

Comments on Wetlands Rules (Env-Wt 100-900) Initial Proposal

January 3, 2019

Permits by Notification (PBN)

Currently there are 14 project types that qualify as PBNs. Abutters must be notified of a proposed project that qualifies for a PBN, and NHDES staff has 10 days to review the PBN once the Conservation Commission has approved it. LACs are not currently notified about these types of projects [Seasonal Dock, Wall Repair & Replacement, Maintenance Dredge, Temporary Cofferdams, Dock Structure Repair, Dry Hydrants, Non-docking structure, Culvert/ Bridge replacement (unless in designated river corridor), Beach replenishment, Dock anchoring pad, Watercraft Lift, Boatlift, Residential Utility, Utility Maintenance Notice].

The proposed rules eliminate Conservation Commission review, eliminate abutter notification, reduce NHDES review time to 5 days, and add 11 additional project types to those that qualify for PBNs. Currently these 11 project types require either an expedited (EXP) or standard (STD) permit, which means that NHDES staff have 30 to 55 days to review them, and LACs also have time to review them.

New PBNs = Activities that will NO LONGER GET LAC REVIEW:

1. Aquatic Vegetation Removal
2. Single Family Beach/ Deck
3. Bank Stabilization (also no property line setback required in new rules)
4. Boathouse Maintenance
5. Boardwalk Construction
6. Agriculture and new agriculture access roads through wetlands
7. **Residential Access** – up to a 3-lot subdivision
8. **Commercial Access**
9. Developed TBZ work
10. Tier 3 Stream Crossing repair, except those located within 250 feet of a designated river.
(Tier 3 streams are those with contributing watersheds of 640 acres or more.)
11. Culvert invert/outlet Maintenance

Expedited Permits (EXP)

With the shift from standard or expedited to PBNs for those project types listed above, very few projects now qualify for the Expedited notification process. Expedited (EXP) projects have previously required Conservation Commission approval, and NHDES staff had 30 days to review them, which also gave the LAC time to review them. Under the proposed rules, EXP projects now only require notifications with no conservation commission review, and NHDES staff has only 10 days to review the notice and determine whether or not the notice is complete and the project as described qualifies as an EXP.

Proposed EXP project types = Projects with NO LAC REVIEW:

1. Bioengineering
2. Wildlife Pond
3. Restoration projects
4. Coastal Living Shoreline

Local advisory committees have been eliminated from the EXP process and can no longer perform their statutory duty to review projects with the potential to impact a designated river.

Standard Permits (STD)

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For those projects in Designated River corridors still requiring standard permit, the new rules require that applicants provide a copy of the application and final plan to the LAC BEFORE submitting the application to NHDES [Env-Wt 311.01 (f)]. Application review times have been shortened in statute, but the early submission allows the LACs to see the project ahead of time, and have more time for comments.

Note that the current wording of Env-Wt 311.01 (f) unintentionally requires permit applicants to send applications and plans to the LAC for any project within *a half mile* of a designated river. This is an oversight, and a correction has already been requested.

Priority Resource Areas, defined in Env-Wt 103.52, are areas that get some special consideration in the wetland permitting processes. I suggested previously, though no change was made, that Outstanding Resource Waters be added to the definition of Priority Resource Area. Outstanding Resource Waters are surface waters of exceptional recreational or ecological significance and include those located in national forests as well as designated rivers classified as Natural. Wetland projects on designated rivers classified as Natural should also receive a more thorough scrutiny to ensure that water quality and riparian habitat is protected.

Stream Crossings

Under the new rules and the [Best Management Practices for Routine Roadway Maintenance Activities in NH](#) manual, some stream crossing projects that previously would have required a standard permit because they fell in a designated river corridor can now be done under a Notification process governed by the Routine Roadway BMP manual. The problem has been that culverts in designated river corridors are not getting repaired because they cost more, due to the elevated permitting requirements. So the RMAC worked out a compromise with NH DOT such that projects that are within 250 feet of a Designated River must still get a standard permit. Someone has since added the condition that if the crossing is on a Tier 1 stream (Tier 1 streams have a contributing watershed of 200 acres or less), a standard permit is not required. Beyond the 250 foot distance, a stream crossing that would otherwise qualify for a Routine Roadway Maintenance Notification can be done under that notification, but the notification must be sent to the LAC.

Note that the Routine Roadway Maintenance BMP manual is not yet final, despite its title in the link above. You may submit comments on any of the BMP manuals as well as on the rules.

To ensure that the Routine Roadway Maintenance BMP manual and rules are consistent, ADD local advisory committees to list of recipients receiving written notification of the work in the following locations, as LACs must also be notified of all Routine Roadway projects occurring in a designated river corridor, as listed in the BMP manual on page 18:

309.03 (a)(2) The entity undertaking the project provides the landowner, the local governing body, **and** the municipal conservation commission, if any, **and the local advisory committee, if the project is located within a designated river corridor**, with written notification of the general location and the type of work to be conducted not less than 5 working days prior to commencing the work; and

309.04 (a) To register routine roadway and railway maintenance activities, the responsible party shall provide the information in (b), below, to the department **and, if the activity will occur within a designated river corridor, to the local advisory committee**, or a Notification of Routine Roadway and Railway Maintenance Activities form that has been signed and certified as specified in Env-Wt 311.11.

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A Few Odds and End of Proposed Changes

311.13 (a) This rule requires that notice of an amended application must be sent to all of the parties to whom notice of the original application was required, which includes LACs.

312.04 (c)(4) This new section allows LACs to be a grantee of easements and fee simple ownership transfers for compensatory mitigation purposes.

313.04 The rules now allow for a combined wetland and shoreland permit application, where the longer timeframe of the two individual permits is effective. This would allow more efficient use of time by LACs for permit review, and allow more timing flexibility for some of these projects to be reviewed.

There are more items out there that should be addressed on behalf of designated rivers. If you know about them, please share them with the other LAC chairs