantee will accept the easement or fee simple deed;
- (b) For any proposal calling for a transfer of easements or fee simple ownership, documentation showing that the proposed grantee is one of the following:
- (1) A state natural resource agency such as the fish and game department or the department of resources and economic development;
 - (2) A municipality with a conservation commission in the town where the property is located; or
 - (3) A conservation organization such as a state-wide, regional, or local conservation organization that can provide documentation from the United States Internal Revenue Service stating that it is an income tax exempt, publicly supported corporation, pursuant to 501(c)(3) of the United States Internal Revenue Code;
- (c) For any proposal calling for a transfer of easements or fee simple ownership to a conservation organization, documentation showing that the conservation organization has:
- (1) Accepted the Land Trust Alliance (LTA) standards and practices as specified in “LTA Standards and Practices”, revised 2004, or adopted equivalent standards and practices; or
 - (2) A record of holding easements and managing them in a manner that is consistent with the purposes of the easements;
- (d) Where restoration, enhancement, or creation is being proposed as compensatory mitigation, information showing that the proposal meets the criteria specified in Env-Wt 805 or Env-Wt 806, as applicable, together with all required plans and proposals; and
- (e) For an applicant who has determined that permittee-responsible mitigation is not feasible as specified in Env-Wt 501.05(b), the information required by Env-Wt 501.05(b) and a preliminary estimate of the in-lieu mitigation payment.

Source. #8911, eff 6-20-07; ss by #11000, eff 2-1-16

Env-Wt 501.07 Review of Compensatory Mitigation Proposals.

- (a) If the applicant submits preliminary information under Env-Wt 501.02(a)(6), the department shall review the information to determine whether the information is sufficient for the department to understand the nature and appropriateness of the proposed mitigation.
- (b) If the applicant submits a complete mitigation proposal under Env-Wt 501.02(a)(7), the department shall review the information to ensure the minimum necessary compensatory mitigation components are included for technical review of the project.
- (c) The department shall notify the applicant in writing of its determination under (a) or (b), above, as applicable. If the information does not meet the standard specified in (a) or (b), above, as applicable, the written notice shall specify the reason(s).

Source. #8911, eff 6-20-07; ss by #11000, eff 2-1-16

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

PART Env-Wt 502 GENERAL CONDITIONS APPLICABLE TO ALL PERMITS

Env-Wt 502.01 Duration of Permit. Issued permits and completed permit by notifications shall have a duration of 5 years except as follows:

(a) Public transportation projects that exceed the limits of the US Army Corps of Engineers' New Hampshire programmatic general permit shall receive one permit extension, to a total of 10 years, provided the applicant:

- (1) Receives an individual federal permit from the US Army Corps of Engineers; and
- (2) Requests such an extension in writing from the department prior to the expiration of the original permit;

(b) Minimum impact forestry notifications submitted pursuant to RSA 482-A:3, V shall be valid for 2 years from date of issuance by the department of a completeness letter; and

(c) Gold dredge permits issued in accordance with RSA 482-A:3, XI shall expire at the end of the calendar year in which they are issued, as set forth in the statute.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97; ss by #7048, eff 6-29-99; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 502.02 Transferability.

(a) The department shall submit to governor and council all requests for transfer of permits for major projects that involve structures in great ponds or public-owned water bodies in the manner prescribed for permits under RSA 482-A:3, II.

(b) Permits shall be issued to land owners on whose land the project is located or attached or to party(ies) having financial or other legal interest in the property when the permitted project is proposed to be performed after transfer of title or when legal authority has been granted. For projects which have not been completed and when ownership or legal authority is to be changed, the department shall transfer the permit after receipt of a written request by the new owner or legal authority unless there is a pending enforcement case on the file. If transfer is approved, the new permittee shall be advised of all conditions, limitations, and special considerations pertinent to the approved project.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by 3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 502.03) (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 502.03 Filing Certificate of Compliance.

(a) The applicant shall file a completed certificate of compliance with the department upon completion of the work authorized under a permit.

(b) The certificate of compliance shall:

- (1) Identify the permit number and the date of permit issuance;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Specify the date the work was completed; and
- (3) Be signed by the applicant.

(c) The applicant's signature shall constitute certification that the project was completed in compliance with all conditions of the permit.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; amd by #4806, eff 4-27-90; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 502.04) (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 502.04 Repair or Rebuilding Structures.

(a) An application and permit shall be required prior to repairing, replacing, or rebuilding any portion of a structure located below the water surface at time of such repair or replacement. Structures requiring an application and permit shall include but not be limited to pilings, cribs, and breakwaters.

(b) The applicant shall provide proof that the structure the applicant is proposing to repair, replace, or rebuild, has been functional, intact in its current shape, dimensions, and configuration within 5 years of the proposed work and that it would be considered grandfathered as defined in Env-Wt 101.47.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84; ss by #4352, eff 1-4-88; ss by #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 502.05) (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 502.05 Permit Acceptance. All permits for construction shall be signed by the applicant and the principal contractor hired to build or install the project prior to start of construction. Permits shall not be valid until signed as provided above.

Source. #3076, eff 7-26-85; ss by #5028, eff 12-20-90; ss by #5740, eff 11-23-93; amd by #6219, eff 4-4-96; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 502.06) (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

PART Env-Wt 503 EMERGENCY PROCEDURES

Env-Wt 503.01 Emergency Approvals.

(a) Emergency work shall be authorized by the bureau administrator when a threat to public safety or public health exists or significant damage to private property is imminent and the event causing the emergency occurred within 5 days of the request for emergency approval.

(b) Emergency authorization shall be limited to temporary stabilization of the site or mitigation of the immediate threat.

(c) The bureau administrator shall create a record of such authorization containing a description of the emergency, the work to be performed, and a schedule for the work.

(d) During a general or local disaster, work without a permit shall be allowed. All such work shall be reported to the department including description of work done.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 503.02 Action After Emergency.

(a) Subject to (b), below, the person responsible for the work shall submit a description of all work performed during an emergency, except for those projects classified minimum impact, in lieu of a permit application.

(b) Applications as required under Env-Wt 501 shall be submitted for any permanent repairs, restoration, or other activities proposed to be conducted after the emergency has ended.

Source. #2271, eff 1-10-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

PART Env-Wt 504 SMALL MOTOR DREDGING PERMITS

Env-Wt 504.01 Persons Requiring a Permit.

(a) Any person operating a small motor dredge for the purpose of recreational mineral dredging shall post the permit in the immediate vicinity of the dredging operation.

(b) Each person 18 years of age or older who is participating in recreational dredging shall have his or her own permit.

(c) Participants who are 17 years of age or younger shall be accompanied by an adult who possesses a valid permit.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 504.02 Application Requirements.

(a) As part of the application, the applicant shall provide the department with:

- (1) A check or money order for the filing fee;
- (2) The applicant's name, mailing address, and daytime telephone number;
- (3) A signed statement certifying that the applicant has read and will comply with Env-Wt 304; and
- (4) Proof of New Hampshire residency, if claimed.

(b) Any applicant claiming New Hampshire residency shall provide a photocopy of his or her New Hampshire driver license or New Hampshire nondriver ID, and shall clearly print the license or ID number on the application.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 504.03 Conservation Commission Review. The conservation commission intervention review of RSA 482-A:11, III shall not apply to this part as the permits are not specific to any town.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 504.04 Dredging Criteria. Recreational dredging operations shall be conducted in accordance with the criteria set by Env-Wt 304.14.

Source. #5401, eff 5-21-92 INTERIM, EXPIRED: 9-18-92

New. #5550, eff 1-5-93; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

PART Env-Wt 505 EXPEDITED MINIMUM IMPACT PERMITS

Env-Wt 505.01 Application Completeness Requirements. As part of the expedited minimum impact application, except for seasonal docks processed under Env-Wt 506, the applicant shall provide the department with:

- (a) Applicant name, mailing address, and daytime telephone number;
- (b) Location of proposed project;
- (c) An application fee for minimum impact projects as required by RSA 482-A:3, I;
- (d) Identification of appropriate minimum impact provision in Env-Wt 501.04;
- (e) A copy of town tax map showing the location of the proposed project in relation to abutters;
- (f) A list of abutters' names and mailing addresses to cross-reference with the tax map;
- (g) A copy of the appropriate US geological survey map with the property and project located;
- (h) An accurate drawing with detailed dimensions clearly annotated to document existing site conditions and to show the impact of the proposed activity on areas in department jurisdiction detailing the precise location of the project;
- (i) Original photos, clearly showing the area to be impacted, mounted on 8½" x 11" paper and annotated to explain impact;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (j) Name of water body or wetland where work is proposed;
- (k) Identification of the type of landform to be affected as follows:
 - (1) Salt marsh;
 - (2) Tidal water;
 - (3) Sand dune;
 - (4) Bog;
 - (5) Freshwater marsh;
 - (6) Swamp;
 - (7) Wet meadow;
 - (8) River;
 - (9) Perennial stream;
 - (10) Seasonal stream;
 - (11) Lake;
 - (12) Upland tidal buffer zone; or
 - (13) Other;
- (l) A brief description of the project, outlining the scope of work to be performed;
- (m) A signed statement by the applicant certifying that the proposed project meets the conditions and limits of the designated minimum impact rule, as identified in Env-Wt 505.01(d), and that all abutters have been notified;
- (n) A signed statement for minimum impact projects that are submitted for repair or replacement of docking structures under Env-Wt 303.04(v), shall include certification that:
 - (1) The structures have been in existence in the same location, configuration and construction type, and dimensions within the last 5 years;
 - (2) The existing structures have not been abandoned as specified in Env-Wt 101.02 or Env-Wt 303.05(a)(4) and:
 - a. The existing structures would be considered grandfathered in their current condition under Env-Wt 101.47; or
 - b. The existing structures have been permitted in the same condition under a wetlands permit, and both (n)(1) and (n)(2) apply;
- (o) A signed statement by the town clerk certifying that the applicant has provided certified postal receipts of abutter notification, and that 5 copies of the application and plans have been received and distributed as required by RSA 482-A:3, I;
- (p) A signed statement by the county conservation district, where required by the appropriate minimum impact rule, certifying compliance with all conditions of that rule;
- (q) A signed statement by the municipal conservation commission certifying that the commission:
 - (1) Waives its right to intervene per RSA 482-A:11, III;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) Recommends approval of the application; and
- (3) Believes that the application and the submitted plans accurately represent the proposed project;
- (r) The number of linear feet of shoreline frontage for projects located on water bodies;
- (s) The linear distance of project from abutting property boundaries;
- (t) The type of dock construction;
- (u) The diameter of culvert(s) to be used for road or driveway crossings;
- (v) The additional information specified in Env-Wt 303.04(u) for minimum impact agricultural applications;
- (w) Plans for retaining walls, as specified in Env-Wt 404.05(a)(2);
- (x) Specifications and plans for rip-rap, as required by Env-Wt 404.04; and
- (y) A statement demonstrating that their proposal is the alternative with the least adverse impact to areas and environments under the department's jurisdiction in accordance with Env-Wt 302.03.

Source. #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97;

New. #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; amd by #8165, eff 9-10-04; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 505.02 Expedited Review Procedures. Minimum impact projects identified for expedited review, except for minimum impact seasonal docks processed under Env-Wt 506, shall be processed in the following manner:

- (a) Applications shall be reviewed by the bureau staff for completeness and compliance with department rules;
- (b) The bureau shall approve the application or send a notice of deficiency to the applicant within 30 calendar days from receipt of the application by the department;
- (c) If the proposed project conforms to department rules and applicable laws, the bureau administrator or designee shall issue a wetlands permit;
- (d) The bureau shall send a notice identifying the deficiencies to the applicant if the application is incomplete or does not meet the department's rules or applicable laws.
- (e) An applicant may proceed with the proposed minimum impact project if the following conditions have been met:
 - (1) A complete application has been filed in accordance with Env-Wt 505.01 and the application and plans meet the criteria of Env-Wt 501.04 and Env-Wt 302.03;
 - (2) The department has received the application specified in (1) above, and the bureau has not mailed the notice with noted deficiencies to the person and mailing address listed on the application within 30 calendar days of the department's receipt of that application; and
 - (3) The applicant follows the conditions set out in Env-Wt 505.03.

Source. #5904, eff 9-30-94; amd by #6219, eff 4-4-96; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

New. #6498-B, eff 4-23-97; amd by #7158, eff 12-17-99; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 505.03 Expedited Permit Conditions. The expedited minimum impact permits shall have the following conditions:

(a) Additional expedited minimum impact applications shall be accepted for the subject property for a period of 12 months only if the applicant demonstrates by plan that the additional project(s) are wholly unrelated or separate from the original application and when considered with the original application are not classified as minor or major;

(b) A permit for repair or replacement of an existing docking structure shall not preclude the department from taking any enforcement action or revocation if the department later determines that these "existing structures" were not previously permitted or grandfathered;

(c) Work authorized shall be carried out such that discharges in spawning or nursery areas during spawning seasons shall be avoided and impacts to such areas shall be avoided or minimized to the maximum extent practicable during all times of the year;

(d) Work shall be carried out in a time and manner such that disturbance to migratory waterfowl breeding areas and spawning areas shall be avoided;

(e) No fill shall be done to achieve septic setback and no dredging shall take place that would create violations of any set-backs specified in Env-Wq 1000;

(f) No fill shall be done for lot development;

(g) No fill shall take place in Atlantic white cedar swamps; and

(h) Applicants shall be advised that all work carried out prior to receiving a department wetlands permit shall not be covered under the Army Corps of Engineers State Programmatic General Permit issued on June 1, 1992 and amended on October 20, 1992 and amended on February 28, 1994 and might be in violation of federal law.

Source. #5904, eff 9-30-94; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 505.04 Expedited Repair Contingency. When the bureau staff has reason to believe that an applicant's existing docking structure as proposed does not meet the criteria of Env-Wt 303.04(v), the applicant shall be required to submit proof as specified by Env-Wt 502.04.

Source. #5904, eff 9-30-94; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

PART Env-Wt 506 PERMIT BY NOTIFICATION

Env-Wt 506.01 Projects Qualifying for Permit by Notification.

- (a) The following projects shall qualify for the permit by notification process:
- (1) The construction or modification of a seasonal pier or wharf, located on a stream or river, that meets the criteria in Env-Wt 303.04(a);
 - (2) The repair or replacement of an existing retaining wall that meets the criteria in Env-Wt 303.04(c);
 - (3) Maintenance dredging that meets the criteria in Env-Wt 303.04(k);
 - (4) The construction of a temporary cofferdam and other water control devices that meets the criteria in Env-Wt 303.04(l);
 - (5) The repair of an existing docking structure that meets the criteria in Env-Wt 303.04(v);
 - (6) The excavation of less than 10 linear feet within the bank and bed of a surface water that does not exceed 200 square feet in total jurisdictional impact to the bed, that meets the criteria in Env-Wt 303.04(w);
 - (7) The maintenance, repair, or replacement of a nondocking structure that meets the criteria in Env-Wt 303.04(x);
 - (8) The replacement of a culvert or bridge and associated fill to permit vehicular access to one single family residence or building lot or to another property for noncommercial recreational use, including conservation projects, upgraded if necessary to meet the general design considerations specified in Env-Wt 904.01, provided the crossing is located on a watercourse where:
 - a. The contributing watershed is less than or equal to 25 acres; and
 - b. The criteria in Env-Wt 303.04(z) are met;
 - (9) The replenishment of an existing beach that meets the criteria in Env-Wt 303.04(aa);
 - (10) The construction of an anchoring pad for a seasonal dock that meets the criteria in Env-Wt 303.04(ab);
 - (11) The installation of a seasonal boatlift that meets the criteria of Env-Wt 303.04(ac);
 - (12) The installation of a personal watercraft lift that meets that criteria of Env-Wt 303.04(ad);
 - (13) The installation of a residential utility line that meets the criteria of Env-Wt 303.04(ae);
 - (14) Temporary impacts associated with the inspection, maintenance and repair of existing utility lines within an existing utility right-of-way that meet the criteria of Env-Wt 303.04(af).
- (b) After-the-fact applications shall not qualify for the permit by notification process.
- (c) Subdivisions shall not qualify for the permit by notification process.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); amd by #9717, eff 5-25-10;); ss by #10367, eff 6-26-13

Env-Wt 506.02 Permit by Notification Procedures for Qualifying Projects. A project qualifying for permit by notification under Env-Wt 506.01 shall be processed in the following manner:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) The applicant shall file 5 copies of signed permit by notification forms with the town clerk in the town where the project is to occur;

(b) The town clerk shall sign all copies, distribute them in accordance with RSA 482-A:3, I, and forward one copy by certified mail to the department;

(c) After filing the completed permit by notification forms with the town clerk, the applicant may proceed with the project:

(1) After 10 days, provided the application contains a waiver of intervention from the conservation commission, or if none, the local governing body; or

(2) After 25 days, unless disqualified from the permit by notification process;

(d) Once the applicant complies with (c)(1) or (2) above, the applicant shall post the completed and signed permit by notification form at the site prior to commencing the project;

(e) If the department determines that a permit by notification form is incomplete, the department shall send a notice of incompleteness to the applicant and the local governing body identifying any deficiencies and notifying the applicant that the applicant shall not proceed with the project;

(f) If the applicant provides the department and local governing body with the information necessary to correct all deficiencies cited pursuant to (e), above, within 20 days following issuance of the written notice of incompleteness, the applicant may proceed with the project as follows:

(1) After 10 days following receipt of the information by the department, provided the application contains a waiver of intervention from the conservation commission, or if none, the local governing body; or

(2) After 25 days following receipt of the information by the department, unless the project is disqualified from the permit by notification process;

(g) If the applicant fails to provide the department and local governing body with the information necessary to correct all deficiencies cited pursuant to (e), above, within 20 days following issuance of the written notice of incompleteness, the notice of incompleteness shall disqualify the project from the permit by notification process provided the notice states in full the reasons why the project does not qualify for permit by notification review;

(h) Upon disqualification of the project from the permit by notification process, the applicant may refile a completed permit by notification form in accordance with this section, or file a standard or expedited application pursuant to Env-Wt 501 or Env-Wt 505 respectively.

(i) Within 10 days following completion of the project, the applicant shall submit to the department confirmation of completion of the project, by either paper copy or electronically, with dated, labeled, photograph(s), mounted on 8½" x 11" sheets if paper copy, or digital photo(s) if electronic, depicting the areas where the impact occurred.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 506.03 Notification Completeness Requirements for Projects Qualifying for Permit by Notification in Env-Wt 506.01. As part of the permit by notification process for projects classified under Env-Wt 303.04(a), (c), (k), (l), (v), (w), (x), (z), (aa), (ab), (ac), (ad), (ae), and (af), the applicant shall file with the department:

(a) The applicant's name, mailing address, and daytime telephone number;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (b) The street address of the proposed project site, if different from the address in (a), above;
- (c) A copy of the appropriate US geological survey map with the property and project located;
- (d) A copy of the town tax map showing the location of the proposed project;
- (e) A sketch plan showing the proposed project, including the following:
 - (1) An overview of the property and proposed impact areas in relation to the property lines;
 - (2) The scale, if any, used on the plan;
 - (3) 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;
 - (4) A labeled north-pointing arrow to indicate orientation;
 - (5) A legend that clearly indicates all symbols, line types, and shading used on the plan;
 - (6) The location of wetlands delineated in accordance with Env-Wt 301.01, shoreline, surface waters, areas within 100 feet from the highest observable tideline, and sand dunes on site, and their relation to the proposed project;
 - (7) The location of the 100-year floodplain, if applicable to the proposed project;
 - (8) If the topography is to be permanently altered, the existing and proposed topography, including a reference to elevation;
 - (9) Proposed methods of erosion and siltation control indicated graphically and labeled, or annotated as necessary; and
 - (10) For projects classified under Env-Wt 303.04(l), plans shall be stamped by a licensed professional engineer;
- (f) A written agreement with any abutters as required in Env-Wt 304.04(a), or Env-Wt 402.04 for docks, when work in jurisdiction will occur within 20 feet of the property line or imaginary extension thereof over surface waters;
- (g) Original, dated photos, clearly showing the area to be impacted, mounted on 8½" x 11" paper and annotated to explain impact;
- (h) A brief description of the project, outlining the scope of work to be performed, including a narrative that describes the sequence of construction including pre-construction through post-construction activities and the relative timing and progression of all work;
- (i) For projects classified under Env-Wt 303.04(z) and Env-Wt 303.04(ae), a sketch plan identified in (e) above, that includes a wetlands delineation, in accordance with Env-Wt 301.01, of the project area, and that is:
 - (1) Stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when that individual prepares the plan(s);
 - (2) Accompanied by a report that includes an existing conditions plan stamped by a certified wetlands scientist as certified by the New Hampshire board of natural scientists, when another individual has prepared the plan(s);
 - (3) Signed by the landowner acting on his or her own behalf, when the landowner prepares the plan for the development of their primary residence, showing the impacts resulting from such development; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) Stamped by a permitted septic system designer, permitted in accordance with RSA 485-A:35.
- (j) An application fee for minimum impact projects as required by RSA 482-A:3, I; and
- (k) A signed statement by the applicant certifying that the proposed project meets the conditions and requirements as identified in Env-Wt 303.04 and Env-Wt 506.04.

