

Readopt with amendment Env-Wt 201.01, effective 12-15-19 (Document #12802), to read as follows:

Env-Wt 201.01 Purpose. The purpose of this chapter is to establish procedures for actions arising under RSA 482-A relative to:

- (a) ~~Permit application~~***Non-adjudicative*** hearings;
- (b) ~~Procedures for processing remands from the New Hampshire wetlands council (council)~~***Appeals of permitting and enforcement decisions;***
- (c) Requests for waivers of requirements established in subtitle Env-Wt; and
- (d) Requests for waivers under RSA 482-A:26, III(b).

Readopt with amendment Env-Wt 202, effective 12-15-19 (Document #12802), to read as follows:

PART Env-Wt 202 ~~PERMIT APPLICATION~~***NON-ADJUDICATIVE*** HEARINGS

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

- (a) ~~Whenever the department determines that a hearing would be helpful in clarifying the application, as contemplated by RSA 482-A:3, XIV(a)(3)(C) or RSA 482-A:3, XIV(a)(4)(C), as applicable; or~~

~~—(b)—~~As required by RSA 482-A:8, for any project that:

- (1) Would have a significant environmental impact, as defined in Env-Wt 104, on the resources protected by RSA 482-A; or
- (2) Is of substantial public interest, as defined in Env-Wt 104.

- (b) ***As required by RSA 482-A:17, RSA 482-A:22, and RSA 482-A:22-a.***

Env-Wt 202.02 Permit Application Hearings: Timing.

- (a) The department shall issue a hearing notice ***and hold a public hearing*** ~~for any hearing held~~ under Env-Wt 202.01(a) within the time established in RSA 482-A:3, XIV(a)(3)(C) or RSA 482-A:3, XIV(a)(4)(C), as applicable.

~~—(b)—~~ The department shall issue a hearing notice ~~for any hearing held under Env-Wt 202.01(b) within 10 calendar days of determining that the project would have a significant environmental impact or is of substantial public interest, as applicable.~~

~~—(c)—~~ The date for any hearing scheduled pursuant to (a) or (b), above, shall be no sooner than 7 working days and no later than 25 working days from the date of the hearing notice.

- (b) ***The department shall issue a hearing notice and hold a public hearing under Env-Wt 202.01(b) in accordance with RSA 482-A:17, RSA 482-A:22, and RSA 482-A:22-a, as applicable.***

Env-Wt 202.03 ~~Permit Application Hearings: Procedures.~~ The department shall conduct any hearing held pursuant to Env-Wt 202.01 in accordance with the provisions of Env-C 200 that apply to non-adjudicative proceedings.

Repeal Env-Wt 203.01, effective 12-15-19 (Document #12802), and renumber Env-Wt 203.02 and Env-Wt 203.03 as Env-Wt 203.01 and Env-Wt 203.02, as follows:

~~Env Wt 203.01 Definitions. For purposes of this part, the following definitions shall apply:~~

~~(a) “Appeal ombudsman” means the department employee designated by the commissioner to review a remand order and to:~~

~~(1) Work with program staff to determine whether additional field work, additional information from any party to the appeal, or consultation with legal counsel is required; and~~

~~(2) Assist program staff with preparing a decision on remand;~~

~~(b) “Appellant” means “appellant” as defined in rules adopted by the council;~~

~~(c) “Party to the appeal” means the appellant and any intervenor(s) and, in an appeal of an issued permit, the permit holder if other than the appellant;~~

~~(d) “Program staff” means the professional technical department staff who implement the program established under RSA 482-A and subtitle Env-Wt; and~~

~~(e) “Remand order” means an order of the council directing the department to reconsider its decision in light of the findings, rulings, and other directives of the council.~~

Repeal Env-Wt 203.04 and Env-Wt 203.05, effective 12-15-19 (Document #12802), as follows:

~~Env Wt 203.04 Action on Remand: Initial Review, Determination of Additional Information Required.~~

~~(a) If a department decision is appealed to the council and the council remands the matter to the department, the commissioner shall designate an appeal ombudsman for that remand order.~~

~~(b) The appeal ombudsman shall review the remand order within 10 working days of:~~

~~(1) The end of the time period for filing a motion for reconsideration of the council’s remand order, if a motion is not filed; or~~

~~(2) If a motion for reconsideration of the council’s remand order is filed, the date any order on reconsideration, including any appeal thereof, becomes final.~~

~~(c) If the appeal ombudsman, in consultation with program staff, determines that preparing a new decision on remand necessitates field work, additional submissions from any party to the appeal, or consultation with legal counsel, or any combination thereof, then:~~

~~(1) Program staff shall:~~

~~a. Conduct such field work as soon as reasonably possible, taking into account weather conditions, site accessibility, and staff availability; and~~

~~b. Identify and request the additional information from any party to the appeal;~~

~~(2) The appeal ombudsman, in coordination with program staff, shall:~~

- a. ~~Identify the issues on which legal advice is needed; and~~
- b. ~~Request a consultation with legal counsel within 10 working days of determining the need for the consultation; and~~
- (3) ~~Consultation with legal counsel shall be completed no later than the completion of the field work and review of additional information, as applicable.~~

~~Env Wt 203.05 Action on Remand: Decision.~~

~~(a) After conducting the review required by Env Wt 203.04(a), if the appeal ombudsman in consultation with program staff determines that no additional field work is needed, no additional information is needed, and no consultation with legal counsel is required, the appeal ombudsman, in consultation with program staff, shall:~~

- (1) ~~Prepare a draft revised decision for internal review within 10 working days of the review; and~~
- (2) ~~Prepare and issue a final decision no later than 25 working days after completion of the draft revised decision.~~

