

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**PERFORMANCE AUDIT REPORT
MAY 2019**



MICHAEL W. KANE, MPA
Legislative Budget Assistant
(603) 271-3161

CHRISTOPHER M. SHEA, MPA
Deputy Legislative Budget Assistant
(603) 271-3161

State of New Hampshire
OFFICE OF LEGISLATIVE BUDGET ASSISTANT
State House, Room 102
Concord, New Hampshire 03301

STEPHEN C. SMITH, CPA
Director, Audit Division
(603) 271-2785

To The Fiscal Committee Of The General Court:

We conducted a performance audit of the effectiveness of the New Hampshire Department of Environmental Services' (Department) Wetlands Bureau (Bureau) permitting function to address the recommendation made to you by the joint Legislative Performance Audit and Oversight Committee. We conducted this audit in accordance with generally accepted government auditing standards. Those standards require we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. The evidence we obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The purpose of the audit was to determine how effectively the Department managed Bureau permitting during State fiscal years 2016 and 2017.

Given the size of this report and complexity of the audit's scope, we would like to provide some insights into the construction of this report.

- The report is assembled to be useful to several sets of potential readers with different needs, including the public, the General Court, policy committees, the Department, and the Wetlands Council (Council).
- The report contains an executive summary, starting on page 1, that captures main themes and the most significant concerns arising from our work, and a recommendation summary, starting on page 5, distilling our recommendations into a table.

Each chapter addresses elements of the Bureau's permitting program, and all chapters contain the same basic components.

- A chapter summary establishes conditions applicable to the observations that follow.
- A figure at the beginning of each chapter shows the relationship between the chapter's observations and the management control systems necessary for effective operation. The figures show how deficiencies interrupt the effective cooperation of the management control systems we examined.

- Each observation addresses one or more elements, or management control systems, affecting the Bureau’s permitting program.
- Each observation is preceded by an assessment of the management control system or systems affecting the particular program element.
- Observations generally include, in their first paragraph or two, a summary of the issues with management’s control in that program element. This summary is intended for general readers.
- The remainder of each observation contains detailed information generally intended to inform Department program managers and the Council about specific deficiencies with management control systems. Some observations contain extensive details, and often similar facts, when describing weaknesses and their likely causes. This repetition is partly because of the interrelationship between management control systems and is necessary to allow each observation to be understood independently from the rest. This information is not intended for general readers, unless they have a specific interest in the observation’s subject matter.

Office of Legislative Budget Assistant

Office Of Legislative Budget Assistant

May 2019

	<u>Page</u>
3. PERMITTING OUTCOMES	<u>119</u>
Observation No. 18: Improve Provision, Measurement, And Control Systems Over Customer Service	<u>122</u>
Observation No. 19: Improve Consistency Of Permitting Decisions.....	<u>127</u>
Observation No. 20: Improve Control System Over Permit Conditions.....	<u>132</u>
Observation No. 21: Clarify And Formalize Peer Review Policies And Monitor Compliance	<u>137</u>
Observation No. 22: Improve Timeliness Of Wetlands Bureau Permitting.....	<u>147</u>
Observation No. 23: Revise Department Of Transportation Permit Application Review Practices.....	<u>160</u>
Observation No. 24: Improve Wetlands Council Appeals Timeliness And Adherence To Statutory Requirements.....	<u>165</u>
Observation No. 25: Improve Management Of Wetlands Council Remands To The Department.....	<u>174</u>
4. PERMITTING PROCESS DEFICIENCIES.....	<u>179</u>
Observation No. 26 Formalize And Leverage Application Receipt Center Processes.....	<u>182</u>
Observation No. 27: Formalize Requirements, Procedures, And Processes For Notice-only Wetlands Projects	<u>185</u>
Observation No. 28: Formalize Expedited Evaluation Of Permit Applications Under Extraordinary Circumstances.....	<u>186</u>
Observation No. 29: Establish Parameters For Conservation Commission Involvement In Permit Application Reviews Consistent With Statute	<u>190</u>
Observation No. 30: Implement Review Framework For Minimum Impact Expedited Projects Consistent With Statute	<u>194</u>
Observation No. 31: Improve Wetlands Permit-by-Notification-related Rules, Procedures, And Practices	<u>196</u>
Observation No. 32: Improve Request For More Information Processes	<u>200</u>
Observation No. 33: Improve Management Of Extensions Of Permit Application Technical Review Time Limits.....	<u>206</u>
Observation No. 34: Develop Rules And Policies For Reclassifying Applications And Amending Applications And Issued Permits	<u>209</u>

		<u>Page</u>
Observation No. 35:	Comply With Statute And Implement Deemed Approved Permits	<u>212</u>
Observation No. 36:	Improve Systems For Managing Emergency Authorizations	<u>215</u>
Observation No. 37:	Improve Systems For Managing After-the-fact Permit Applications	<u>217</u>
Observation No. 38:	Resolve Prior Audit Findings And Other Issues Related To Fees And Mitigation Accounts	<u>220</u>
5. ORGANIZATION, ADMINISTRATION, AND STAFFING		<u>225</u>
Observation No. 39:	Strategically Manage Organizational Structure	<u>228</u>
Observation No. 40:	Formally Delegate Statutory Authority	<u>236</u>
Observation No. 41:	Clarify And Rationalize Employee Responsibilities	<u>238</u>
Observation No. 42:	Assess And Revise Managerial Workloads	<u>245</u>
Observation No. 43:	Clarify And Rationalize Wetlands Bureau Employee Credentialing Requirements.....	<u>255</u>
Observation No. 44:	Improve Employee Development Program	<u>265</u>
Observation No. 45:	Clarify And Formalize Standards Of Professional Conduct And Monitor Compliance	<u>276</u>
Observation No. 46:	Improve Department Compliance With <i>Financial Disclosure</i> Requirements	<u>281</u>
6. KNOWLEDGE MANAGEMENT		<u>287</u>
Observation No. 47:	Improve External Communications	<u>288</u>
Observation No. 48:	Ensure Public Information And Permitting Unit Practices Fully Comply With Statute	<u>295</u>
Observation No. 49:	Improve Compliance With External Reporting Requirements.....	<u>297</u>
Observation No. 50:	Improve Internal Communications	<u>301</u>
Observation No. 51:	Improve Management Of Information Technology And Data Quality.....	<u>311</u>
Observation No. 52:	Improve Paper Records Management.....	<u>316</u>
Observation No. 53:	Assure Third-party Data Quality	<u>318</u>

	<u>Page</u>
7. WETLANDS COUNCIL MANAGEMENT	<u>323</u>
Observation No. 54: Improve Wetlands Council Compliance With The Right-to-Know Law.....	<u>325</u>
Observation No. 55: Improve Wetlands Council External Reporting.....	<u>331</u>
Observation No. 56: Improve Wetlands Council Compliance With <i>Financial Disclosure</i> Requirements	<u>333</u>
Observation No. 57: Improve Wetlands Council Compliance With The <i>Administrative Procedure Act</i>	<u>337</u>
Observation No. 58: Improve Consistency Of Environmental Councils’ Rules.....	<u>344</u>
Observation No. 59: Improve Wetlands Council Member Orientation	<u>345</u>
Observation No. 60: Clarify Roles Of Staff Supporting The Wetlands Council	<u>347</u>

APPENDICES

Appendix A: Scope, Objectives, And Methodology	<u>A-1</u>
Appendix B: Department Of Environmental Services Response To Audit	<u>B-1</u>
Appendix C: Wetlands Council Response To Audit	<u>C-1</u>
Appendix D: Survey Of Wetlands Council Members	<u>D-1</u>
Appendix E: Survey Of Stakeholders.....	<u>E-1</u>
Appendix F: Survey Of Wetlands Bureau And Application Receipt Center Employees On Bureau Operations	<u>F-1</u>
Appendix G: Survey Of Wetlands Bureau Employees On Bureau Permitting	<u>G-1</u>
Appendix H: Status Of Prior Audit Observations.....	<u>H-1</u>

LIST OF TABLES

Table 1: Wetlands Council Members’ Perceptions Of Department Reporting To The Council, May 2018.....	<u>68</u>
Table 2: Underpinning Criteria To Selected Standards In Wetlands Rules.....	<u>88</u>
Table 3: Permit Applications And Notices Listed In Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017	<u>121</u>
Table 4: Wetlands Bureau Employee Permit Application Denial Rates, Based On Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017	<u>131</u>
Table 5: Permit Application Review Time Limits Through CY 2018.....	<u>146</u>

		<u>Page</u>
Table 6:	Permit Application Review Time Limits And Associated Processing Criteria, Based On Outstanding File Report Criteria, Through CY 2018	<u>149</u>
Table 7:	Number Of Approved And Denied Permit Applications Listed In Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017.....	<u>151</u>
Table 8:	Timeliness Of Application Review And Request For More Information Issuance, Based On Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017.....	<u>152</u>
Table 9:	Timeliness Of Permitting Decisions Following Request For More Information Responses, Based On Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017	<u>153</u>
Table 10:	Timeliness Of Application Review Without A Request For More Information, Based On Permit Application File Review, SFYs 2016–2017	<u>154</u>
Table 11:	Timeliness Of Application Review With A Request For More Information, Based On Permit Application File Review, SFYs 2016–2017	<u>155</u>
Table 12:	Timeliness Of Application Review With A Request For More Information Response, Based On Permit Application File Review, SFYs 2016–2017.....	<u>156</u>
Table 13:	Timeliness Of Application Processing, Based On Permit Application File Review, SFYs 2016–2017	<u>158</u>
Table 14:	Timeliness Of Application Processing Compared To Wetlands Bureau Aspirational Goals, Based On Permit Application File Review, SFYs 2016–2017.....	<u>159</u>
Table 15:	Number Of Approved And Denied Department Of Transportation Permit Applications Listed In Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017.....	<u>162</u>
Table 16:	Timeliness Of Department Of Transportation Application Processing Without A Request For More Information, Based On Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017.....	<u>163</u>
Table 17:	Number Of Applications Or Notices With At Least One Request For More Information Or Notice Of Deficiency, SFYs 2016–2017	<u>202</u>
Table 18:	Average Number Of Days Between Application Receipt Or Completeness And Issuance Of A Request For More Information, SFYs 2016–2017.....	<u>204</u>
Table 19:	Department-reported Aquatic Resource Compensatory Mitigation Fund Administrative Revenues And Expenses, SFYs 2015–2017	<u>222</u>
Table 20:	Wetlands Bureau Managerial Workloads, SFYs 2016–2017	<u>248</u>
Table 21:	Permitting Employee Responsibilities Assigned Through Supplemental Job Descriptions, August 2018.....	<u>259</u>
Table 22:	Maturity Model For Control Systems Related To Bureau Permitting And Associated Maturity Levels For The Department And Wetlands Council	<u>A-5</u>
Table 23:	Status Of Prior Audit Observations And Status Key	<u>H-1</u>

	<u>Page</u>
LIST OF FIGURES	
Figure 1: Management Control Systems Necessary For Effective Wetlands Bureau Permitting.....	26
Figure 2: Maturity Of Wetlands Bureau Permitting-related Management Control Systems And Subsystems, Through SFY 2018	27
Figure 3: Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Strategic Management	29
Figure 4: Actual Versus Self-reported Remediation Status Of 19 Observations From Our 2007 Audit.....	43
Figure 5: Relationship Between Wetlands Bureau Permitting Goals And Program Performance	48
Figure 6: Relationship Between Department And Wetlands Bureau Goals And Employee Performance	53
Figure 7: Reported Allocation Of 102,102 Hours Of Wetlands Bureau Employee Time, SFYs 2016-2017.....	61
Figure 8: Relationships Between Relevant Observations And Management Control Systems Necessary For An Effective Regulatory Framework	78
Figure 9: Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Permitting And Programmatic Outcomes.....	120
Figure 10: Compliance With Select Peer Review Policy Requirements, SFYs 2016–2017.....	138
Figure 11: Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Permitting Processes	180
Figure 12: Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Organization, Administration, And Staffing.....	226
Figure 13: Reported Allocation Of Wetlands Bureau Employee Time, SFYs 2016–2017....	243
Figure 14: Performance Of Wetlands Science-related Responsibilities As Assigned Through Supplemental Job Descriptions And Reported By Employees, August 2018	260
Figure 15: Performance Of Other Professional Responsibilities, As Assigned Through Supplemental Job Descriptions And Reported By Employees, August 2018	261
Figure 16: Select Proficiency Test Questions From The Cross-Training Session On Requests For More Information And Permit Conditions, January 2017	275
Figure 17: Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Knowledge Management	288

	<u>Page</u>
Figure 18: Relationships Between Relevant Observations And Management Controls Systems Necessary For Effective Wetlands Council Oversight And Management.....	324

ABBREVIATIONS

<i>2002 Audit</i>	<i>Department Of Environmental Services Performance-based Budgeting Audit Report, Office of Legislative Budget Assistant–Audit Division, March 2002</i>
<i>2005 Audit</i>	<i>Department Of Environmental Services Financial And Compliance Audit Report For The Fiscal Year Ended June 30, 2004, Office of Legislative Budget Assistant–Audit Division, February 2005</i>
<i>2007 Audit</i>	<i>Alteration Of Terrain And Wetlands Permitting Performance Audit Report, Office of Legislative Budget Assistant–Audit Division, August 2007</i>
<i>2015 Audit</i>	<i>Department Of Environmental Services Stated-owned Dams Performance Audit Report, Office of Legislative Budget Assistant–Audit Division, October 2015</i>
<i>2015 IC Review</i>	<i>Department Of Environmental Services Water Division Internal Control Review Agency-Income Revenues, Office of Legislative Budget Assistant–Audit Division, October 2015</i>
<i>2015 Guide</i>	<i>Wetlands Permitting Technical Review Guide, Department of Environmental Services, June 2015</i>
2016 LRM BSC	Land Resources Management Programs’ Balanced Scorecard, December 2016
2017 Online LRM Survey	Land Resources Management Programs’ online <i>Customer Service Survey Permit Process Questionnaire</i> , implemented in CY 2017
<i>2018 Audit</i>	<i>Department Of Environmental Services Air Resources Division Performance Audit Report, Office of Legislative Budget Assistant–Audit Division, May 2018</i>
<i>Act</i>	<i>Administrative Procedure Act (RSA Chapter 541-A)</i>
ATF	After-the-Fact
Appeals Docket Review	Office of Legislative Budget Assistant–Audit Division review of a subjective sample of Wetlands Council appeals dockets
ARC	Land Resources Management Programs’ Application Receipt Center
ARM Fund	Aquatic Resource Compensatory Mitigation Fund (RSA 482-A:29, et seq.)
Bureau	Wetlands Bureau
Bureau Operations Survey	Office of Legislative Budget Assistant–Audit Division’s 2018 survey of Bureau and ARC employees on Bureau operations

Bureau Permitting Data	Unaudited Bureau data on 7,174 permit applications and notices handled by the Bureau between SFYs 2016 and 2017
Bureau Permitting Survey	Office of Legislative Budget Assistant–Audit Division’s 2018 survey of Bureau employees on Bureau permitting-related practices
Committee	Shoreland Advisory Committee
Council	Wetlands Council
Council Rules	<i>Wetlands Council</i> Rules (Env-WtC Chapters 100-200)
Council Survey	Office of Legislative Budget Assistant–Audit Division’s 2018 survey of Council members
CY	Calendar Year
Dashboard	Department Of Environmental Services’ Environmental Dashboard
DBMS	Database Management System
Department	Department Of Environmental Services
Department Time Allocation Data	Unaudited Department data on self-reported Bureau employee time allocated to different activities, SFYs 2016 to 2017
Department’s 2010-2015 Strategy	Department’s <i>2010-2015 Strategic Plan</i> , November 2010
Department’s 2014-2015 Survey	Department’s 2014–2015 internal survey of Department employees
Division	Division Of Water
DNCR	Department Of Natural And Cultural Resources
Docket	Appeals dockets maintained by the Wetlands Council
DOJ	Department Of Justice
DOT	Department Of Transportation
Draft 2014 Rules	Draft Environmental Council rules developed by the Department in CY 2014 for use by the Environmental Councils
F&G	Department Of Fish And Game
IDP	Individual Development Plan
IT	Information Technology
<i>Integrated Permit</i>	<i>Integrated Land Development Permit</i> (RSA Chapter 489)
LBA	Office Of Legislative Budget Assistant–Audit Division
LRM	Land Resources Management
LRM Hardcopy Questionnaire	LRM hardcopy <i>Permit Process Questionnaire</i> , distributed from the 1990s to CY 2017
<i>Memorandum</i>	<i>Attorney General’s Memorandum On New Hampshire’s Right-to-Know Law, RSA 91-A</i> , Department of Justice, March 2015
MIE	Minimum Impact Expedited
MOA	Memorandum Of Agreement
NHB	Department Of Natural And Cultural Resources’ Natural Heritage Bureau

NHI	Natural Heritage Bureau’s Natural Heritage Inventory
NOD	Notice Of Deficiency
NWI	U.S. Fish And Wildlife Services’ National Wetlands Inventory
PBN	Permit-by-Notification
Peer Review File Review	LBA review of a subjective sample of hardcopy Bureau permit application files to assess compliance with the LRM peer review policy
Permit Application File Review	LBA review of a subjective sample of hardcopy Bureau permit application files for standard dredge and fill, MIE, and shoreland permit applications
PIP	Department’s Public Information And Permitting Unit
PNA	Preliminary Notice Of Appeal
Proposed 2019 Rules	Proposed revisions to Wetlands Program rules, with finalization anticipated by the Department in CY 2019
RFMI	Request For More Information
Right-to-Know Law	<i>Access to Governmental Records and Meetings</i> (RSA Chapter 91-A)
SDF	Standard Dredge And Fill
SFY	State Fiscal Year
SJD	Supplemental Job Description
<i>Shoreland</i>	<i>Shoreland Water Quality Protection Act</i> (RSA Chapter 483-B), formerly the <i>Comprehensive Shoreland Protection Act</i>
Shoreland Rules	<i>Shoreland Protection Rules</i> (Env-Wq Chapter 1400)
SOP	Standard Operating Procedure
Stakeholders Survey	LBA’s 2018 survey of Bureau permitting stakeholders
Wetlands Rules	<i>Wetlands Program Rules</i> (Env-Wt Chapters 100-900)
<i>Wetlands</i>	<i>Fill And Dredge In Wetlands</i> (RSA Chapter 482-A)

GLOSSARY OF TERMS

Abuse	Behavior that is deficient or improper when compared with behavior that a prudent person would consider a reasonable and necessary business practice, given the facts and circumstances.
Applicant	Person who has submitted a permit application.
Decade-long Wetlands Rules Revision Process	Effort to revise Bureau wetlands rules after our <i>2007 Audit</i> , which the Department originally committed to completing by CY 2008, with finalization anticipated by CY 2019.
Filer	Person who has submitted a permit notification or notice.
LRM BSC	A balanced scorecard tool management intended to serve as an ongoing performance measurement reporting system for the LRM programs.
LRM Permitting Database	The LRM programs’ database containing data from Bureau notice or permit application submission, review, and decision.

LRM Reorganization	Proposed effort to consolidate and integrate the Alteration of Terrain, Wetlands, and Subsurface Systems bureaus into a single LRM bureau.
LRM Restructuring	Proposed effort to consolidate LRM programs' administrative functions but leave Alteration of Terrain, Wetlands, and Subsurface Systems bureaus intact and with responsibility for technical reviews of permit applications.
Inputs	Resources and activities that are needed for, or guide, operations.
Processes	Activities designed to provide services.
Outputs	Services provided by activities.
Outcomes	Impacts resulting from services.
Waste	The act of using or expending resources carelessly, extravagantly, or to no purpose, relating primarily to mismanagement, inappropriate actions, or inadequate oversight.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

EXECUTIVE SUMMARY

The Department of Environmental Services (Department) lacked a system demonstrating the extent to which Wetlands Bureau (Bureau) permitting achieved expected outcomes. The Bureau's principal purpose was to prevent despoliation, or the uncontrolled devaluing, of submerged lands and to regulate development of protected shorelands through permitting. However, the Department lacked adequate control systems to understand and manage performance or determine whether these outcomes were being achieved.

Bureau employees, often the public face of permitting, only operated within the control systems management developed, implemented, and monitored over several decades—the deficiencies we summarize here, and detail in this report, were management control deficiencies. Bureau management reported knowing insufficient time was spent on permitting, yet lacked a relevant control system and never connected the complexity, cost, and burden of the regulatory framework to an outcome. Unaudited Department data listed 7,174 Bureau permit applications and notices active during the two-year audit period, with 6,139 (85.6 percent) approved or accepted. Thirty-two Bureau employees, at a two-year cost of nearly \$4.9 million, reported allocating:

- 25.0 percent of their time on tasks most closely connected to permitting, including technical review of permit and mitigation applications, assisting applicants, and conducting peer review of high-risk permit applications and decisions; and
- 75.0 percent of their time on other tasks with either less direct, or no, connection to permitting, including administration, program development, leave, training, and public outreach.

Bureau permitting was reportedly highly contentious and the highest-risk permitting activity within the Department, and was:

- known to be based on broadly-written statutes and a complex regulatory framework;
- implemented by employees with inconsistent credentials, training, and supervision;
- subjectively carried out, resulting in inconsistent decisions; and
- inconsistent with guiding Department strategy and principles.

Management control systems must be effectively designed and implemented, operate together, and be monitored and improved to provide reasonable assurances the Bureau could achieve expected outcomes. However, deficient control systems compromised Bureau effectiveness and efficiency. The control systems integral to Bureau permitting we reviewed were typically at the lowest level of maturity and were, at times, absent, knowingly circumvented, ineffectively designed, inconsistently implemented, and unmonitored. Deficiencies perpetuated and, in some cases, exacerbated contentiousness, inefficiency, and ineffectiveness by supporting an operating environment and organizational culture accommodating unresolved prior audit findings, a regulatory framework without reasonable bases, and persistent statutory and regulatory noncompliance. Most deficiencies were:

- related to basic management controls with long-standing statutory underpinnings, which, given the Department's guiding principles and strategic objectives to continually improve its operations, should have been more mature; or
- previously identified in 26 audit observations that recommended solutions with which the Department generally concurred, but in most cases did not fully resolve.

Some long-standing, unresolved deficiencies resulted in abuse and waste. Abuse is contextually imprudent behavior, and occurred through the known imposition of unadopted requirements on the public, known as ad hoc rulemaking. Management recognized it imposed ad hoc requirements on the public but did not timely promulgate rules to implement uncodified requirements or discontinue improperly enforcing uncodified requirements. Waste was the use of resources without demonstrated outcomes, and occurred during reorganization and restructuring efforts and when some employees were paid as supervisors but supervised no staff. We were unable to quantify the amount of waste due to inadequate data. Other data quality issues existed, and we qualify our use of, and our conclusions resting on, Department data as a result. Additionally, some controls and corresponding Bureau actions were unauditably because they were poorly documented, some permit application files were missing, and some final permitting decisions were missing key documentation.

The regulatory framework was outdated, disjointed, and inconsistent with underlying statute. Rules, policies, and procedures were, at times, unreasonable and inconsistently understood by Bureau employees and the public. This fostered confusion, led to regulatory overreach and ad hoc rulemaking, and likely compromised due process and increased costs. Permit application decisions rested upon this framework, and were often augmented by uncodified requirements. Importantly, other than in areas of regulatory overreach, requirements may or may not have been appropriate. In instances:

- of ad hoc rulemaking, the Bureau did not comply with statute and rely on properly adopted requirements;
- where requirements were properly in rule, but informal groups were used to develop them, the Bureau inconsistently complied with statute to develop those requirements transparently; and
- where requirements were judgment- or consensus-based, the Bureau inconsistently complied with statute to adopt reasonable rules underpinned by objective criteria.

The Wetlands Council (Council), created to oversee and advise the Department on Bureau policy, programs, goals, operations, and plans, was marginalized so as to no longer fulfill its statutory purpose and limited principally to hearing appeals. The Council selectively operationalized its governing statute, and absent or deficient Council control systems contributed to 56 observations in our current report. The Department utilized ad hoc bodies of select interest groups to provide detailed input on Bureau operations instead of the Council. This subordinated the Legislatively-established control of formal Council oversight to informal and unaccountable ad hoc groups, compromising transparency.

The Department was engaged in a decade-long process to revise the *Wetlands Programs* rules underlying much of the Bureau's activity, and submitted draft rules for Joint Legislative

Committee on Administrative Rules consideration in March 2019. Properly based, reasonable rules could establish the basis for permitting policies and procedures necessary to operate a consistent, transparent regulatory program. Proper utilization of the Council in its statutory roles could help improve objectivity, consistency, and transparency. Proper implementation of strategic management, including comprehensive performance measurement, could help demonstrate Bureau outcomes, more than three decades after the permitting program was formalized in its current construct. Until clear, data-informed connections are made between permitting and outcomes, determining whether the Bureau achieved its purpose of preventing despoliation and regulating development of protected shorelands will likely be impossible.

Developing and implementing a consistent, transparent regulatory program that achieves expected outcomes would appear to be a multi-year undertaking in which the Department's newly formed management team will have to invest considerable effort. The Department has committed to publishing an outcomes-focused corrective action plan 30 days after this audit is released—an important early step. However, the Legislature may wish to exert additional oversight of the Department's efforts due to the extensive number of unresolved prior audit findings; the current lack of a detailed, time-phased remedial action plan making it clear what the Department actually intends to do and when; and the diminished oversight role of the Council that appears likely to continue.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

RECOMMENDATION SUMMARY

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
1	30	No	The Department of Environmental Services (Department) develop and maintain an operating environment and culture supporting effective management control; ensure processes and practices are adequately controlled; ensure existing controls are reviewed to ensure they are sufficiently designed, operating as intended, not circumvented, and are regularly monitored; ensure processes allow employees to report deviations without fear of retaliation or repercussion; and ensure managers demonstrate the importance of management controls.	Department: Concur
2	34	No	The Department create a strategic plan; ensure the Division of Water (Division) and Wetlands Bureau (Bureau) develop complimentary strategies and plans; incorporate remediation of audit findings; develop a remedial action plan; engage the Wetlands Council (Council) on long-range planning; develop performance measures tied to strategic goals, plans, and initiatives; and track performance. The Division and Bureau develop strategies and implementing plans to help ensure strategic objectives are achieved.	Department: Concur
3	39	No	The Department establish formal agency-wide risk management policy and processes tied to strategy and plans; develop measureable risk tolerances; and monitor controls. The Division and Bureau implement the Department's risk management policies and practices.	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
4	42	Yes	<p>Department management comply with Executive Orders on audit reporting; assign responsibility for audit finding remediation; timely resolve audit findings; incorporate audit remediation processes into strategy and plans; and track remediation and ensure timely progress towards achieving full remediation.</p> <p>The Bureau remediate findings from prior audits and evaluations.</p> <p>The Legislature consider increasing its oversight of Department efforts to address audit observations.</p>	<p>Department: Concur</p>
5	49	No	<p>Department management develop a performance measurement system tied to strategy, risk tolerances, and outcomes; ensure performance measurement is coordinated; address deficiencies with information technology system design and data quality control; collect data timely; and regularly assess performance.</p> <p>The Division and Bureau develop performance measurement systems to help ensure agency performance is measured and strategic objectives are achieved.</p>	<p>Department: Concur</p>
6	54	No	<p>Department management improve management of staff; develop and implement workforce, succession, and contingency plans; identify and use data to inform workforce planning efforts; develop performance expectations linked to goals and objectives; routinely measure staff performance; ensure staff receive performance evaluations; develop systems to identify staff noncompliance with policies, standard operating procedures, and standards of conduct; address staff noncompliance; and assess workloads.</p>	<p>Department: Concur</p>

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
7	63	No	Department management create goals, plans, policies, and procedures to ensure transparent operation; monitor compliance; utilize the Council to obtain advice; and ensure compliance with statute when establishing advisory committees.	Department: Concur
8	66	Yes	<p>The Council meet its statutory obligations; develop a strategic plan; structure internal operations and its relationship with the Department; create a plan to remediate current audit findings; request the Commissioner attend Council meetings; and provide formal objections to proposed rules to the Commissioner.</p> <p>The Legislature consider dissolving the Council if it cannot or will not operationalize its statutory oversight obligations.</p> <p>The Commissioner meet with the Council quarterly and leverage the Council as statute provided.</p>	Council: Do Not Concur
9	82	No	Department management constrain rules to statutory purpose; seek clarification from the Legislature whether public safety issues may be considered during permit application review and if guidance in statute is insufficiently clear to develop simple and constrained rules.	Department: Concur
10	87	No	Department management improve reasonableness of Bureau rules to ensure requirements are underpinned by objective standards and tied to permitting outcomes; and remove from rule any requirements without objective underpinnings and clear ties to permitting outcomes.	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
11	90	No	Department management clearly demonstrate the balance between environmental benefits and the economic costs of Bureau regulation; develop policy for evaluating economic impact of Bureau regulatory activities; train staff in the Department's policy; and monitor rulemaking and permitting activities to ensure employees comply.	Department: Concur
12	94	No	Department management review statutes, rules, forms, supplemental materials, procedures, and other elements to identify requirements affecting non-employees; amend rules to include missing definitions, procedures, practices, and requirements, and correct ambiguities, inaccuracies, and inconsistencies; amend rules to clarify jurisdiction; amend forms, supplemental materials, procedures, and practices to ensure they reflect statute and rules; and develop procedures over rule quality to ensure rules are reviewed and well maintained.	Department: Concur
13	101	No	Department management discontinue ad hoc rulemaking; develop policy and procedure to ensure employees do not undertake ad hoc rulemaking; monitor organizational behavior to help ensure ad hoc rulemaking does not occur; review requirements imposed upon the public; amend policy, procedure, and practice that rest upon ad hoc rules; and ensure standards-setting manuals and similar materials incorporated into Department rules are not used to develop ad hoc rules.	Department: Concur
14	107	No	Department management discontinue enforcing expired rules; develop policy and procedure designed to ensure rules remain valid and expired rules are not enforced; and timely update expired rules.	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
15	109	No	Department management adopt forms, and requirements in supplemental materials, in rule; discontinue enforcing unadopted requirements; and develop policy and procedure to generate, adopt, amend forms as required by law; and reconcile discrepancies between rules and current forms and supplemental materials.	Department: Concur
16	112	No	Department management correct miscitations, define ambiguous terms, and ensure third-party materials are incorporated in rule; cite statutory references; ensure discretionary decision-making rules implement statute; and develop procedures to track rule revisions.	Department: Concur
17	113	No	Department management ensure the Bureau produces and updates comprehensive policy and procedure for its permitting programs; align policies and procedures with rules and statute; adopts policies and procedures with effect of rule, into rule; establish policies and procedures to ensure management monitors training on and compliance with policies and procedures; and publish current and future policies and procedures in a consistent format.	Department: Concur
18	122	No	Department management develop, implement, and refine a holistic, coordinated customer service performance measurement system; ensure performance measurement is coordinated between Department, Division, and Bureau; develop, implement, integrate, and refine a complaint policy and procedure; ensure guidelines and other public-facing materials accurately reflect underlying rule-based standards, are clear, consistent, and readily available; and ensure customer service-related data are reliable and processed timely.	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
19	127	No	Department management ensure consistent outcomes derive from Bureau permitting practices; develop consistency measures; evaluate and report on consistency; and regularly review permit processes and decisions.	Department: Concur
20	132	Yes	<p>Department management ensure permit conditions are reasonable and comply with State law; ensure conditions are tied to permitting outcomes; adopt permit conditions in rule; adopt a process for modifying permit conditions in rule; and seek statutory changes to accommodate reasonable conditions on shoreland permits.</p> <p>Bureau management cite relevant State and federal statutory and regulatory requirements when imposing permit conditions.</p>	Department: Concur
21	137	No	Department management develop written peer review requirements; ensure requirements are communicated and employees trained; identify and record data necessary to document peer review; routinely monitor and measure compliance; and address noncompliance.	Department: Concur
22	147	Yes	<p>Department management structure permit and notice application review process in rule with applicable time limits; establish goals and targets; ensure the database management system enables performance measurement; develop timeliness reports; develop policies on managerial oversight; develop policies and performance targets; and ensure staff compliance.</p> <p>The Legislature consider amending statute to establish an overall time limit to the permitting process.</p>	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
23	160	Yes	Department management comply with statute and ensure Department of Transportation applications are processed according to statutory time limits, or seek statutory changes to accommodate its practices if necessary.	Department: Concur
24	165	No	<p>The Council adhere to appeals-related statutory and regulatory requirements; clarify and ensure rules reflect statute; set time limits to guide the appeals process; ensure notices are issued; timely review and issue decisions; simplify and correct guidance documents; collect performance data on appeals; and monitor data to ensure compliance with requirements.</p> <p>Department management timely act on appeals; work with the Council to simplify and correct the Department’s guidance documents; and provide clerical and technical support necessary to remediate deficiencies and monitor performance data.</p>	<p>Council: Do Not Concur</p> <p>Department: Concur</p>
25	174	Yes	<p>The Council fulfill its oversight responsibilities; seek legislative clarification as to whether shoreland-related appeals should be subjected to the remand process; adopt administrative rules structuring the remand process; obtain timely information from the Department on the status of remands; and include information on the status of remands in reports to stakeholders.</p> <p>Department management develop policy and procedures to timely resolve remands consistent with statute and Council rules.</p>	<p>Council: Do Not Concur</p> <p>Department: Concur</p>

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
26	182	No	Department management adopt Application Receipt Center (ARC) rules; ensure reporting and oversight structures are clarified; establish performance measures and collect data; develop policies and procedures to ensure consistency; conduct adequate peer review; ensure delegations of authority are issued; and ensure Bureau practices conform to applicable requirements.	Department: Concur
27	185	No	Department management adopt notification process rules and establish procedures to address requests for more information (RFMI) and reclassifications.	Department: Concur
28	186	No	Department management adopt the expedited evaluation of permit applications under extraordinary circumstances process in rule and publicize the process.	Department: Concur
29	190	No	Department management base interaction with applicants and conservation commissions on statute; timely align practices, procedures, rules, and forms with statute; develop policies to ensure adequate data is collected; ensure conservation commissions are held to statutory time limits; and limit Department integration of conservation commissions into permitting processes to those provided in statute.	Department: Concur
30	194	No	Department management adopt rules governing the minimum impact expedited (MIE) application process; include timeframes for processing MIE applications and timelines; monitor to ensure timely review; and amend policies, procedures, and forms.	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
31	196	No	Department management ensure permit-by-notification (PBN) rules align with statute and forms align with requirements; develop policies and procedures to ensure consistent and equitable application of rules; and consider revising rules to ensure requirements for project types are commensurate with level of impact.	Department: Concur
32	200	Yes	Department management seek clarification from the Legislature as to whether the shoreland RFMI response deadline should be extendable, and promulgate rules detailing RFMI processes. Bureau management revise policy and procedure to ensure RFMI practices conform to applicable requirements and develop policy and procedure to provide managerial oversight.	Department: Concur
33	206	No	Department management create rules and policies related to application review extensions; modify the database management system (DBMS) to track and manage extensions to ensure compliance with applicable requirements; and communicate availability of application extensions.	Department: Concur
34	209	No	Department management promulgate rules defining the circumstances under which staff can reclassify and amend applications; and develop policy and procedure to describe reclassification and amendment of applications.	Department: Concur
35	212	Yes	Department management discontinue efforts to circumvent legislative intent; adopt rules, policies, and procedures to implement the deemed approved provisions of statute; communicate the availability of the process; develop policy and procedure to ensure compliance; and seek statutory changes to clarify deemed approved provisions.	Department: Concur In Part

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
36	215	No	Department management structure emergency authorization processes through rules, policies, and procedures; ensure rules are consistent, and practices adhere to delegation of authority requirements in rules; establish strategic objectives, goals, and performance targets for timely processing; ensure the DBMS enables performance measurement; develop reports, policies on managerial oversight, and performance targets; and ensure staff compliance.	Department: Concur
37	217	No	Department management structure after-the-fact permitting processes through rules, policies, and procedures; ensure rules are consistent, and practices adhere to delegation of authority requirements in rule; establish strategic objectives, goals, and performance targets for timely processing; ensure DBMS enables performance measurement; develop reports, policies on managerial oversight, and performance targets; and ensure staff compliance.	Department: Concur
38	220	Yes	Department management review fee structures to ensure fees are appropriate; expunge shoreland PBN fee forfeitures from rule; collect statutorily-required fees or seek a statutory amendment if there are reasons fees could or should not be assessed; develop and implement policies and procedures; rationalize the cost to administer the Aquatic Resource Compensatory Mitigation (ARM) Fund against the administrative assessment; and seek clarification on the ARM Fund and whether administrative assessments should be a separate account.	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
39	228	No	Department management integrate evaluations of efficiency and effectiveness of organizational structures with strategic and workforce planning and performance management efforts; monitor data and integrate results into planning; with the Council, assess factors affecting the operating environment; evaluate the effectiveness of permit application review processes; ensure organizational charts and human resources data are accurate; and strategically manage significant organizational changes.	Department: Concur
40	236	No	The Commissioner delegate authority to appropriate Department staff. Department management implement policies and procedures to ensure formal delegations of authority are followed and periodically reviewed for appropriateness.	Department: Concur
41	238	No	Department management rationalize position classifications and employee responsibilities; ensure supplemental job descriptions reflect responsibilities; ensure supplemental job descriptions are signed, documented, and used during annual performance evaluations; ensure transparency and equity in the assignment of responsibilities; ensure emphasis on the assignment and completion of permitting-related responsibilities over non-related responsibilities; and develop a measure of permit application complexity to allocate permit application workloads.	Department: Concur
42	245	No	Department management identify factors affecting Bureau supervisory workloads; develop and implement methods to measure and monitor factors affecting workload; review and adjust supervisory workloads and spans of control to improve organizational efficiency, including phasing out the two coastal sections.	Department: Concur In Part

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
43	255	No	Department management determine which positions require professional credentials, ensure requirements are specified in supplemental job descriptions, and monitor compliance with requirements; determine which positions qualify for statutory exemptions to professional credentialing; ensure authority is delegated and requirements are specified in supplemental job descriptions; update peer review policy; and develop associated professional training and development programs for employees.	Department: Concur
44	265	No	Department management integrate employee development with strategic and workforce planning efforts; identify and analyze data to inform employee development planning; conduct assessments of gaps in employee knowledge, skills, and abilities and operational performance; develop performance improvement targets, policies, and procedures; evaluate results of training sessions; ensure individual development plans and annual performance evaluations are completed; routinely update employee development plans; assess costs and benefits of development efforts; and communicate development program results and outcomes to internal and external stakeholders.	Department: Concur
45	276	No	Department management develop written standards of professional conduct; ensure standards and expectations are communicated; measure employee compliance; require employees to attest to knowledge of and adherence to standards of conduct; develop systems to identify employee noncompliance with standards of conduct; and address noncompliance.	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
46	281	Yes	<p>The Legislature consider clarifying <i>Financial Disclosure</i> regarding whether failure to file annual statements of financial interest should prohibit public officials from serving in their appointed capacity.</p> <p>Department management ensure employees comply with <i>Financial Disclosure</i> requirements; develop policy and procedures to identify which staff the Commissioner should designate to file statements and ensure compliance; maintain applicable records; review prior actions involving ineligible staff and seek legal advice to determine the best method by which the Department can address actions tainted by the participation of ineligible members and staff.</p> <p>The Commissioner annually submit to the Secretary of State an organizational chart of all Department staff and advisory committee members required to file statements.</p>	<p>Department: Concur</p>
47	288	No	<p>Department management improve external communication policies and procedures; ensure employees responsible for communications are aware of and understand responsibilities; obtain customer feedback and ensure analysis is incorporated into strategic and workforce planning and process improvement efforts; obtain stakeholder feedback and input; ensure external performance reporting is timely, accurate, and provides relevant information; and evaluate the effectiveness and timeliness of external communications.</p>	<p>Department: Concur</p>
48	295	Yes	<p>Department management ensure Public Information and Permitting Unit roles and responsibilities fully comply with statute or seek legislative changes to align statute with practice.</p>	<p>Department: Concur</p>

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
49	297	Yes	Bureau management develop policy and procedures designed to ensure compliance with external reporting requirements; ensure external reports with specified content are submitted as required; consider seeking statutory changes to simplify reporting requirements; and ensure attached environmental councils have the necessary clerical and technical support.	Department: Concur
50	301	No	Department management establish reporting lines between management and staff; communicate organizational and employee responsibilities and performance expectations; implement knowledge transfer processes; improve policies and procedures; ensure employees are aware of and understand their responsibilities; identify data and information for sufficient oversight at each management level; analyze data and information and integrate with planning efforts; and evaluate the effectiveness and timeliness of internal communications to make adjustments to communications strategies.	Department: Concur
51	311	No	Department management create a wetlands permitting data quality policy, train staff, and monitor compliance; evaluate to what extent Bureau information technology (IT) systems meet staff, management's, and stakeholders' needs to understand performance; work with the Department of Information Technology to modify IT systems to allow for performance measurement and assessment of compliance; and ensure changes include cost-benefit analysis.	Department: Concur

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
52	316	No	<p>Department management develop recordkeeping requirements, policies, and procedures to ensure records contain documentation of the Department's functions, policies, and decisions, procedures; and ensure employees conform to requirements.</p> <p>Bureau management develop policy and procedure to track Bureau records and define the minimum standard content for completed applications; develop Bureau policy to ensure employees comply with requirements; and consider adopting policy requiring the ARC certify the completeness of each completed permit application file.</p>	<p>Department: Concur</p>
53	318	No	<p>Department management develop procedures to ensure reliable external data support all Bureau processes; promulgate rules incorporating data reviews; and inform applicants of reliability issues with data used during permitting processes.</p>	<p>Department: Concur In Part</p>
54	325	Yes	<p>The Council develop policy and procedures to ensure its practices comply with statute; review past Council meeting minutes for quorum issues and seek legal counsel to determine how to ratify prior Council actions taken without a quorum; obtain full representation of members, or seek legislative changes to ensure full representation of members can be attained; comply with <i>Access to Governmental Records and Meetings</i> (RSA Chapter 91-A) (Right-to-Know law) requirements on meeting minutes; develop rules detailing clerical requirements; and clearly indicate in meeting minutes when the Council is temporarily adjourning.</p> <p>Department management ensure the Council has the necessary clerical support to comply with the Right-to-Know law.</p>	<p>Council: Concur In Part</p> <p>Department: Concur</p>

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
55	331	Yes	<p>The Council develop policy and procedures to ensure compliance with external reporting requirements, formalize rules detailing clerical and technical requirements, ensure external reports are submitted as required, and consider seeking statutory changes to simplify reporting requirements.</p> <p>Department management ensure the Council has the necessary clerical and technical support to meet its external reporting requirements.</p>	<p>Council: Concur In Part</p> <p>Department: Concur</p>
56	333	Yes	<p>The Legislature consider clarifying <i>Financial Disclosure</i> regarding whether failure to file annual statements of financial interest should prohibit public officials from serving in their appointed capacity.</p> <p>Council members comply with <i>Financial Disclosure</i> requirements and timely file annual statements.</p> <p>The Council develop policy and procedures to ensure Council member compliance.</p> <p>The Council’s chair annually submit to the Secretary of State an organizational chart of all Council members required to file statements.</p> <p>Department management develop policy and procedures to ensure supported councils receive necessary administrative and clerical support to comply with <i>Financial Disclosure</i> requirements.</p>	<p>Council: Concur</p> <p>Department: Concur</p>

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
57	337	No	<p>The Council revise rules to comply with rulemaking requirements and reflect underpinning statutes; ensure any requirements intended as binding upon anyone other than the Council are adopted in rule; correct improper citations in rules; comply with statutory requirements to have rules be consistent with those of the other environmental councils; seek assistance from the Department to attain and maintain compliance with statute; meet as frequently as its workload demands, dispensing with the misapplication of the quarterly requirement to meet with the Commissioner to all of its business.</p> <p>Department management provide legal and technical support to coordinate and assist the Council with rulemaking to ensure the Council maintains ongoing compliance with statute.</p>	<p>Council: Concur In Part</p> <p>Department: Concur</p>
58	344	Yes	<p>The Council revive the dormant revised rules and process with the Department and the other environmental councils to achieve rule consistency across councils as statute required.</p> <p>Department management provide all necessary support to assist the Environmental Councils with rulemaking to ensure consistency and compliance.</p> <p>Absent any progress in developing consistent rules across environmental councils, the Legislature may wish to: 1) amend statute and consider creating a temporary committee comprised of members from the environmental councils, with Department of Justice staff providing advice and administrative support, to develop consistent rules, and establish a deadline for the councils to adopt harmonized rules, or 2) repeal the requirement altogether.</p>	<p>Council: Concur In Part</p> <p>Department: Concur</p>

Observation Number	Page	Legislative Action May Be Required	Recommendations	Agency Response
59	345	No	<p>The Council comply with statute and develop an orientation process for new members and consider including information on the Council’s practices and procedures, the Right-to-Know law, <i>Financial Disclosure</i> requirements, statutory reporting requirements, and the <i>Administrative Procedure Act</i>.</p> <p>Department management ensure the Council has the necessary clerical and technical support to meet its requirement to provide orientation for members.</p>	<p>Council: Concur</p> <p>Department: Concur</p>
60	347	No	<p>The Council ensure its rules reflect underpinning statutes; ensure requirements the Council may have of clerical and technical staff are clearly detailed in rule; and obtain necessary support and services from the Department to maintain compliance with State law.</p> <p>Department management ensure the Council has necessary clerical and technical support.</p>	<p>Council: Concur</p> <p>Department: Concur</p>

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

1. STRATEGIC MANAGEMENT

The Department of Environmental Services (Department) was to prevent despoliation and unregulated alteration of submerged lands and wetlands and protect shorelands through Wetlands Bureau (Bureau) permitting. For more than three decades, permitting has been viewed as time-consuming, uncoordinated, and inefficient with complex and unclear regulatory requirements producing inconsistent results. Stakeholders have also raised concerns about adherence to statutory requirements, deviation from Legislative intent, customer service, and accountability and transparency. To address general permitting concerns, the Legislature: 1) established the Department and centralized its management and authority under the Commissioner, 2) required the creation of a Department-level unit to coordinate permitting and provide information to the public, and 3) established the Division of Water (Division), responsible for programs and activities designed to protect State waters, including wetlands and shorelands. The Legislature also established the Wetlands Council (Council) to provide oversight, consultation, and advice on Bureau operations. For at least three decades, the Department pointed to its commitment to continuous improvement and provided assurances concerns were being addressed. However, historic concerns persisted through our current audit, despite the Department's self-imposed calendar year (CY) 2008 deadline to resolve previously-identified Bureau permitting deficiencies, a six-year process improvement effort, a decade-long reorganization effort, and a decade-long effort to revise *Wetlands Programs* rules (wetlands rules).

The Division oversaw three bureaus responsible for permitting development activities potentially affecting State waters, collectively known as the Land Resources Management (LRM) programs:

- the Wetlands Bureau, operating permitting programs regarded as the Department's highest risk and most controversial;
- the Alteration of Terrain Bureau, operating a permitting program to control soil erosion and manage stormwater runoff; and
- the Subsurface Systems Bureau, operating permitting programs for on-site wastewater disposal systems and subdivisions.

The Department assigned responsibility for managing the LRM programs to the Assistant Division Director two decades ago, with the intention of improving LRM permitting coordination, communication, consistency, and performance.

LRM Reorganization And Restructuring Efforts

The Department also attempted to address concerns, in part, through a major reorganization effort to consolidate and integrate the Wetlands, Alteration of Terrain, and Subsurface Systems bureaus into one bureau. The LRM reorganization, formally initiated in CY 2011, intended to: 1) ensure timely, consistent, and appropriate review of permit applications; 2) provide timely and consistent customer responses; 3) make efficient use of resources and streamline permitting; and 4) provide better environmental outcomes. However, some stakeholders and employees expressed concerns the reorganization would not have fundamentally or efficiently addressed perceived problems with LRM permitting, which were primarily related to the Wetlands Bureau.

The LRM reorganization underwent six years of formal development and a decade of informal development. However, in February 2017, the Governor and Executive Council rejected the Department’s request to reclassify ten positions management viewed to be essential to the LRM reorganization. The Department took no further reorganization actions. Instead, management expected to proceed with a more limited LRM restructuring to consolidate administration but leave each bureau with continued responsibility for reviewing discipline-specific permit applications. The restructuring effort remained unplanned and unimplemented through CY 2018.

Bureau Rulemaking And Process Improvement Effort

The Department also formally initiated a “significant” Bureau improvement effort in CY 2013. The effort was intended to: 1) improve decision-making processes and ensure scientifically-based decisions; 2) increase permitting consistency, reduce complexity and confusion, and streamline permitting; and 3) enhance transparency and efficiency. A major focus was the complete revision of wetlands rules, last comprehensively revised in CY 1991. The Department provided draft rules for public comment in January 2018, and formal rulemaking commenced in September 2018. Adoption was anticipated in CY 2019 (proposed 2019 rules), more than a decade after the Department previously committed to completing a full review and revision of wetlands rules.

Council

The Legislature established the Council to implement “the provisions of law conferring on the Department authority to decide matters” under *Fill And Dredge In Wetlands (Wetlands)* and the *Shoreland Water Quality Protection Act (Shoreland)* through Department oversight. Both the Department and the Council historically recognized the Council’s oversight role. To effectuate this role, the Council was statutorily required to provide consultation and advice on Department rules, policy, programs, goals, and operations related to wetlands and protected shorelands. The Council was also required to exercise oversight of permitting decisions by hearing administrative appeals, determining whether decisions were reasonable and lawful, and remanding unreasonable and unlawful decisions to the Department. However, Council oversight diminished over time, contributing to persistent concerns with Bureau permitting through our current audit.

Management Control Systems

The Department—and the Council through its oversight role—were responsible for Bureau operations, administration, and performance. To effectively manage the Bureau, Department management and the Council should have developed, implemented, and operationalized management controls and then monitored and improved controls to ensure continued effectiveness. Management controls include:

- plans, policies, and procedures adopted to meet goals and objectives;
- processes for planning, organizing, directing, and controlling operations;
- plans, policies, and procedures establishing expectations of employee conduct and performance; and
- processes for measuring, monitoring, improving, and reporting on performance.

Systematizing effective management controls can help managers:

- achieve compliance with statutory and regulatory requirements;
- effectuate data-informed decision-making aligned with organizational values;
- ensure operations and administration are efficient and effective;
- achieve goals, objectives, programmatic outcomes, and other intended results;
- ensure reliable performance reporting;
- promote public accountability and transparency;
- provide effective stewardship of public resources and avoid waste; and
- prevent and detect fraud and abuse.

Management formally committed to achieving these outcomes through numerous related guiding principles and goals in the Department's *2010-2015 Strategic Plan* (Department's 2010-2015 strategy). Strategy also committed the Department to continuous improvement and included goals to "strive for a strong customer-centric, continuous improvement ethic that pervades all Department operations" and "regularly assess continuous process improvement expectations and performance." For decades, senior Department managers publicly committed to continuous improvement of Department programs, including Bureau permitting. Continuous improvement was reported to be a "core" Department practice, and both Department managers and staff were responsible for its implementation.

Given long-standing and persistent concerns about Bureau permitting, we reviewed various processes related to Bureau permitting and associated management controls. Many processes have been operating, and reportedly subject to continuous process improvement efforts, for more than three decades. Our audit work focused on seven key, interrelated systems of control and relevant sub-systems. When interoperating effectively, all were necessary to achieve effective Bureau permitting, as shown in Figure 1.

Maturity Of Bureau Permitting-related Management Control Systems

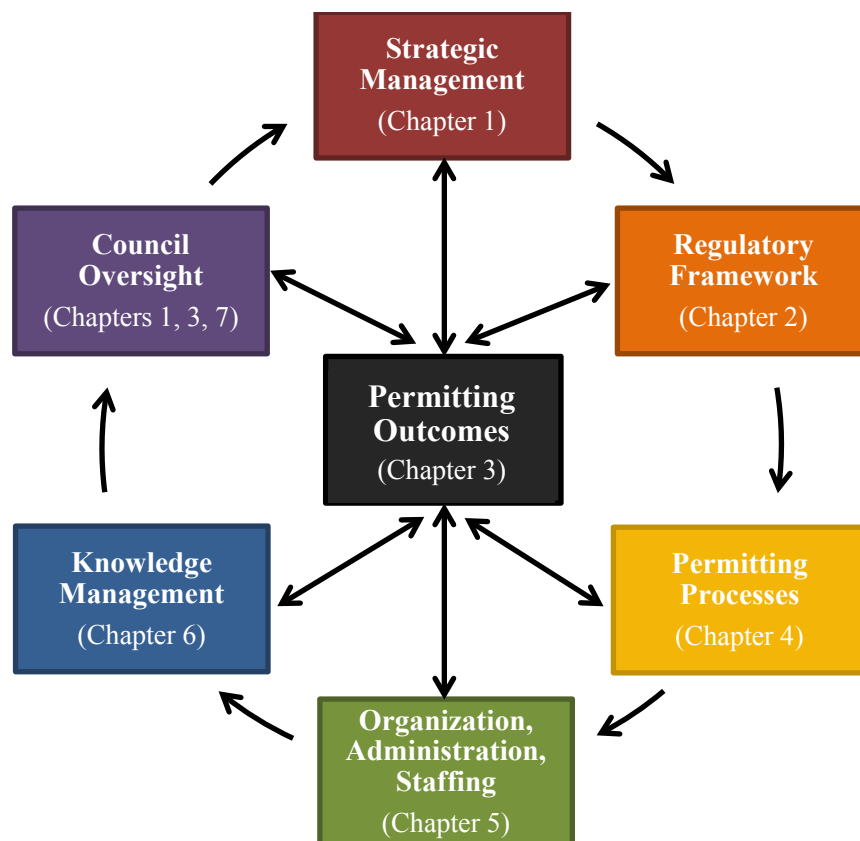
Department and Council control systems were amendable to the application of a maturity model to identify progress Department management and the Council had made towards optimizing Bureau permitting. Measuring outcomes can provide the ultimate criteria for assessing program effectiveness. However, understanding how effectively the control systems over processes leading to intended outcomes are designed and functioning can also facilitate systematic process improvements. The maturity model consists of five levels, from least to most mature:

- **Level 1: Initial** – control systems were absent or informal,
- **Level 2: Repeatable** – some control systems were defined or implemented,
- **Level 3: Integrated** – all control systems were defined and implemented,
- **Level 4: Managed** – control systems were monitored and measured, and
- **Level 5: Optimized** – control systems were continuously improved using quantitative information.

Additional information on the maturity model is contained in Appendix A.

Figure 1

Management Control Systems Necessary For Effective Wetlands Bureau Permitting



Source: Office of Legislative Budget Assistant–Audit Division (LBA) analysis.

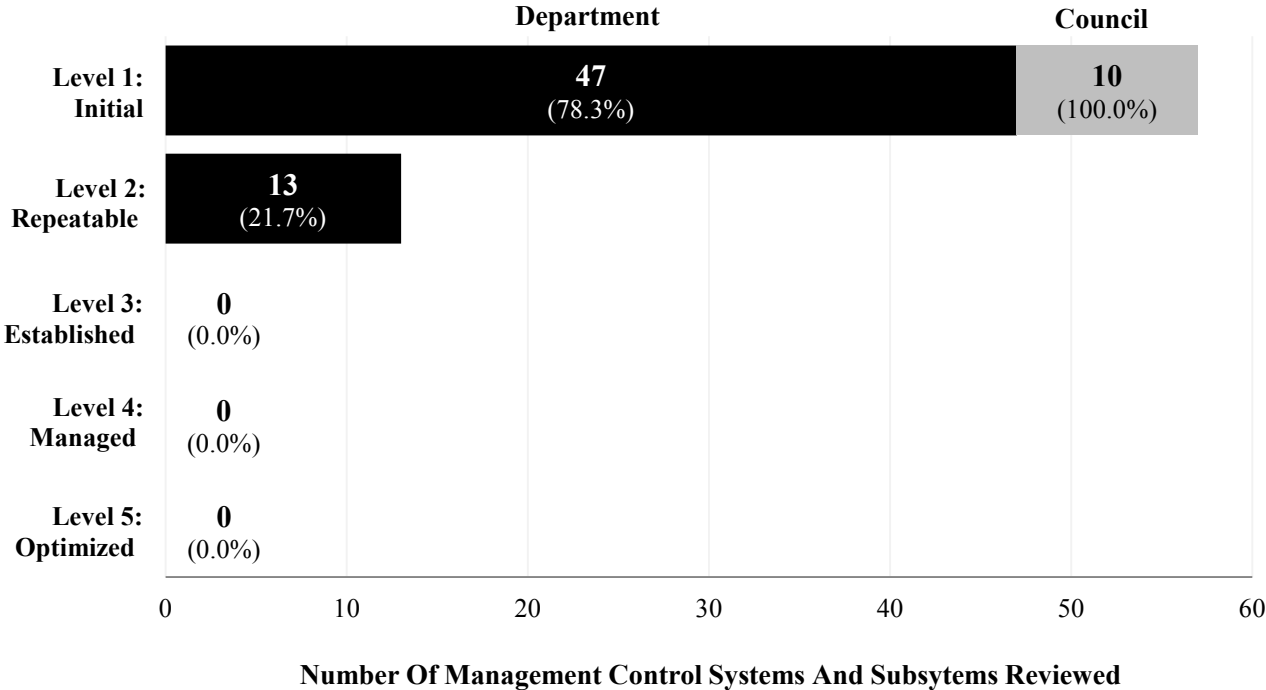
We evaluated the maturity of various management control systems related to Bureau permitting to assist the Legislature, the Department, the Council, and the public in assessing the work needed to optimize permitting. We found elements of management control systems were, at times, absent, ineffectively designed, inconsistently implemented, circumvented, and unmonitored. Many deficiencies persisted, some for decades, despite:

- long-standing related statutory requirements,
- relevant findings in external audits and assessments,
- the Department’s strategic commitment to continuous improvement,
- long-standing stakeholder concerns, and
- Department management or Council awareness.