Source. #7158, eff 12-17-99; ss by #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 506.04 Conditions for Permit by Notification for Qualifying Projects. A permit issued pursuant to the permit by notification procedure for a qualifying project shall have the following conditions:

- (a) The qualifying project shall remain in compliance with all applicable criteria in Env-Wt 303.04(a), (c), (k), (l), (v), (w), (x), (z), (aa), (ab), (ac), (ad), (ae) and (af) and the conditions listed in Env-Wt 304;
- (b) Construction or modification shall be undertaken in compliance with RSA 483-B, the comprehensive shoreland protection act;
- (c) For projects classified under Env-Wt 303.04(z) and Env-Wt 303.04(ae) involving stream impacts, the proposed project shall only impact a watercourse with a contributing watershed of 25 acres or less.

Source. #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); amd by #9717, eff 5-25-10; ss by #10367, eff 6-26-13

PART Env-Wt 507 SEASONAL DOCK NOTIFICATION

Env-Wt 507.01 Qualification for Seasonal Dock Notification. A person may construct or modify a seasonal pier or wharf on any lake or pond without obtaining a permit from the department, provided the project meets the criteria in RSA 482-A:3,IV-a, and the individual notifies the department pursuant to the procedures in Env-Wt 507.02.

Source. #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 507.02 Notification Procedures for Qualifying Seasonal Dock Projects. A minimum impact seasonal dock on a lake or pond qualifying for the notification process pursuant to RSA 482-A:3, IV-a shall be processed in the following manner:

- (a) The applicant shall submit to the department all information required by RSA 482-A:3,IV-a for a review by the department;
- (b) The department shall review the information submitted;
- (c) The applicant may proceed with the proposed project, exempt from permitting requirements, if the applicant has filed the information required in Env-Wt 507.03 with the department, and the information submitted meets the requirements established in RSA 482-A:3,IV-a;
- (d) If the department determines that the information provided is incomplete, the department shall send a notice of incompleteness to the applicant identifying any deficiencies;
- (e) If the applicant fails to provide the information necessary to correct any deficiencies within 20 days following issuance of the written notice of incompleteness from the department sent pursuant to (c), above, the notice shall serve to disqualify the project from the notification process provided the notice states in full the reasons why the project does not meet the notification requirements; and

(f) Upon disqualification of the project from the notification process, the applicant may resubmit a notification in accordance with this section, for qualifying seasonal dock projects or, if applicable, submit a permit application using the standard or expedited application process pursuant respectively to Env-Wt 501 and Env-Wt 505.

Source. #7988, eff 11-21-03, ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 507.03 Notification Completeness Requirements for Qualifying Seasonal Dock Projects. In order for a seasonal dock to qualify for the notification process, an applicant shall submit to the department, on the department's appropriate notification form:

- (a) The information required by RSA 482-A:3, IV-a; and
- (b) Certification that the applicant intends to meet all project criteria specified in RSA 482-A:3 IV-a, (a) through (i).

Source. #7988, eff 11-21-03; ss by #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

PART Env-Wt 508 SUSPENSION, REVOCATION, OR MODIFICATION OF PERMITS

Env-Wt 508.01 Purpose. The purpose of this part is to establish the procedures to suspend, revoke, or modify a permit issued under RSA 482-A or a waiver issued under Env-Wt 204.

Source. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

Env-Wt 508.02 Suspension, Revocation, or Modification of Permits.

(a) The department shall initiate a proceeding to suspend, revoke, or modify a wetlands permit whenever the department receives credible information that supports a conclusion that the owner or contractor is not in compliance with the terms of the permit.

(b) To initiate the proceeding, the department shall notify the owner and contractor, if known to the department, in writing of:

- (1) The intention to suspend, revoke, or modify the permit, as applicable;
- (2) The basis for the proposed action; and
- (3) The date, time, and place of a hearing on the proposed action at which the owner or contractor, or both, shall be given an opportunity to show cause why the proposed action should not be taken.

(c) The hearing shall be conducted in accordance with RSA 541-A:31 and Env-C 200 relative to adjudicative proceedings.

(d) After the hearing, the department shall revoke the permit if the department determines that:

- (1) The permit would not have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project for which the permit was obtained can not be made to conform to applicable requirements.

(e) After the hearing, the department shall suspend the permit if the department determines that:

- (1) The permit would not have been issued if the information submitted had been true, complete, and not misleading; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) The project for which the permit was obtained can be made to conform to applicable requirements.

(f) If a permit is suspended pursuant to (e), above, the department shall reinstate the permit upon receiving proof from the recipient that the project meets applicable requirements for approval.

(g) If as a result of the hearing the department determines that a modification to the permit is required in order to bring the permit and the project into compliance with applicable requirements, the department shall issue a modified permit.

(h) The department shall notify the recipient in writing of its decision. If the decision is to suspend, revoke, or modify the waiver, the department shall specify the reason(s) for the decision.

(i) Any person aggrieved by the decision may request reconsideration of the decision pursuant to Env-Wt 203.02 and appeal the decision to the Wetlands Council in accordance with RSA 482-A:10 and Env-WtC 200.

Source. #8341, eff 4-25-05 (See Revision Note at chapter heading for Env-Wt 500); ss by #10367, eff 6-26-13

CHAPTER Env-Wt 600 TIDAL WETLANDS

REVISION NOTE:

Document #5185, effective 7-23-91, changed the title of Chapter Env-Wt 600 from Coastal Wetlands to Tidal Wetlands. Doc. #5185 has also repealed Parts 602, 603, 604, 605, and 607. The rules in these parts were amended and incorporated into Chapter Env-Wt 300 by Document #5186, effective 7-23-91. See the revision note at the chapter heading for Chapter Env-Wt 300.

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 600 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 601 DEFINITIONS - REPEALED

REVISION NOTE:

Document #5551, effective 1-5-93, repealed Part Env-Wt 601 entitled "Definitions." Many of the definitions contained in former Part Env-Wt 601 had been earlier amended and incorporated by Document #5536, effective 12-23-92, into Part Env-Wt 101 entitled "Definitions." See revision note at the part heading for Part Env-Wt 101. The prior filings for former Part Env-Wt 601 included the following documents:

- #2923, eff 12-10-84
- #4297, eff 7-23-87
- #5028, eff 12-20-90

Please note that some of the rules in former Part Env-Wt 601 were out of effect between 12-10-90 and 12-20-90.

PARTS Env-Wt 602 through Env-Wt 605 - REPEALED

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90; amd by #3077, eff 7-26-85; amd by #4297, eff 7-23-87; ss by #5028, eff 12-20-90; rpld by #5185, eff 7-23-91 (See first Revision Note at chapter heading of Env-Wt 600)

PART Env-Wt 606 DESIGN AND CONSTRUCTION CRITERIA

Env-Wt 606.01 Fill Criteria.

- (a) Fill shall be distributed in conformance with existing topography.
- (b) Fill shall not cause shoaling.
- (c) Fill shall not increase wave height.
- (d) Fill shall be compatible with existing grain size and distribution.
- (e) Fill shall be staked and measured by the department.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld by #5740, eff 11-23-93

New. #8341, eff 4-25-05 (from Env-Wt 606.02) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.02 Breakwater Criteria.

- (a) Breakwaters shall not hinder or prevent flushing of coastal areas.
- (b) Breakwaters shall not create current or waves that present a danger to small watercraft.
- (c) Breakwaters shall not create nor cause sediment deposits.
- (d) Breakwaters shall meet the criteria of Env-Wt 402.06.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.03) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.03 Piers, Docks, Wharves, and Floats Criteria.

- (a) Projects shall be designed such that supporting cribs, piles, and caissons occupy no more than 5 percent of total volume under the structure at mean high water to allow most wave and current energy to pass through, and prevent deepening of the area.
- (b) Piles and cribs shall not be placed any closer than 12 feet apart.
- (c) Superstructures shall not completely shield the underlying area from direct sunlight.
- (d) All floats shall be anchored, held by piles, or made fast to the shore or dock, to prevent substantial changes in their positions.
- (e) Floats that are not linked to the shore by ramps or piles, but are anchored, shall not exceed 400 square feet.
- (f) All floats and floating structures or sections thereof, shall be positioned waterward of any vegetated wetlands or vegetated shallows.
- (g) Piers shall meet the criteria of Env-Wt 402.01, Env-Wt 402.02, Env-Wt 402.04, and Env-Wt 402.05.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.05) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.04 Jetty Criteria. The following shall apply to jetties:

- (a) Jetties shall be the minimum length necessary to reduce shoaling of the inlet;
- (b) Jetties shall be an adequate height to trap sediment completely;
- (c) A system of replenishment shall be designed and maintained to prevent the deepening of down drift areas due to the interruption of longshore sediment drift.
- (d) Jetties shall not prevent proper flushing of coastal areas; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(e) Jetties shall meet the criteria of Env-Wt 402.06.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld and moved by #5740, eff 11-23-93 (see Env-Wt 403.03)

New. #8341, eff 4-25-05 (from Env-Wt 606.06) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.05 Mooring and Marina Criteria.

(a) Projects shall be located waterward of wetlands vegetation and vegetated shallows.

(b) Projects shall not be located in areas where tides, currents, and waves may present a hazard.

(c) Projects shall not remove amounts of water space in an area from accessibility to water craft.

(d) Any person who wishes to install a mooring, as defined in Env-Wt 101.62, shall direct inquiries to the pease development authority, division of ports and harbors, or harbor master.

(e) Marinas shall meet the criteria of Env-Wt 402.15.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.08) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.06 Pile, Crib, and Caisson Criteria.

(a) Open piles shall be the least impacting alternative of permanent docking construction.

(b) Crib and caisson supported structures shall be authorized only when the applicant offers clear evidence that alternative constructions would be impractical.

(c) Cribs and caissons shall not be allowed in areas of vegetation or wildlife, fish, or crustacean habitat.

(d) Materials used for fill within any crib or caisson shall be of a minimum size that exceeds the largest opening in the walls.

Source. #2923, eff 12-10-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.09) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.07 Utility Line, Pole, Tower, and Antennae Criteria.

(a) Projects shall not endanger finfish, shellfish, crustacea, or wildlife attracted to wetlands areas.

(b) Projects shall not significantly disturb underground or surface water flow.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (c) Projects shall not endanger the navigation, recreation, or commerce of the general public.

Source. #2923, eff 12-10-84; amd by #4506, eff 10-13-88; ss by #5028, eff 12-20-90; rpld and moved by #5740, eff 11-23-93 (see Env-Wt 404.05)

New. #8341, eff 4-25-05 (from Env-Wt 606.12) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.08 Boardwalk Criteria.

- (a) Projects shall be elevated such that no area under the structure shall be completely shaded from the sun.

- (b) Superstructures of projects shall be of slatted construction to allow circulation of air and water, and allow the penetration of light.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.13) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

Env-Wt 606.09 Trails, Roadways, Access, and Boat Ramps.

- (a) Projects shall be of the minimum size necessary to bear expected vehicular traffic.
- (b) Projects shall be of the lightest construction possible and elevated on piles where possible.
- (c) Access projects shall be temporary.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; EXPIRED: 12-20-96

New. #6429, INTERIM, eff 1-18-97, EXPIRES: 5-18-97; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (from Env-Wt 606.14) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

- Env-Wt 606.10 Boathouses and Shoreline Slips. Boathouses in or over the waters and wetlands and slips dug into the shore shall not be approved.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

New. #5028, eff 12-20-90; rpld by #5740, eff 11-23-93

New. #8341, eff 4-25-05 (from Env-Wt 606.15) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

- Env-Wt 606.11 Part Taking Precedence. Env-Wt 606 shall supersede Env-Wt 402 when projects are located in coastal wetlands. Projects exceeding or violating these criteria shall not be classified as minimum impact.

Source. #2923, eff 12-10-84, EXPIRED: 12-10-90

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

New. #5028, eff 12-20-90; rpld and moved by #5740, eff 11-23-93 (see Part Env-Wt 403)

New. #8341, eff 4-25-05 (from Env-Wt 606.17) (See second Revision Note at chapter heading of Env-Wt 600); ss by #10367, eff 6-26-13

CHAPTER Env-Wt 700 PRIME WETLANDS

REVISION NOTE:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 700 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. The title Wt has been discontinued.

PART Env-Wt 701 CRITERIA AND EVALUATION

Env-Wt 701.01 Purpose. The purpose of these rules is to provide criteria to municipalities for use to designate wetlands of significant value that are worthy of extra protection because of their uniqueness, fragility, and/or unspoiled character pursuant to RSA 482-A:15.

Source. #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

Env-Wt 701.02 Identification of Wetlands for Consideration as Prime.

(a) All wetlands greater than 2.0 acres in size in the municipality shall be identified. Wetlands smaller than 2.0 acres may be identified and included in the functional ranking.

(b) After wetlands have been identified, the municipality may set threshold conditions for one or more measurable functions, such as size. A wetland that does not meet or exceed the threshold conditions shall be dropped from further consideration unless it can be shown to support a rare species, provide critical wildlife habitat, or have known historical significance.

(c) Identified wetlands that have not been eliminated by threshold conditions shall be ranked for each of the adopted functional values. Evaluation shall be done using the Method for Comparative Evaluation of Nontidal Wetlands in New Hampshire (1991), or Method for the Evaluation and Inventory of Vegetated Tidal Marshes in New Hampshire (Coastal Method) (1993). If an alternative method is used the cited reference shall be identified and the reasons for using the alternative method shall be explained.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

Env-Wt 701.03 Selection of Evaluation Criteria.

(a) The municipality shall use 10 of the following 14 wetlands functions in their evaluation of the identified wetlands in designating the wetlands as prime:

- (1) Ecological integrity;
- (2) Wildlife habitat;
- (3) Finfish habitat;
- (4) Educational potential;
- (5) Visual/aesthetic quality;

- (6) Water based recreation;
 - (7) Flood control potential;
 - (8) Ground water use potential;
 - (9) Sediment trapping;
 - (10) Nutrient attenuation;
 - (11) Shoreline anchoring and dissipation of erosive forces;
 - (12) Urban quality of life potential;
 - (13) Historical site potential; and
 - (14) Noteworthiness.
- (b) Up to 3 additional functions may be added if the municipality provides justification for the additions.

Source. #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

Env-Wt 701.04 Selection of Designated Prime Wetlands.

(a) Selection of prime wetlands shall be based on the ranking of relative functional values described in Env-Wt 701.02 and Env-Wt 701.03 except as provided in (b) below.

(b) In addition to their relative ranking, wetlands designated as prime shall meet the following minimum criteria:

- (1) The wetlands shall have the presence of hydric soils, hydrophytic vegetation, and wetlands hydrology; and
- (2) At least 50% of the prime wetland shall have very poorly drained soils and the remaining soils shall be poorly drained soils.

(c) Designated prime wetlands boundaries shall be walked and verified by the municipality or its authorized agent where landowner permission can be obtained.

Source. #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

PART Env-Wt 702 SUBMISSION

Env-Wt 702.01 Report. The municipality, or its authorized agent, shall prepare a report which shall correlate each prime wetland by name or number to a map or maps, describe the methodology used, and present the specific evaluation data for each wetland.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6498-B, eff 4-23-97, EXPIRED: 4-23-05

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

Env-Wt 702.02 Map Format.

- (a) The map scale shall be such that 1" equals 1,000 feet or less.
- (b) The map or maps shall delineate each prime wetland with an exterior outline defined to an accuracy of within approximately 100 feet in location, and property boundaries shall be shown.
- (c) The most accurate maps available to a municipality shall be used.
- (d) Map sheets submitted to the department shall not exceed a size of 28 inches by 40 inches and shall have a one-inch border and title block with scale and legend.
- (e) State coordinate reference points shall be marked on the map.
- (f) Maps shall contain clear identification of the prime wetlands.
- (g) Blue or black ink shall be used to identify prime wetlands perimeters.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

Env-Wt 702.03 Acceptance. A review of the submission from each municipality shall be conducted by the department for compliance to the requirements of report and format. The department shall not act upon an application that is incomplete or fails to comply with the format or criteria set by the department.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

PART Env-Wt 703 PERMIT PROCESS

Env-Wt 703.01 Criteria for Approval.

(a) The department shall review an application indicating that a project will be in or adjacent to a prime wetland in accordance with (b) below.

(b) Prior to approving an application for any project in or contiguous to a prime wetlands, the applicant shall show, and the department shall find, as required under RSA 482-A:11, IV, based on clear and convincing evidence, that:

- (1) There will be no significant net loss of values set forth in RSA 482-A:1;
- (2) The project is consistent with the purpose specified in RSA 482-A:1;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) The project could not be relocated to avoid impacts on prime wetlands without either reducing the public value of the project, or negatively affecting the public health or safety;
- (4) The project's impacts on prime wetlands are the minimum practical without either reducing the public value of the project, or negatively affecting the public health or safety; and
- (5) The project incorporates appropriate and practicable compensatory mitigation for each of the wetland functions and values of RSA 482-A:1, and each of the functions and values ranked by the municipality, that are impacted by the project. The mitigation proposed shall be appropriate in terms of matching the proposed benefit given the relative harm of the project. The mitigation shall be practicable given the technology available at the time of the application to the department.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; amd by #6404, INTERIM, eff 12-21-96, EXPIRES: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

Env-Wt 703.02 Criteria for Mitigation and Compensation.

(a) Compensatory mitigation of lost or reduced wetland functions shall be within the physical boundaries of the project where possible and appropriate.

(b) Off-site compensation of a wetland function, except mitigation for lost flood storage capacity, shall be considered if the applicant shows, and the department finds, that:

- (1) The wetland function cannot be compensated on-site, or attempting to compensate on-site would have adverse affect on the value of other wetlands functions, the ecological value of adjacent environments, or the public health or safety; and
- (2) The off-site compensation provides equal or greater value for that function than the value lost as a result of the proposed project.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; amd by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

Env-Wt 703.03 Public Hearing. A public hearing shall be held by the department prior to approval of an application for any project in or contiguous to a prime wetland.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 703.04 Delineation of Prime Wetland. If the applicant contests the boundary of a prime wetland, or wishes a more precise delineation of that boundary at a project site than provided by Env-Wt 702.02, the applicant may present data and evidence to the department and to the local conservation commission, if any, or the local governing body relative to the correct location of the boundary. In the event of a dispute, the final delineation shall be determined by the department based on the data and evidence submitted.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

PART Env-Wt 704 NOTIFICATION PERMIT ISSUANCE AND APPEAL

Env-Wt 704.01 Permit Issuance. No permit shall be issued until 20 calendar days after notification of the department's decision has been given to the municipal conservation commission, planning board, municipal executive body, applicant, and other interested parties who have entered written testimony or attended the public hearing.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

Env-Wt 704.02 Appeal. Any party to a proceeding may request reconsideration within 20 calendar days after notification of a decision to approve or deny a project involving prime wetlands. An appeal shall include grounds for a rehearing or new relevant information that was not available to the department at the time of its decision.

