| Notice Number | 2024-87 | Rule Number | Env-Wq 1500 various | | |
|-------------------------------|-------------------|---|---|--|--|
| Agency Name & Department of | | 2. RSA Authority: | RSA 485-A:6, VIII; RSA 485-A:17, I; and RSA 485- A:22, V(a) | | |
| 29 Hazen Drive P.O. Box 95 | | 3. Federal Authority: 4. Type of Action: Adoption Repeal Readoption Readoption w/a | N/A X amendment X | | |
| 5. Short Title: Alter | ration of Terrain | | | | |

2024 97

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

The existing rules in Env-Wq 1500 implement RSA 485-A:17, the Terrain Alteration section of RSA Chapter 485-A titled "Water Pollution and Waste Disposal" and specify the requirements for obtaining an Alteration of Terrain (AOT) permit.

The Department of Environmental Services ("Department") is proposing to readopt with amendment:

- A revised definition of "significantly alter the characteristics of the terrain" in Env-Wq 1502.58 to include clarifying language. The requirements in Env-Wq 1502.58(c) regarding steep slopes only apply to projects within the protected shoreland. The proposed rules clarify how to calculate the 25% slope criteria; cite the "reference line" of the protected shoreland; and exclude activities that already have engineering, such as road construction and utility line work, in accordance with RSA Chapter 483-B.
- An additional requirement in Env-Wq 1504.04 to construct diversion swales above the limits of disturbance for projects that require steep slope and erosion control plans to prevent clean stormwater runoff from flowing over disturbed areas and causing erosion to the slope or from transporting sediment into downslope waterbodies.
- Revised requirements in Env-Wq 1507.03 for projects located within one-quarter mile of a Class A surface water or within the watershed of a surface water that is an Outstanding Resource Water (ORW). The proposed changes would add more flexibility for selecting stormwater treatment practices, including for redevelopment projects. The proposed amendment allows for the technology required in the original rule, any new technology that performs as well or better, or a pollutant loading analysis to show no net increase in nutrient loading.

The Department is also proposing to adopt a schedule of administrative fines at Env-Wq 1512 as required by RSA 485-A:22, V(a), for violations of RSA Chapter 485-A and the administrative rules adopted under the authority of RSA 485-A:6, VIII (Env-Wq 1500). The previous schedule of administrative fines on alteration of terrain was in a cross-program rule Env-C 603.02 in Chapter Env-C 600, which had applied to all programs within the Department. Env-C 603.02 expired in 2008, and the Department is in the process of adopting a schedule of administrative fines for each

agency program individually where required by statute, rather than in cross-program rules. None of the rules in Env-Wq 1500 have expired.

6. (b) Brief description of the groups affected:

The rules affect any person or entity that needs a permit under RSA 485-A:17 or any violators of RSA 485-A:17 or Env-Wq 1500.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

| Rule Section(s) | State Statute(s) Implemented |
|-----------------|------------------------------|
| Env-Wq 1502.58 | RSA 485-A:1; RSA 485-A:17 |
| Env-Wq 1504.04 | RSA 485-A:1; RSA 485-A:17 |
| Env-Wq 1507.03 | RSA 485-A:1; RSA 485-A:17 |
| Env-Wq 1512 | RSA 485-A:22, V(a) |

| 7. | Contact person f | or copies and | l questions | including i | requests to accor | mmodate persons | s with disabilities: |
|----|------------------|---------------|-------------|-------------|-------------------|-----------------|----------------------|
|----|------------------|---------------|-------------|-------------|-------------------|-----------------|----------------------|

Name: Michael Schlosser Title: Permitting Section Supervisor, AOT

Bureau

Address: **Dept. of Environmental Services** Phone #: 603-271-3568

29 Hazen Drive; P.O. Box 95 Fax#: 603-271-2867

Concord, NH 03302-0095 E-mail: Michael.J.Schlosser@des.nh.gov

The rules also can be viewed in PDF at the Public Comment

Opportunities section of the NHDES website at

https://www.des.nh.gov/public-comment-opportunities and

selecting "Rulemaking"

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in

NH)

| 8. | Deadline for | or submission | of materials in | writing or, | , if practical | ole for the ag | gency, in the | electronic | format |
|----|--------------|---------------|-----------------|-------------|----------------|----------------|---------------|------------|--------|
| | specified: | 4:00 PM on | July 3, 2024 | | | | | | |

| Please submit comme | nts to Michael.J.Schlosser@des.nh. | gov |
|---------------------|------------------------------------|-------------------------|
| ☐ Fax | ⊠ E-mail | Other format (specify): |

9. Public hearing scheduled for:

Date and Time: Tuesday, June 25, 2024, at 10:30 AM

Room 208C, DES Offices, 29 Hazen Drive, Concord, NH

<u>NOTE</u>: NHDES security procedures require all visitors to sign in and present photo identification (such as a driver's license). If you plan to attend the public hearing in person, please bring photo identification with you.

Physical Location:

You also may attend the hearing via Microsoft Teams, which can be accessed

through the following link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_M2VlNGU3N2EtNzU1Ni00MjVlLWEyZWMtNjAxNTRmNGJmODlj%40thread.v2/0?context=%7b%22Tid%22%3a%22992deae9-1c4c-

<u>42c8-a310-5088af55ba74%22%2c%22Oid%22%3a%22bbaa9077-e48d-4f82-810c-81f4ef416a17%22%7d</u>

Meeting number (access code): 243 877 176 58

Meeting password: qL3pmS

You also may join the meeting by phone:

Call in Number: 1-603-931-4944

Access Code: 648 094 904#

If any questions or technical issues, please contact Edward McKenna at 603-271-3503 or via email at edward.p.mckenna@des.nh.gov

| 10. | Fiscal Im | pact Statement | (Prepared | l by] | Legislative | Budget | Assistant) |): |
|-----|-----------------|---|-----------|--------|-------------|--------|------------|-----|
| | 1 10 0 001 1111 | P *** ~ * * * * * * * * * * * * * * * * | , (| , . | | | | , - |

| EIC # 24.074 Jaka J 05/15/2024 | |
|---------------------------------|--|
| FIS # 24:074 , dated 05/15/2024 | |

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules, the proposed rules may increase or decrease costs for certain citizens, political subdivisions, or independently owned businesses. Not applicable to Env-Wq 1512 which is new.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed rules may result in cost increases, and some may result in cost savings. The only requirements that could result in an additional cost for a particular permit application would be the proposed change in Env-Wq 1504.04 to require diversion swales above the limits of disturbance for projects that require Steep Slope and Erosion Control Plans. The flexibility added to Env-Wq 1507.03 could potentially reduce costs for certain permit applicants. Due to the number and variability of factors, including the type and scope of proposed projects and the number of options available for stormwater management systems, it is not possible for the Department to estimate the net impact. Certain State citizens, political subdivisions, and independently owned businesses that are permit applicants will experience these costs or savings.

Proposed Env-Wq 1512 establishes an administrative fine schedule with a maximum fine amount of \$2,000 in accordance with RSA 485-A:22, V. Such fines were previously addressed in Env-C 603.02 which expired in 2008. Any cost or benefit associated with either proposed with Env-Wq 1512 or the expired rules is attributable to RSA 485-A:22, V.

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

See #3 above.

C. To independently owned businesses:

See #3 above.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify an existing program or responsibility, but do not mandate any additional expenditure on the political subdivisions of the state and therefore do not violate Part I, Article 28-a of the N.H. Constitution.