

## CHAPTER Env-Wt 200 HEARINGS, APPEALS, AND WAIVER REQUESTS

Statutory Authority: RSA 482-A:11, I; RSA 541-A:16, I(b)

### PART Env-Wt 201 PURPOSE; APPLICABILITY

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

- (a) Non-adjudicative hearings;
- (b) 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).

*amended effective 04-30-2024*

Env-Wt 201.02 Applicability. This chapter shall apply to actions arising under RSA 482-A.

### PART Env-Wt 202 NON-ADJUDICATIVE HEARINGS

Env-Wt 202.01 Hearings: When Held. The department shall conduct a hearing:

- (a) 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.

*amended effective 04-30-2024*

Env-Wt 202.02 Hearings: Timing.

(a) The department shall issue a hearing notice and hold a public hearing 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 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.

*amended effective 04-30-2024*

Env-Wt 202.03 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.

*amended effective 04-30-2024*

### PART Env-Wt 203 APPEALS OF DECISIONS MADE UNDER RSA 482-A

Env-Wt 203.01 Appealing an Enforcement Decision. Any person aggrieved by a department enforcement decision, as defined in RSA 21-O:14, I(b), that is issued under authority established in RSA 482-A who wishes to appeal the decision shall proceed as specified in RSA 482-A:10 and RSA 21-O:14.

Env-Wt 203.02 Appealing a Permitting Decision. Any person aggrieved by a department permitting decision, as defined in RSA 21-O:14, I(a), that is made under RSA 482-A who wishes to appeal the decision shall proceed as specified in RSA 482-A:10 and RSA 21-O:14.

PART Env-Wt 204 WAIVERS

Env-Wt 204.01 Purpose. The purpose of these rules is to establish the procedures for requesting and the criteria for granting or denying the following:

- (a) Waivers to requirements established in subtitle Env-Wt, to accommodate those situations where strict adherence to the requirements would not be in the best interest of the public or the environment; and
- (b) Waivers requested under RSA 482-A:26, III(b).

Env-Wt 204.02 Procedures.

- (a) A request for a waiver shall be filed in accordance with this part by:
  - (1) A person who is or would be directly and adversely affected by the strict application of a requirement established in subtitle Env-Wt; or
  - (2) A person seeking a waiver under RSA 482-A:26, III(b).
- (b) Each request for a waiver shall be submitted in writing to the following address:

DES Wetlands Bureau  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095
- (c) Each request for a waiver shall:
  - (1) Include the information specified in Env-Wt 204.03; and
  - (2) Be signed as specified in Env-Wt 204.04.
- (d) Any request submitted in conjunction with an application for a permit under RSA 482-A:3 or RSA 483-B:5-b shall be submitted with the permit application or as soon thereafter as the need for the waiver to a requirement established in subtitle Env-Wt is identified by the applicant or the department.

Env-Wt 204.03 Content of Waiver Requests. The applicant shall complete and submit to the department the Form NHDES-W-06-083, "Wetlands Rule Waiver or Dwelling Over Water Waiver Request", as amended April 2024, with the following information:

- (a) The name, mailing address, daytime telephone number including area code, and email address of the applicant, and, if no email address is available, the applicant's fax number;
- (b) If the 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 and how the applicable criteria in Env-Wt 204.05 are met;

(g) If applicable, a complete explanation of the 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.

*amended effective 04-30-2024*

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

- (a) The applicant shall sign and date the request;
- (b) If the 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 applicant to act on the person's behalf in connection with the request; and
- (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 any waiver granted based on false, incomplete, or misleading information shall be subject to revocation.

*amended effective 04-30-2024*

Env-Wt 204.05 Criteria for Waivers.

(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 adherence to the applicable 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) Application of the rule to the property will prohibit all reasonable use of the property based on the special and unique conditions of the property that distinguish it from other properties in the area;
- (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.

*amended effective 04-30-2024*

Env-Wt 204.06 Decisions.

(a) The department shall notify the requestor of the decision in writing. If the request is denied, the department shall identify the specific reason(s) for the denial.

(b) If a waiver is granted, the department shall impose such conditions, including time limitations, as the department deems necessary to ensure that the activities conducted pursuant to the waiver will be consistent with the applicable criteria.

Env-Wt 204.07 Suspension, Revocation, or Modifications of Waivers.

(a) Any waiver to a rule or under RSA 482-A:26, III(b) that is issued by the department shall be issued based on the presumption that the information submitted to obtain the approval is true, complete, and not misleading.

(b) If the department receives credible information, after the time has run for requesting reconsideration, which indicates that the information upon which the waiver was based was false, incomplete, or misleading, the department shall notify the person to whom the waiver was issued of:

- (1) The department's intention to suspend, revoke, or modify the waiver, as applicable;
- (2) The basis for the proposed action; and
- (3) The date, time, and place of a hearing on the proposed action at which the person to whom the waiver was issued shall be given an opportunity to show cause why the proposed action should not be taken.

(c) The hearing shall be conducted in accordance with RSA 541-A:31 and the provisions of Env-C 200 that apply to adjudicative proceedings.

(d) After the hearing, the department shall revoke the waiver if the department determines that:

- (1) The waiver would not have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project or activities to which the waiver relates cannot be conducted lawfully even with the waiver.

(e) After the hearing, the department shall suspend the waiver if the department determines that:

- (1) The waiver would have been issued if the information submitted had been true, complete, and not misleading; and
- (2) The project or activities to which the waiver relates can be conducted lawfully with the waiver.

(f) If a waiver is suspended pursuant to (e), above, the department shall reinstate the waiver upon receiving proof from the recipient that the project meets applicable requirements for approval.

(g) If as a result of the hearing the department determines that a modification to the waiver is required in order to bring the waiver and the project into compliance with applicable requirements, the department shall issue a modified waiver.

(h) The department shall notify the recipient in writing of its decision. If the decision is to suspend, revoke, or modify the waiver, the department shall specify the reason(s) for the decision.

(i) Any person aggrieved by the decision who wishes to contest the decision shall proceed as specified in Env-Wt 203.03.

**APPENDIX A**

| <b>Rule(s)</b> | <b>State Statutes Implemented</b>   |
|----------------|---|
| Env-Wt 201     | RSA 482-A:8; RSA 482-A:10; RSA 482-A:11; RSA 482-A:26, III(b); RSA 541-A:22, IV |
| Env-Wt 202     | RSA 482-A:8; RSA 482-A:17 ; RSA 482-A:22; RSA 482-A:22-a                        |
| Env-Wt 203     | RSA 482-A:10  |
| Env-Wt 204     | RSA 482-A:26, III(b); RSA 541-A:22, IV  |