Source. #1825, eff 10-5-81; ss by #2512, eff 10-19-83; ss by #2924, eff 12-11-84, EXPIRED: 12-11-90

New. #5028, eff 12-20-90; ss by #5486, eff 10-14-92; ss by #6404, INTERIM, eff 12-21-96, EXPIRED: 4-20-97

New. #6498-B, eff 4-23-97, EXPIRED: 4-23-05

New. #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 700); ss by #10367, eff 6-26-13

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

APPENDIX A: STATE/FEDERAL STATUTES & FEDERAL REGULATIONS IMPLEMENTED

Rule (Env-Wt)	State Statute(s) Implemented	Federal Authority Implemented
301.02, 302, 303, 304.01-304.04, 304.06, 304.08-304.15 (see additional statutes for specific section below)	RSA 482-A:1, 3, 4, & 11	
Env-Wt 301.01	RSA 482-A:1, 3, & 4, II	
Env-Wt 301.02	RSA 482-A:1 & 3	
Env-Wt 301.02(c)	RSA 482-A:1, 3, & 4, II	
Env-Wt 302.01 – 302.02	RSA 482-A:1 & 3	
Env-Wt 302.03	RSA 482-A:1 & 3	
Env-Wt 302.04	RSA 482-A:1, 3, & 11, II	
Env-Wt 302.04(a)(7)	RSA 482-A:1, 3, & 4, II	
Env-Wt 304.05	RSA 482-A:1 & 3	
Env-Wt 303.01 - 304.15	RSA 482-A:1 & 3	
Env-Wt 303.02	RSA 482-A:8 & 9	
Env-Wt 303.02 intro & (p)	RSA 482-A: 1, 3, & 11	
Env-Wt 303.03 intro, (n) & (o)	RSA 482-A: 1, 3, & 11	
Env-Wt 303.04 intro, (g)-(j), (n), (x), (y), (z), (ae) & new (ag)	RSA 482-A: 1, 3, & 11	
Env-Wt 303.05 intro, (a) intro, (f), (r)	RSA 482-A: 1, 3, & 11	
Env-Wt 303.05(e)	RSA 482-A:1 & 3	
Env-Wt 304.07	RSA 482-A: 1, 3, & 11	
Env-Wt 401.02, 402.01, 402.03-402.21, 403, 404 (see additional statutes for specific section below)	RSA 482-A:1, 3, 4, & 11	
Env-Wt 401.01 - 402.01	RSA 482-A:1 & 3	
Env-Wt 402.02	RSA 482-A:1 & 3	
Env-Wt 402.03 -402.05	RSA 482-A:1 & 3	
Env-Wt 402.05(a) and (m) (renumbered as Env-Wt 402.06(a) and (m))	RSA 482-A:1 & 3	
Env-Wt 402.06 – 402.16	RSA 482-A:1 & 3	
Env-Wt 402.17	RSA 482-A:11, II; RSA 228-:57-a	
Env-Wt 402.18	RSA 482-A:11, II; RSA 228-:57-a	
Env-Wt 402.19 - 501.01	RSA 482-A:1 & 3	
Env-Wt 501.01	RSA 482-A:3, I; 11; 28-33	Clean Water Act, Section 404; 33 CFR Parts 325 & 332
Env-Wt 501.02-501.04, 502-508 (see additional statute for specific sections below)	RSA 482-A: 1, 3, & 11	
Env-Wt 501.02(a)(1), (3)-(5), (b)-(d)	RSA 482-A:1, 3, & 11 RSA 477:47	
Env-Wt 501.02(a)(2)	RSA 482-A: 1, 3, & 11 RSA 477:28-33	
Env-Wt 501.02(a)(6)&(7)	RSA 482-A:3, I; 11; 28-33	Clean Water Act, Section 404; 33 CFR Parts 325 & 332
Env-Wt 501.02 new (e)	RSA 482-A: 1, 3, & 11	
Env-Wt 501.03 - 504.04	RSA 482-A:1 & 3	

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Rule (Env-Wt)	State Statute(s) Implemented	Federal Authority Implemented
Env-Wt 501.05-501.07	RSA 482-A:3, I; 11; 28-33	Clean Water Act, Section 404; 33 CFR Parts 325 & 332
Env-Wt 505.01	RSA 482-A: 1, 3, & 11, III	
Env-Wt 505.02 - 508.01	RSA 482-A:1 & 3	
Env-Wt 506.01(a)(8) & (c)	RSA 482-A: 1, 3, & 11	
Env-Wt 506.04 (c)	RSA 482-A: 1, 3, & 11	
Env-Wt 508	RSA 541-A:30	
Env-Wt 508.02	RSA 482-A:1, 3, 8, & 10; RSA 541-A:30	
Env-Wt 606	RSA 482-A:1, 3, 4; & 11	
Env-Wt 700	RSA 482-A:1, 3, 4, 11, 15	

APPENDIX B: STATUTORY DEFINITION

RSA 310-A:76:

II-a. “Certified wetland scientist” means a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and to prepare wetland maps; to classify wetlands; to prepare wetland function and value assessments; to design wetland mitigation; to implement wetland mitigation; to monitor wetlands functions and values; and to prepare associated reports, all in accordance with standards for identification of wetlands adopted by the New Hampshire department of environmental services or the United States Army Corps of Engineers or their successors, and who has been duly certified by the board.

APPENDIX C: INCORPORATION BY REFERENCE INFORMATION

Rule (Env-Wt)	Title	Dated	Obtain at:
301.02(a)	“Classification of Wetlands and Deepwater Habitats of the United States”, U.S. Fish and Wildlife Service Manual FWS/OBS-79/31, Cowardin et.al.	1979	http://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States.pdf - no cost
303.04(u)(1)a.; 303.04(u)(1)c.; 303.04(u)(6)	“Best Management Wetlands Practices for Agriculture”, N.H. Department of Agriculture	July 1993, amended September 1998.	http://des.nh.gov/organization/divisions/water/wetlands/documents/bmp_wetland_practices_agric.pdf - no cost
303.04(y)(1)	“Best Management Practices for Erosion Control During Trail Maintenance and Construction”, N.H. Department of Resources and Economic Development, Division of Parks and Recreation, Bureau of Trails	1994, updated 2004	http://www.nhstateparks.org/uploads/BMPmanual2010.pdf - no cost
303.05(q) intro	"Best Management Practices for Routine Roadway Maintenance Activities in New Hampshire", N.H. Department of Transportation	August 2001	http://www.nh.gov/dot/org/projectdevelopment/environment/units/program-management/documents/BMPManual.pdf - no cost

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Rule (Env-Wt)	Title	Dated	Obtain at:
701.02(c)	“Method for the Evaluation and Inventory of Vegetated Tidal marshes in New Hampshire (Coastal Method)”	1993	http://docs.lib.noaa.gov/noaa_documents/NOS/CZIC/89FF0F.pdf - no cost
701.02(c)	"Method for the Comparative Evaluation of Nontidal Wetlands in New Hampshire"	March 1991	ftp://ftp-fc.sc.egov.usda.gov/NH/Ecological_publications/NH_Method_Part1.pdf and ftp://ftp-fc.sc.egov.usda.gov/NH/Ecological_publications/NH_Method_Appendices.pdf - no cost

Appendix D: Statutory Provisions Establishing the Certified Culvert Installation program

[Not relevant to these chapters]

Appendix E: Additional Applicable Statute

RSA 641:3 Unsworn Falsification. – A person is guilty of a misdemeanor if:

- I. He or she makes a written or electronic false statement which he or she does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or
- II. With a purpose to deceive a public servant in the performance of his or her official function, he or she:
 - (a) Makes any written or electronic false statement which he or she does not believe to be true; or
 - (b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or
 - (c) Submits or invites reliance on any writing which he or she knows to be lacking in authenticity; or
 - (d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.
- III. No person shall be guilty under this section if he or she retracts the falsification before it becomes manifest that the falsification was or would be exposed.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 800 COMPENSATORY MITIGATION

REVISION NOTE 1:

Pursuant to a rules reorganization plan approved by the Director of the Office of Legislative Services on September 7, 2005, Department rules in Wt 800 filed under Document #8341, effective 4-25-05, have been editorially renumbered with subtitle Env-Wt denoting the wetlands program area. Title Wt has been discontinued.

REVISION NOTE 2:

Document #11000, effective 2-1-16, adopted, readopted, and readopted with amendments the rules in Chapter Env-Wt 800 on compensatory mitigation, including all rules in Part Env-Wt 803 on compensatory mitigation proposals which were extensively renumbered as follows:

<u>Former Rule</u>	<u>Current Rule</u>
Env-Wt 803.01	Env-Wt 803.01-803.03
Env-Wt 805.02(m)	Env-Wt 803.04
Env-Wt 803.02	Env-Wt 803.05
Env-Wt 803.03	Env-Wt 803.06
Env-Wt 803.04	Env-Wt 803.07
Env-Wt 803.05	Env-Wt 803.08
Env-Wt 803.06-803.08	Env-Wt 803.09-803.11

Most of the rules in the former Part Env-Wt 803 had last been filed under Document #8911, effective 6-20-07. These rules did not expire on 6-20-15 since they were extended pursuant to RSA 541-A: 14-a until replaced by the rules in Document #11000, effective 2-1-16.

Document #11000 replaces all prior filings for the rules formerly in Chapter Env-Wt 800, including Part Env-Wt 803. The prior filings for rules in the former Env-Wt 803 and the former Env-Wt 805.02 include the following documents:

- #8062, eff 3-13-04
- #8341, eff 4-25-05 (See Revision Note at chapter heading of Env-Wt 800)
- #8762, INTERIM, eff 11-21-06, EXPIRED 5-20-07 (did not affect Env-Wt 805.02)
- #8911, eff 6-20-07
- #9717, eff 5-25-10

PART Env-Wt 801 PURPOSE; APPLICABILITY; DETERMINATION OF APPROPRIATE MITIGATION

Env-Wt 801.01 Purpose. The purpose of this chapter is to establish the criteria and procedures for submission and review of compensatory mitigation proposals that compensate for the loss of wetland functions and values resulting from permitted permanent impacts to jurisdictional areas, including permanent impacts to stream banks and stream channels.

Source. #4352, eff 1-4-88; ss by #5762, eff 12-21-93; amd by #6219, eff 4-4-96; rpld by #6404, INTERIM, eff 12-21-96

New. #6498-B, eff 4-23-97; repealed and moved by #7205, eff 2-24-00 (See Env-C 614 Administrative Fines)

New. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #9717, eff 5-25-10; ss by #11000, eff 2-1-16

Env-Wt 801.02 Applicability. This chapter shall apply to all compensatory mitigation proposals required by Env-Wt 302.03.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8762, INTERIM,

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16

Env-Wt 801.03 Determination of Type of Compensatory Mitigation Required.

(a) The applicant shall first consider permittee-responsible mitigation opportunities by determining whether on-site mitigation is practicable and, if not, obtaining a list of local mitigation projects from the municipality in which the project is proposed. If permittee-responsible mitigation is practicable, the applicant shall propose such mitigation.

(b) If on-site mitigation is not practicable for permanent wetlands impacts and the municipality does not have a list of local mitigation projects or if none of the projects on the list are appropriate mitigation for the applicant's proposed project, the applicant shall provide an explanation and documentation relative to:

(1) Why preservation of an aquatic resource buffer as specified in Env-Wt 803.10(b) is not practicable;

(2) Why restoration, enhancement, or creation of wetlands on the property, as applicable, as specified in Env-Wt 803.10 (c) is not practicable; and

(3) Calculation of an in-lieu mitigation payment as specified in RSA 482-A:30.

(c) If permittee-responsible mitigation is not practicable for permanent stream crossing impacts and the municipality does not have a list of local mitigation projects or if none of the projects on the list are appropriate mitigation for the applicant's proposed project, the applicant shall provide an explanation and documentation relative to:

(1) Why preservation of aquatic resource buffers as specified in Env-Wt 803.10(b) is not practicable;

(2) Why stream restoration and enhancement activities as specified in Env-Wt 803.10(d) on the property and within the same Hydrologic Unit Code 12 (HUC-12) watershed as the impacts is not practicable; and

(3) Calculation of an in-lieu payment as specified in RSA 482-A:30-a.

Source. #8911, eff 6-20-07; ss by #9717, eff 5-25-10; ss by #11000, eff 2-1-16

PART Env-Wt 802 DEFINITIONS

Env-Wt 802.01 "Conservation easement" means a legal agreement between a landowner and a land trust or governmental agency that permanently limits uses of the land in order to protect its conservation values.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16

Env-Wt 802.02 "Conservation interest" means:

(a) The fee simple ownership of a parcel of land where the land is to be protected from development in perpetuity; or

(b) A conservation easement.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 802.03 “HUC 12 watershed” means the hydrologic unit code 12 watershed as developed by the U. S. Geological Survey (USGS).

Source. #11000, eff 2-1-16

Env-Wt 802.04 “In-lieu mitigation payment” means a form of compensatory mitigation where funds are provided as contemplated by RSA 482-A:28 in lieu of completing permittee-responsible mitigation.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 802.03)

Env-Wt 802.05 “Permittee-responsible mitigation” means a form of compensatory mitigation where an aquatic resource restoration or creation project in accordance with Env-Wt 805 or Env-Wt 806 or a preservation project in accordance with Env-Wt 804 is undertaken by the permittee, for which the permittee retains full responsibility.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 802.04)

Env-Wt 802.06 “Qualified professional” means an individual with a combination of education and experience, such as a fluvial geomorphologist or hydrologist, who has knowledge of stream systems that is sufficient to enable the individual to evaluate stream systems and to develop appropriate mitigation.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 802.05)

Env-Wq 802.07 “Stewardship plan” means a plan for undertaking the responsibilities described in Env-Wq 808.15.

Source. #11000, eff 2-1-16

PART Env-Wt 803 COMPENSATORY MITIGATION PROPOSALS

Env-Wt 803.01 Plan and Report Required for All Mitigation Proposals. With each mitigation proposal, the applicant shall submit a plan and report prepared by a certified wetland scientist or qualified professional, as applicable, that:

- (a) Identifies the size of the proposed project’s impact to each jurisdictional area;
- (b) Identifies each type of jurisdictional area to be impacted, with wetlands being classified by a certified wetland scientist in accordance with US Fish and Wildlife Service Manual FWS/OBS-79/31 Classification of Wetlands and Deepwater Habitats of the United States, Cowardin et al, 1979, reprinted 1992, available as noted in Appendix B;
- (c) Includes a detailed account of the compensatory mitigation recommendations provided by the conservation commission or governing body, such as a copy of the meeting minutes, from the town in which the project is located, if any;
- (d) For a project having impacts within a designated river corridor as defined by RSA 483:4, XVIII, includes a detailed account of the recommendations provided by the local river management advisory committee established pursuant to RSA 483:8-a; and
- (e) When permittee-responsible mitigation will be proposed, includes a proposed monitoring plan as described in Env-Wt 803.04.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 803.02 Additional Information for Wetland Impact Projects and Wetland Restoration, Enhancement, or Creation Mitigation Proposals.

(a) For a wetland impact project, the plan and report submitted pursuant to Env-Wt 803.01 also shall include a functional assessment of each impacted jurisdictional area using:

(1) The U.S. Army Corps of Engineers New England District highway methodology workbook supplement, 1999 edition (1999 US ACE Highway Workbook Supplement), available as noted in Appendix B, or the Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire, 2013 edition (2013 NH Method), available at <http://nhmethod.org>; and

(2) Data on the surrounding area including, but not limited to:

a. Land use;

b. Soils;

c. Habitat information from the WAP, including critical habitats and populations of the state's species of conservation and management concern;

d. Natural community and natural community system classifications in accordance with "Natural Communities of New Hampshire", second edition, 2012, available as noted in Appendix B, and "Natural Community Systems of New Hampshire", second edition, 2011, available as noted in Appendix B, prepared by the NH department of resources and economic development, natural heritage bureau (DRED-NHB) (NH Classification Methods);

e. Whether there are any rare, special concern, or state or federally listed threatened or endangered species present, including any flora, fauna, or migratory species; and

f. Exemplary natural communities and natural community systems identified by the DRED-NHB.

(b) For permittee-responsible wetlands restoration, enhancement, or creation, the plan and report submitted pursuant to Env-Wt 803.01 also shall:

(1) Include a functional assessment as described in (a), above, of each proposed mitigation site;

(2) Identify the location of the mitigation site relative to other protected lands with an explanation of how the site meets the selection criteria stated in Env-Wt 805.02; and

(3) Explain why the mitigation project will result in a resource with a functional value equal to or greater than the jurisdictional area(s) impacted by the project.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

Env-Wt 803.03 Additional Information for Stream Impact Projects and Stream Restoration or Enhancement Mitigation Proposals.

(a) For a stream impact project, the plan and report prepared pursuant to Env-Wt 803.01 shall include the following information for each impact area:

(1) Stream order;

(2) Stream type;

(3) Geography in and condition of the project area;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) Bed material;
- (5) Channel form, including channel width and depth for a distance of the channel width multiplied by 15, both upstream and downstream of the project site;
- (6) Position within the surrounding landscape;
- (7) Data on the surrounding area as specified in Env-Wt 803.02(a)(2);
- (8) Floodplains within the project area; and
- (9) Dominant adjacent vegetation.

(b) For a permittee-responsible stream restoration or enhancement mitigation project, the plan and report submitted pursuant to Env-Wt 803.01 also shall:

- (1) Identify the location of the mitigation project;
- (2) Provide the information specified in (a), above; and
- (3) Explain how the project meets the goals stated in Env-Wt 806.02(a) and how the mitigation proposal will result in added value to the aquatic resource.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

Env-Wt 803.04 Mitigation Project Monitoring.

(a) For each permittee-responsible restoration, enhancement, or creation mitigation project, the applicant shall prepare a proposed monitoring plan that:

- (1) Establishes the performance standards for the mitigation project;
- (2) Describes the monitoring that will be conducted following construction of the mitigation project, by identifying how the monitoring will be accomplished, how many growing seasons the monitoring will span, and whether and how the monitoring will change as the project begins to achieve the established performance standards;
- (3) Provides the name, daytime telephone number, and email address, if any, of the certified wetland scientist or qualified professional, as applicable, who will be responsible for conducting the monitoring and assessing whether the mitigation project has met the specified performance standards;
- (4) Describes the measures that will be taken during construction and after completion of the project for which the permit is being sought to promote success of the mitigation project; and
- (5) Explains how the department will be informed of the condition of the mitigation project over time, which shall include not less than annual written reports.

(b) Unless modified pursuant to Env-Wt 807.04, monitoring shall span no fewer than 5 growing seasons.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

Env-Wt 803.05 Proposal for In-Lieu Mitigation Payment. For a project for which compensatory mitigation is proposed as an in-lieu mitigation payment, the plan and report prepared pursuant to Env-Wt 803.01 also shall include:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(a) The information required by Env-Wt 803.02 or Env-Wt 803.03, as applicable based on the type of impact; and

(b) The explanations required by Env-Wt 803.10(b) and by Env-Wt 803.10(c) or (d), as applicable.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

Env-Wt 803.06 Compensatory Mitigation Site Location.

(a) For a project for which permittee-responsible mitigation is proposed, the applicant shall give preference to any mitigation site that:

(1) Is located in the same HUC 12 watershed as the impacted jurisdictional area(s); and

(2) Abuts land that already is subject to a conservation interest.

(b) If a stream crossing project is not a replacement for an existing tier 3 stream crossing, the applicant may propose, as mitigation, upgrading a similar tier 2 or tier 3 stream crossing within the same watercourse or in the same town as the project.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

Env-Wt 803.07 Compensation Amount.

(a) The applicant may propose a combination of the types of compensatory mitigation listed in Table 800-1 to meet the requirements of this section.

(b) For a project for which permittee-responsible mitigation is proposed, the department shall not require the applicant to propose mitigation ratios exceeding the ratios as listed in Table 800-1 for approval of any project under this chapter, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds the mitigation ratios listed in Table 800-1.

(c) As required by RSA 482-A:30, the department shall calculate the amount of an in-lieu mitigation payment for wetland impact projects by summing the following items:

(1) The cost that would have been incurred if a wetland of the same type was constructed at the ratios listed in Table 800-1 based on a price of \$65,000 per acre of wetland created, adjusted according to the annual simple rate of interest on judgments established by RSA 336:1, II;

(2) The area of wetlands that would need to be constructed, at the ratios established in Table 800-1, times the cost of land where the impact is occurring as calculated by the assessed land values determined by the NH department of revenue administration which are equalized and divided by the number of acres in each municipality to yield a per acre equalized land value; and

(3) The administrative assessment authorized by RSA 482-A:30, III.