Through State fiscal year (SFY) 2018, Department and Council management control systems related to Bureau permitting were at an **initial** level of maturity. The majority of individual systems and subsystems were also at an **initial** level of maturity, as shown in Figure 2.

Figure 2

Maturity Of Wetlands Bureau Permitting-related Management Control Systems And Subsystems, Through SFY 2018



Note: Twenty-two of 60 Department control systems (36.7 percent) and six of ten Council control systems (60.0 percent) we reviewed during this audit were completely absent.

Source: LBA analysis.

Previously Identified Management Control Deficiencies

Some of the deficiencies identified with Department management control systems during our current audit were previously brought to the attention of Department management by prior LBA audits. The State had invested substantially in several performance and financial audits of the Department to help management improve performance. Our audits were the primary source of substantive external review, as formal assessments by federal regulatory agencies were limited in scope. We previously reviewed Department management control systems relevant to the current audit—identifying a substantial depth and breadth of deficiencies—and made recommendations and suggestions for improvement in four prior audits:

- *Department Of Environmental Services Performance-based Budgeting Audit Report*, published in March 2002 (2002 Audit);
- *Department Of Environmental Services Financial And Compliance Audit Report For The Fiscal Year Ended June 30, 2004*, published in February 2005 (2005 Audit);

- *Alteration Of Terrain And Wetlands Permitting Performance Audit Report*, published in August 2007 (*2007 Audit*); and
- *Department Of Environmental Services Water Division Internal Control Review Agency-Income Revenues*, published in October 2015 (*2015 IC Review*).

We re-examined 26 audit observations and five “other issues and concerns” relevant to Bureau permitting. We found few improvements, despite the Department’s repeated and public commitments, not only to continuous improvement, but also specifically to resolve audit findings and management control deficiencies. Consequently, stakeholder concerns about Bureau permitting and deficiencies with relevant processes and management controls persisted through the current audit period.

Appendix H contains a summary of the status of each observation from prior LBA performance and financial audits examined during the course of our current audit.

Strategic Management

Strategic management entails ensuring operations, administration, resource allocations, and actual outcomes align with—and are supported by—mission, goals, objectives, and strategy. Effective and systematic strategic management can help ensure:

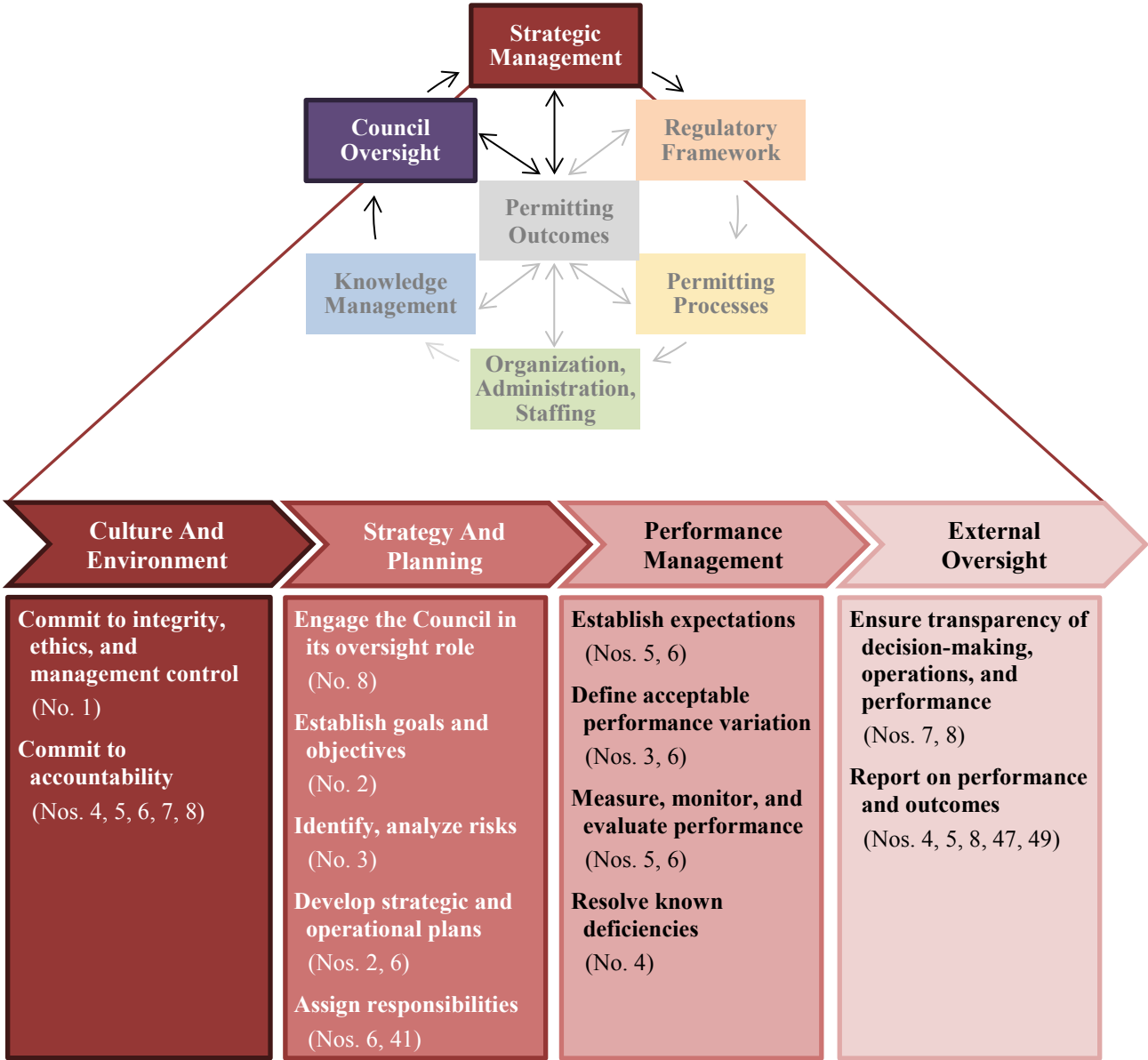
- management controls operate as intended;
- risks are adequately assessed;
- decision-making is data-informed and aligned with organizational values;
- employees comply with requirements and follow controls;
- operations are transparent, communication of performance and outcomes is reliable, and the public has access to relevant information, discussions, and decisions; and
- operations are efficient and effective and achieve strategic and operational objectives.

Department managers at all organizational levels were responsible for strategic management, and some were statutorily-responsible for more than three decades. Additionally, the Department’s 2010-2015 strategy contained goals related to strategic management. However, Department management minimized—and in some instances negated—the value of strategic management, which inhibited accountability and transparency, hindered the effective stewardship of financial resources, prevented evaluation of impacts to environmental resources, and compromised data-informed decision-making. Department goals remained unimplemented or partially implemented for almost a decade, and many recommendations from prior LBA audits remained unresolved for a decade-and-a-half or longer. We found deficient control systems over key components of strategic management persisted through our current audit period, as shown in Figure 3.

Through SFY 2018, Department and Council control systems necessary for effective strategic management of Bureau permitting were at an **initial** level of maturity, while subsystem maturity ranged from **initial** to **repeatable**, the lowest two levels of maturity. Deficient control systems contributed to process and management control deficiencies identified in all 60 observations in our current report, as the framework in which other control systems and subsystems operated lacked focus on outcomes.

Figure 3

Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Strategic Management



Source: LBA analysis.

Organizational Culture And Operating Environment

Department management was responsible for Bureau operations and performance, which required an operating environment and organizational culture committed to integrity, ethical values, and effective management. Such an environment and culture were particularly important,

as employees helped design, implement, and operate management controls and were responsible for reporting issues with effectiveness to management. Effective management controls can: 1) help prevent an environment and culture in which operations and administration are driven by the personalities and preferences of individual managers, and 2) instead, help create predictability and stability in expectations of performance and conduct over time and under different managers.

The Department managed Bureau permitting within a complex and evolving environment, as permitting-related requirements expanded and changed, and amid long-standing concerns about the timeliness, clarity, complexity, consistency, and efficiency of Bureau permitting, customer service, and administration. To ensure management control effectiveness and minimize the potential for waste and abuse, Department managers were responsible for developing and maintaining an organizational culture with a positive attitude towards effective controls. However, internal and external stakeholders long expressed concerns about the environment and culture within which Bureau permitting occurred, including:

- a lack of accountability,
- disregard for external oversight,
- potentially abusive behavior, and
- a lack of public trust.

We found significant issues persisted through our current audit.

The absence of a control system over the operating environment and organizational culture, from the Department to the Division to the Bureau, contributed to: abuse, waste, compromised due process, compromised transparency, regulatory overreach, inconsistent permitting outcomes, and statutory noncompliance. The Department's absent control system: 1) contributed to 52 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 1

Strengthen The Department's Operating Environment And Organizational Culture

The Department's operating environment and organizational culture did not support an organizational commitment to effective management controls, including those over the equitable treatment of Bureau permit applicants. Long-standing neglect of Bureau permitting-related control systems persisted, in part, because management did not: 1) establish expectations to report ineffective or absent controls or deviations from expectations and requirements or 2) timely address identified deficiencies. Necessary elements of management control systems were at times absent, knowingly circumvented, ineffectively designed, inconsistently implemented, and unmonitored.

Consequently, management did not consistently or adequately control the operating environment within which Bureau permitting occurred and did not fully understand relevant operations, administration, or performance. The environment within which Bureau and Application Receipt Center (ARC) employees had to operate accommodated:

- inconsistency and subjectivity in permit application review processes, including over permitting decisions, resulting in processes that produced inconsistent outcomes and, at times, abusive behavior, and could be seen as capricious by applicants;
- waste of public resources and the imposition of additional time and cost on applicants; and
- internal dysfunction and low morale.

Furthermore, the operating environment and organizational culture contributed to: 1) ineffective strategic management, 2) insufficient understanding of performance and actual outcomes, 3) compromised external oversight and transparency, 4) lack of accountability, and 5) permitting requirements and processes noncompliant with statutory and regulatory requirements and Legislative intent.

Ineffective Strategic Management Control Systems

The Department's operating environment and organizational culture accommodated deficient controls over strategic management. Consequently, the value of strategic management and external oversight of Bureau permitting was minimized or negated, resulting at times in wasted resources, noncompliance, and abusive behavior. We found inadequate or absent control systems over:

- strategic and operational planning, as we discuss in Observation Nos. 2 and 6;
- risk management, as we discuss in Observation No. 3;
- resolving audit findings, as we discuss principally in Observation No. 4;
- performance measurement, as we discuss principally in Observation Nos. 5 and 6;
- measuring costs and benefits of initiatives and decisions, as we discuss principally in Observation Nos. 2 and 6;
- internal accountability, as we discuss in Observation No. 6;
- transparency of decision-making and operations, as we discuss principally in Observation No. 7; and
- Council oversight of Department planning, policy, goals, operations, and rules related to wetlands and protected shorelands, as we discuss principally in Observation No. 8.

Additionally, we found knowingly circumvented, inconsistently implemented, and unmonitored controls over the workplace environment, even though Division management was aware of—but failed to address—dysfunction among Bureau administrators reportedly affecting operations, administration, performance, and morale. In CY 2018, we surveyed 37 Bureau and ARC employees then-employed or employed during SFYs 2016 or 2017 on general Bureau operations (Bureau operations survey), of whom 32 (86.5 percent) responded. Employees inconsistently reported: 1) Bureau administrators treated one another or employees with respect, 2) Bureau administrators provided effective leadership, and 3) they felt they could share concerns without fear of retaliation or retribution, affecting morale and employee retention. The complete results of our Bureau operations survey are included in Appendix F.

Noncompliant Regulatory Framework And Defective Control Systems

The Department's operating environment and organizational culture accommodated deficient controls over permitting requirements. Consequently, noncompliance created the potential for inconsistent permitting decisions, increased costs to permit applicants, compromised due process, accommodated regulatory overreach, compromised transparency, and resulted in abusive behavior at times. We found inadequate or absent control systems over:

- the reasonableness of rules, as we discuss in Observation Nos. 9, 10, and 11;
- fidelity with statute and rules, as we discuss principally in Observation Nos. 9 and 12;
- the clarity and specificity of rules, as we discuss principally in Observation No. 12;
- ad hoc rulemaking, as we discuss principally in Observation Nos. 13, 14, and 15;
- technical rule-writing standards, as we discuss in Observation No. 16; and
- policies and procedures, as we discuss principally in Observation No. 17.

Additionally, managers knowingly operated a permitting environment engaged in substantial ad hoc rulemaking by systematically augmenting rules over time with numerous requirements that were not properly incorporated into rules and enforcing these non-binding requirements on the public. For example, permit applicants were required to demonstrate their "need" for a project, even though statute did not impose or contemplate such a requirement, nor did federal wetlands regulations impose such a requirement. Permit applications were approved or denied based, in part, on whether technical permit application reviewers believed an applicant needed a proposed project, although management had not provided clear guidance as to how to objectively assess "need." In May 2018, the State Supreme Court found the Bureau's ambiguous definition of "need" was inconsistent with statute and provided a clear definition for use. However, managers continued to require permit applicants to demonstrate "need" through at least March 2019 without accommodating the State Supreme Court's definition and never issued interim guidance to technical reviewers, as we discuss in Observation No. 13.

Insufficiently Understood Permitting Outcomes And Defective Control Systems

The Department's operating environment and organizational culture accommodated deficient controls over permitting outcomes and processes. A lack of understanding of performance and permitting outcomes perpetuated defective permitting processes and the potential for inconsistent permitting outcomes, increased costs to permit applicants, compromised due process, and resulted in abusive behavior at times. We found inadequate or absent control systems over:

- customer service, as we discuss principally in Observation No. 18;
- permitting consistency, as we discuss principally in Observation Nos. 19, 20, and 21;
- permitting timeliness, as we discuss principally in Observation Nos. 22 and 23;
- appeals and remands, as we discuss in Observation Nos. 24 and 25;
- pre-technical review, as we discuss in Observation Nos. 26, 27, 28, and 38; and
- technical review, as we discuss in Observation Nos. 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 53.

Ineffective Organization, Administration, And Staffing Control Systems

The Department's operating environment and organizational culture accommodated deficient controls over the Bureau's organization, administration, and employees. Consequently, management's ability to optimize performance was hindered, and resources were wasted at times. We found inadequate or absent control systems over:

- organizational structure, as we discuss in Observation Nos. 26, 39, and 42;
- employee responsibilities, as we discuss in Observation Nos. 6, 26, 41, and 48;
- delegation of authority, as we discuss in Observation No. 40;
- permit reviewer credentials, as we discuss in Observation No. 43;
- employee development, as we discuss in principally in Observation No. 44; and
- professional conduct, as we discuss in Observation Nos. 45 and 46.

Inadequate Knowledge Management Control Systems

The Department's operating environment and organizational culture accommodated deficient controls over knowledge management. Consequently, the ability to optimize performance and ensure transparency and accountability were hindered, and some processes were unauditible. We found inadequate or absent control systems over:

- external communications, as we discuss principally in Observation Nos. 47 and 48;
- reporting, as we discuss principally in Observation Nos. 4 and 49;
- internal communications, as we discuss principally in Observation No. 50;
- information management, as we discuss principally in Observation Nos. 51 and 52; and
- third-party data used during review, as we discuss in Observation No. 53.

Recommendations:

We recommend Department management:

- **develop and maintain an operating environment and organizational culture supportive of an organizational commitment to effective management controls;**
- **ensure uncontrolled processes and practices are adequately controlled through comprehensive and clear rules, policies, and procedures;**
- **ensure existing controls are reviewed to ensure they are sufficiently designed, operating as intended, not circumvented, and are regularly monitored, modifying them as required;**
- **ensure processes allow employees to report deviations from controls, requirements, and expectations without fear of retaliation or repercussion; and**
- **ensure managers demonstrate the importance of controls through their own development of, and adherence to, controls and by timely addressing deviations.**

Department Response:

We concur with the recommendations.

The Department recognizes that it is effective management to consistently evaluate its organization's policies and controls.

Strategy And Planning

In order to strategically manage the Bureau, Department management first needed to develop a Department-wide strategic plan that identified a mission, goals, and objectives. Then, management was responsible for developing supporting Division- and Bureau-specific strategic and operational plans to describe how Department goals and objectives would be accomplished. Strategic planning served as the foundation for performance measurement and demonstration of outcomes. Plans should:

- reflect external compliance requirements;
- have corresponding implementation plans and performance measures;
- be implemented timely and effectively; and
- be broadly understood by employees and key stakeholders.

For more than three decades, the Assistant Commissioner was statutorily responsible for supervising Department planning activities and coordinating and compiling the Division's planning activities. Additional responsibilities were assigned to the Assistant Division Director, the Bureau Administrator, and the LRM Administrator, a vacant position whose responsibilities were carried out by the Assistant Division Director through the audit period. The LRM Administrator was responsible for overseeing Bureau strategic planning and determining Bureau goals.

However, deficient control systems over strategic management of Bureau operations contributed to ineffective performance management, inconsistent permitting outcomes, compromised transparency, and statutory noncompliance. Department control systems: 1) contained elements that were either absent, or, when present, were ineffectively designed, inconsistently implemented, or unmonitored, contributing to 52 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 2

Improve Strategic Management And Planning

Department, Division, and Bureau management did not manage operations strategically, lacking an ongoing, systematic approach to strategy development, management, and planning. The Department's 2010-2015 strategy was outdated and incomplete, implementation was inconsistent, reporting was unintegrated, goals were only partially fulfilled, and performance measures, where developed, were not holistic. Meanwhile, supporting operational plans—where

developed—were incomplete, disconnected from strategy, unintegrated, and not focused on statutory requirements. Deficiencies affected costs and achievement of outcomes, such as those related to the decade-long wetlands rule revision process and the LRM reorganization, and were inconsistent with the Department’s core practice of continuous improvement.

Inadequate Management, Development, Integration, And Implementation

Control systems over strategy and planning were inadequate. Department strategy, last updated in CY 2010, was incomplete, outdated, inconsistently implemented, unintegrated, unachieved, and developed without consultation with, and advice of, the Council.

Strategy did not address: 1) prior audit findings and external assessments using a systematic or strategic approach, or 2) compliance with relevant laws, which resulted in persistent ad hoc rulemaking. Moreover, the Department’s strategy included aspirational goals and timeliness targets for completion, but lacked accompanying plans, performance measures, and assignment of responsibility to implement plans and achieve outcomes. Additionally, employees gave conflicting statements as to whether the Department still used its 2010-2015 strategy, with some recognizing the need to update the strategy to more fully reflect current issues facing the Department. Among employees responding to our Bureau operations survey, 11 (34.4 percent), including seven managers, reported being familiar with the Department’s strategy. We asked those 11 employees if Department strategy guided Bureau planning and operations, and:

- six (54.5 percent), including four managers, reported *yes*;
- two (18.2 percent), both managers, reported *no*; and
- three (27.3 percent), including one manager, reported being *unsure*.

Reporting and performance measurement, such as the December 2016 LRM Balanced Scorecard (2016 LRM BSC) and the Department’s Environmental Dashboard (Dashboard), were not holistically connected to strategy to evaluate progress toward achieving strategic goals and objectives. Measures used in the 2016 LRM BSC and Bureau reports were also inputs and outputs, rather than actual outcomes. Goals were unfulfilled, as permitting was persistently untimely; rules were vague, inconsistent, incomplete, and not underpinned by objective standards or economic impact analysis; permitting decisions were inconsistent; performance was not holistically measured or well communicated internally or externally; and employees were neither efficiently nor effectively managed. Furthermore, the Council was not engaged in Department long-range planning; Council members were unaware of statutory responsibilities to consult with and advise the Commissioner and engage in long-range planning, and were unfamiliar with Department strategy; and the Commissioner met only once with the Council from January 2015 to April 2018, despite a statutory requirement to meet quarterly.

Inadequate Planning And Untimely Results

Despite the need for supporting operational and strategic plans to establish a basis for implementing Department-level strategic goals and objectives at lower organizational levels, the Division lacked operational plans, and Bureau planning: 1) was informal, 2) was unintegrated with Department strategy, 3) inconsistently incorporated statutory requirements, and 4) was tied

to compliance with federal reporting requirements. The Bureau completed federally-required reports annually and submitted federally-required long-term program plans every six years. Department employees reported federal reports and plans could have served as Bureau operational plans, but connections between short-term reports and long-term plans and the Department's strategy were unclear. While Bureau plans contained goals related to environmental protection, stakeholder outreach, and improving rules, they lacked goals focused on: 1) achieving and improving compliance with statutory permit application review time limits, despite decades-long concerns with untimely permitting; 2) resolving findings from external audits and assessments; and 3) addressing known ad hoc rulemaking, ambiguities in the regulatory framework, and inconsistency.

Management was responsible for creating controls to help ensure plans were implemented according to specified timelines, yet enforcement mechanisms were nonexistent. There was no evidence Department or Bureau management oversaw progress towards fulfilling goals and meeting timelines established in the Bureau's short-term reports or long-term plans. For example, 31 of the 54 goals (57.4 percent) specified in the 2011-2017 long-term plan and five of 35 projects (14.3 percent) in the federal fiscal year 2016 report were not timely achieved. Untimely activities included: 1) implementation of an integrated LRM permit, with an initial completion date of CY 2015, and revised completion date of CY 2021; and 2) the wetlands rules revision process, with a previous completion date of CY 2013, but which the Department subsequently expected to complete in CY 2019.

Effect Of Inadequate Strategic Management

Among Bureau initiatives, two—the wetlands rules revision process and the LRM reorganization—likely could have had the broadest effect were they realized, but instead illustrate the direct and indirect effects of the Department's inadequate control over strategic management. Department operations, such as these initiatives, should: 1) connect to strategic objectives through integrated plans, 2) include evaluations of feasibility and fiscal effects, 3) follow implementation plans and timelines, and 4) contain performance measures to evaluate progress. Division and Bureau managers, including the LRM Administrator, were responsible for understanding operational and fiscal effects and analyzing and evaluating Bureau financial and other resources. However, the Department engaged in both initiatives without adequate planning, study of feasibility and fiscal impact, or evaluation of performance, leading to increased costs due to untimely or unsuccessful implementation. There were also opportunity costs to the Department due to the amount of employee time and other resources dedicated to these initiatives. For example, deficiencies identified in prior LBA audits and longstanding inconsistency and ambiguity went unaddressed, and implementation of *Integrated Land Development Permit (Integrated Permit)* was delayed from CY 2015 to CY 2019.

Protracted Wetlands Rules Revision Process

The Bureau engaged in a wetlands rules revision process—rules being last fully updated in CY 1991—for at least ten years without a plan or holistic evaluation of fiscal and other potential effects, contributing to persistent flaws in the regulatory framework and increased costs. Rules underpinned the regulatory framework and were the source of longstanding concerns identified

in our 2007 Audit, including inconsistency, ambiguities, and overreach. Relevant 2007 Audit recommendations remained unresolved through CY 2018, despite the Department's assertion it would conduct a complete review of wetlands rules, propose changes to address our recommendations, and complete substantial revisions by CY 2008. Subsequently, the Bureau proposed at least five different timelines for completing wetlands rules revisions. The wetlands rules revision process involved:

- Department and Division managers;
- Bureau employees, who reported allocating 1.4 percent of their time (1,394 of 102,102 hours) on rulemaking during the audit period, according to unaudited Department data on self-reported employee time allocations (Department time allocation data);
- 159 meetings with several informal stakeholder groups representing business, industry, government, and environmental advocacy interests; and
- sole-source contract assistance in CY 2018, valued up to \$28,000.

Unimplemented LRM Reorganization

For more than ten years, the Department worked to reorganize LRM programs without adequate planning and full evaluation of potential effects. The LRM reorganization effort involved a “staggering” amount of time, according to one senior Department manager. It included numerous management meetings, employee training events, and public meetings, and generated mixed feedback from stakeholders. Eventually, reclassification of ten proposed LRM positions Department management viewed to be essential to reorganization was rejected by the Governor and Executive Council, and no further LRM reorganization actions were taken. We were unable to quantify the opportunity costs and waste of time and effort expended on the LRM reorganization effort, due to insufficiently detailed unaudited Department time allocation data, which indicated Bureau employees reported allocating 7.2 percent of their time (7,354 of 102,102 hours) on tasks related to general development and planning, but not exclusively on the LRM reorganization.

Recommendations:

We recommend Department management:

- **update and maintain Department strategy;**
- **create and maintain a strategic plan with measureable goals, objectives, targets, and timelines for completion, assigning accountability to individuals for implementation and performance;**
- **ensure the Division and Bureau develop complimentary strategies and plans focused on achieving outcomes centered upon statutory expectations and Department strategy;**
- **incorporate resolving prior and current audit findings throughout strategy;**
- **engage the Council regularly regarding long-range planning;**
- **tie initiatives to strategy and plans, and evaluate feasibility through formal fiscal and other analyses; and**

- **develop performance measures tied to strategic goals, plans, and initiatives, and track Department performance.**

We recommend Division and Bureau management develop complimentary, integrated strategies and implementing plans to help ensure strategic objectives are achieved.

Department Response:

We concur with the recommendations.

The Department already has systems in place that address many of the recommendations, and we will pursue improvement in these areas to ensure that the necessary controls are in place and are operating effectively.

Additional Department and LBA comments on Observation No. 2 appear in Appendix B.

Risk Management

Bureau permitting was characterized as the highest-risk permitting program within the Department. Effective risk management required Department management to:

- establish measurable objectives defining what was to be achieved, who was to achieve it, how it would be achieved, and when it would be achieved;
- define measurable risk tolerances, or acceptable performance variations, if necessary;
- identify risks, or possible events that could hinder the achievement of objectives;
- analyze risks to estimate whether they might occur or have a significant impact;
- avoid, mitigate, or accept risks to ensure they were within defined risk tolerances;
- communicate risk-related responsibilities to managers responsible for implementing controls; and
- monitor control effectiveness and performance.

Although management controls cannot absolutely ensure organizational effectiveness, an effective and documented risk assessment process is a core element of effective management control. For more than three decades, the Assistant Commissioner was statutorily responsible for risk management. However, two recommendations related to Department risk management from two prior LBA audits issued as long as a decade-and-a-half ago remained unresolved.

The absence of a control system over managing risks related to Bureau operations contributed to waste, abuse, and mismanagement. The Department's absent control system: 1) contributed to 52 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 3

Establish And Formalize Risk Management Policy And Practices

Neither the Department nor the Bureau systematically managed risk associated with Bureau permitting. The Department lacked a formal, systematic approach to risk management, and the Bureau similarly lacked one at its level, decreasing the likelihood the Bureau would achieve strategic or operational objectives. Additionally, the Department had not addressed deficiencies identified by our *2005 Audit* and *2015 IC Review*, in which we recommended implementing risk management controls. The Department concurred, stating in CY 2015 it was in the process of developing a formal risk assessment process with several other agencies. However, there was no evidence Department management developed such a system, conducted formal risk assessments to regularly identify risks, defined risk tolerances, or created controls to manage identified Bureau permitting risks. The lack of risk management negatively affected the Bureau. The Bureau operated in a turbulent environment, with multiple conflicting demands from internal and external stakeholders, and its operations occurred without due consideration of risk. Bureau initiatives like the LRM reorganization and wetlands rules revision process were protracted and costly, and neither initiative was completed after a decade or more.

Strategy, and the plans to implement strategy, should be risk-informed and systematically manage risks that could affect achievement of organizational objectives. The Department incurred costs by not proactively managing risks. Some key areas where the absence of adequate risk management policy and practices affected the Bureau included:

- **Prior Audit Findings** – Our *2005 Audit* recommended the Department develop and implement formal fraud risk mitigation efforts, while our *2015 IC Review* recommended the Division and Department develop a broader formal risk assessment process. The Department concurred with both recommendations and stated it would implement relevant risk management processes. However, these recommendations were not implemented, and the Department lacked a systemic approach to managing risk through our current audit period and resolving external audit and assessment findings, as we discuss in Observation No. 4.
- **Issues With Information Technology (IT) Systems** – Effective risk management could have helped ensure the Bureau improved IT systems to meet its organizational needs. Our *2007 Audit* commented on deficiencies with the Bureau’s IT systems affecting performance measurement, as we discuss in Observation Nos. 5 and 51. We recommended the Department replace the Bureau’s antiquated database management system (DBMS) and obtain a new system that met operational needs and improved performance measurement. Though the Department concurred with these findings, the DBMS was not replaced until nearly ten years later, and then reportedly under emergency circumstances with little planning and no analysis of operational needs. Furthermore, IT system deficiencies persisted during our current audit, and, as a result, Department and Bureau management could not evaluate the efficiency and effectiveness of permitting without reliance on inadequately controlled paper records, as we discuss in Observation No. 52.

- Wetlands Rules Revision Process – The Department incurred costs and prolonged deficiencies in process and rules by not completing wetlands rules revisions timely. In response to rule deficiencies identified in our *2007 Audit*, the Department stated it would revise wetland rules in CY 2008, but subsequently expected to complete rule revisions in CY 2019 after several delays. Not only was a significant amount of time spent on the effort by employees and stakeholders, but the decade-long process also contributed to delays in other activities, such as implementation of *Integrated Permit* and data collection for the anticipated CY 2017 LRM BSC. Furthermore, the protracted nature of the revision process meant deficiencies in process and rules, last fully updated in CY 1991, went unaddressed, including: vague, undefined, and expired requirements, as we discuss principally in Observation Nos. 9 and 12; ad hoc rulemaking, as we discuss principally in Observation No. 13; requirements based on outdated standards, as we discuss in Observation No. 10; technical deficiencies, as we discuss in Observation No. 16; and forms not adopted in rule, as we discuss in Observation No. 15. Stakeholders incurred increased costs due to rule deficiencies.
- LRM Reorganization – The LRM reorganization was not underpinned by effective risk assessment and mitigation, leading to increased costs. The reorganization effort lasted more than ten years and was ultimately placed on hold indefinitely, as we discuss in Observation No. 39, due, in part, to negative stakeholder feedback. The protracted nature of reorganization efforts consumed significant employee and stakeholder time. Proactive risk management could have allowed Department management to holistically identify risks associated with the initiative sooner and avoid expending resources without realizing any outcomes.
- Organization And Staffing – Bureau organization and staffing practices were not risk-based, and Bureau employees were inconsistently credentialed, trained, and overseen by managers, leading to increased costs to the Department through inefficiency and waste, and to stakeholders through confusion and inconsistent permitting outcomes, as we discuss in Observation Nos. 6, 21, 43, and 44.

Recommendations:

We recommend Department management:

- **establish, document, implement, and refine formal agency-wide risk management policy and processes tied to strategy and plans to help ensure the Department recognizes, evaluates, and responds to risks that could affect its ability to achieve objectives;**
- **develop appropriate, clear, and measurable risk tolerances; and**
- **holistically review operations on a regular basis for indicators of risk and changes to risks, and establish and monitor controls to address those risks.**

We recommend Division and Bureau management adapt and implement the Department's risk management policies and practices to help ensure operations are risk informed and strategic objectives are achieved.

Department Response:

We concur with the recommendations.

Many facets of risk management are already in place at the Department- and Bureau-levels, including:

- *establish, document, implement, and refine formal agency-wide risk management policy and processes tied to strategy and plans to help ensure the Department recognizes, evaluates, and responds to risks that could affect its ability to achieve objectives;*
- *develop appropriate, clear, and measurable risk tolerances; and*
- *holistically review operations on a regular basis for indicators of risk exposure, and changes to exposures, and establish and monitor controls to address those risks.*

Division and Bureau management adapt to their operating level and implement the Department's risk management policies and practices to help ensure operations are risk informed and strategic objectives are achieved.

We will pursue improvement in these areas to ensure that the necessary controls are in place and are operating effectively.

Additional Department and LBA comments on Observation No. 3 appear in Appendix B.

Resolution Of Previously Identified Management Control Deficiencies

Department management had a responsibility to timely resolve deficiencies identified in external audits and assessments by:

- implementing a system to ensure prompt resolution of findings and recommendations,
- assigning responsibility to resolve deficiencies,
- taking appropriate follow-up action to resolve findings, and
- investigating underlying causes contributing to findings and recommendations, to prevent or address additional, related deficiencies.

External audits and assessments identified areas in which management controls were deficient, how deficiencies affected operations and performance, and how deficiencies could be resolved. Our *2007 Audit* identified numerous issues with Bureau operations. Following its publication, Department managers publicly reported launching an initiative—in partnership with the Council—to improve the management and clarity of Bureau permitting. The initiative would have reportedly addressed the *2007 Audit's* findings and recommendations, identified other areas for improvement, and implemented changes. However, we re-examined 26 observations and five “other issues and concerns” relevant to Bureau permitting from our *2002, 2005, and 2007 Audits* and *2015 IC Review* and found few improvements.

The absence of a control system over timely resolution of prior audits and other external assessments: perpetuated and increased Bureau permitting risks and contributed to the persistence of other control deficiencies, contributed to ongoing stakeholder concerns, and resulted in opportunity costs to the Department and waste. The Department's absent control system: 1) contributed to 45 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 4

Timely Resolve External Audit And Assessment Findings

The Department did not systematically or deliberately resolve management control deficiencies identified by the LBA or the federal Environmental Protection Agency for as long as 16 years. The Department inconsistently complied with resolution reporting requirements. Management reported inaccurate and misleading information on the Department's progress towards resolving prior audit findings, sometimes significantly so, as shown in Figure 4 for the 19 observations from our *2007 Audit*. We found most prior findings and recommendations relevant to the current audit were not fully resolved, despite many managers' knowledge of prior LBA audits. Untimely resolution contributed to ongoing, and in some cases worsening, management control deficiencies. Since CY 2002, we conducted four audits containing 26 observations and five "other issues and concerns" with findings, recommendations, and suggestions directly related to our current audit. We followed up on the Department's progress towards resolving:

- the 26 observations, of which 25 (96.2 percent) remained unresolved or partially resolved, and
- the five "other issues and concerns," all of which remained unaddressed.

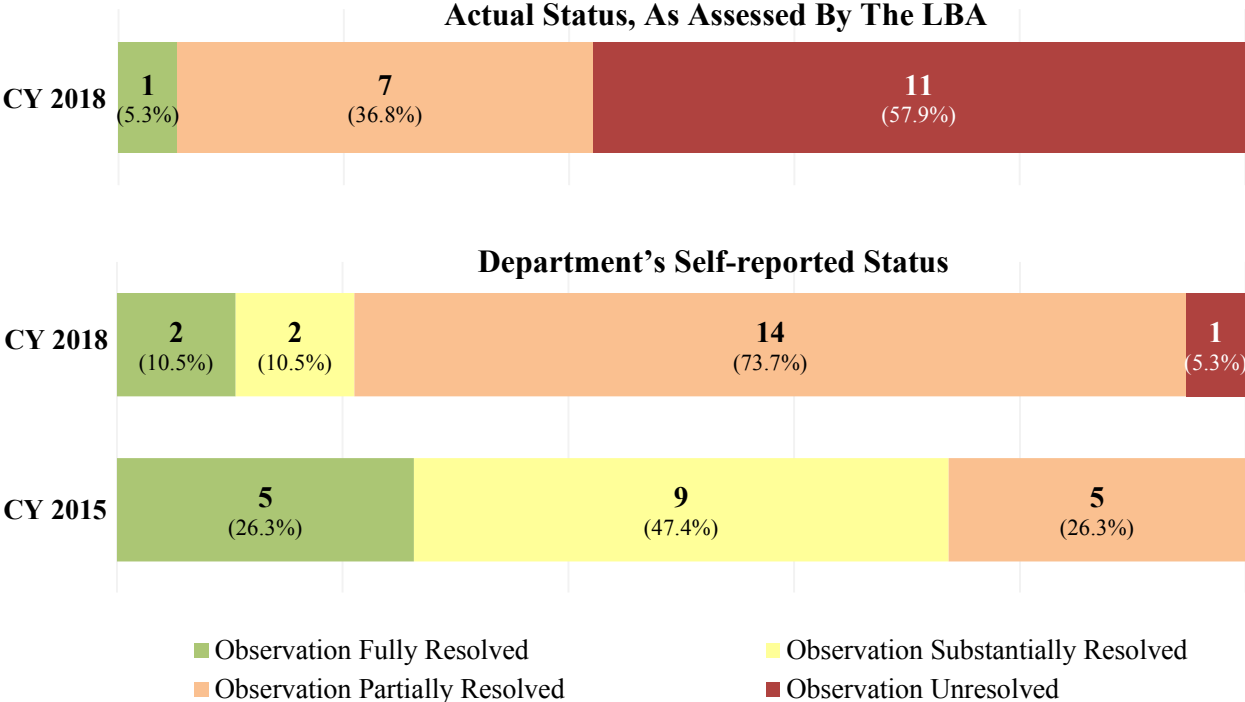
Additionally, since CY 2008, the federal Environmental Protection Agency conducted three assessments of the Department's quality system. Five deficiencies relevant to the current audit had not been fully addressed.

Management control systems were insufficient to ensure statutory and regulatory compliance and operational efficiency and effectiveness related to Bureau permitting.

- Without an adequate management control system to ensure resolution, the Department wasted the State's substantial and decades-long investment in LBA audits of the Department. Audits resulted in only limited corrective actions by Department management, despite identification of a substantial depth and breadth of management control deficiencies. Furthermore, management inaction wasted Department resources invested in audits and assessments.
- Without fully resolving deficiencies related to external communications, rules, and policies and procedures, the Department perpetuated and increased risks associated with Bureau permitting due to an ongoing lack of transparency; an inconsistent and increasingly complicated regulatory construct; and reliance on ad hoc rulemaking.

Figure 4

Actual Versus Self-reported Resolution Status Of 19 Observations From Our 2007 Audit



Note: The resolution status of prior audit observations previously was reported according to four categories—fully resolved, substantially resolved, partially resolved, and unresolved—which are also used throughout this observation to provide consistency for the reader in depicting changes in resolution status over time. The status of prior audit observations reported in Appendix H now reports resolution according to three categories—resolved, resolution in process, and unresolved.

Source: LBA analysis of Department-reported resolution and actual, documented resolution.

- Failure to fully resolve audit findings also compromised the implementation of the Department’s 2010-2015 strategy, as a number of activities were unguided by strategic principles, and strategic goals were not achieved through the audit period due to management control deficiencies, including previously-identified deficiencies related to customer service, transparency, efficiency, and effectiveness.

Lack Of Managerial Accountability For Resolving External Audit Findings

The majority of the 26 relevant LBA recommendations and the five “other issues and concerns” were unresolved through CY 2018. No policies and procedures were developed to ensure audit findings and recommendations were brought to the attention of the appropriate Department managers and resolved promptly and transparently, nor did any element of Department strategy focus on audit resolution.

No Systematic Resolution Or Corrective Action Monitoring Despite Awareness Of Audits

The Department lacked control systems to ensure management had necessary institutional knowledge of deficiencies identified by audits and timely resolve audits findings. Senior management reportedly did not ask for information on progress towards resolving audit findings and recommendations, despite the formal allocation of responsibilities related to, or associated with, audit resolution. The Chief Operations Officer was statutorily responsible for implementing audit recommendations concerning units within the Commissioner's Office; the Division Director was responsible for the overall effectiveness of Division operations; and the Assistant Division Director, also the acting LRM Administrator, and Bureau administrators were responsible for improving Bureau operations.

The Commissioner and a former Division Director both reported they were unaware of our *2007 Audit* until we asked about resolution status during our current audit in CY 2018. However, other Department and Bureau employees, including managers still serving in the same roles as they were in CY 2007, were aware of prior LBA audits and could have ensured changes were made.

- The Assistant Division Director, also the acting LRM Administrator, participated in our *2007 Audit*. The Assistant Division Director also received copies of the Department's written responses to our observations, all of which indicated full concurrence, and many of which outlined a plan for resolution by CY 2008.
- The Bureau Administrator participated in our *2007 Audit*. The Bureau Administrator also received permit application file review results, received copies of the Department's written responses to observations, and participated in the exit conference discussing the final report.
- The Assistant Bureau Administrator participated in our *2007 Audit*. The Assistant Bureau Administrator also received the results of, and responded to, our file reviews.
- The Chief Operations Officer participated in our *2007 Audit* and also reported the resolution status of *2007 Audit* observations in response to a follow-up conducted during our *2015 IC Review*.

Lack Of Transparency And Accurate Resolution Reporting

The Department inconsistently complied with transparency and reporting requirements on its progress resolving audit findings and provided inaccurate and misleading information. Since CY 2014, the Department was required to: 1) develop a remedial action plan within 30 days of an LBA audit, identifying planned remedial actions and actions requiring approval from the Legislature, Governor and Executive Council, or another party; 2) report on progress semi-annually; and 3) provide plans and progress reports for posting on the State's transparency website. However, following the:

- October 2015 publication of our *Department Of Environmental Services State-owned Dams Performance Audit Report*, the Department did not file a remedial action plan

and, while it did file two semi-annual progress reports in April and October 2016, it stopped filing progress reports thereafter, despite reporting eight of 12 observations (66.7 percent) had not been fully resolved as of October 2016;

- October 2015 publication of our *2015 IC Review*, the Department did not file a remedial action plan or any semi-annual progress reports; and
- May 2018 publication of our *Department Of Environmental Services Air Resources Division Performance Audit Report*, the Department did not file a remedial action plan until March 2019, nine months late, and had not filed a semi-annual progress report through April 2019.

Minimal Resolution Of Relevant Deficiencies Identified During Audits And Assessments

Management was responsible for monitoring resolution to verify corrective actions were implemented and identified deficiencies were actually resolved, as well as cooperating with auditors and disclosing known management control problems, including unresolved audit findings. However, we found broad non-resolution of the 26 prior LBA recommendations and five “other issues and concerns,” as we discuss in 19 additional observations in this audit report.

- Our *2002 Audit* included one observation relevant to the current audit and, 16 years later, it remained unresolved.
- Our *2005 Audit* included three observations relevant to the current audit and, 14 years later, two (66.7 percent) remained unresolved, while one (33.3 percent) had been partially resolved.
- Our *2007 Audit* included 19 observations and five “other issues and concerns” relevant to the current audit and, 11 years later, 18 observations (94.7 percent) remained unresolved or partially resolved, while one (5.3 percent) had been fully resolved, and all “other issues and concerns” (100.0 percent) remained either unaddressed or partially addressed.
- Our *2015 IC Review* included three observations relevant to the current audit and, three years later, all (100.0 percent) remained either unresolved or partially resolved.

Additionally, management did not fully resolve relevant deficiencies identified by the federal Environmental Protection Agency, which, in some cases, were long-standing and dated back a decade or more. The Environmental Protection Agency periodically assessed the Department’s quality system, which was intended to improve and assure data quality and ensure programs produced the type, quality, and quantity of data needed to make informed decisions. Since CY 2008, the Environmental Protection Agency conducted three *Quality System Assessments*, in June 2008, June 2012, and August 2017. While the Department was required to submit corrective action plans describing planned resolution, some deficiencies relevant to our current audit persisted for a decade or more, while others were related to prior LBA audit findings, as we discuss in Observation Nos. 17, 49, and 51.

Recommendations:

We suggest the Legislature consider increasing its oversight of Department efforts to address prior and current audit observations.

We recommend Department management:

- **comply with Executive Orders requiring development, submittal, and posting of remedial action plans and progress reports after an LBA audit;**
- **timely resolve audit and assessment findings;**
- **develop, validate, and implement policy and procedures to ensure responsibility for resolving audit and assessment recommendations is clearly assigned and audit and assessment findings are timely resolved;**
- **incorporate audit and assessment resolution processes into its strategy and plans to ensure continuous monitoring and evaluation of the adequacy of its management controls; and**
- **track resolution observation-by-observation and ensure timely progress towards achieving full resolution.**

Department Response:

We concur with the recommendations.

The Bureau is under new leadership as the Governor appointed a new Division Director on March 13, 2019 and the Department hired a new LRM Administrator, effective February 1, 2019. These new leaders bring a fresh perspective to management of the Bureau, and they will oversee corrective action plan development, submittal, posting, and progress reporting in compliance with Executive Orders.

The Department is preparing a comprehensive corrective action plan to address the findings of the audit. The corrective action plan will be available by May 10, 2019, and the plan will establish a timeline for addressing all outstanding audit findings. The LRM Administrator will track corrective action observation-by-observation and ensure resolution of the findings within the constraints of available resources by directing as many resources as possible toward corrective actions while still committing sufficient resources to meeting the Bureau's primary tasks of application reviews and permitting. The LRM Administrator is responsible for developing, validating, and implementing policy and procedures to ensure timely resolution of the findings and for incorporating remediation processes into LRM strategy and plans to ensure continuous monitoring and evaluation of the adequacy of management controls.

Given the scope and large number of recommendations in the audit, we anticipate corrective action will be a multi-year process, but the Department is committed to completing remediation of all findings with which we have concurred.

Additional Department and LBA comments on Observation No. 4 appear in Appendix B.

Performance Management

Management of Bureau performance, and measuring and demonstrating actual outcomes, provides a basis for making data-informed, objective, and strategic decisions. These decisions support the achievement of goals and objectives, and help ensure compliance with requirements, accountability for performance and conduct, and transparency. Performance management includes ongoing, systematic:

- establishment of performance expectations connected to goals and assignment of responsibilities;
- measuring and continually monitoring performance, including adherence to risk tolerances;
- evaluating performance and ensuring accountability;
- ensuring the reliability, accuracy, and timeliness of performance measurement, monitoring, and reporting; and
- revising expectations.

Performance measurement rested upon quantifying Bureau inputs, outputs, and outcomes.

Programmatic Performance Management

It was a fundamental expectation for the Department to operate effectively, by demonstrating the Bureau had achieved its intended programmatic outcomes. However, Department data could not demonstrate any programmatic outcomes resulted from permitting, including the extent to which despoliation or unregulated development of wetlands and protected shorelands were prevented. Unaudited Department and Bureau data indicated that, during the audit period, the Bureau employed 32 employees at a cost of \$4.9 million and handled 7,174 applications and notices. These inputs allowed the Bureau to produce permitting program outputs: final decisions on 6,334 applications and notices (88.3 percent). Outputs should have supported intermediate permitting outcomes, as shown in Figure 5, including:

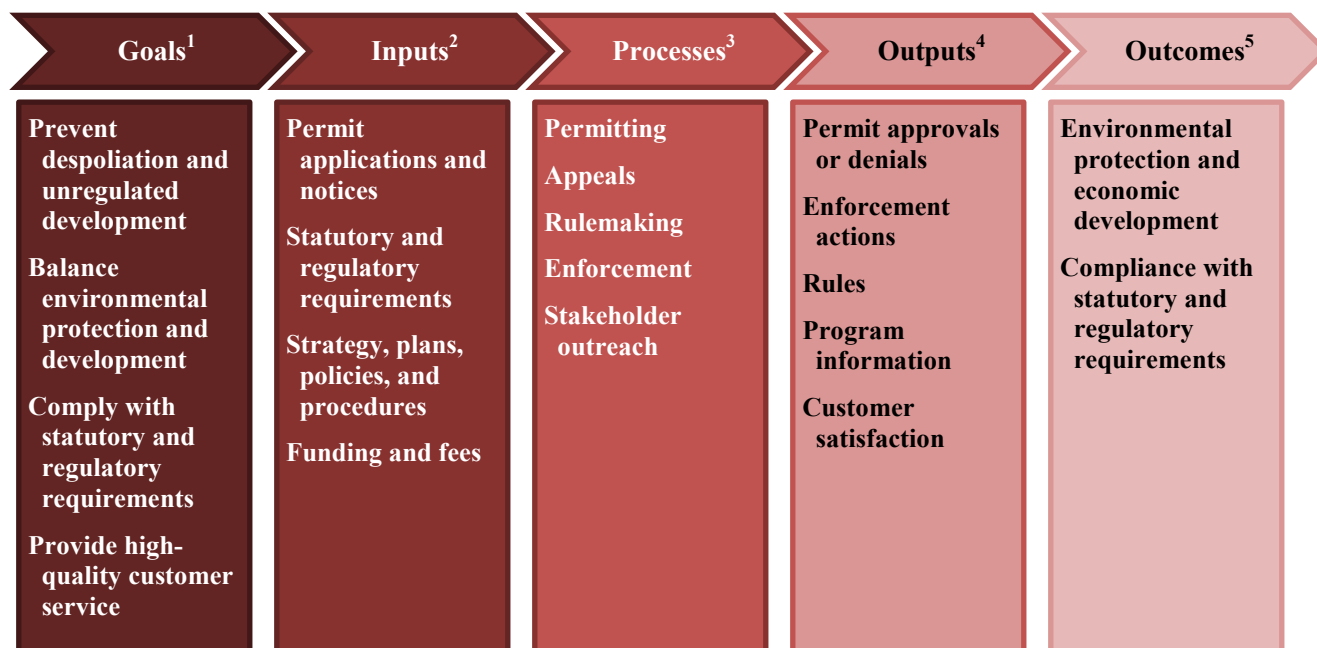
- making consistent permitting decisions compliant with statutory and regulatory requirements, and
- achieving strategic objectives to balance economic development and environmental protection.

Intermediate outcomes should have underpinned, and ultimately led to, programmatic outcomes expected by statute.

Department managers were responsible for measuring and managing program performance. The Assistant Division Director, acting as the LRM Administrator, was responsible for evaluating, developing, and coordinating Bureau activities to minimize duplication of effort and maximize efficiency and allocation of resources. Department management relied upon the Dashboard, which included measures on water quality and wetland loss and mitigation, to report on purported Department effectiveness. Division management reported it separately relied on the LRM BSC to review program performance information.

Figure 5

Relationship Between Wetlands Bureau Permitting Goals And Program Performance



Notes:

1. Management sets in strategy goals related to statutory compliance and expected outcomes.
2. Inputs are resources and activities that are needed for, or guide, Bureau operations.
3. Processes are Bureau activities designed to provide services.
4. Outputs are the services provided by Bureau activities.
5. Outcomes are the impacts resulting from Bureau operations, and include intermediate and ultimate outcomes.

Source: LBA analysis of Bureau operations and the Department’s 2010-2015 strategy.

The 2016 LRM BSC contained 21 performance measures in ten categories: 1) exemplary customer service; 2) clear and consistent process; 3) clear guidance; 4) environmental outcomes; 5) early coordination; 6) efficiency; 7) effectiveness; 8) strategy; 9) employee knowledge, ability, and performance; and 10) organizational capacity. These measures focused on inputs and outputs, not outcomes. For example, the 2016 LRM BSC purported to measure the efficiency of operational processes through process improvement efforts. This measure was intended to align with the Department’s goal to use the most efficient, effective, and innovative workforce practices. However, efficiency was measured solely based on the total number of program improvement efforts conducted—an output—and not on the effect those efforts had on Bureau operations—an intermediate outcome—or what effect those efforts had on preventing despoliation or protecting shorelands—the ultimate programmatic outcome.

Deficient control systems over program performance contributed to: an insufficient understanding of program performance, an inability to demonstrate actual environmental outcomes, inconsistent permitting outcomes, and compromised objective and data-driven

decision-making. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, or unmonitored, contributing to 51 observations in our current report; and 2) were at a **repeatable** level of maturity.

Observation No. 5

Improve And Expand Performance Measurement Systems

The Department, Division, and Bureau lacked a systematic performance measurement system tied to strategy and risk. Management could not evaluate the efficiency and effectiveness of Bureau operations, performance, and actual outcomes due to incomplete and inadequate data collection, inconsistent data quality, and untimely reporting. Systematic performance measurement tied to strategy and informed by risk management could have helped ensure strategic and operational objectives were met and performance was within risk tolerances. The Department did not develop comprehensive performance measures from strategy and plans, and the performance measures that were developed were disconnected between the Bureau, Division, and Department. For example, the Bureau could not determine how permitting affected the quality and functions of wetlands and protected shorelands or the costs incurred by the regulated community. The performance measures used by the Bureau were focused on a limited subset of inputs and outputs, rather than achieving actual programmatic outcomes.

Performance Measurement Not Tied To Outcomes

The Bureau could not determine whether intended outcomes were met. Bureau program performance measurement was focused on meeting a limited subset of timeliness compliance measures, rather than on outcomes, such as balancing economic development and environmental protection, ensuring statutory compliance, and preventing despoliation. Internal Bureau reports and the 2016 LRM BSC had certain permit timeliness measures to help ensure compliance with initial statutory time limit requirements. However, the Bureau did not collect data to evaluate the performance of the entire permitting process, which included other statutory time limits, including those associated with requests for more information (RFMI) and permit review extensions. The Bureau also lacked measures to evaluate the effect of permitting on wetlands and protected shorelands, relying instead on anecdotal information. The online LRM *Customer Service Survey Permit Process Questionnaire* implemented in CY 2017 (2017 online LRM survey), a method used to measure customer service, had low response rates and lacked controls over who took the survey and with what frequency. The 2017 online LRM survey also lacked questions regarding customer satisfaction with the permitting process, timeliness of application processing, Department use of RFMIs, and the costs of permitting, as we discuss in Observation No. 18.

Uncoordinated Performance Measurement

The Department inconsistently translated strategic goals into performance measures, and performance measures used were either unreliable, not monitored by management, or not connected to strategy. We found no evidence Department management created performance measures for the Department's 2010-2015 strategy or for the Bureau's long-term plans. The

Bureau's short-term plans included some performance targets focused on outputs, but not outcomes; however, information in short-term plans was characterized as unreliable, and management did not monitor whether the Bureau met performance targets. Though the Dashboard and the 2016 LRM BSC were reportedly used to evaluate performance, the Department did not provide any evidence that performance measures on either were derived from, or purposefully connected to, strategy.

Department and Bureau goals regarding performance measurement were not fully accomplished. The Department did not create the web-based system to track permitting and enforcement trends and summarize backlogs, average review timeframes, and trends that was integral to the Department's 2010-2015 strategy. Furthermore, the strategy provided the Department would connect operations to relevant outcomes and environmental indicators, and establish a web-based system to present real-time trend information on the State's environment and key Department outcomes. However, these goals were only partially fulfilled. While the Dashboard and 2016 LRM BSC's measure of wetlands loss and mitigation was presented as an outcome measure, it was an output measure with no connection to the prevention of despoliation or unregulated development, and could not be used to demonstrate Bureau effectiveness. A Bureau goal to develop wetlands water quality standards was similarly unfulfilled, and no standard was ever developed, even though the federal Environmental Protection Agency had encouraged states to develop water quality standards for wetlands since CY 1990.

Department- and Bureau-level performance measurement was also uncoordinated. Management made no formal connections between the Dashboard and the 2016 LRM BSC and other performance reports. Already lacking connections between performance measurement and strategy and plans, the uncoordinated Dashboard and 2016 LRM BSC meant management could not tie Bureau outputs to Department outcomes.

Incomplete Performance Measurement

The 2016 LRM BSC was the only LRM BSC published and was not developed in consultation with the Council. It was plagued by data-quality issues, aggregated data for all three LRM programs, and was incomplete. The 2016 LRM BSC generally did not align with Department strategy and would not have helped management assess Bureau performance or attainment of Department goals and objectives. Consequently, management had a skewed and limited understanding of Bureau performance, as we also discuss in Observation Nos. 2, 6, 18, 44, 47, and 50.

Other than qualitative feedback through meetings, management relied upon Bureau permitting timeliness reports and the 2016 LRM BSC to assess permitting performance. However, the measures in these reports were not sufficient to comprehensively measure Bureau operational efficiency and effectiveness. Internal Bureau permitting timeliness reports, such as the "Outstanding Files Report," focused on meeting one initial statutory review time limit, rather than measuring the timeliness of the entire permitting process. The Bureau included a similar measure in the 2016 LRM BSC, the percentage of days used until statutory first review, and did not include any other measures of timeliness. Using statutory first review measures, management would be unable to measure actual permit timeliness or identify applications that were delayed

due to RFMIs, review extensions, preferential treatment, or other factors, limiting oversight. Consequently, the Bureau did not understand permitting performance and instead only understood how often it did or did not comply with one statutory time limit, as we discuss in Observation No. 22.

The quality of the Bureau's performance measurement data was inconsistent, complicating potential management oversight of Bureau permitting. Our *2007 Audit* concluded the Department's ability to measure performance was negatively affected by deficient IT systems and inconsistent data quality, and the conditions leading to these findings were unresolved more than a decade later. The LRM permitting database management system overwrote, or did not capture important dates to evaluate timeliness of permitting, and electronic data was unreliable due to data entry inconsistencies within the Bureau. Reliance on performance measures derived from data of poor quality painted an incomplete picture of Bureau performance and meant management did not have a correct or complete understanding of whether the Bureau was meeting expectations.

Untimely Performance Measurement

The Department did not timely measure performance, particularly with the LRM BSC, delaying management's use of the report for oversight purposes. One Bureau employee characterized data collection for the LRM BSC as time consuming and heavily reliant on manual processes. As of December 2018, the Bureau had not finalized CY 2017 LRM BSC performance data and published results. Management cannot use data to inform decision-making if it is not collected, analyzed, and reported timely.

