

Summary of Proposed Wetland Rule Revisions relative to Lakes
Mike Hodder – February 13, 2018

The proposed wetlands administrative rules represent a thorough and important revision and enhancement of the existing ones. Changes and additions are extensive in some chapters, minimal in others. Some changes will effect private and commercial activities in and near lakes and rivers, ponds and wetlands. Some changes, especially the extensive and incomplete ones found in ENV-Wt 500, could raise extensive and lengthy debate. This overview may supplement DES' own *Summary of Proposed Revisions to Subtitle Env-Wt*.

ENV-WT 100. Definitions. Greatly expanded chapter (note: definitions applying to coastal and tidal matters are moved to ENV-WT 600).

Env-Wt 102.03 "Abutter" and Ev-Wt 102.04 "Abutting property" replace Env-Wt 101.03 "Abutter". More restrictive definition of abutter, ¼ mile boundary around a project and its owner(s) adopted beyond which no one will be recognized as an abutter.

Env-Wt 101.57 "Major docking system" definition enlarged, 100' waterfront threshold eliminated.

Env-Wt 103.20 "Permit jurisdiction" adds distinct effective dates (one new) for wetlands jurisdiction to the old rules' "Grandfathered status".

ENV-WT 200. Procedural clarifications, minor changes.

ENV-WT 300. This chapter has been extensively rewritten. Types of work in wetlands, waivers allowable, types of permits and permitting processes, descriptions and limitations on work in wetlands have been described in detail.

Env-Wt 307.13 Property Line Setbacks. Proposed rules reduce setback requirements, allow for bank stabilization work without the need for abutter approval, allow DES to establish setbacks for navigational safety reasons (current language allowing for increased setbacks if the proposed work "...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." has been eliminated).

ENV-WT 400. Notably updates methods and manuals for wetlands delineations.

Env-Wt 406.03 Wetlands Delineation Not Required for Certain Projects. Proposed rules add categories of exempted work including "Low impact exotic weed control projects" and "Low impact projects at the shoreline of open water, such as a seasonal dock or beach."

ENV-WT 500. A new chapter covering projects in non-tidal jurisdictional areas such as beach and deck construction, water plant management (invasive and natural), breakwaters, private and commercial docking structures (seasonal and permanent), accessory docking structures (i.e., canopies, lifts, etc.), setbacks and frontages, roles of local land use boards in permitting processes for marinas, bank and shoreline reconstructions, basins and dug-in boathouses, boat launches, forestry and agricultural activities, dredging, trails and paths, residential and commercial development projects, dams and public highways. Much of this chapter is unfinished, awaiting public input.

ENV-WT 600. Coastal Lands and Tidal Waters. Outside LMAC purview.

ENV-WT 700. Prime Wetlands. Allows a challenge to the boundaries of a prime wetland but also clarifies and tightens requirements for permitting work in prime wetlands and their buffers. Creates a process for permitting forestry work in a prime wetland or its buffer not otherwise permitted under minimum impact forestry/wetlands rules. Adds text of RSA 482-A:11, I, IV a-c to Appendix (statutory restrictions on DES permitting in prime wetlands).

ENV-WT 800. Compensatory Mitigation and Restoration. Very few changes as current rules were readopted in 2016. Point system for stream crossing mitigations awaits public input.

ENV-WT 900. Stream Crossings. Definitions added, others expanded, detailed descriptions of types of projects and permitting requirements, enhanced design criteria.