

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

(h) Hand raking
see attached
pages.

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

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