Recommendations:

We recommend Department management:

- **develop, implement, and refine a performance measurement system with measures tied to strategy, risk tolerances, and outcomes;**
- **ensure performance measurement is coordinated between the Department, Division, and Bureau;**
- **address deficiencies with IT system design and data quality control to help ensure performance measurement is based upon holistic, reliable data; and**
- **collect and process data timely, and regularly assess performance measurement data.**

We recommend Division and Bureau management develop complimentary performance measurement systems to help ensure performance is holistically and accurately measured and conveyed to stakeholders routinely, and strategic objectives are achieved.

Department Response:

We concur with the recommendations.

We have many of the recommended systems in place, and we agree that these systems should be monitored and improved over time. We will:

- *“develop, implement, and refine a performance measurement system with measures tied to strategy, risk tolerances, and outcomes.”*

The Department has an operational Strategic Management Plan that is currently in the process of being updated. Also see prior Department responses to Observation No. 2.

- *“ensure performance measurement is coordinated between the Department, Division, and Bureau.”*
- *“address deficiencies with IT system design and data quality control to help ensure performance measurement is based upon holistic, reliable data.”*

See the Department responses to Observation Nos. 4 and 51.

- *“collect and process data timely, and regularly assess performance measurement data.”*

See the Department response to Observation Nos. 4, 17, and 51.

Division and Bureau management will “develop complimentary performance measurement systems to help ensure agency performance is holistically and accurately measured and conveyed to stakeholders routinely, and strategic objectives are achieved.”

Additional Department and LBA comments on Observation No. 5 appear in Appendix B.

Employee Performance Management

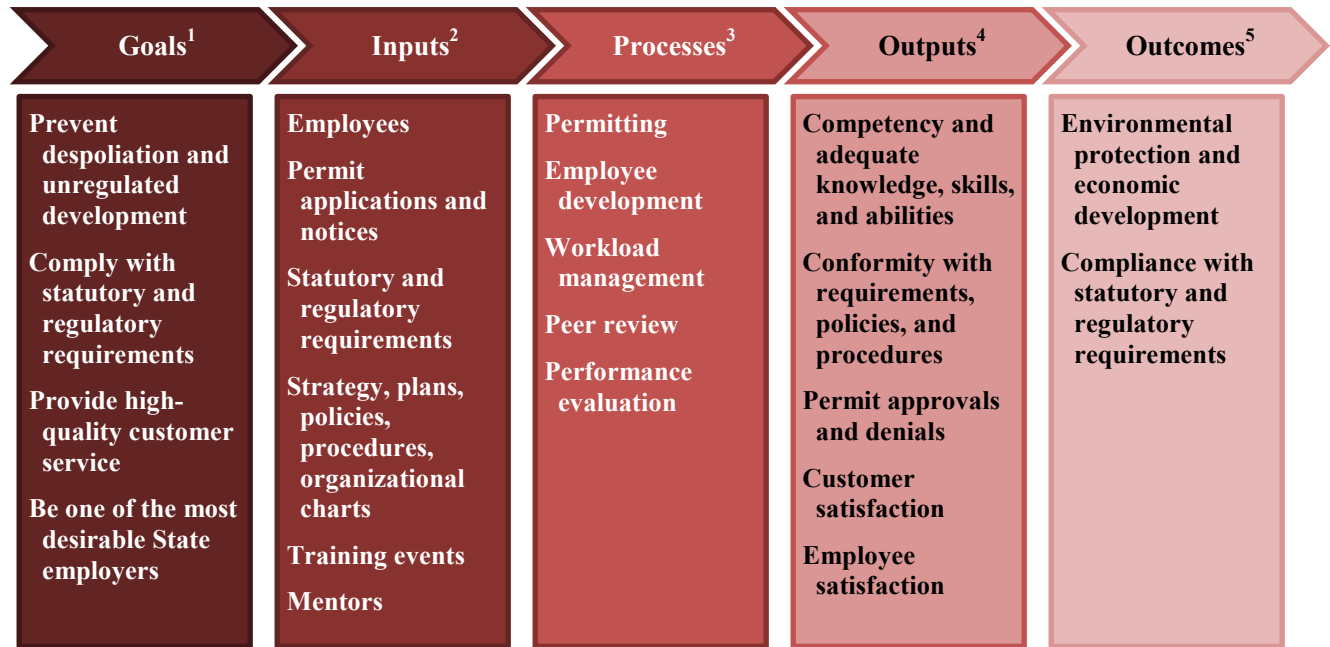
Effective employee management is essential to achieving results and integral to effective management control. Employees with the right training, tools, structure, incentives, and responsibilities make operational success possible, as shown in Figure 6. A comprehensive employee performance management system linked to strategy and workforce plans could have:

- contributed to achieving programmatic outcomes, including the extent to which despoliation or unregulated development of wetlands and protected shorelands were prevented;
- provided a basis for making strategic decisions, emphasizing the importance of achieving goals and objectives, rather than merely completing activities, and demonstrating how staffing decisions supported strategy;
- helped ensure employees carried out assigned responsibilities, met standards of professional conduct, and adhered to policies and procedures;

- helped re-balance workloads or proposed adjustments to staffing levels to meet operational demands; and
- helped the Department attain its strategic workforce goals and objectives.

Figure 6

Relationship Between Department And Wetlands Bureau Goals And Employee Performance



Notes:

1. Management sets goals in strategy related to statutory compliance and expected outcomes.
2. Inputs are resources and activities that are needed for, or guide, Bureau administration.
3. Processes are Bureau activities designed to provide services.
4. Outputs are the services provided by Bureau activities.
5. Outcomes are the impacts resulting from Bureau administration, and include intermediate and ultimate outcomes.

Source: LBA analysis of Bureau administration and operations and the Department’s 2010-2015 strategy.

Department managers were responsible for helping achieve strategic goals, collecting relevant and reliable information, and monitoring performance. The Assistant Division Director, also serving as the acting LRM Administrator, and the Assistant Bureau Administrator were both responsible for timely performance management and measurement. However, the Department could not demonstrate programmatic outcomes. Additionally, the Bureau Administrator and some supervisors and staff were aware employees were unable to spend sufficient time on permitting, and management appeared to place insufficient emphasis on permitting responsibilities. Furthermore, the negative effect of employee management on permitting efficiency was a longstanding issue known to Bureau management.

Employee management focused primarily on inputs, processes, and outputs. For example, the 2016 LRM BSC purported to measure enhancement of employee knowledge, ability, and performance. This measure was intended to align with the Department's goal to develop and maintain a formal and comprehensive workforce development process. However, employee knowledge, ability, and performance was measured solely based on the number of training events and the number of mentoring relationships—both inputs—and not based on the effect those events or relationships had on employee conformity with requirements—an output—or on the effect of Bureau operations—an outcome.

Deficient control systems over Bureau employee management contributed to: an insufficient understanding of employee and program performance, waste, inconsistent permitting outcomes, statutory noncompliance, and compromised objective and data-driven decision-making. Department control systems: 1) contained elements that were absent or ineffectively designed, inconsistently implemented, unmonitored, or, in some cases, knowingly circumvented, contributing to 52 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 6

Improve Management Of Wetlands Bureau Employees

The Department's strategic goal to develop and maintain a formal and comprehensive process for workforce analysis, planning, and development remained unimplemented at the Bureau through CY 2018. Effective, strategic employee management could help optimize Bureau performance and ensure public accountability. However, the Department did not develop an objective, strategic approach to managing Bureau employees that: 1) aligned with the Bureau's mission, 2) focused on achieving outcomes and strategic goals and objectives, and 3) integrated strategy, workforce planning, and performance management. Instead, the Bureau's approach to managing employees was ad hoc and reactive. Since at least CY 2006, the Bureau Administrator reported employee management directly affected permitting outcomes, and management lacked a system to evaluate the appropriateness and effectiveness of employee time allocation. Unaudited Department time allocation data indicated Bureau employees reported allocating 25.0 percent of their time (25,570 of 102,102 hours) on tasks most closely connected to permitting and 75.0 percent (76,533 hours) on other tasks, including administration, program development, leave, and outreach. This may indicate insufficient focus on the area of most strategic importance, and greatest risk, to the Bureau.

Lack Of Workforce Planning

LRM programs, including the Bureau, attempted to address purported management issues and gaps in staffing resources through the proposed LRM reorganization, and then through the more limited LRM restructuring when the LRM reorganization failed to progress, without undergoing formal workforce planning to identify existing or anticipated organizational deficiencies or various options to correct those deficiencies. Consequently, LRM reorganization and restructuring efforts and related decisions regarding the distribution of employees and organizational structure added to costs, produced limited tangible benefits, and resulted in wasted employee time, as we discuss in Observation Nos. 2 and 39.

Integrating employee management and strategic planning efforts could help ensure the Bureau operated efficiently and effectively to support permitting-related outcomes. Workforce planning could have provided a basis for making proactive staffing decisions to meet strategic goals, and management could have identified both existing and future staffing needs and actual or anticipated gaps in employee skills.

- Assessments of existing workforce needs could have examined whether or not the Bureau had the appropriate number of employees; whether employees had the necessary knowledge, skills, and abilities; and whether employees were allocated efficiently across different responsibilities to achieve Bureau goals and objectives and mitigate risk.
- Assessments of future workforce needs could have examined anticipated retirements; turnover rates; whether remaining employees would have the necessary knowledge, skills, and abilities; and whether any impacts on permit review processes were expected as a result of staffing changes.

Insufficient Use Of Relevant And Reliable Information

The Department's 2010-2015 strategy contained 14 goals related to workforce planning and employee performance management, with implementation intended in CYs 2010 and 2011. All were purportedly ongoing efforts. Workforce planning relied, in part, on collecting and assessing relevant and reliable data, such as distribution of employee knowledge, skills, and abilities; performance evaluations; amount of time needed to fill vacant positions; and actual and anticipated turnover. Such data and information were essential to achieving strategic workforce planning goals and helping management to identify skills employees needed, recruit and develop employees to ensure operational needs were met, and manage employee and program performance. However, the Bureau did not collect, monitor, and analyze necessary and sufficient information to conduct or inform workforce planning. Additionally, information on the Bureau's progress towards implementing and achieving relevant Department goals was absent from the 2016 LRM BSC, which would not have helped management assess Bureau performance against, or attainment of, Department goals to: 1) develop and maintain a comprehensive process for workforce planning, 2) recognize and reward exceptional employee performance, and 3) continually review and designate key positions. Management had not implemented another means by which to assess progress towards implementing or achieving these strategic goals.

Lack Of Succession And Contingency Plans

Department strategy contained a goal to continually review and designate key positions and ensure continuity of service, but the Bureau lacked succession and contingency plans, and management lacked a strategic planning approach. These deficiencies: 1) subjected the Bureau's ability to both ensure operational continuity and undertake basic functions needed to fulfill permitting responsibilities at unnecessary risk due to sudden staffing changes and 2) affected the management, achievement, and stability of operations.

However, the transition of responsibilities across employees appeared to be affected by the lack of succession and contingency plans, even during short-term absences. For example, the Bureau reportedly had a difficult time identifying capable employees to temporarily perform peer review responsibilities. Issues with records management, employee development, internal communication, and knowledge transfer appeared to further impede the Bureau's ability to ensure operational continuity, as we discuss in Observation Nos. 44, 50, and 52. These issues were further compounded by staffing changes, and the Bureau Administrator acknowledged the frequency of staffing changes affected permitting efficiency at least since CY 2006.

- By February 2018, 12 of 30 employees (40.0 percent) had less than two years' experience, while seven of 25 employees (28.0 percent) who were employed in July 2015 had left the Bureau.
- Managers and staff reported being aware the Bureau was reliant on key employees whose skills and knowledge could not be replaced by others in the Bureau. Left unaddressed, such a situation could adversely affect operations. Significant turnover was reportedly offset by the knowledge of long-serving, experienced permitting supervisors. However, three of six permitting supervisors (50.0 percent) left the Bureau during the audit period.
- The potential existed for continuing and significant staffing changes, for which management would have been unprepared. In response to our Bureau operations survey, 13 of the 24 then-employed employees (54.2 percent), including four managers, reported seriously considering leaving the Bureau or ARC.

Inadequate Management Of Employee Performance

Management lacked a comprehensive system to manage performance, which contributed to an ad hoc and reactive approach to employee management; a lack of clarity as to whether workloads were reasonable or additional employees needed to meet permitting demands; and a lack of understanding as to how changes in the operating environment might affect workload or permit application review times. Without a comprehensive performance management system:

- assignment of responsibilities was not strategic, and minimum employee qualifications did not always align with the knowledge, skills, and abilities necessary to carry out assigned responsibilities, as we discuss in Observation Nos. 40, 41, and 43;
- employee development efforts were unfocused, as we discuss in Observation Nos. 43 and 44; and
- the Bureau's organizational structure was inadequate, and some spans of management control inappropriate, as we discuss in Observation Nos. 39 and 42.

Insufficient Performance Expectations, Measurement, And Monitoring

Department strategy included a goal to recognize and reward exceptional employee performance, which would have required the establishment of performance expectations, measurement of

performance against expectations, and monitoring of performance. Expectations should have been related to carrying out assigned responsibilities, meeting standards of conduct, and ensuring adherence to requirements, policies, and procedures. Expectations should have been measurable, understandable, and equitable. Through holistic monitoring, management could assess whether employees met expectations, adjust unrealistic performance expectations, and identify unacceptable levels of employee and program performance.

However, established expectations often indicated what employees needed to accomplish, not always how well they must accomplish it, or whether there was an acceptable range of performance or margin of error. Additionally, expectations were not always clearly communicated to employees, as we discuss in Observation Nos. 40 and 50, or clearly defined. For example, management established:

- a requirement to meet statutory review time limits, although only one expectation was established relative to the various steps into which technical permit application review was divided, as we discuss in Observation No. 22, and management excluded Department of Transportation permit applications from the requirement, as we discuss in Observation No. 23;
- a requirement all applicable permit application reviews be approved by the Bureau Administrator or undergo peer review, which was inconsistently followed, as we discuss in Observation No. 21;
- an expectation permitting decisions be consistent, but no expectations were established related to an acceptable range of the consistency or accuracy of decisions, and we identified inconsistency, as we discuss in Observation No. 19;
- an expectation to provide high-quality customer service, which was not defined, was inconsistently understood, and lacked objective measures, as we discuss in Observation No. 18;
- a requirement to respond to customer phone calls within 24 hours, although some managers indicated reviewing permit applications superseded returning phone calls;
- an informal requirement to respond to emails within 24 hours; and
- a requirement related to employee recusals from permit application reviews, although Bureau administrators established additional, informal requirements of which employees had an inconsistent understanding, as we discuss in Observation No. 45.

Additionally, sufficient data, information, and analysis to comprehensively and routinely measure and monitor performance were lacking.

- Management appeared to routinely and formally measure and monitor only one aspect of employee performance: adherence to statutory permit review time limits for certain project types through the Outstanding Files Report, to identify whether applications were approaching the end of one statutory review time limit, as we discuss in Observation Nos. 5 and 22.
- The 2016 LRM BSC contained measures related to select inputs and outputs. However, measures generally did not align with stated Bureau expectations of employee performance or focus on outcomes.

- Management did not collect sufficient information to effectively monitor compliance with standards of conduct, including those related to recusal from the permit application review process, as we discuss in Observation No. 45.
- Management did not monitor peer review findings or compliance with peer review requirements, which could have provided pertinent information on the accuracy and consistency of permitting decisions and adherence with policy. We found inconsistencies in permitting decisions, as we discuss in Observation No. 19, and meeting peer review requirements, as we discuss in Observation No. 21.
- Management did not document or track complaints about technical reviewers made by customers, the results of investigations, or the resolution of complaints. Inadequate documentation rendered this process unauditible, and management could not have objectively measured or monitored employee performance using this information.

Furthermore, Department strategy established a goal to regularly assess continuous process improvement expectations and performance for each employee, but expectations connected to Bureau process improvement efforts had not been established as part of a broader planning process, as we discuss in Observation No. 2, nor had responsibility for specific components of improvement efforts been assigned to employees.

Inconsistent Performance Evaluation And Lack Of Accountability

Management was required to evaluate employee performance in writing, at least annually. Doing so effectively and timely was an essential component of performance management and the Department's strategy, but evaluations were inconsistently completed and were not always timely. Bureau employees, ARC staff, and the Assistant Division Director, also acting as the LRM Administrator, should have collectively received 55 performance evaluations during the audit period. However, we found:

- 10 of 37 employees (27.0 percent) received none of their required performance evaluations during the audit period, including the Assistant Division Director and both Bureau administrators;
- 27 of 55 performance evaluations (49.1 percent) were completed; and
- 15 of 27 completed evaluations (55.6 percent) were submitted an average of four months late.

Furthermore, completed performance evaluations were often associated with employee eligibility for incremental salary step increases, as 14 of 27 completed evaluations (51.9 percent) were completed around the time of an employee's eligibility for a step increase. Four of the 14 evaluations (28.6 percent) were submitted an average of three weeks after an employee's eligibility for a step increase.

Without adequate performance expectations in place, a sufficient system to measure and monitor performance, and consistent performance evaluation, management was limited in its ability to know when employee performance affected the achievement of goals, or when performance fell

below acceptable levels. Additionally, Bureau managers and supervisors evaluated employees with similar responsibilities against different and varying, and typically qualitative, standards of performance.

- Although no expectations related to quality of work had been established by management, such as accuracy of permit application reviews or acceptable range of performance or margin of error, performance evaluations required a related assessment. Standards against which employees were to be assessed included the number of mistakes made in work products and the amount of managerial review needed, even though management had no systems to comprehensively identify permitting errors. However, only one of 27 completed evaluations (3.7 percent) explicitly assessed work based on the number of errors in permitting documents and indicated while the percentage of errors was not unacceptable, steps to reduce the number should be taken.
- Although no expectations related to quantity of work had been established by management, such as the number of permit applications an employee needed to review, performance evaluations required a related assessment. Standards against which employees were to be assessed included the volume of work produced. However, managers inconsistently included the number of applications reviewed during the evaluation period to measure quantity of work, without a system to understand whether workloads were appropriate. As we discuss in Observation No. 41, a more comprehensive measure of permitting workload could help improve workload assignments and performance monitoring.
- Although the Bureau collected survey and questionnaire responses from customers who had undergone the permitting process, Bureau administrators did not analyze this information to determine whether customers who were not satisfied had interacted with specific employees. Instead, evaluations, when they included assessments of employee performance providing customer service, were qualitative.
- Although no expectations related to the implementation or achievement of continuous process improvement efforts had been established, managers inconsistently evaluated employee contributions using qualitative assessment of their initiative to make recommendations for improvement.
- Performance evaluations required an assessment of dependability and enforcement of standards, but, as we discuss above and in Observation Nos. 21 and 45, management could not, or did not, monitor compliance with standards of conduct, peer review, and other requirements.

Our Bureau operations survey asked the 29 employees reporting there were, or may have been, standards of conduct whether Bureau administrators took timely and consistent action to address deviations from those standards, and:

- three (10.3 percent), including two managers, reported *always*;

- five (17.2 percent), including four managers, reported *sometimes*;
- one (3.4 percent) reported *rarely*;
- two (6.9 percent), including one manager, reported *never*;
- 15 (51.7 percent), including three managers, reported being *unsure*; and
- three (10.3 percent) reported *no deviations* had occurred.

Five of 26 employees (19.2 percent), including one manager, reported they observed a breach of standards of conduct that went unaddressed.

Uninformed Workload Allocations And Staffing Levels

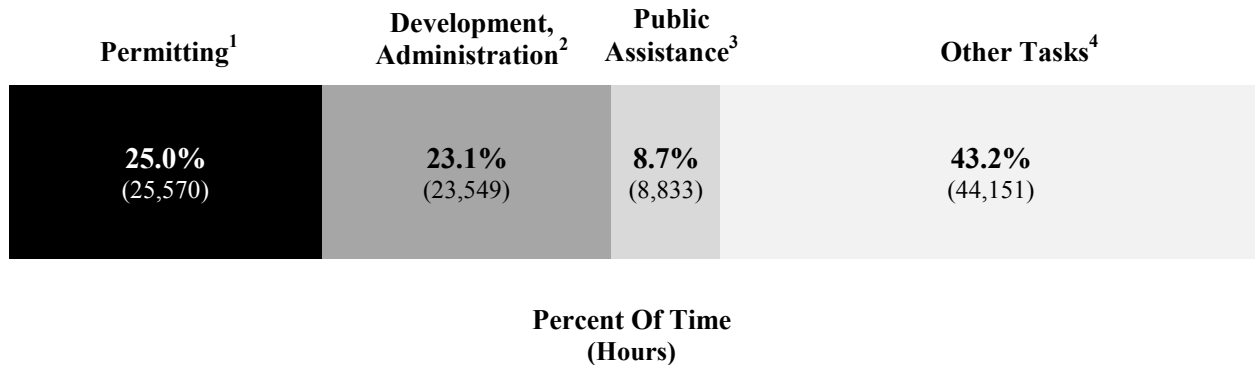
Management had access to, but did not analyze, information on how employees spent their time, such as the amount of time reportedly allocated to permit application review activities relative to other responsibilities, as shown in Figure 7, or the amount of overtime worked. Such analyses were essential to achievement of Department strategic goals related to work environment and employee management. While management reported employees were unable to spend sufficient time on permitting-related responsibilities due to non-permitting-related responsibilities, all available information was not used to assess whether workloads were equitable or reasonably divided across employees, or assess whether the Bureau had an adequate number of permit reviewers. Furthermore, there was no standard established on how much time employees should spend on permitting, versus other activities. Consequently, management attempted a significant and resource-intensive reorganization effort without first understanding whether current employees could fulfill permitting responsibilities at acceptable performance levels and, if not, whether it would be best to re-allocate workloads or seek additional employees.

Without adequate workforce planning or performance management systems, anticipating the effects of significant changes on workload and review timeliness, due to statutory and regulatory changes reducing review time limits and the number of permit applications submitted for review, would be anecdotal. Permitting section employees spent the most time processing permit applications, followed by permitting section supervisors. However, without an effective performance management system in place, management was unable to determine how much time employees spent actively reviewing individual permits, by type. Such data could have informed estimates on how operational changes might affect current workloads; whether or not the Bureau's current employees could have reasonably met shorter review timeframes; and whether or not Bureau management would need to reallocate workloads so employees could devote more time to permit review.

Unaudited Department time allocation data indicated 32 Bureau employees reported allocating 2,366 hours of overtime during the audit period, including seven employees accounting for nearly two-thirds of overtime. Reportedly, overtime hours were primarily allocated to permit application review (32.8 percent, 775 hours) and program development (30.2 percent, 715 hours). More detailed analysis of overtime data may have been useful in helping management identify whether it has enough permit reviewers to complete workload within a normal work week, or whether the use of overtime at certain times of the year would be more efficient than hiring more employees.

Figure 7

**Reported Allocation Of 102,102 Hours Of Wetlands Bureau Employee Time,
SFYs 2016–2017**



Notes:

- ^{1.} Permitting tasks included peer review, applicant assistance, and technical review of permit applications and Aquatic Resource Compensatory Mitigation (ARM) Fund applications.
- ^{2.} Development and administration included 13.5 percent of time (13,789 hours) on program development tasks, such as rulemaking, legislation, grant application and management, and ARM Fund administration, and 9.6 percent (9,760 hours) on general administration tasks, such as staff meetings, human resources tasks, and budget preparation.
- ^{3.} Public assistance tasks included public education and information and general assistance.
- ^{4.} Bureau employees reported allocating to other tasks: 10.1 percent (10,271 hours) on clerical and administrative support, 8.3 percent (8,439 hours) on enforcement, 5.1 percent (5,212 hours) on inspections, 3.6 percent (3,679 hours) on training, 0.4 percent (364 hours) on hearings and appeals, 0.2 percent (230 hours) on meetings, 0.0 percent (36 hours) on data management, and 15.6 percent (15,921 hours) on leave.

Source: LBA analysis of unaudited Department time allocation data.

Recommendations:

We recommend Department management:

- **improve employee management by developing and implementing workforce, succession, and contingency plans to help achieve strategic goals;**
- **identify necessary data to inform workforce, succession, and contingency planning, and develop, implement, and refine means to routinely collect, monitor, and analyze data and integrate results into planning efforts;**
- **develop, implement, and refine objective, quantifiable performance expectations, and acceptable ranges of performance that are clearly linked to Bureau goals and objectives and clearly communicated to employees;**
- **routinely measure employee performance against expectations and analyze information to identify trends, potential issues with performance expectations, and deviations from acceptable performance levels;**

- **comply with State law and ensure employees receive performance evaluations consistently and timely;**
- **develop, implement, and refine systems to identify employee noncompliance with policies, standard operating procedures (SOP), and standards of conduct and address noncompliance in a timely and equitable manner; and**
- **use information and data on employee time to assess workloads, reallocate workloads if needed, and determine expected effects on employee workloads due to changes in the statutory or regulatory framework affecting review time limits or number of permit applications.**

Department Response:

We concur with the recommendations.

The Department already has systems in place that address many of the recommendations. We agree that a healthy organization should explore continuous improvement in these areas. We will pursue improvement in these areas to ensure that the necessary controls are in place and are operating effectively.

External Oversight

External oversight of Bureau decision-making, operations, administration, performance, and outcomes can help ensure:

- effective management control design, implementation, and performance;
- adequate organizational and operational risk assessments;
- employee adherence to management controls and standards of conduct;
- achievement of strategic and operational objectives;
- statutory and regulatory compliance;
- efficiency and effectiveness of operations; and
- reliability of internal and external reporting.

Transparency

Ensuring transparency of decision-making processes, operations, and performance related to Bureau permitting was essential to accountability and public access. The Bureau operated the Department's highest risk and most controversial permitting program. For decades, the regulatory framework underpinning permitting was known to be complex, unclear, and produce inconsistent results. Bureau permitting was subject to a high degree of public and Legislative scrutiny, involved a significant number of stakeholders, affected private property rights, and was subjective. Additionally, the Department was undertaking policy development via rules and other standard-setting documents, making transparency of paramount importance.

However, deficient control systems over the transparency of Bureau decision-making, operations, and performance contributed to: statutory noncompliance, compromised

transparency, and compromised achievement of strategic goals. Department control systems: 1) contained elements that were absent or ineffectively designed, inconsistently implemented, or unmonitored, contributing to 52 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 7

Improve Transparency Control Systems

The Department's strategy emphasized transparency. Management should have developed plans, policies, and procedures to help ensure performance was measured and goals were achieved. However, no plans, policies, or procedures were created to ensure transparency goals were achieved and operations complied with statute. Instead, the Department used inadequately transparent processes to: 1) engage ad hoc advisory bodies to develop rules, best management practice manuals, and permitting guidance documents, and 2) obtain feedback on the LRM reorganization and the LRM BSC. Additionally, transparency and compliance issues were exacerbated by inadequate external reporting, internal and external communication, internal and external data reliability, and Council engagement.

Insufficient Transparency In Rulemaking

The Department's rulemaking practices were insufficiently transparent. Statute provided the Department could obtain advice through the Council and through properly constituted advisory committees. The Commissioner had authority to create advisory committees, with the approval of the Governor, and the Department was required to file a record of each advisory committee and its name, composition, members' names and addresses, purpose, and term of existence. Advisory committees had a lifespan of three years, unless continued through legislation. Department management reported being unaware of statutory provisions related to advisory committees. Department reliance upon the Council or advisory committees could have helped ensure transparency obligations were met, including notice, recordkeeping, disclosure of potential conflicts of interest, and quorum requirements.

Instead, the Department relied upon ad hoc advisory bodies to develop consensus on proposed revisions to Bureau rules, thereby decreasing transparency, rather than increase Council involvement or create statutorily-compliant advisory committees. Ad hoc advisory bodies were reportedly established each time the Bureau engaged in the rulemaking process. Several ad hoc bodies, including those for stream crossing rules and wetlands rules, persisted for several years and provided substantive input. The Department reportedly held 117 meetings between January 2014 and March 2018 to obtain input on the proposed 2019 rules. Although stakeholder meetings were intended to "help correct glaring deficiencies," a senior Department manager reported the Bureau's draft proposed rules "surprisingly missed the mark" in terms of stakeholder satisfaction. As a result, the Bureau held 42 additional meetings, with negligible Council involvement, to substantively edit and revise proposed rules. Transparency issues related to just one ad hoc advisory body working on the CY 2018 draft of the proposed 2019 rules included:

- Communications – The workgroup’s schedule was published online, but Bureau employees sent emails out only to specific parties to inform them of the meeting schedule and agenda.
- Attendees – Attendees varied somewhat, but the same core group of individuals was present at most meetings. This core group represented environmental engineering, business and industry, forestry, environmental advocacy, and other State agencies, and were included in previous ad hoc advisory bodies relied upon to develop stream-crossing rules, mitigation rules, and the unsuccessful CY 2014 effort to revise wetlands rules. No members of the general public were involved in any meetings we attended.
- Rule Changes – Each meeting included a short discussion of proposed rule changes followed by lengthy input sessions, with attendees suggesting substantive changes for Department consideration.
- Carve Outs – Attendees openly debated whether rules should include carve outs for particular interests represented in the ad hoc body.
- Task Group – Attendees subdivided into a smaller ad hoc advisory body which met on two occasions to discuss how the Bureau should define its jurisdiction.
- Documentation – Meetings were not public, and no minutes were recorded.

While obtaining stakeholder feedback regarding proposed rules was essential, formalizing ad hoc advisory bodies used or using the statutorily-established Council would have allowed greater transparency of a high-risk and controversial activity and improved statutory compliance.

Other Transparency Issues

The Bureau used similar ad hoc, insufficiently transparent means to create best management practice manuals and permitting guidance documents that underpinned and expounded upon wetlands rules. Certain manuals were created using informal ad hoc bodies, similar to those involved in rulemaking. Manuals were inconsistently adopted in rule, and guidance documents imposed additional requirements not found in rules, as we discuss in Observation No. 13.

Additionally, the Department engaged another ad hoc advisory body during the LRM reorganization to obtain feedback during five meetings on proposed organizational changes and performance measures in the LRM BSC. Meetings were not public, and no minutes were kept. Furthermore, transparency was further compromised by inadequate:

- reporting controls, as we discuss principally in Observation No. 49;
- internal and external communication, as we discuss in Observation Nos. 47 and 50;
- communication of external data reliability issues, as we discuss in Observation No. 53;

- controls over financial interest statements, as we discuss in Observation No. 46; and
- engagement with the Council to obtain necessary advice on programs, goals, policies, operations, and long-term planning, as we discuss in Observation No. 8.

Recommendations:

We recommend Department management:

- **create goals and plans related to ensuring transparency of operations;**
- **develop, implement, and refine policies and procedures to implement transparency goals and plans, and monitor compliance; and**
- **leverage the Council to the fullest extent envisioned by State law, obtaining and incorporating Council consultation and advice and ensuring transparency of decision-making processes.**

If advisory committees in addition to the Council are needed, we recommend Department management comply with statute when establishing them.

Department Response:

We concur with the recommendations.

The Department will create goals and plans to ensure transparency of operations, and we will develop, implement, and refine policies and procedures to implement and monitor compliance with the goals. We will establish a formal agreement with the Council regarding how and when the Department consults the Council, and we will implement the agreement.

Council Oversight

The Legislature established the Council to implement “the provisions of law conferring on the Department authority to decide matters relative to resources of the State, including, but not limited to,” those under *Wetlands* and *Shoreland* through oversight of Department activities. To fulfill its oversight responsibilities, the quasi-independent Council was statutorily required for more than two decades to:

- provide consultation and advice on Department policy, programs, goals, and operations related to wetlands and protected shorelands, with particular emphasis on long-range planning and public education;
- meet with the Commissioner at least quarterly, and annually report on its deliberations and recommendations to the Commissioner, as well as the Governor and Executive Council;
- consider, and potentially object to, Department rules related to wetlands and protected shorelands prior to their adoption by the Commissioner, which could occur only after any Council objections had been addressed; and
- approve disbursements of the ARM Fund.

Additionally, the Council exerted oversight over permitting decisions, with its responsibilities to:

- hear all administrative appeals from Department decisions made under *Wetlands* or *Shoreland*;
- determine whether Department decisions were reasonable and lawful; and
- remand unreasonable and unlawful decisions back to the Department.

The Council consisted of 13 members, including *ex-officio* members; representatives of municipal conservation commissions, conservation districts, and municipal officials; representatives of related industry, professions, and trades; and a representative of environmental protection and resource management interests.

Following our *2007 Audit*, Department managers publicly reported launching an initiative—in partnership with the Council—to improve the management and clarity of Bureau permitting. The initiative was intended to resolve audit findings and recommendations, identify other areas for improvement, and implement changes. However, broad non-resolution of our *2007 Audit* findings persisted. The Council and Department management minimized—and in some instances negated—the value of Council oversight. As a result, we identified numerous issues with Department management controls related to Bureau permitting, resulting in:

- inefficient and ineffective operations and administration, including wasted resources;
- noncompliance with statutory and regulatory requirements and Legislative intent;
- a lack of transparency and accountability; and
- abusive behavior, compromised due process, and inconsistent permitting outcomes.

Deficient Council control systems over its consultative, advisory, and planning responsibilities: inhibited accountability and transparency, hindered effective stewardship of public resources, and compromised objective and data-driven decision-making. Council control systems: 1) contained elements that were either absent or ineffectively designed, unimplemented, and unmonitored, and in some cases, knowingly circumvented, contributing to 56 observations in our current report; and 2) were at an **initial** level of maturity. Related and absent Department control systems were at an **initial** level of maturity.

Observation No. 8

Ensure The Wetlands Council Fulfills Its Statutory Roles

The relationship between the Council and Department neither reflected statutory expectations, nor was it structured to fulfill statutory requirements through SFY 2018. Fulfilling statutory responsibilities was a fundamental expectation of the Council, as was helping the Department fulfill statutory requirements related to wetlands and protected shorelands. The Council explicitly acknowledged its oversight role and advisory responsibilities in CY 2008 and CY 2016. In our *2007 Audit*, we recommended the Department produce well-organized and comprehensive written permitting policies and procedures. The Department concurred and indicated it would engage the Council in its advisory capacity when developing rules and SOPs. However, the Department subsequently reported no such engagement with the Council had occurred through

SFY 2018. One Council member indicated the role of the Council and the amount of interaction it had with the Department degenerated over time. Several other members indicated the Council's role was limited and involvement in Department strategic planning was lacking.

Failure To Provide Advice And Contribute To Strategic Planning

In CY 2018, we surveyed 16 Council members then-serving or who served during SFYs 2016 or 2017 (Council survey), of whom 11 (68.8 percent) responded. Despite explicit acknowledgement of its consultative and advisory responsibilities in *Wetlands Council* rules (Council rules), five members (45.5 percent) reported being unaware of these responsibilities and indicated a consultative and advisory role was wholly outside the Council's charge. One member (9.1 percent) indicated their tenure on the Council never exposed them in any significant way to Department strategic planning efforts. The complete results of our Council survey are included in Appendix D.

Council members generally reported lacking knowledge necessary to contribute to fulfillment of the Council's oversight responsibilities. The Council had no rules or policy requirements specifying information it required of the Department to fulfill its consultative and advisory role, such as rules revisions or permitting performance measures. Department employees did not appear to provide updates to the Council on key performance measures, as shown in Table 1, and members responding to our Council survey inconsistently indicated they received related updates.

Additionally, when asked whether the Council had a role in overseeing the provision of high-quality customer service by the Bureau:

- two (18.2 percent) reported *yes*,
- five (45.5 percent) reported *no*, and
- four (36.4 percent) reported being *unsure*.

When asked whether the Department consulted with the Council on an ongoing basis when developing internal practice:

- one (9.1 percent) reported *yes*,
- seven (63.6 percent) reported *no*, and
- three (27.3 percent) reported being *unsure*.

Council minutes indicated the Council did not discuss wetlands or protected shorelands long-range planning or policy, programs, goals, or operations in any capacity at 12 of 24 regular meetings (50.0 percent) from January 2015 to April 2018. The remaining 12 regular Council meetings (50.0 percent) contained minimal discussion of operations and rules, and no apparent discussion of goals or policy, or programs generally. Additionally, the Council did not appear to discuss public education at any of its regular meetings. The Council did not advise the Commissioner on risks to the achievement of Bureau objectives, management controls, or performance and improvement efforts. Nor did the Council advise the Commissioner on

resolving management control deficiencies, such as those identified in external audits and assessments, despite the joint CY 2008 initiative to address our *2007 Audit*.

Table 1

**Wetlands Council Members' Perceptions Of Department Reporting To The Council,
May 2018**

Topic	Number Of Council Members Reporting:		
	Council Did Not Receive Reports Or Updates	Council Did Receive Reports Or Updates	Being Unsure
Bureau Permitting			
Consistency	7 (63.6%)	1 (9.1%)	3 (27.3%)
Clarity	6 (54.5%)	2 (18.2%)	3 (27.3%)
Timeliness	4 (36.4%)	3 (27.3%)	4 (36.4%)
Costs			
Full costs of <u>Bureau permitting</u> to the Department	5 (45.5%)	4 (36.4%)	2 (18.2%)
Full costs of <u>compliance</u> with Bureau rules and regulations	6 (54.5%)	3 (27.3%)	2 (18.2%)

Source: LBA Council survey.

The Commissioner should have met with the Council at least ten times from January 2015 to April 2018. However, Council minutes indicated the Commissioner appeared at only one regular meeting, in January 2018. Authority to represent the Commissioner was not formally delegated, but three Department employees appeared at four of 24 regular Council meetings (16.7 percent) to briefly discuss wetlands and LRM programs or operations. The Council appeared to provide minimal feedback during only two of the four meetings, although specific inquiries or concerns were not detailed in meeting minutes.

The Council was also required to annually file a report of its deliberations and recommendations with the Governor and Executive Council and with the Commissioner. However, the Council's reports provided insufficient detail on the nature of its deliberations and recommendations, as we discuss in Observation No. 55. It was also unclear whether the Commissioner received any informal feedback provided to Department employees during Council meetings or whether Council feedback had any effect. Consequently, in response to our Council survey:

- seven members (63.6 percent) reported being *unsure* whether the Council was sufficiently influential in developing long-range wetlands and shorelands plans and policy, programs, goals, or Bureau and Department operations;
- four (36.4 percent) reported the Council was *not sufficiently influential* with the *Department*; and
- three (27.3 percent) reported the Council was *not sufficiently influential* with the *Bureau*.

Inadequate Involvement In Review Of Proposed Department Rules

The Commissioner was required to present all proposed wetlands and protected shorelands rules to the Council for consideration prior to filing a notice of proposed rulemaking. Additionally, in response to our *2007 Audit*, the Department indicated it would produce well-organized and written comprehensive policies and procedures for its permitting programs through engagement with the Council. However, the Department indicated it did not consult with the Council on an ongoing basis during the development of rules or SOPs. The interactions the Council did have with review of, and consultation on, Bureau rules had no apparent effect on the content of the rules or related requirements.

Instead, the Department's ad hoc advisory bodies and workgroups were tasked with responsibilities similar to the Council's statutory obligations, compromising the Council's purpose, as we discuss in Observation No. 7.

- The Shoreland Advisory Committee (Committee) was Legislatively-initiated and established in CY 2011 based on statutory language developed by the Department. It operated through CY 2015. The Committee was intended to identify issues needing clarification in *Shoreland* and *Shoreland Protection* rules, and prepare written comments for the Commissioner to suggest potential statutory and regulatory changes.
- In developing its proposed 2019 wetlands rules, the Department reportedly held 40 stakeholder meetings from January to September 2014—including one with the Committee—before meeting with the Council. Council minutes indicated primary discussion of mitigation rules occurred during the Council's April 2015 regular meeting, during which only three parts of rules appear to have been discussed. The Department subsequently held an additional 77 stakeholder and workgroup meetings to revise wetland rules from May 2015 to March 2018, none with the Council.

Although authority to represent the Commissioner was not formally delegated, three Department employees appeared at six regular Council meetings (25.0 percent) from January 2015 to April 2018 to mention or review proposed rules. The Council appeared to provide minimal feedback during two of the six meetings. However, meeting minutes did not contain sufficient detail to indicate the nature of Council members' comments at either meeting. Neither were we able to assess what effect Council comments had on the substance of the proposed rules.

The Council was required to present any objections to proposed rules to the Commissioner in writing within 15 days. The Commissioner could adopt a rule to which the Council objected only after presenting a written reply explaining the reasons for adopting the rule over Council objections. Six Council members (54.5 percent) responding to our Council survey reported the Council had provided objections to the Department regarding the draft proposed 2019 rules. However, we identified only one instance, in CY 2015 meeting minutes, of the Council formally developing a letter to send to the Commissioner regarding proposed rules. While the letter was reportedly intended to support an upcoming wetlands rules presentation, it contained little substantive feedback. Despite the lack of substantive feedback to the Department regarding Bureau rules, Council members variously expressed concerns, including that the existing rules were:

- not adequate (six members, 54.5 percent),
- difficult for the public to understand (four members, 36.4 percent), and
- more restrictive than State law required (four members, 36.4 percent).

Bureau rules contained inaccuracies, were noncompliant with the *Administrative Procedure Act*, and failed to contain all requirements imposed on applicants, as we discuss in eight observations, principally in Observation Nos. 9, 12, and 13. The Council suggested developing a list of issues with rules in CY 2015. However, no further work appeared to occur to develop such a list, and Bureau rules remained inadequate through CY 2018.

Lack Of Internal Strategic Planning

The Council lacked its own strategy or overarching plan establishing Council-specific goals and objectives and identifying how to implement effective and efficient operations necessary to accomplish goals and objectives. For example, the Council lacked plans detailing when and how frequently the Council should: 1) meet with the Commissioner to discuss specific policies, goals, and operations; 2) meet with the Commissioner to review proposed rules and provide formal feedback; and 3) review and update its own rules.

Unstructured Approach To Advisory Responsibilities

Without a plan in place to structure its interactions with the Department, the Council appeared to rely primarily on Department employees to determine what information to present to the Council and at what level of detail. This unstructured approach to oversight appeared to negatively affect the Council's ability to obtain timely and relevant information on Bureau policies, programs, goals, operations, and plans. This included major Bureau initiatives that would have significantly affected wetlands and protected shorelands, such as the LRM reorganization, integrated permitting through *Integrated Permit*, and major rules revision efforts. However, the Council's role was minimal, often after-the-fact, and limited to a reactive role where Bureau employees generally just provided information to the Council.

Additionally, Council members reported an inconsistent understanding of the performance of Bureau permitting processes. When asked whether permitting was timely:

- five (45.5 percent) reported *usually*,
- one (9.1 percent) reported *sometimes*,
- one (9.1 percent) reported *rarely*, and
- four (36.4 percent) reported being *unsure*.

When asked whether permitting was consistent:

- one (9.1 percent) reported *usually*,
- six (54.5 percent) reported *sometimes*, and
- four (36.4 percent) reported being *unsure*.

When asked whether permitting was clear:

- five (45.5 percent) reported *usually*,
- four (36.4 percent) reported *sometimes*,
- one (9.1 percent) reported *rarely*, and
- one (9.1 percent) reported being *unsure*.

Furthermore, Council members inconsistently reported Bureau permitting struck a balance between economic opportunity and environmental quality, as:

- three (27.3 percent) reported it did,
- two (18.2 percent) reported it did not, and
- six (54.5 percent) reported being *unsure*.

Negative Effect On Council Operations

Similarly, without a plan to structure when and how frequently to review or revise rules, Council rules: 1) inconsistently addressed, inconsistently applied, or misinterpreted appeals, meeting, and quorum requirements; and 2) were outdated, having last been revised in CY 2008. The Council operated since September 2011 with at least 16 sections containing expired rules, lacked adequate rules to structure the process to remand appeals to the Department, and lacked adequate specification of support staff roles to ensure the Council was able to comply with statutory requirements, as we discuss in Observation Nos. 25, 57, and 60.

The Council appeared to defer opportunities to conduct a comprehensive review of its rules to the Department. All agencies with rulemaking authority, such as the Council, had to submit a report by March 31, 2017 outlining existing and proposed rules under the agency's jurisdiction. Agencies had to evaluate whether rules were mandated by law or essential to the public health, safety, or welfare. To make the latter determination, the Council had to find:

- there was a clear need for the Council, and not another agency, to adopt the rule;
- the costs of the rule did not exceed its benefits;
- the rule was the least restrictive or intrusive alternative that would fulfill the need which the rule addressed;

- the rule did not unduly burden the State’s citizens or businesses and did not have an unreasonably adverse effect on the State’s competitive business environment; and
- the effectiveness of the rule could be reasonably and periodically measured, and that there was a process in place to do so.

The Council did not complete a report. The Department filed a report, which included Council rules. However, the Council did not appear to have either participated in the evaluation of its rules or verified that the Department’s submission was accurate.

Recommendations:

We recommend the Council meet its statutory obligations and:

- **develop a strategic plan to guide its consultative, advisory, and long-range planning roles;**
- **structure its own internal operations and its relationship with the Department consistent with its strategy;**
- **incorporate a time-phased plan to resolve current audit findings into its strategic plan;**
- **request the Commissioner or the Commissioner’s authorized designees to attend Council meetings at intervals detailed in its strategic plan to discuss topics according to a risk-based schedule;**
- **request the Commissioner or the Commissioner’s authorized designees to attend Council meetings at intervals detailed in its strategic plan to review proposed rules; and**
- **provide formal objections to proposed rules to the Commissioner.**

If the Council cannot, or will not, operationalize holistically its statutory oversight obligations, we suggest the Legislature consider dissolving the Council and apportioning its statutory oversight responsibilities to other entities. Council appeals were handled at the detail level by a Department of Justice-assigned hearing officer and Department support staff, and the Department operated several informal advisory bodies, which could be formalized and used to provide consultation and advice.

We recommend the Commissioner meet with the Council quarterly and ensure Department management leverages the Council to the fullest extent envisioned by State law, incorporating Council consultation and advice on plans, policy, programs, goals, and operations of the Department’s wetlands and protected shorelands programs, with particular emphasis on long-range planning and public education.

Council Response:

We do not concur with the recommendations.

The observation misinterprets Council statutory requirements and perceived conflict of interest issues.

The Council is required to “consult with and advise” the Commissioner; the Council is the consultant; the Commissioner brings issues to the Council, which then advises. The Council does not have an active oversight role. Both the Department and Council agree—and have agreed for many years—on the limited nature of the Council’s authority in this area. The only Council oversight is narrowly limited to:

- *ARM fund disbursements, when such funds are requested;*
- *commenting on proposed Department rules when presented, although Council comments do not have to be implemented; and*
- *hearing appeals in response to an appeal filing.*

Perceived Conflict of Interest

“...the U.S. Supreme Court has recognized that those whom our legal system entrusts to resolve controversies among litigants have a constitutional duty to step aside whenever a conflict of interest – or the public appearance of such a conflict – is so powerful as to erode public trust in the fair and impartial administration of justice.” (Opinion editorial by Laurence Tribe, emphasis added.) The Council is striving to avoid crossing this line, a line the audit team fails to recognize.

Review of Proposed Department Rules

This part of the observation is inconsistent with statute. The only requirement for reviewing rules is specifically stated in statute. The Council does not have authority to perform more extensive review. The Council did indicate issues with the rules in FY 2015, and the Department’s response has been to completely rewrite them; clearly an adequate response when completed.

Strategic Planning

Improvements will be made as indicated in our response to Observation No. 59. As part of our existing January organization meeting, we will review Council activities, procedures, statutes, and rules and plan for additional discussion as necessary.

Meeting With The Commissioner

The Commissioner, or authorized designee, will make an effort to attend Council meetings at a frequency agreed upon by both parties.

Formal Objections To Proposed Rules

The Council produces a rule comment letter when the Department presents rules for comment and the Council has comments, particularly objections.

LBA Rejoinder:

The Council's response indicates the Council will not be operationalizing holistically its statutory oversight obligations. Also, while the Council concurs in part with our recommendations, the Council did not: 1) directly address our suggestion that the Legislature consider dissolving the Council or our recommendations related to strategic planning, 2) specify whether the Commissioner will attend meetings as often as required by statute, and 3) specify a timeline for resolving deficiencies, which would help stakeholders understand when the Council intends to become compliant with statutory requirements, even when they concur with our recommendations.

The Legislature established the Council to implement “the provisions of law conferring on the Department authority” under *Wetlands* and *Shoreland*, through oversight of Department activities. The Council's role and responsibilities were comprehensive, and—in the context of its enabling statute—amounted to oversight, which is “watchful and responsible care or regulatory supervision.” The Council's obligations related to Department policy, programs, goals, operations, and long-range planning were inextricably connected with oversight of the development and implementation of Department rules, as each of these functions had to cooperate for the Department's objectives to be met.

The Council indicates it and the Department had a long-standing agreement to minimize the Council's oversight responsibilities. An informal “agreement” with another agency does not permit circumvention of Legislative intent. The breadth of issues with Department management control over Bureau permitting we identified were directly related to Department policy, programs, goals, operations, long-range planning, public education, and rules, all areas subject to Legislatively-prescribed Council oversight. This demonstrated inadequate Council oversight.

The potential for conflicts of interest was obvious—the Council was inescapably and inherently conflicted by both its Legislatively-established membership and Legislatively-directed dependence upon Department support. However, Council and Department duties were segregated, consistent with Legislative intent, and the Council was required to comply with the State's *Code Of Ethics*, promulgate administrative rules, and develop appropriate risk-based controls to reinforce segregation of duties to prevent—as much as was reasonable—an actual, or perceived, conflict of interest. The Legislature further augmented these controls by requiring compliance with *Financial Disclosure* and *Access To Governmental Records And Meetings*, with which the Council inconsistently or incompletely complied.

The Council cites an *opinion editorial* as evidence of our “misinterpretation” of perceived conflicts of interest. The *opinion editorial* cites “formally promulgated codes of judicial conduct” as one mechanism to ensure “institutional integrity” and suggests recusal is necessary if there are “stated animosities” towards individuals or groups who may be a party to a case before a judicial body, all of which align with our findings and recommendations. Additionally, the *opinion editorial* discusses ungermane conflicts of interest, citing irrelevant federal Supreme Court cases related to politically-elected judges.

Department Response:

We concur with the recommendations.

We will work with the Council to implement them.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

2. REGULATORY FRAMEWORK

The regulatory framework within which Wetlands Bureau (Bureau) permitting occurred was developed piecemeal over several decades. The State began regulating tidal wetlands in calendar year (CY) 1967 and non-tidal wetlands in CY 1969. Statutes related to wetlands were recodified in CY 1989 into *Fill and Dredge in Wetlands (Wetlands)*, shortly after the Department of Environmental Services (Department) was established. Statutes related to shorelands were formalized in the *Comprehensive Shoreland Protection Act*, now the *Shoreland Water Quality Protection Act (Shoreland)*, in CY 1991. Reportedly, wetlands and shoreland regulations directly affected more people than any other State environmental program, including pre-applicants, applicants, and non-applicant property owners within jurisdictional areas.

The jurisdictions of *Wetlands* and *Shoreland* intersected and overlapped one another, and overlapped the jurisdictions of other Land Resources Management (LRM) and Division of Water (Division) programs. Clearly defining *Wetlands'* and *Shoreland's* jurisdictions was purportedly complicated by statutory changes. Consequently, aspects of *Wetlands'* jurisdiction remained undefined for decades. State regulation occurred within a federal regulatory framework that was also reportedly expanding and subject to change. However, neither *Wetlands* nor *Shoreland* were designed or explicitly intended to implement the federal regulatory framework, and differences existed between State and federal jurisdictions.

Rules

An effective regulatory framework was essential to implement *Wetlands* and *Shoreland*. Both statutes delegated significant rulemaking authority and latitude in creating permitting criteria to the Department. *Wetlands* was notably vague and provided few standards, while *Shoreland* was less vague, such as by providing quantified delineation of jurisdiction. However, both statutes left the development of permitting processes, standards, and requirements to rulemaking. The Department had to conform to the *Administrative Procedure Act (Act)* to ensure transparency and due process when exercising its quasi-Legislative rulemaking authority. Rules were any regulation, standard, form, or generally applicable statement that: 1) implemented, interpreted, or made specific *Wetlands* or *Shoreland*, or 2) prescribed or interpreted policy, procedure, or practice requirements binding on persons outside the Department.

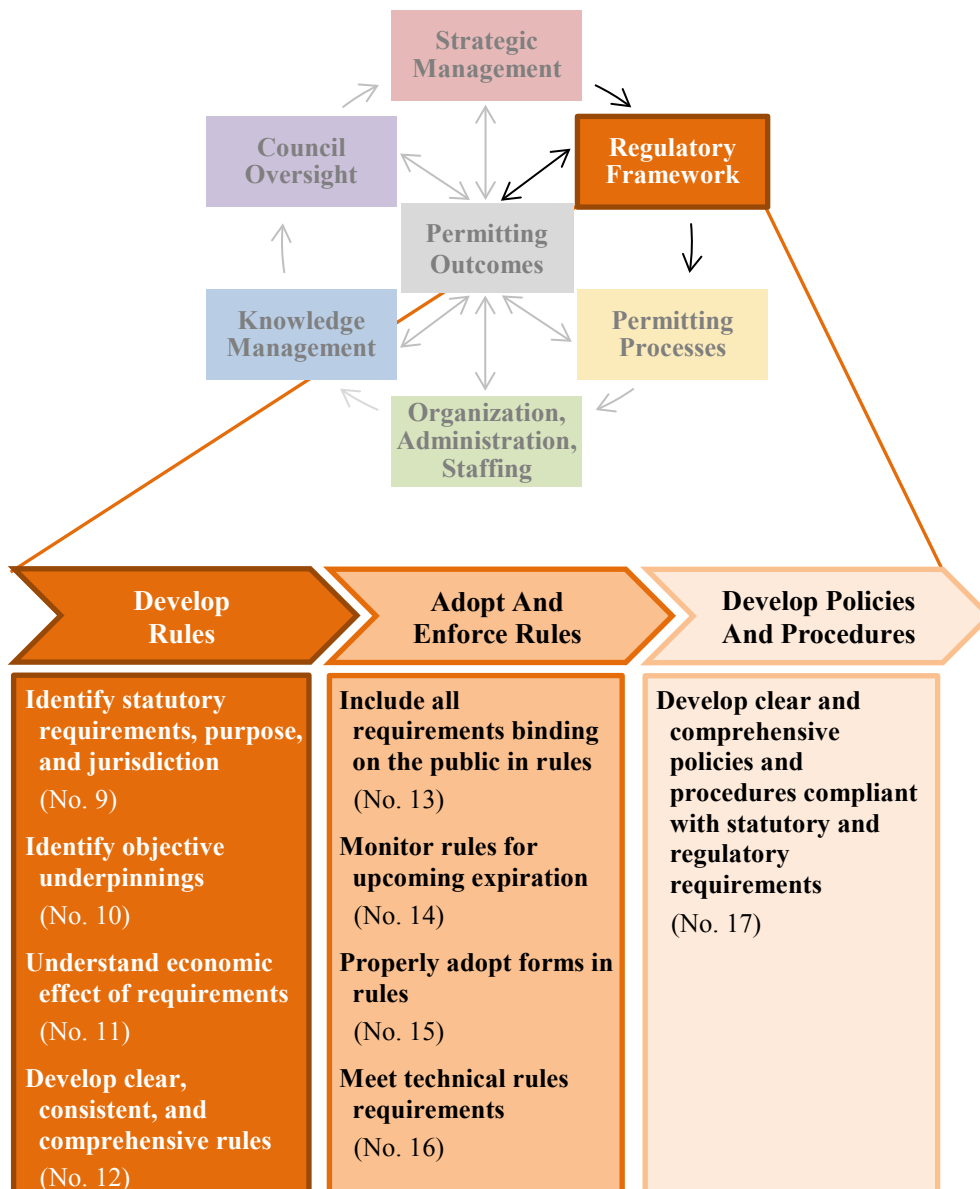
- Properly adopted rules had the force and effect of law. Imposing improperly adopted or unadopted rules was prohibited by statute and considered ad hoc rulemaking.
- Rules could fill in details to effectuate the purpose of *Wetlands* and *Shoreland*. However, the Department could exercise only Legislatively-delegated authority. Rules could not add to, detract from, or modify statute, and rules that did so exceeded the Department's authority and constituted overreach.

Forms, supplements and instructions to forms, guidelines, and other materials supported, and were required to conform to, rules. Internal policies and procedures specified control systems to implement effectively the regulatory framework and were not subject to rulemaking.

However, management control systems necessary to implement an effective regulatory framework were deficient, as shown in Figure 8. Deficiencies contributed to ad hoc rulemaking, regulatory overreach, and inconsistent permitting outcomes, which, in some cases, compromised due process.

Figure 8

Relationships Between Relevant Observations And Management Control Systems Necessary For An Effective Regulatory Framework



Source: Office of Legislative Budget Assistant–Audit Division (LBA) analysis.

Additionally, the Department did not measure or monitor inputs, outputs, or outcomes related to its regulatory framework.

- Inputs – Resources and information needed to develop an effective regulatory framework, such as statutory requirements or whether all requirements binding on the public were in existing rules, were not tracked.
- Outputs – Products of the rulemaking process, such as rule expiration dates or whether internal policies and procedures reflected all rules-based requirements, were not tracked.
- Outcomes – The results of the regulatory framework, including the economic effect of requirements on applicants and permittees or the relationship between regulatory requirements and the prevention of despoliation and unregulated development of wetlands and protected shorelands, were never objectively established.