(d) For permittee-responsible stream mitigation, the applicant shall demonstrate that the amount of compensatory mitigation meets or exceeds the total amount of impacted stream area that may include the stream bottom and associated stream banks as calculated according to Env-Wt 303.02(i).

(e) As required by RSA 482-A:30-a, the department shall calculate the amount of an in-lieu mitigation payment for stream or shoreline resource losses by summing the following items:

(1) The cost that would have been incurred if a stream of the same type were restored at the ratios established in Table 800-1, based on a price of \$200 per linear foot of channel or bank impacts or both, adjusted according to the annual simple rate of interest on judgments established by RSA 336:1, II; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) The administrative assessment authorized by RSA 482-A:30-a, II.

(f) For a project that would have both wetland impacts and stream impacts, the department shall calculate the amount of an in-lieu mitigation payment as follows:

(1) For wetland impacts and stream impacts that can be distinguished from each other, by summing the payments calculated pursuant to (c) and (e), above; and

(2) For wetland impacts and stream impacts that cannot be distinguished from each other, by calculating the amount of an in-lieu mitigation payment for the impact that would result in the greater environmental loss pursuant to (c) or (e), above, as applicable.

(g) For a project for which the applicant proposes a combination of permittee-responsible mitigation and an in-lieu mitigation payment, the department shall not require the applicant to propose a combined total that exceeds the mitigation ratios listed in Table 800-1, provided, however, that nothing herein shall prevent the department from accepting a proposal that exceeds those mitigation ratios.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

Env-Wt 803.08 Compensatory Mitigation Ratios.

(a) For permittee-responsible mitigation, other than for stream impacts, the applicant shall demonstrate that the compensatory mitigation plan meets or exceeds the ratios listed in Table 800-1, relative to the amount of impacted jurisdictional areas:

Table 800-1: Minimum Compensatory Mitigation Ratios

Resource Type	Creation	Restoration	Enhancement		Aquatic Resource Buffer Preservation
			Hydrologic	Vegetative	
Bog or Fen	N/A	2:1	5:1	10:1	15:1
Tidal Wetlands	3:1	2:1	5:1	10:1	15:1
Forested	1.5:1	1.5:1	5:1	10:1	10:1
Undeveloped Tidal Buffer Zone	N/A	2:1	5:1	10:1	3:1
All Other Jurisdictional Areas	1.5:1	1:1	5:1	10:1	10:1

(b) For permittee-responsible mitigation for stream impacts, the applicant shall demonstrate that the total amount of compensatory mitigation area meets or exceeds the total amount of impacted stream area, including the stream bottom and associated stream banks.

(c) For any project that also requires a federal permit from the US Army Corps of Engineers (US ACE) under section 404 of the Clean Water Act, the applicant shall consult with the US ACE relative to whether additional mitigation will be required in order to satisfy federal mitigation requirements.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

Env-Wt 803.09 Alternative Compensatory Mitigation Proposals.

(a) An applicant may propose permittee-responsible compensatory mitigation that does not meet or exceed the ratios listed in Table 800-1 if the alternative will have greater benefit to water quality, wildlife, aquatic life, habitat(s) for wildlife or aquatic life, or other functions and values of wetlands and surface waters identified in RSA 482-A:1 or to one or more of the following:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Exemplary natural communities as identified by the DRED-NHB;
- (2) Habitat that supports rare, threatened, or endangered species, or species of concern, as identified by the natural heritage bureau or by the WAP; or
- (3) Ecologically important lands as designated or similarly identified by the local river management advisory committee, municipality or other state or federal agencies for protection of biodiversity values such as those listed in (1) or (2), above.

(b) If the applicant proposes alternative compensatory mitigation for a project for which a federal permit from the US ACE under section 404 of the Clean Water Act is also required, the applicant shall consult with the US ACE relative to whether additional mitigation will be required.

(c) Alternative compensatory mitigation allowed under (a) or (b), above, shall meet all other applicable requirements of Env-Wt 800.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

Env-Wt 803.10 Criteria for Acceptance of In-Lieu Mitigation Payments.

(a) An in-lieu mitigation payment shall not substitute for the requirement to avoid or minimize impacts established in Env-Wt 302.03.

(b) An applicant wishing to make an in-lieu mitigation payment shall evaluate available aquatic resource buffer preservation opportunities in accordance with Env-Wt 804 and provide documentation and an explanation of how aquatic resource buffer preservation is not practicable based on the following:

- (1) The property has upland and wetland areas remaining after the development has been designed, but does not meet or exceed the ratios in Table 800-1 or cannot meet the buffer requirement in Env-Wt 804.02;
- (2) Preservation was discussed by the municipal conservation commission and acceptance of the easement was declined as an option, as demonstrated by minutes from the meeting(s) at which the proposal was considered or a letter signed by the conservation commission; and
- (3) Acceptance of the easement was declined by other conservation organizations as cited in Env-Wt 501.06(b)(3), as demonstrated by written responses from such organizations.

(c) An applicant for a project that will have permanent impacts to a wetland shall evaluate available wetland restoration, enhancement, and creation opportunities in accordance with Env-Wt 805 and provide documentation and an explanation of what was considered and why restoration, enhancement, or creation will not produce a valuable and sustainable jurisdictional area.

(d) An applicant for a project that will have permanent impacts to a stream shall evaluate available stream restoration and enhancement opportunities in accordance with Env-Wt 806 and provide documentation and an explanation of what was considered and why restoration or enhancement will not produce a valuable and sustainable jurisdictional area.

(e) The department shall accept a proposal for an in-lieu mitigation payment if the proposal meets the requirements of (b), above, and of (c) or (d), above, as applicable, and the mitigation type or combination of mitigation types listed in Table 800-1 that are available in the same watershed as the impacts for compensating jurisdictional area losses are not practicable.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 803.11 Notification of Decision on a Proposed In-Lieu Mitigation Payment.

(a) The department shall determine whether it is appropriate for an applicant proposing a dredge or fill activity to provide an in-lieu mitigation payment instead of providing permittee-responsible mitigation by reviewing the functional assessment and alternatives provided and applying the criteria specified in Env-Wt 803.10.

(b) The department shall notify the applicant and the town in which the project is located in writing of its decision on the proposal.

(c) If the project meets the criteria for an in-lieu mitigation payment, the notice issued pursuant to (b), above, shall include:

(1) A calculation of the amount the applicant must pay prior to issuance of a permit as specified in Env-Wt 807.06; and

(2) A statement that if the in-lieu mitigation payment is not paid as specified in Env-Wt 807.06, the department will deny the permit.

(d) If the project does not qualify for an in-lieu mitigation payment, the notice issued pursuant to (b), above, shall specify the reason(s) and a date by which the applicant must submit a revised mitigation proposal.

(e) If an applicant who has been notified that a revised mitigation proposal is required does not submit a revised mitigation proposal by the deadline specified in the notice or such longer time period as agreed to by the applicant and the department, the department shall deny the application.

Source. (See Revision Note 2 at chapter heading) #11000, eff 2-1-16

PART Env-Wt 804 AQUATIC RESOURCE BUFFER PRESERVATION

Env-Wt 804.01 Location and Value. An upland buffer preservation area offered for compensatory mitigation shall:

(a) Be adjacent to a jurisdictional area that meets or exceeds the function and values of the jurisdictional areas to be impacted by the project, as determined through a functional assessment;

(b) Benefit the resource to be protected by maintaining water quality, wildlife habitat, or other functions and values of wetlands and surface waters; and

(c) Be consistent with the local and regional land use conservation goals and any applicable river corridor management plans developed per RSA 483:10.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #11000, eff 2-1-16

Env-Wt 804.02 Dimensions.

(a) Subject to (b), below, an upland buffer shall be a minimum of 100 feet wide and contiguous with the protected resource(s).

(b) For permittee-responsible stream mitigation, an upland riparian buffer shall be a minimum of 300 feet in length, as measured parallel to the centerline of the stream, and 100 feet in width, as measured from the top of bank, on both sides of the watercourse.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #9717, eff 5-25-10; ss by #11000, eff 2-1-16

Env-Wt 804.03 Incorporated Jurisdictional Areas.

(a) An area subject to preservation may incorporate a jurisdictional area provided:

- (1) The aquatic resource buffer partly or entirely surrounds the jurisdictional area or at least surrounds those undeveloped upland portions on the preservation parcel; and
- (2) Uplands comprise 50% or more of the minimum total compensatory mitigation area required under Env-Wt 803.08.

(b) Jurisdictional areas on the same site as the project that are left undisturbed as part of meeting the avoidance and minimization requirements shall not be considered preservation.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #11000, eff 2-1-16

Env-Wt 804.04 Criteria for Evaluation of an Aquatic Resource Buffer. To propose compensatory mitigation based on aquatic resource buffer preservation, the applicant shall:

- (a) Submit a functional assessment of each jurisdictional area to be impacted;
- (b) Describe how the property proposed for preservation will be legally protected in perpetuity;
- (c) If protective measures already exist on the mitigation site(s), identify the existing protective measures and describe how the proposed additional measures would provide greater protection of the aquatic resources on the site(s);
- (d) Delineate all wetlands within the proposed compensatory mitigation area and all contiguous wetlands and surface waters as follows:
 - (1) For compensatory mitigation areas comprising 10 acres or more, delineation shall be completed:
 - a. By a certified wetland scientist in accordance with Env-Wt 301.01; or
 - b. By interpretation of aerial photography, published soil surveys, U.S. Fish and Wildlife Service National Wetland Inventory maps, or other available information; and
 - (2) For compensatory mitigation areas comprising less than 10 acres, delineation shall be completed by a certified wetland scientist in accordance with Env-Wt 301.01;
- (e) Identify the property or portion of property on a tax map and USGS quad map;
- (f) Identify the legal entity that will hold the easement, which shall not be the owner in fee of the property;
- (g) Submit a property survey plan in accordance with Env-Wt 808.11 that identifies the boundaries of the compensatory mitigation area;
- (h) Submit a draft legal description of the compensatory mitigation area;
- (i) Submit the items required by Env-Wt 501.02(a)(6) or (a)(7);
- (j) Submit color photographs to illustrate important site features with location(s) noted on the property survey plan, including the location(s) of:
 - (1) Significant ecological features;
 - (2) Existing impervious surfaces, including but not limited to buildings, structures, and trails;

- (3) Wells;
 - (4) Power lines or pipelines;
 - (5) Historic resources; and
 - (6) Other improvements that will be in place at the time of the establishment of the compensatory mitigation area; and
- (k) Submit a stewardship plan for the property.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #11000, eff 2-1-16

PART Env-Wt 805 WETLAND RESTORATION, ENHANCEMENT, OR CREATION

Env-Wt 805.01 Choice of Wetland Restoration, Enhancement, or Creation.

(a) A compensatory mitigation proposal based on wetland restoration, enhancement, or creation shall replace the types of wetlands to be impacted and the functions affected and, where practicable, include a contiguous aquatic resource buffer.

(b) Wetland restoration, enhancement or creation proposals shall not be accepted as compensatory mitigation for sites at which remediation is required to correct unpermitted activities in jurisdictional areas.

(c) When considering compensatory mitigation based on wetland restoration, enhancement, or creation, the applicant shall:

- (1) Give preference to wetland restoration over wetland enhancement and wetland creation;
- (2) Consider wetland creation only with input from the US ACE and EPA where:
 - a. Impacts to upland forest for wetland creation is minimized and avoided, except where necessary to establish appropriate landscape context such as vernal pool creation;
 - b. The specific area of creation is not also being used as part of the project, such as for construction of a stormwater detention feature; and
 - c. The area is not directly adjacent to developed areas; and
- (3) Consider vernal pool creation only with input from the US ACE and EPA where:
 - a. The hydrology of the proposed creation site includes both short and intermediate hydroperiods;
 - b. Inoculation of created vernal pool areas with vernal pool organisms from impact areas is possible;
 - c. The use of natural substrate and plant structure from impacted locations is used to provide appropriate pool structure, egg attachment sites, and seed sources; and
 - d. Non-breeding habitat is located adjacent to created vernal pool areas for the long-term viability of potential pools as described in the US ACE Vernal Pool Best Management Practices (BMPs), January 2015, available at <http://www.nae.usace.army.mil/Portals/74/docs/regulatory/VernalPools/VPBMPsJan2015.pdf>.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #11000, eff 2-1-16

Env-Wt 805.02 Selection Criteria. To propose compensatory mitigation based on wetland restoration, enhancement, or creation, the applicant shall:

- (a) Submit the report and plan required by Env-Wt 803.01;
- (b) Include connections to wetlands, surface waters, or associated upland wildlife and vegetated corridors to enhance the wetland or surface water use and colonization by native flora and fauna;
- (c) Identify the source of wetland hydrology for the proposed mitigation area to confirm that the site has a suitable geomorphic setting for aquatic resource restoration, enhancement, or creation;
- (d) Explain how the proposal creates hydrologic conditions or land connections that will produce the desired wetland functions and values to be restored, enhanced, or created;
- (e) Provide wetland micro and macro topography in the proposal to achieve hydrologic diversity;
- (f) Identify the relationship of the proposed mitigation site to any jurisdictional area(s) in the immediate vicinity, the proximity to existing infrastructure and adjacent properties, and whether any lands are protected in the vicinity of the mitigation site(s);
- (g) Provide documentation on how the proposed wetland restoration, enhancement, or creation site will not be affected by anticipated secondary and cumulative impacts from the construction site; and
- (h) For restoration and enhancement proposals, explain the history of the mitigation project area, to the extent known.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #11000, eff 2-1-16

Env-Wt 805.03 Plans for Wetland Restoration, Enhancement, or Creation Projects. The applicant shall include the following in the plans required by Env-Wt 803.01:

- (a) Existing and proposed grades, with typical and unique cross sections with specific locations where clarity is needed showing:
 - (1) Predicted water fluctuations; and
 - (2) Proposed wetland cover types for the mitigation area;
- (b) Construction procedures, sequence, and timing;
- (c) A planting proposal, with preference given to native wetland plants and natural communities as follows:
 - (1) Plant species with scientific names and quantities provided;
 - (2) Source of planting materials or whether the plan relies on natural re-vegetation;
 - (3) Plant stock size and zones of predicted plant occurrence;
 - (4) Plant survival goals;
 - (5) The proposed locations of native plant stock and the rate and type of seeding;
 - (6) When and where seeding or planting will take place; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (7) Notation of dead snags, tree stumps, or logs per acre, where appropriate, to provide structure and cover for wildlife and food chain support;
- (d) Documentation of existing and proposed soils as follows:
- (1) The existing soils on the proposed mitigation site;
 - (2) The source of soils to be placed on the site;
 - (3) The likely seed bank composition of soils;
 - (4) The depth of proposed growing medium; and
 - (5) The soil properties such as texture and organic content;
- (e) Erosion control notes and details to minimize or prevent sediment from entering adjacent, undisturbed wetlands or surface waters;
- (f) Invasive species in the vicinity;
- (g) If applicable, an invasive species control plan; and
- (h) Activities that will be allowed and not allowed within the mitigation area.

Source. #8911, eff 6-20-07; ss by #11000, eff 2-1-16

PART Env-Wt 806 STREAM RESTORATION OR ENHANCEMENT

Env-Wt 806.01 Stream Restoration or Enhancement.

- (a) A compensatory mitigation proposal based on stream restoration or enhancement shall consider the types of stream(s) impacted and, where practicable, include a contiguous upland buffer.
- (b) Stream restoration or enhancement proposals shall not be accepted as compensatory mitigation for sites at which remediation is required to correct unpermitted activities in jurisdictional areas.

Source. #11000, eff 2-1-16

Env-Wt 806.02 Goals; Types of Projects.

- (a) Any proposed compensatory mitigation based on stream restoration or enhancement shall be designed to meet as many of the following goals as practicable:
- (1) Increase or restore native ecosystem productivity and biodiversity;
 - (2) Increase or restore sediment, nutrient, and particulate transport and retention/recycling dynamics;
 - (3) Restore the natural hydrologic regime;
 - (4) Support or improve migration and movement of aquatic biota;
 - (5) Increase or restore the availability or accessibility of upstream aquatic habitats;
 - (6) Increase habitat complexity of the stream ecosystem;
 - (7) Increase sediment and nutrient retention in riparian areas and floodplains;
 - (8) Improve thermal regimes, such as adding riparian vegetation to provide shade;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (9) Improve water quality;
 - (10) Improve access to refuge and reproductive habitat for aquatic organisms;
 - (11) Reduce the likelihood of water surges and flash flooding; and
 - (12) Restore a dynamic channel boundary so as to allow a natural migration of the channel within the floodplain.
- (b) The applicant shall consider the following types of projects:
- (1) Upgrading or removing existing culverts;
 - (2) Restoring or enhancing riparian and floodplain vegetation;
 - (3) Re-establishing connections to floodplains and side channels;
 - (4) Removing dams or culverts that are effectively functioning as dams;
 - (5) Removing riprap and concrete banks and channels and revegetate;
 - (6) Improving stormwater storage and processing;
 - (7) Enhancing or restoring riparian buffers;
 - (8) Installing coarse woody material in the stream or along its banks, or both;
 - (9) Using low impact development (LID) technology such as pervious surfaces, rain gardens, and filter strips; and
 - (10) Removing pavement and other impervious surfaces.

Source. #11000, eff 2-1-16

Env-Wt 806.03 Information Required for Proposed Stream Mitigation Project. An applicant proposing a stream restoration or enhancement mitigation project shall submit the following, as applicable, in the plan and report required by Env-Wt 803:

- (a) The length of the stream channel to be restored or enhanced, in linear feet;
- (b) Information on the location of the stream impact or mitigation plan in relation to critical habitats and populations identified in the WAP, and whether any lands are protected in the vicinity of the mitigation site(s);
- (c) Information on the suitability of the mitigation site for coldwater fisheries habitat, access to feeding, spawning or natural dispersal for fisheries or wildlife;
- (d) Proposed improvements for aquatic organism passage, geomorphic compatibility, or hydraulic capacity;
- (e) Proposed improvements to restore or enhance riparian or associated aquatic resource function(s), including the percent of the area within 100 feet laterally in an outward direction from each stream bank along the length of stream bank that will be restored or otherwise improved;
- (f) A description of the hydrology necessary to support the desired stream type, including stream flow, location in the watershed, watershed size, water source, and salinity for tidal water; and
- (g) A description of the proposed substrate type, source material, and material size.

Source. #11000, eff 2-1-16

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 806.04 Plans for Stream Restoration and Enhancement Projects. The applicant shall include the following in the report and plan required by Env-Wt 803:

- (a) Existing and proposed channel forms, including both cross section and profile;
- (b) Channel width and length of reach;
- (c) Sediment transport model and the reference reach;
- (d) Construction procedures, sequence, and timing;
- (e) A planting proposal, with preference given to native plants and natural communities as required in Env-Wt 805.03(c);
- (f) Information on the floodplain, including the level of connectivity between the stream and the floodplain, the permanence of coarse woody material in the floodplain, and the width of the floodplain;
- (g) Erosion control specifications to prevent sediment from entering adjacent, undisturbed wetlands or surface waters;
- (h) If any invasive plant species are within 100 feet of each stream bank, identification of the type and location of the species and an invasive species control plan;
- (i) Photographs of the channel, banks, and side slopes; and
- (j) A list of activities that will be allowed and not allowed within the mitigation area.

Source. #11000, eff 2-1-16

PART Env-Wt 807 REQUIREMENTS UPON APPROVAL OF MITIGATION PLAN

Env-Wt 807.01 Notification of Construction Completion. Within 60 days of completing a mitigation project that included restoration, enhancement, or creation of wetlands or the restoration or enhancement of a stream, or both, the applicant shall:

- (a) Submit a signed letter specifying the date of completion and the anticipated dates of submittal of the annual monitoring reports; and
- (b) Submit a post-construction monitoring report, documenting the conditions of the restored, enhanced, or constructed wetland or restored or enhanced stream.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 806.01)

Env-Wt 807.02 Monitoring Report.