~~(b) After conducting the review required by Env Wt 203.04(a), if the appeal ombudsman in consultation with program staff determined that preparing a new decision on remand necessitated field work, additional submissions, or consultation with legal counsel, or any combination thereof, the appeal ombudsman in consultation with program staff shall:~~

- (1) ~~Prepare a draft revised decision for internal review within 10 working days of:~~
 - a. ~~Completing the field work;~~
 - b. ~~Receiving all required information information; and~~
 - c. ~~Consulting with legal counsel; and~~
- (2) ~~Prepare and issue a final decision no later than 25 working days after preparation of the draft revised decision.~~

~~(c) If the remand is of a permitting decision, the department shall send a copy of the final decision to:~~

- (1) ~~The council;~~
- (2) ~~The appellant;~~
- (3) ~~The permit holder, if other than the appellant; and~~
- (4) ~~Each intervenor.~~

~~(d) If the remand is of an enforcement decision, the department shall send a copy of the final decision to:~~

- (1) ~~The council;~~
- (2) ~~The appellant;~~
- (3) ~~Each person to whom a copy of the original enforcement decision was sent; and~~
- (4) ~~Each intervenor who is not covered by (3), above.~~

Readopt with amendment Env-Wt 204.03, effective 12-15-19 (Document #12802), as amended effective 12-24-19 (Document #12953), to read as follows:

Env-Wt 204.03 Content of Waiver Requests. ~~The person requesting the waiver (requestor)~~***applicant*** shall ~~provide the following information~~***complete and submit to the department the Form NHDES-W-06-083, “Wetlands Rule Waiver or Dwelling Over Water Waiver Request”, as amended November 2023, with the following information:***

- (a) The name, mailing address, daytime telephone number including area code, and email address of the ~~requestor~~***applicant***, and, if no email address is available, the ~~requestor~~***applicant***’s fax number;
- (b) If the ~~requestor~~***applicant*** is making the request on behalf of someone else, the name, mailing address, daytime telephone number including area code, and email address of the person the requestor represents, and, if no email address is available, a fax number for that person;
- (c) The location of the property to which the waiver request relates;
- (d) If the request is to waive a requirement established in subtitle Env-Wt, the number of the specific section of each 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~~ ***and how the applicable criteria in Env-Wt 204.05 are met;***
 - ~~(1) For a waiver to a requirement established in subtitle Env-Wt, an explanation of the operational and economic consequences of complying with the requirement 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~~***alternative*** that is proposed to be substituted for the requirement in subtitle Env-Wt, including written documentation or data, or both, to support the alternative; ***and***
- (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.~~

Readopt with amendment Env-Wt 204.04 and Env-Wt 204.05, effective 12-15-19 (Document #12802), to read as follows:

Env-Wt 204.04 Signature Required. ***Whenever this section requires a signature from an applicant making a request:***

- (a) The ~~requestor~~***applicant*** shall sign and date the request.
- (b) If the ~~requestor~~***applicant*** 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 ~~requester~~***applicant*** 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:~~
 - a. ~~A~~***any*** waiver granted based on false, incomplete, or misleading information shall be subject to revocation; ~~and.~~
 - b. ~~He or she is subject to the penalties for falsification in official matters, currently established in RSA 641.~~

Env-Wt 204.05 Criteria for Waivers to Rules.

~~— (a) The department shall grant a waiver to a requirement established in subtitle Env-Wt that will not extend the duration of a wetlands permit only if:~~

~~(1) Granting a waiver will not result in:~~

~~a. An avoidable adverse impact on:~~

~~1. The environment or natural resources of the state, including but not limited to jurisdictional areas and protected species or habitat; or~~

~~2. 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 only 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.~~

(a) In addition to the requirements of any other applicable rule or law, the department shall grant a waiver of a rule if it determines that:

(1) Granting the waiver will not result in:

a. An adverse effect on public safety or the environment that is greater than following the rule; and

b. An adverse impact on abutting properties that is more significant than that which would result from complying with the rule;

(2) The purposes and intent of RSA 482-A will be met if the waiver is granted; and

(3) Granting the waiver will not have the effect of waiving or modifying a statutory requirement.

(b) If the department determines that an applicant is unable to meet the standard in (a)(1), the department shall grant a waiver of a rule if it determines that:

(1) Due to the special and unique conditions of the property that distinguish it from other properties in the area, application of the rule to the property creates a significant unnecessary hardship on the applicant;

(2) Any adverse effect or impact is minimized to the maximum extent practicable; and

(3) The requirements in (a)(2) and (3) are met.

(c) The department shall grant a waiver pursuant to RSA 482-A:26, III(b) only if it determines that the criteria listed in RSA 482-A:26, III(b) are met.

Repeal Env-Wt 204.06, effective 12-15-19 (Document #12802), and renumber Env-Wt 204.07 and Env-Wt 204.08 as Env-Wt 204.06 and Env-Wt 204.07, as follows:

~~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;~~

~~(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.~~

APPENDIX

Rule(s)	State Statutes Implemented
Env-Wt 201.01, Env-Wt 202.01, Env-Wt 202.02, Env-Wt 202.03, Env-Wt 203.01 (repeal), Env-Wt 203.04 (repeal), Env-Wt 203.01 (repeal)	RSA 482-A:1; RSA 482-A:3; RSA 482-A:8; RSA 482-A:10; RSA 482-A:11
Env-Wt 204.03, Env-Wt 204.04, Env-Wt 204.05, Env-Wt 204.06 (repeal)	RSA 482-A:26, III(b); RSA 541-A:22, IV