Long-standing, Persistent Inadequacies

Deficiencies with the regulatory framework persisted through the current audit period. For three decades, the Department referred to a commitment to continuous improvement of operations, which included rules, policy, and practice, and formalized related strategic goals. The Legislature also established the Wetlands Council (Council) to provide oversight, consultation, and advice to the Department, including advice on the regulatory framework.

Previously-identified Deficiencies

Our CY 2007 *Alteration Of Terrain And Wetlands Permitting Performance Audit Report (2007 Audit)* contained 16 recommendations and one suggestion related to the Bureau's regulatory framework. Nine recommendations were related to making rules more clear, comprehensive, or consistent. Rules should have been clear and coherent to aid reading and comprehension by the "average" person. The Department reported launching a joint CY 2008 initiative with the Council intended to address our *2007 Audit* findings and implement improvements. However, *Wetlands Programs* rules (wetlands rules), last fully updated in CY 1991, were not amended following our *2007 Audit*. By CY 2013, the Department had to readopt wetlands rules without substantive changes, purportedly due to constraints on employee time. The wetlands rule revision process was intermittently revisited after CY 2013, and by February 2018, the Department had released preliminary drafts of revised wetlands rules. Rule revisions were reportedly intended to:

- increase consistency and standardization,
- restructure and clarify,
- reflect current statutes and streamline permitting,
- make processes more predictable and transparent, and
- ensure decisions were science-based.

Proposed revisions to wetlands rules were submitted to the Joint Legislative Committee on Administrative Rules in March 2019 (proposed 2019 rules), more than a decade after our *2007 Audit*, and 28 years after the last comprehensive update.

Purportedly, *Shoreland Protection* rules (shoreland rules), more recently readopted than wetlands rules, will be addressed after wetlands rules are revised. The Department reported it would address in its proposed 2019 rules most, but not all, of the wetlands rules issues we identified. The Department also indicated subsequent rulemaking would be necessary after the 2019 revisions are adopted.

Systemic Inadequacies

Many of the systemic inadequacies in the regulatory framework and Bureau permitting sourced back to inadequacies in rules. The rules in effect during the audit period were:

- challenged to comply with, and conform to, governing statutes;
- poorly maintained, containing expired elements and other defects;
- unduly complex, inconsistently clear, and incomplete, lending themselves to regulatory overreach;
- augmented with numerous requirements improperly incorporated into the regulatory framework, resulting in ad hoc rulemaking;
- without bases in science or other objective standards, or connections to programmatic outcomes; and
- without clear balance between economic development and environmental protection.

Forms, procedures, and practices flowed from rules, either to accommodate their provisions, or through attempts to update forms, procedures, and practices, but without consistently first promulgating valid rules as statutorily required.

As this audit occurred during the Department's decade-long wetlands rule revision process, the Department asked us to provide detailed input on rule inadequacies. We identified over 500 issues in wetlands and shoreland rules in effect during the current audit period, of which:

- over 300 were substantive ambiguities,
- over 30 were unclear statutory bases,
- 125 were inconsistencies with statute, and
- nearly 70 were technical deficiencies.

These inadequacies, at times, made the rules difficult to understand, exacerbated overreach, contributed significantly to ad hoc rulemaking, negatively affected consistency and predictability, and likely added uncertainty and confusion to the permitting process. Inconsistently trained, credentialed, and peer-reviewed employees applied varying interpretations of inconsistently clear and understood policy and procedures when making permitting decisions. Inadequacies also increased time and effort spent by Department employees and applicants attempting to interpret and satisfy uncodified Department requirements. It is unlikely we identified every issue with the regulatory framework, inconsistent interpretation, or inconsistent

permitting outcome. Additionally, we were unable to quantify the overall costs and other effects that issues with the regulatory framework had upon the public. However, we found specific cases where members of the public:

- likely incurred additional costs,
- waited longer than they might have otherwise to receive final permit application decisions,
- were denied permits, and
- endured compromised due process.

The Department's operating environment and organizational culture accommodated knowingly circumvented, absent, ineffectively designed, inconsistently implemented, and unmonitored controls over the regulatory framework. Effective controls could have helped the Department:

- ensure fidelity with Legislative intent and adherence to statutory requirements, some in place for two and a half decades or more;
- prevent the imposition of unlawful requirements on the public, leading to abuse;
- address prior LBA audit recommendations on rules, which remained resolved for more than a decade;
- meet strategic goals, including those related to the clarity of regulatory requirements, which were not achieved after almost a decade; and
- make objective, data-informed and objective decisions about permitting rules and other requirements.

The Commissioner had overall authority to adopt rules, and rule development and monitoring responsibilities were widely distributed. The Assistant Division Director was responsible for developing and implementing priorities for rules and overseeing rulemaking. The Bureau Administrator was responsible for planning, directing, and evaluating rules, effectively managing the Bureau, and identifying research to determine additional procedures that should be applied to the Bureau. The Assistant Bureau Administrator was responsible for planning, developing, evaluating, and implementing the regulatory framework to achieve permitting objectives.

Through State fiscal year (SFY) 2018, Department control systems necessary for an effective regulatory framework over Bureau permitting were at an **initial** level of maturity. Deficient control systems contributed to process and management control deficiencies identified in 52 of our current report's observations.

Reasonable And Clear Rules

The Department exercised more authority than delegated to it by the Legislature, and adopted some rules that contradicted statute, constituting overreach. Rules supplement statutory requirements by filling-in details not contained in statute and formalize how an agency will enact those requirements. However, rules may not expand, limit, or modify statute they were intended to implement. Statute also required wetland rules be "reasonable," but did not provide a definition. In contrast, shoreland rules were provided more focused guidance from statute.

However, the absence of control systems over the reasonableness of wetlands rules and ensuring rules were simple and constrained to their statutory purpose contributed to: over 150 rules-related issues we identified; compromised reasonableness of wetlands rules; and regulatory overreach. Absent Department control systems: 1) contributed to 43 observations in our current report, and 2) were at an **initial** level of maturity.

Observation No. 9

Simplify And Constrain Rules

Department rules provided significant opportunity for overreach by going beyond what statute envisioned, with potentially significant impacts upon the public. Misinterpretations of statute, incompletely defined jurisdiction, inappropriate application of federally-derived terms, and dated rules, supplemented by broad ad hoc rulemaking, rendered the regulatory framework insufficiently clear and unnecessarily complex and wetlands rules unreasonable.

Upended Purpose

Wetlands rules upended the purpose of statute, leading to overreach. *Wetlands* expected regulated development of submerged lands would occur. *Wetlands*' purpose was to protect and preserve submerged lands from despoliation and unregulated alteration through permitting. Despoliation was the act or process of despoiling, which can be defined as the stripping of belongings, possessions, or value, or pillaging, looting, or plundering. However, rules never defined what despoliation of wetlands actually meant, rendering it difficult to understand what the rules were intended to accomplish, especially when combined with the lack of objective underpinnings tied to programmatic outcomes, as we discuss in Observation Nos. 10 and 11. Rules nonetheless established several aspirational goals as their purposes.

- Wetlands rules aspired to provide the “maximum degree” of protection of the natural environment. However, statute did not envision the Department would provide the “maximum degree” of protection, a goal far exceeding the degree of protection encompassed in preventing despoliation. The maximum degree of protection would be no development; however, any landowner use which avoided despoliation was allowable under law.
- The purpose of shoreline structure rules was to prevent “unreasonable” encroachment on surface waters, without establishing objective standards to make such determinations. Preventing encroachment on surface waters was not the purpose of *Wetlands*, as *Wetlands* expected development would occur, and it was unclear what was “unreasonable” without objective underpinnings or definitions of “despoliation” and “unreasonable.”
- Rules required structures to be constructed to avoid deleterious impacts to fish and wildlife habitat. However, avoiding any deleterious impact to fish or wildlife habitat would potentially render any project impermissible, without objective standards to make such determinations.

- Stream crossings rules aspired to “enhance” public safety; “lessen” the risk of blockages and wash-outs of culverts and bridges, and associated flooding; “preserve” the functions and values of existing streams; “restore” impacted streams to their natural state; and “improve” aquatic life passage and sediment transport. Nowhere did *Wetlands* require projects to proactively enhance public safety, lessen flood risks, preserve streams in isolation, improve aquatic passage, or restore conditions. *Wetlands*’ purpose was to prevent despoliation and unregulated alteration of submerged land, and expected development would occur.
- Wetlands rules regulating modification of existing structures prohibited any change in size, location, or configuration of an existing structure unless an applicant demonstrated the modification was “less environmentally-impacting” than the current configuration. There was no statutory basis for this, nor did the Department clarify what constituted an “existing structure.” Nowhere did *Wetlands* specify that projects would provide less impact. This action can be characterized as *positive* action or outcome arising from the regulatory construct: something not currently existing to be achieved. *Wetlands*’ purpose, however, was to prevent despoliation and unregulated alteration of submerged land, inherently a *negative* outcome: something avoided.
- Rules prohibited minor and major projects unless an applicant could demonstrate they “needed” the proposed project and that the proposed project had a “public good” or “public benefit,” all undefined terms. However, statute did not require applicants demonstrate they needed a project or demonstrate a private project had public benefit, as we discuss in Observation Nos. 12 and 13.

Imprecisely Defined Jurisdiction

In addition to upending statutory purpose, wetlands rules inadequately defined jurisdiction. Rules purportedly had numerous federal underpinnings, but some were inappropriately implemented or applied out of context, as we discuss in Observation Nos. 12 and 13. However, since the State’s regulatory jurisdiction exceeded federal jurisdiction, applying federal criteria to all State projects equated to a one-size-fits-all approach, and inappropriately imposed federal requirements upon some applicants.

Rule also advised the public that work carried out before a permit was issued was not covered under federal permits and might be in violation of federal law, creating the specter of federal enforcement where it may not have been applicable because federal jurisdiction did not align with the State’s more expansive jurisdiction. Rules should clarify impositions upon the public and specify precisely what terrain was under, and was not under, State and federal jurisdiction. Without a method to objectively determine top-of-bank, *Wetlands*’ jurisdiction was undefined, imparting subjectivity into the permitting process, and likely leading to overreach. Additionally, neither *Wetlands* nor *Shoreland* was intended to adapt the federal regulatory framework into State rules. Adaptation of federal requirements to State rules effectively deferred State regulation of wetlands to the federal government, something neither chapter of law envisioned.

Nullified Exemptions

In addition to provisions of wetlands rules that exceeded the intent of underpinning statutes, rules also nullified several statutory exemptions, furthering overreach. Procedurally, there were no mechanisms designed to: 1) ensure permit application reviewers filtered out exempt projects; 2) ensure exempt, non-project undertakings were not erroneously processed; or 3) prevent citizens from perceiving a need to file an application for an exempt, non-project undertaking.

Maintenance Of Manmade Structures

Rules muddled “maintenance,” “repair,” and “replacement” by using several related, but undefined terms that were carried throughout forms and other documents and the remainder of the regulatory framework, as we discuss in Observation No. 12. Rules lacked any statutory exemption references, and effectively limited or nullified statutory exemptions. This not only affected exemptions, but also classification of projects. Out of the 86 permit application files we reviewed, we examined 50 wetlands files for possible maintenance exemption issues. Four of the 50 files (8.0 percent) indicated applicants were subjected to permitting despite appearing to be eligible for some form of maintenance exemption. Stream crossing rules exacerbated: 1) ambiguity, by using additional undefined terms, and 2) overreach, through continued misinterpretation and imposition of additional restrictions on maintenance activities where statute provided none. For example, rules classified stream crossing repair and replacement as a minimum impact project requiring a permit without accommodating statutory maintenance exemptions.

Abandoned

Rules on abandoned properties or structures expanded Bureau jurisdiction. Rule provided property owners a five-year window to maintain facilities by defining “abandoned” as “the failure, for a period of 5 years, to maintain an existing structure in a condition so that it is functional and intact” without further definition, making related decisions subjective. “Abandoned” was purportedly developed to support a discrete need solely related to determining “grandfathered” status. Classifying a structure as “abandoned” could affect the proposed wetlands impact and related classification of some projects, subjecting them to a more time consuming review process. For example, an applicant seeking to repair a structure classified as “abandoned” may require a permit when they otherwise would not. Furthermore, statute, in intending to prevent despoliation, did not provide the Department with authority to decide when a property owner “abandoned” a structure and then prohibit its maintenance. Without clear underpinnings, as we discuss in Observation No. 10, equating an unmaintained structure to despoiling submerged lands was arbitrary.

Dock Dimensions

Rules misinterpreted several statutory thresholds on dock dimensions, resulting in inconsistencies between rules and the implemented statute, and without a definition of despoliation or objective standards underpinning rules as we discuss in Observation Nos. 10 and 12, added unreasonableness to rules.

- Lakeside Dock Dimensions On Large Frontages – Rules limited the size of all docks to the dimensions statute established to exempt temporary seasonal docks from permitting. Temporary seasonal docks above the threshold, and all other docks, should have been subjected to regular permitting requirements as statute set no threshold for dock size.
- Docks On Rivers And Streams On Large Frontages – Rules applied the temporary seasonal dock dimension thresholds for lakes to all docks in rivers and streams. However, statute provided no dimensional limits on docks in rivers and streams.
- Dock Dimensions On Small Frontages – For a property with less than 75 feet of water frontage, rule provided docks or piers could be no longer than four feet by 24 feet. Statute did not provide for such a limitation.
- Stair Dimensions – Statute excluded from permitting stairs six or fewer feet wide. Rules used the exemption threshold for stairs as the maximum dimensions allowable for all stairs, prohibiting larger stair dimensions outright, instead of subjecting larger stair projects to regular permitting requirements.

Prime Wetland Buffer

Inconsistent and ambiguous presentations of prime wetlands and buffers in rules and supplemental materials led to employee and stakeholder confusion in separate instances, and may have led applicants to apply under more onerous standards applicable to projects with “prime wetland” buffer implications, when in fact there were none. Statute provided municipalities could designate a prime wetland and adopt a 100-foot buffer, but only a minority of jurisdictions in the State have opted to designate a prime wetland, and a smaller subset have also implemented a 100-foot buffer. References in rule, supporting forms, and other materials to an ambiguous “prime wetland” buffer tended to expand jurisdiction where a buffer was not designated, as we discuss in Observation No. 12.

Imbalanced Burden Of Proof

Shoreland rules placed the burden of proof upon property owners to prove they had not committed a violation, instead of the Department substantiating noncompliance, as other Department rules and policy provided.

Time Limits On Work On Nonconforming Structures

Shoreland rules required owners of pre-existing nonconforming structures damaged by accident to rebuild the structure within two years and allowed repair, renovation, or replacement-in-kind only when an owner could demonstrate the structure was maintained in a functional and intact condition in the two years immediately prior to the replacement. There was no underlying statute for these provisions, which appeared disenfranchising to property owners.

Balance Between Public Safety And Mitigation Requirements

Through SFY 2018, the Department left unresolved our 2007 *Audit* suggestion that the Legislature consider amending State laws to clarify whether, and to what extent, public safety should be considered for applications involving prime wetlands. While the Department concurred and asserted in CY 2015 it had “fully” addressed deficiencies, in CY 2018, it reported having only “partially” addressed deficiencies. However, current rules contained no mention of balancing public safety and mitigation requirements, despite revisions to mitigation rules in CY 2016, and no statutory changes were made. Proposed 2019 rules purportedly “[reflected] an appropriate balance between public safety and mitigation requirements.”

Recommendations:

We recommend Department management constrain rules to their statutory purposes by:

- **focusing wetlands rules on preventing despoliation and abandoning attempts to aspirationally seek proactive outcomes via rulemaking;**
- **eliminating from wetlands rules the premise the Department can compel applicants to demonstrate they need a project, or that their project must provide a public good;**
- **clearly defining *Wetlands*' jurisdiction;**
- **properly integrating statutory exemptions related to maintenance, repair, and replacement generally;**
- **eliminating time limits on work on nonconforming structures, and ceasing to place the burden of proof on citizens in certain enforcement actions;**
- **properly integrating statutory dimensional thresholds;**
- **simplifying the regulatory framework; and**
- **rationalizing forms, guidelines, and other elements of the regulatory framework based on properly framed and underpinned rules.**

We further recommend Department management seek clarification from the Legislature:

- **as to whether, and what extent, public safety issues may be considered during permit application review or mitigation requirements may be waived; and**
- **if they believe the guidance provided in statute is an insufficiently clear basis from which to develop simple and constrained rules.**

Department Response:

We concur with the recommendations.

We are addressing these recommendations in the proposed 2019 wetlands rules, and are in the process of reviewing public comments.

We will develop and implement policies and procedures regarding balancing public safety and mitigation requirements, within the authority provided by rule and statute.

Objective Underpinnings

Wetlands broadly required the Department to promulgate reasonable rules to protect and preserve wetlands from despoliation and unregulated alteration. *Shoreland* was more limited, specifically requiring the Department promulgate rules on the: 1) content and form of applications and permits, 2) implementation and enforcement of minimum shoreland standards, and 3) permitting procedures and criteria to protect State waters and shoreland. Statute required the Department to follow a process providing transparency and accountability through public, Council, and Legislative review of proposed rules. The Department's *2010-2015 Strategic Plan* (Department's 2010-2015 strategy) also committed the Department to scientifically and technically sound, cost-effective, and environmentally appropriate solutions. Strategy included a goal to ensure the requirements of all regulatory programs were clear and unambiguous and that the underlying policy reasons for those requirements were clearly explained. The decade-long wetlands rule revision process was reportedly focused on increasing consistency and standardization, making processes more predictable and transparent, and ensuring decisions were science-based.

However, the absence of control systems over the reasonableness of rule underpinnings contributed to: rules inconsistently based upon objective, science-based standards; rules inconsistently connected to programmatic outcomes; and inconsistent permitting outcomes. Absent Department control systems: 1) contributed to 44 observations in our current report, and 2) were at an **initial** level of maturity.

Observation No. 10

Improve Reasonableness Of Underpinnings To Regulatory Framework

Elements of the Bureau's wetlands rules containing quantified thresholds were underpinned by dated employee opinions, third-party consensus and suggestions, and best management practices, rather than current, empirically-established, and scientifically-based standards explicitly tied to expected Bureau programmatic outcomes. Bureau rules, which were used to structure the permitting process, were poorly maintained. Wetlands rules in particular were outdated and not underpinned by current, objective standards. Not tying Bureau rules to objective standards and programmatic outcomes increased the risk the Bureau would not fulfill its purposes to protect wetlands from despoliation and unregulated alteration and protect State waters and shoreland. This also undermined the reasonableness of the Bureau's rules and added to the ambiguity and subjectivity of the regulatory framework, increasing applicant and permittee costs.

Deficient Rules

We identified 85 instances where wetlands rules set specific, quantified standards, such as specifying a certain number of square feet or linear feet, or time, as substantive permitting criteria. Each affected permitting by establishing a threshold to discriminate between permitting categories, by imposing a limitation on a project, by prohibiting an activity, or in some other way. The underpinnings of most were subjective, as shown in Table 2.

Table 2

Underpinning Criteria To Selected Standards In Wetlands Rules

Criteria	Number Of Standards ¹	Percent Of Standards
Department Employee Opinion	23	27.1
Third Party, Consensus-based ²	12	14.1
Statute Or Rule	11	12.9
Third Party, Not Consensus-based ³	9	10.6
Incorrect Standard ⁴	3	3.5
Science-based	1	1.2
Unsure Of Source Of Standard	32	37.6
Other ⁵	26	30.6

Notes:

1. Does not add to 85 since multiple criteria applied to some standards.
2. Standard developed by a non-Bureau group using a consensus approach.
3. Standard developed by a non-Bureau group not using a consensus approach.
4. Standard outdated or incorrectly stated in rule.
5. Includes miscellaneous underpinnings, such as precedence established by previous rules, consistency within other existing rules, or court cases.

Source: LBA analysis of Bureau records and employee comments.

Unimplemented Strategy

The Bureau's inconsistent use of objective standards to underpin rule was contrary to goals in the Department's 2010-2015 strategy. Employees acknowledged wetlands rules were outdated and not linked to current science. Wetlands rules were developed over decades, first by the former Wetlands Board and then by the Department. During this time, statutes changed, wetlands-related science progressed, and Bureau permitting processes became more complex through formal and informal means. However, the Bureau did not systematically update rules to fully reflect these changes, and as a result, connections between outdated rules and continuously maturing and evolving science and other requirements decayed over time. Furthermore, other than anecdotes, Bureau administrators provided no evidence rules were connected to programmatic outcomes or strategic goals and objectives. Instead of using objective standards, employees relied upon judgment and subjective standards when reviewing permits, adding additional variability to achieving intended outcomes.

Unrealized Outcomes

The effectiveness of the Department's rulemaking approach to fulfill the purposes of *Wetlands* and *Shoreland* was indeterminable, due to the lack of objective underpinnings to Bureau rules. Reportedly, employees melded science with statutory objectives to achieve Bureau permitting outcomes. However, no wetlands water quality standards to evaluate permitting outcomes were ever developed, even though the federal Environmental Protection Agency had encouraged states to develop standards since CY 1990. Furthermore, the science underpinning rules was reportedly

not definitive. Without objective standards, the Bureau could not reliably assess whether permitting actually affected wetlands water quality or prevented despoliation, and therefore could not objectively evaluate programmatic outcomes. Rules without objective underpinnings increased the risk the Department would not achieve its expected outcomes.

Additionally, the Department:

- did not have employees with economic analysis expertise to evaluate regulatory costs, as we discuss in Observation No. 11;
- assigned rulemaking responsibilities to employees who inconsistently held relevant professional credentials, as we discuss in Observation No. 43; and
- engaged informal workgroups of employee-selected stakeholders to provide input to develop rules before formal rulemaking commenced, further increasing the risk that rules would not be underpinned by transparently-developed and objective standards, as we discuss in Observation No. 7.

Recommendations:

We recommend Department management improve the reasonableness of wetlands and shoreland rules by:

- **developing, applying, and refining a reasonableness test to be applied to wetlands and shoreland rules when they are developed;**
- **conducting a systematic review of existing wetlands and shoreland rules to ensure requirements are underpinned by objective standards and tied to programmatic outcomes when possible; and**
- **removing from rule any requirements without underpinnings to objective standards and ties to programmatic outcomes.**

Department Response:

We concur with the recommendations.

We will address them through current and future rulemaking efforts.

Economic Basis

The Department was required to provide adequate details and supporting data to enable preparation of fiscal impact statements that:

- demonstrated short- and long-term fiscal consequences of its rulemaking;
- stated the costs and benefits to the citizens of the State and to political subdivisions of proposed rules;
- concluded on the cost or benefit to State funds;
- explained the relevant federal mandate, if any, and its effect on State funds;

- compared the cost of the proposed rules and the cost of existing or expired rules; and
- demonstrated the general impact of the intended action upon any independently-owned business.

Additionally, the Department was required to demonstrate:

- the costs of its rules did not exceed their benefits,
- the rules were the least restrictive means to accomplish their purpose,
- the rules did not unduly burden the public,
- the effectiveness of the rules could be measured, and
- there was a process in place to measure rule effectiveness.

Additionally, some Department rules required applicants to undertake and provide to the Bureau economic analyses, upon which Bureau employee permitting decisions rested. Other rules required Bureau employees to conduct their own economic analyses to underpin permitting decisions.

However, the absence of control systems over the economic basis of rules contributed to inconsistent permitting outcomes and negatively affected the reasonableness of rules. Absent Department control systems: 1) contributed to 42 observations in our current report, and 2) were at an **initial** level of maturity.

Observation No. 11

Understand And Quantify Economic Effect Of Regulatory Framework

The Department lacked a systematic, objective method to evaluate the cost of Bureau regulations on permit applicants and filers, increasing the risk of negative economic impacts to the regulated community and undermining the Department's 2010-2015 strategy. Economic analysis could have helped the Bureau determine the cost of regulation and inform decision-makers and stakeholders about the economic effects of Bureau actions. While the Bureau planned to quantify the economic benefits of wetlands, no corresponding effort was made to quantify the economic costs of regulations incurred by the regulated community. Fiscal impact statements did not allow for a comprehensive quantification of changes in costs. Furthermore, extensive ad hoc requirements imposed by the Bureau also increased costs, making reliance on fiscal impact statements alone insufficient to determine costs of regulation. Without objective evaluation of the economic effects of regulation, the Department's inability to balance costs and benefits compromised the reasonableness of Bureau rules.

Embedded Costs

Employees acknowledged the complexity of regulation led to an increased compliance cost to the regulated community. The only costs directly provided by statute were permit application and notice fees. Fees differed based on the size and type of project associated with an application, ranging from \$25 to more than \$10,000. Statute did not specify any other required costs, though statutory provisions could have led to additional applicant costs, such as: 1) requiring plans

accompany applications, applications be additionally submitted to town clerks and conservation commissions, and abutters and local river management advisory committees be notified by certified mail; and 2) allowing requests for more information (RFMI) and review extensions.

Wetlands and shoreland rules also increased costs to applicants and permittees, including requirements for:

- plans stamped by a certified professional for major and minor standard dredge and fill (SDF) projects, and stream crossings for vehicular access to a single family lot or installation of utility lines when the location was not the applicant's primary residence;
- mitigation proposal plans stamped by a certified professional;
- mitigation monitoring by a certified professional;
- wetlands delineation by a certified professional for mitigation areas of any size;
- adherence to permit conditions, such as erosion control measures; and
- adherence to multiple best management practices, such as those for routine roadway and railway maintenance.

In addition, the Bureau enforced multiple ad hoc requirements, such as requiring applicants establish their "need" for a project, without defining "need," leading to subjective permitting decisions and associated costs. Reportedly, proposed 2019 rules were written in an effort to balance economic activity and environmental protection, but employees expected the scope of regulation would increase, and new rules would also increase the complexity of permitting, potentially increasing costs.

Balancing Economic Costs And Environmental Benefits

Statute, rule, policy, and practice lacked any specific, objective standards or method by which the Bureau would assess economic impacts and balance benefits and costs. Statute established a transparent method for evaluating economic cost of regulation using fiscal impact statements. However, statute was silent regarding how Bureau permitting should balance competing economic and environmental interests. Nonetheless, the Bureau should analyze the risks, benefits, and costs associated with its regulations to complete fiscal impact statements and meet strategic goals. The Department's 2010-2015 strategy stated it: 1) was guided by consideration of the quality of life and economic vitality of citizens while pursuing the Department's statutory responsibilities, 2) was committed to developing cost-effective solutions, and 3) would consider long-term, cumulative effects of policies, programs, and decisions. The strategy also specified a goal to strive for strong customer-centric, continuous improvement throughout its operations.

Bureau-level practice was imbalanced, with an objective to increase public understanding of wetlands value and sustain economic vitality of the State through wetlands preservation, without any corresponding goal to evaluate economic impact of its regulations. No Department or Bureau plans existed to track and evaluate the costs of regulation or develop a method for evaluating economic and environmental interests. Without a process in place to collect information about the costs associated with compliance, the Department could not know what burden its regulations imposed and whether they were reasonable. Proposed rules were required by statute to have a

fiscal impact statement; however, these statements were only completed as part of formal rulemaking and were only as precise as the information provided by the Bureau.

From CY 2008 to CY 2018, fiscal impact statements for 20 wetlands rule changes and eight shoreland rule changes were published, and while the cost of compliance increased by some indeterminate amount for shoreland rules, the change in cost was reportedly altogether indeterminable for wetlands rules. However, the information in these documents was overly broad, and we found no evidence the Department had conducted economic analyses of its rule changes. Furthermore, understanding and assessing the costs resulting from ad hoc rulemaking was particularly problematic because there were no fiscal impact statements filed, eliminating Legislative and public oversight and transparency.

Wetlands rules provided vague, subjective criteria for reviewers to evaluate economic and environmental interests, including a requirement that a proposed project must have the least impact on wetlands and surface waters practicable. Shoreland rules were less subjective, but still lacked criteria for balancing economic and environmental interests. The Department did not have employees with economic analysis expertise to evaluate regulatory costs, leaving rulemaking to individuals without experience in this area. Having non-credentialed employees without economic analysis experience develop rules without objective criteria to assess economic effect increased the risk of negative economic impact to the regulated community.

In CY 2018, we surveyed 32 Bureau employees then-employed or employed during SFY 2016 or 2017 on Bureau permitting-related practices (Bureau permitting survey), of whom 22 (68.8 percent) responded. We asked the 18 employees (81.8 percent) reporting involvement in technical review if they had clear criteria to use when balancing economic factors and environmental quality, and:

- four (22.2 percent), including two managers, reported *yes*;
- eight (44.4 percent), including three managers, reported *no*; and
- six (33.3 percent), including four managers, reported being *unsure*.

Instead, employees reportedly used their judgment and subjective standards from the regulatory framework, like a requirement in wetlands rules that a project be the least impacting alternative, to balance economic costs and environmental benefits, resulting in ad hoc rulemaking as we discuss in Observation No. 13. The complete results of our Bureau permitting survey are included in Appendix G.

Our review of 86 SDF, shoreland, and minimum impact expedited (MIE) permit application files revealed formal and ad hoc Bureau requirements increased applicant costs through project delays, engagement of additional licensed professionals, and added compliance conditions, including:

- one application (1.2 percent) that was denied in part because the applicant had not submitted plans stamped by a professional;

- one application (1.2 percent) where a permit application reviewer completed a cost-benefit analysis on whether or not an applicant should join a local community dock association rather than build their own dock;
- four applications (4.7 percent) each with multiple RFMIs, contrary to provisions in statute;
- six applications (7.0 percent) where the Bureau included other agencies' permit conditions using a process not defined in rule;
- six applications (7.0 percent) initially classified as MIE but later reclassified as SDF using a process not defined in rule, prolonging review times from 30 to 75 days and increasing the scrutiny of review;
- eight applications (9.3 percent) not processed timely;
- nine applications (10.5 percent) denied on the basis of undefined, vague requirements from rule related to project need, avoidance, and minimization;
- 13 applications (15.1 percent) in which inconsistently credentialed reviewers appeared to question the judgment of a certified or licensed professional, potentially prolonging the review process and producing inconsistent permitting outcomes; and
- 44 applications (51.2 percent) with permit approval letters that included permit conditions not incorporated in rule.

Complaints about the cost of compliance with Bureau regulations were long-standing, and included misapplication of Bureau fees, burdensome regulation, and expanding regulations. Stakeholder comments suggested the permitting process was confusing, time-consuming, and costly. The Department issued permit applicants an LRM hardcopy *Permit Process Questionnaire* (LRM hardcopy questionnaire) from the 1990s to CY 2017. The Department provided, and we reviewed, LRM hardcopy questionnaires from CY 2011 through CY 2016, which showed 26 of 34 respondents (76.5 percent) needed professional assistance to complete an application. Required reliance on certified or licensed professionals, coupled with a complex regulatory framework, meant applicants incurred more costs engaging certain professions, including wetlands scientists, engineers, and developers, who in turn benefitted from Bureau requirements. All of these groups were well represented in wetlands rules workgroup meetings in which Bureau requirements were discussed and formulated, increasing the risk of higher cost of regulation. Ongoing issues with untimely permit processing also increased applicant costs through project delays.

Recommendations:

We recommend Department management:

- **develop a strategy for clearly demonstrating the balance between environmental benefits and economic costs of Bureau regulation;**
- **develop, implement, and refine policy and a method for evaluating economic impact of Bureau rulemaking, permitting, and other regulatory activities;**
- **train employees in the Department's policy and method for evaluating economic impact of regulation; and**
- **monitor rulemaking and permitting activities to ensure employees follow policy.**

Department Response:

We concur with the recommendations.

We will evaluate how to address them within the constraints of Bureau resources and workload.

Additional Department and LBA comments on Observation No. 11 appear in Appendix B.

Ambiguity

Rules cannot be ambiguous. Rules must be clear and coherent, and aid reading and comprehension by the “average” person. Of the rules issues we identified for the Department, over 300 were substantive ambiguities. Ambiguity left it unclear when a rule applied or when less than full compliance was acceptable, implying a case-by-case variation in meaning but with unstated criteria. Each ambiguity afforded an opportunity for systematic ad hoc rulemaking, as we discuss principally in Observation No. 13. Ambiguous terms could have nullified the purpose of rulemaking and the Department’s interpretation of its rules.

The absence of control systems over ensuring rules were clear, coherent, and complete contributed to: statutory noncompliance and inconsistent permitting outcomes. Absent Department control systems: 1) contributed to 45 observations in our current report, and 2) were at an **initial** level of maturity.

Observation No. 12

Ensure Rules Are Clear, Comprehensive, And Consistent

Wetlands rules were not sufficiently clear, comprehensive, and consistent—long-standing and known concerns. Wetlands rules: 1) were poorly maintained; 2) were augmented with numerous improperly incorporated requirements; 3) revisions were not strategically managed or planned, instead being managed by expiration date; 4) were subject to multiple issues illustrated by prior audits, but without resolution; 5) did not fully clarify jurisdiction; 6) were inconsistent with certain underpinning statutes; and 7) lacked key elements. Shoreland rules were similarly challenged to comply with governing statutes.

Our *2007 Audit* contained nine observations with unresolved recommendations related to making rules more clear, comprehensive, or consistent. The lack of clarity, consistency, and comprehensiveness was inconsistent with guiding principles and objectives within the Department’s 2010-2015 strategy. The Department asserted it would remediate many, but not all, of the issues we identified in its proposed 2019 wetlands rules. For example, several process-related issues may be left without a proposed remediation, while others were deferred to pending or ongoing Legislative study.

Ambiguities

Ambiguities in wetlands and shoreland rules included: 1) vague terms, 2) undefined terms similar to defined terms, 3) inconsistencies, 4) un-defined or ill-defined processes, and 5) non-specific standards.

Terms

During the audit period, the Bureau was engaged in revising wetlands rules, self-identifying uncodified practices and some 50 undefined terms in common use. We identified others. Several were likely to significantly affect applicants.

- “Need,” “Avoidance,” And “Minimization” – These terms, and other terms integral to permitting decisions, were ill-defined and subject to ad hoc rulemaking in attempts to clarify their meaning and use, as we discuss in Observation No. 13.
- “Practicable” – Rule provided a permit application could not be approved if there was a “practicable” less-impacting alternative. Practicable occurred 25 times in wetlands rules and was defined as “available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes,” with no further elaboration or definitions provided. To confuse the rule-defined term, rules: 1) used, but did not define, “practical,” “impractical,” and “feasible” in situations similar to those where “practicable” should have been used; 2) inconsistently modified “practicable,” indicating varying degrees of practicability were acceptable or required; and 3) relied on an uncited federal definition that would not change or be clarified in the proposed 2019 rules, leaving ambiguities around a term integral to permitting decisions and irrespective of State statutory requirements to promulgate clear rules. Furthermore, federal citations in rule were missing, adding additional ambiguity as to which requirements were being enforced, even though *Wetlands* neither intended to effectuate federal requirements nor provided authority to promulgate rules to effectuate federal requirements. “Practicable” was similarly used and modified in shoreland rules but altogether undefined.
- Qualified Terms – Rules established qualified requirements creating ambiguity, such as requiring applicants to submit: 1) a completed application “with at least” certain items, suggesting more were required; and 2) other information, but only “if available,” raising questions as to the necessity of the information to begin with. Other rules required draft documentation be provided, offering the possibility that final decisions might be made on these drafts. Still other rules allowed applicants to use a rule-specified standard, or another standard of the applicant’s choosing, to satisfy requirements. Other ambiguous terms, or variations thereon, in rules included “possible,” “appropriate,” “give preference,” “greater,” “significant,” “substantial,” “material,” “sufficient,” “adequate,” “adjacent,” “vicinity,” “contiguous,” “maximum extent,” and “minimum.”

- Effects On The Public – Rules used several terms and phrases related to various effects on the public as criteria affecting permitting. Rule: 1) required the “public value” of private projects be demonstrated, without an enabling statute; 2) provided certain projects “shall not endanger navigation, recreation, or commerce of the general public,” without structuring any means to establish or quantify “endangerment;” 3) required assessment of the impact to public commerce, navigation, and recreation, aesthetics, passage and access, and health without providing how assessments were to be conducted; and 4) referenced “negatively affecting” the public health or safety, but without a health or safety standard. Some references qualified these effects, while others did not, making it unclear whether the standard was absolute or not, and whether the effect was an actual, demonstrable effect or just a speculative, potential effect. For example, references qualify the effect on the public with “avoidable,” again, however, without any further definition. Any effect could be avoidable by not undertaking a project. Reportedly, permit application reviewers considered risk of injury or harm to the public and environment without the project, these considerations affected determinations on project need, and thresholds varied.

Stream Crossings

Stream crossing rules were developed to augment other wetlands rules to make more specific the criteria for design and approval of stream crossings, supplementing existing rules and affecting, among other things, “need,” “minimization,” and “avoidance.” However, stream crossing rules: 1) were confusing; 2) relied upon additional, technical materials to implement; and 3) overreached statutory authority, contained incomplete or ambiguous elements, and were more broadly applied than intended, as we discuss in Observation No. 9.

Prime Wetlands

“Prime wetlands” were referred to in various ways and inconsistently modified in Bureau rules and supporting materials. Some references were less ambiguous than others, but most references were inconsistent with statute when referencing the 100-foot buffer around prime wetlands established in only a few municipalities. Rule inconsistently used the undefined term “adjacent” and unmodified “buffer” with prime wetlands, instead of referring to the definitive 100-foot buffer, creating ambiguity and leading to confusion. Furthermore, rules relied on prime wetlands delineations to determine project impact category, but delineation rules had been expired since April 2016. Additionally, rules for prime wetlands designation by municipalities: 1) were ambiguous, 2) lacked time limits for Department actions, 3) relied on undefined terms, and 4) exceeded their statutory basis, as we discuss in Observation No. 9.

Rules Were Not Comprehensive

While aspects of permitting practice appeared to change periodically, many of those changes, as well as long-standing statutory provisions, were not reflected in, or not properly reflected in, rule. Rules had the force and effect of law only when properly adopted and filed, and procedural rules, rendered inaccurate by new or amended statutes, expired after one year.

Organizational Rules

More than 30 years after its establishment, the Department lacked organizational rules for the Bureau and subordinate sections, and did not adopt rules to reflect changes, such as the designation of three bureaus as constituting LRM programs, and the implementation of the Application Receipt Center (ARC). Formalizing the Department's organizational structure, its operations, and its components and their functions in rules was a fundamental management control and obligation.

Procedures

Rules lacked comprehensive permitting processes and procedures, with some rule-based provisions being so vague or ill-defined as to be meaningless. Other rules did not reflect Bureau practices and were ignored. While internal Bureau guidance established 23 steps within the permit application technical review and approval process, with multiple substeps, all of which affected applicants either directly or indirectly, formalization in rule generally did not occur. Formalizing the Department's processes and procedures and codifying those affecting the public in reasonable rules were fundamental obligations. Basic elements of permitting processes and procedures not in rule included:

- first-come-first-served application review, reportedly Bureau policy since CY 2007;
- shoreland permits-by-notification (PBN);
- time limits on Department actions generally;
- requirements found in forms and supplemental materials, as we discuss in Observation No. 15;
- conditions on permits, as we discuss in Observation No. 20;
- the administrative completeness review and notices of incompleteness, as we discuss in Observation No. 26;
- expedited evaluation of permit applications under extraordinary circumstances, as we discuss in Observation No. 28;
- RFMIs, as we discuss in Observation No. 32;
- extensions of decision time limits, as we discuss in Observation No. 33;
- reclassifying impacts to other categories, as we discuss in Observation No. 34;
- deemed approved permits, as we discuss in Observation No. 35; and
- delegated authority, including who may issue permits, as we discuss in Observation No. 40.

Additionally, other uncoded or incompletely coded but related processes and procedures included those for:

- process complaints, which managers asserted existed but were wholly undocumented, and unauditible;
- permit amendments, which lacked regulating statute, rules, policies, or procedures on amending the substance of an approved permit, and which we noted in our *2007 Audit* as a deficiency that left to reviewer discretion whether requestors had to provide additional information;

- hearing and waiver time limits, which can add a degree of certainty to Bureau procedures but were generally lacking;
- prime wetlands waiver requests, criteria for granting waivers, methods to determine whether significant net loss of wetlands values might occur, waiver conditions, extensions of waivers, and fees; and
- visitor registration requirements.

Shoreland rules generally lacked detailed procedures, including procedures integral to the permitting process, such as jurisdictional determination procedures contained in policy and practice, time limits provided for features of the permitting process, ARC processes, RFMIs, and extensions of RFMI response times. Shoreland rules also lacked reference to appeals of Department permitting decisions to the Council. Additionally, shoreland rules defined what an “unsafe tree” was, but did not provide a methodology for identifying unsafe trees as statute required.

Definitions

Many of the terms defining fundamental processes, including basic jurisdictional limits, were not in rules. Several undefined terms appeared to be more significant in terms of their effect on the public, including:

- “despoliation,” which rendered wetlands rules inadequately focused on their purpose when combined with the general lack of objective underpinnings to rules, broad ambiguities throughout rules, and subjectivity embedded in decision-making related to permitting;
- “need,” “avoidance,” “minimization,” and “public benefit” and “public good,” instrumental to approving or denying a permit application;
- “top-of-bank,” integral to determining jurisdiction but was inconsistently interpreted and to remain undefined in proposed 2019 rules, perpetuating decades-long ambiguity affecting applicants in something as basic as the Department’s jurisdiction;
- “low flow,” which imposed specific restrictions on work;
- “exemplary natural community,” another agency’s undefined term, affected project classification and mitigation requirements; and
- “day,” a basic term that rule interchangeably used with “calendar day” and “working day” without any being defined, and which deviated from a fourth form of “day” the Bureau used in practice to establish actual due dates, none of which were the statutorily-defined “business day.”

Additionally, “maintenance,” “repair,” and “replacement” were muddled by the use of several related, but undefined, terms. Rule defined: 1) “maintenance” of structures as the repair or replacement of legal structures; 2) “repair” as the restoring of an existing structure by partial replacement of worn, broken, or unsound parts; and 3) “replacement” as the substitution of a new structure for an existing structure without changing size, dimensions, location, configuration, or construction. Rule then proceeded to use “rebuild,” “reconstruction,” “modify” and “modification,” and “in-kind,” as well as other related terms, where “maintenance” appeared appropriate, without defining the additional terms. Rules also used these additional undefined

terms at times with and at other times without, the defined terms, making it unclear whether a different meaning was intended. These additional terms affected exemptions, classification of projects, and stream crossings, among other things and without any clear reason for not using the rule-defined terms.

Inconsistencies

Inconsistencies were both internal, within Department rules, and external, between rules and underpinning statutes.

- Lakeside Dock Dimensions On Large Frontages – Temporary seasonal docks were exempt from permitting requirements if they were: 1) no more than six feet wide, 40 feet long, and located on waterbodies of 1,000 or more acres; and 2) no more than six feet wide, 30 feet long, and located on smaller waterbodies. A notice was instead required. Any dock—temporary, seasonal, or otherwise—outside or above these thresholds was subject to regular permitting requirements by statute. However, rules established approvable standard dimensions for all docks that could not be exceeded using temporary seasonal dock thresholds. This effectively set the threshold for temporary seasonal docks under which no permit was required by statute as the absolute upper dimensional limits for all docks. Statute did not provide for an upper limit to dock dimensions.
- Docks On Rivers And Streams On Large Frontages – Rules also applied the temporary seasonal dock thresholds for lakes to all docks in rivers and streams. Statute did not provide for any limit to docks on rivers and streams. Department rules substituted the threshold for exempting seasonal lake docks from permitting for the upper limit for seasonal river and stream dock size.
- Dock Dimensions On Small Frontages – For a property with less than 75 feet of water frontage, rule provided docks or piers could be no bigger than four feet by 24 feet. Statute did not provide for such a limitation. Anything outside the limitations statute provided should have fallen under regular permitting procedures.
- Stair Dimensions – Statute excluded from the jurisdiction of *Wetlands*: 1) benches, 2) ten foot by ten foot or smaller landings, and 3) stairs six or fewer feet wide when not constructed over water and regrading or recontouring the shoreline was not required. However, rules were not reflective of this exemption. Instead, rules used the exemption threshold for stairs as the upper limit for all stairs, instead of subjecting larger stair projects to regular permit requirements. This misconstruction continued throughout forms and practice.
- “Bog,” “Swamp,” And “Tidal Buffer Zone” Definitions – Bureau rules did not define bog, swamp, and tidal buffer zone as statute provided, and the Department relied upon generalized definitions instead and asserted the federally-derived definitions used were “well-recognized.” However, statute provided bogs and swamps were “subject to periodical flooding by fresh water...,” which was excluded from rule.

- Reconsideration – Reconsideration was provided for in policy and inconsistently in rule, but was removed from the Department’s statutory authority in CY 2013.
- “Standard” Versus “Regular” Review – Standard review was referenced in the wetlands permit application; however, regular review was provided for in corresponding rules.
- Number Of Application Copies – Rule required five copies of a permit application and plans, while statute required four.

Recommendations:

We recommend Department management:

- **thoroughly review statutes, rules, forms, supplemental materials, guidance documents, procedures, and other elements of the Bureau’s regulatory and procedural frameworks to identify requirements affecting anyone other than an employee;**
- **amend rules to include missing definitions, procedures, practices, and requirements, and correct ambiguities, inaccuracies, and inconsistencies;**
- **amend rules to clarify jurisdiction;**
- **amend forms, supplemental materials, guidance documents, procedures, practices, and other elements of the Bureau’s procedural framework to ensure they reflect, and do not modify, amend, or otherwise alter, statute and rules; and**
- **develop, implement, and refine procedures over rule quality to ensure rules are continually reviewed and maintained.**

Department Response:

We concur with the recommendations.

We will address them through current and future rulemaking and review and amendment of the Bureau’s procedures and practices.

Enforcement Of Uncodified Requirements

Each inadequacy with Bureau rules had the potential to impart ambiguity into the regulatory framework and afforded an opportunity for systematic ad hoc rulemaking during the audit period. The rulemaking process incorporated public and Legislative oversight to help ensure Department rules were reasonable. No rule was valid or effective, nor could it be enforced by the Department, until properly adopted. Department records demonstrated cognizance of these requirements and limitations.

However, the absence of control systems over ad hoc rulemaking contributed to: abuse, statutory noncompliance, and inconsistent permitting outcomes. Absent Department control systems: 1) contributed to 45 observations in our current report, and 2) were at an **initial** level of maturity.

Observation No. 13

Discontinue Ad Hoc Rulemaking

To remedy known inadequacies in rules, the Bureau engaged in a substantial amount of ad hoc rulemaking by systematically augmenting rules over time with numerous requirements that were not properly incorporated into rule, and enforcing these non-binding requirements on the public. Ad hoc requirements, combined with the subjectivity of the application review process, likely made it impossible for applicants to initially submit a permit application fully compliant with Bureau requirements, at least for more complex projects. Ad hoc rulemaking was inconsistent with the Department's 2010-2015 strategy. Strategy was guided by principles such as mutual respect, straightforward communication, and fair and equitable treatment. Strategy also contained subgoals seeking to ensure program requirements were clear and policy reasons underlying requirements were clearly explained and unambiguous to earn the public's trust. Other than instances of apparent overreach where statutory authority was not clearly provided to the Department to make certain rules, it was likely the Department had ample authority to require what it did by ad hoc rules instead through duly promulgated and legally binding rules.

Statutory Noncompliance

Management's perception of the Bureau's compliance with the *Act* and actual compliance deviated significantly, and staff and management knew uncodified requirements were imposed upon the public. However, management neither timely promulgated necessary rules nor discontinued enforcing invalid requirements, allowing the practice to persist, in some cases, for decades. For example, our *2007 Audit* contained nine observations with recommendations containing a rule component and affecting processes integral to permitting, such as expedited permit reviews, RFMIs, and deemed approved permits. None were fully addressed by management through CY 2018, leaving each process, and any citizen affected thereby, subject to more than a decade of ad hoc rulemaking. While the Commissioner and Division Director have changed since the *2007 Audit*, certain Division and Bureau managers continued to serve in the same positions.

Our Bureau permitting survey asked the 18 employees reporting involvement in technical review (81.8 percent) how frequently application requirements were based on something in addition to State statutes or rules, and:

- one (5.6 percent), a manager, reported *always*;
- three (16.7 percent), including one manager, reported *often*;
- four (22.2 percent), including two managers, reported *sometimes*;
- six (33.3 percent), including two managers, reported *rarely*;
- two (11.1 percent), both managers, reported *never*; and
- two (11.1 percent), including one manager, reported being *unsure*.

Additionally, we asked the 18 employees upon what technical completeness of applications was based, and:

- 16 (88.9 percent) reported *rules*;
- 15 (83.3 percent) reported *statutes*;
- ten (55.6 percent) reported *application instructions or checklists*;
- ten (55.6 percent) reported *best management practices*;
- nine (50.0 percent) reported *professional judgment*;
- eight (44.4 percent) reported *precedence*;
- seven (38.9 percent) reported *Bureau policies*; and
- six (33.3 percent) reported *Department guidelines or fact sheets*.

Reliance on ad hoc rules was also recognized by some Council members, but with the Council's oversight role diminished, ad hoc rulemaking persisted. While the Bureau may have achieved a statutorily-expected end of regulating wetlands and protected shoreland development, it did so, at least in some cases, by using methods or relying on standards and means that did not comply with statute. Even uncodified practices that might be viewed as beneficial to applicants were neither standardized nor publicized via rule, nor could the Bureau ensure every applicant who could have benefited from a particular ad hoc procedure knew of its availability, potentially disenfranchising uninformed applicants.

Widespread ad hoc rulemaking with management's consent appeared abusive, as it was imprudent to knowingly continue to negatively affect the public through noncompliance with law. While Department compliance with law was a basic expectation, no specific provision of the *Act* provided for penalties for noncompliance of this nature. A court could fashion appropriate relief for violations of the *Act*, and official oppression was a misdemeanor occurring when a "public servant...with a purpose to benefit himself or another or to harm another... knowingly commits an unauthorized act which purports to be an act of his office; or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office," leaving potential enforcement to specific cases and individual applicant action.

While the Department's proposed 2019 rules were intended to add clarity to permitting, management identified a need for materials outside of the proposed 2019 rules to explain with what requirements applicants really needed to comply in order to obtain a permit.

Key Terms Subject To Ad Hoc Rulemaking

The ambiguities we identified afforded an opportunity for systematic ad hoc rulemaking during the audit period, and several appeared to have a significant effect on the public, including "need," "avoidance," "minimization," and "public benefit" and "public good." Determining "need," "avoidance," "minimization," and "public benefit" were the elements of the permit application review process most subject to potential inconsistency, and the regulatory framework contained no objective way to demonstrate they were achieved.

Need

Wetlands rules and Bureau practice required applicants to demonstrate their “need” for a project. “Need” was undefined, and the Council and Department management were aware of the deficiency. Internal guidelines: 1) adopted a phrase from federal regulations including “need,” with embedded ambiguities, to define “need;” 2) augmented “need” to also include a requirement to demonstrate “need” for “cumulative impacts;” and 3) allowed inconsistently credentialed permit application reviewers to judgmentally apply the ambiguous phrases as a test for “need” when reviewing applications. Some managers and staff found the operational definition ambiguous and ill-defined. “Need” was never used in *Wetlands* in the context in which the Department utilized it, nor did statute suggest the Department should determine for an applicant whether they needed a project. The federal phrase was not used in the federal context the way the Bureau used it—it was not designed to be applied as a test to determine whether an applicant needed a proposed project.

Management nonetheless persisted in requiring need determinations be made based on the uncodified and incomplete Bureau definition. Permit applications were approved and denied based, in part, on whether the Bureau reviewer believed the applicant needed the proposed project. The Bureau persisted using its ad hoc definition of “need” through at least March 2019 after the State Supreme Court found it inconsistent with State law in CY 2018, never issuing interim guidance on the application of “need” to permit application reviewers following the case. Ad hoc determination of “need” affected every wetlands permit application for a minor and major impact during the audit period. Proposed 2019 rules may continue to require “need” determinations. Shoreland rules did not attempt to compel applicants demonstrate project need.

Avoidance And Minimization

Wetlands rules and practice also required applicants to demonstrate a proposed project “avoided” impacts to wetlands “to the maximum extent practicable” and “minimized” “unavoidable” impacts. The terms were also derived from federal regulations, but the federal regulations were not incorporated into wetlands rules, and rules did not define avoidance, minimization, or practicable, as we discuss in Observation No. 12. This left determining whether a proposed project avoided and minimized impacts sufficiently to the subjective determination of inconsistently credentialed, trained, and supervised employees using inconsistently understood rules and standard operating procedures (SOP). For example, avoiding and minimizing unavoidable impacts could be absolute—an applicant could be permitted to do nothing, thereby avoiding impacts altogether. To clarify the threshold terms of “avoidance” and “minimization,” and address questions such as, “how does an applicant know what [the Bureau] wants,” “how does an applicant know whether he or she is going to get a permit,” and how an applicant could “get it right the first time,” the Bureau adopted and rewrote another state’s 100-plus page manual to clarify the two terms. The manual’s guidance specified every project was evaluated to see whether all steps were taken to avoid alterations in or near wetlands, citing as examples of sufficient avoidance and minimization:

- building upon other properties that did not contain wetlands;
- locating a project elsewhere on the same property, but farther away from wetlands;

- using alternative layouts, designs, and technologies to avoid impacts; and
- obtaining easements on other properties for access.

Bureau practice demonstrated this guidance and other requirements were used as approval criteria and caused substantive changes to proposed projects. The Department reported both terms would be defined in its proposed 2019 rules.

Public Benefit And Public Good

Wetlands rules required the Department to find projects: 1) had a “public benefit,” 2) had a “significant public benefit,” or 3) produced a “public good.” Underpinning statutes did not use public good or benefit in the context used by the Department in its rules, nor did statutes suggest the Department was to make a case-by-case determination that an applicant’s proposal to develop their private property had a public benefit or good, or should compel an applicant to demonstrate a public benefit or good arising from their private project. Federal guides used to clarify State rules and practice did not appear to be designed to make such determinations. “Public benefit” or “public good” determinations were subjective, again left to employee judgment. Nonetheless, the Bureau compelled applicants to demonstrate a public benefit or good from proposed private projects and denied applications when a reviewer did not believe the proposed project had sufficient public benefit or good. The Department indicated proposed 2019 rules would address some instances where this language was used, but may prohibit certain project types, exacerbating this condition.

Uncodified And Improperly Codified External Standards

Bureau permitting rested, in part, upon several sets of external standard-setting publications, including at least 17 best management practice manuals. Some standards provided guidance, while most contained substantive requirements applicants or permittees were required to meet by rule, form, permit condition, or other means. The standards were inconsistently adopted in rule, despite statute requiring proper adoption for the standards to be enforceable. Furthermore, to implement some publications, additional external standards not incorporated in rule were relied upon, and other standards were required precursors to completing a permit application.

The Department developed some external standards itself, while third parties developed most. However, some standards purportedly developed by third parties were actually developed at the behest of the Department, with Department funding, using Department employees, or by incorporating Department-generated materials, and one was the wholesale adaptation of another state’s standards by changing state references to “New Hampshire.” Regardless, these practices were either inconsistent with or circumvented: 1) a statutory prohibition against agencies developing rule-like requirements outside of formal rulemaking, 2) statutory requirements that agencies incorporate by reference only materials from unrelated third parties, or 3) statutory requirements agencies adopt other states’ materials only with explicit statutory permission. Additionally, rules referenced an outdated version of one standard, and inconsistencies between standards and corresponding rules existed, exacerbating the complexity of the regulatory framework.

SOPs And Other Policies And Procedures

Bureau permitting also rested, in part, upon a complex inventory of internal SOPs and other policies and procedures, as we discuss in Observation No. 17. Internal policies were excluded from the definition of a rule, but only to the extent they did not affect anyone outside the Department. Many policies and procedures were identified for rulemaking by the Bureau, but were not duly adopted. Nonetheless, requirements established only by internal policy and procedure, but affecting the public to varying degrees, were enforced, including:

- requirements related to pre-construction meetings involving Department employees, the permittee, professionals involved with the project, and contractors and subcontractors;
- walk-in visitor registration and other procedural requirements;
- mitigation pre-application meeting procedures;
- a prohibition on detention of storm water runoff in jurisdictional wetlands;
- requirements related to applications and permits issued for projects near impaired waterbodies, which were also excluded from application forms but accommodated an exception for the Department of Transportation;
- requirements related to projects near outstanding resource waters, which were also excluded from application forms;
- prohibitions related to altering the interior of nonconforming shoreland structures based on what the Department perceived to be the intent of the underpinning statute but was expressly deleted from the law as adopted;
- requirements for boat ramps servicing single-family residences, encompassing prohibitions against approval when other ramps on other properties were available and having other docking structures on the property, among other limitations;
- requirements for classifying canopy applications as specific project types, specifying design criteria and limitations, and setting fees;
- shoreland PBN procedures, including a jurisdictional review that could result in returning a notice to the applicant without action;
- shoreland guidance which defined the protected shoreland as those lands located within 250 feet “measured using a horizontal surveyors [sic] line” from the reference line of protected waterbodies;
- a requirement for a copy of a new deed to accompany requests for ownership change;
- shoreland PBN procedures “not in strict keeping with the statute” to selectively contact applicants who may have inadvertently excluded required documents and request they provide them to allow permit reviewers to complete the notice on their behalf;
- requirements to use numerous databases;
- Natural Heritage Bureau-related procedures, which a senior Department manager thought may have been confusing;
- limitations on modification of existing structures which: 1) provided the Department would not approve changes in size, location, or configuration of an existing structure unless the applicant demonstrated, and the Department found, the modification was less environmentally impacting; 2) established thresholds to be used to approve or

deny applications; 3) provided details on calculating area of impact; and 4) specified modifications which would be prohibited; and

- altered wetlands and surface waters delineation encompassing a “modified interpretation” of federal standards to conform to State law, and which effectively abdicated rulemaking to another jurisdiction.