- (a) The permittee responsible for a mitigation project shall submit monitoring reports to the department as specified in the mitigation monitoring plan.
- (b) The permittee also shall submit a final monitoring report.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 806.02)

Env-Wt 807.03 Implementation of Remediation Plan.

(a) Upon being notified by the certified wetlands scientist who is monitoring the mitigation project that the mitigation project is not likely to achieve its objectives after the number of growing seasons specified in the monitoring plan, the permittee shall:

- (1) Submit a remediation plan to the department within 45 days of the notification; or
 - (2) Request the department to accept an in lieu mitigation payment to compensate for the portions of the project that failed to meet the performance standards.
- (b) A remediation plan submitted pursuant to (a)(1), above, shall identify:
- (1) The problem(s) limiting the success of the mitigation site;
 - (2) Measures which need to be taken to address the problem(s); and
 - (3) A time schedule on which the permittee will implement the corrective measures.

(c) The department shall approve the proposed remediation plan if the department determines that the plan has a reasonable probability, within 3 full growing seasons following implementation of the remediation plan, of resolving the problem(s) that have caused the mitigation project to be unsuccessful.

(d) Following department approval of the remediation plan, the permittee shall implement the plan and submit reports following each of the next 3 full growing seasons to demonstrate the success of the remedial measures.

Source. #8062, eff 3-13-04; ss by #8341, eff 4-25-05 (See Revision Note 1 at chapter heading); ss by #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 806.03)

Env-Wt 807.04 Adjustments to Mitigation Monitoring Plan.

(a) If the mitigation project has met or exceeded its performance standards in fewer than 5 growing seasons, the permittee may request the department to waive subsequent monitoring by submitting the following to the department in writing:

- (1) A statement that all performance standards have been met; and
- (2) Documentation to support the statement, including photo documentation and certification from the certified wetlands scientist who conducted the monitoring that the mitigation project has met its performance standards.

(b) The department shall waive implementation of the remaining monitoring plan if the information provided by the permittee pursuant to (c), above, demonstrates that the performance standards have been met or exceeded and that continued monitoring is not needed.

(c) The permittee may request the department to reduce subsequent monitoring if the mitigation project has achieved some performance standards sooner than anticipated, by submitting the following to the department in writing:

- (1) An explanation, including photo documentation, of the extent to which the performance standards have been met;
- (2) A description of the proposed revised monitoring plan; and
- (3) Certification from the certified wetlands scientist who is conducting the monitoring that the mitigation project has met some of its performance standards sooner than anticipated and that the

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

revised monitoring proposal is sufficient to ensure that the remaining performance standards are likely to be met.

(d) The department shall approve a reduced monitoring plan if the information provided by the permittee pursuant to (e), above, demonstrates that based on the extent to which the mitigation project has exceeded its performance standards, the reduced plan appears sufficient to ensure that all performance standards will be met.

(e) If all performance standards have not been met within the time period specified in the monitoring plan, the permittee shall extend the monitoring.

Source. #11000, eff 2-1-16

Env-Wt 807.05 Notification of Recorded Conservation Interest.

(a) After the department has issued a permit in accordance with Env-Wt 500 and prior to work commencing on a project for which the mitigation plan requires a conservation interest to be acquired, the permittee shall:

- (1) If the conservation interest is an easement, obtain the signature of the grantee on the document conveying the interest for each parcel to be preserved;
- (2) Record each document that conveys a conservation interest for each parcel to be preserved at the registry of deeds for the county in which the parcel is located;
- (3) Submit a copy of each recorded document to the department; and
- (4) Submit a digitized polygon file, if available, to be incorporated into the department's geographic information system (GIS) conservation lands layer for the location of compensatory mitigation parcels.

(b) Within 60 days after issuance of the permit, the permittee shall submit verification that the compensatory mitigation area has been marked by permanent monuments and signs indicating the location of the area.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 806.04)

Env-Wt 807.06 Submittal of In-Lieu Mitigation Payment.

(a) For a project for which the department has notified the applicant of the acceptance of a proposed in-lieu mitigation payment as specified in Env-Wt 803.11(c), the department shall not issue the permit until the applicant has remitted the full amount of the in-lieu mitigation payment as specified in the notice.

(b) If the applicant does not remit the full amount of the in-lieu mitigation payment within 120 days of the date of the notice or such longer time as is agreed to by the applicant and the department, the department shall deny the application.

(c) The department shall deposit all in-lieu mitigation payments into the aquatic resource compensatory mitigation fund established by RSA 482-A:29 as follows:

- (1) For each payment deposited, the department shall credit the payment to the service area that contains the jurisdictional area(s) impacted by the project;
- (2) The department shall account for payments made for stream impact projects separately from payments made for wetland impact projects;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (3) For a project that impacts jurisdictional area(s) in more than one service area, the department shall allocate the payment among the service areas in proportion to impacts; and
- (4) For a project having both stream impacts and wetland impacts, the department shall allocate the payment to wetland impacts and stream impacts in proportion to impacts.

Source. #8911, eff 6-20-07; ss by #11000, eff 2-1-16
(formerly Env-Wt 806.05)

PART Env-Wt 808 AQUATIC RESOURCE COMPENSATORY MITIGATION FUND

Env-Wt 808.01 Use of Aquatic Resource Compensatory Mitigation Fund. Costs that are eligible under RSA 482-A:29, I, for funding from the aquatic resource compensatory mitigation fund (“ARM Fund”) shall be as follows:

- (a) Development of final restoration, enhancement, or creation plans;
- (b) Construction costs for restoration, enhancement, or creation such as site clearing and excavation, construction management, consulting fees, permit costs, grading and soil augmentation, disposal costs of excavated materials, planting, and monitoring and maintenance of restoration, enhancement, or creation sites to reduce risk of failure;
- (c) Acquisition of land for the protection of mitigation sites in perpetuity and associated costs including property surveys, appraisals, closing costs, and subdivision fees;
- (d) Acquisition of conservation interests after a qualified grantee has been identified;
- (e) Acquisition of legal services related to the protection of land(s) in perpetuity;
- (f) Stewardship of a conservation interest in accordance with Env-Wt 808.15, including development of a stewardship plan for the land that is subject to the conservation interest; and
- (g) Other aquatic resource improvement or protection projects, such as water quality improvement projects, tidal wetland restoration projects, dam removal projects, stream or river restoration projects, or activities that provide habitat improvement including culvert replacement or removal.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly
Env-Wt 807.02)

Env-Wt 808.02 Identification of Eligible Projects.

- (a) The department shall announce a request for pre-proposals for proposed projects in a service area, in consultation with the site selection committee per Env-Wt 808.17 (b)(4), at least once every 2 years.
- (b) Any person wishing to obtain funding for a project from the ARM Fund shall complete and submit a pre-proposal as specified in Env-Wt 808.03.
- (c) The department shall:
 - (1) Review each pre-proposal received to determine whether the proposed project is eligible for funding and in which service area(s) the proposed project is located;
 - (2) Consult with the U.S. Army Corps of Engineers relative to the proposed projects; and
 - (3) Notify the applicant of whether the proposed project is eligible for funding and provide comments to the applicant to consider prior to submitting an ARM Fund application.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(d) To have a project considered for funding, an applicant who has been notified pursuant to (c)(3), above, that the proposed project is an eligible project shall complete an ARM Fund application in accordance with Env-Wt 808.04 and submit it to the department for review.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.03)

Env-Wt 808.03 Requirements for ARM Fund Pre-Proposals. Any person who wishes to request funding from the ARM Fund shall submit to the department:

(a) The following information on an ARM Fund pre-proposal form obtained from the department that has been signed as specified in Env-Wt 808.05:

- (1) A short title for the proposed project;
- (2) The location of the proposed project by street address, municipality, and service area;
- (3) Contact information, including the name of the applicant and the name, daytime telephone number, and email address, if any, of a contact individual for the applicant;
- (4) The name and role of each other entity that will participate in or otherwise contribute to the proposed project; and
- (5) The total grant amount requested, the amount and source of matching funds, and the estimated total project cost;

(b) A USGS topographic map on which the following areas are clearly marked:

- (1) The property or portion(s) of the property to be acquired or otherwise protected through a conservation interest with the requested funds, if applicable;
- (2) The property or portions of the property to be considered for wetland restoration, enhancement, or creation, or for stream restoration or enhancement if applicable; and
- (3) Any other protected lands within one mile of the outer boundaries of the area identified pursuant to (1) or (2), above;

(c) A description of the project in not more than 1,000 words that includes:

- (1) The project's objectives;
- (2) A brief summary of how the project meets the ARM Fund criteria specified in Env-Wt 808.07;
- (3) The tasks required to complete the project;
- (4) The proposed budget to complete the project; and
- (5) The proposed results to be achieved; and

(d) A second plan or map of the areas identified pursuant to (b), above, such as one from the WAP, on which critical habitats and populations of the state's species of conservation and management concern are clearly delineated.

Source. #11000, eff 2-1-16

Env-Wt 808.04 Requirements for ARM Fund Applications. To request funding for an eligible project, the applicant shall submit the following information to the department on or with an ARM Fund application form obtained from the department that has been signed as specified in Env-Wt 808.05:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (a) Information to identify the project and applicant, as follows:
 - (1) A name for the proposed project;
 - (2) The location of the proposed project by street address, municipality, and service area;
 - (3) The name and mailing address of the applicant and the name, daytime telephone number, and email address, if any, of a contact individual for the applicant; and
 - (4) The total grant amount requested, the amount and source of matching funds, and the estimated total project cost;
- (b) A USGS topographic map marked as required by Env-Wt 808.03(b);
- (c) A description of the property(ies) that includes:
 - (1) The location and type of all structures;
 - (2) Existing impoundments, if any;
 - (3) Existing disturbances, if any; and
 - (4) Known or potential contamination sources as identified in the department's GIS, if any;
- (d) A functional assessment or a description of the aquatic resource functions and values of the property(ies) and overall conservation value and identification of the specific primary functions and values and how these functions and values are being protected, restored, enhanced, or constructed by the proposed project;
- (e) A table summarizing the information provided pursuant to (d), above, which for each aquatic resource lists the resource type, size, and functions;
- (f) A map, at a scale that ensures that all details are legible, on which are identified all developed and undeveloped parcels within one-half mile of the outer boundaries of the area that would be restored, enhanced, created, or protected by the proposed project;
- (g) A map of the property, at a scale that ensures that all details are legible, on which are identified the following:
 - (1) Wetlands, surface waters, fields, and forest;
 - (2) Any structures;
 - (3) All utilities and wells;
 - (4) All roads or trails;
 - (5) All easements or rights-of-way; and
 - (6) Gravel pits or other disturbed areas;
- (h) For both the proposed project property and the mitigation property, the number of confirmed vernal pools and the number of potential vernal pools;
- (i) For a wetlands restoration, enhancement, or creation project:
 - (1) A description of the work to be completed;
 - (2) The total area, in acres, proposed for restoration;
 - (3) The total area, in acres, proposed for enhancement;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) The total area, in acres, proposed for creation;
 - (5) The total area, in acres, of upland enhancement proposed, if any; and
 - (6) A written explanation of how the project meets the criteria specified in Env-Wt 808.07;
- (j) For a stream restoration or enhancement project:
- (1) A description of the work to be completed;
 - (2) The total linear feet of stream on the property;
 - (3) The total linear feet of in-stream restoration or enhancement proposed;
 - (4) The percent of the length of stream that has a 100-foot wooded zone on both sides of the stream and the percent of each area that is upland; and
 - (5) A written explanation of how the project meets the criteria specified in Env-Wt 808.07;
- (k) For an upland preservation project:
- (1) The total acreage of the land proposed for protection and the acreage of any included jurisdictional area(s); and
 - (2) A written explanation of how the project meets the criteria specified in Env-Wt 808.08;
- (l) For other projects, an explanation of why the project is eligible under Env-Wt 808.01;
- (m) A signed and dated statement from each landowner that:
- (1) Affirms the landowner's willingness to have the restoration, enhancement, or creation work performed or willingness to negotiate the acquisition of the properties, as applicable;
 - (2) Commits the landowner(s) to not selling or otherwise conveying or committing to sell or otherwise convey the property covered by the application except to the applicant for 120 days;
 - (3) Commits the landowner(s) to allowing inspection, survey, and appraisal of the property within 120 days from the date of receipt of a copy of the application by the department;
 - (4) Specifies the price at which the landowner will sell the property, which information shall be treated as confidential under the provisions of RSA 91-A:5, IV and subject to disclosure only with the consent of the landowner until the department has selected the application for funding; and
 - (5) Identifies all liens and encumbrances; and
- (n) A budget that includes a complete list of itemized costs and an anticipated time line for expenditures.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.04)

Env-Wt 808.05 Signatures Required for Pre-Proposals and Applications.

- (a) If the applicant is an individual, the applicant shall sign and date the pre-proposal and the application.
- (b) If the applicant is an organization or other legal entity, the official of the applicant who has been authorized to sign the pre-proposal or application shall sign and date the document and print or type his or her name and title on the document.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) A signature provided under (a) or (b), above, shall constitute certification that:

(1) The information contained in or otherwise submitted with the application is true, complete, and not misleading to the best of the applicant's knowledge and belief;

(2) The applicant understands that:

a. The submission of false, incomplete, or misleading information is grounds for denying the application or revoking any award of ARM funds that is made based on such information; and

b. The applicant is subject to the penalties for making unsworn false statements specified RSA 641:3 or any successor New Hampshire statute.

Source. #11000, eff 2-1-16

Env-Wt 808.06 Processing of ARM Fund Applications.

(a) The department shall review each application for conformance with Env-Wt 808.04 and to determine whether the project meets the criteria of Env-Wt 808.07 or Env-Wt 808.08, as applicable.

(b) The department shall notify the applicant and the municipality(ies) in which the land is located in writing of its decision on the application. If the application is determined to not be acceptable for funding, the notice shall specify the reason(s) for the determination.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.05)

Env-Wt 808.07 Eligibility Criteria for Wetland Restoration, Enhancement, or Creation Projects and Stream Restoration or Enhancement Projects. A project to restore, enhance, or create wetlands or to restore or enhance a stream shall be eligible for funding from the ARM Fund when all of the following conditions are met:

(a) The applicant demonstrates that:

(1) Rights to access the mitigation project site have been or will be acquired;

(2) The mitigation project site is undeveloped land and free of known and potential contamination sources; and

(3) All needed local, state, and federal authorizations or permits to conduct the mitigation work have been applied for, will be applied for, or have already been acquired; and

(b) The applicant presents a budget to accomplish the proposed project's stated objectives in the projected time frame, including long-term management expenses, using good-faith, realistic estimates of costs.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.06)

Env-Wt 808.08 Eligibility Criteria for Land Protection Projects. A project to acquire a conservation interest shall be eligible for funding from the ARM Fund when all of the following conditions are met:

(a) The applicant is a political subdivision, a governmental agency, or a non-profit, 501(c)(3) organization having land conservation as a principal mission, or provides a signed and dated statement from such an entity stating the willingness of the entity to negotiate the proposed acquisition;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) The conservation interest to be acquired meets the criteria specified in Env-Wt 804.01 and Env-Wt 804.03;

(c) The conservation interest to be acquired is in undeveloped land that is free of known contamination;

(d) The conservation interest to be acquired is in land that is not already permanently protected and is not currently owned by the applicant;

(e) The resources within the conservation interest area are under threat of destruction or adverse modifications by reasonably foreseeable activities; and

(f) The conservation interest to be acquired will be held by a grantee that meets the criteria specified in Env-Wt 501.06(c).

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.07)

Env-Wt 808.09 Requirements upon Determination of Eligibility.

(a) If a project is selected to receive funding for the restoration, enhancement, or creation of wetlands or the restoration or enhancement of a stream, the applicant shall submit the following to the department prior to the funds being awarded:

- (1) An environmental site assessment prepared in accordance with Env-Wt 808.10(b) through (d), if required pursuant to Env-Wt 808.10(a);
- (2) A property survey prepared in accordance with Env-Wt 808.11;
- (3) Detailed plans on the mitigation project site in accordance with Env-Wt 805 or Env-Wt 806, as applicable; and
- (4) A detailed schedule for mitigation work to be carried out.

(b) If a project to conduct wetland restoration, enhancement, or creation or stream restoration or enhancement is awarded funding, the applicant shall:

- (1) Select a qualified contractor using the procurement process prescribed by RSA 21-I:22, IV-VII;
- (2) Execute the mitigation plan in accordance with the schedule approved by the department;
- (3) Adhere to ARM Fund contract conditions;
- (4) Provide ongoing monitoring reports in accordance with Env-Wt 807.02; and
- (5) Provide a plan for the on-going maintenance or management of the mitigation area(s), if needed.

(c) If a project is selected to receive funding to acquire a conservation interest, the applicant shall submit the following to the department prior to the funds being awarded:

- (1) An environmental site assessment prepared in accordance with Env-Wt 808.10(b) through (d), if required pursuant to Env-Wt 808.10(a);
- (2) A property survey prepared in accordance with Env-Wt 808.11;
- (3) An appraisal prepared in accordance with Env-Wt 808.12;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (4) A title examination and, if necessary, an opinion of title prepared in accordance with Env-Wt 808.13; and
- (5) Baseline documentation in accordance with Env-Wt 808.15(c)(1).
- (d) If a project to acquire a conservation interest is awarded funding, the applicant shall:
 - (1) Execute the land transaction in accordance with Env-Wt 808.16;
 - (2) Record the deed and survey, if applicable, in accordance with Env-Wt 808.16;
 - (3) Adhere to ARM Fund contract conditions; and
 - (4) Provide a stewardship plan for the property in accordance with Env-Wt 808.15.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.08)

Env-Wt 808.10 Environmental Site Assessment Requirements.

(a) The applicant shall submit an environmental site assessment for any property that is the subject of a request for funding from the ARM Fund and that, based on information in the department's GIS or a site walk performed by the department, contains known or potential sources of contamination.

(b) An environmental site assessment shall be performed by an environmental consultant who has at least 5 years' experience in preparing site assessments.

(c) An environmental site assessment shall include the following:

- (1) A history of land usage;
- (2) A description of the site inspection;
- (3) A review of all department records relating to site investigations or other environmental assessments for all properties located within 1,000 feet of the property;
- (4) A description of the review conducted pursuant to (3), above, including the date of the review and who conducted the review;
- (5) A description of the findings from any files reviewed pursuant to (3), above; and
- (6) An opinion by the consultant that there are no contamination concerns for the property(ies) proposed for protection.

(d) The applicant shall submit the environmental site assessment to the department upon completion.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.09)

Env-Wt 808.11 Survey Requirements.

(a) If an accurate survey does not already exist for property that is the subject of a request for funding from the ARM Fund, the applicant shall obtain a property survey after the applicant receives notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) The applicant shall provide the department with 2 paper copies, a mylar copy suitable for recording at the registry of deeds, and a digitized polygon file of the standard property survey for the property that is the subject of the proposed project.

(c) A New Hampshire licensed surveyor shall perform a standard property survey in accordance with the standards specified in Lan 503.03 – Lan 503.10.

(d) The turning points of the boundaries shall be marked with permanent monuments and the boundary lines shall be blazed or painted so that they can be located in the field.

(e) The survey plan shall include:

- (1) The property boundaries and acreage; and
- (2) The method and accuracy of the survey.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.10)

Env-Wt 808.12 Appraisal Requirements.

(a) The applicant requesting funding from the ARM Fund for acquisition of a conservation interest shall obtain an appraisal or an updated appraisal after the applicant has received notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) If an appraisal has not been completed within 120 days of the notification, the money shall revert back to the ARM fund.

(c) An appraisal shall be conducted for each property included in the proposed project, based on the terms of the proposed conservation interest instrument and the survey performed in accordance with Env-Wt 808.11.

(d) In order for the appraisal to be accepted as a determination of the fair market value of the conservation interest, the appraisal shall be conducted in accordance with the Uniform Standards of Professional Appraisal Practice established by The Appraisal Foundation.

(e) The applicant shall submit the appraisal to the department.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.11)

Env-Wt 808.13 Title Examination Requirements.

