

## MEMORANDUM

TO: Michael Rainey, Residuals Management Section  
FROM: Tracie Sales, Rivers Program  
SUBJECT: Re-Adoption of the Sludge Management Rules (Env-Wq 800)  
DATE: July 9, 2015  
CC: Jacquie Colburn, Ted Diers, Gene Forbes, LAC Members, RMAC Members

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On behalf of the Rivers Management and Protection Program (RMPP), thank you for the opportunity to review and comment on the proposed sludge management rules. The RMPP staff conducted a thorough review of the proposed rules and would like to submit several comments and recommendations for your consideration. These comments and recommendations are listed below according to topic. To summarize, the Program recommends that definitions from the Rivers statute be added to the proposed rules; is concerned about communication with Local River Management Advisory Committees (LACs), review timeframes for LACs, and site plan and permit content regarding designated rivers; and believes that RSA 483 should be added to Appendix A. To accompany this letter, a marked-up version of the proposed rules indicating the Program's suggested revisions is attached for your review. These comments are based on our experience working with LACs and from their input to the state on similar permitting programs.

### Definitions

Consider adding the definition of 'Designated river' to the list of definitions in section 802. The full definition can be included in this section, or it can be referenced in Appendix B. Adding this definition will allow the use of this term without having to reference its origin multiple times in the rules.

It is also important to add the definition of 'River corridor' to the rules in section 802, otherwise this term will need to reference RSA 483:4 XVIII each time it is used. Using the full definition is important because the definition is not just the land area within a quarter mile of the river as it is referenced in the proposed 804.04(d)(2), but also can include the 100 year floodplain:

483:4 XVIII. "River corridor" means the river and the land area located within a distance of 1,320 feet of the normal high water mark or to the landward extent of the 100 year floodplain as designated by the Federal Emergency Management Agency, whichever distance is larger.

### Communication with LACs

*Notice of Permit Application* - Thank you for adding section 804.04(d)(2), a specific requirement for DES to notify both the rivers coordinator and the appropriate Local River Management Advisory Committee (LAC) chair when a site or facility permit application is received for a proposed activity that would fall in a designated river corridor. However, given the fact that the 30-day public comment period can begin as soon as the application is deemed complete, a public hearing is no longer required, and LACs are charged with considering these types of permits but are made up of volunteers that meet at most only once per month, more than 30 days is needed for LACs to provide their local perspective by commenting on a site or facility permit. LACs are required to approve these comments at a publicly noticed meeting per RSA 91-A. Possible options include:

- Allow LACs to submit comments to NHDES up to 55 days after the application is deemed complete. Note that this process is compatible with the process currently used by the Land Resources Management Program (LRMP) for permit applications in river corridors and assumes that LACs do not fall under the constraints of the general public. This option should not require a change to the rules, but may require clarification in NHDES Standard Operating Procedure 801.
- If LACs are required to submit comments within the public comment period:
  - Require that LAC chairs are notified of the application earlier in the process by adding the relevant LAC(s) to the list of parties notified of application submittal in 803.01(b); and/or
  - Give LACs the ability to request a public hearing in 803.01(d)(8), 804.04(e)(9) and 804.05(a) the same way a municipal official is allowed.

*Permit Application Communications* - In cases where a site or facility falls within a river corridor, it is important that NHDES copy the LAC chair on subsequent communications with the applicant. Communications should include, at a minimum, notice of incomplete application [804.04(b)] assuming the LAC has previously been notified of the submission of the permit application, notice that a public hearing has been scheduled [804.05], the final decision on the application along with any conditions or limitations [804.06], and subsequent suspensions, transfers or modifications [804.07, 804.08, 804.10, 808.03]. The communication of permit findings and conditions with LACs is of particular importance.

*Notice of Land Application* - Please require that for land application of QC sludge within a designated river corridor, the appropriate LAC Chair is notified at least 14 days before the sludge application the same way that NHDES is notified. This requires an update to section 803.02(b).

#### Access to Permit Application

In order to review the permit application, LAC members need access to the application. For LRMP permits, applicants on designated rivers are required to send a hardcopy of the permit application to the relevant LAC chair. If permit applications are submitted electronically, access to the electronic copy of the permit would likely be adequate in most cases. However, until DES fully converts to e-permitting, both site and facility permit applicants should be required to mail a hard copy to the appropriate LAC chair, and the application should not be deemed complete without proof that the application was sent. The current [list of LAC chairs](#) and their contact information is available on NHDES' Rivers Program webpage, and a link to this information can be included on the application itself as well as on any instructions that accompany the application form. Adding the requirement to send the application to the LAC chair in 806.01(c)(4)c and 808.01(c)(4)c would be necessary.

#### Comment Period

The amount of time for the public to comment on a permit application has diminished from a minimum of 45 days (30 day hearing notice plus 15 days comment period after the hearing) to a minimum of 30 days. While we understand the need to shorten the comment period given the shortened period for application review from 120 days to 60 days, the shortened timeframe places additional burden on the volunteer LAC members. As discussed in the options above, there are ways to provide LACs more than 30 days to review the plan and then prepare and submit comments.

#### Permit Application Forms

In order to assist sludge site and facility permit applicants in determining whether or not they will be subject to restrictions resulting from the provisions of RSA 483, and also ensure that the appropriate LAC chair is notified of the permit application, Rivers Program staff suggest adding a question to the site and facility permit application forms asking the applicant "Is this activity going to take place within a

designated river corridor?” Along with this question, we suggest adding a link on the permit application form to our soon-to-be-published interactive map of designated river corridors. This map allows users to input a street address and determine whether or not the location falls within a designated river corridor. The map also includes a link to the LAC chair contact information. The requirement to include this information on the application form could be inserted in section 806.01(b) and 808.01(b). This question about designated rivers is consistent with LRMP permit application forms.

#### Site/Facility Plans

Given the conditions imposed by RSA 483, site and facility plans should include identification of any designated river within 1320 feet, though identifying the river classification is unimportant for this situation. Adjusting the rules to incorporate this change will require changes in both the text and the formatting of the proposed 806.06(b)(8)e and the proposed 808.06(d)(4).

We support the addition of the requirement for noting the location of the 100 year floodplain in the site plan [806.06(a)(10)]. This is important for applicants near designated rivers, as the extent of river corridor is defined by the 100 year floodplain in some areas. For the same reason, a requirement for noting the 100 year floodplain on facility plans should be added in 808.06.

#### Permit Expiration

Understanding the administrative burden of reviewing permit applications, the Rivers Program agrees with the lengthened site and facility permit timeframes from 5 to 10 years so long as the LACs, where applicable, are included in the permit application process from the beginning, and communications with regard to permit renewals and modifications are also sent to the appropriate LAC chairs, as has been proposed in section 804.04(d)(2).

#### Appendix A

The rules defined by Env-Wq 800 also implement RSA 483. Thus, RSA 483, the Rivers Management and Protection Program, should also be listed in appendix A either in whole, or by specific reference. Some of the specifically referenced portions of RSA 483 include:

- Restrictions on the application of sludge on designated rivers [483:9 VI(c); 483:9-a VII(d); 483:9-aa VII(b); and 483:9-b VII(b)].
- Requirement for state agencies to notify the rivers coordinator of actions that affect a designated river [483:12-a I].
- Requirement for LACs to comment on governmental plans to license facilities that would alter the resource values of a designated river [RSA:8-a III(b)].

Again, thank you for your consideration of our recommendations and comments. If you have any questions or need further clarification, please contact me at 271-8811 or [tracie.sales@des.nh.gov](mailto:tracie.sales@des.nh.gov).

Enclosure