Other Areas Of Ad Hoc Rulemaking

Additionally, ad hoc rulemaking occurred when the Department:

- exceeded statutory underpinnings in its rules, as we discuss in Observation No. 9;
- enforced expired wetlands rules, as we discuss in Observation No. 14;
- created and required the use of forms it had not properly adopted in rules and improperly enforced form requirements and procedures, some conflicting with rules, as we discuss in Observation No. 15;
- clarified miscitations, ambiguous terms, and improperly incorporated materials by reference, as we discuss in Observation No. 16;
- conditioned permits with provisions inconsistently adopted in rule, as we discuss in Observation No. 20;
- used uncodified application review time limits, as we discuss in Observation No. 22;
- enforced requirements, procedures, and processes for notification-only wetlands projects, as we discuss in Observation No. 27;
- expedited evaluation of permit applications under extraordinary circumstances, as we discuss in Observation No. 28;
- applied uncodified requirements to PBN filers, as we discuss in Observation No. 31;
- used RFMI processes and letters containing requirements not contained in statute or rule, as we discuss in Observation No. 32;
- extended permit review times, as we discuss in Observation No. 33; and
- reclassified applications, as we discuss in Observation No. 34.

Recommendations:

We recommend Department management:

- **comply with State law and discontinue ad hoc rulemaking;**
- **develop, implement, and refine policy and procedure to help ensure employees do not undertake ad hoc rulemaking;**
- **monitor organizational behavior to help ensure ad hoc rulemaking does not occur;**
- **undertake wholesale review of requirements imposed upon the public, whether they rest in expired rules, unadopted forms, guidelines, SOPs, policies, procedures, practices, or elsewhere and include all requirements intended to be binding upon anyone other than an employee in properly adopted rules or properly incorporated forms and standards;**

- **amend, implement, and refine policy, procedure, and practice that rest upon ad hoc rules to conform to enforceable requirements; and**
- **ensure standards-setting manuals and similar materials incorporated into Department rules are not a means to circumvent prohibitions against developing binding standards outside the rulemaking process.**

Department Response:

We concur with the recommendations.

We will review, modify, and monitor the peer review process to ensure that “ad hoc” rulemaking does not occur, and we are addressing review of requirements imposed upon the public and appropriate use of standards-setting manuals through current rulemaking.

Additional Department and LBA comments on Observation No. 13 appear in Appendix B.

Expired Rules Enforced

Properly adopted rules are enforceable, while unadopted or expired rules are not. Rules where the rulemaking notice was filed before September 11, 2011 are valid for eight years after adoption, while those with filings on or after September 11, 2011 are valid for ten years. Enforcing expired rules was equivalent to ad hoc rulemaking. Reportedly, Bureau employees were to notify Department counsel of upcoming expired rules.

However, no formal policies or procedures were in place to ensure rules did not expire, and deficient control systems over ensuring rules were valid and up-to-date contributed to: statutory noncompliance and inconsistent permitting outcomes. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 26 observations in our current report, and 2) were at an **initial** level of maturity.

Observation No. 14

Discontinue Enforcing Expired Wetlands Rules

While Department employees reported investing substantial amounts of time and effort in rule revisions, certain wetlands rules instrumental to wetlands permitting were expired and were nonetheless enforced. We identified five sections of wetlands rules that expired in SFY 2016 or SFY 2018:

- *Delineation of Wetland Boundaries*, which established the criteria by which wetlands were to be delineated and was integral to most applications, expired in April 2016;
- *Logging Operations*, expired in April 2016;
- *Embankments Adjacent to Culverts and Other Stream Crossings*, expired in May 2018;
- *Purpose of Shoreline Structure* rules, expired in February 2016; and

- *Navigation Space*, expired in February 2016.

Furthermore, we identified six additional requirements in unexpired rules that relied upon one or more of the five expired sections for effectiveness, potentially nullifying their validity as well, including the definition of “bank” and requirements for submitting applications. Department management was not aware of the expired rules when we discussed the matter with them in June 2018.

Recommendations:

We recommend Department management:

- **comply with State law and discontinue enforcing expired rules and those rules reliant upon expired rules for effect;**
- **develop, implement, and refine policy and procedure designed to ensure expired rules and rules nullified by expired rules are not enforced improperly;**
- **develop, implement, and refine policy and procedure designed to ensure rules remain valid; and**
- **timely update expired rules.**

The Department may wish to enter into emergency or interim rulemaking to provide legal basis for enforcement of expired requirements.

Department Response:

We concur with the recommendations.

The Department is aware of the discrepancies/inconsistencies in the current wetlands rules. These are being addressed in the comprehensive rule re-write and the accompanying formal rule-making process which began in September 2018.

Improperly Adopted Forms And Supplemental Materials

Properly adopted and filed rules, including forms and supplemental materials necessary to complete forms, have the force and effect of law. Unadopted rules cannot be enforced and doing so is ad hoc rulemaking. Forms must either be incorporated by reference, or each requirement must be enumerated in rule. LRM procedure was to update forms every six months and issue them for general use without changing rules. Although editorial changes were permissible without following full rulemaking procedures, substantive changes must be formally adopted as any other rule. Regularly updating forms created administrative burden and added instability to the regulatory framework without demonstrated benefit.

The absence of control systems over ensuring forms and supplemental materials were properly adopted in rules contributed to: ad hoc rulemaking, statutory noncompliance, and inconsistent

permitting outcomes. Absent Department control systems: 1) contributed to 33 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 15

Ensure Forms And Supplemental Materials Comply With Statute

None of the 20 wetlands and shorelands forms central to permitting and reportedly circulated for general use during the audit period fully complied with the *Act* and related regulations. Supplemental materials used to augment forms also inconsistently complied with the *Act* and related regulations. Management reported being unaware of the requirement forms be adopted in rule. By not properly adopting forms, supplemental materials, and amendments in rule, while still enforcing requirements, the Department undertook ad hoc rulemaking, as we discuss in Observation No. 13. In doing so, the Department risked potential legal challenges, and may have created confusion and a lack of clarity within the regulated community and among the general public. Noncompliance with the *Act* and related regulations persisted in drafts of the Department's proposed 2019 rules.

Unadopted Forms

Of the 20 forms we examined, the *Notification of Routine Roadway and Railway Maintenance Activities* form was the least noncompliant, as it was specifically cited by title in rule, but the rule lacked version control or version date, and the form imposed unadopted requirements and was otherwise noncompliant. The remaining 19 applications, notifications, and forms were not cited in rule. Each was required for use.

Forms Lacking Required Content

Relevant Bureau forms lacked necessary content.

- Rules should have clearly specified who was required to submit a form; however, rules associated with 13 of 20 forms (65.0 percent) did not.
- Forms not incorporated by reference, but instead adopted in their own section of rule as a series of requirements, should have provided the Bureau's mailing address as it would appear on an applicant's envelope. While forms we reviewed included the Department's mailing address, rules associated with the same topics addressed by forms did not specify an address to which the form should have been sent.
- Certification statements were rules, and a form should quote verbatim or paraphrase the statement as codified in rules. Three of 20 forms (15.0 percent) appeared to not require certification statements, while 17 forms (85.0 percent) did require certification statements, of which: ten statements (58.8 percent) had not been adopted in rule, five statements (29.4 percent) were inconsistent with rule, and two statements (11.8 percent) appeared to be properly codified in rule.

- The Bureau was required to provide the universal resource locator, or internet address, for hardcopy forms it also made available online; only one universal resource locator was provided in rule, and it was not functional.
- Versions of forms should have been controlled with a footer depicting the latest, valid version or an effective date. Two of 20 forms (10.0 percent) possessed no form number or revision or effective date, and a third form (5.0 percent) possessed a form number but contained no revision or effective date. The remaining 17 forms had version control.

Application- And Notice-related Materials

Bureau permitting rested upon an extensive set of forms, supplements to forms, guidance documents, and related materials, and the Department improperly enforced numerous requirements and procedures established solely in these materials, some of which were inconsistent with rules. Application-related materials required information not specified in rule, appeared to encompass non-jurisdictional projects, comingled requirements among project types, contained requirements exceeding those of rule, established provisions based on a misinterpreted statute, were inconsistent with rules, excluded provisions contained in relevant rules, relied upon expired rules, and required agreement to conditions and provisions not contained in rule.

Permit Extensions

The *Permit Extension Request* form the Bureau required permittees use to extend the duration of a wetlands or shoreland permit lacked a valid underpinning rule. *Wetlands* and *Shoreland* provided extensions applied generally and required the Department, upon proper request, to extend permit durations beyond the initial five-year period by a second five-year period. However, wetlands and shoreland rules misinterpreted statutes and did not allow extensions of most wetlands permits or any shoreland permits. Furthermore, the form cited nonexistent wetlands statutes and the wrong shoreland rule as underpinning requirements; included non-existent “statutory” wetlands and shoreland “rule” requirements; and imposed additional, uncodified requirements on requestors. The form did provide a means for permittees to request a permit extension as statute intended, but added uncodified requirements without corresponding rules. The rule-based prohibition against extensions appeared as a shoreland permit condition as recently as February 2016.

Noncompliant Supplemental Materials

Some instructional materials included with forms were noncompliant with the *Act* and related regulations. Some materials established requirements for the applicant but were not adopted in rule. For example, instructions required the applicant to submit information in a particular order, without a corresponding rule. Furthermore, some forms required a signature attesting to statements contained within the instruction sheets themselves, which were not established in rule.

Recommendations:

We recommend Department management:

- **comply with statute and adopt forms and requirements in supplemental materials in rule;**
- **discontinue enforcing unadopted requirements in forms and supplemental materials;**
- **develop, implement, and refine policy and procedure to generate, adopt, and amend forms as required by law; and**
- **reconcile discrepancies between rules and current forms and supplemental materials.**

Department Response

We concur with the recommendations.

- *The Department is aware of the discrepancies/inconsistencies in the current wetlands rules. These are being addressed in the comprehensive rule re-write and the accompanying formal rule-making process which began in September 2018.*
- *Items identified in this observation with respect to the shoreland rules will be clarified in the proposed rule re-write, and the Department will seek statutory changes if needed.*
- *Items identified in this observation with respect to developing, implementing, and refining policy and procedure and proper adoption of forms will be addressed through current rulemaking and implementation efforts that will follow adoption of the rules.*

Technically Deficient Rules

Rules should be clear, specific, and unambiguous. Where discretionary decision-making is required, the Department should clearly establish the criteria being used when executing judgment. Both Department employees and those regulated by the rules must have a clear understanding of what is required of them. References to statutory authority or federal regulations should be as specific as possible, and rules should be detailed and provide clarity to aid the reader.

Deficient control systems over the technical compliance of rules with statute contributed to nearly 70 of the rules issues we identified, including imprecise or improper citations and erroneous external and internal references; statutory noncompliance; and inconsistent permitting outcomes. Department control systems: 1) contained elements that were absent or ineffectively designed, inconsistently implemented, and unmonitored, contributing to 38 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 16

Remediate Technical Deficiencies In Rules

Department rules contained erroneous citations, including references to processes repealed by statute, such as the reconsideration process repealed in CY 2013. Other rules cited inapplicable rules or statutes, nonexistent rules, or incorrect definitions. Rules inconsistently referenced the specific statutory authority from which the rule was derived. For example, rules generally referenced sections of law when specific paragraphs or subparagraphs within sections were the corresponding authority. The Department also reported adopting some rules based on federal regulations, which, in most cases, were not referenced. Some rules lacked a citation to their underpinning authority altogether.

The Department could incorporate materials produced by third parties into its rules, with certain limitations and exceptions. Properly incorporated manuals should be referenced in an appendix to the Department's rules and filed during rulemaking. Department forms, supplemental materials, policies, and rules relied on 17 best management practice manuals. The use of three manuals (17.6 percent) was mandated by statute and did not require incorporation by reference in rule. Of the remaining 14 manuals, eight (57.1 percent) were not properly incorporated into Department rules, and six (42.9 percent) were not mentioned in rule, incorporated into rule by reference, or referenced in Department forms, and were only identified upon review of internal agency guidance documents.

Additionally, we found the Department:

- used multiple undefined terms to express the same concept in rule where a defined term was already established;
- used numerous ambiguous terms and phrases;
- improperly incorporated discretionary decision-making criteria; and
- used “catch all” phrases, such as “including, but not limited to.”

While singular technical issues may not appear substantive, the combined effects of undefined and ambiguous terms, uncodified requirements, and missing and inaccurate citations likely had a substantial impact by adding uncertainty and confusion to the permitting process, increasing time and effort spent by both Department employees and applicants attempting to satisfy uncodified Department requirements, and contributing significantly to ad hoc rulemaking, as we discuss in Observation No. 13.

Recommendations:

We recommend Department management:

- **correct miscitations;**
- **discontinue the use of ambiguous terms in rule;**
- **ensure third-party materials are incorporated through the rulemaking process;**

- ensure references to statutory authority provide specificity and are properly cited, including federal standards;
- ensure discretionary decision-making rules implement, interpret, or make specific the implemented statute; and
- develop procedures to track necessary rule revisions and ensure rules are well maintained.

Department Response:

We concur with the recommendations.

We understand the recommendations, and all recommendations have been addressed in the recent wetlands rule-making process. Items identified in this observation with respect to the shoreland rules will be clarified in the proposed rule re-write, and the Department will seek statutory changes, if needed. We will create procedures to track necessary rules revisions and ensure rules are well maintained. Following development of these procedures, we will provide training on them, monitor implementation, and ensure that staff follow the procedures.

Insufficient Policy And Procedure

The Department was required to:

- adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, and
- make and maintain records containing adequate and proper documentation of policies and procedures.

Bureau policy and procedure could not impose a requirement upon anyone other than an employee, as doing so constituted ad hoc rulemaking. Policy and procedure development follow statute and rule, and describe management's expectations for performance of duties to implement controls to achieve expected programmatic outcomes. Clear policies and procedures were essential to guide proper employee operationalization of responsibilities.

However, deficient control systems over internal policy and procedures contributed to: ad hoc rulemaking, statutory noncompliance, and inconsistent permitting outcomes. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 51 observations in our current audit; and 2) were at an **initial** level of maturity.

Observation No. 17

Produce And Maintain Comprehensive Policies And Procedures

The Bureau lacked comprehensive, written policies and procedures to help manage risks and ensure consistency by guiding management and staff in carrying out assigned responsibilities and

setting employee performance expectations. In our *2007 Audit*, we recommended the Department create comprehensive, written policy and procedure guides for Bureau permitting activities. The Department committed to comprehensively reviewing Bureau policies and procedures to ensure consistency with statutory authority by CY 2008. While the Department produced the *Wetlands Permitting Technical Review Guide* in CY 2015 (*2015 Guide*) and other policies since CY 2007, none of the 16 policy-related recommendations made in our *2007 Audit* were fully addressed by the end of our current audit period, and policies and procedures remained outdated, disconnected and incomplete, and unintegrated. A CY 2017 federal assessment also identified undocumented administrative policies and procedures that existed since CY 2012, recommending the Department review its policies and procedures and implement a system to track policy and procedure reviews and updates. The continued lack of comprehensive control system over policy and procedure despite external audit and assessment findings contributed to inconsistency in Bureau operations, extensive ad hoc rulemaking, insufficient rules, employee and applicant confusion over permitting requirements, and noncompliance with State law.

Inadequate Permitting-related Policy And Procedure

Inconsistency in Bureau operations was a long-standing concern, and it was management's responsibility to establish adequate control systems through policies and procedures and timely address deviations effectively. Without adequate policies and procedures and monitoring, the Department risked perpetuating inconsistent permitting practices. In response to our *Department of Environmental Services Water Division Internal Control Review Agency-Income Revenues (2015 IC Review)*, the Department purported to have substantially resolved our *2007 Audit* recommendation to establish comprehensive policies and procedures, but this was not the case. After five years of federal grant-funded effort, the Bureau finalized the *2015 Guide* at the end of SFY 2015. The *2015 Guide* arranged various aspects of the permit review process into 23 major steps to purportedly provide clear, step-by-step instructions to permit application reviewers and improve consistency. However, underlying issues from our *2007 Audit*: 1) persisted within the *2015 Guide* and other internal policy and procedure documents, and 2) manifested themselves in practice.

- Review Priority – Department policy on processing Commissioner's expedited applications updated in CY 2007 left out the long-standing—but informal—first in, first out application review policy.
- Administrative Completeness – ARC staff utilized standard checklists to determine administrative completeness for applications, but policies and procedures left out, for example, guidance covering ARC staff responsibilities for determining completeness of notification-only projects, guidance on management review of ARC employee decisions, and adequate data entry procedures.
- Technical Review – The *2015 Guide* provided some clarity but: 1) lacked complete, comprehensive guidance; 2) applied misinterpretations of statute in some cases; 3) required—through its instruction—permit conditions contrary to both State law and the *Act*; 4) relied on ambiguous or non-existent definitions; and 5) required proposed plans be the “least impacting” without clarifying policies or procedures.

- “Need” – The *2015 Guide* did not define “need” and acknowledged no definition of “need” existed in rule, instead referencing federal guidelines and incorporating requirements that applicants demonstrate “need.” The *2015 Guide* purported a stakeholder workgroup was working to clarify the definition. However, through CY 2018, no definition was developed, and no policy or procedure clarified what demonstrated appropriate “need.” Our Bureau permitting survey asked the 18 employees reporting involvement in technical review whether clear guidance was provided on how to assess whether need had been demonstrated by an applicant, and: six (33.3 percent), including two managers, reported *yes*; four (22.2 percent), including two managers, reported *no*; and eight (44.4 percent), including five managers, reported being *unsure*.
- “Avoidance And Minimization” – A 100-plus page avoidance and minimization manual supplemented the *2015 Guide* and provided insufficient detail to determine when an applicant had actually reached the Department’s level of adequate avoidance and minimization. The Department created the avoidance and minimization manual by adapting and amending another state’s manual, circumventing statutory restrictions in doing so. The Department’s *2015 Guide* and rules also lacked sufficient detail to provide guidance as to whether avoidance and minimization measures had been met.
- RFMIs – While policy provided for issuing one RFMI to an applicant, staff reported it was common practice to issue multiple formal and informal RFMIs. Policies and procedures lacked: 1) guidance on whether and under what circumstances informal RFMIs were appropriate, 2) controls to ensure compliance with policy and to ensure adequate recordkeeping, and 3) requirements that complete information be issued to applicants notifying them of their option to request a time limit extension to satisfy an RFMI, as we discuss in Observation No. 32.
- Extensions To RFMI Response Time Limits – The *2015 Guide* referenced only statute when describing extensions applicants could have been granted after receiving an RFMI. Policy and procedures did not require systematically informing applicants of this option and lacked policies, procedures, and rules to provide consistency on: 1) the frequency and duration of extensions; 2) how quickly a decision to grant or deny an extension must have been made; 3) when and for how long an extension should have been granted; and 4) whether a standard extension agreement form should be used to formalize extensions, as we discuss in Observation No. 33.
- Permit Conditions – The conditions depicted in the *2015 Guide*: 1) were inconsistently contained in rule; 2) inconsistently reflected conditions contained in rule; 3) commingled *Wetlands* and *Shoreland* requirements; or 4) were altered and new conditions were imposed on permits without controlling instructions on either practice, as we discuss in Observation No. 20.
- Peer Review – The peer review policy was: 1) insufficiently detailed and clear, 2) undermined by informal policy minimizing peer review’s importance, 3) inadequately

monitored, 4) poorly implemented, and 5) not well understood by employees, as we discuss in Observation No. 21.

Poor Implementation And Control Over Policy And Procedures

Employees recognized policies and procedures were not consistently enforced, comprehensive, updated, or disseminated effectively. Our Bureau permitting survey asked the 18 employees reporting involvement in technical review how clear and understandable permitting-related policies and procedures were, and:

- five (27.8 percent), including four managers, reported *very clear and understandable*;
- six (33.3 percent), including two managers, reported *mostly clear and understandable*;
- four (22.2 percent), including two managers, reported *somewhat clear and understandable*;
- two (11.1 percent), including one manager, reported *rarely clear and understandable*;
- and
- one (5.6 percent) reported being *unsure*.

In CY 2018, we surveyed 37 Bureau and ARC employees then-employed or employed during SFYs 2016 or 2017 on general Bureau operations (Bureau operations survey), of whom 32 (86.5 percent) responded. Employees responding to our Bureau operations survey inconsistently reported general Bureau policies and procedures were clear and understandable, as we discuss in Observation No. 50. Additionally, in response to both the Bureau permitting and Bureau operations surveys, employees also reported individual concerns, including:

- being inconsistently notified or not notified at all when new policies and procedures were issued, or when changes to existing policies and procedures were made;
- typically being unable to follow policies and procedures without additional training or guidance;
- having difficulty locating policies and procedures;
- policies not being clearly communicated;
- lack of clarity resulting in differing interpretations and application;
- policies and procedures being inconsistently followed, and no repercussions for not following policies and procedures;
- policies being distributed in many different formats;
- policies and procedures not being changed or developed timely; and
- having insufficient resources to enforce policies.

The complete results of our Bureau operations survey are included in Appendix F.

Additionally, our *2007 Audit* identified several issues within Department policy and procedures that persisted through our current audit period, including policies:

- without the appropriate signature;

- with no effective date;
- without signatures and effective dates;
- remaining in draft form, one since CY 2001;
- inconsistent in format, ranging from inter-office or inter-departmental memos, letters or printed announcements, and emails; and
- not codified in rule and without corresponding written policy and procedures, resulting in ad hoc rules imposed on applicants.

A systematic review of policies and procedures reportedly did not occur until after our *2015 IC Review*. Rather than using a risk-based approach, the review focused on financial policies and procedures, which was reportedly nearing completion in May 2018, with the next area of focus reportedly safety-related policies and procedures, even though management concluded Bureau permitting was one of the highest risk operations in the Department. The federal Environmental Protection Agency's CY 2017 *Quality System Assessment* found undocumented SOPs existed since at least CY 2012, and, although the Department was in the process of reviewing Department- and program-wide SOPs, not all programs were tracking their reviews, making it difficult to assess if and when routine reviews of SOPs were conducted. The Environmental Protection Agency recommended continued review of SOPs and implementation of a system to track SOP reviews and updates.

Recommendations:

We recommend Department management ensure the Bureau:

- **produces a well-organized and written comprehensive policy and procedure guide for its permitting programs;**
- **timely updates procedure and practice documents;**
- **aligns policies and procedures with rules and statutory changes;**
- **adopts policies and procedures with the effect of rule, into rules;**
- **establishes policies and procedures to ensure management actively monitors training on, and compliance with, policies and procedures; and**
- **finalizes and publishes current and future policies and procedures in a consistent format.**

Department Response:

We concur with the recommendations.

The Department is already addressing these issues. We are in agreement that enhancements can always be made to Department- and Bureau-level policies and procedures. We will:

- *produce a well-organized and written comprehensive policy and procedure guide for its permitting programs. The Department has already created an internal electronic policy compendium which is available to all staff. This information was provided to the auditors.*

- *timely updates procedure and practice documents.*
- *align policies and procedures with rules and statutory changes. This is being addressed in the current rulemaking process during the current legislative session.*
- *adopt policies and procedures with the effect of rule, into rules. This is being addressed in the current rulemaking process during the current legislative session.*
- *establish policies and procedures to ensure management actively monitors training on and compliance with policies and procedures. Wetlands management currently monitors training and compliance with policies, albeit the current process could always be enhanced.*
- *finalize and publish current and future policies and procedures in a consistent format.*

Additional Department comments on Observation No. 17 appear in Appendix B.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

3. PERMITTING OUTCOMES

For more than three decades, Wetlands Bureau (Bureau) permitting has been viewed as inefficient, with complex and unclear requirements producing inconsistent permitting decisions. These concerns persisted through our current audit period. It was a fundamental expectation for the Department of Environmental Services (Department) to operate effectively, by demonstrating the Bureau had achieved its intended programmatic outcomes. Permitting should have processed inputs, including permit applications, to produce outputs, including application approvals and denials. Outputs should have supported intermediate permitting outcomes, including consistent permitting decisions compliant with statutory and regulatory requirements, which should have underpinned, and ultimately led to, programmatic outcomes expected by statute.

- *Fill And Dredge In Wetlands (Wetlands)* was intended to prevent despoliation of submerged land, including tidal waters, wetlands, and freshwater resources, and required a permit to dredge and fill in wetlands or submerged lands.
- The *Shoreland Water Quality Protection Act (Shoreland)* was intended to protect shorelands and the quality of public waters, particularly lakes, by establishing minimum standards for the subdivision, use, and development of shorelands. *Shoreland* was later amended to require a permit when excavating, placing fill, or increasing impervious areas within the protected shoreland, the area within 250 feet of certain waterbodies.

Department, Division of Water (Division), and Bureau managers were responsible for effective Bureau operation. The Assistant Division Director, acting as the Land Resources Management (LRM) Administrator, held responsibility for overseeing Bureau administrative and technical activities, including permitting and compliance. However, as shown in Figure 9, deficiencies with the management control systems necessary to implement permitting contributed to an insufficient understanding of performance, an inability to demonstrate programmatic outcomes, and inconsistent permitting outcomes from application review and decision issuance. In some cases, due process was compromised.

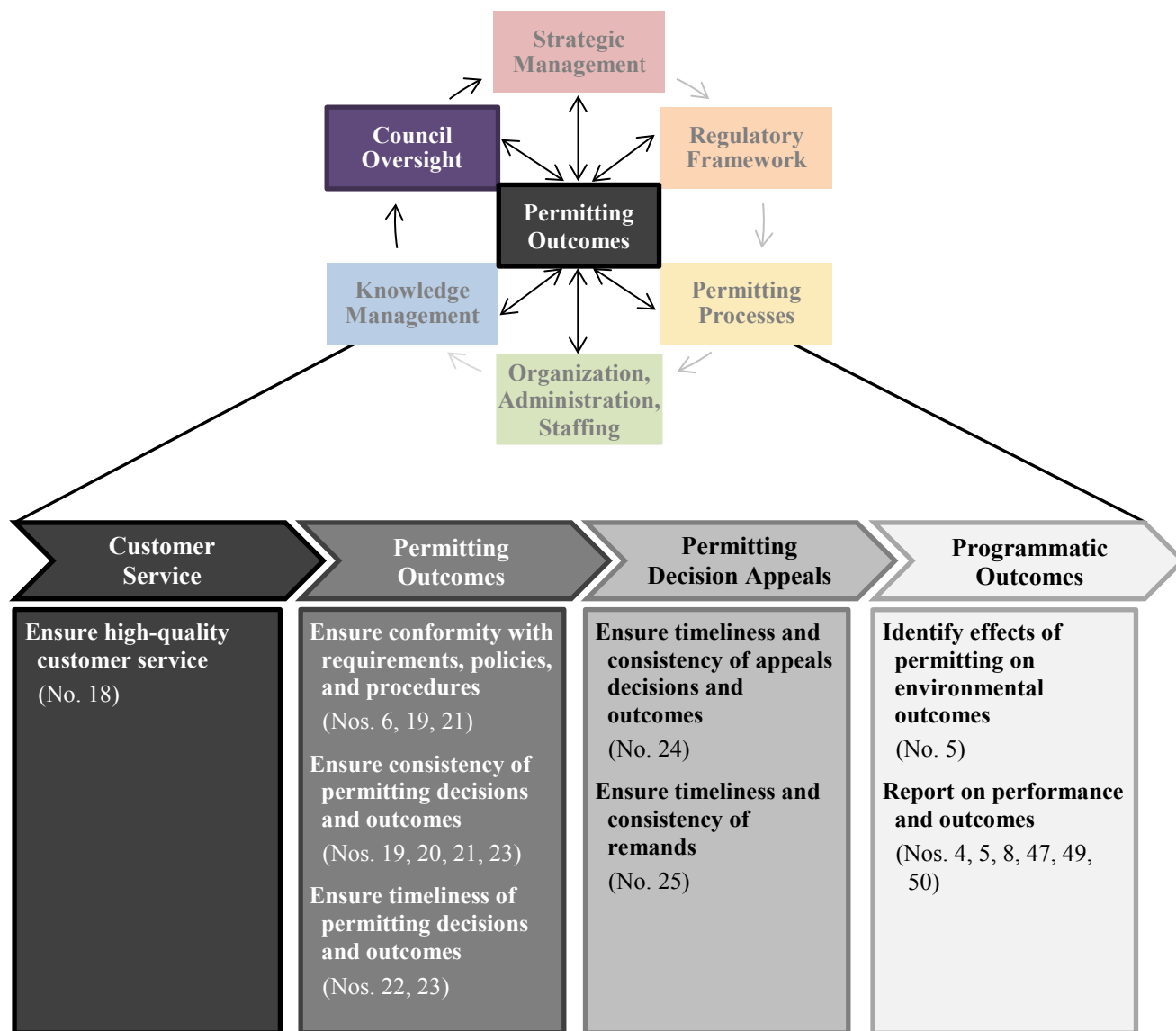
The Bureau was responsible for processing 13 types of permit applications or notices, of which four were most relevant to our current audit: 1) wetlands major, minor, and minimum standard dredge and fill (SDF) applications; 2) shoreland applications; 3) wetlands minimum impact expedited (MIE) applications; and 4) wetlands and shoreland permits-by-notification (PBN). Unaudited data listing Bureau permit applications and notices during State fiscal years (SFY) 2016 and 2017 (Bureau permitting data) included 7,174 applications and notices, as shown in Table 3, and indicated a Department decision had been made on 6,334 applications and notices (88.3 percent) by the end of the audit period.

Our *Alteration Of Terrain And Wetlands Permitting Performance Audit Report (2007 Audit)* focused on the Bureau's SDF and MIE permit applications and review processes. Following the publication of our *2007 Audit*, Department managers publicly reported launching an initiative—in partnership with the Wetlands Council (Council)—to improve the management and clarity of

Bureau permitting. They would: 1) address the 2007 Audit’s findings and recommendations, 2) identify other areas for improvement, and 3) implement changes. However, more than a decade later, 18 of our 2007 Audit’s 19 recommendations (94.7 percent) remained unresolved or partially resolved, while one (5.3 percent) had been fully resolved. Appendix H contains a summary of the status of each observation from prior Office of Legislative Budget Assistant–Audit Division (LBA) performance and financial audits examined during the course of our current audit.

Figure 9

Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Permitting And Programmatic Outcomes



Source: LBA analysis.

Table 3

**Permit Applications And Notices Listed In Unaudited Wetlands Bureau Permitting Data,
SFYs 2016–2017**

Application Or Notice Type	Number Listed (Percent Of Total)	Department Decision ¹	
		Number Approved (Percent Of Type)	Number Denied (Percent Of Type)
SDF²-Major³ one acre or more of impact	35 (0.5%)	21 (60.0%)	0 (0.0%)
SDF²-Major³ less than one acre of impact	421 (5.9%)	326 (77.4%)	14 (3.3%)
SDF²-Minor⁴	562 (7.8%)	429 (76.3%)	18 (3.2%)
SDF²-Minimum⁵	411 (5.7%)	341 (83.0%)	11 (2.7%)
Shoreland	1,394 (19.4%)	1,174 (84.2%)	7 (0.5%)
MIE	457 (6.4%)	373 (81.6%)	11 (2.4%)
Wetlands PBN	477 (6.6%)	421 (88.3%)	41 (8.6%)
Shoreland PBN	1,110 (15.5%)	1,040 (93.7%)	70 (6.3%)
Other	2,307 (32.2%)	2,014 (87.3%)	23 (1.0%)
Totals	7,174 (100.0%)	6,139 (85.6%)	195 (2.7%)

Notes:

1. Bureau data indicated 840 (11.7 percent) of the 7,174 applications and notices did not have a decision by the end of the audit period.
2. Rules established three levels of SDF classifications and related permitting standards, which were dependent on the type and quantity of wetlands impacts proposed. Multiple other criteria existed in rule and could elevate a proposed project to a higher level.
3. “Major” SDF applications were generally for projects with more than 20,000 square feet (0.46 acre) of jurisdictional impact, although numerous other requirements could also make an application a “major” project. Major SDF applications with one acre (43,560 square feet) or more of jurisdictional impact had a 105-day review time limit, while major SDF applications with less than one acre of jurisdictional impact had a 75-day review time limit.
4. “Minor” SDF applications were generally for projects between 3,000 and 20,000 square feet (0.07–0.46 acre) of jurisdictional impact, although numerous requirements could make an application a “minor” project.
5. “Minimum” SDF applications were generally for projects up to 3,000 square feet (0.07 acre) of jurisdictional impact, although numerous other requirements could also make an application a “minimum” project.

Source: Unaudited Bureau permitting data.

Through SFY 2018, Department control systems necessary to effectively achieve Bureau permitting outcomes were at an **initial** level of maturity, while subsystem maturity ranged from **initial to repeatable**, the lowest two levels of maturity. Deficient control systems contributed to process and management control deficiencies identified in 59 observations in our current audit.

Customer Service

The Department's *2010-2015 Strategic Plan* (Department's 2010-2015 strategy) set goals to: 1) provide "high-quality customer service," including prompt, knowledgeable, consistent, fair, and clear responses to customers; and 2) establish a strong, customer-centric, continuous improvement ethic. Department, Division, and Bureau managers were responsible for customer service. In particular, the Bureau Administrator was responsible for providing technical and procedural assistance to aid the public in understanding wetlands laws, rules, and application procedures. The calendar year (CY) 2015 *Wetlands Technical Review Guide (2015 Guide)* and other efforts, such as the LRM reorganization, *Integrated Land Development Permit (Integrated Permit)*, and LRM cross-training were intended to improve customer service in support of achieving long-standing Department strategic goals and objectives. Bureau efforts focused on measuring customer service inputs and outputs, rather than customer service outcomes.

However, deficient control systems over customer service contributed to inconsistent permitting outcomes. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 50 observations in our current report; and 2) were at a repeatable level of maturity.

Observation No. 18

Improve Provision, Measurement, And Control Systems Over Customer Service

The Department lacked a comprehensive, well-integrated, and systematic approach to determine whether its customer service goals were achieved. Management was responsible for establishing an effective system to ensure those objectives were achieved. However, the Department lacked systematic performance measurement generally and specific performance measurement of the Bureau's achievement of strategic customer service goals. Importantly, in our surveys as well as the Department's surveys, most respondents described interactions with Bureau employees as friendly and courteous. While some positive indicators of the Department's customer interactions existed, opportunities for improvements also existed, including:

- customer service policies and procedures, which were either incomplete, informal, or uncodified;
- forms and supplemental materials, which were inconsistent with statute and rules;
- employee awareness of customer service goals and objectives, which was inconsistent; and
- customer satisfaction data, and methods to collect and incorporate existing data, which were inadequate and unreliable.

Insufficient Strategy, Implementation, And Measurement

The Department's 2010-2015 strategy established continuous improvement and high-quality customer service as guiding principles, and set five customer service goals and 13 sub-goals to achieve high-quality customer service. Department efforts to measure customer satisfaction were focused on the LRM Balanced Scorecard (BSC), published once in late CY 2016 (2016 LRM BSC), and by distributing surveys and questionnaires to stakeholders, and calculating a customer satisfaction score. Measurement focused on input and output-related measures, rather than customer service outcomes.

None of the 13 customer service sub-goals in Department strategy were directly linked to the LRM BSC. The 2016 LRM BSC contained three customer satisfaction objectives—to provide exemplary customer service, clear and consistent processes, and clear guidance—but the measures were inadequately constructed and did not actually assess Bureau performance in achieving the three objectives. The 2016 LRM BSC measured:

- exemplary customer service through the number of “stakeholder surveys” and the “comments received,” with no apparent consideration as to what customer responses actually indicated, only that surveys were taken and comments were provided;
- exemplary customer service through a customer satisfaction score, which was based on 29 customer responses to the hardcopy *Permit Process Questionnaire* (LRM hardcopy questionnaire) relative to 3,418 permit applications and notices listed in unaudited SFY 2016 Bureau permitting data, and did not incorporate negative comments from the LRM hardcopy questionnaire;
- clear and consistent processes through “timely reviews,” defined as the number of days before a technical permit application reviewer took “[first] action,” but reliable data and a well-designed system to measure timeliness did not exist, as we discuss in Observation Nos. 22 and 51;
- the provision of clear guidance through the “[number] of outreach events,” but there was no apparent follow-up to determine whether outreach events were beneficial, informative, or clarified the permitting process for customers; and
- the provision of clear guidance through the “[number] of web-hits,” but lacked a method to determine whether a higher number of web-hits occurred because 1) the Department's website was actually helpful and informative, 2) the website was unclear and difficult to navigate, or 3) stakeholders were confused by permitting processes.

The 2016 LRM BSC did not provide data on specific bureaus' programmatic performance, limiting its usefulness, and survey-based performance measures were based on a limited number of customer responses. Data not integrated within the 2016 LRM BSC that might have indicated to what degree high-quality customer service was provided included:

- timeliness in meeting permitting time limits and issuing final permitting decisions;
- the number of requests for more information (RFMI) issued;
- positive and negative feedback provided by employees, stakeholders, and customers;

- improvements to the clarity and consistency of rules, forms, policies and procedures; and
- the number, subject matter, and resolution of employee and process-related complaints.

Furthermore, the online LRM *Customer Service Survey Permit Process Questionnaire* implemented in CY 2017 (2017 LRM online survey) lacked questions on customers' overall satisfaction with the permitting process, timeliness, or customer service they received and largely reflected opinions of individuals familiar with Bureau permitting processes. The 2017 online LRM survey also lacked adequate controls to ensure each customer responded only once per application submitted, increasing the likelihood validity issues existed with the data. Generally, the Bureau lacked a data quality policy and adequate management oversight to ensure valid and reliable information was received and processed.

In CY 2018, we surveyed an indeterminable number of stakeholders directly and through various stakeholder groups (stakeholders survey), of whom 278 responded. Although results cannot be generalized to the broader stakeholder community, those who responded were asked how effectively the Bureau provided high-quality customer service, and:

- 103 (37.1 percent) reported *effectively*,
- 55 (19.8 percent) reported *somewhat effectively*,
- 27 (9.7 percent) reported *neither effectively nor ineffectively*,
- ten (3.6 percent) reported *somewhat ineffectively*,
- 11 (4.0 percent) reported *ineffectively*, and
- 72 (25.9 percent) reported being *unsure*.

The complete results of our stakeholders survey are included in Appendix E.

Inconsistently Clear And Consistent Processes

The lack of comprehensive, complete, and updated policies and procedures hindered provision of consistent high-quality service and was exacerbated by the absence of management monitoring employee compliance.

In CY 2018, we surveyed:

- 37 Bureau and ARC employees then-employed or employed during SFYs 2016 or 2017 on general Bureau operations (Bureau operations survey), of whom 32 (86.5 percent) responded, and
- 32 Bureau employees then-employed or employed during SFYs 2016 or 2017 on Bureau permitting-related practices (Bureau permitting survey), of whom 22 (68.8 percent) responded.

Our Bureau operations and permitting surveys and our stakeholders survey indicated Bureau processes were typically perceived to be less than fully clear and understandable, while a significant minority of respondents generally found existing rules unclear and not

understandable. The complete results of our Bureau operations survey are included in Appendix F, and the complete results of our Bureau permitting survey are included in Appendix G.

Since at least CY 2013, the Department knew several customer service policies and procedures were either outdated or needed to be adopted in rule, with one in draft form since CY 2001. We also found several customer service policies and procedures were informal, outdated, or incomplete during the audit period, including:

- an “Inspector of the Day” policy providing for the public face of Bureau communications with customers, outdated since at least July 2016;
- a policy to ensure timely responses to customer emails within 24 hours, reportedly Bureau practice, but never drafted or formalized;
- a customer phone call response policy, in draft form since July 2006;
- an external communications policy on disseminating external communications products that was outdated since at least November 2017; and
- the Department’s practice of resolving employee and process-related complaints, which was informal, undocumented, and unauditible.

Our Bureau operations survey included questions related to Bureau policies and procedures and customer website use. When we asked the 31 employees (96.9 percent) reporting they could not *always* follow policies and procedures if it was clear when new policies and procedures were issued or when existing policies and procedures were changed:

- seven (22.6 percent), including three managers, reported *yes*;
- 16 (51.6 percent), including five managers, reported *no*; and
- eight (25.8 percent), including one manager, reported being *unsure*.

When we asked all 32 responding employees how clear and understandable customer service policies and procedures were:

- 14 employees (43.8 percent), including four managers, reported *very clear and understandable*;
- 13 (40.6 percent), including five managers, reported *somewhat clear and understandable*; and
- five (15.6 percent), including one manager, reported *not clear or understandable*.

When we asked all 32 responding employees whether information related to completing an application was easy to find on the Department’s website, based on their interactions with the public:

- 11 employees (34.4 percent), including seven managers, reported *yes*;
- 14 (43.8 percent), including three managers, reported *no*;
- five (15.6 percent) reported being *unsure*; and
- two (6.3 percent) reported they did not interact with the public.

Stakeholders additionally reported confusion regarding the permitting process, even after being provided information by the Department. Our stakeholders survey asked if it was clear from Department-provided information how to submit a complete application, and out of 98 respondents:

- 53 (54.1 percent) reported they obtained everything necessary,
- 31 (31.6 percent) reported they needed to contact the Department to ensure they either understood requirements or provided all materials needed for approval, and
- 14 (14.3 percent) reported being *unsure*.

Other elements of Bureau operations and the regulatory framework limited clarity and consistency, as we discuss throughout this report. Unaudited Department data on self-reported employee time allocations during the audit period indicated Bureau employees reported allocating 8.7 percent of their time (8,833 of 102,102 hours) on providing general public assistance. Meanwhile, Bureau employees, including administrators and supervisors, reported allocating 25.0 percent of their time (25,570 hours) on tasks most closely connected to permitting.

Data Insufficiently Reliable

As we discuss in Observation Nos. 51 and 52, the Bureau lacked a data quality policy and adequate management oversight to ensure valid and reliable information was received and processed timely by the Bureau. Data necessary to assess customer service was not adequately collected, monitored, or utilized in order to ensure meaningful improvements to customer service could be made and measured. Data used to measure customer service-related goals and objectives—including the 2017 online LRM survey and the LRM hardcopy questionnaire—lacked adequate controls to ensure validity and reliability. For example, hardcopy LRM questionnaire data indicated the Department received one wetlands permit application-related questionnaire in CY 2016, but hardcopy LRM questionnaires we reviewed demonstrated the Department received 27. Additionally, Bureau management used an unreliable system to conduct timeliness analysis, due in part to key dates being overwritten in the LRM permitting database.

Recommendations:

We recommend Department management:

- **develop, implement, and refine a customer service performance measurement system with measures tied to strategy, risk tolerances, and outcomes;**
- **ensure customer service performance measurement is coordinated between the Department, Division, and Bureau;**
- **ensure customer service measures consider the Bureau's operations holistically;**
- **develop, implement, integrate, and refine a process- and employee-related complaint policy and procedure, and ensure records are generated and adequately managed;**
- **ensure guidelines and other public-facing materials accurately reflect underlying rule-based standards, are clear, consistent, and readily available; and**

- ensure customer service-related data are reliable and processed timely.

Department Response:

We concur with the recommendations.

The Bureau has a customer service measurement system that has been in place for many years. This system is tied to the Department's strategic plan and the LRM BSC. We will work to refine Bureau systems in keeping with the Department's continuous improvement philosophy. We will develop performance metrics that are based on outcomes and relate them to Bureau, Division, and agency strategy.

Additional Department and LBA comments on Observation No. 18 appear in Appendix B.

Consistency Of Permitting Outcomes

Permitting outcomes included consistent decisions compliant with statutory and regulatory requirements. Decisions included final approval or denial decisions, and other decisions made at interim review process steps, such as reclassification of an application from one type to another or applying specific permit conditions. Management placed substantial decision-making authority with technical permit reviewers, including final permit application decisions. The decade-long Bureau process improvement effort was intended to improve predictability, consistency, and standardization of permitting by simplifying and improving processes and rules. However, these efforts did not produce quantifiable outcomes, lacking a system to either measure or monitor the accuracy and consistency of permitting decisions. Dated Bureau rules remained in place and were augmented with ad hoc rules to fill in around gaps left by poorly maintained rules. Additionally, the Bureau reportedly went to great lengths, including deviating from policy, procedure, rules, and statute, to ensure permits were approved.

However, deficient control systems over consistent permitting decisions contributed to: inconsistent permitting outcomes, statutory noncompliance, and, in some cases, compromised due process. Department control systems: 1) contained elements that were knowingly circumvented or ineffectively designed, inconsistently implemented, and unmonitored, contributing to 49 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 19

Improve Consistency Of Permitting Decisions

Bureau permitting was: 1) based on inconsistent requirements in rule and policy; 2) implemented by employees with inconsistent credentials, training, and understanding of rule, policy, and procedure; and 3) carried out in a sometimes inconsistent, subjective manner, resulting in inconsistent processes, procedures, and decisions, and likely confusion and increased costs for the regulated community. Inconsistencies in Bureau permitting persisted despite: statute, rules, Department strategy, and Bureau plans requiring consistent permitting outcomes across similar circumstances; long-standing stakeholder concerns; several Department initiatives;

and multiple prior audit findings recommending numerous changes. Due to the ubiquitous nature of consistency issues, it is unlikely we identified every area or specific instances where Bureau activities were inconsistent.

Long-standing And Recognized Concerns

The Bureau's, at times, subjective and ad hoc approach to permitting was inconsistent with statute, rule, Department strategy, Bureau plans, and prior audit recommendations. Department strategy required employees provide consistent responses to customers and treat customers fairly and equitably when enforcing law, rule, and policy, while Bureau plans included a goal to have a consistent regulatory program.

It was unclear whether Department management sufficiently prioritized the importance of resolving issues with Bureau permitting consistency. Strategy and planning were not risk-based, and neither the Department nor the Bureau created measures to evaluate permitting consistency, limiting management's ability to evaluate performance. Long-standing concerns with permitting consistency were:

- identified as early as CY 1995, when stakeholders reported inconsistent Bureau permit decisions were a problem, leading to confusion and increased costs to the regulated community;
- enumerated in our *2007 Audit*, which identified related issues, including the inconsistent treatment of applicants and inconsistent compliance with statutory time limits, that were not fully resolved through SFY 2018; and
- recognized by the Department when it set a goal of increasing permitting consistency for the decade-long wetlands rule revision process and the ultimately unsuccessful LRM reorganization.

Concerns with permitting consistency, including how employees applied *Wetlands Program* rules (wetlands rules) and how comparable permitting outcomes were for similar projects, led in part to the request for our current audit.

Inconsistency Throughout Management Practices And Permitting Processes

Inconsistent permitting took many forms and occurred throughout Bureau management practices and permitting processes. Inconsistently credentialed and trained employees had substantial leeway in how they applied rules, policy, and procedures; reviewed and processed permit applications; and conditioned permits. While Bureau employees acknowledged permitting decisions were inconsistent, they expressed mixed opinions regarding the scope of the problem, with some reporting inconsistency was a bigger issue than others. Our Bureau permitting survey asked the 18 employees (81.8 percent) reporting involvement in technical review how consistent permitting decisions and conditions were for similar projects, and:

- six (33.3 percent), including three managers, reported *always consistent*;
- six (33.3 percent), including three managers, reported *often consistent*;
- two (11.1 percent), including one manager, reported *sometimes consistent*; and

- four (22.2 percent), including two managers, reported being *unsure*.

Further contributing to inconsistency were:

- Rules – The rules, which should have formed an objective set of standards upon which permitting decisions were based, were unreasonable, unclear, inconsistent, incomplete, and heavily augmented with ad hoc rules, as we discuss in Observation Nos. 9 through 16. Wetlands permitting decisions centered on undefined and vague terms including “need,” “least impacting alternative,” and “top-of-bank,” leading to inconsistency. For example, one employee reportedly interpreted “top-of-bank,” a term describing the delineation of wetlands and the jurisdictional reach of Bureau authority, more broadly than others to pursue an increased focus on environmental protection with their permitting decisions.
- Policy And Procedure – The Bureau lacked comprehensive, standardized checklists for wetlands permit application reviews, indicating the process was subjective and reliant upon employee judgment rather than objective and based upon established policy and procedure. The Bureau supplemented rules with a mix of formal and informal ad hoc requirements, policies, and procedures, which were inconsistently communicated to employees and the public, as we discuss in Observation Nos. 13, 17, and 47.
- Credentials, Training, And Peer Review – Bureau employees were inconsistently credentialed and trained, as we discuss in Observation Nos. 43 and 44, and peer review and standards of conduct policies were inconsistently followed and enforced, as we discuss in Observation Nos. 21 and 45.
- Expedited Review Of Permit Applications – The Commissioner’s Office inconsistently applied policy for expediting permit applications, as we discuss in Observation No. 28.
- RFMI – RFMI use and timeliness were inconsistent, and employees sent both formal and informal RFMIs and often sent multiple RFMIs, contrary to requirements, as we discuss in Observation No. 32.
- Permit Application Review Timeliness – Overall permit application review timeliness was inconsistent, with permit reviews at times exceeding statutory time limits, as we discuss in Observation No. 22, and Department of Transportation (DOT) permit applications were regularly reprioritized and extended contrary to statutory requirements, as we discuss in Observation No. 23.
- Permit Conditions – Permit conditions were used inconsistently, with employees regularly creating new or customized conditions not found in Bureau policy or rules, as we discuss in Observation No. 20.

- Permit Review Extensions – The use of permit review time limit extensions was ad hoc and inconsistent, with employees using informal and formal practices, as we discuss in Observation No. 33.
- Application Reclassifications – Bureau rules and policies were insufficient to guide employees to make consistent reclassification decisions, as we discuss in Observation No. 34.
- Inspections – Policy and procedures lacked criteria defining when employees should inspect project sites, and Bureau employees inconsistently conducted site visits during permit application reviews. Department managers stated employees rarely inspected sites except for larger projects, and employees struggled to meet statutory permit timeliness requirements. We reviewed 86 hardcopy files for SDF, shoreland, and MIE permit applications listed in unaudited Bureau permitting data as active during SFYs 2016 or 2017 (permit application file review). Six of 86 files (7.0 percent) had documented site inspections, of which three were for major SDF projects, two were for minor SDF projects, and one was for a minimum SDF project. The remaining 80 applications (93.0 percent)—including 21 major SDF applications—lacked documented site inspections.

Denials Not Assessed

Though Bureau-wide permit application denial rates were low, certain employees had higher denial rates than others. Unaudited Bureau permitting data included 2,725 SDF, shoreland, and MIE permit applications receiving a final decision, of which 61 decisions (2.2 percent) were classified as denials. Fourteen Bureau employees were responsible for the 61 denials, as shown in Table 4, with two employees responsible for more than half: one denied 26 applications, or 42.6 percent of all denials, and one denied ten applications, or 16.4 percent of all denials. The employee with the most denials also had the second highest denial rate at 8.4 percent, which was nearly four times the Bureau's overall average denial rate of 2.2 percent. Seven additional employees had denial rates above the Bureau average. Management lacked a system of control over denials to ensure it understood whether denials, and denial rates, were appropriate or indicated potential inconsistencies in permitting practices.

Potential Employee Bias Inadequately Controlled

Inconsistent application of, and adherence to, peer review policy and procedures and standards of conduct further compromised permit application review process controls, as we discuss in Observation Nos. 21 and 45. Certain employees were purportedly more focused on environmental protection and tended to use a more expansive approach to defining Bureau jurisdiction than others. For example, our permit application file review identified:

- one file that documented an employee suggesting an applicant pay to join a private dock association rather than build their own dock and researching the applicant's political affiliation, and

- a second file that documented an employee suggesting an applicant approach a neighbor to obtain shared driveway access through the neighbor's property, rather than build separate access on the applicant's property.

These practices were inconsistent with statute and rule. While there was no objective test for bias, management had an unrealized obligation to control the effects of potential bias to help ensure consistency, especially given the defective controls over peer review, inoperative controls over standards of conduct, and absent controls over examining final decisions.

Table 4

**Wetlands Bureau Employee Permit Application Denial Rates¹,
Based On Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017**

Employee	Number Of Permit Applications		Individual Denial Rate As A Percent ²	Relationship Between Individual Denial Rate And Average Bureau Denial Rate ^{2,3}
	Reviewed	Denied		
1	6	1	16.7	more than seven times higher
2	310	26	8.4	nearly four times higher
3	18	1	5.6	two-and-a-half times higher
4	67	3	4.5	two times higher
5	93	3	3.2	one-and-a-half times higher
6	130	4	3.1	nearly one-and-a-half times higher
7	72	2	2.8	slightly higher
8	446	10	2.2	equal
9	149	3	2.0	nearly equal
10	53	1	1.9	nearly equal
11	168	3	1.8	nearly equal
12	118	2	1.7	nearly equal
13	92	1	1.1	half
14	152	1	0.7	less than half
Totals	1,874	61		

Notes:

- ¹ Limited to 14 Bureau employees denying at least one permit application. The excluded employees collectively reviewed 851 SDF, shoreland, and MIE permit applications permit applications, with no denials.
- ² Grey-shaded cells indicate individual denial rates above the Bureau average.
- ³ Relationship between individual denial rate and average Bureau denial rate for all employees who denied at least one SDF, shoreland, or MIE permit application, based on the average Bureau-wide denial rate of 2.2 percent.

Source: LBA analysis of unaudited Bureau permitting data.

Recommendations:

We recommend Department and Bureau management:

- **undertake a comprehensive, coordinated effort to ensure consistent outcomes derive from Bureau permitting practices;**
- **develop, implement, and refine consistency measures;**
- **collect data to measure consistency on an ongoing basis and evaluate and report on programmatic performance; and**
- **review permit processes and decisions on a regular basis to help ensure consistency.**

Department Response:

We concur with the recommendations.

We are evaluating how best to address them.

Conditioning Permits

Wetlands provided the Department could issue permits with reasonable conditions to protect and preserve wetlands and submerged lands from despoliation and unregulated alteration. However, *Shoreland* did not provide for permit conditions on shoreland permits, but did allow permits issued under other statutes to contain shoreland-related conditions. Permit conditions were generally intended to protect water quality by specifying actions, such as specific design techniques, to be taken by the permit holder before, during, and after construction. Such actions would purportedly minimize unavoidable wetlands impacts and reduce loss of wetlands functions. *Wetlands* made noncompliance with permit conditions a misdemeanor and provided for a fine of up to \$10,000. *Shoreland* authorized the Commissioner, in case of noncompliance with permit conditions issued under other statutes, to issue an administrative enforcement order.

The Bureau acknowledged it lacked consistent procedures for drafting permit conditions prior to the development of the *2015 Guide*, which was intended to standardize guidance and improve consistency. However, deficient control systems over permit conditions contributed to inconsistent permitting outcomes. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 37 observations in our current report; and 2) were at a **repeatable** level of maturity.

Observation No. 20

Improve Control System Over Permit Conditions

The Bureau's use of permit conditions was inconsistent and noncompliant with statute and rule. The Bureau expanded its authority to use permit conditions through rulemaking by including permit conditions in shoreland permits without corresponding statutory authority. Given that

statute subjected permittees to potential criminal charges and fines for not complying with permit conditions, Bureau permit conditions were unreasonable as they were: inconsistently adopted in rule or underpinned by statute or rule, making the use of uncodified requirements essentially ad hoc rules; judgmentally established and not tied to programmatic outcomes; and subject to potentially arbitrary and ad hoc change or creation, without adequate management oversight.

Not only were standard permit conditions not communicated to the regulated public via rulemaking, but standard conditions could change without any documentation or explanation. Although the Bureau had an internal list of standard conditions, wetlands and shoreland conditions were comingled, and technical permit application reviewers regularly edited existing conditions and created new ones, without evidence of management oversight. Furthermore, insufficient training and evidence of employee confusion concerning use of conditions indicated broader issues with the Department's strategy implementation, risk management, and oversight. Employees reportedly found it necessary to edit existing conditions or create new conditions due to the varying nature and complexity of projects associated with permit applications. There also were concerns about the qualifications of some employees to impose permit conditions upon permittees without proper management oversight, as we discuss in Observation No. 43, and no employee had a formal delegation of authority to condition permits, as we discuss in Observation No. 40.

Statutory Limitations Exceeded By Overly Broad Rules

Rules expanded the Bureau's authority to condition permits, but the Department had not systematically adopted permit conditions in rules. Wetlands rules reflected the authority provided in *Wetlands* to impose conditions on permits to minimize project impacts and established conditions in 52 areas to be complied with as applicable. Two of these sections in rule were expired. *Shoreland Protection* rules (shoreland rules), on the other hand, created authority where there was none in statute for the Bureau to impose reasonable project-specific conditions to bring a project into compliance with *Shoreland* and formally provided for five generally applicable permit conditions.