(a) The applicant for funding from the ARM Fund for acquisition of a conservation interest shall obtain a title examination or an updated title examination after the applicant has received notification from the department that the applicant's application for funding has been selected and prior to the funding being provided.

(b) The title examination shall be conducted for each property included in the proposed project.

(c) In order for the title examination to be accepted as determinative that there is clear and marketable title to the property, the title examination shall be conducted in accordance with the "New Hampshire Title Examination Standards" of the New Hampshire Bar Association.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 807.12)

Env-Wt 808.14 Conservation Interest Instrument Requirements.

(a) Each conservation interest instrument shall:

- (1) Uphold the conservation purposes of the transaction in perpetuity;
- (2) Protect the quality of wetlands and surface water resources associated with the property;
- (3) Safeguard the environmental values of the property that are dependent on aquatic resources; and
- (4) Convey an interest to the State of New Hampshire that allows the state to enforce the conditions and restrictions of the easement and to recover the costs of such enforcement from the easement holder or property owner, or both.

(b) Each conservation interest instrument shall contain, at a minimum, the following restrictions:

- (1) No industrial or commercial activities or improvements shall occur on the property except in conjunction with any water supply, agricultural, forestry, or outdoor recreational activities that are allowed by the instrument, subject to such conditions as are specified in the instrument;
- (2) No land surface alterations shall occur on the property, such as filling, excavation, mining, and dredging, except to the extent that they do not degrade the aquatic resource for which the project was funded and do not pose a risk of such degradation;
- (3) No wastes generated off the property shall be disposed of, stored, or discharged on the property;
- (4) No substances that would be hazardous waste if discarded or abandoned shall be disposed of on the property, and no such substances shall be stored or applied on the property except in conjunction with any allowed water supply, agricultural, forestry, or outdoor recreational activities, and provided the storage and use do not threaten aquatic resource protection and are specifically allowed by the instrument, subject to such conditions as are specified in the instrument;
- (5) No acts or uses shall occur on the property that would:
 - a. Degrade wetlands or water quality;
 - b. Cause an unsustainable quantity of water to be withdrawn; or
 - c. Harm state or federally recognized rare, threatened, or endangered species; and
- (6) Activities specifically allowed by the instrument, such as community drinking water supply, agriculture, forestry and outdoor recreation, shall be conducted in accordance with a plan, best management practices, or conditions as set forth in the instrument, subject to such conditions as are specified in the instrument.

(d) In the case of a conservation easement, the owner of the fee shall retain all other customary rights and privileges of ownership including the right to privacy and to carry out all regular agricultural and forestry practices that are not prohibited by the restrictions in the easement.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.13)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 808.15 Stewardship Requirements.

- (a) The grantee shall be responsible for ongoing stewardship of each conservation interest acquired.
- (b) The grantee shall determine the financial and management implications of each conservation interest and establish that it has or can obtain funds to monitor and enforce the interest.
- (c) To fulfill its obligations under (a), above, the grantee shall:
 - (1) Prior to acquisition of the conservation interest, prepare and submit to the department a baseline documentation report that describes, in writing and with photographs, the condition of the property(ies) that will be subject to the interest at the time of acquisition, including aquatic resource functions and values;
 - (2) Prepare and submit to the department an annual property inspection that confirms that boundaries are being maintained and land is being appropriately protected according to the terms of the conservation interest;
 - (3) For conservation easements, contact landowners annually to inform the landowners of their obligations under the easement;
 - (4) Prepare and submit an annual stewardship report to the department that contains the following:
 - a. A description of the site inspection conducted;
 - b. A description of any physical changes to the property;
 - c. A description of any landowner contact conducted;
 - d. A description of any conditions that violate or may violate the intent of the conservation interest; and
 - e. A description, including current status, of any violations witnessed and remedial steps taken.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07
New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.14)

Env-Wt 808.16 Final Approval, Execution, and Deed Recordation.

- (a) The department shall approve the acquisition of a conservation interest if, for each property to be included in the conservation interest, the applicant:
 - (1) Confirms that the property is not contaminated in accordance with Env-Wt 808.10;
 - (2) Confirms the property boundaries and acreage in accordance with Env-Wt 808.11;
 - (3) Negotiates a price not to exceed the fair market value determined in accordance with Env-Wt 808.12;
 - (4) Confirms that there is clear and marketable title for the property determined in accordance with Env-Wt 808.13;
 - (5) Submits a deed that conforms to the requirements of Env-Wt 808.14; and
 - (6) Submits the baseline documentation prepared in accordance with Env-Wt 808.15 (c)(1).

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(b) Final execution, payment of acquisition cost, and recording of the necessary instruments of transfer shall be conducted after final approval.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.15)

Env-Wt 808.17 Site Selection Committee.

(a) The site selection committee for the ARM Fund shall be as specified in RSA 482-A:32.

(b) As specified in RSA 482-A:32, I, the purpose of the site selection committee is to identify projects to be funded from the ARM Fund. To accomplish this purpose, the site selection committee shall:

(1) Participate in meetings coordinated by the department to develop operating procedures for the committee and discuss operation of the ARM Fund;

(2) Provide guidance on the application ranking and selection criteria that will be used to rank parcels considered for funding;

(3) Provide contact information to the department for individuals or organizations that may be knowledgeable on issues or priorities within the service areas for which requests for eligible projects were made pursuant to Env-Wt 808.02(a);

(4) Assist the department in determining dates to request pre-proposals and applications to be submitted with specified deadlines for submittal;

(5) Oversee the ARM Fund to ensure that funds deposited are considered for disbursement as specified in Env-Wt 808.03;

(6) Evaluate and rank applications in accordance with Env-Wt 808.18 and Env-Wt 808.19;

(7) Select the project(s) that will be recommended to the Wetlands Council for funding;

(8) Recommend an amount to be disbursed for each project selected; and

(9) Review the annual report prepared by the department pursuant to RSA 482-A:33.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.16)

Env-Wt 808.18 Application Ranking and Selection by the Site Selection Committee.

(a) For each application funding cycle the site selection committee shall, within 120 days of the application deadline, rank each project for which a pre-proposal has satisfied pre-proposal requirements and the request for ARM funding is received.

(b) The ranking shall be based on a review of the applications and site walks conducted by the department.

(c) The site selection committee shall rank the project(s) that are located in the same service area as the impact areas that paid into the fund.

(d) The site selection committee shall select projects that provide the greatest potential to replace or protect specific functions and values lost by the impacts in the service area.

(e) Where project scores are comparable, preference shall be given to projects that provide the longer term, more beneficial protection mechanism for the project area and its buffer.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(f) The site selection committee shall only consider applications for ARM funds that include a budget that is based on good-faith, realistic estimates of costs to accomplish the proposed project's stated objectives and time frame.

(g) The site selection committee shall select the highest ranked projects for each application cycle.

(h) If the department announces a watershed account is ready to be spent and the submitted proposals do not address the priorities for the service area, then the funds deposited in that account shall remain to be available in a new application cycle.

(i) Funds that remain in an account after the ARM fund applications have been selected for funding shall be carried over in that service area account to be available for the next application cycle.

(j) Applications for ARM funds shall be evaluated based on the criteria and points specified in Env-Wt 808.19.

Source. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.17)

Env-Wt 808.19 Project Evaluation.

(a) The department and site selection committee shall:

- (1) Evaluate a wetlands mitigation project using the criteria in (b) through (f), below; and
- (2) Evaluate a stream passage improvement using the criteria in (c) through (g), below.

(b) A maximum of 27 points shall be assigned based on the potential the project has to restore, enhance, or retain similar wetland functions and values lost within the service area, and those that have been identified by the site selection committee as priorities for the application cycle, as follows:

(1) The project shall receive 20 to 27 points if the application clearly demonstrates that the project will:

- a. Restore, enhance, or retain more than two-thirds of the wetland types or natural community lost by the impacts that generated the funds; or
- b. Is located in an area of significant habitat value with high likelihood of success and the work will result in improved habitat functions;

(2) The project shall receive 13 to 19 points if the application clearly demonstrates that the project will:

- a. Restore, enhance, or retain less than two-thirds of the wetland types or natural community by improving the ecological integrity function of the wetland and/or other functions lost in the service area; or
- b. Provides an improvement in the functions that were impaired in the service area as identified in the compensation planning framework;

(3) The project shall receive 6 to 12 points if the application clearly demonstrates that the project will:

- a. Restore, enhance or retain less than two-thirds of the wetland types or natural community other than by improving the ecological integrity function of the wetland and/or other functions lost in the service area; or
- b. Provides an improvement in the functions that were impaired in the service area as identified in the compensation planning framework; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(4) The project shall receive one to 5 points if the application credibly asserts but does not clearly establish that the project will restore, enhance, or retain some of the wetland types or natural community or functions previously impaired in the service area.

(c) A maximum of 27 points shall be assigned based on the overall environmental significance the project provides, with the project receiving one to 9 points for each of the following that apply:

(1) The project is located within a source water protection area or overlays a high-yield stratified drift aquifer;

(2) The project will protect endangered, threatened, or special concern species or exemplary natural communities documented to occur on the property; and

(3) The project is located in or in close proximity to NH Wildlife Action Plan highest quality wildlife habitat or NH Wildlife Action Plan conservation focal areas.

(d) A maximum of 19 points shall be assigned based on the project's proximity and connectivity to the following resources, with the project receiving the points noted for each of the following that apply:

(1) If the project is adjacent to lands protected in perpetuity, the project shall receive 4 points;

(2) If the project provides a connection between lands that are currently unconnected and which are protected in perpetuity, the project shall receive one to 4 points;

(3) If the project will protect linkages or over-land connections among and between 1 or more aquatic resource areas, the project shall receive one to 4 points;

(4) If the project will protect lands within a large unfragmented block of land, relative to the service area, the project shall receive one to 4 points; and

(5) If the project is located within the same sub-watershed as the impact area(s), the project shall receive 3 points.

(e) A maximum of 19 points shall be assigned based on the overall mitigation potential for the project to address the considerations noted below, with the project receiving the points noted for each of the following that apply:

(1) The project shall receive one to 6 points if it will protect most or all of the aquatic resource;

(2) The project shall receive one to 6 points if it will provide an upland buffer that protects an aquatic resource identified as a prime wetland by a municipality or recognized in a municipal or regional wetland or natural resource study;

(3) The project shall receive one to 4 points if it will protect, at a minimum, a 200 foot upland buffer around most or all of the aquatic resource; and

(4) The project shall receive one to 3 points if it will protect most or all of the HUC 12 watershed of the aquatic resource.

(f) A maximum of 8 points shall be assigned based on the cost-effectiveness of the project and partnership potential, with the project receiving the points noted for each of the following that apply:

(1) The project shall receive 3 points if it will provide a cash or in-kind donation match of at least 30%;

(2) The project shall receive one to 3 points if the project area is identified in a federal, or state environmental priority plan other than the Wildlife Action Plan; and

(3) The project shall receive 3 points if it is supported by the host municipality.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(g) A maximum of 27 points shall be assigned based on the potential the project has to provide a stream passage improvement for stream resources in the service area that were impaired, and those that have been identified by the site selection committee as priorities for the application cycle.

Source. #8762, INTERIM, eff 11-21-06, EXPIRED: 5-20-07

New. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.18)

Env-Wt 808.20 Annual Report. The annual report prepared pursuant to RSA 482-A:33 shall include the following for the reporting period covered by the report:

- (a) A summary that details the sources of all payments received and all fund expenditures on a per-service area basis;
- (b) A description of each project funded and information on the progress or completion of those projects;
- (c) The acreage and type of aquatic resources restored, enhanced, created, or otherwise protected in each service area by the projects described pursuant to (b), above; and
- (d) The functions gained by the projects described pursuant to (b), above.

Source. #8911, eff 6-20-07; ss by #11000, eff 2-1-16 (formerly Env-Wt 807.19)

APPENDIX A: STATE STATUTES & FEDERAL STATUTES/REGULATIONS IMPLEMENTED

Rules	State Statute(s) Implemented	Federal Statutes/Regulations Implemented
Env-Wt 800	RSA 482-A:3, I; RSA 482-A:11; RSA 482-A:28-33	Clean Water Act, Section 404; 33 CFR Parts 325 & 332

APPENDIX B: STATUTORY DEFINITION

RSA 310-A:76:

II-a. “Certified wetland scientist” means a person who, by reason of his or her special knowledge of hydric soils, hydrophytic vegetation, and wetland hydrology acquired by course work and experience, as specified by RSA 310-A:84, II-a and II-b, is qualified to delineate wetland boundaries and to prepare wetland maps; to classify wetlands; to prepare wetland function and value assessments; to design wetland mitigation; to implement wetland mitigation; to monitor wetlands functions and values; and to prepare associated reports, all in accordance with standards for identification of wetlands adopted by the New Hampshire department of environmental services or the United States Army Corps of Engineers or their successors, and who has been duly certified by the board.

Appendix C: Incorporation By Reference Information for Env-Wt 800

Rule (Env-Wt)	Title	Dated	Obtain at:
803.01(b)	Classification of Wetlands and Deepwater Habitats of the United States, FWS/OBS-79/31, Cowardin et al.	1979, reprinted 1992	US Fish and Wildlife Service Northeast Region 300 Westgate Center Dr. Hadley, MA 01035 Download at no cost from: http://www.fws.gov/wetlands/Documents/Classification-of-Wetlands-and-Deepwater-Habitats-of-the-United-States.pdf
803.02(a)(1)	Highway methodology workbook supplement Method for Inventorying and Evaluating Freshwater Wetlands in New Hampshire	1999 edition 2013 edition	U.S. Army Corps of Engineers New England District 696 Virginia Road Concord, MA 01742 Download at no cost from: http://www.nae.usace.army.mil/Portals/74/docs/regulatory/Forms/HighwaySupplement6Apr2015.pdf Download at no cost from: http://nhmethod.org
803.02(a)(2)d.	“Natural Communities of New Hampshire”, second edition “Natural Community Systems of New Hampshire”, second edition	2012 2011	NH Department of Resources and Economic Development, Natural Heritage Bureau 172 Pembroke Road Concord, NH 03301 Download at no cost from: http://www.nhdf.org/library/pdf/Natural%20Heritage/WebVersion_Tech%20Manual.pdf http://www.nhdf.org/library/pdf/Natural%20Heritage/Web%20Version%20-%20Systems%20Report.pdf

APPENDIX D: STATUTORY PROVISIONS ESTABLISHING THE CERTIFIED CULVERT INSTALLATION PROGRAM

[Not relevant to this chapter]

APPENDIX E: ADDITIONAL APPLICABLE STATUTE**RSA 641:3 Unsworn Falsification.** – A person is guilty of a misdemeanor if:

I. He or she makes a written or electronic false statement which he or she does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his or her official function, he or she:

(a) Makes any written or electronic false statement which he or she does not believe to be true; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or
- (c) Submits or invites reliance on any writing which he or she knows to be lacking in authenticity; or
- (d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.

III. No person shall be guilty under this section if he or she retracts the falsification before it becomes manifest that the falsification was or would be exposed.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wt 900 STREAM CROSSINGS

PART Env-Wt 901 PURPOSE AND APPLICABILITY

Env-Wt 901.01 Purpose. The purpose of this chapter is to:

(a) Enhance public safety by establishing standards for necessary stream crossings that are designed to lessen the risk of blockages and wash-outs of culverts and bridges, and the associated flooding, which can jeopardize property and human lives upstream and downstream of such crossings and on roadways;

(b) Preserve the functions and values of existing streams, support the restoration of impacted streams to their natural state, and improve aquatic life passage and sediment transport, while recognizing that well-managed forest management activities, normal agricultural operations, and trail activities play important roles in protecting water quality; and

(c) Implement the program established by RSA 482-A:3, XVII - XIX to certify certain individuals to maintain, repair, replace, or modify culverts.

Source. #9714, eff 5-12-10; ss by #10491, eff 12-21-13

Env-Wt 901.02 Applicability.

(a) All crossings of perennial streams and intermittent streams shall be subject to Env-Wt 903 and Env-Wt 904 unless the work on the crossing is:

(1) Exempted under Env-Wt 901.03; or

(2) Undertaken in accordance with the certified culvert maintainer program established by RSA 482-A:3, XVII - XIX and Env-Wt 905.

(b) The rules in this chapter shall not apply to crossings of drainage swales or ephemeral streams, or to any crossings located upstream of where the scouring starts for an intermittent stream or perennial stream.

Source. #9714, eff 5-12-10; ss by #10491, eff 12-21-13

Env-Wt 901.03 Exemptions. The following shall be exempt from Env-Wt 903 and Env-Wt 904:

(a) Routine roadway and railway maintenance activities conducted in accordance with Env-Wt 303.05(q);

(b) Minimum impact projects to allow vehicular access to a piece of property for forest management activities, conducted in accordance with:

(1) Env-Wt 303.04(e) for roadway construction through forested wetlands; or

(2) Env-Wt 303.04(g) for installation of a structure and associated fill to cross wetlands, including streams;

(c) Minimum impact agricultural activities conducted in accordance with Env-Wt 303.04(u);

(d) Minimum impact trail activities conducted in accordance with Env-Wt 303.04(y); and

(e) Minimum impact stream crossings for access to a property for a single-family residential property or building lot, for noncommercial recreational purposes including conservation projects, or for normal agricultural operations, conducted in accordance with Env-Wt 303.04(z) or (ag).

Source. #9714, eff 5-12-10

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

PART Env-Wt 902 DEFINITIONS

Env-Wt 902.01 “Aggradation” means the raising of the grade or level of the bed of a watercourse by the deposition of detritus, sediment, or other material.

Source. #9714, eff 5-12-10

Env-Wt 902.02 “Aquatic life” means plant and animal species whose life-cycle depends, in whole or in part, on fresh water, salt water, or both. The term includes fish, amphibians, reptiles, and macroinvertebrates. The term does not include any exotic aquatic weed as defined in RSA 487:16, II.

Source. #9714, eff 5-12-10

Env-Wt 902.03 “Bankfull flow” means the volume of flow in a watercourse at which water begins to overflow into the active floodplain.

Source. #9714, eff 5-12-10

Env-Wt 902.04 “Bankfull width” means the width of the wetted channel during bankfull flow.

Source. #9714, eff 5-12-10

Env-Wt 902.05 “Closed culvert” means a culvert that is solid at the top, along its sides, and across its lower edge, such that its cross-section is continuous. A closed culvert can be square, rectangular, circular, or oval in cross-section.

Source. #9714, eff 5-12-10

Env-Wt 902.06 “Connectivity” means the state in which upstream and downstream reaches of a watercourse meet in a geomorphically stable situation that does not adversely affect the movement of aquatic life or the transport of sediment.

Source. #9714, eff 5-12-10

Env-Wt 902.07 “Designated river” means “designated river” as defined in RSA 483:4, VIII.

Source. #9714, eff 5-12-10

Env-Wt 902.08 “Designated river corridor” means the river corridor of a designated river. 

Source. #9714, eff 5-12-10

Env-Wt 902.09 “Embedded” means, when referring to a stream crossing structure, buried within the stream bed to such an extent that water depths and velocities at a variety of flows within the crossing structure are comparable to those found in the natural channel upstream and downstream of the stream crossing structure.

Source. #9714, eff 5-12-10

Env-Wt 902.10 “Existing legal crossing” means a stream crossing for which:

(a) All applicable federal, state, and local requirements were met when the crossing was originally installed; and

(b) If the crossing was modified, repaired, or reconstructed subsequent to its original installation, the work, when undertaken, met all applicable federal, state, and local requirements.

Source. #9714, eff 5-12-10

Env-Wt 902.11 “Forest management activities” means activities necessary for forest management as defined in RSA 227-G:2, IX, including but not limited to extracting timber, planting and replanting of various

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

species, and cutting roads and pathways through forests, provided such activities are undertaken in compliance with applicable statutes and rules, including RSA 227-J, and best management practices.

Source. #9714, eff 5-12-10

Env-Wt 902.12 “Normal agricultural operations” means activities as described in RSA 21:34-a, including the construction or maintenance of farm roads.

Source. #9714, eff 5-12-10

Env-Wt 902.13 “Open-bottom culvert” means a culvert whose sides do not meet at its lower edge.

Source. #9714, eff 5-12-10

Env-Wt 902.14 “Permanent crossing” means a crossing that is intended to remain in place for 2 years or more after installation, regardless of the purpose for its installation.