Unlike *Wetlands*, *Shoreland* did not provide the Department authority to issue shoreland permits with conditions, only to approve or deny permit applications. *Shoreland* did provide authority for permits issued under other statutes, such as *Wetlands*, to be conditioned to conform with *Shoreland* requirements. However, shoreland rules provided:

- when a proposed project did not comply with rule and statute for approval, but reasonable project-specific conditions could be imposed on the project to bring the project into compliance, the Department would approve the application and impose necessary conditions to ensure compliance;
- when a proposed project could not be brought into compliance through a conditioned permit, that the application would be denied; and
- all approved permits would be subject to a set of standard conditions.

Our permit application file review included 14 shoreland permit applications, of which: 12 (85.7 percent) had been approved, with each permit containing between 15 and 22 conditions; one (7.1 percent) had been denied; and one (7.1 percent) lacked decision documentation.

Inadequate Policy And Procedure

Department policy offered guidance on the use of permit conditions, stating conditions were enforceable by law to the same extent as statute and rule. Bureau training materials suggested employees should adapt conditions to each project, but were silent on whether peer review was required for non-standard or new conditions. However, peer review by the Bureau Administrator or designee of any non-standard permit conditions that deviated from formalized permit conditions was required under the peer review policy.

Reportedly, employees conducted a Lean event to coalesce and standardize conditions, which had not previously been memorialized, into a single list to improve consistency. Resulting standard conditions were based on employee opinion, third-party consensus-based standards, and contemporary best management practices. Other than anecdotal information, the Bureau provided no evidence permit conditions were connected to programmatic outcomes or to minimizing project impacts. The list was reportedly vetted with the Department's Legal Unit and subsequently included in the LRM permitting database for employees to select conditions for inclusion on permits as needed.

Bureau policy formally listed 242 permit conditions, though not all were adopted in rule and others were inconsistent with rules. The 242 formal permit conditions:

- comingled wetlands and shoreland conditions;
- covered topic areas from pre-construction to erosion control and shoreline retaining walls to mitigation; and
- were intended either for general inclusion on all permits—referred to as general conditions—or for inclusion only on specific types of permits—referred to as project-specific conditions.

Some approvals were contingent upon the permittee obtaining additional permits or permissions from other State or federal agencies, or providing payment for mitigation, meaning the permit was not valid when issued by the Bureau, and subsequently, the permittee's project could be delayed. Also, wetland rules required mitigation payment before permit approval, making such contingent permit conditions appear improper, as an application without payment was inherently noncompliant with rules.

The process to alter standard conditions or develop new conditions was not included in rule and lacked transparency, making it difficult for an applicant to determine how and under what circumstances and authority altered or new conditions were derived. Also, conditions listed on permit approvals inconsistently cited an underpinning rule, potentially complicating permittee compliance efforts, even though noncompliance could lead to criminal charges or fines.

Inconsistent Practice

Bureau employees reported an inconsistent approach to applying permit conditions. Our Bureau permitting survey asked the 18 employees reporting involvement in technical review whether guidance from statute, rules, and policies and procedures was clear on how to select appropriate permit conditions, and:

- nine (50.0 percent), including five managers, reported *very clear and easy to apply*;
- six (33.3 percent), including two managers, reported *somewhat clear and easy to apply*;
- one (5.6 percent), a manager, reported *not clear and easy to apply*; and
- two (11.1 percent), including one manager, reported being *unsure*.

Employees also expressed mixed opinions when asked how consistent permit decisions and conditions were for similar projects.

Factors reportedly affecting consistency included differences between projects and differences in employee interpretations of rules or focus during technical permit application review, as we discuss in Observation No. 19. Employees reported non-standard or new conditions did not require peer review, despite Bureau policy mandating otherwise, and viewed application of permit conditions as decisions up to each reviewer's judgment. At the same time, we found employees were inconsistently credentialed and had no formal delegation to issue permit conditions, while supplemental job descriptions did not clearly and consistently define roles related to issuing permit conditions, as we discuss in Observation Nos. 40, 41, and 43. Employees also expressed conflicting views as to whether the standard list of permit conditions improved clarity of decision-making and identified issues that necessitated additional editing or removal of conditions from a "pick list."

Our permit application file review included 60 files containing permit approvals, and our review of these permit approvals demonstrated the Bureau always conditioned permits and regularly included both non-standard and new conditions. Among the 60 permits:

- 58 (96.7 percent) contained 35 or fewer total conditions, while the remaining two (3.3 percent) were large projects and contained 48 and 92 conditions, respectively;
- 59 (98.3 percent) contained seven or eight general conditions; and
- 60 (100.0 percent) contained between three and 92 project-specific conditions, averaging 19 each.

On average, 17.0 percent of all project-specific permit conditions imposed were non-standard. Among the 60 permits, 44 (73.3 percent) contained between one and 37 non-standard conditions, averaging more than three each. Forty-three of the permits with non-standard conditions (97.7 percent) were not peer reviewed as policy required. Additionally, among the 60 permits:

- six (10.0 percent) were conditioned upon mitigation payment, contrary to a requirement in rule that such payments be made before permit approval;

- all 12 shoreland permits contained a general condition providing the applicant could not extend the permit, contrary to statutory provisions;
- ten (16.7 percent) included conditions from the Natural Heritage Bureau and Department of Fish and Game, and lacked citations to applicable regulations, leaving permittees without references for conditions imposed; and
- three (5.0 percent) included conditions from federal agencies and lacked citations to applicable regulations, leaving permittees without references for conditions imposed.

Recommendations:

We recommend Department management ensure permit conditions are reasonable by:

- **defining, then applying, a reasonableness test to each permit condition;**
- **ensuring conditions are clearly and objectively tied to permitting outcomes to ensure each meets the purpose of statute and rule;**
- **ensuring shoreland rules comply with the *Administrative Procedure Act (Act)*;**
- **expunging from shoreland rules provisions allowing conditioning of shoreland permits;**
- **adopting standard permit conditions used by the Bureau in rule; and**
- **adopting a process for modifying conditions on a case-by-case basis in rule, including documentation requirements evidencing the grounds for modifying conditions, statutory and rule basis for changes made, and evidence of management review and approval.**

We suggest Department management seek legislative change to accommodate reasonable conditions on shoreland permits should management believe such authority is necessary, and subsequently adopt relevant procedural and substantive rules.

We recommend the Bureau include citations to relevant State and federal statutory and regulatory requirements when imposing permit conditions. The Bureau should not include conditions without such basis in permit approvals.

Department Response:

We concur with the recommendations.

We are evaluating, revising, and clarifying all permit conditions to ensure reasonableness and clear, objective ties to permitting outcomes, to meet the purpose of statute and rule, and we will adopt the standard permit conditions in rule. We will review the shoreland rules to ensure that they comply with the Act, and we will design a process for modifying conditions on a case-by-case basis in rule. Rather than expunging from shoreland rules the provisions allowing conditioning of shoreland permits, we are seeking legislation to amend the statute to allow conditioning of shoreland permits.

Peer Review Of Permit Applications And Permitting Decisions

Peer review of certain high-risk permit applications and permitting decisions was a quality control process designed to help ensure consistency of Bureau permit application decisions. Peer review could have served as a control for timely processing of high-risk applications, but was not designed for that purpose. Management should have:

- clearly communicated peer review requirements and any exceptions to policy,
- ensured employees understood policy and consequences of noncompliance,
- routinely monitored and evaluated employee performance against policy, and
- timely addressed and remediated deviations from policy.

However, despite a suggestion made to the Department in our *2007 Audit*, a deficient control system over ensuring consistency of permitting decisions through peer review remained and contributed to inconsistent permitting outcomes. The Department's control system: 1) contained elements that were either knowingly circumvented or ineffectively designed, inconsistently implemented, and unmonitored, contributing to 34 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 21

Clarify And Formalize Peer Review Policies And Monitor Compliance

Since CY 2007, we have commented on the Department's control system over peer review, and deficiencies continued through the current audit period. Management did not implement a clear and sufficiently detailed peer review policy; ensure employees were aware of, or clearly understood, requirements; or monitor and enforce compliance with policy. Furthermore, management reportedly minimized the importance of compliance, raising concerns with integrity and the potential for inconsistent permitting decisions. We selected three peer review requirements against which to assess Bureau compliance and reviewed a sample of 56 Bureau permit applications processed during SFYs 2016 and 2017 (peer review file review), some of which were subject to more than one peer review requirement. We found noncompliance with 47 of 58 applicable peer review requirements (81.0 percent), as shown in Figure 10, as permit applications either did not undergo peer review or were not peer reviewed by the type of manager specified in policy.

Unresolved Prior Audit Findings

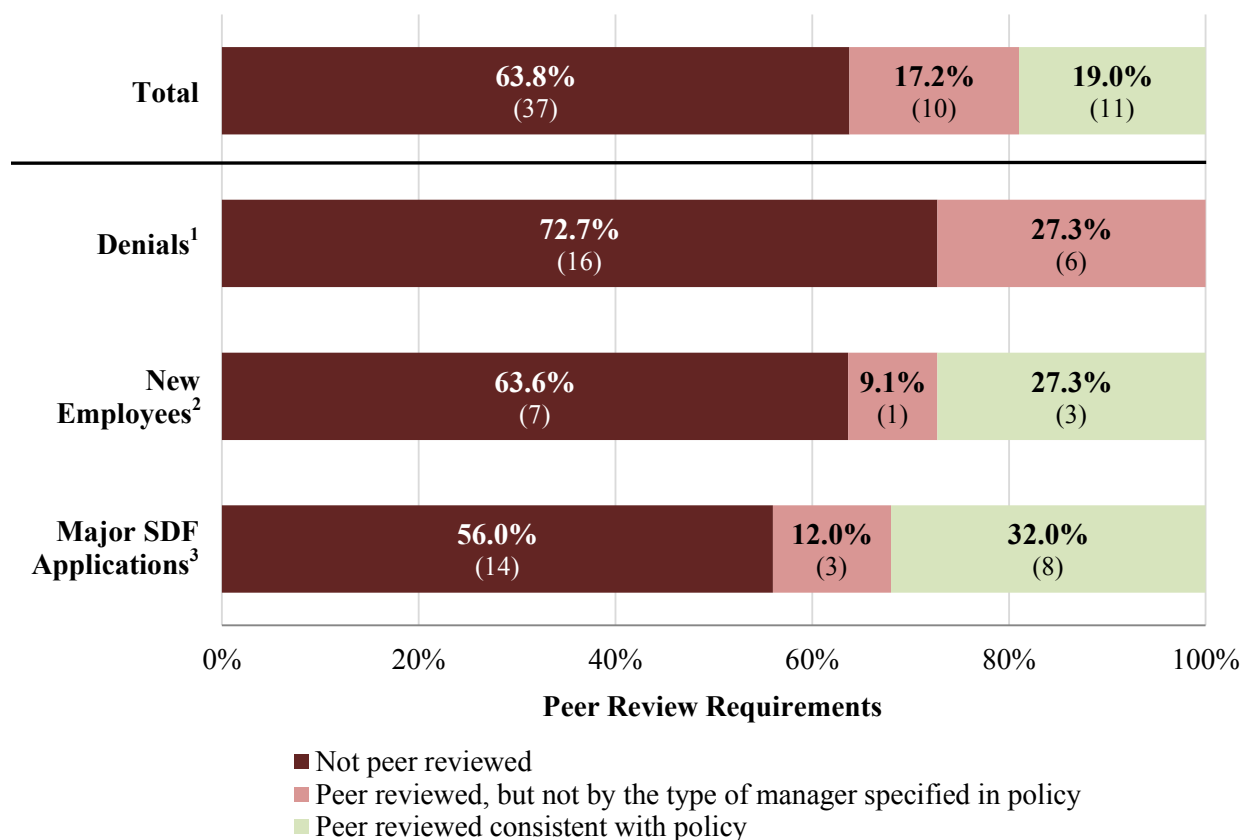
Our *2007 Audit* concluded the Bureau could have alleviated permitting inconsistencies by improving peer review. The Division could have also reduced the risk of issuing substandard permits if deliberations over disputed permits were well-documented and reviewed by qualified managers. We suggested the Bureau re-evaluate its review of permitting functions to ensure employees followed policies and procedures and improve review processes to help ensure:

- new permitting employees received oversight from more experienced employees;

- proper documentation of all review process steps, including permit issuance and response to requests for more information; and
- more consistent permitting decisions.

Figure 10

Compliance With Select Peer Review Policy Requirements, SFYs 2016–2017



Notes:

1. Denials were permit applications that had been denied.
2. New employees had one year or less of experience with Bureau permit application review.
3. Major SDF applications were initially classified or later reclassified as major impact.

Source: LBA analysis of peer review file review and LRM peer review policy requirements.

Our 2007 *Audit* also recommended the Division develop policies and procedures to ensure: 1) reviewers documented reasons for refusing to sign permits, and 2) there was an additional level of documented review and approval by managers when disputed permits were approved, including reasons for approval. The Department concurred and indicated Department-wide standard operating procedures (SOP) addressing audit findings would be developed by December 31, 2008. The Department asserted they had fully resolved our recommendation in response to a follow-up of 2007 *Audit* recommendations conducted during our CY 2015

Department Of Environmental Services Water Division Internal Control Review Agency-Income Revenues and “partially” resolved our recommendation as of SFY 2018.

LRM programs implemented a formal, written peer review policy in response to our *2007 Audit* and updated the policy effective June 30, 2015. However, more than a decade after our *2007 Audit* findings:

- policy insufficiently established peer review expectations for employees and managers;
- compliance monitoring was insufficient to ensure requirements were met and decisions were consistent, as we discuss in Observation No. 19;
- documentation related to permit application review processes and decisions was inadequate, as we discuss below and principally in Observation No. 52; and
- the Department reported it had not yet finalized a draft policy on employee refusal to sign a permit and did not report any progress taken to implement additional review and approval processes for approval of disputed permits, leaving our *2007 Audit* recommendation unaddressed.

Insufficient Prioritization Of Peer Review By Management

Decade-long concerns with management’s implementation and prioritization of an effective peer review system contributed to an operating environment and organizational culture in which compliance with statutes, rules, and policies and procedures was not promoted, as we discuss in Observation No. 1. Prior to our *2007 Audit*, a more comprehensive peer review process reportedly required section supervisors to review all permit application decisions on a rotating basis to ensure consistency across the Bureau. Former Bureau administrators also reportedly provided substantive feedback on the content and style of permitting decision documents, including the permit itself. During our *2007 Audit*, a former manager reported some then-serving managers viewed peer review to be “wasteful” and dropped the requirement, and employees lacked a clear understanding of peer review requirements.

Since our *2007 Audit*, identified deficiencies persisted through our current audit period. Several managers and employees reported Division and Bureau management still viewed peer review to be a “waste of time” and minimized peer review’s role in the permit application review process. Division and Bureau management reportedly told employees not to follow the peer review process. One manager reported the Bureau spent “a lot of time” making sure permitting decisions were consistent but indicated only some permitting decisions were peer reviewed, and another indicated decisions would be more consistent if more were reviewed. Bureau administrators reportedly provided minimal feedback on permit application decisions when they did conduct peer review, and one supervisor reported review was focused on grammar and identifying duplicative permit conditions instead of technical aspects. However, the substance of peer review and resulting findings were insufficiently documented.

Our Bureau permitting survey asked the 18 employees (81.8 percent) reporting involvement in technical review whether compliance with peer review requirements was a Bureau priority, and:

- eight (44.4 percent), including four managers, reported *yes*,
- two (11.1 percent), including one manager, reported *no*, and
- eight (44.4 percent), including four managers, reported being *unsure*.

Noncompliance With Peer Review Requirements

A comprehensive peer review process could have helped management ensure consistency of permitting decisions, although lack of clarity, inconsistent implementation, and insufficient monitoring hindered full utilization of peer review as intended. Policy required all Bureau employees to comply with established peer review requirements but provided no direction to managers as to which aspects of the permit application to direct their focus towards. Consequently, peer review reportedly varied widely in scope, from a cursory review of an application file to an in-depth discussion with the employee who conducted the initial review. Furthermore, policy did not specify the timeframe within which managers should complete peer review, how to document peer review was performed, how to verify employees complied with requirements, or how to provide continuity when management positions were vacant.

One manager reported there was insufficient time to conduct the type of in-depth review needed to determine whether there were serious issues with permit decisions. A second manager also reported insufficient time for supervisors to perform peer review because they spent time on permitting. These reports raise potential concerns with managerial workloads, as we discuss in Observation No. 42, and the effectiveness of the peer review process when carried out. Management also reportedly had difficulty ensuring peer review responsibilities were performed by capable employees.

Bureau Administrator Peer Review

The Bureau Administrator did not conduct peer review on certain high-risk permit applications required by the policy signed by the same Administrator. Policy required the Bureau Administrator or a designee to review or approve all:

- applications or requests for permit amendments that created a potential conflict with law, rules, SOPs, or guidance;
- RFMIs or permit conditions that imposed new restrictions or significant changes from prior interpretations of law, rules, policy, or guidance;
- permits that imposed non-standard permit conditions; and
- denials of permit applications.

Our peer review file review included 22 denied permit applications, of which none were peer reviewed by the Bureau Administrator as policy required. Denied applications were high-risk, given the potential for appeal to the Council.

- Sixteen of the 22 applications (72.7 percent) were not peer reviewed at all, of which three (18.8 percent) were later appealed. Among the 16 applications: supervisors performed the initial technical review on six (37.5 percent), staff performed the initial technical review on seven (43.8 percent), and no one was recorded as performing the initial technical review on three (18.8 percent).

- Six of the 22 applications (27.3 percent) were peer reviewed, but by someone other than the Bureau Administrator, even though no one was designated to conduct peer review in lieu of the Bureau Administrator. The Assistant Bureau Administrator peer reviewed three of the six applications (50.0 percent), and supervisors peer reviewed the other three (50.0 percent).

Section Supervisor Peer Review

Supervisors inconsistently complied with peer review requirements for certain high-risk permit applications. Policy required Environmentalist IV supervisors to peer review all major impact projects, restoration of altered or degraded wetlands projects classified as minimum impacts, and approvals by new employees.

Our peer review file review included 11 permit applications where the initial technical review was conducted by new employees, of which eight applications (72.7 percent) were not peer reviewed by an Environmentalist IV supervisor as required.

- Seven of the 11 applications (63.6 percent) were not peer reviewed at all, among which: a new supervisor performed the initial technical review on one (14.3 percent), new staff performed the initial technical review on two (28.6 percent), and no one was recorded as performing the initial technical review on four (57.1 percent).
- One of the 11 applications (9.1 percent) was peer reviewed, but by a permitting section staff member, not an Environmentalist IV supervisor as policy required.

Our peer review file review included 25 SDF permit applications initially classified or later reclassified as having a major impact, of which 17 (68.0 percent) were not peer reviewed by an Environmentalist IV supervisor as required. One of the 25 applications (4.0 percent) that had been reviewed by an Environmentalist IV supervisor was later appealed.

- Fourteen of the 25 applications (56.0 percent) were not peer reviewed at all, of which one (7.1 percent) was later appealed. Among the 14 applications: supervisors performed the initial technical review on four (28.6 percent), section staff performed the initial technical review on one (7.1 percent), and no one was recorded as performing the initial technical review on nine (64.3 percent).
- Three of the 25 applications (12.0 percent) were peer reviewed, but by Bureau administrators.

Other Peer Review Requirements

Policy provided that the Bureau Administrator could establish additional peer review requirements. The Bureau Administrator reported the application of peer review requirements to newer employees was based upon development and the acquisition of sufficient experience, resulting in a level of comfort with their permitting decisions. No additional, formal requirements existed, but supplemental, informal requirements were imposed by some

supervisors as a way to help ensure consistency of permitting decisions and interactions with permit applicants due to significant staffing changes. Some supervisors reported conducting additional peer review for newer staff outside of the one-year probationary period, for other types of permit applications not specified in policy, or of formal correspondence with permit applicants. However, none of these additional requirements were documented in SOPs or employee performance evaluations.

Inconsistent Awareness And Understanding Of Requirements

Employees inconsistently understood peer review requirements, and several managers and staff were unaware a formal policy existed. In responding to our Bureau permitting survey, one employee commented not knowing what the peer review policy was and indicated it seemed “to be based on supervisor discretion.” Managers also variously reported reasons beyond formal policy requirements as to when a permit application should proceed through the peer review process, including: whenever a question arose about an application, whenever an application was unique, or whenever an application could be considered controversial or political. Alternatively, one manager reported non-standard permit conditions were not required to be peer reviewed, although policy explicitly required review of such conditions.

Management should have provided development for employees to ensure they had the necessary knowledge to perform their assigned responsibilities and allow the Bureau to achieve its objectives, as we discuss in Observation No. 44. However, formal LRM cross-training sessions held during CYs 2016 and 2017, including training on drafting permitting decisions, provided no guidance or instruction on the peer review policy.

Employee responses to our Bureau permitting survey contradicted our peer review file review findings of noncompliance with peer review requirements. Consequently, our findings may indicate employees either did not have a comprehensive understanding of the policy, and therefore needed training and guidance on requirements, or purposefully did not follow requirements, increasing the importance of monitoring and ensuring accountability. The 18 employees reporting involvement in technical review generally reported they understood and complied with peer review requirements. When asked how clear and understandable peer review policies and procedures were:

- 11 (61.1 percent), including seven managers, reported *very clear and understandable*;
- six (33.3 percent), including two managers, reported *somewhat clear and understandable*; and
- one (5.6 percent) reported *not clear or understandable*.

When asked how frequently they followed peer review policies and procedures:

- 14 (77.8 percent), including seven managers, reported *always*;
- one (5.6 percent), a manager, reported *often*; and
- three (16.7 percent), including one manager, reported being *unsure*.

Monitoring Compliance

Management did not monitor compliance with peer review requirements, which could have helped ensure consistency of permitting decisions, particularly given:

- frequent staffing changes, discussed in Observation No. 6;
- insufficient training, discussed in Observation No. 44; and
- inadequate internal communications and knowledge transfer, discussed in Observation No. 50.

Without comprehensive monitoring in place, management could not direct guidance to employees who appeared to need it most and could not hold employees accountable for meeting requirements. Furthermore, we found inconsistency in permitting decisions, as we discuss in Observation No. 19. Our Bureau permitting survey asked the 18 employees reporting involvement in technical review whether Bureau management tracked compliance with peer review requirements, and:

- two (11.1 percent), both managers, reported *yes*;
- three (16.7 percent), including two managers, reported *no*; and
- 13 (72.2 percent), including five managers, reported being *unsure*.

A former Division Director reported not knowing how compliance was verified and being unaware as to whether Bureau management actually verified compliance, while some Bureau managers expressed uncertainty as to how compliance could be monitored. Bureau administrators expressed opposing views on the utility of the LRM permitting database as an oversight mechanism for peer review policy compliance, with one suggesting it was useful; however, the database did not collect information necessary to verify compliance with peer review requirements.

Several managers noted permitting decision consistency could be monitored through alternative, reactive mechanisms, although the use of these mechanisms was ineffective. Such mechanisms included review of the Bureau's permitting decision reports published weekly after decisions to approve or deny applications were finalized, or through phone calls or complaints from permit applicants after permitting decisions had been made.

Effect On Permit Applicants

The effects of infrequent peer review on permit applicants were largely unknown, because the outcome of peer reviews was undocumented. Additionally, key information was unrecorded, including whether final permitting decisions to approve or deny an application changed; project type, permit conditions, or mitigation requirements were modified; or new requirements were imposed, requiring additional costs or time to address.

Consequently, the integrity of permitting records was compromised, preventing understanding of how permitting decisions were made. The only documented information in permit application files demonstrated the length of time that the peer review process took to complete, which ranged

from one to six days, averaging one-and-a-half days. In one instance, peer review was recorded as occurring the day before the initial technical permit reviewer signed off on the permit application.

Our peer review file review identified one major impact SDF application that contained inaccurate findings associated with the permit approval and referenced a structure not included in the project. The inaccuracy was identified by the applicant after the permit was issued and was apparently corrected by the employee, who had initially issued the permit without peer review by an Environmentalist IV supervisor as required. Deficiencies with not only the control system over peer review, but also over other aspects of employee management, demonstrated the interconnectedness of Department control systems and the importance of their effectiveness, as:

- our peer review file review included four permit applications for which this employee performed the initial technical review and that should have been peer reviewed, but only one (25.0 percent) was, and by a manager not specified in policy;
- the employee had attended a training session on drafting permitting decisions and passed the related proficiency test, but training sessions inadequately covered many key topics, and tests insufficiently assessed employee knowledge, as we discuss in Observation No. 44; and
- the employee's manager did not conduct a performance evaluation during the audit period, which limited management's ability to know when employee performance fell below acceptable levels, as we discuss in Observation No. 6.

Recommendations:

We recommend Department management:

- **develop, implement, and refine written peer review requirements;**
- **ensure peer review requirements are clearly communicated to employees;**
- **develop and incorporate into training sessions information about peer review requirements and compliance;**
- **identify and record data and information necessary to document the effects of peer review in the permit application file;**
- **identify data and information necessary for monitoring compliance with peer review requirements, and develop, implement, and refine means to routinely collect, monitor, and analyze compliance data and information;**
- **routinely measure employee compliance and analyze information to identify trends and potential issues with compliance; and**
- **address noncompliance in a timely, formal, and equitable manner by tying peer review to performance evaluations.**

Department Response:

We concur with the recommendations.

While the Department has a Peer Review policy, we agree that some improvements to the process should be made. Through the recent performance evaluation of all of the permit supervisors, Department managers now better understand the variations within the Bureau.

Program managers acknowledge the need to better clarify how Peer Review is documented. Some staff document these through a Database Sign off and others through sign-off on the barcode sheet, or through meetings and emails. Depending on the size and status of a file, some remote Peer Reviews are done electronically between the Concord and Pease office.

Through the audit, managers became aware of a database problem that needs to be addressed to ensure electronic sign off and to retain the ability for permit signatories to be efficiently achieved.

All written policies and procedures related to the Peer Review process will be evaluated and updated as necessary and included in future training sessions.

In addition, a process will be put in place that will require managers to perform random audits of the peer review process on a quarterly basis, with the results of the evaluation recorded in writing.

Timeliness

Initially, there were no statutory time limits for permit processing, leaving applicants without any insights as to when, or even if, their application would be processed. The initial lack of review time limits contributed to longstanding concerns dating back more than three decades, which led to the imposition, then shortening, of statutory permit application review time limits in CY 2003, CY 2008, and CY 2018; and two LBA performance audits in CY 2007 and CY 2019.

Additionally, *Integrated Permit* was adopted in CY 2013 at the Department's request and was expected to reduce permit review times. *Integrated Permit* would have provided for the development of a single application form to cover five individual permits handled independently by LRM programs, and offered concurrently with individual permits. However, implementation, initially planned for SFY 2015, was suspended first through SFY 2017, then through SFY 2019, "due to budgetary and staffing constraints." The suspension reportedly centered upon the inability of Division employees to find sufficient time to write necessary rules.

Statute and rule provided three primary time limits for permit application review within the control of the Bureau, two time limits controlled by external parties, and one mutually-shared time limit, as shown in Table 5. Bureau-controlled time limits included administrative completeness reviews by the ARC, which we discuss in Observation No. 26; decisions on whether to send an RFMI or directly issue a final decision; and final decisions on an application following an RFMI response, when applicable.

Externally-controlled time limits included conservation commission review, which ran concurrently with Department review, as we discuss in Observation No. 29; and applicant

response to an RFMI, which we discuss in Observation No. 32. The one mutually-shared time limit was permit review extensions, which were subject to Department and applicant agreement, and which we discuss in Observation No. 33.

Despite the Bureau’s goal to achieve similar review timeframes for similar types of projects, deficient control systems over permitting timeliness contributed to inconsistent permitting outcomes, and statutory noncompliance. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 49 observations in our current report; and 2) were at a **repeatable** level of maturity.

Table 5

Permit Application Review Time Limits Through CY 2018

Application Type	Pre-technical Review		Technical Review			
	Conservation Commission	Department	Department	Applicant	Department, Applicant	Department
	Review	Administrative Review	RFMI Or Final Decision	Respond To RFMI	Review Extension	Final Decision
SDF-Major one acre or more of impact	40 days from municipal clerk signature	14 days from application receipt	105 days from administrative completeness	60 days from date issued	No pre-defined time limit ¹	30 days from RFMI response receipt
SDF-Major less than one acre of impact	40 days from municipal clerk signature	14 days from application receipt	75 days from administrative completeness	60 days from date issued	No pre-defined time limit ¹	30 days from RFMI response receipt
SDF-Minor						
SDF-Minimum						
Shoreland	None established	None established	30 days from application receipt	60 days from date issued	No pre-defined time limit ²	30 days from RFMI response receipt
MIE³	21 days from municipal clerk signature	None established	30 days from application receipt ⁴	None established	None established	None established

Notes:

1. Applicant or Department could request.
2. Department could request.
3. Contrary to statute, Bureau policy extended MIE review timeframes to 75 days if a conservation commission chose to intervene or did not sign an application.
4. Wetlands rules defined an RFMI for MIE applications as a notice of deficiency, but it served the same function.

Source: LBA analysis of statute and rules.

Observation No. 22

Improve Timeliness Of Wetlands Bureau Permitting

Longstanding issues with untimely permit processing persisted through the current audit. The Bureau's timeliness of application processing was inconsistent, time limits for processing applications were not inclusive, some controls were ill-designed to help management understand timeliness, and other controls were focused on not failing to meet statutory time limits, rather than processing applications as expeditiously as possible. While the Department reported working with applicants to approve applications and avoid denials, permit applications did not always follow a linear process. We found instances where internal and external factors prolonged review. Routine management reports did not track permitting timeliness, instead focusing on time to first review action. This approach to processing applications was focused on minimum standards of operational performance and not on the Department's customer service goals, unnecessarily exposing the Department to risk of untimely application processing.

Continued inconsistent statutory compliance, untimely application processing, protracted revision of wetlands rules, and no comprehensive policies to address recommendations from the *2007 Audit*, despite increasingly stringent statutory timeliness requirements and oversight, evidenced ineffective management and administration. We found the Bureau could not reliably evaluate application processing timeliness due to limitations with the LRM permitting database, insufficient data control systems, and inadequate performance measurement. Based on insufficiently reliable unaudited Bureau permitting data and the subjective and limited nature of our permit application file review, we could not make final determinations as to the overall timeliness of Bureau application processing during the audit period, other than in those instances where our permit application file review documented compliance or noncompliance with certain statutory and rule-based time limits.

Untimely Resolution Of Prior Audit Findings

Our *2007 Audit* found the Bureau inconsistently processed applications timely. We recommended the Bureau improve permitting timeliness by:

- promulgating rules regarding RFMIs, application reclassification, MIE processing, and conservation commission intervention, which we discuss in Observation Nos. 29, 30, 32, and 34;
- creating comprehensive policies and procedures, which we discuss in Observation No. 17; and
- improving information technology systems and data quality, which we discuss in Observation No. 51.

The Bureau had not fully resolved relevant audit recommendations. The same rules and database and data quality issues remained more than a decade later, and SOPs were still inadequate through SFY 2018.

Lack Of Department Strategy Integration

The Bureau's inconsistent compliance with timeliness requirements, insufficient oversight of application processing, and inadequate data management and reporting did not support the continuous improvement of customer service objective established in the Department's 2010-2015 strategy. Untimely application processing affected applicants through increased costs and project delays. Another unrealized strategic goal was to create an online system to track permit trends, including backlogs, average processing times, and seasonal versus annual trends. The Bureau's approach to timeliness, while necessarily focused on statutory compliance, was focused on only one element of statutory compliance and was not in line with Department goals to continuously improve its provision of high quality, timely customer service.

Lack Of Connection Between Statute, Rules, And Policy

The framework of time limits within which the Bureau processed applications was unintegrated, making an assessment of overall timeliness impossible. Statute did not provide an overall time limit for permit application review processes, nor define each review process step and establish corresponding time limits. Department rules, in turn, did not define each step of what Bureau policy described as a 23-step review process, nor fill in around statutory requirements to connect steps and establish corresponding time limits for permit review.

Inconsistent Practice

We found the Bureau's timeliness of application processing was inconsistent, based on Bureau reports, employee comments, and Bureau permitting and permit application file review data. Untimely application processing was acknowledged by employees and indicated management controls were known to be insufficient.

Inconsistent Views On Timeliness

Feedback on the effectiveness and efficiency of the Bureau's permit application processing was mixed, illustrating a lack of underlying controls over permitting timeliness. During interviews, two managers reported permit application processing was timely, while five other managers stated certain programs within the Bureau did not always process applications timely. Employees reported Bureau processes were timely overall. Our Bureau permitting survey asked the 18 employees reporting involvement in technical review how timely Bureau permit processes were, and:

- 11 (61.1 percent), including four managers, reported *always timely*;
- four (22.2 percent), including three managers, reported *often timely*; and
- three (16.7 percent), including two managers, reported being *unsure*.

Bureau measures of timeliness were based on the timeliness of the first review action and focused on not becoming statutorily noncompliant, rather than being based on expedient processing to a final action in every case. Furthermore, issues with data quality and inadequate performance measurement underpinned the accuracy of employee views of timeliness.

Employees reported being aware of—and tracking—review timeframes on a continual basis through the outstanding files report, but instances of untimeliness still occurred.

Outstanding Files Report

The Bureau relied on the weekly “Outstanding Files Report” to monitor timeliness of permitting. However, the report tracked the amount of time taken to the first Bureau action on an application, not the time taken to reach a final decision. Outstanding Files Reports were generated from the same database and used the data we noted was problematic in our *2007 Audit*. Reliability issues continued and arose from inconsistent data entry by employees and other factors as we discuss in Observation No. 51. The reports identified applications with upcoming statutory and rule decision time limits, color-coding applications based on criteria shown in Table 6. White, green, and yellow indicated statutory compliance, and progression towards noncompliance, while red indicated noncompliance.

Table 6

Permit Application Review Time Limits And Associated Processing Criteria, Based on Outstanding File Report Criteria, Through CY 2018

Application Type	Processing Time Limit	Percent Of Processing Time Consumed			
		<u>White</u> Up To 15 Days Before Time Limit	<u>Green</u> Within 14–Eight Days Of Time Limit	<u>Yellow</u> Within Seven Days Of Time Limit	<u>Red</u> After Time Limit
SDF-Major one acre or more of impact	105 days	Up to 85.7	Up to 92.4	Up to, and including, 100.0	Greater than 100.0
SDF-Major less than one acre of impact	75 days	Up to 80.0	Up to 89.3		
SDF-Minor					
SDF-Minimum					
Shoreland MIE	30 days	Up to 50.0	Up to 73.3		

Note: The color scheme in the table is based on application processing timeliness benchmarks from Bureau outstanding files reports.

Source: LBA analysis of Bureau outstanding file reports.

The Bureau’s threshold for prioritization focused on certain elements of statutory compliance, rather than expeditious application processing, was embedded within the report’s structure, and aspirational targets were not incorporated. The Outstanding Files Reports did not measure

permitting performance but instead identified the Bureau's proximity to failure. Applications did not receive green, yellow, or red color-coding to alert reviewers of impending deadlines until the majority of review time had already expired. These reports were the primary method the Bureau used to track permit application processing.

Reportedly, employees generally reviewed the reports and changed their application review priorities based on whether the applicant was a public entity, the order in which applications were received, and imminence of respective review deadlines. Management provided no additional formal benchmarks to ensure employees processed applications more quickly, limiting performance measurement and any opportunity to optimize programmatic performance, as we discuss in Observation Nos. 5 and 6. The reports also:

- demonstrated entire categories of applications functioned outside permitting time limits, including applications filed by DOT, as we discuss in Observation No. 23; and
- identified instances of applications open past statutory time limits, with no indication as to why.

Inconsistent Effectiveness Demonstrated By Unaudited Bureau Permitting Data

While unaudited Bureau permitting data demonstrated the Bureau inconsistently met permit review time limits in statute and rule, significant reliability issues with the data prevented us from using the Bureau's permitting data and any analyses to definitively establish permitting timeliness. Nonetheless, unaudited Bureau permitting data were the only dataset available to describe Bureau permitting activities, and management used these data for oversight and reporting. Nonetheless, we provide analyses using these data to give some indication of Bureau permitting performance, including:

- the total number of approved and denied SDF, MIE, and shoreland applications, constituting 2,725 of the 7,174 listed applications and notices (38.0 percent), as shown in Table 7;
- the timeliness of overall permit application processing and issuance of RFMIs, as shown in Table 8; and
- the timeliness of Department permitting decisions after receipt of applicants' RFMI responses, as shown in Table 9.

Table 7

**Number Of Approved And Denied Permit Applications
Listed In Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017**

Application Type	Total By Type (Percent Of Total)	Without An RFMI Letter Date (Percent Of Type)	With An RFMI Letter Date (Percent Of Type)	With An RFMI Response Receipt Date (Percent Of RFMI Letter Date)	Approved (Percent Of Type)	Denied (Percent Of Type)
SDF-Major one acre or more of impact	21 (0.8%)	11 (52.4%)	10 (47.6%)	5 (50.0%)	21 (100.0%)	0 (0.0%)
SDF-Major less than one acre of impact	340 (12.5%)	143 (42.1%)	197 (57.9%)	158 (80.2%)	326 (95.9%)	14 (4.1%)
SDF-Minor	447 (16.4%)	225 (50.3%)	222 (49.7%)	151 (68.0%)	429 (96.0%)	18 (4.0%)
SDF-Minimum	352 (12.9%)	209 (59.4%)	143 (40.6%)	95 (66.4%)	341 (96.9%)	11 (3.1%)
Shoreland	1,181 (43.3%)	871 (73.8%)	310 (26.2%)	134 (43.2%)	1,174 (99.4%)	7 (0.6%)
MIE	384 (14.1%)	253 (65.9%)	131 (34.1%)	93 (71.0%)	373 (97.1%)	11 (2.9%)
Totals	2,725 (100.0%)	1,712 (62.8%)	1,013 (37.2%)	636 (62.8%)	2,664 (97.8%)	61 (2.2%)

Note: Of the 7,174 applications and notices active during the audit period, 3,280 (45.7 percent) were SDF, MIE, and shoreland applications. Of the 3,280 SDF, MIE, and shoreland applications, 2,725 (83.1 percent) were approved or denied. The remaining 555 (16.9 percent) applications excluded were either not approved or denied by the end of the audit period; contained extensions, amendments, or were already-approved applications; were applications that were withdrawn or closed; or were applications with other non-approval or denial statuses.

Source: LBA analysis of unaudited Bureau permitting data.

Table 8

**Timeliness Of Application Review And Request For More Information Issuance,
Based On Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017**

Application Type	Processing Time Limit	Without An RFMI	With An RFMI
		Average Time Between Application Receipt And Decision Dates ^{1, 2, 3} (Percent Of Time Limit)	Average Time Between Application Receipt And RFMI Issuance Dates ^{1, 2, 3} (Percent Of Time Limit)
SDF-Major one acre or more of impact	105 days	82.3 days (78.4%)	200.3 days (190.8%)
SDF-Major less than one acre of impact	75 days	92.1 days (122.8%)	89.1 days (118.8%)
SDF-Minor		77.1 days (102.8%)	73.2 days (97.6%)
SDF-Minimum		68.4 days (91.2%)	75.4 days (100.5%)
Shoreland	30 days	26.2 days (87.3%)	28.5 days (95.0%)
MIE		27.1 days (90.3%)	29.5 days (98.3%)

Notes:

- Limited to permit applications with a final Department decision.
- The color scheme is based on application processing timeliness benchmarks from Bureau outstanding files reports shown in Table 6. White, green, and yellow indicates statutory compliance, while red indicates noncompliance. The processing of individual permit applications may or may not have been statutorily compliant.
- Though SDF applications included ARC review prior to technical review, unaudited Bureau permitting data did not capture the ARC completion date. As a result, receipt date was used to evaluate timeliness for SDF applications.

Source: LBA analysis of statute, rules, and unaudited Bureau permitting data.

Table 9

**Timeliness Of Permitting Decisions Following Request For More Information Responses,
Based On Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017**

Application Type	Processing Time Limit	Average Time Between RFMI Response Receipt And Decision Dates^{1, 2} (Percent Of Time Limit)
SDF-Major one acre or more of impact	30 days	108.2 days (360.7%)
SDF-Major less than one acre of impact		43.7 days (145.7%)
SDF-Minor		29.1 days (97.0%)
SDF-Minimum		36.9 days (123.0%)
Shoreland		15.9 days (53.0%)
MIE³	None Established	20.7 days (n/a)

Notes:

- Limited to permit applications with a final Department decision.
- The color scheme is based on application processing timeliness benchmarks from Bureau outstanding files reports shown in Table 6. White, green, and yellow indicates statutory compliance, while red indicates noncompliance. The processing of individual permit applications may or may not have been statutorily compliant. Gray indicates compliance standards were inapplicable.
- Wetlands rules defined an RFMI for MIE applications as a notice of deficiency, but it served the same function. Wetlands rules gave no timeframes as to how quickly employees should render decisions on MIE applications following receipt of an RFMI response.

Source: LBA analysis of statute, rules, and unaudited Bureau permitting data.

Inconsistent Effectiveness Demonstrated By Permit Application File Review Data

Given limitations in the design of the Bureau’s database management system and quality issues with unaudited Bureau permitting data, we analyzed timeliness of Bureau application processing based on our permit application file review of 86 SDF, shoreland, and MIE applications, excluding one permit application file that was part of a larger statewide project involving several other permit applications and did not have a final decision date. Of the remaining 85 files, we found the Bureau:

- did not render a decision timely for five of 32 applications without an RFMI (15.6 percent), as shown in Table 10;
- did not issue an RFMI timely for three of 53 applications (5.7 percent), as shown in Table 11; and
- rendered decisions timely for applications with an RFMI response where review times were not extended, as shown in Table 12.

Table 10

**Timeliness Of Application Review Without A Request For More Information,
Based On Permit Application File Review, SFYs 2016–2017**

Application Type ¹	Processing Time Limit	Average Processing Time ² (Percent Of Time Limit)	Number Of Applications	
			Total For Type	Processed Untimely ² (Percent Of Type)
SDF-Major less than one acre of impact	75 days	80.4 days (107.2%)	5	3 (60.0%)
SDF-Minor		80.8 days (107.7%)	8	1 (12.5%)
SDF-Minimum		69.0 days (92.0%)	5	1 (20.0%)
Shoreland	30 days	24.1 days (80.3%)	9	0 (0.0%)
MIE		24.8 days (82.7%)	5	0 (0.0%)
Totals			32	5 (15.6%)

Notes:

1. No major SDF applications with one acre or more of jurisdictional impact and without an RFMI were included in our permit application file review.
2. The color scheme is based on application processing timeliness benchmarks from Bureau outstanding files reports shown in Table 6. White, green, and yellow indicates statutory compliance, while red indicates noncompliance.

Source: LBA analysis of statute, rules, and selected permit application files.

Table 11

**Timeliness Of Application Review With A Request For More Information,
Based On Permit Application File Review, SFYs 2016–2017**

Application Type	Processing Time Limit	Average Time To Issue RFMI (Percent Of Time Limit) ¹	Number Of Applications	
			Total Type	Untimely RFMI Issuance (Percent Of Type)
SDF-Major one acre or more of impact	105 days	84.0 days (80.0%)	3	1 (33.3%)
SDF-Major less than one acre of impact	75 days	62.6 days (83.5%)	17	1 (5.9%)
SDF-Minor		58.7 days (78.3%)	12	1 (8.3%)
SDF-Minimum		52.3 days (69.7%)	8	0 (0.0%)
Shoreland	30 days	25.8 days (86.0%)	6	0 (0.0%)
MIE		20.1 days (67.0%)	7	0 (0.0%)
Totals			53	3 (5.7%)

Note: The color scheme is based on application processing timeliness benchmarks from Bureau outstanding files reports shown in Table 6. White, green, and yellow indicates statutory compliance, while red indicates noncompliance.

Source: LBA analysis of statute, rules, and selected permit application files.

Table 12

**Timeliness Of Application Review With A Request For More Information Response,
Based On Permit Application File Review, SFYs 2016–2017**

Application Type	Processing Time Limit	All Applications ¹	Applications Without Extensions ^{1, 2}	Number Of Applications
		Average Time To Respond To RFMI (Percent Of Time Limit)	Average Time To Respond To RFMI (Percent Of Time Limit)	Total Type
SDF-Major one acre or more of impact	30 days	124.5 days (415.0%)	n/a	2
SDF-Major less than one acre of impact		48.9 days (163.0%)	17.6 days (58.7%)	13
SDF-Minor		20.7 days (69.0%)	20.7 days (69.0%)	9
SDF-Minimum		157.8 days (526.0%)	14.3 days (47.7%)	5
Shoreland		151.6 days (505.3%)	15.7 days (52.3%)	5
MIE³	None established	19.5 days (n/a)	19.5 days (n/a)	4
Total				38

Notes:

- The color scheme is based on application processing timeliness benchmarks from Bureau outstanding files reports shown in Table 6. White, green, and yellow indicates statutory compliance, while red indicates noncompliance. The processing of individual permit applications may or may not have been statutorily compliant.
- All SDF and shoreland applications with an RFMI response and no decision deadline extensions were processed timely.
- There were no time limits in statute or rule on Bureau decisions following receipt of an RFMI response for MIE applications. However, the Bureau took more than 30 days to render a decision for one of the four MIE applications that received an RFMI response (25.0 percent).

Source: LBA analysis of statute, rules, and selected permit application files.

Efficiency

The Bureau focused on not exceeding statutory time limits and issuing RFMIs, rather than on processing applications as timely as practicable. Reportedly, the Bureau had aspirational targets to process SDF applications within 60 days of receipt and shoreland applications within 25 days of receipt, but we found no evidence these standards were formalized in policy, guidance, the Bureau's standard reports, or employee performance expectations or evaluations. Statute and rule provided for RFMIs and review extensions for SDF, shoreland, and MIE applications and extension of the RFMI response time limit for SDF applications. Absent adequate performance reporting and timeliness standards more rigorous than statute and rule, the risk of prolonged reviews through issuing RFMIs and initiating review extensions in order to ensure compliance was increased. The 75- and 105-day review time limits for SDF applications could become 165 and 195 days when the 60-day time limit for replying to an RFMI and the 30-day time limit for making a final decision on an application following receipt of an RFMI response were included. Similarly, shoreland 30-day review time limits could become 120 days when RMFI and response time limits were included. These lengthened time limits did not include any extensions that might have been used, and which lacked any formal limits, or other ad hoc deviations that might have occurred.

Our permit application file review also demonstrated the effect of the Bureau's use of outstanding files reports, and indicated timeliness issues not only affected compliance, but also efficiency. As shown in Table 13, most decisions were made within 14 days of, or past, statutory or rule-based deadlines.

Aspirational Goals

Analysis of SDF and shoreland applications demonstrated the Bureau inconsistently met aspirational goals. SDF applications would have exceeded the 60-day aspirational goal for processing before they met the threshold for prioritization on the Outstanding Files Report and were color-coded green. Shoreland applications would have consumed 64.0 percent of the 25-day aspirational goal for processing before meeting the threshold for prioritization. Based on aspirational goals, most SDF applications were not reviewed timely, and timeliness of shoreland applications was mixed, as shown in Table 14. MIE applications were excluded from this analysis, since no corresponding aspirational benchmark was reportedly established. We also could not conduct analysis on Bureau decisions following receipt of RFMI responses, since the Bureau had no aspirational goals for this step of the review process.

Table 13

**Timeliness Of Application Processing, Based On Permit Application File Review¹,
SFYs 2016–2017**

Application Processing	Number Of Applications		Number Of Department Decisions
	Without An RFMI (Percent Of Total)	With An RFMI (Percent Of Total)	Following An RFMI Response ² (Percent Of Applications With An RFMI)
White Up To 15 Days Before Time Limit	6 (18.8%)	20 (39.2%)	10 (40.0%)
Green Within 14–Eight Days Of Time Limit	7 (21.9%)	10 (19.6%)	7 (28.0%)
Yellow Within Seven Days Of Time Limit	14 (43.8%)	19 (37.3%)	8 (32.0%)
Red After Time Limit	5 (15.6%)	3 (5.9%)	0 (0.0%)
Totals³	32	51	25

Notes:

- The color scheme in the table was based on application processing timeliness benchmarks from Bureau outstanding files reports shown in Table 6. White, green, and yellow indicated statutory compliance, while red indicated noncompliance. The processing of individual permit applications may or may not have been statutorily compliant. Gray indicates compliance standards were inapplicable.
- Twelve of the 85 applications (14.1 percent) were excluded from this category: four MIE applications (4.7 percent) because there were no time limits in statute or rule requiring the Bureau to render a decision following receipt of an RFMI response within a specified time limit, and eight applications (9.4 percent) with decision deadline extensions.
- Two of the 85 applications (2.4 percent) were excluded from the table: one shoreland application without an RFMI that had its final decision delayed by an appeal and one major SDF after-the-fact application with an RFMI for which statute waived time limits.

Source: LBA analysis of selected permit application files.

Table 14

**Timeliness Of Application Processing Compared To Wetlands Bureau Aspirational Goals,
Based On Permit Application File Review, SFYs 2016–2017**

Application Type	Aspirational Goal	Number of Applications Without An RFMI ¹			Number Of Applications With An RFMI		
		Total Type	Processed Timely (Percent Of Type)	Processed Untimely ² (Percent Of Type)	Total Type	Processed Timely (Percent Of Type)	Processed Untimely ² (Percent Of Type)
SDF	60 days	18	6 (33.3%)	12 (66.7%)	39 ¹	17 (43.6%)	22 (56.4%)
Shoreland	25 days	9	5 (55.6%)	4 (44.4%)	6	3 (50.0%)	3 (50.0%)
Totals		27	11 (40.7%)	16 (59.3%)	45	20 (44.4%)	25 (55.6%)

Notes:

1. Excluded one after-the-fact major SDF application with an RFMI for which statute waived time limits.
2. Red indicated noncompliance with aspirational goals. The processing of individual permit applications may or may not have met aspirational goals.

Source: LBA analysis of selected SDF and shoreland applications.

Recommendations:

We suggest the Legislature consider amending statute to establish an overall time limit to the permitting process and obligating the Department to develop time limits for interim steps within the process via its existing rule making authority.

We recommend Department management:

- fully structure the review process in rule, detailing all steps and substeps with applicable time limits for each;
- establish strategic objectives, goals, and performance targets for timely permit applications processing;
- formalize operational performance goals and targets for timely permit application processing;
- build a database, or restructure the existing database, to collect data to enable comprehensive performance measurement, and achieve data quality;
- develop, implement, and refine reports demonstrating organizational and individual employee performance in terms of each timeliness requirement and overall timeliness;

- **develop, implement, and refine policies on managerial oversight of employee performance regarding each timeliness requirement;**
- **develop, implement, and refine policies and aspirational performance targets to achieve more timely reviews of applications, migrating away from meeting minimum timeliness requirements; and**
- **ensure employee compliance with timeliness requirements from statute, rules, and policy.**

Department Response:

We concur with the recommendations.

We are evaluating how to address them within the constraints of available staff and other resources. Compliance with timeliness of permitting is a high priority for the Department.

Additional Department and LBA comments on Observation No. 22 appear in Appendix B.

Unique DOT Permit Application Review Procedures

Wetlands contained few statutory provisions specific to permit applications submitted by the DOT. Statute provided a:

- rebuttable presumption of public need for proposed DOT projects,
- rebuttable presumption that appropriate engineering judgment was applied by the DOT to proposed projects' designs, and
- maximum permit application fee of \$10,000.

Otherwise, DOT permit applications were subject to the same standards and requirements as all other permit applications.

However, a deficient control system over DOT permit application review contributed to inconsistent permitting outcomes. The Department's control system: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 36 observations in our current report; and 2) was at a **repeatable** level of maturity.

Observation No. 23

Revise Department Of Transportation Permit Application Review Practices

The Department preferentially treated DOT applications, creating long-standing noncompliance with statute and rule. The Bureau processed DOT permit applications without consistently complying with statutory time limits, allowed the DOT to reprioritize applications, and held DOT applications for extended periods without taking final action, practices which were not afforded to non-DOT applicants. While the Department's relationship with the DOT was generally formalized in a memorandum of agreement (MOA), the MOA did not establish review

timelines beyond those provided by statute. Meanwhile, Department employees acknowledged DOT projects were not held to statutory time limits, and analysis of unaudited Bureau permitting data and information from our permit application file review demonstrated DOT applications were inconsistently processed according to statutory time limits.

MOA And Practice Circumvented Statute

The CY 2012 MOA between the DOT and the Department reportedly formalized longstanding practices and was primarily created to fund an additional Bureau position dedicated to DOT applications, with emphasis on projects associated with Interstate 93. The agreement specified responsibilities for the position, such as regular meetings with the DOT and reviewing non-Interstate 93 projects, and intended to ensure timely review of DOT applications by the Department but with no explanation of how the Bureau would improve timeliness. Timeliness was apparently addressed by an oral agreement pre-dating CY 2013. Department employees reported DOT projects were exempt from statutory time limits, the DOT could impose review timelines on the Bureau, and the DOT was allowed to reprioritize projects based on funding and other needs. A CY 2016 Lean event involving the DOT and the Department established review timeliness goals for the Bureau to send an RFMI for wetlands projects within 52 days of application receipt and to render a final decision after receiving a response to an RFMI within 89 days of application receipt. These timelines allowed for more timely processing than time limits provided by statute, and no other applicant enjoyed such a formalized agreement to expediently process applications. The combination of exemption from statutory time limits, allowance for project reprioritization, and provision of review timelines faster than what was stated in statute, created equity issues with how the Bureau treated the DOT when compared to other applicants who were not afforded such privileges.

Untimely Permit Application Processing

Employees long acknowledged—and our permit application file review and unaudited Bureau permitting data demonstrated—the Bureau inconsistently processed DOT permit applications timely. One manager asserted the MOA allowed the Department to process DOT permit applications without complying with statutory time limits. However, we found no time limit exemption in *Wetlands* or *Shoreland* for DOT permit applications, and while the MOA stated both the Department and DOT desired more timely application processing, no new timelines for review were provided.

Inconsistency Demonstrated By Bureau Permitting Data

Unaudited Bureau permitting data indicated a final decision had been made on 110 DOT permit applications: 109 SDF, MIE, and shoreland applications were approved, and one SDF application was denied. Among the 110 permit applications, 90 (82.6 percent) did not have an RFMI, and 20 (18.3 percent) did have an RFMI, of which 16 (80.0 percent) also had DOT responses, as shown in Table 15. The Bureau's timeliness in processing DOT applications was inconsistent, as shown in Table 16.

Table 15

**Number Of Approved And Denied Department Of Transportation Permit Applications
Listed In Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017**

Application Type	Total Type (Percent Of Total)	Without An RFMI Letter Date (Percent Of Type)	With An RFMI Letter Date (Percent Of Type)	With An RFMI Response Receipt Date (Percent Of RFMI Letter Date)	Approved (Percent Of Type)	Denied (Percent Of Type)
SDF-Major one acre or more of impact	5 (4.5%)	3 (60.0%)	2 (40.0%)	1 (50.0%)	5 (100.0%)	0 (0.0%)
SDF-Major less than one acre of impact	70 (63.6%)	55 (78.6%)	15 (21.4%)	13 (86.7%)	69 (98.6%)	1 (1.4%)
SDF-Minor	12 (10.9%)	11 (91.7%)	1 (8.3%)	0 (0.0%)	12 (100.0%)	0 (0.0%)
SDF-Minimum	6 (5.5%)	5 (83.3%)	1 (16.7%)	1 (100.0%)	6 (100.0%)	0 (0.0%)
Shoreland	13 (11.8%)	13 (100.0%)	0 (0.0%)	0 (n/a)	13 (100.0%)	0 (0.0%)
MIE	4 (3.6%)	3 (75.0%)	1 (25.0%)	1 (100.0%)	4 (100.0%)	0 (0.0%)
Totals	110 (100.0%)	90 (81.8%)	20 (18.2%)	16 (80.0%)	109 (99.1%)	1 (0.9%)

Note: Among 7,174 total applications and notices listed in unaudited Bureau permitting data, 110 SDF, MIE, and shoreland DOT applications (1.5 percent) were approved or denied.

Source: LBA analysis of unaudited Bureau permitting data.

The timeliness of DOT permit applications with RFMIs was also inconsistent. Twenty DOT permit applications had RFMIs and:

- two major SDF applications with one acre or more of jurisdictional impact (10.0 percent) had an RFMI sent within an average of 118.5 days of receipt, consuming 112.9 percent of the 105-day statutory time limit;
- 15 major SDF applications with less than one acre of jurisdictional impact (75.0 percent) had an RFMI sent within an average of 82.9 days of receipt, consuming 110.5 percent of the 75-day statutory time limit;
- one minor SDF application (5.0 percent) had an RFMI sent 122 days after receipt, consuming 162.7 percent of the 75-day statutory time limit;
- one minimum SDF application (5.0 percent) had an RFMI sent 63 days after receipt, consuming 84.0 percent of the 75-day statutory time limit; and

- one MIE application (5.0 percent) had an RFMI sent 34 days after receipt, consuming 113.3 percent of the 30-day regulatory time limit.

Table 16

**Timeliness Of Department Of Transportation Application Processing
Without A Request For More Information,
Based On Unaudited Wetlands Bureau Permitting Data, SFYs 2016–2017**

Application Type	Processing Time Limit	Average Time Between Receipt And Sign-off Dates^{1, 2, 3} (Percent Of Time Limit)
SDF-Major one acre or more of impact	105 days	94.8 days (90.3%)
SDF-Major less than one acre of impact		90.1 days (120.1%)
SDF-Minor	75 days	67.8 days (90.4%)
SDF-Minimum		66.1 days (88.1%)
Shoreland	30 days	28.2 days (94.0%)
MIE		31.7 days (105.7%)

Notes:

1. Limited to DOT permit applications with a final Department decision.
2. Though SDF applications included ARC review prior to technical review, Bureau permitting data did not accurately capture the ARC completion date. As a result, receipt date was used to evaluate timeliness for SDF applications.
3. The color scheme is based on application processing timeliness benchmarks from Bureau outstanding files reports shown in Table 6. White, green, and yellow indicates statutory compliance, while red indicates noncompliance. The processing of individual permit applications may or may not have been statutorily compliant.

Source: LBA analysis of statute, rules, and unaudited Bureau permitting data.

Sixteen of 20 applications (80.0 percent) had an RFMI response and:

- one major SDF application with one acre or more of jurisdictional impact (6.3 percent) had a decision rendered 52 days after RFMI response receipt, consuming 173.3 percent of the 30-day statutory time limit;

- 13 major SDF applications with less than one acre of jurisdictional impact (81.3 percent) had a decision rendered 34.9 days after RFMI response receipt, consuming 116.3 percent of the 30-day statutory time limit;
- one minimum SDF application (6.3 percent) had a decision rendered 12 days after RFMI response receipt, consuming 40.0 percent of the 30-day statutory time limit; and
- one MIE application (6.3 percent) had a decision rendered 15 days after RFMI response receipt, though no timeliness standard applied due to lack of related requirements in statute or rule.

Bureau Reports

The Bureau's Outstanding Files Reports from July 2016 to April 2018 also showed DOT applications were overdue, with no reason given for delay, or were excluded altogether. One report contained applications between 65 days and more than 10 years past the statutory time limit. We found similar instances in other reports. Depending on the review stage, overdue applications could have been eligible for deemed approval. We question the usefulness of Outstanding Files Reports, and management's ability to oversee permitting, if projects were shown as past statutory time limit without an explanation.

Untimeliness Demonstrated By Permit Application File Review

Results from our permit application file review similarly showed the timeliness of DOT applications processing was inconsistent. Our permit application file review of 86 applications included four DOT applications (4.7 percent), all SDF major projects with less than one acre of jurisdictional impact. Three were processed untimely (75.0 percent), while one was processed timely (25.0 percent). The untimely reviews, all involving applications without RFMIs, went between 11 and 48 days past the 75-day statutory time limit.

Recommendations:

We recommend Department management comply with State law and ensure DOT applications are processed according to statutory time limits. Should the Department determine compliance with law is impracticable, we suggest the Department seek legislative changes to accommodate its practices.

Department Response:

We concur with the recommendations.

The Department has initiated discussions with legislators to seek legislative changes this session to address audit findings relative to DOT application processing.

Administrative Appeals Of Department Permitting Decisions

The Council was statutorily responsible for hearing administrative appeals of Department decisions made under *Wetlands* or *Shoreland*. Appellants and other participants were offered the opportunity to meet and resolve issues without the need for a formal hearing. If an appeal did proceed to a formal hearing, the Council would determine whether the Department decision being appealed was unlawful or unreasonable. Any decisions it found to be unlawful or unreasonable should have been remanded back to the Department. Unlawful decisions were contrary to laws and rules, while unreasonable decisions were arbitrary and capricious.

There were no apparent requirements on the overall length of time before a final decision needed to be issued on an appeal. However, some individual steps did have time limits. The Bureau Administrator was responsible for coordinating responses to cases appealed to the Council, on behalf of the Department.

From CY 2015 through CY 2017, the Council processed 33 administrative appeals stemming from a Department permitting decision, of which:

- ten (30.3 percent) were not filed timely, incomplete, not accepted, or otherwise dismissed;
- 11 (33.3 percent) were either withdrawn by the appellant or settled; and
- seven (21.2 percent) received a final decision from the Council, either denial or remand to the Department.

Despite the importance of appeals, deficient Council control systems over the timeliness of appeals processes potentially compromised due process and the public's right to know and contributed to inconsistent permitting outcomes. Council control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 32 observations in our current report; and 2) were at an **initial** level of maturity. A related and absent Department control system was at an **initial** level of maturity.

Observation No. 24

Improve Wetlands Council Appeals Timeliness And Adherence To Statutory Requirements

Inadequate *Wetlands Council* rules (Council rules) and their inconsistent application inhibited the timely resolution of appeals, created an opportunity for due process rights to be compromised, and may have increased costs. Additionally, the sufficiency and availability of Council information for appellants, other parties to appeals, and the public was limited in certain instances. The Council had not established any standards or goals related to the timely processing of appeals, and administrative rules did not provide an overall time limit for the appeals process. Furthermore, the Council did not track compliance with timeliness requirements associated with individual steps within the appeals process.

Inconsistent Timeliness Of Appeals Processes

Although individual steps within the Council appeals process had time limits in statute or rules, overall, the appeals process had no governing time limit. We reviewed nine of 20 available appeal dockets (dockets), where the appeal was related to a wetlands or shoreland permitting decision (appeals docket review). We found the nine appeals took more than 13 months to resolve on average, ranging from less than eight months to nearly 22 months. The Council was required to adopt rules on practice and procedure, including rules governing appeals hearings. However, Council rules inconsistently addressed, inconsistently applied, or misinterpreted certain appeals proceeding requirements, as we discuss in Observation No. 57.

Inadequate Controls Over Appeals Notice Filings

Inconsistent Documentation Of, And Response To, Preliminary Notice Of Appeal (PNAs)

Sufficient information on the outcome of PNAs was not always available, and in at least one instance, an untimely Department response contributed to a delay in resolution. As an alternative to filing an appeal and entering full appeal proceedings, a person aggrieved by a Department permitting decision could, within 30 days of the decision date, file a PNA with the Council and offer to enter into settlement discussions with the Department and, if applicable, the permit holder. Within seven days of the appellant filing a PNA and serving the PNA on the Commissioner and permit holder, the Department and permit holder were required to notify the appellant in writing whether they accepted the offer. Our appeals docket review identified two dockets (22.2 percent) containing a PNA, of which: one contained no information as to whether the appellant had been notified of a decision to enter into settlement discussions, while the second indicated that the permit applicant provided timely notice, but the Department's notice was nearly two weeks late.

Inconsistent Processing Of Notices Of Appeal

The Council inconsistently followed statutory timelines for filing notices of appeal. Council rules provided that, *except where a time period was fixed by statute*, the Council could, on its own initiative or by motion of any party and with notice to all affected parties, extend or shorten the time provided for the filing of any document. Statute specified that appellants filing a PNA had 45 days after filing the PNA to file a complete notice of appeal. Appellants not filing a PNA were required to file a notice of appeal within 30 days of the Department's decision date. Our appeals docket review identified nine dockets containing 11 notices of appeal, of which two (18.2 percent) had not apparently been filed timely, although the Council accepted both.

- One notice of appeal was apparently filed 49 days after a PNA had been filed. The Council's letter of receipt contained no indication the appeal was untimely filed, although Council minutes specified a different receipt date than the docket.
- One notice of appeal was filed 32 days after the Department's decision date. The Council's letter of receipt questioned the timeliness of the appeal and found it was

timely based on the date of the Department's cover letter but not based on the date of the permitting decision itself.

Inaccurate Guidance On Notice Of Appeal Filing Time Limits

Department guidance on appeals was inaccurate, and Council rules were unclear.

- Department guidance indicated an appeal had to be filed on or before the last business day of the statutory 30-day window, if the 30th day fell on a weekend or a holiday, effectively shortening the statutory time limit. This contradicted statute, which specified when the end of a statutory time limit fell on a weekend or holiday, the time limit was to be extended to the next business day, not shortened.
- Department guidance also indicated an appeal must be filed within 30 days of the date that appeared on the front of the document containing the decision being appealed. This was not provided for in Council rules and was potentially misleading. As noted above, at least one appellant apparently filed a notice of appeal based on the date of the cover letter to the Department's permitting decision, not the decision date.
- Council rules provided that filed notices of appeal were not complete until all specified items were provided. An appellant had 30 days to file revisions, correcting deficiencies identified with the originally-submitted notice of appeal. However, Council rules did not clearly define when the 30-day time limit began.

Inadequate Controls Over Accepting Appeals

Inconsistent Timeliness Of Appeals Considerations

The Council inconsistently followed its own rules on time limits related to considering whether to accept notices of appeal for a full hearing. Council rules required it consider notices of appeal at its first regularly-scheduled meeting that occurred at least 30 days after the receipt of a complete notice of appeal, and provided the Council could either dismiss an appeal or commence an appeal proceeding. Our appeals docket review identified nine dockets containing 11 notices of appeal considered by the Council, of which three (27.3 percent) did not meet requirements: two were heard at the Council's *second* regularly-scheduled meeting 30 days after the receipt of a complete notice, while the third was heard at a Council meeting *prior* to the notice being deemed complete.

The Council misinterpreted statutory requirements specifying meeting frequency, and the Council's chair expressed reluctance to schedule meetings to address one item, such as a petition for appeal, due to the costs of convening a meeting. This misinterpretation appears to have affected the timeliness of the appeals process. On average, the Council considered notices of appeal at meetings held 58 days after receipt of a complete appeal—as many as 28 days after the earliest possible date to do so.

There was no indication relevant Council rules had been waived, unnecessarily lengthening the appeals process in some cases. In an appeal related to an enforcement action omitted from our appeals docket review, we noted the Council using the process to waive rules on appeals process time limits. However, the process appeared to be used incorrectly, as the Council did not provide notice to affected parties prior to making its decision to waive the rules.

Inconsistent Processing Of Untimely Or Incomplete Appeals

The Council inconsistently followed its own rules when considering untimely or incomplete notices of appeal. A Council ruling from April 2017 noted,

When an appeal is filed that is of questionable timeliness or standing, the Council does not send an insufficient appeal letter until the issue is resolved; this is to avoid unnecessary time and expense by the appellant revising an unacceptable appeal.

Council rules outlined processes to follow if notices of appeal were timely filed and appeared to comply with the remaining filing requirements, untimely filed, or timely filed but did not comply with remaining filing requirements. Among the 11 notices of appeal identified in our appeals docket review, five (45.5 percent) were incomplete upon initial filing, of which two (40.0 percent) were also reportedly of uncertain timeliness.

- For one notice of appeal, the Council sent a letter of receipt questioning the filing's timeliness and indicating the notice of appeal was incomplete, but not that there was a question of standing. The appellant was asked to correct deficiencies with the notice of appeal and re-submit it, even though timeliness of the original filing was in question. The appeal was accepted three months after the original notice of appeal had been filed, but the Council later held a hearing on standing and ultimately decided the appellant did not have standing, just over one year after the original filing.
- For one notice of appeal, the Council sent a letter of receipt neither questioning timeliness nor noting that the notice of appeal was incomplete. The Council initially rejected the appeal, as the notice of appeal was thought to be untimely, but the Council later rescinded this decision and directed the appellant to address deficiencies with the notice of appeal, almost five months after the original notice of appeal had been filed with the Council. The Council ultimately accepted the appeal seven months after the original filing.

Inadequate Controls Over Prehearing Conference Notices

The Council inconsistently adhered to time limits in rules related to providing notice of prehearing conferences. If the Council decided to commence an appeal proceeding, the appeals clerk had to send written notice the Council would schedule a prehearing conference no sooner than 20 days of the notice date. Our appeals docket review identified nine dockets containing notices of 12 prehearing conferences, of which three notices (25.0 percent) were noncompliant with regulatory requirements, as the Council provided less than 20 days' notice to parties to the appeals, without any indication relevant Council rules had been waived.

Inconsistent Compliance With Appeals Hearings Requirements

The Council inconsistently adhered to appeals hearing time limits in its own rules and did not adhere to statutory requirements related to providing notice of appeals hearings. Consequently, parties who should have received notice of appeals proceedings received no or inadequate information.

Inconsistent Notice Of Hearings

The Council inconsistently provided notice of appeals hearings. The Council was to hold a hearing for each accepted appeal. Any party could request that a hearing be continued for reasonable cause. The Council was required to provide at least ten days' notice of a rescheduled hearing. Our appeals docket review identified three dockets (33.3 percent) containing four requests for a continuance, of which three requests (75.0 percent) were followed by Council notice of the rescheduled hearing date, while one request (25.0 percent) was not.

Notices of appeals hearings were required to include various information, including the time and place; nature; legal authority for the hearing; the statutes, rules, and issues involved; and that each party had the right to have an attorney present. Our appeals docket review identified nine dockets containing 14 hearing dates, of which nine hearings (64.3 percent) were not apparently preceded by Council notice, while five (35.7 percent) were. The five notices sent by the Council did not appear to include information on the legal authority under which the hearing was to be held, the sections of statutes and rules involved, the issues involved, or the right to have an attorney present. Furthermore, one of the five notices (20.0 percent) did not include information on the date, time, or place of the hearing, while a second (20.0 percent) did not include information on the place or time of the hearing.

The Council was also required to send notice of appeals hearings related to permit applications submitted under *Wetlands* to all persons entitled to permitting notice under *Wetlands*, including: 1) the applicant; 2) property owner, if different from the applicant; 3) the local governing body; and 4) all known abutting landowners. Our appeals docket review identified four dockets (44.4 percent) containing eight hearing dates, of which four (50.0 percent) were not apparently preceded by Council notice, while four (50.0 percent) were preceded by Council notice, but not to all statutorily-required entities.

Inconsistent Timeliness Of Issued Decisions

The Council inconsistently adhered to statutory time limits related to reviewing and issuing decisions on appeals, potentially affecting due process and the timely resolution of the appeals process. The hearing officer was required to provide the Council with a proposed written decision on the merits of an appeal within 45 days of the conclusion of a hearing and to issue written decisions within 90 days. Council rules had not been updated to reflect the roles and responsibilities of the hearing officer and failed to establish the administrative support necessary for the Council to comply with statutory requirements, as we discuss in Observation No. 60. Our appeals docket review identified five dockets (55.6 percent) containing Council hearings to review five appeals, but none contained clear documentation of when the Council received any

of the five proposed written decisions from the hearing officer. Additionally, the Council took an average of 94 days to issue final, written decisions, and three of the five decisions (60.0 percent) were not issued timely, exceeding the 90-day time limit established in statute by nearly one-and-a-half months.

Inadequate Content Of Issued Decisions

The Council was required to specify the factual and legal basis for its determinations, as well as identify the evidence in the record used to support the Council's decisions. Findings of fact and conclusions of law were to be separately stated, and the Council was to rule on each proposed findings of fact. However, Council rules only specified that the Council was to issue a written decision for each appeal, as well as identify reasons for its decision if it found the Department's decision to be unlawful or unreasonable. Our appeals docket review identified five dockets (55.6 percent) containing a written decision, of which: one (20.0 percent) appeared to contain insufficient information to address statutory requirements, while four (80.0 percent) did not appear to be organized as statutorily required with findings of fact and conclusions of law separately stated. Additionally, the Council inconsistently issued written decisions for appeals remanded back to the Department. Our appeals docket review identified two dockets (22.2 percent) containing remands, of which one contained a written decision and one did not.

No Controls Over Remands To The Department

Council rules did not clarify the remand process, lacking any time limits on Department responses or requirements to notify the Council of final Department action, as we discuss in Observation No. 25. Consequently, remands could take an extended or indefinite period of time for the Department to address. Our appeals docket review identified two dockets (22.2 percent) containing remands, of which: one contained documentation on when the Department resolved the remanded matter, indicating the Department took 174 days to process the remand, while the second contained no documentation on when, or even if, the Department resolved the remanded matter.

Untimely Reconsideration Of Appeals

The Council did not timely respond to requests for reconsideration of decisions on appeals, as its rules inaccurately reflected statutory time limits. Council decisions could be reconsidered and then appealed to the State Supreme Court. Decisions on a motion for reconsideration were to be made within ten days, but rules provided decisions to grant or deny a motion would happen no later than the first regularly-scheduled meeting occurring at least ten days after receipt of a motion and any related objections. Our appeals docket review identified two dockets (22.2 percent) containing requests for reconsideration. The Council responded timely to neither of the requests, with decisions taking an average of 70 days, exceeding the 10-day statutory time limit by two months and impeding timely resolution.

Inadequate Information On Appeals Withdrawals

Dockets inconsistently contained sufficient information on withdrawn appeals. An appellant could withdraw an appeal at any time before a final Council decision. Council rules contained insufficient information on requirements related to withdrawing an appeal. Our appeals docket review identified three dockets (33.3 percent) where the appeal was withdrawn before the Council's final decision, of which two (66.7 percent) contained clear documentation of the appeal's withdrawal, while the third (33.3 percent) contained no documentation.

Inconsistency In Final Resolution of Appeals

Sufficient information on appeals decisions was not always available, and the Council did not adhere to statutory requirements related to issuing decisions. Our appeals docket review identified two dockets (22.2 percent) where final resolution of the appeal was unclear. The Council's annual reports provided high-level information regarding appeals decisions, but lacked detailed information about final decisions, such as for remanded appeals. Council rules contained insufficient information or requirements related to providing a status report, a potential mechanism for the Council to understand how permits were modified by the Department once remanded, for example, or the result of settlement agreements.

Furthermore, the dockets contained no indication that orders and decisions issued by the hearing officer had been adopted by the Council itself. The *Act* required that final decisions or orders adverse to a party should be in writing or stated on the record. Council rules defined the record of an appeal proceeding as including all orders and notices issued by the Council, minutes of the hearings, all rulings, and any decision. Rules also required the Council to issue a written decision for each appeal. However, the Council almost always made decisions through votes at regular Council meetings, rather than through written decisions, and these votes were not included in the dockets.

Recommendations:

We recommend the Council:

- **adhere to statutory and regulatory requirements related to the appeals process;**
- **clarify and ensure rules accurately reflect statutory time limits related to the appeals process;**
- **set an overall time limit to guide the appeals process relative to aspects of the process under the Council's control, so the Council is able to proactively manage resolution of appeals;**
- **ensure notices of Council and hearing officer actions are issued to appropriate parties and included in the docket;**
- **timely review and issue decisions related to appeals;**
- **work with the Department to simplify and correct the Department's guidance documents related to the appeals process, to ensure documents accurately reflect statutory and regulatory requirements; and**

- **collect programmatic performance data on appeals, including information on statutory and regulatory timeframes, as well as final resolution of the appeal in cases of withdrawn, settled, or remanded cases, and monitor and analyze data to ensure compliance with requirements.**

We recommend Department management:

- **timely act on appeals;**
- **work with the Council to simplify and correct the Department’s guidance documents related to the appeals process, to ensure documents accurately reflect statutory and regulatory requirements; and**
- **provide clerical and technical support necessary to remediate deficiencies with administrative rules and collect, monitor, and analyze programmatic performance data.**

Council Response:

We do not concur with the recommendations.

The observation misconstrues the dispute process the Council must follow to provide reasonable due process and the realities of civil litigation.

The observation assigns to the Council delays caused by the parties scheduling, filing motions and objections, and doesn’t account for the required waiting times during this process. This renders much of the analysis inaccurate. In most appeals the filings must be read to determine the actual events and timeliness that vary depending on the particular facts of each case.

The observation does not reference specific appeals, therefore the Council cannot respond to the observation’s individual determinations.

LBA Rejoinder:

The Council’s response indicates the Council will not be operationalizing holistically its statutory oversight obligations. The observation makes recommendations for the Council to implement adequate controls over a core function to ensure it understands how it performs, identify areas for improvement, ensure statutory and regulatory compliance, and ensure transparency and public accountability, and does not assert any given case limit due process.

The Council’s response does not address any of the observation’s recommendations or the lack of an adequate control system to understand the timeliness of appeals and whether or not certain steps within the appeals process complied with statutory requirements.

The Council lacked objective analyses of the performance of its appeals process. Without an adequate system in place to understand and monitor timeliness, the Council risked statutory noncompliance and infringement upon due process. The sample of appeals we

reviewed indicated the Council's control system was inadequate, and the Council's disagreement with our analytical methods does not change the fact that it lacked an adequate control system. The Council lacked any alternative approach to our recommendations related to timeliness and other statutory appeals-related requirements.

The Council's response conflates its obligation to hear and decide on appeals of Department decisions using administrative procedure and law with civil procedure and law. The Council's response misconstrues our presentation of the appeals process, in which we articulate discrete steps in the appeals process; note statutory and regulatory requirements associated with each step, including applicable time limits; and provide information on how a sample of Council appeals compared to statutory and regulatory requirements. Given the absence of relevant Council information and analyses on its appeals processes, we conducted an analysis to assess timeliness and other aspects of compliance with statutory and regulatory requirements.

- We reviewed not only dockets, but also relevant statutes and the Council's rules. All statutory and regulatory requirements related to compliance and timeliness we identified were accounted for in the analysis.
- Our analysis accounts for, and focuses on, required statutory and regulatory timelines controlled by either the Council or the Department. It does not present information on the time associated with actions controlled primarily by other parties, such as scheduling prehearing conferences or appeals hearings. We do not attribute the length of time these actions took to the Council or "assign" delays to the Council when these steps add time to the appeals process.

We repeatedly offered to meet with the Council to discuss specific concerns with observations and the audit generally. The Council made no request for docket numbers included in our appeals docket review and repeatedly indicated there was no need to meet with the audit team.

Department Response:

We concur with the recommendations.

The Department agrees to work with the Council to simplify and create guidance documents related to the appeals process to ensure the documents reflect the statutory and regulatory requirements and timeframes associated with the appeals process and to act timely on appeals. The Department acknowledges and believes that the necessary technical and clerical support is available upon request to help remediate the Council deficiencies as noted in this, and several other, observations.

Remands

Wetlands provided the Council could either:

- affirm an appealed Department decision related to wetlands, or
- remand the decision to the Department with a determination that the decision was unlawful or unreasonable.

The Department could then either:

- accept the Council's determination and reissue a conforming decision or order, or
- request reconsideration from the Council.

Failing at reconsideration, the Department could appeal the Council's decision to the State Supreme Court.

Shoreland did not specify that shoreland-related appeals could result in remands back to the Department, but the Council remanded shoreland-related appeals. From CY 2015 through CY 2017, the Council remanded two Department permitting decisions back to the Department.

However, the absence of Council and Department control systems over remands contributed to potential compromised due process and inconsistent permitting outcomes. Absent Council and Department control systems: 1) contributed to 34 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 25

Improve Management Of Wetlands Council Remands To The Department

Although they occurred infrequently, Council remands were not tracked to ensure action was taken in a timely manner, because rules were inadequate and processes were absent. Council rules should have provided sufficient detail about proceedings to ensure clarity, but did not clarify the remand process sufficiently, and consequently, the Council did not receive adequate information to know whether, when, or how the Department resolved remands.

Absent Council Controls

The Council was required to adopt rules on practice and procedure, including rules governing appeals hearings and remands. However, as we discuss in Observation No. 57, Council rules provided insufficient detail about certain proceedings. While statute contained no guidelines as to how long a remand should take to resolve or what information should be provided back to the Council following resolution of a remand, Council rules did not clarify the remand process. While Council rules allowed for remands in cases where the Council found in favor of the appellant, rules provided no additional guidance to the Department as to a timeframe for addressing remands or providing notification back to the Council that the remand had been addressed and indicating the final resolution.

Consequently, remands could take an extended period of time for the Department to address. Also, remands could remain unresolved, without the Council's knowledge, as the Council appeared to receive limited information regarding remands. In CY 2018, we surveyed 16 members either then-serving or who served during SFYs 2016 or 2017 (Council survey), of whom 11 (68.8 percent) responded. When asked about appeals remanded back to the Department, the majority of responding Council members reported being *unsure* whether the Department acted:

- effectively (seven members, or 63.6 percent) or
- timely (eight members, or 72.7 percent).

The complete results of our Council survey are included in Appendix D.

As we discuss in Observation No. 8, the Council appeared to rely primarily on Department employees to present information on Bureau policies, programs, goals, and operations, rather than formally structuring this relationship with the Department, and appeared to defer opportunities to conduct a comprehensive review of its rules to the Department. An unstructured approach to its oversight responsibilities appeared to negatively affect the Council's ability to obtain timely and relevant information, including resolution of remands. Consequently, the Department did not always appear to inform the Council as to whether it responded to a remand, whether it responded timely, or whether it responded consistently with the remand.

As we discuss in Observation No. 55, the Council inconsistently complied with external reporting requirements, and reports that were developed lacked detailed information. Although annual Council reports included copies of the Council's appeals docket, no information was reported on the status of remands.

Absent Department Controls

The Department lacked policies or procedures on how to handle Council remands, purportedly due to their infrequent occurrence. Instead, the Department reportedly handled remands on a case-by-case basis in consultation with the Department of Justice. However, it was not clear from the documented record that the Department resolved remands as provided for in statute. During CYs 2015, 2016, and 2017, the Council remanded two Department permitting decisions back to the Department following an appeal.

- One appeal docket contained documentation: 1) on when the Department resolved the remanded matter and 2) that the Department had issued a revised permit after the appellant and the permit holder entered into a settlement agreement, but without explaining how the initial permit's conditions were modified. There was no Department transmittal to the Council on its resolution of the remand—relevant documentation was filed with the Council by the appellant more than one month after the Department resolved the remand, even though appellants were not obligated to provide the Council information closing out remands. The Department took 174 days, or half the total length of the appeals process for this appeal, to process the remand. The revised permit neither referenced the settlement agreement between the appellant

and the permit holder nor included their proposed permit conditions. Consequently, the permit holder could have violated the settlement agreement, which was the basis for obtaining a re-issued permit, but the permit would have still been valid.

- The second appeal docket contained no documentation on when, or even if, the Department resolved the remanded matter or requested reconsideration, and the Bureau could not locate the application file for the remanded permit.

In responding to our Council survey, one Council member (9.1 percent) reported the Council “never [heard] the resulting consequence” of a remand, and two members (18.2 percent) indicated a process to follow-up on appeals remanded to the Department was needed. One member (9.1 percent) indicated the failure to clearly require the Department to act upon remands timely and exactly “[undermined] the entire Council mission of being an oversight board.” As we discuss in Observation No. 8, the relationship between the Council and the Department neither reflected statutory expectations, nor was structured to fulfill statutory requirements. Furthermore, as we discuss in Observation No. 52, the Department was required to maintain adequate and proper documentation of decisions “designed to furnish information to protect the legal and financial rights of... persons directly affected” by the Department’s activities.

Insufficient Clarity Of Shoreland Remands

Shoreland did not specify that shoreland-related appeals could result in remands back to the Department. However, Council rules appeared to broadly allow for remands related to both appeals of wetlands and shoreland permit applications and administrative orders. The difference between statutory and regulatory language had the potential to create confusion, but the Council apparently did not seek clarification.

Recommendations:

We recommend the Council fulfill its oversight responsibilities and:

- **seek legislative clarification as to whether shoreland-related appeals should be subjected to a remand process;**
- **adopt rules structuring the process to remand decisions to the Department, including timeframes for the Department to resolve remands and provide confirmation of resolution back to the Council;**
- **obtain timely information from the Department on the status of remanded matters; and**
- **include information on the status of remanded matters in formal reports to stakeholders.**

We recommend Department management:

- **develop, refine, and implement comprehensive policy and procedures to timely resolve remands; and**
- **timely resolve remands consistent with State law and Council rules.**

Council Response:

We do not concur with the recommendations.

The Department “may” accept the Council determination or the Department “may” appeal to the New Hampshire Supreme Court. There is no “shall either.” The Department is not required to implement Council decisions.

To remand is “sending something (such as a case, claim, or person) back for further action” (Black’s 9th ed.).

The Council is not given statutory authority to set timelines, review Department actions during or following remand, issue or deny permits, or retract administrative orders. The Council believes expanded authority may be necessary to provide reasonable due process and justice for appellants, permit applicants, and respondents. This would require statutory revisions.

The Council is not aware of any “reports to stakeholders” required.

LBA Rejoinder:

The Council’s response indicates the Council will not be operationalizing holistically its statutory oversight obligations.

The Council’s assertions that the Department “is not required to implement Council decisions” and that the Council cannot “review Department actions... following remand” nullifies statute, which expected remands be resolved. Statute provided the Department two actions it could take when responding to a remand: 1) accept the Council’s decision and reissue its own modified decision or 2) request reconsideration of, and appeal, the Council’s decision. Statute provided the Department with no other options. Statute did not provide the Department could “do nothing” or select another option of its own design. The Legislature, in selecting “may,” was permissive by providing two options, rather than restrictive by providing only one option, to allow the Department to select what it viewed to be the best action in a given situation. Additionally, the same statutory construct was used to describe the Council’s options when making a decision on appeal: 1) the Council may affirm a Department decision or 2) the Council may remand to the Department with a determination the decision was unlawful or unreasonable. The Council did not suggest it was not required to affirm or remand appealed Department decisions—it too must also act, and in one of two ways, depending upon the specifics of the case.

The Council’s definition of “remand” contradicts the Council’s assertion the Department was not required to implement Council decisions. If the remand was sent to the Department for “further action,” what must the Department do, if not comply with law and either: 1) accept the Council’s decision and reissue its own decision or 2) request reconsideration of, and appeal, the Council’s decision?

The Council’s statement regarding its statutory authority is misleading. We made no statement the Council itself issues or denies permits, or retracts orders—permitting and

enforcement were the sole responsibility of the Department, as we clearly discuss throughout this report. The response was also inaccurate. The Council is necessarily required to review Department actions following a remand—otherwise, how else would the Council be able to verify whether its order to revise an unlawful or an unreasonable decision had been fully addressed by the Department? Statute provided the Council with necessary rulemaking authority and explicitly *required* the Council to adopt rules to govern its proceedings, including appeals, remands, and reconsideration.

Department Response:

We concur with the recommendations.

The Department will move forward to develop and implement an SOP to track and resolve remands in a timely fashion that will be in compliance with State law and Council rules.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

4. PERMITTING PROCESS DEFICIENCIES

The Department of Environmental Services (Department) attempted to address long-standing concerns with Wetlands Bureau (Bureau) permitting through initiatives intended to simplify and improve permitting and improve transparency, predictability, consistency, standardization, and efficiency. Department managers publicly reported launching a calendar year (CY) 2008 initiative in partnership with the Wetlands Council (Council) to improve the management and clarity of Bureau permitting. The initiative intended to: 1) address our August 2007 *Alteration Of Terrain And Wetlands Permitting Performance Audit Report (2007 Audit)* findings and recommendations, 2) identify other areas for improvement, and 3) implement changes. However, more than a decade later, almost all of our 2007 *Audit's* recommendations remained unresolved or partially resolved, and underlying concerns persisted through the audit period.

Permitting should have processed inputs—including permit applications—to produce outputs—including application approvals and denials—while adhering to statutory requirements, ensuring consistent permitting decisions, and achieving intended outcomes—preventing despoliation of submerged lands and protecting shorelands. However, the Department focused its measurement and monitoring on select inputs and outputs, never developing a system demonstrating how permitting processes contributed to achieving programmatic outcomes.

- Inputs – The Department tracked resources needed to conduct permitting, including the number of permit applications and notices received.
- Outputs – The Department tracked some permitting products, including the number of final decisions made on permit applications and notices, and permits issued.
- Outcomes – The Department did not measure or monitor the results of permitting, including whether permitting decisions were consistent or compliant with all statutory and regulatory requirements.

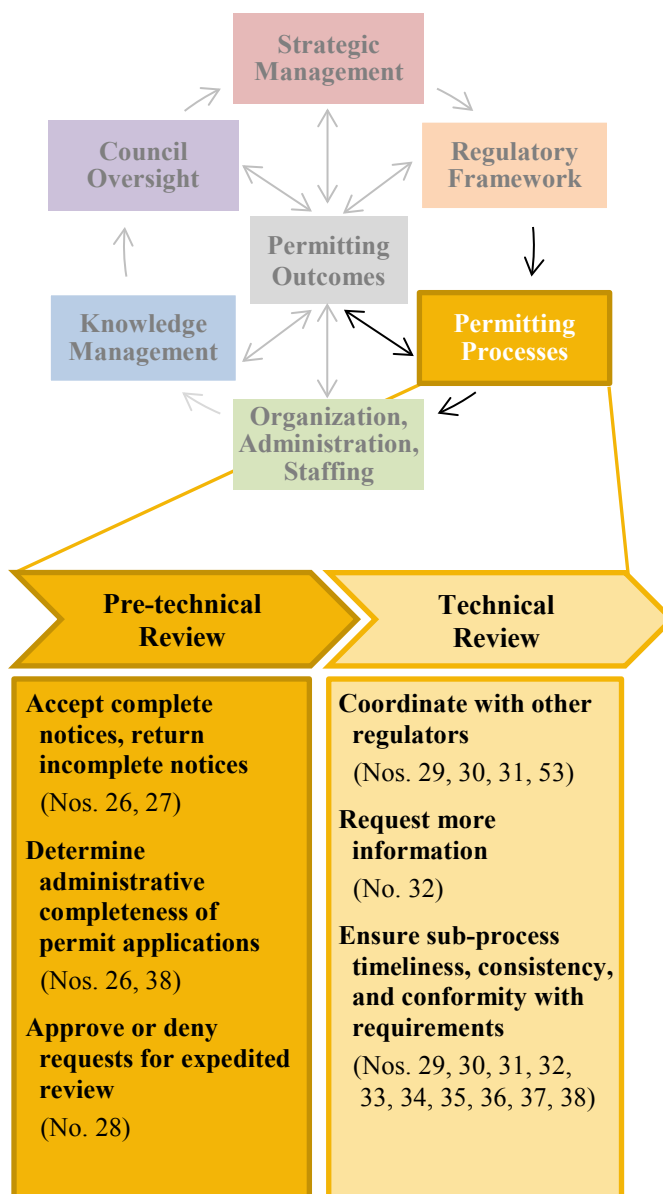
The Bureau developed the *Wetlands Permitting Technical Review Guide (2015 Guide)* in CY 2015, reportedly the culmination of a five-year effort and apparently a first-of-its-kind procedural control document. The *2015 Guide* accommodated both wetlands and shoreland review processes but focused primarily on wetlands standard dredge and fill (SDF) applications. Permitting processes encompassed six main phases:

- 1) pre-application assistance, including providing information to potential applicants;
- 2) receipt of a permit application or notice;
- 3) pre-technical review, including notice acceptance and application administrative review;
- 4) technical review, including project assessment, requests for more information (RFMI), and application re-classification;
- 5) decision issuance; and
- 6) post-decision issuance, including appeals of Department decisions or amending issued permits, if applicable.

However, deficient management control systems throughout permitting processes, as shown in Figure 11, contributed to inconsistent permitting outcomes and compromised due process, in some cases.

Figure 11

Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Permitting Processes



Source: Office of Legislative Budget Assistant–Audit Division (LBA) analysis.

Defective processes were developed based on a regulatory framework with numerous inadequacies, and many defective processes relied upon ad hoc rulemaking and incomplete or

ineffective policies and procedures. It was within this operating environment that employees reviewed and made decisions on permit applications.

Through State fiscal year (SFY) 2018, Department control systems over Bureau permitting processes were at an **initial** level of maturity, while subsystem maturity ranged from **initial** to **repeatable**, the lowest two levels of maturity. Deficient control systems contributed to process and management control deficiencies identified in 40 of our current audit's observations.

Pre-technical Review

Pre-technical review included:

- review of applications to determine whether they were administratively complete,
- acceptance of notices and notifications,
- initial screening of applications for proposed environmental impacts, and
- application review by federal and other State agencies, if applicable.

Application Receipt Center (ARC)

The ARC was established in CY 2009 to create a single, standardized process for receiving and processing Land Resources Management (LRM) programs' permit applications, notifications, and notices. The ARC centralized certain administrative staff from the Wetlands and Subsurface Systems bureaus to do so. Division of Water (Division), LRM, and Bureau managers held responsibility for ARC operations and performance. The Assistant Division Director, acting as the LRM Administrator, was responsible for overseeing, evaluating, and coordinating the ARC to maximize efficiency and allocation of resources.

ARC staff processed wetlands, shoreland, and subsurface systems permit applications and notifications by:

- 1) accepting submission of notifications when permits were not required, but the Department had to be notified of regulated activity; and
- 2) conducting administrative completeness reviews of applications and subsequently providing administratively complete applications to technical permit application reviewers.

However, a deficient control system over ARC operations contributed to inconsistent permitting outcomes. The Department's control system: 1) contained elements that were either absent or ineffectively designed, inconsistently implemented, and unmonitored, contributing to 26 observations in our current report; and 2) was at a **repeatable** level of maturity.

Observation No. 26

Formalize And Leverage Application Receipt Center Processes

The Department created the ARC to improve processing times for notices and permit applications, but failed to: 1) adopt corresponding rules, 2) implement comprehensive policies and procedures, and 3) ensure adequate data collection and performance measurement. Since its creation, the ARC operated with an informal organizational structure and with both formal and informal processes. The Department's efforts to address perceived issues with its implementation were incomplete, likely limiting effective ARC process improvement and optimization. Management did not reassess performance goals or establish basic performance measures or acceptable variations in performance for processing notices, making administrative completeness determinations, or entering data. Additionally, management did not implement peer review to ensure consistency for notifications deemed complete by ARC staff as it did for certain permit applications approved or denied by technical permit reviewers.

Administrative Completeness Controls Inadequate

The Department's *2010-2015 Strategic Plan* (Department's 2010-2015 strategy) established goals to develop and maintain comprehensive processes, as well as review permit processes to ensure consistency, coordination, and improvement. Reportedly, administrative completeness determinations were reduced from as many as 14 days to one or two days by creating the ARC, and receipt of complete initial permit applications increased by 23 percent. The Department lacked documentation supporting these purported improvements, although management asserted analyses were conducted and "intuition" further validated the ARC's success.

However, since CY 2011, management had been aware of issues with ARC operations, including errors in application processing and data entry. In CY 2018, we surveyed 32 Bureau employees then-employed or employed during SFYs 2016 or 2017 on Bureau permitting-related practices (Bureau permitting survey), of whom 22 (68.8 percent) responded. We asked 18 employees (81.8 percent) reporting involvement in technical review whether they ever found an administrative completeness determination to be inaccurate, and:

- six (33.3 percent), including one manager, reported *yes*;
- seven (38.9 percent), including five managers, reported *no*; and
- five (27.8 percent), including three managers, reported being *unsure*.

The complete results of our Bureau permitting survey are included in Appendix G.

Although the Department reportedly attempted to improve ARC processing of permit applications, performance issues remained, and management never tracked and memorialized the results of improvement efforts it implemented. Additionally, management never established basic performance measures, goals, or acceptable variations in performance for processing notices, making administrative completeness determinations, or entering data. The LRM database management system (DBMS) also did not collect sufficient information to allow managers to monitor ARC compliance with statutory requirements, as we discuss in Observation

No. 51. Statute required the Department to issue a notice of administrative completeness or request more information within 14 days of receiving a permit application; however, the LRM DBMS allowed the date of an administrative completeness determination to overwrite the date the Department received the application, making systematic assessment of timeliness impossible without hardcopy records. Additionally, the Department did not systematically record the total number of applications it received and whether they were accepted and entered into the LRM permitting database or rejected and never entered into the database, therefore providing only a partial view of the total number of applications actually received by the Department annually.

Letters notifying applicants whether their application was administratively complete or missing information were inconsistent with statute. *Fill And Dredge in Wetlands (Wetlands)* and the *Administrative Procedure Act (Act)* required the Department to provide an applicant with the name, official title, address, and telephone number of an agency official or employee who may be contacted regarding their application, but the Department's letter only included a general Bureau phone number and the Department's address.

Though goals existed since CY 2010 to enhance the Department's ability to monitor permit data, significant deficiencies remained. In our review of a subjective sample of hardcopy Bureau permit application files for SDF, minimum impact expedited (MIE), and shoreland permit applications (permit application file review), eight of 64 files (12.5 percent) had errors that should have been identified during the ARC's administrative completeness review. Seven of 64 (10.9 percent) were processed with expired application forms contrary to policy, and one of 64 (1.6 percent) was processed without certain documentation required for an administrative completeness determination. We did find administrative completeness determinations occurred within one day of receipt, well within the 14-day statutory deadline.

Notification Acceptance Inadequately Controlled

ARC staff were also responsible for processing and accepting Department utility maintenance, forestry, trails, recreational mineral dredging, and roadway and railway notifications. Department strategy included goals to improve customer service by fully adhering to internal policies and procedures, though management acknowledged: 1) no policies or procedures were developed for this function of the ARC, and 2) no delegations of authority were made authorizing ARC staff to deem notifications complete, as we discuss in Observation No. 40.

Organizational Structure Not Formalized

Management was aware the ARC was not reflected on any organizational charts and could only describe the ARC's organizational structure and reporting relationships in narrative form. The Department was required to formalize its organizational structure and procedures, update its organizational structure as soon as practicable, and commence rulemaking no more than 90 days after changes were made. Despite strategic goals to establish clear reporting lines and improve Department coordination, the ARC included administrative staff who reported variously to the Subsurface Systems and Wetlands bureau administrators.

Recommendations:

We recommend Department management:

- **formally adopt ARC comprehensive procedural and organizational rules and ensure reporting and oversight structures are clarified to enhance internal and external accountability;**
- **establish performance measures and collect adequate data to measure ARC performance;**
- **develop and implement policies and procedures to ensure monitoring of ARC performance, and conduct adequate peer review;**
- **develop, implement, and refine comprehensive policies and procedures to ensure notifications are processed consistently;**
- **ensure delegations of authority are issued for ARC staff in order to process notifications; and**
- **ensure Bureau practices conform to statutory, regulatory, and procedural requirements.**

Department Response:

We concur with the recommendations.

We will develop and refine procedures, policies, organizational rules, and oversight to ensure that the Bureau practices conform with statutory, regulatory, and procedural practices. We will also formalize and ensure the necessary delegations of authority.

Notice And Notification Processing

Statute provided certain activities were exempt from permitting requirements, and individuals instead had to submit some form of notice to the Department. Unaudited data listing 7,174 Bureau permit applications and notices during SFYs 2016 and 2017 (Bureau permitting data) indicated that 1,785 (24.9 percent) were for projects requiring only a notice be filed. Notices were generally processed by ARC staff, with the exception of some notices processed by technical permit application reviewers.

Rules should provide the public, as well as Department employees, with clear and formal expectations. The Department should adopt rules when private rights are affected by Bureau policies, procedures, or practices. Properly adopted forms are rules, and their requirements should have been established in rule or incorporated by reference. However, requirements, procedures, and processes for notification-only projects were informal and uncodified.

A deficient control system over processing notices contributed to ad hoc rulemaking and may have caused confusion among filers. The Department's control system: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 31 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 27

Formalize Requirements, Procedures, And Processes For Notice-only Wetlands Projects

The Department did not adopt in rule the forms, requirements, procedures, and processes for projects requiring filers provide only a notice to the Department to satisfy requirements of *Wetlands*. Requirements, procedures, and policies for processing three out of five (60.0 percent) notice-only projects were not adopted in rule. Only the routine roadway and railway maintenance form was mentioned in rule—but was not properly adopted—and only the seasonal dock and routine roadway and railway maintenance notification forms had nearly, but not fully, complete corresponding procedures in rule.

ARC staff utilized checklists for each notification type to ensure completeness prior to the ARC approving notices. If a notice was incomplete, ARC staff either returned the notice and accompanying documents or consulted with technical permit reviewers or managers to determine whether to issue an RFMI or deny the notice. Ad hoc requirements were also imposed on filers through supplemental materials and, in some cases, requirements on notice forms went beyond what statute required, as the:

- seasonal dock notice form established a provision based on a misinterpreted statute and required certification statements not contained in rule;
- utility maintenance notification form’s content was inconsistent with rules, excluded provisions contained in relevant rules, and provided a permit was valid for one year, while rules and statute provided permits were valid for five years;
- trail notification form encompassed work excluded by statute from the scope of permitting and established requirements not contained in statute;
- roadway and railway maintenance notice form contained multiple requirements in addition to what rule provided, expanded definitions beyond rule, and established timelines and expanded the scope of the Department’s regulatory jurisdiction beyond what statute provided; and
- forestry notification form required the use of instructions and required attached documents, and agreement to conditions and provisions thereon not contained in rule.

Recommendations:

We recommend the Department:

- **formalize notice-related processes by adopting corresponding rules for each project type that include all forms, requirements, procedures, and processes; and**
- **establish procedures to address RFMIs and reclassifications of notice filings.**

Department Response:

We concur with the recommendations.

The Department will formalize the notification process by adopting corresponding rules for each project-type that includes all forms, requirements, procedures, and processes.

Expedited Application Processing

Department practice to allow applicants to request expedited evaluation of permit applications was reportedly long-standing. Under existing policy, the Commissioner would determine whether expedited review was necessary to further an important public interest, including: 1) promoting economic development or improving environmental conditions, 2) avoiding significant hardship, or 3) for other good cause shown. The Commissioner would also determine if any other applicant with a pending application would be unreasonably disadvantaged if the request to expedite was approved. The Commissioner could then approve or deny the request. If approved, the Commissioner could direct the permit application be reviewed ahead of some, or all, other pending applications. If denied, the Commissioner's decision could not be appealed. In either case, the Department would send a written response within five business days informing the applicant of approval or denial.

Applications approved for expedited evaluation under extraordinary circumstances represented less than one percent of the 7,174 notices and permit applications listed in unaudited Bureau permitting data. Among 42 wetlands and shoreland requests for expedited evaluation filed during the audit period:

- 32 (76.2 percent) were filed by local government and public works entities,
- eight (19.0 percent) were filed by private entities, and
- two (4.8 percent) were filed by other entities.

The approval rate for expedited evaluation of applications was 95.0 percent.

However, the Department never adequately formalized the expedited review process, despite recommendations made to the Department in our *2007 Audit*, and a deficient control system over expedited evaluation of permit applications contributed to inconsistent permitting outcomes. The Department's control system: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 28 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 28

Formalize Expedited Evaluation Of Permit Applications Under Extraordinary Circumstances

In our *2007 Audit*, we identified an inadequate control system over expedited evaluation of permit applications under extraordinary circumstances. The Department did not implement related recommendations made in our *2007 Audit*, with which it concurred. While the Department developed a policy in CY 2007 for an expedited evaluation process through the Commissioner's Office, which was revised in February 2014, the criteria for the policy were

broad, were not based in statute or rule, and lacked transparency. As a result, the Department continued to engage in ad hoc rulemaking and potentially exposed itself to risks we identified in our *2007 Audit*, including untimely processing of non-expedited applications and public perceptions of bias. We also found instances where the current policy was circumvented. These issues demonstrate the need for a standardized, well-publicized, rule-based expedited evaluation process.

Unresolved Prior Audit Findings

Expedited evaluation of certain applications, a “long-standing” Department practice, has been an issue since at least our *2007 Audit*. The Department was required to adopt procedural rules containing all formal and informal procedures. In our *2007 Audit*, we reported the process for expediting evaluation was not commonly known or readily available, creating the potential for abuse or the perception of favoritism. We recommended rules be adopted. In its concurrence, the Department stated, in part, it was “committed to a complete review and revision to the wetlands...rules by June 30, 2008,” and that “[p]roposed revisions will include adoption of rules establishing protocols for expediting permit applications consistent with...policy.” However, the Department created no relevant rules, leaving this recommendation unresolved more than a decade later and the Department noncompliant with State law. Noncompliance persisted through SFY 2018.

Current Expedited Evaluation Policy

The CY 2014 revised policy on expedited evaluation of permit applications included broad criteria for approval. Though the policy was posted on the Department’s website, it was not readily accessible or well integrated into Bureau permitting forms and other materials likely accessed by applicants, and instead rested with the Department’s Public Information and Permitting Unit. It was not clear whether every applicant knew this process was available to them. Broad criteria, potential lack of public knowledge regarding the policy, and the ability to direct employees to review an application before some—or all—other pending applications created potential for inequitable treatment. As we stated in our *2007 Audit*, formalizing this process in rule would allow for public and legislative comment, rather than perpetuating the current process only known to those who have knowledge of the Department’s policy.

Inconsistent Practice

Processing times for expedited evaluation requests inconsistently followed policy, and overall processing times for applications approved for expedited evaluation were shorter than other Bureau permit applications. The average processing time for expedited evaluation requests was 3.3 days in SFYs 2016 and 2017, though four requests (9.5 percent) were processed beyond the five-business day timeframe established in policy. Of the 12 requests where we could identify a corresponding SDF permit application file number: eight requests (66.7 percent) were processed within the 75-day statutory time limit, while one request (8.3 percent) was processed in 111 days. Three (25.0 percent) were still active after the audit period. The processing time for these 12 expedited applications averaged 53.8 days—less than the average processing time for all SDF

applications of 90.3 days for applications without an RFMI and 154.4 days for applications with an RFMI.

While less than one percent of all permit applications were expedited during the audit period, the expedited evaluation process created questions of equity for non-expedited applications. Though expedited review should not have unreasonably disadvantaged other pending applications, if Department employees evaluated expedited applications before others, they could not process regular applications as timely as they could have otherwise. We note claims from Bureau and Department managers that timely permitting was challenged by staffing shortages. Expedited evaluation was particularly problematic for requests from private entities, since entities benefitting from expedited evaluations could receive monetary gain and other benefits that similar entities with applications pending regular review would not. For instance, one major SDF application from a private entity with an informal RFMI was approved for expedited evaluation, and a permit was issued in 28 days—more than two months sooner than the average processing time for an SDF application without a formal RFMI.

There were also equity issues with how the Department used criteria from policy to evaluate applications. Of 42 requests to expedite evaluation, 37 (88.1 percent) were approved for reasons of economic development and environmental improvement. These criteria were problematic, however, especially for private entities, because it suggested the Department was taking formal positions on the applications before approval. One approval letter for a controversial project used these criteria and prompted the only letter from the public in any expedited evaluation file we reviewed, sent via an elected official, demanding the Department explain why it pre-judged the project. The Department revised the approval letter, stating the approval of the expedited evaluation request did not mean the Department passed judgment on the merits of the project. The approval letter contained language explaining that the previous letter contained “boiler plate” language and should be disregarded. However, this statement undermined other expedited evaluation request approvals and potentially gave the process a gloss of unawareness or incompetence.

Additionally, application filing was inconsistent with policy. For one request (2.4 percent), a Bureau employee contacted the Commissioner’s Office to file the request for expedited evaluation on behalf of a municipal project. We found no evidence a formal request was ever made by the applicant as required by policy, but the request was approved nonetheless. One Bureau employee also reported several instances where the request policy was circumvented by elected officials, including one reported instance where Bureau employees were asked to review a permit application in one day. This condition appeared to reflect the conditions that led to the *2007 Audit* being conducted.

Recommendations:

We recommend Department management:

- **adopt the expedited evaluation of permit applications under extraordinary circumstances process in rule, and**
- **publicize the process and who receives expedited permits and why.**

Department Response:

We concur with the recommendations.

The Department currently has a standard operating procedure that addresses requests for expedited permit review under extraordinary circumstances. Generally, most requests are to address issues related to public safety, storm-related emergencies, or financial hardship. The Department is adding an expedited process to the draft Wetlands Program rules (wetlands rules) being filed with the Office of Legislative Services in March 2019. Before adoption, staff will be trained about this rule amendment. Following adoption, the Department will provide outreach regarding all of the changes in the rules, including the addition of the extraordinary circumstance expedited permit review process. We will evaluate whether to publicize who receives expedited permits and why those entities receive expedited permits. If the public benefits of doing so outweigh the risks to individuals and the public, we will establish and follow a process for publicizing this information.

Technical Permit Application Review

Technical review of permit applications included:

- evaluation of impacts to wetlands functions and values;
- verification that impacts to wetlands and surface waters had been avoided or minimized and all alternative approaches had been considered;
- verification of need for a proposed project;
- evaluation of potential impacts to water quality resulting from proposed changes to slope, soils, and drainage, the proposed construction sequence, and proposed erosion controls;
- coordination with other LRM or Department programs or other State or federal agencies;
- requests for information missing from permit applications or additional information necessary to complete technical review; and
- review of information submitted in response to Department requests.

Required External Agency Interactions

To obtain wetlands permit approval, an applicant may have to contact 22 or more other government agencies, depending upon the scope of the proposed project. Municipal conservation commissions had a statutory advisory role in the State permitting process. Wetlands permit applications were sent to conservation commissions, which could then investigate an application. If a conservation commission opted to investigate, it was required to provide timely notice to the Department, placing a final Department decision on a regular application on hold for 40 days. If a conservation commission's report made recommendations to the Department, the Department was required to consider them and make written findings addressing each recommendation.

Despite related recommendations made to the Department in our *2007 Audit*, a deficient control system over conservation commission involvement in Bureau permitting processes contributed to inconsistent permitting outcomes. The Department's control system: 1) remained ineffectively designed, inconsistently implemented, and unmonitored, contributing to 31 observations in our current report; and 2) was at a **repeatable** level of maturity.

Observation No. 29

Establish Parameters For Conservation Commission Involvement In Permit Application Reviews Consistent With Statute

The Department's interpretation and application of statute: 1) granted more authority to conservation commissions than statute provided, 2) did not fully resolve prior audit recommendations related to statutory review time limits, and 3) did not collect adequate data to monitor Bureau permitting performance. The Department included varying degrees of conservation commission involvement in several permit application types without underlying statutory authority, required applicants to respond to local conservation commission requests directly, and inappropriately delegated the Department's inspection authority to conservation commissions.

For more than a decade, the regulatory burden on applicants likely increased and led to inconsistent and inequitable treatment of applicants due to:

- misalignment between practices and statute,
- failure to resolve prior audit recommendations,
- failure to respond to legislative changes,
- requiring applicants comply with uncodified policies and conservation commission requests, and
- requiring applicants meet conditions beyond what statute provided.

In our *2007 Audit*, we recommended the Department seek legislative changes to allow technical reviewers adequate time to review permit applications when conservation commissions intervened. The Department reported fully resolving conservation commission issues during our *CY 2015 Department Of Environmental Services Water Division Internal Control Review Agency-Income Revenues (2015 IC Review)*, but, despite our *2007 Audit* recommendations and legislative changes, no substantive changes were made to rules or the Department practice of incorporating conservation commissions into permit application review processes. Additionally, inadequate data collection would have limited any analysis of conservation commission timeliness, had the Bureau made any such attempts. The Department's inability to confine its rules, policies, and practices to statute appears to have persisted in the Department's revised wetlands rules schedule for adoption in CY 2019 (proposed 2019 rules).

Undue Authority

By formal rules without underpinning statutory authority, by expired rules, or by ad hoc rules, the Department afforded conservation commissions more authority than statute provided, which:

- allowed conservation commissions to determine whether applicants were eligible for MIE review;
- allowed conservation commissions to determine whether applicants were eligible for a more expedited permit-by-notification (PBN) process;
- required applicants authorize conservation commissions to inspect project sites; and
- required applicants respond to each comment submitted by conservation commissions.

Conservation Commission Intervention In MIE Review Process

Department rules required applicants to secure a signature from a conservation commission before filing an MIE application with a municipal clerk, but this was not what statute provided. Rule had the effect of nullifying the statutory time limits on Department and conservation commission actions. Rule granted conservation commissions de facto control over which applicants would be eligible for MIE review, substantially expanding the power of conservation commissions to affect the permitting process established in *Wetlands*. Statute provided conservation commissions the opportunity to suspend temporarily a final Department decision on an application for 21 days for MIE projects, or 40 days for other applicable projects. While the Department could not issue a final decision during the suspended decision timeframes, it could continue processing an application. *Wetlands* provided no authority for conservation commissions to prohibit applicants from accessing the MIE review process.

Conservation Commission Intervention In PBN Review Process

By allowing conservation commissions to not only intervene in the permitting process, but also determine which review mechanism permit applicants and PBN filers would be subject to, the Department granted significantly more authority to conservation commissions than what statute provided. Expired Department rules allowed conservation commissions to determine whether PBN filers would be subject to an extended 25-day review timeframe or to a shorter 10-day review timeframe if a conservation commission signature was obtained. However, CY 2015 legislative changes eliminated authority for conservation commission intervention in the PBN process, and statute required conservation commissions only be notified when PBN forms were filed with a municipal clerk. Due to changes in the underpinning statute, unamended PBN-related procedural rules expired one year after the CY 2015 changes. Expired rules required filers obtain a conservation commission signature before filing a PBN notice with the municipal clerk. Like MIE rules, PBN rules also nullified the statutory time limits on Department and conservation commission actions.

Inappropriate Delegation Of Inspection Authority To Conservation Commissions

The Department delegated inspection authority to conservation commissions for certain permit application types and notices by:

- requiring SDF and MIE applicants authorize the local conservation commission to inspect their project site as a condition of submitting a complete application, without authorizing statute;

- requiring PBN and wetlands trails notifications filers authorize the local conservation commission to inspect their project site as a condition of submitting a complete application, without authorizing statute or rules; and
- appearing to request conservation commissions informally inspect seasonal docks, without authorizing statute or rules.

Conservation commissions were prohibited from entering private property without first obtaining permission or obtaining a warrant. If entry was denied, a conservation commission had to obtain an administrative inspection warrant. The Department could also conduct inspections, but could not delegate inspection authority, nor could it act on behalf of a conservation commission or compel applicants through ad hoc rules to surrender entry privileges to a conservation commission.