Source. #9714, eff 5-12-10

Env-Wt 902.15 “Pipe arch” means a culvert that has rounded sides and a rounded top with a flat bottom.

Source. #9714, eff 5-12-10

Env-Wt 902.16 “River corridor” means “river corridor” as defined RSA 483:4, XVIII.

Source. #9714, eff 5-12-10

Env-Wt 902.17 “Span structure” means a structure that crosses from the top of one bank to the top of the opposite bank, such that it does not disturb the stream channel or its banks.

Source. #9714, eff 5-12-10

Env-Wt 902.18 “Stream channel” means a channel that carries the bankfull flow.

Source. #9714, eff 5-12-10

Env-Wt 902.19 “Stream enhancement” means stream rehabilitation activities undertaken to improve water quality or ecological function of a watercourse that do not qualify as total stream restoration, including but not limited to in-stream or stream bank stabilization activities that restore one or more of the geomorphic variables such as dimension, pattern, and profile.

Source. #9714, eff 5-12-10

Env-Wt 902.20 “Stream simulation” means a method of designing and constructing a stream crossing structure, in which the structure created within the channel is as similar as possible to the natural channel in both physical structure and function, and which takes into account appropriate bed forms and streambed characteristics so that water depths and velocities within the crossing structure at a variety of flows are comparable with those found in the natural channel upstream and downstream of the stream crossing.

Source. #9714, eff 5-12-10

Env-Wt 902.21 “Temporary crossing” means a crossing that will:

(a) Be used solely for forest management activities, normal agricultural operations, or trail activities, or a combination of such activities; and

(b) Remain in place for less than 2 years after installation.

Source. #9714, eff 5-12-10

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 902.22 “Protected species or habitat” means:

(a) Any threatened wildlife species as defined in RSA 212-A:2, V, any endangered wildlife species as defined in RSA 212-A:2, IV, or any habitat of such species which is determined to be critical by the executive director of the NH department of fish and game (NHF&G) under RSA 212-A:9, III; and

(b) Any protected plant species as defined in RSA 217-A:3, VIII, or any exemplary natural community as identified by the New Hampshire department of resources and economic development, division of forest and lands, natural heritage bureau (NHB).

Source. #9714, eff 5-12-10

Env-Wt 902.23 “Tier one stream crossing” means a crossing that meets the criteria specified in Env-Wt 904.02(a).

Source. #9714, eff 5-12-10

Env-Wt 902.24 “Tier 2 stream crossing” means a crossing that meets the criteria specified in Env-Wt 904.03(a).

Source. #9714, eff 5-12-10

Env-Wt 902.25 “Tier 3 stream crossing” means a crossing that meets the criteria specified in Env-Wt 904.04(a).

Source. #9714, eff 5-12-10

Env-Wt 902.26 “Trail activities” means activities necessary for public-access trail construction and management, including but not limited to cutting roads and pathways through forests, provided such activities are undertaken in compliance with RSA 482-A:3, XII(a) by conforming to the Best Management Practices for Erosion Control During Trail Maintenance and Construction published by the department of resources and economic development (Trail BMPs) and filing the required notice.

Source. #9714, eff 5-12-10

PART Env-Wt 903 STREAM CROSSINGS: CLASSIFICATIONS AND APPLICATIONS

Env-Wt 903.01 Classification of Stream Crossings and Stream Crossing Projects.

(a) Stream crossings shall be classified as tier one, tier 2, or tier 3 based on the location of the project, as specified in Env-Wt 904.02(a), Env-Wt 904.03(a), and Env-Wt 904.04(a), respectively.

(b) A stream crossing project shall be classified as minimum impact, minor impact, or major impact based on (e) through (g), below, regardless of the tier classification of the stream crossing included in the project.

(c) The requirements for the design of a stream crossing and the information that must be submitted with the application shall be based on the tier classification of the crossing, regardless of whether the project is a minimum impact, minor impact, or major impact project, except that if a tier 3 stream crossing is downgraded to a tier 2 or tier one crossing pursuant to Env-Wt 904.04(b) or (c), the design and application submission requirements of the final classification shall apply.

(d) The classification of a stream crossing project as minimum impact, minor impact, or major impact shall be used to determine the fee that must be submitted with the application and how the application is processed.

(e) A project shall be classified as a minimum impact project if (f) and (g), below, do not apply, and the only stream crossing included in the project is:

- (1) A new tier one stream crossing that meets the criteria of Env-Wt 904.02(b);

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (2) A repair or rehabilitation that is classified as a minimum impact project under Env-Wt 904.06(c); or
 - (3) A replacement that is classified as a minimum impact project under Env-Wt 904.07(c).
- (f) A project shall be classified as a minor impact project if (g), below, does not apply, and:
- (1) The only stream crossing included in the project is:
 - a. A new tier one stream crossing for which approval of an alternative design is being sought as specified in Env-Wt 904.02(c);
 - b. A new tier 2 stream crossing that meets the criteria of Env-Wt 904.03(b);
 - c. A replacement tier 2 stream crossing that does not meet the criteria of Env-Wt 904.06;
 - d. A repair or rehabilitation that is classified as a minor impact project under Env-Wt 904.06(d); or
 - e. A replacement that is classified as a minor project under Env-Wt 904.07(d); or
 - (2) Any of the criteria for a minor impact project specified in Env-Wt 303.03 are met.
- (g) A project shall be classified as a major impact project if:
- (1) The stream crossing is a new or replacement tier 3 crossing; or
 - (2) Any of the criteria for a major project specified in Env-Wt 303.02 are met, regardless of the tier classification of the stream crossing that is part of the project.

Source. #9714, eff 5-12-10

Env-Wt 903.02 Application Fees.

- (a) The application fee for a stream crossing project classified as minimum impact shall be as specified in RSA 482-A:3, I(c) for a minimum impact project.
- (b) The application fee for a any stream crossing project that does not qualify as a minimum impact project shall be calculated as specified in RSA 482-A:3, I(c) based upon the sum of the square feet of impacts to the banks and channel bottom and other associated jurisdictional areas.

Source. #9714, eff 5-12-10

Env-Wt 903.03 Information Required for a Stream Crossing Application.

- (a) In addition to the information required in Env-Wt 501.02, for all stream crossing projects the applicant shall submit the following:
 - (1) On the USGS map required by Env-Wt 501.02(a)(4), the approximate boundaries and size of the contributing watershed;
 - (2) Plans showing the following information:
 - a. The scale, north arrow, and at least 3 reference points outside of the construction disturbance area;
 - b. Clearing limits showing all work areas covered by special project requirements with notes;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- c. Structure location with inlet and outlet inverts;
 - d. Extension of channel excavation and filling;
 - e. Road locations, including road edges and centerline;
 - f. Channel work identified including bank erosion control features, grade control, and channel linings; and
 - g. Estimated drainage area at the crossing location;
- (3) Streambed details, with figures, which show the following:
- a. The distance from the top of the right bank to the top of the left bank;
 - b. Approximate elevations, spacing, diameters, and locations of rocks for steps, bankline, and other channel rocks for roughness;
 - c. Details for sediment retention structures, if any, within embedded structures; and
 - d. A visual estimate of dominant channel materials upstream, downstream, and if applicable, within the existing crossing;
- (4) Existing crossing metrics, including:
- a. Existing riparian zone, including the extent and type of existing vegetation surrounding or in the stream bank;
 - b. Existing crossing type and dimensions, including material, length, and dimensions; and
 - c. Existing tailwater control, including its location and materials, and pool configuration;
- (5) The dewatering system, as follows:
- a. Estimates of the maximum flow anticipated during construction, including any summer storm estimates;
 - b. Location, height, and width of the diversion dam;
 - c. Sump locations, including estimate of necessary flow and sump capacity;
 - d. Backwater prevention method; and
 - e. Sediment treatment plan with methods, release point, and extent;
- (6) Erosion and pollution controls, as follows:
- a. Any additional methods of controlling erosion;
 - b. A stormwater management plan, including but not limited to where to cover stockpiles and place straw bales;
 - c. Pollution control methods for pumps, fuel stations, and equipment storage;
- (7) Footings, including the following:
- a. Estimate of bearing capacity; and
 - b. Footing depth and width for bottomless arch or bridge; and
- (8) Structural details of the crossing, including the following:
- a. Structural section, gauge or thickness, and material, minimum and maximum cover limits;

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- b. Structures, drawn to scale, on elevation view showing bed material location relative to structure, and special backfill zones; and
- c. Structural excavation quantity and total excavation estimate.

(b) In addition to the information required in Env-Wt 501.02 and (a), above, the applicant for any tier 3 - major impact stream crossing project shall provide the following additional information:

- (1) Structure location including inlet and outlet inverts;
- (2) Streambed details, with figures, which show the streambed simulation materials and its extent, depth and length within the crossing;
- (3) Road locations, including road edges and centerline;
- (4) Channel information for the design reference reach including bankfull width, bankfull depth, entrenchment ratio, sinuosity, flood prone width, a long profile that is 7-10 bankfull widths long with grade controls, pools and gradients shown, an appropriate reference reach cross section with channel details, reference reach pebble count, including a narrative explaining why the cross section is considered representative;
- (5) Pebble count upstream, downstream, and if applicable, within the existing crossing; and
- (6) The hydraulic calculation for the bypass pipe or channel size, length and gradient.

Source. #9714, eff 5-12-10

PART Env-Wt 904 DESIGN AND CONSTRUCTION OF STREAM CROSSINGS

Env-Wt 904.01 General Design Considerations. All stream crossings shall be designed and constructed so as to:

- (a) Not be a barrier to sediment transport;
- (b) Prevent the restriction of high flows and maintain existing low flows;
- (c) Not obstruct or otherwise substantially disrupt the movement of aquatic life indigenous to the waterbody beyond the actual duration of construction;
- (d) Not cause an increase in the frequency of flooding or overtopping of banks;
- (e) Preserve watercourse connectivity where it currently exists;
- (f) Restore watercourse connectivity where:
 - (1) Connectivity previously was disrupted as a result of human activity(ies); and
 - (2) Restoration of connectivity will benefit aquatic life upstream or downstream of the crossing, or both;
- (g) Not cause erosion, aggradation, or scouring upstream or downstream of the crossing; and
- (h) Not cause water quality degradation.

Source. #9714, eff 5-12-10

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

Env-Wt 904.02 Tier One Stream Crossings.

(a) A tier one stream crossing shall be a crossing located on a watercourse where the contributing watershed is less than or equal to 200 acres.

(b) Tier one stream crossings shall:

(1) Meet the general design considerations specified in Env-Wt 904.01;

(2) Be sized so as to accommodate the greater of:

- a. The 50-year frequency flood; or
- b. Applicable federal, state, or local requirements; and

(3) Be a span structure, pipe arch, open-bottom culvert, or closed-bottom culvert, with or without being embedded with stream simulation.

(c) An applicant shall use a design that does not meet the criteria of (b)(1) or (2)a., above, only if a request for approval of the alternate design is submitted and approved as specified in Env-Wt 904.09. Any application requesting approval for an alternative design for a tier one stream crossing shall constitute an application for a minor impact project.

(d) An existing legal crossing that would be classified as tier one under (a), above, may be repaired or rehabilitated pursuant to Env-Wt 904.06 or replaced in kind pursuant to Env-Wt 904.07.

(e) Compensatory mitigation shall not be required for any tier one minimum impact project.

(f) Construction involving in-stream work shall be limited to low flow conditions.

(g) Crossings that require excavation in flowing water shall use best management practices, such as temporary by-pass pipes, culverts, or cofferdams, so as to maintain normal flows and prevent water quality degradation.

Source. #9714, eff 5-12-10

Env-Wt 904.03 Tier 2 Stream Crossings.

(a) A tier 2 stream crossing shall be a crossing located on a watercourse where the contributing watershed is greater than 200 acres and less than 640 acres.

(b) Subject to (c), below, any new tier 2 stream crossing and any replacement tier 2 stream crossing that does not meet the criteria specified for in-kind replacement in Env-Wt 904.07 shall be a span structure, pipe arch embedded with stream simulation, open-bottom culvert with stream simulation, or closed-bottom culvert embedded with stream simulation.

(c) The applicant shall use an alternative design only if a request is submitted and approved as specified in Env-Wt 904.09.

(d) An existing legal crossing that would be classified as tier 2 under (a), above, may be repaired or rehabilitated pursuant to Env-Wt 904.06 or replaced in kind pursuant to Env-Wt 904.07.

(e) Compensatory mitigation shall not be required for:

(1) Any new tier 2 stream crossing that meets the requirements of this section and Env-Wt 904.05; or

(2) Any tier 2 stream crossing that is repaired or rehabilitated pursuant to Env-Wt 904.06 or replaced in kind pursuant to Env-Wt 904.07.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(f) Plans for a tier 2 stream crossing shall be stamped by a professional engineer who is licensed under RSA 310-A to practice in New Hampshire.

(g) Construction involving in-stream work shall be limited to low flow conditions.

(h) Crossings that require excavation in flowing water shall use best management practices, such as temporary by-pass pipes, culverts, or cofferdams, so as to maintain normal flows and prevent water quality degradation.

Source. #9714, eff 5-12-10

Env-Wt 904.04 Tier 3 Stream Crossings.

(a) Subject to (b), below, a tier 3 stream crossing shall be a crossing located:

(1) On a watercourse where the contributing watershed is 640 acres or greater;

(2) Within a designated river corridor;

(3) On a watercourse that is listed on the surface water assessment 305(b) report in effect at the time of application as not attaining surface water quality standards for aquatic life based on one or more of the following:

a. Benthic macroinvertebrate index of biological integrity;

b. Fish assemblage index of biological integrity;

c. Habitat assessment; or

d. Stream channel stability;

(4) Within a 100-year flood plain or fluvial erosion hazard zone;

(5) In a jurisdictional area having any protected species or habitat; or

(6) In or within 100 feet of a wetland that has been designated by a municipality as a prime wetland pursuant to RSA 482-A:15, unless a waiver has been granted pursuant to RSA 482-A:11, IV(b).

(b) The applicant for a project in which a stream crossing is categorized as tier 3 based solely on (a)(3) or (4), above, may request that the crossing be categorized as a tier one or tier 2 stream crossing, as applicable based on watershed size, if there are no impacts to the resource or the impacts to the resource are specifically mitigated in accordance with Env-Wt 800.

(c) If an applicant for a project in which a stream crossing is categorized as tier 3 based solely on (a)(5), above, wishes to have the crossing categorized as tier one or tier 2 based on watershed size, the applicant shall consult with the NHB if any protected plant species or habitat is impacted or the NHF&G if any protected wildlife species or habitat is impacted. The department shall downgrade the stream crossing to tier one or tier 2, with mitigation if necessary, if the NHB or NHF&G, as applicable, recommend such a downgrade.

(d) A tier 3 stream crossing shall be a span structure or an open-bottomed culvert with stream simulation, not a closed-bottom culvert or pipe arch.

(e) The applicant shall use an alternative design only if the request is submitted and approved as specified in Env-Wt 904.09.

(f) Compensatory mitigation shall not be required for:

(1) Any new tier 3 stream crossing that is self-mitigating; or

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(2) Any replacement of a crossing that met all applicable requirements when originally installed but is in a location that results in the crossing being classified as tier 3 under these rules, provided the proposed stream crossing meets the requirements of Env-Wt 904.08.

(g) Plans for a tier 3 stream crossing shall be stamped by a professional engineer who is licensed under RSA 310-A to practice in New Hampshire.

(h) Construction involving in-stream work shall be limited to low flow conditions.

(i) Crossings that require excavation in flowing water shall use best management practices, such as temporary by-pass pipes, culverts, or cofferdams, so as to maintain normal flows and prevent water quality degradation.

Source. #9714, eff 5-12-10

Env-Wt 904.05 Design Criteria for Tier 2 and Tier 3 Stream Crossings. New tier 2 stream crossings, replacement tier 2 stream crossings that do not meet the requirements of Env-Wt 904.07, and new and replacement tier 3 stream crossings shall be designed and constructed:

(a) In accordance with the NH Stream Crossing Guidelines, University of New Hampshire, May 2009, which can be downloaded for free at <http://des.nh.gov/organization/divisions/water/wetlands/documents/nh-stream-crossings.pdf>;

(b) With the bed forms and streambed characteristics necessary to cause water depths and velocities within the crossing structure at a variety of flows to be comparable to those found in the natural channel upstream and downstream of the stream crossing;

(c) To provide a vegetated bank on both sides of the watercourse to allow for wildlife passage;

(d) To preserve the natural alignment and gradient of the stream channel, so as to accommodate natural flow regimes and the functioning of the natural floodplain;

(e) To accommodate the 100-year frequency flood, to ensure that:

(1) There is no increase in flood stages on abutting properties; and

(2) Flow and sediment transport characteristics will not be affected in a manner which could adversely affect channel stability;

(f) To simulate a natural stream channel; and

(g) So as not to alter sediment transport competence.

Source. #9714, eff 5-12-10

Env-Wt 904.06 Repair or Rehabilitation of Tier One or Tier 2 Existing Legal Stream Crossings.

(a) An existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be repaired or rehabilitated pursuant to this section only if the crossing does not have a history of causing or contributing to flooding that damages the crossing or other human infrastructure.

(b) Repair or rehabilitation of a culvert or other closed-bottom stream crossing structure pursuant to this section may be accomplished by concrete repair, slip lining, cured-in-place lining, or concrete invert lining, or any combination thereof, except that slip lining shall not occur more than once.

(c) An existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be repaired or rehabilitated as a minimum impact project only if the stream crossing as proposed to be repaired or rehabilitated will:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Meet the general criteria specified in Env-Wt 904.01;
- (2) Not diminish the hydraulic capacity of the crossing; and
- (3) Not diminish the capacity of the crossing to accommodate aquatic life passage.

(d) If the criteria of (c), above, cannot be met, an existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be repaired or rehabilitated as a minor impact project if the stream crossing as proposed to be repaired or rehabilitated will:

- (1) Not adversely impact the stability of the stream banks or stream bed upstream or downstream of the crossing; and
- (2) Not cause an increase in the frequency of flooding or overtopping of banks.

Source. #9714, eff 5-12-10

Env-Wt 904.07 In-Kind Replacement of Tier One or Tier 2 Existing Legal Stream Crossings.

(a) If the routine roadway/railway maintenance exemption of Env-Wt 303.05(q) is not available, an existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) may be replaced pursuant to this section, provided that the existing crossing does not have a history of causing or contributing to flooding that damages the crossing or other human infrastructure.

(b) The replacement stream crossing shall be:

- (1) The same size and type as the existing stream crossing; or
- (2) An upgrade of the existing stream crossing, for example by replacing a closed-bottom culvert that did not have stream simulation with a span, or with a pipe arch or culvert with stream simulation.

(c) An existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be replaced as a minimum impact project only if the stream crossing as proposed to be replaced will:

- (1) Meet the general criteria specified in Env-Wt 904.01;
- (2) Not diminish the hydraulic capacity of the crossing; and
- (3) Not diminish the capacity of the crossing to accommodate aquatic life passage.

(d) If the criteria of (c), above, cannot be met, an existing legal crossing that would be classified as tier one under Env-Wt 904.02(a) or as tier 2 under Env-Wt 904.03(a) shall be replaced as a minor impact project if the stream crossing as proposed to be replaced will:

- (1) Not adversely impact the stability of the stream banks or stream bed upstream or downstream of the crossing; and
- (2) Not cause an increase in the frequency of flooding or overtopping of banks.

Source. #9714, eff 5-12-10

Env-Wt 904.08 Replacing Tier 3 Existing Legal Stream Crossings.

(a) As part of an application for replacing an existing legal crossing that would be classified as a tier 3 stream crossing under Env-Wt 904.04(a), the applicant shall provide an assessment of the geomorphic

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

compatibility of the existing stream crossing based on the NH Stream Crossing Guidelines, University of New Hampshire, May 2009, which can be downloaded for free at http://www.unh.edu/erg/stream_restoration/.

(b) A replacement tier 3 stream crossing shall comply with the specific design criteria in Env-Wt 904.05, unless a request for an alternative design is submitted and approved as specified in Env-Wt 904.09.

Source. #9714, eff 5-12-10

Env-Wt 904.09 Alternative Designs.

(a) If the applicant believes that installing the structure specified in the applicable rule is not practicable, as that term is defined in Env-Wt 101.73, the applicant may propose an alternative design in accordance with this section.

(b) To request approval of an alternative design, the applicant shall submit a written request to the department, accompanied by a technical report prepared by an environmental scientist or professional engineer that clearly explains how the proposed alternative meets the criteria for approval specified in (c) or (d), below, as applicable.

(c) The department shall approve an alternative design for a new tier 2 crossing, a replacement tier 2 crossing that does not meet the requirements of Env-Wt 904.07, or a new or replacement tier 3 crossing if:

- (1) The report submitted pursuant to (b), above, demonstrates that adhering to the stated requirements is not practicable;
- (2) The proposed alternative meets the specific design criteria specified in Env-Wt 904.05 to the maximum extent practicable; and
- (3) The alternative design meets the general design criteria specified in Env-Wt 904.01.

(d) The department shall approve an alternative design for a new tier one crossing or a replacement tier one crossing that does not meet the requirements of Env-Wt 904.07 if:

- (1) The report submitted pursuant to (b), above, demonstrates that adhering to the rules is not practicable; and
- (2) The alternative design meets the general design criteria specified in Env-Wt 904.01 to the maximum extent practicable.

(e) The department shall notify the applicant in writing of its decision on the request. If the request is denied, the notice shall specify the reason(s) for the denial. If the request is approved, the permit issued shall include such conditions as are needed to ensure that the project's impacts are minimized.

Source. #9714, eff 5-12-10

PART Env-Wt 905 CERTIFIED CULVERT MAINTAINER PROGRAM

Env-Wt 905.01 Applicability.

(a) The rules in this part shall apply to any employee of a state or municipal public works agency who wishes to be certified to maintain, repair, replace, or modify culverts as provided in RSA 482-A:3, XVII, reprinted in Appendix C.

(b) Nothing in this part shall be construed to prevent routine roadway and railway maintenance activities from being undertaken in accordance with Env-Wt 303.05(q).

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) Nothing in this part shall be construed to prevent a certified individual from undertaking culvert maintenance activities for a state or municipal public works agency other than the one by which the individual is employed, for example pursuant to an inter-municipal agreement.

Source. #10491, eff 12-21-14

Env-Wt 905.02 Definitions.

(a) “Approved provider” means an organization that has been approved by the department pursuant to Env-Wt 905.11 to offer one or more of the courses, including field work, necessary for an individual to become knowledgeable in one or more of the areas identified in Env-Wt 905.03(b).

(b) “Certificate” means the document identified in RSA 482-A:3, XVII - XIX as a certification or installer’s permit, which is issued by the department to authorize a state or municipal public works employee to maintain, repair, replace, or modify culverts as provided in RSA 482-A:3, XVII - XIX.

(c) “Certified culvert maintainer program” means the program established by RSA 482-A:3, XVII - XIX to certify individuals to maintain, repair, replace, or modify culverts.

(d) “Culvert project” means a discrete endeavor undertaken to maintain, repair, replace, or modify a specific culvert.

(e) “Incidental damage” means disturbances to areas outside of the immediate work area that are corrected in the normal course of a culvert project. The term does not include any disturbance or other action that:

- (1) Causes any injury to any individual who is not working on the culvert project;
- (2) Causes injury to an individual who is working on the culvert project to the extent that the individual is hospitalized or otherwise cannot work; or
- (3) Results in harm to public or private property in an amount that triggers an insurance claim by the state or municipal public works agency undertaking the culvert project or by the owner of the property.

(f) “Public way” means a paved or unpaved path upon which travel occurs, including but not limited to lanes, alleys, streets, avenues, boulevards, roads, turnpikes, highways, and railway beds, that is maintained by a state or municipal public works agency.

Source. #10491, eff 12-21-14

Env-Wt 905.03 Qualifications for Initial Certificate. Any state or municipal public works employee who wishes to become qualified to maintain culverts under RSA 482-A:3, XVII, as reprinted in Appendix B, shall:

(a) Fulfill the requirements of the certification program established in this part or be a professional engineer who is duly licensed by the New Hampshire board of professional engineers;

(b) Be knowledgeable in the following areas:

- (1) State rules and federal regulations governing culvert replacement and maintenance;
- (2) Culvert purpose and function;
- (3) Culvert design, including proper sizing, and installation;
- (4) Culvert replacement and maintenance techniques; and
- (5) Best management practices for culvert replacement and maintenance, including identifying those areas that are not within the scope of the BMP manual; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (c) Apply to the department for a certificate in accordance with Env-Wt 905.04.

Source. #10491, eff 12-21-14

Env-Wt 905.04 Application for Initial Certificate.

- (a) Any individual wishing to be certified shall complete and submit an application form to the department that:

(1) Provides the information and documentation specified in (b), below, on or with an application form obtained from the department; and

(2) Has been signed by the applicant as specified in Env-Wt 905.05.

- (b) The information and documentation required by (a)(1) shall be as follows:

(1) The applicant's name, mailing address, daytime telephone number, and email address;

(2) The name, address, and daytime telephone number of the state or municipal public works agency by which the individual is employed;

(3) If the applicant wishes to qualify as a professional engineer, written confirmation from the New Hampshire board professional engineers that the applicant is a professional engineer licensed by the board and in good standing; and

(4) If the applicant wishes to qualify based on specific training, documentation from the approved provider(s) whose course(s) the applicant attended which demonstrate that the applicant has met the requirements for certification under this program.

Source. #10491, eff 12-21-14

Env-Wt 905.05 Signature Required.

- (a) The applicant for an initial or renewal certificate shall sign and date the application form.

- (b) The applicant's signature shall constitute certification that:

(1) The information provided on or with the application form, as applicable, is true, complete, and not misleading to the best of the applicant's knowledge; and

(2) The applicant understands that:

a. The submission of false, incomplete, or misleading information is grounds for denying the application or revoking any certificate that is issued based on the information; and

b. He or she is subject to the penalties specified in RSA 641:3, as reprinted in Appendix C, for making unsworn false statements.

Source. #10491, eff 12-21-14

Env-Wt 905.06 Issuance of Certificate.

- (a) Within 10 working days of receiving a complete application as specified in Env-Wt 905.04(a), the department shall determine whether the information submitted demonstrates that the applicant meets the requirements for becoming a certified culvert maintainer specified in RSA 482-A:3, XVII - XIX and this part.

- (b) If the department determines that the applicant meets the requirements, the department shall issue a certificate that identifies the individual as a certified culvert maintainer.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) As provided in RSA 482-A:3, XIX and subject to (d) and (e), below, certificates shall be issued for a 2-year term, from January 1 of the year of issue through December 31 of the following year.

(d) An initial certificate shall be issued for a term that begins on the date of issuance and extends through December 31 of the year following the year of issuance.

(e) A certificate shall remain valid for its full term provided the certified individual remains employed by a state or municipal public works agency, unless sooner suspended or revoked pursuant to Env-Wt 905.10.

(f) If the department determines that the individual does not meet the requirements for becoming a certified culvert maintainer, the department shall send a written notice to the applicant that:

- (1) Specifies the reason(s) why the applicant was not certified; and
- (2) Informs the individual that an appeal may be taken as provided in RSA 482-A:10 and RSA 21-O:14.

Source. #10491, eff 12-21-14

Env-Wt 905.07 Certificate Renewal; Continuing Education Required.

(a) As provided in RSA 482-A:3, XIX, certificates shall be renewable.

(b) To apply for renewal, a certified culvert maintainer shall submit an application for renewal as specified in (c) and (d), below, to the department no later than December 15 of the year of expiration.

(c) An applicant for renewal shall provide the following information and documentation to the department on or with a form obtained from the department:

- (1) The applicant's name, mailing address, daytime telephone number, and email address;
- (2) The name, address, and daytime telephone number of the state or municipal public works agency by which the applicant is employed;
- (3) Documentation that the applicant has completed 2 hours of instruction from an approved provider in one or more of the areas identified in Env-Wt 905.03(b) within the 2-year term of the individual's current certificate; and
- (4) A statement that the applicant currently holds a valid certificate as a culvert maintainer and has not acted or failed to act in any way that would constitute just cause to suspend, revoke, or refuse to renew the certificate.

(d) The applicant shall sign the application for renewal in accordance with Env-Wt 905.05.

(e) Within 10 working days of receiving a complete application for a renewal certificate as specified in (b) through (d), above, the department shall determine whether the information submitted demonstrates that the applicant:

- (1) Currently holds a valid culvert maintainer certificate;
- (2) Is employed at the time of renewal by a state or municipal public works agency;
- (3) Has filed all required reports; and
- (4) Has not acted or failed to act in any way that would constitute just cause to suspend, revoke, or refuse to renew the certificate.

(f) If the department determines that the applicant meets the requirements, the department shall issue a certificate that:

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- (1) Identifies the individual as a certified culvert maintainer; and
- (2) As provided in RSA 482-A:3, XIX, is valid from January 1 of the year of issue through December 31 of the following year.

(g) If the department determines that the applicant does not meet the requirements for renewal, the department shall send a written notice to the applicant that:

- (1) Specifies the reason(s) why the applicant's certificate was not renewed; and
- (2) Informs the individual that an appeal may be taken as provided in RSA 482-A:10 and RSA 21-O:14.

Source. #10491, eff 12-21-14

Env-Wt 905.08 Obligations and Responsibilities of Certified Individuals. Each individual certified under this part shall:

- (a) Undertake or supervise work performed pursuant to RSA 482-A:3, XVII;
- (b) Use reasonable care, judgment, and application of his or her knowledge when maintaining, repairing, replacing, or modifying a culvert;
- (c) Not submit any information that is false, incomplete, or misleading on, in, or with any application for an initial or renewal certificate or quarterly report;
- (d) Repair, replace, or modify each culvert in compliance with:
 - (1) RSA 482-A, exclusive of the requirement to obtain a permit;
 - (2) Env-Wt 100 et seq., exclusive of the requirement pertaining to applying for and obtaining a permit; and
 - (3) Best management practices to protect water quality; and
- (e) Correct any work that is identified as defective by the department or by the state or municipal public works agency for which the work was performed.

Source. #10491, eff 12-21-14

Env-Wt 905.09 Quarterly Reporting Required.

- (a) As required by RSA 482-A:3, XVIII, all individuals certified under this program shall submit a quarterly report to the department to fully identify the work performed in the prior quarter.
- (b) If more than one certified individual works on or supervises the same culvert project, each individual shall identify the project in her or his quarterly report.
- (c) Quarterly reporting periods and due dates for reports shall be as specified in Table 905-1, below:

Table 905-1: Quarterly Reporting Periods with Corresponding Due Date for Report

Reporting Period	Report Due
January 1 through March 31	April 15
April 1 through June 30	July 15
July 1 through September 30	October 15
October 1 through December 31	January 15

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(d) Each quarterly report shall contain the following information for each culvert maintained, repaired, replaced, or modified during the reporting period:

- (1) The state or municipal public works agency for which the work was done;
- (2) The municipality in which the work was done;
- (3) The name or other identification of the public way that crosses the culvert;
- (4) The location of the culvert, as follows:
 - a. If the public way has numbered buildings along it, the numbers of the 2 closest buildings that bracket the culvert;
 - b. If the public way has utility poles along it, the identification numbers of the 2 closest utility poles that bracket the culvert;
 - c. If there are no numbered buildings or utility poles but the public way has mile markers, the numbers of the 2 closest markers that bracket the culvert; and
 - d. If none of the information identified in a. through c., above, is available, the distance from the culvert to the nearest identifiable intersection, to the nearest 0.1 mile, plus any other information that is helpful in locating the culvert.
- (4) Whether the culvert was maintained, repaired, replaced, or modified;
- (5) Whether the work was done as part of a planned routine maintenance procedure or was unexpected;
- (6) If the work was not part of a planned routine maintenance procedure, an assessment of what caused the culvert to need to be repaired, replaced, or modified;
- (7) The size, type, and condition of the culvert prior to the maintenance, repair, replacement, or modification; and
- (8) The size, type, and condition of the culvert following the maintenance, repair, replacement, or modification.

Source. #10491, eff 12-21-14

Env-Wt 905.10 Suspension, Revocation, or Refusal to Renew Certificate.

(a) As provided in RSA 482-A:3, XIX, a certificate issued under this part may be suspended, revoked, or not renewed for just cause.

(b) Just cause to suspend, revoke, or refuse to renew a certificate shall include the following;

- (1) Installing culverts in violation of the requirements specified in Env-Wt 905.08(d);
- (2) Refusing to correct defective work;
- (3) Failing to use reasonable care, judgment, and application of his/her knowledge in the performance of his/her duties;
- (4) Failing to submit required quarterly reports;
- (5) Submitting false or misleading information regarding any application for an initial or renewal certificate; and
- (6) Obtaining any certificate through fraud, deceit, or intentional falsification.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(c) If after issuing a certificate the department receives information which indicates that just cause, as specified in (b), above, exists to suspend or revoke the certificate, the department shall proceed in accordance with RSA 541-A:30 and the provisions of Env-C 200 that apply to adjudicative proceedings.

(d) After proceeding in accordance with (c), above, the department shall revoke the certificate if the department determines that the certified individual:

- (1) Intentionally submitted false or misleading information on any application for an initial or renewal certificate or otherwise obtained a certificate through fraud, deceit, or falsification;
- (2) Repaired, replaced, or modified a culvert in violation of the requirements specified in Env-Wt 905.08(d) more than once in any 2-year period or in such a way as to cause water quality violations;
- (3) Refused to correct defective work;
- (4) Failed to use reasonable care, judgment, and application of his/her knowledge when maintaining, repairing, replacing, or modifying a culvert where such failure resulted in more than incidental damage to public or private property; or
- (5) Intentionally submitted false or misleading information on any quarterly report.

(e) An individual whose certificate has been revoked shall not be eligible to reapply for a new certificate for 2 years.

(f) After proceeding in accordance with (c), above, the department shall suspend the certificate if the department determines that the certified individual:

- (1) Negligently or inadvertently submitted false or misleading information regarding any application for an initial or renewal certificate;
- (2) Repaired, replaced, or modified a culvert in violation of RSA 482-A, Env-Wt 100 et seq., and best management practices to protect water quality, but:
 - a. Did not do so more than once in any 2-year period; and
 - b. Did not cause water quality violations;
- (3) Failed to use reasonable care, judgment, and application of his/her knowledge when maintaining, repairing, replacing, or modifying a culvert, where such failure resulted in no damage or only incidental damage to public or private property;
- (4) Negligently or inadvertently submitted false or misleading information on any quarterly report; or
- (5) Failed to submit required quarterly reports.

(g) If a certificate is suspended pursuant to (f), above, or (i)(2), below, the department shall not reinstate the certificate until the certified individual:

- (1) Remedies all violations, including as applicable:
 - a. Providing accurate and complete information regarding an application for an initial or renewal certificate;
 - b. Correcting any defective work that has not already been corrected;
 - c. Providing corrected quarterly reports; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

d. Submitting all required quarterly reports;

(2) Completes an extra 2 hours of instruction from an approved provider in the area in which the reason for the suspension occurred; and

(3) Submits a written request to the department requesting that the certificate be reinstated, together with documentation that the requirements of (1) and (2), above, have been met.

(h) If after receiving a request for renewal of a certificate the department receives information which indicates that just cause, as specified in (b), above, exists to refuse to renew the certificate, the department shall proceed in accordance with (c), above.

(i) After proceeding in accordance with (c), above, the department shall:

(1) Refuse to renew the certificate, if the department determines that one or more of the reasons to revoke a certificate, as listed in (d), above, applies; or

(2) Renew the certificate and suspend it, if the department determines that one or more of the reasons to suspend a certificate, as listed in (f), above, applies.

(j) An individual whose certificate has been refused renewal shall not be eligible to reapply for a new certificate for 2 years.

(k) If the department renews a certificate and suspends it as specified in (i)(2), above, the department shall not reinstate the certificate until the certified individual has complied with (g)(1)-(3), above.

Source. #10491, eff 12-21-14

Env-Wt 905.11 Designation as Approved Provider.

(a) An organization that wishes to become an approved provider shall apply as specified in (d), below.

(b) Within 45 days of receiving a complete application to become an approved provider, the department shall:

(1) Determine whether the applicant has met the criteria specified in (e), below; and

(2) Notify the applicant in writing of its determination.

(c) If the department determines that the applicant has not met the criteria specified in (e), below, the notice sent pursuant to (b)(2) shall specify the reason(s) for the determination.

(d) To apply to become an approved provider, an organization shall submit the following in writing to the department:

(1) A description of the organization, including:

a. The organization's name, mailing address, and daytime telephone number; and

b. If the organization is required by RSA 292, RSA 293, RSA 293-A, or other applicable provision of New Hampshire law to register with the New Hampshire secretary of state, proof of being registered and in good standing to do business in New Hampshire.

(2) The name, mailing address, daytime telephone number, and email address of an individual at the organization who can be contacted regarding the application;

(3) If approval is being sought for an entire curriculum, a list of the courses to be offered; and

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

(4) A complete description of each course for which the organization is seeking approval, including:

- a. The name of the course;
- b. The name and qualifications of each individual who will present the course;
- c. The length of time attendees of the course will be under the direct supervision of the instructor;
- d. A syllabus for the course and the written materials to be used in the course;
- e. The method to be used to evaluate attendees at the conclusion of the course; and
- f. The format the organization will use to provide the documentation required by Env-Wt 905.04(b)(3)a. and Env-Wt 905.07(c)(3).

(e) The department shall designate an organization as an approved provider for the proposed curriculum or for one or more specific courses if the information submitted demonstrates that the curriculum or course(s), as applicable, will impart the information necessary for attendees to become knowledgeable in one or more of the areas identified in Env-Wt 905.03(b).

(f) An organization that has received approval for less than all of the courses it offers shall be an approved provider only as to the courses that have been submitted pursuant to Env-Wt 905.11(d)(4) and approved by the department.

Source. #10491, eff 12-21-14

APPENDIX A: STATUTES IMPLEMENTED

RULE Section(s)	State Statute Implemented
Env-Wt 900 (see Part below for specific paragraphs)	RSA 482-A:1 & 3; RSA 482-A:11
Env-Wt 905	RSA 482-A:3, XVII through XIX

APPENDIX B: INCORPORATION BY REFERENCE INFORMATION

[None in this Part]

APPENDIX C: STATUTORY PROVISIONS ESTABLISHING THE CERTIFIED CULVERT INSTALLATION PROGRAM

RSA 482-A:3:

XVII. State and municipal public works employees who have fulfilled the requirements of a certification program developed by the department may maintain, repair, replace, or modify culverts up to a maximum diameter of 48 inches, or the hydraulic equivalent, as long as the structure can pass flows from the contributing watershed without causing damage to upstream or downstream properties, and in accordance with best management practices to protect water quality, without prior notification to the department.

XVIII. The department shall develop an installer’s certification program, in accordance with paragraph XVII, and shall determine the educational requirements for certification, including continuing education requirements. Professional engineers who are duly licensed by the New Hampshire board of professional engineers are exempt from the program requirements of this section. All certified individuals who perform such work shall submit a quarterly report to the department fully identifying work that they performed during each quarter and documentation of continuing education requirements.

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

XIX. The department shall issue an installer's permit to any individual who submits an application provided by the department, and has satisfactorily completed the program in accordance with paragraphs XVII and XVIII. Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, and documentation of compliance with the continuing education requirement of paragraph XVIII. The installer's permit may be suspended, revoked, or not renewed for just cause, including, but not limited to, the installation of culverts in violation of this chapter or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke, or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend, or not renew a permit may be taken pursuant to RSA 21-O:14.

APPENDIX D: ADDITIONAL APPLICABLE STATUTE

RSA 641:3 Unsworn Falsification. – A person is guilty of a misdemeanor if:

I. He or she makes a written or electronic false statement which he or she does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his or her official function, he or she:

(a) Makes any written or electronic false statement which he or she does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he or she knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.

III. No person shall be guilty under this section if he or she retracts the falsification before it becomes manifest that the falsification was or would be exposed.