Inappropriate Integration Of Conservation Commissions

The Department inappropriately deferred to conservation commissions and granted them additional authority not provided by statute by requiring applicants respond directly to comments made by conservation commissions and allowing conservation commissions to intervene in shoreland permit applications without statutory basis. Conservation commissions could intervene in some wetlands applications; map, document, and establish prime wetlands and buffers; and hold public hearings on wetlands permit applications. However, conservation commissions had no authority to intervene in shoreland applications. While statute provided conservation commissions could temporarily suspend final Department action on certain wetlands permit application reviews, statute only provided conservation commissions an opportunity to provide input to the Department, not act as agents for the Department, nor act as regulators in conjunction with the Department.

Noncompliance With Statutory Time Limits

The Department inconsistently held conservation commissions to their statutory time limit on interventions. Bureau permitting data were incomplete, inconsistent, and generally lacked key dates to determine conservation commission timeliness and statutory compliance. Our examination of unaudited Bureau permitting data illustrated significant issues with documenting: 1) town clerk filing dates, a key date to establish statutory time limits for conservation commissions; 2) notice of conservation commission intervention dates, if any; and 3) dates on which conservation commissions provided written recommendations to the Department, if any. For example, municipal clerk filing dates were missing from 106 of the 122 SDF, PBN, and MIE applications (86.9 percent) submitted by the Department of Transportation listed in unaudited Bureau permitting data. Also, our permit application file review included 50 wetlands permit applications for which: commissions waived their right to intervene 15 times (30.0 percent), while the remaining 35 (70.0 percent) were subject to intervention by a conservation commission. Of the 35 files:

- ten (28.6 percent) either lacked corresponding Bureau permitting data or data were inconsistent with the hardcopy documentation in Bureau permit application files, and

- five (14.3 percent) demonstrated the Department allowed conservation commissions to act beyond statutory time limits, without a corresponding extension, which was permissible only after agreement by both the applicant and the Department.

Recommendations:

We recommend Department management:

- **base interaction with applicants and conservation commissions on statute;**
- **timely align practices, procedures, rules, and forms with statute;**
- **develop and implement policies to ensure adequate data is collected and accurately entered into the LRM permitting database;**
- **ensure conservation commissions are held to statutory time limits provided by statute and except for suspending final decision-making, permit application reviews are not impeded by requested “holds” by conservation commissions; and**
- **limit Department integration of conservation commissions into permit and notice processes to those provided by statute.**

Department Response:

We concur with the recommendations.

We will address them through the current rulemaking effort and subsequent implementation, outreach, procedure updates, staff training, and monitoring.

MIE Permit Applications

MIE permit applications were developed to facilitate the review of proposed projects with purported minimal environmental impacts, thereby:

- reducing permitting complexity, and
- enhancing processing efficiency and customer service for all applicants.

Despite related recommendations made to the Department in our *2007 Audit*, a deficient control system over MIE permit application review contributed to inconsistent permitting outcomes. The Department’s control system: 1) remained ineffectively designed, inconsistently implemented, and unmonitored, contributing to 37 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 30

Implement Review Framework For Minimum Impact Expedited Projects Consistent With Statute

The Department deprived certain applicants of the opportunity to participate in the expedited review process for MIE projects since at least CY 2003. Department rules, forms, and policies required or instructed an applicant to secure a signature demonstrating conservation commission approval before submitting their application in order to be eligible to receive expedited review for certain minimum impact projects, contrary to State law, and leaving our *2007 Audit* recommendations unresolved but with resolution reportedly in process through proposed 2019 rules. Because the Department incorrectly operationalized statute related to MIE applications, and due to limitations with the Bureau's permitting data and records management, we could not determine how many applicants were negatively affected by being prevented from using the 30-day MIE process, nor could we quantify the extra costs to applicants resulting from complying with the lengthier regular review processes.

Inconsistent Framework

Statute allowed a conservation commission or another municipal body to provide the Department input to inform permitting decisions. Statute did not grant authority to the local entity to approve or deny access to the MIE review process, nor did statute require conservation commission approval of an MIE project prior to the Department making a final decision. Statute only provided a conservation commission could: 1) submit a written report and 2) pause the Department's final decision on a permit for 21 days while completing the report, reduced from 40 days for applications subject to standard review. Statute required the Department to assume it would receive a conservation commission's notice of intent to investigate, unless the timeframe for the conservation commission response was extended. Statute permitted the Department to approve or deny an application immediately after receiving the conservation commission report or if no report had been provided within 21 days. If the application was signed by a conservation commission, indicating approval, statute allowed the Department to proceed and make a final decision, and delegated to the Department rulemaking authority to structure the remainder of the MIE review process.

According to rules, MIE project applications must be approved within 30 days or a notice of deficiency (NOD) provided to applicants if required information was missing. If an applicant could not secure a conservation commission signature the application would be: incomplete, ineligible for MIE processing, and processed under regular review time limit of 75 days. Rules were silent on the MIE review time limit and subsequent processes when a NOD was issued. Internal policy and external guidance and forms reflected the rule-based conservation commission requirement, instructing applicants to secure a conservation commission signature prior to submitting the application to a municipal clerk. Rules, guidance, and forms requiring conservation commission approval have remained substantively unchanged since at least our *2007 Audit* and were contrary to statute.

Unreliable Data Inhibited Meaningful Oversight

Bureau permitting data was unreliable, as we discuss in Observation No. 51. The Department did not implement formal guidance on reclassification of applications, such as reclassifying an MIE application to a SDF application, and how meeting statutory time limits were handled in those situations, as we discuss in Observation No. 34. According to unaudited Bureau permitting data, of the 518 applications initially classified as MIE projects, 67 (12.9 percent) were later reclassified by the Department. We could not determine whether, or how, those reclassifications were justified.

We provide analyses, albeit knowingly flawed, to give some indication of Bureau permitting performance. For example, one permit application appeared to have taken 2,270 days to be processed due to how the LRM DBMS functioned. The permit was initially approved in CY 2009 but was amended and again approved in CY 2015, overwriting the original approval date in the LRM permitting database, while maintaining the original received date from CY 2009. Of the 451 MIE applications processed under expedited review listed in unaudited Bureau permitting data, 216 (47.9 percent) took longer than 30 days to process, and on average were processed in 188 days. Again, we could not reliably determine whether 188 days was reflective of Bureau performance due to inadequate data quality. Also, involvement by the Department of Fish and Game or the Department Of Natural And Cultural Resources' Natural Heritage Bureau, RFMIs from the Department, and applicant responsiveness to Department RFMIs might have affected timeliness.

Unresolved Prior Audit Findings

Other issues identified in our *2007 Audit* affecting the MIE process have also persisted. The Department did not adopt rules to clarify timeframes associated with RFMIs or NODs. During the audit period, rules were silent on what should occur after a NOD was provided to the applicant. Our *2007 Audit* also identified confusion regarding the Department's deemed approved provisions for MIE projects, and there were no efforts to clarify or seek legislative changes to remediate these concerns and relevant language remained in the Department's current rules unchanged.

Recommendations:

We recommend Department management:

- **adopt rules governing the MIE application process that are consistent with State law, include reasonable timeframes for processing MIE applications and timelines when a NOD is issued, and do not require conservation commission approval;**
- **develop a monitoring system to help ensure the timely review of MIE applications; and**
- **amend MIE policies, procedures, and forms to reflect rules.**

Department Response:

We concur with the recommendations.

We will address them through the current rulemaking effort; rule implementation; outreach, policy, procedure, and forms updates; and staff training. We will also improve, maintain, and use our monitoring system to help ensure timely review of applications.

Wetlands PBNs

PBNs were reportedly created to streamline the permitting process for certain minimum impact projects that proposed impacts to areas protected under *Wetlands* to:

- save applicants time by not waiting for a paper permit, while
- still protecting the environment and providing standards under which work must be accomplished.

Rules established 14 types of minimum impact projects eligible for the PBN review process.

Despite related recommendations made to the Department in our *2007 Audit*, a deficient control system over wetlands PBNs contributed to inconsistent permitting outcomes. The Department's control system: 1) remained ineffectively designed, inconsistently implemented, and unmonitored, contributing to 37 observations in our current report; and 2) was at a **repeatable** level of maturity.

Observation No. 31

Improve Wetlands Permit-by-Notification-related Rules, Procedures, And Practices

While the Department was granted broad authority to promulgate PBN rules, it imposed ad hoc requirements on filers, implemented a PBN review process inconsistent with statute, ignored legislative changes, and erroneously reported to have resolved related prior audit recommendations. Doing so circumvented requirements intended to provide legislative oversight over administrative action and ensure regulations affecting private rights were transparent. The Department risked eroding public trust when inequitable and inconsistent treatment of filers occurred because of inconsistent and outdated rules, forms, policies, procedures, and informal practices.

Wetlands PBN forms and guides: 1) required plans to contain more information than rule required; 2) contained conditions inconsistently adopted in, and noncompliant with, rules; 3) appeared to encompass non-jurisdictional projects; 4) comingled requirements from other project types; and 5) contained requirements exceeding, and at times noncompliant with, those of rule. Inadequate data likely impeded monitoring of PBN timeliness and whether PBNs were processed according to rules, limiting effectiveness. Since CY 2010, the Department's 2010-2015 strategy set goals to review processes within LRM programs and identify areas to improve consistency,

coordination, and work towards implementation. The Department had also previously committed to addressing issues identified in our *2007 Audit*, yet no changes had been made to PBN procedural rules, leaving our *2007 Audit* recommendations unresolved, but with resolution reportedly in process through proposed 2019 rules.

Rule-based Framework

The Bureau's practice of processing PBNs deviated from rules and statute. Not only was the PBN form not adopted in rule as required by statute, but requirements imposed by the PBN form deviated from rule-based requirements. Conflicting information may have caused confusion among municipal clerks and filers.

Wetlands rules required filers to obtain a conservation commission signature prior to submitting a PBN form to a municipal clerk to proceed with a project ten days after submission. If no signature was obtained, wetlands rules required filers to wait 25 days from submitting with the municipal clerk before proceeding with the PBN project. Rules provided that the time limit a filer had to wait before proceeding with a PBN-eligible project began on the date the filer submitted their PBN with the municipal clerk. Rules also required filers to submit their PBN form and copies with the appropriate municipal clerk. Rules then required municipal clerks distribute the PBN to the local conservation commission or governing body, post the PBN application publicly, and forward a copy to the Department. However, the PBN form instructed the filer to forward the PBN form to the Department themselves.

If the Department determined a PBN form was incomplete, the Department was required to issue a NOD. If a NOD was issued, the filer had 20 days to respond to the Department's request. However, Department rules did not set a time limit by which the Department should send the NOD. If the filer submitted the necessary information in response to the NOD, the filer could proceed with the project:

- ten days after the Department received the requested information, provided a conservation commission signature was included, or
- 25 days after receipt of requested information if no conservation commission signature was included.

Rules disqualified a filer from the PBN process if the filer did not respond to a NOD within 20 days; however, unaudited Bureau permitting data indicated inconsistent application of this rule.

Statutory Framework And Noncompliance

Despite legislative changes to the PBN review process in CY 2015, the Department processed PBNs in the same manner since at least CY 2003. Consequently, authority for conservation commission intervention in PBN review process, which no longer existed in statute, remained and likely affected applicant costs, timeliness of permitting, and required the Department devote more resources to processing PBN applications. Additionally, the Department was noncompliant with statute since at least CY 2003, by omitting the PBN form from rules and informally requiring more information than rule required. The Department had broad authority to

promulgate PBN rules, as statute was silent on processing time limits or other requirements for filers, except where it exempted PBN projects from other statutory requirements applicable to SDF projects.

The PBN form required a filer attest to meeting 13 conditions. By signing the form, a filer authorized conservation commission inspections of the project, a requirement not in rule or statute. Statute prohibited the Department from delegating its authority to another agency, and nothing in statute suggested such a delegation should occur. The filer was also required to abide by 18 more conditions, eight (44.4 percent) of which were inconsistent with rules. The PBN form instructed filers to use the Department's online permit query system to verify their notice had either been deemed complete or disqualified before proceeding with their project, without corresponding requirements in rule. Rules simply allowed a filer to proceed with a project ten days after filing the PBN form with the municipal clerk, provided a conservation commission signature had been obtained.

Utility Maintenance Projects

The Department established a rule-based PBN process it did not follow, utilized a form not adopted in rule, and, despite classifying certain utility maintenance projects as PBN-eligible, steered filers to use a separate process established only within the utility maintenance notification form itself, circumventing the rule-based PBN process. The Department also imposed requirements not provided for by statute, and limited access to utility maintenance projects by augmenting statutory language to be more restrictive by limiting work to in-kind repair and replacement projects. While differences between statute and the Department's form appeared minor, the restriction likely prohibited an unknown number of projects from utilizing the notification-only process provided by statute. Furthermore, the Department:

- incorrectly categorized eligible utility maintenance projects in rule as one of 14 PBN-eligible projects and published only 13 PBN project criteria documents, indicating the Department was aware of the PBN classification error;
- restricted eligible notification-only utility maintenance projects from working in or adjacent to prime wetlands, in contrast to statute which explicitly provided for work to be done in or adjacent to prime wetlands; and
- provided a PBN was valid for only one year, while statute provided all permits were valid for five-years, unless otherwise stated in *Wetlands*.

Unresolved Prior Audit Findings

PBN-related issues identified in our *2007 Audit* persisted. In response to follow-up of prior audit recommendations during our *2015 IC Review*, the Department purported to have substantially resolved PBN-related matters, when in fact they had not. Our *2007 Audit* observed PBN rules did not allow reviewers adequate time to review PBN submissions because the ten-day deadline could have passed before the reviewer received the form from a municipal clerk. Due to poorly maintained and incomplete data, in addition to ad hoc rules with inconsistent requirements, reliable analysis could not be conducted to measure how many PBNs eligible for ten-day processing actually received ten-day processing. Furthermore, because PBN rules remained

unchanged since at least CY 2005, the conditions leading to our 2007 *Audit* observation remained.

Our 2007 *Audit* also found the Department did not automatically disqualify late responses to NODs. Of 470 PBNs listed in unaudited Bureau permitting data, 122 (26.0 percent) were subject to NODs. Reliable analysis could not be conducted for 66 (54.1 percent) due to incomplete data, while 56 (45.9 percent) PBN projects with complete data showed five PBN projects (4.1 percent) were processed but should have been disqualified due to late responses. Only one of the five projects was disqualified due to a late response, resulting in inequitable treatment.

Additionally, several issues in our 2007 *Audit* remained unresolved, including:

- PBNs were inconsistently reclassified and were reclassified without a basis in rule;
- the lack of a physical permit issued by the Department was an issue for filers and was potentially inconsistent with statutory requirements; and
- PBN requirements were sometimes more stringent than for MIE projects with seemingly more environmental impact.

Recommendations:

We recommend Department management:

- **ensure PBN-related rules align with statute;**
- **ensure PBN-related forms reflect only statutory and regulatory requirements;**
- **develop, implement, and refine policies and procedures to improve and ensure adequate data quality;**
- **develop, implement, and refine policies and procedures to ensure consistent and equitable application of PBN-related rules; and**
- **consider revising rules to ensure requirements for project-types are commensurate with their level of impact.**

Department Response:

We concur with the recommendations.

We are addressing them through the current rulemaking effort, which includes alignment of the forms with the statutory and regulatory requirements and adoption of the forms in rule. We will develop, implement, and refine policies and procedures to ensure consistency and data quality and to prohibit imposition of ad hoc rules, and we will train staff on the new policies and procedures and monitor their implementation and continued use.

RFMI

Statute allowed the Bureau to issue one RFMI within the statutory technical review period for SDF and shoreland applications. Statute required the Department to deny applications when an

applicant did not respond to an RFMI within 60 days. Statute also allowed applicants to request an extension to this 60-day deadline for SDF applications. Within 30 days of receiving a complete RFMI response from the applicant, the Bureau was to:

- approve or deny the permit application,
- schedule a public hearing if the application was an SDF, or
- extend the period for rendering the decision for good cause shown and with written agreement of the applicant.

There were no additional requirements in wetlands rules or *Shoreland Protection* rules (shoreland rules) regarding SDF and shoreland RFMI processing.

Statute provided the Department authority to develop RFMI procedures related to MIE applications through rules. Rules provided that, within 30 days of application submission, the Bureau would either approve an MIE permit application or send an RFMI if the application was incomplete or did not conform to rules or applicable laws. There were no additional requirements, such as the timeframe for MIE review when an RFMI was issued.

Despite related recommendations made to the Department in our *2007 Audit*, a deficient control system over issuing RFMIs contributed to inconsistent permitting outcomes. The Department's control system: 1) remained ineffectively designed, inconsistently implemented, and unmonitored, contributing to 32 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 32

Improve Request For More Information Processes

Since CY 2007, we have commented on the Bureau's control system over RFMIs, and we found continued noncompliance with governing statute and policy during our current audit. Bureau technical permit application reviewers sent formal and informal RFMIs, sent more RFMIs than statute provided, and used RFMI letters that were inconsistent with statutory provisions. The Department had not adopted RFMI rules. Many practices constituted ad hoc rulemaking, as we discuss in Observation No. 13. Furthermore, records management related to RFMIs was inadequate, and the LRM DBMS did not adequately support managerial oversight of RFMI practices.

Unresolved Prior Audit Findings

Our *2007 Audit* found the Bureau:

- did not inform applicants the Bureau had 30 days to reach a final decision or request from the applicant an extension to its review period;
- sent multiple RFMIs for some applications and did not adequately document RFMIs in permit application files;
- lacked RFMI-related rules;

- lacked adequate means to document RFMIs; and
- should clarify timeframes for reviewing MIE applications, then reflect any changes in relevant rules, forms, and policy.

The Department stated it would promulgate rules to address audit recommendations regarding RFMIs by June 30, 2008. However, the Bureau did not follow through with prior audit recommendations to create rules regarding how applicants would receive RFMIs, how employees would document RFMIs, and what review time frames should be used for MIE applications. Proposed 2019 rules also did not contain relevant changes, leaving our *2007 Audit* recommendations unresolved.

Bureau policy stated, and management asserted, employees should only send one formal RFMI per application, including written letters sent to applicants. Informal RFMIs included emails, phone calls, and meetings with applicants. There was confusion among Bureau employees regarding the Bureau's policy of sending one formal RFMI per application, and we also observed instances where multiple formal RFMIs were sent by reviewers. Bureau employees were also inconsistent with what frequency they sent and documented formal and informal RFMIs, which we also observed in the *2007 Audit*. Bureau employees often excluded formal and informal RFMIs from the permit application file, leaving questions as to how application changes were made, what statutory and regulatory basis Bureau employees used to request changes to applications, and how Bureau employees made final decisions on applications. Information requested through RFMIs exceeded the requirements imposed by statute and rule. The Department lacked a sufficient control system to monitor Bureau compliance with statutory RFMI time limit requirements. Responding to RFMIs likely increased costs to some applicants through project delays, engaging consultants, and revising projects.

Inadequate Policy, Procedure, And Practice

Internal Bureau guidance provided employees could send one RFMI per application to obtain missing or additional information needed to complete their evaluation of an application. Guidance lacked information regarding when Bureau employees should send RFMIs, whether employees should issue formal or informal RFMIs, or what language should be used. Supplements to Bureau guidance, policy, and procedure did not further clarify RFMI practice.

However, Bureau employees frequently sent RFMIs through formal and informal processes. Unaudited Bureau permitting data showed Bureau employees sent formal RFMIs on 1,447 of 7,174 notices and applications (20.2 percent), as shown in Table 17.

In practice, applications reportedly averaged two or three RFMIs, or employees may have issued one formal RFMI and followed-up informally as necessary. Our Bureau permitting survey asked by what means they sent RFMI, 18 employees (81.8 percent) answered, and:

- 13 (72.2 percent), including eight managers, reported they sent *both formal and informal requests*;
- three (16.7 percent) reported they only sent *formal requests via letter*; and
- two (11.1 percent), including one manager, reported being *unsure*.

Table 17

**Number Of Applications Or Notices With At Least One Request
For More Information Or Notice Of Deficiency, SFYs 2016 And 2017**

Application or Notice Type	Total By Type	Number Of Type With An RFMI or NOD	Percent Of Type With An RFMI or NOD
SDF	1,423	691	48.6
MIE	490	171	34.9
Agriculture	15	5	33.3
Wetlands PBN	478	125	26.2
Shoreland	1,436	359	25.0
Emergency Authorization	58	8	13.8
Forestry Notification	968	78	8.1
Seasonal Dock Notification	268	7	2.6
Trails Notification	87	2	2.3
Shoreland PBN	1,138	0	0.0
Recreational Mineral Dredging Notification	282	0	0.0
Utility Maintenance Notification	297	0	0.0
Routine Roadway And Railway Maintenance Notification	188	0	0.0
Other	46	1	2.2
Total	7,174	1,447	20.2

Note: Data represent only the number of applications and notices recorded as having an RFMI or NOD, not the number of RFMIs or NODs sent for each. The number of RFMIs or NODs the Bureau issued was likely higher. We identified inaccuracies in unaudited Bureau permitting data, including instances where formal RFMIs were not documented and informal RFMIs were sent instead of formal RFMIs, making the accuracy of analyses relying on Bureau permitting data suspect.

Source: LBA analysis of unaudited Bureau permitting data.

Our Bureau permitting survey also asked the 18 employees (81.8 percent) reporting involvement in technical review how many RFMI were sent, on average, by application type, and:

- nine (50.0 percent), including five managers, reported sending more than one RFMI for major SDF applications,
- seven (38.9 percent), including three managers, reported sending more than one RFMI for minimum SDF and MIE applications,
- six (33.3 percent), including three managers, reported sending more than one RFMI for minor SDF applications, and

- four (22.2 percent), including one manager reported sending more than one RFMI for PBNs.

The complete results of our Bureau permitting survey are included in Appendix G.

We reviewed 64 hardcopy files of SDF, shoreland, and MIE permit applications active during SFYs 2016 or 2017, and 43 (67.2 percent) contained some form of RFMI:

- 27 (62.8 percent) contained formal RFMIs;
- nine (20.9 percent) were subjected to informal RFMIs, including phone calls, emails, and meetings; and
- four (9.3 percent) were subjected to multiple formal RFMIs.

Additionally, four of 64 (6.3 percent) included evidence of substantial changes, including reclassification of permit type and changes in square footage between proposed and final impact, which all indicated RFMIs in some form could have occurred, yet none were documented in the file; and three (4.7 percent) were clearly subjected to at least one RFMI, but lacked a formal RFMI letter in the file. These findings were similar to the conditions we found that led to an observation in the *2007 Audit* and indicate a persistent, inconsistent, and ad hoc approach to RFMIs.

Furthermore, we found RFMI letters were inconsistent with statute and rule. RFMI letters lacked a notice to applicants of their statutory right to request an extension to the 60-day RFMI response period. RFMI letters directed applicants to provide a “**single, complete response**” [emphasis original] within 60 days, though there was no underpinning requirement in statute or rule. Informal RFMIs did not always include statutory language specifying that, if the applicant did not send a complete response within 60 days, the application would be denied. Bureau employees were also inconsistent in what they included in RFMIs and included ad hoc requirements. Finally, though extensions were provided for by statute, the Bureau did not have a process based in rule or policy specifying circumstances under which employees could request extensions, nor to what frequency they could do so, which we discuss in Observation No. 33.

Inconsistent Timeliness

While we found instances of untimely processing, the average number of days between: 1) application receipt for MIE and shoreland applications or administrative completeness for SDF applications and 2) the Bureau issuing formal RFMIs appeared to mostly comply with statutory time limits. SDF applications had the highest average number of days between application receipt or administrative completeness to RFMI issuance, followed by shoreland and MIE applications, as shown in Table 18.

Two of 64 permit application files (3.1 percent) were non-compliant: 1) one major SDF application with over one acre of jurisdictional impact with an RFMI issued 30 days after the 105-day review time limit concluded, and 2) one minor SDF application with an RFMI issued 17 days after the 75-day review time limit concluded. It was unclear from documentation why RFMIs were not issued timely for these applications. Since both applications were SDFs, it

appears they met statutory provisions for the applicant to request deemed approval from the Bureau, though we found no evidence the Bureau notified the applicant of this opportunity or the applicant made such a request.

Table 18

**Average Number Of Days Between Application Receipt Or Completeness
And Issuance Of A Request For More Information, SFYs 2016 And 2017**

Application Type¹	Processing Time Limit	Average Processing Times² (Percent Of Time Limit)
SDF³-Major⁴, one acre or more of impact	105 days	84.0 days (80.0 percent)
SDF³-Major⁴, less than one acre of impact	75 days	62.6 days (83.5 percent)
SDF³-Minor⁵		58.7 days (78.3 percent)
SDF³-Minimum⁶		52.3 days (69.7 percent)
Shoreland	30 days	25.8 days (86.0 percent)
MIE		22.1 days (73.7 percent)

Notes:

- ¹ SDF applications were evaluated for timeliness between the administrative completeness date and the date an RFMI was issued. Shoreland and MIE applications were evaluated similarly using the application receipt date and the date an RFMI was issued.
- ² The color scheme is based on application processing timeliness benchmarks from Bureau outstanding files reports. White, green, and yellow indicates statutory compliance, while red indicates noncompliance. The processing of individual permit applications may or may not have been statutorily compliant.
- ³ Rules established three levels of SDF project classifications and related permitting standards, which were dependent on the type and quantity of wetlands impacts proposed. Multiple other criteria existed in rule and could elevate a proposed project to a higher level.
- ⁴ SDF major applications were generally for projects with more than 20,000 square feet (0.46 acre) of jurisdictional impact. Major SDF applications with one acre (43,560 square feet) or more of jurisdictional impact had a longer review time limit than major SDF applications with less than one acre of jurisdictional impact.
- ⁵ SDF minor applications were generally for projects between 3,000 and 20,000 square feet (between 0.07 and 0.46 acres) of jurisdictional impact.
- ⁶ SDF minimum applications were generally for projects up to 3,000 (0.07 acres) square feet of jurisdictional impact.

Source: LBA analysis of 86 SDF, shoreland, and MIE permit application files included in SFYs 2016 and 2017 unaudited Bureau permitting data.

Some employees reported sending multiple, informal RFMIs to avoid denying permit applications, and applicants incurred costs from application denials, including through project delays and additional permit application fees. However, the Bureau's processes of using multiple formal and informal RFMIs were inconsistent with statute and policy, and among employees, potentially leading to instances where similarly applications received dissimilar treatment.

Issues with data reliability and documentation of application files resulted in uncertainty regarding Bureau practices and operational performance. The Bureau documented: 1) informal RFMIs were not tracked in the LRM DBMS and 2) this limitation made it so management could not track the Bureau's 30-day time limit for rendering decisions on a permit following receipt of an RMFI response. Without sufficient documentation, we were similarly unable to determine systematically through our permit application file review when, and how, the Bureau issued RFMIs.

Recommendations:

We recommend Department management:

- **seek clarification from the Legislature as to whether the shoreland RFMI response deadline should be extendable like the wetlands RFMI response deadline, and**
- **promulgate rules detailing the Bureau's RFMI processes.**

We recommend Bureau management:

- **revise, implement, and refine policy and procedure to ensure RFMI practices conform to statute, rules, and policy;**
- **revise RFMI memoranda to reflect statute and rules, include notice to applicants of their right to request an extension to RFMI response deadlines, and exclude ad hoc requirements; and**
- **develop, implement, and refine policy and procedure to provide adequate managerial oversight of Bureau practices to help ensure they conform to law, rules, and policy.**

Department Response:

We concur with the recommendations.

The audit conflates applications with notices. Statutory notices and applications have different statutory authority and different review processes.

The Department will seek clarification from the Legislature and promulgate rules detailing the RFMI procedure. We will also develop, revise, implement, monitor implementation of, and refine Bureau policy, procedure, and documents on RFMIs to ensure that they conform to statutory and regulatory requirements. The Department will provide clarity on these different types of administrative vs. technical review processes, in the proposed 2019 rules.

LBA Comment:

The portrayal of Bureau data shows the widespread nature of RFMIs regardless of underlying statutory authority or differing review processes, and demonstrates an operational area requiring adequate management controls.

Extensions Of Permit Application Technical Review Time Limits

Wetlands provided the Department could grant applicants extensions of:

- the 60-day time limit in which applicants had to respond to Department RFMIs, and
- the 75- or 105-day time limit in which the Department had to complete its technical review and issue a decision on applications.

The Department could also extend the time needed to issue a decision with written consent from the applicant under the *Shoreland Water Quality Protection Act (Shoreland)*. Unlike *Wetlands*, *Shoreland* did not allow applicants to request an extension of the time they had to respond to an RFMI.

However, the absence of a control system over extending permit review time limits contributed to inconsistent permitting outcomes. The Department's absent control system: 1) contributed to 34 observations in our current report, and 2) was at an **initial** level of maturity.

Observation No. 33

Improve Management Of Extensions Of Permit Application Technical Review Time Limits

The Bureau insufficiently defined how it would manage technical permit application review extensions in policy and rule, resulting in inconsistent application by employees. These practices were inconsistent with: 1) goals from the Department's 2010-2015 strategy to provide fair and equitable treatment to the public and 2) the Department's statutory obligations to adopt rules of practice setting forth all formal and informal procedures. Inconsistent application of permit review extensions increased the risk applicants may have incurred additional costs to either respond within a single 60-day time limit to avoid denial, or accept a denial, without ever knowing they could request an extension.

While applicants for permits under *Wetlands*, except for PBNs, could request an extension of the 60-day time limit to reply to the Bureau's RFMI, the Bureau did not specify in rule or policy how technical permit reviewers should handle such requests. Furthermore, RFMI letters sent to applicants did not include information regarding the statutorily provided opportunity for review extensions. Instead, these letters informed applicants that if no RFMI response was received within 60 days, the application would be denied. As a result, it was unclear: 1) whether applicants were aware they could request such an extension, 2) how they should request them, and 3) how employees should process them.

Consequently, Bureau employees inconsistently handled permit review extensions, and managerial oversight was insufficient. Of 41 SDF permit applications reviewed during our permit application file review, nine (22.0 percent) included permit review extension requests. One of nine (11.1 percent) was missing extension request documentation. We also observed employees inconsistently used a Bureau form to formalize review extension agreements. Our Bureau permitting survey asked the 18 employees (81.8 percent) reporting involvement in technical review how often they documented extensions using an official Bureau form, and:

- three (16.7 percent) reported *always*,
- three (16.7 percent), including one manager, reported *often*,
- four (22.2 percent) managers reported *sometimes*,
- one (5.6 percent) reported *rarely*,
- five (27.8 percent), including two managers, reported *never*, and
- two (11.1 percent) managers reported being *unsure*.

Furthermore, the LRM permitting database lacked a field for entering data related to review time extensions, as we discuss in Observation No. 51, making managerial oversight difficult.

The length of time for extension agreements and number of extensions an applicant could request were not standardized. We found one permit application with eight review extension agreements: one 29-day extension, two 60-day extensions, one 64-day extension, two 65-day extensions, one 68-day extension, and one 90-day extension. Varying extension lengths could complicate managerial oversight. We also found one instance where an employee appeared to allow a review extension for a shoreland permit, which was not provided for under *Shoreland*. None of these practices were codified in policy. In our *2007 Audit*, we recommended the Division produce written, well-organized and comprehensive policies and procedures for its permitting programs. The Department concurred with the *2007 Audit* recommendation, stating it would complete a comprehensive review of its policies and procedures during SFY 2008 and incorporate these into a procedures manual in CY 2008.

Recommendations:

We recommend Department management help ensure equitable treatment of applicants by:

- **promulgating rules detailing requirements related to the extension process imposed upon members of the public;**
- **developing, implementing, and refining policies to standardize how employees process and handle application review extensions;**
- **modifying the LRM permitting database to track and help manage extensions to ensure compliance with statute, rules, and policy; and**
- **including clear language in every RFMI letter on the availability of an extension to the 60-day RFMI response period.**

Department Response:

We concur with the recommendations.

We are addressing them through the current rulemaking effort. We will develop, implement, and refine policies and procedures to ensure consistency in handling application review extensions. As IT resources allow, we will modify the Bureau's database to track and help manage extensions in compliance with statute, rules, and policy. We will include language in RFMI letters regarding the availability of extensions, and we will train staff on the new policies and procedures and monitor their implementation and continued use.

Time extensions are not imposed on the public by Department staff. Time extensions are typically granted at the request of the permit applicant and as allowed under the statute. In accordance with statute, the Department extends "the time for rendering a decision on the application for good cause and with the written agreement of the applicant" to allow an applicant the additional time that they need to provide the necessary information so that an application may be fully evaluated. Time extensions are mutually agreed to by the Department and the permit applicant. Without the time extension option, many of these applications would have to be denied. The upcoming rule-making package will contain detailed requirements relative to the extension process. The suggestion to include clear language in every RFMI letter on the availability of an extension to the 60-day RFMI response period will be implemented after formal rule adoption. This too will be part of the educational process with staff relative to this and all rule changes/revisions.

LBA Comment:

We did not assert time extensions were imposed upon applicants but rather stated the Bureau's process was imposed upon the public through ad hoc rulemaking.

Reclassification Of Applications And Amendment Of Applications And Issued Permits

Reclassification of permit applications occurred when Bureau technical permit application reviewers changed an application type during the technical review process. Application type could be changed, for example, by upgrading an MIE permit application to a minor SDF permit application or by downgrading a major SDF to a minor SDF permit application. There was no statutory permission for reclassifications.

Substantially amended permit applications were major changes submitted by applicants themselves to applications or project classification occurring outside the RFMI process.

Amendments to issued permits were changes to permit conditions or permitted activities that generally did not require submitting a new application but might have, at the discretion of the reviewer, required specific information not in the original application.

Despite related recommendations made to the Department in our *2007 Audit*, the absence of control systems over reclassifying permit applications, amending permit applications, and amending issued permits contributed to inconsistent permitting outcomes. Absent Department control systems: 1) contributed to 36 observations in our current report, and 2) were at an **initial** level of maturity.

Observation No. 34

Develop Rules And Policies For Reclassifying Applications And Amending Applications And Issued Permits

The Department lacked formal, rule based-processes and policies for reclassifying permit applications and amending issued permits. Reclassification, depending on the project types involved, could have included changes in fees and sometimes changes in timeframe for review and specific permitting requirements. The lack of regulatory guidance for reclassification, substantially amended applications, and permit amendments created issues with transparency and statutory compliance, and left recommendations from our *2007 Audit* unresolved.

Inconsistency Reclassifying Permit Applications

According to unaudited Bureau permitting data, of the 3,349 SDF, shoreland, and MIE permit applications, 381 (11.4 percent) were reclassified, and we found instances of applications both upgraded and downgraded. Despite the frequent occurrence of reclassifications, no rule or policy regulating the process existed, limiting transparency and public understanding of circumstances when the Department could reclassify permit applications, and leaving reclassification practices ad hoc.

Two observations from our *2007 Audit* related to reclassification of applications, and, had our recommendations been addressed, the conditions leading to our findings might have been resolved. Furthermore, State law required the Department to promulgate reasonable rules for its procedures. While our *2007 Audit* recommendation on reclassification was related to PBNs being reclassified to other permit types, our current audit indicated a broader problem existed. Reclassification of MIE permit applications to other application types was not addressed in wetlands rules, leaving review time limits ambiguous. For instance, if an MIE application, which had a review time limit of 30 days, was reclassified to an SDF, which had a review time limit of 75 days, rules did not specify which review time limit applied. In responding to our *2007 Audit*, the Department stated it would consider amendments to PBN rules as part of its CY 2008 rules revision. No changes were made to PBN rules, and no rules were implemented regarding reclassifications more generally.

Reclassification without formal guidance from rules and standardized procedures potentially led to increased costs to applicants and confusion among Bureau employees. Six of 43 SDF files we reviewed (14.0 percent) were initially submitted for MIE review but were reclassified to SDF, potentially changing the review time limit from 30 days to 75 days but without rules clearly stating so. Five of six files (83.3 percent) included an RFMI, requiring the applicant submit additional documentation for SDF permit applications, including responses to 20 questions, and

additional fees. Separately, another of the 43 files (2.3 percent) involved a major SDF application reclassified as a minimum SDF application after the applicant obtained a recommendation from the Commissioner's Office for expedited evaluation. Our Bureau permitting survey asked the 18 employees (81.8 percent) reporting involvement in technical review how clear and understandable policy and procedure were regarding reclassification of projects, and:

- eight (44.4 percent), including three managers, reported *very clear*;
- four (22.2 percent), including two managers, reported *somewhat clear and understandable*;
- three (16.7 percent), including two managers, reported there were no policies and procedures; and
- three (16.7 percent), including three managers, reported being *unsure*.

Unresolved Deficiencies Related To Review Of Substantially Amended Permit Applications

Through CY 2018, the Department partially resolved our *2007 Audit* recommendation to seek amendments to statute and modify rules to allow adequate time to review substantially amended permit applications. During our *2007 Audit*, we found neither statute nor rules provided exceptions to technical review time limits when applicants submitted major changes to their permit applications. Although *Wetlands* was amended in CY 2008 to clarify processing of “significantly” amended applications, whereby significantly amended applications—with the exception of applications amended in response to a Department RFMI—were to be deemed as new applications, and review time limits were to be reset, no relevant rules existed through CY 2018. The Department included related rules in its proposed 2019 rules.

Unresolved Deficiencies Related To Amending Issued Permits

Through CY 2018, the Department left unresolved our *2007 Audit* recommendation that the Division write rules and implement policies and procedures for amending issued permits to ensure: 1) consistent processing, 2) new permits were sought for substantial changes, 3) increases in environmental impacts were minimal, and 4) the correct fees were applied and collected. The Department, in concurring, indicated it was “committed” to major rules revisions in SFY 2008, and asserted it had “substantially” resolved deficiencies as of CY 2015 and SFY 2018. Although *Wetlands* was amended in CY 2008 to clarify significantly amended wetlands permits were to be deemed as new applications, no relevant rules, policies, or procedures existed through CY 2018. The Department included related rules in its proposed 2019 rules. However, proposed 2019 rules contained no information on how employees were to evaluate proposed amendments or assess and collect the correct fees. Additionally, the Department reported policies and procedures would be developed after the decade-long wetlands rule revision process was finalized.

Recommendations:

We recommend the Department:

- **promulgate rules defining the circumstances under which employees can reclassify applications between permit types;**
- **develop, implement, and refine policy and procedure to describe relevant practices;**
- **develop and implement rules, policies, and procedures for amending permits to ensure amendments are handled consistently among reviewers, and correct fees are applied and collected;**
- **finalize rules and develop and implement policies and procedures for amending permits to ensure new permits are sought if changes are substantially beyond the scope of the original permit and increased environmental impacts are minimal; and**
- **finalize proposed wetlands rules on modified permit applications, to include proposed time limits for review.**

Department Response:

We concur with the recommendations.

- *The Department is currently in the rulemaking process which will contain a section relative to the re-classification of applications between permit types. The requirements and procedures established in rules will be communicated and referenced for staff to locate, review, and follow. There will be further training of staff relative to this particular rule change/revision, as well as all other rule changes/revisions contained in the 2018 rule-making process. This will be followed up, after final adoption of the rules by the Joint Legislative Committee on Administrative Rules, in the monthly permit review staff meetings to clarify all of the changes in the new rule-making package.*
- *We concur with the recommendation to "finalize proposed wetlands rules on modified permit applications, to include proposed time limits for review."*

The Department has proposed rules on modified applications; timelines are set by statute, and the Department is seeking statutory changes on amendments. We will consider this recommendation in light of the scope of the Rulemaking Notice on the proposed rules.

- *We concur with the recommendation to "develop and implement rules, policies, and procedures for amending permits to ensure amendments are handled consistently among reviewers, and correct fees are applied and collected."*

The Department is seeking statutory changes to clarify amendments and proposing new rules on amendments.

- *We concur with the recommendation to "finalize rules and develop and implement policies and procedures for amending permits to ensure new permits are sought if changes are substantially beyond the scope of the original permit and increased environmental impacts are minimal."*

See responses on Amendments, above.

Deemed Approved Permit Applications

Statute established a method for applicants to request that the Department issue a permit if the Department failed to approve or deny permit applications within certain statutory time limits. Wetlands applicants could request the Department issue a permit if the Department failed to issue a decision within:

- 30 days of receiving a complete response to an RFMI,
- 75 or 105 days of issuing a notice of administrative completeness if no RFMI was issued, or
- 60 days of the closing of a public hearing, if one was held.

Shoreland applicants could request the Department issue a permit if the Department failed to issue a decision within:

- 30 days of receiving additional information as requested; or
- 30 days of receiving an application when no request for additional information had been made.

Statute then required the Department to either deny the request or approve it, in whole or in part, and issue the permit within 14 days of receiving the request. If the Department provided no response during the 14-day period, the permit was to be deemed approved.

Despite related recommendations made to the Department in our *2007 Audit*, a deficient control system over deemed approved permits contributed to inconsistent permitting outcomes and persistent statutory noncompliance. The Department's control system: 1) was knowingly circumvented, contributing to 28 observations in our current report; and 2) remained at an **initial** level of maturity.

Observation No. 35

Comply With Statute And Implement Deemed Approved Permits

The Department failed to comply with State law and neglected to implement deemed approved provisions of both *Wetlands*, effective since CY 2003, and *Shoreland*, effective since CY 2008. In our *2007 Audit*, we found *Wetlands'* deemed approved requirements were not implemented, and the Department committed to resolving the conditions we found by October 2007. However,

while Department managers acknowledged statutory deemed approved permit requirements were clear, provisions were not present in the Department's rules, policies, or practice.

Over A Decade Of Acknowledged Noncompliance

In our *2007 Audit*, we recommended the Bureau establish rules and related forms or instructions for deemed approved wetlands permits and clearly describe to applicants the risks of undertaking a deemed approved project. The then- and still-serving Bureau Administrator and Assistant Division Director were aware of our *2007 Audit* findings and recommendations, with which the Department concurred. In response to a follow-up of *2007 Audit* recommendations conducted during our *2015 IC Review*, the Department asserted they had "substantially resolved" recommendations regarding deemed approved permits. While the Department sought and endorsed legislative changes in CY 2008 to address some of our *2007 Audit* findings, recommendations regarding deemed approved provisions remained unresolved.

We found no evidence the Department attempted to implement the deemed approved provisions of *Wetlands* and *Shoreland*. Neither rules in effect during the current audit period nor drafts of the proposed 2019 rules contained deemed approved provisions. There was no indication applicants were made aware deemed approved requests could be made if the Department did not meet statutory time limits. Instead, management appeared to have disregarded statute, asserting the Department would not allow deemed approved permits. Instead, employees reportedly worked overtime to meet statutory time limits or sought extensions to finalize a permit application. For example, a technical permit reviewer suggested an applicant agree to extend the Department's review time to avoid requesting the application be deemed approved.

Of the 86 SDF, shoreland, and MIE permit application files we reviewed, 78 (90.7 percent) were potentially subject to deemed approved provisions. Seven of 78 permit applications (9.0 percent) contained eight instances where Department actions were untimely, and the applications could have been deemed approved. The Department's LRM DBMS was insufficiently reliable and not designed to readily identify applications eligible for deemed approval, so we could not determine how many other applications might have been eligible for deemed approved permits. Additionally, we identified issues with the adequacy of the Department's records management during our permit application file review, which resulted in being unable to identify key dates we could have used to determine eligibility for the deemed approved process for some cases. Issues with the Department's records management are further detailed in Observation Nos. 51 and 52 and were previously identified in our *2007 Audit*, where we concluded the Department risked potential challenges to permitting decisions.

Deemed approved provisions were enacted due to concerns with the timeliness of Bureau permit application processing. By not implementing or notifying applicants of deemed approved provisions, the Department likely deprived applicants of a statutorily-required process and circumvented Legislative intent. Some applicants likely faced increased costs, time, and effort in retaining certified professionals.

Potential Risk Of Certain Deemed Approved Permits

While the Department expressed concerns deemed approved permits might not comply with federal permitting requirements, not all permit applications subject to deemed approved provisions were subject to federal review, because differences existed between State and federal jurisdictions. Furthermore, as both *Wetlands* and *Shoreland* make clear, a deemed approved permit does not relieve the applicant of complying with all other applicable requirements. In cases where deemed approved permits would also fall under federal jurisdiction, federal oversight would not be bound by a deemed approved State permit, which potentially could leave permit applicants subjected to federal regulatory action.

Recommendations:

We recommend Department management:

- **comply with statute and discontinue efforts to circumvent legislative intent;**
- **adopt rules, policies, and procedures to implement the deemed approved provisions of statute;**
- **ensure applicants are made aware of deemed approved provisions and are made aware of the risks of proceeding with deemed approved permits, both for applicants subject to and not subject to federal requirements; and**
- **develop, implement, and refine policy and procedure to help ensure agency operations conform to applicable laws.**

We further recommend the Department seek statutory changes to clarify the deemed approved provisions in State law, should the concerns the Department expressed in responding to our *2007 Audit* linger.

Department Response:

We concur in part with the recommendations.

The Department consistently complies with statutory requirements as to when an application should be deemed approved and does not concur that it has ever intentionally worked to circumvent legislative intent. All applicants have access to statute and rule links on the Department website where statutory information regarding deemed approved applications is available. The Department also provides annual updates for professional organizations on the rules. The Department concurs, and will move forward with, providing a policy document (along with associated internal training) to all staff regarding the availability of and when the deemed approved statute should be invoked. The Department also concurs with the recommendation to include the deemed approved provisions in the proposed rules.

LBA Rejoinder:

The Department's response is inconsistent with the commitment in response to our *2007 Audit* to make applicants aware of deemed approved eligibility and which we re-

recommended. Placing the onus on applicants to navigate the Department's website, statutes, rules, and other materials to understand when deemed approved provisions might be triggered, while at the same time providing no guidance, rules, forms, or procedures for deemed approved requests is disingenuous. Rules are required for every available procedure binding on persons outside the Department.

The Department's response also appears inconsistent with the Department's commitment to providing high quality customer service. The utility of the Department's links to rules and providing updates to professional organizations on rules is misleading as there were no related rules, nor did any deemed approved provisions appear in the Department's proposed rules submitted in September 2018.

No evidence existed to suggest the Department consistently complied with statutory requirements as to when an application should be deemed approved. Asserting consistency when no rules, policies, or procedures existed was implausible. We note significant issues existed in the LRM permitting database, as discussed in Observation No. 51, which allowed key dates to be overwritten, preventing reliable analysis to determine which applications could have been eligible for deemed approved provisions.

Emergency Authorizations

Rules allowed unpermitted emergency work be conducted:

- when there was a threat to public safety or public health, or when significant damage to private property was imminent;
- when the event causing the emergency occurred within the previous five days; and
- only to temporarily stabilize the site of the emergency or mitigate an immediate threat.

Bureau employees would request certain information about the emergency and proposed project, then provide a project authorization form if the emergency authorization to proceed with work was granted. Unaudited Bureau permitting data listed 58 emergency authorizations, including six (10.3 percent) related to shorelands.

However, a deficient control system over emergency authorizations contributed to inconsistent permitting outcomes. The Department's control system: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 29 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 36

Improve Systems For Managing Emergency Authorizations

The Bureau lacked comprehensive rules, policies, and procedures to guide emergency authorizations, leading to inconsistency, ad hoc rulemaking, and inaccurate reporting. Wetlands and shoreland rules contained vague, inconsistent requirements regarding emergency

authorizations. Rules contained time limits for applicants to request an emergency authorization, but none for the Bureau's response. Bureau employees reviewed and approved wetlands emergency authorizations, despite rule requirements that only the Bureau Administrator could. The Bureau lacked policies to guide evaluation of emergency authorizations. Bureau employees did not follow up with emergency authorizations, allowing them to remain on Bureau reports, for years in some cases.

Emergency authorization rules were incomplete, and Bureau employees supplemented rules with ad hoc practices. Certain terms like "threat," "temporary stabilization," and "need" were not defined. Rules were inconsistent and included different time limits for applicant requests and responses. Shoreland rules including substantially more requirements than wetlands rules. The Department indicated it would address at least some of these issues in proposed 2019 rules. Furthermore, time limits imposed upon the public were arbitrary, and there were no corresponding time limits on the Bureau's processing of emergency authorizations. Wetlands rules limited authorization decisions to the Administrator. However, unaudited Bureau permitting data indicated 18 additional Bureau employees reviewed and finalized emergency authorizations without delegated authority, as we discuss in Observation No. 40. Bureau forms and supplemental materials for wetlands emergency authorizations differed from rules, expanded and elaborated upon rules, and imposed additional, uncodified requirements. Also, in issuing emergency authorizations, the Department imposed conditions upon applicants without authority, and those conditions were inconsistent with—or absent from—rules. We found the Bureau's practice of ad hoc rulemaking and imposing timelines on emergency authorization applicants, but not on the Bureau itself, inappropriate, especially in the context of emergency work related to a disaster or public safety concern.

Based on unaudited Bureau permitting data, the Bureau did not close out old emergency authorizations timely, leading to inaccurate operational performance reporting. Bureau performance reporting during the audit period included emergency authorizations from as far back as CY 2011, with no evidence of Bureau action since. Purportedly, these authorizations remained on Bureau reports due to ad hoc requirements that applicants follow up with the Bureau after projects were completed. One manager did indicate the Bureau should remove some, if not all, of these from reports.

Recommendations:

We recommend Department management:

- **formalize and fully structure emergency authorization processes through promulgating applicable rules, policies, and procedures, including applicable time limits;**
- **ensure emergency authorization requirements in wetlands and shoreland rules are consistent, and delegation of authority requirements in wetlands rules are adhered to by reviewers;**
- **establish strategic objectives, goals, and performance targets for timely emergency authorization processing;**

- **improve data quality policies and data entry and close out procedures to help ensure reliable data is collected to measure Bureau performance in managing emergency authorizations;**
- **develop, implement, and refine reports demonstrating organizational and individual employee performance in terms of each timeliness requirement and overall timeliness; and**
- **develop, implement, and refine policies on managerial oversight of employee performance regarding each timeliness requirement.**

Department Response:

We concur with the recommendations.

This is a critical service that the Department provides to property owners, municipalities, state agencies, and others during emergency situations. The intent of the emergency authorization process is to protect public health and safety, life, and property. Under certain circumstances, the current emergency authorization process requires follow-up reporting by the property owner.

After-the-fact (ATF) Permits

There was no explicit statutory authority providing for permits to be granted after work started. However, ATF permits were provided for in practice and accommodated, to a limited extent, in Bureau rules. Management viewed ATF permits to be enforcement actions intended to bring unpermitted jurisdictional work into compliance with statute and rules. To retain completed work, individuals could submit an ATF permit application after undertaking some or all of the work that would be covered by a permit. Unaudited Bureau permitting data indicated of 2,288 applicable wetlands and shoreland applications, 95 (4.2 percent) were ATF SDF applications and 73 (3.2 percent) were ATF shoreland applications.

The absence of a control system over ATF permits contributed to inconsistent permitting outcomes. The Department's absent control system: 1) contributed to 32 observations in our current report, and 2) was at an **initial** level of maturity.

Observation No. 37

Improve Systems For Managing After-the-fact Permit Applications

The Bureau lacked comprehensive rules, policies, and procedures to guide ATF permitting, leading to an inconsistent and ad hoc approach to ATF permit application review. ATF permitting was exempted from statutory review time limits, and was only partially guided by rule and policy. As a result, Bureau employees inconsistently handled ATF permit applications, with permit application reviews conducted by enforcement or permitting employees using different approaches. Furthermore, information technology (IT) systems and ATF-related data entry procedures were not comprehensive, requiring the use of paper records to separate ATF

application review from regular review, and limiting evaluation of timeliness, efficiency, and effectiveness of ATF-related practices.

Bureau rules did not provide sufficient guidance for ATF permitting, particularly for ATF shoreland permits. *Wetlands* and *Shoreland* only indirectly allowed ATF permitting. The Department could waive statutory review time limits for a project if any project element was completed without permits. Wetlands and shoreland rules did not generally detail how the Bureau would process ATF applications. However, wetlands rules: 1) provided the Bureau should use the same criteria for evaluating ATF applications as for other applications, and 2) did not allow applications be reviewed under MIE or PBN review processes.

Without adequate guidance, Bureau employees reportedly approached ATF applications in an inconsistent, ad hoc manner. ATF permit application reviews were handled by both enforcement and permitting employees, with permitting employees reportedly following statutory review time limits and enforcement employees not. There was no policy on when permitting employees or enforcement employees should process ATF permit applications.

The Department's 2010-2015 strategy and policy required compliance actions be efficient, timely, consistent, and effective. Department policy: 1) acknowledged timeliness depended upon the unique circumstances of each ATF project and applicant cooperation, and 2) recommended timeliness goals for enforcement action, which Bureau employees indicated were not followed. Reviews by enforcement employees could last months or years due to many factors. Bureau IT systems were inadequately designed to collect data to measure employee and operational performance, and data input procedures were not comprehensive or adequately followed to ensure ATF data was reliable, as we discuss in Observation Nos. 5 and 51. Among the 168 ATF SDF and shoreland applications, 70 (41.7 percent) were incorrectly coded in unaudited Bureau permitting data. We could not analyzing timeliness due to data quality issues.

Recommendations:

We recommend Department management ensure ATF permitting is timely, consistent, efficient, and effective by:

- **formalizing and fully structuring the ATF permitting process through promulgating applicable rules, policies, and procedures, including applicable time limits;**
- **establishing strategic objectives, goals, and performance targets for timely ATF permit applications processing;**
- **improving IT system design, data quality policies, and data entry procedures to help ensure reliable data is collected to measure Bureau performance in managing ATF permitting;**
- **developing, implementing, and refining reports demonstrating organizational and individual employee performance in terms of each timeliness requirement and overall timeliness; and**
- **developing, implementing, and refining policies on managerial oversight of employee performance regarding each timeliness requirement.**

Department Response:

We concur with the recommendations.

- *We concur with the recommendation for “formalizing and fully structuring the ATF permitting process through promulgating applicable rules, policies, and procedures, including applicable time limits.” We are evaluating potential statutory conflicts with establishing time limits in rules, and will seek clarifying legislation if needed. We will address shoreland ATF applications in an upcoming rulemaking effort.*
- *We concur with the recommendation for “establishing strategic objectives, goals, and performance targets for timely ATF permit applications processing.”*
- *We concur with the recommendation for “improving IT, system design, data quality policies, and data entry procedures to help ensure reliable data is collected to measure Bureau performance in managing ATF permitting.” Implementation of these improvements is directly tied to resource availability in the biennial budget process.*
- *We concur with the recommendation for “developing, implementing, and refining reports demonstrating organizational and individual staff performance in terms of each timeliness requirement and overall timeliness.”*
- *We concur with the recommendation for “developing, implementing, and refining policies on managerial oversight of staff performance regarding each timeliness requirement.”*

Application Fees And Aquatic Resource Compensatory Mitigation (ARM) Fund Accounts

Permit applications submitted under *Wetlands* and *Shoreland* had a variety of fee requirements, primarily based on project classification and square footage of environmental impact. The Department was not required to ensure fees fully covered Bureau costs associated with processing wetlands and shoreland permit applications. Additionally, the Bureau collected Aquatic Resource Compensatory Mitigation Fund (ARM Fund) revenues as compensation for unavoidable impacts to wetlands and surface waters resulting from permitted activities.

Despite related recommendations and suggestions made to the Department in three audits dating back more than a decade, deficient control systems over permit application fees and ARM fund accounts: contributed to inconsistent permitting outcomes, raised costs for those paying into the ARM Fund, and hindered environmental protection efforts. The Department’s control systems: 1) remained ineffectively designed, inconsistently implemented, and unmonitored, contributing to 25 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 38

Resolve Prior Audit Findings And Other Issues Related To Fees And Mitigation Accounts

Our February 2005 *Department Of Environmental Services Financial And Compliance Audit Report For The Fiscal Year Ended June 30, 2004 (2005 Audit)* and *2007 Audit* contained several findings and recommendations related to fees, which were inconsistently resolved. We identified additional fee-related issues during our current audit. Additionally, issues with ARM Fund administration we previously identified during our *2015 IC Review* were incompletely resolved.

Wetlands And Shoreland Fees

- Departmental Review Of Application Fees – Through CY 2018, the Department left unaddressed our *2007 Audit* suggestion it review its fee structures and recommend changes to the Legislature. The Department reported such a review was infeasible, given its assessment of the current political climate. However, our *2007 Audit* found minimal consistency in applications fees and a lack of full cost recovery for reviewing permits, which continued to be relevant through the current audit period. Several Division managers noted concerns with the Bureau’s cost of permit review, permit application fee revenue, and financial sustainability, making such a review particularly important.
- Application Fees – While our *2007 Audit* recommendation the Department request an Attorney General opinion to clarify *Wetlands* with respect to a minimum SDF application fee was resolved through legislative changes and reflected in Bureau forms and guidance documents, associated risks remained unaddressed. During our *2007 Audit*, we found inconsistency in fees between forms and statute resulted in the potential for confusion and, in some cases, overpayment, which persisted through CY 2018. The Bureau had no rules, policies, or procedures to ensure shoreland fees were refunded to applicants within 30 days of a denial. Refunds due to changes in project classification—affecting application type—or changes in impacted square footage were inconsistently treated across LRM programs. While the Alteration of Terrain Bureau had procedures on processing refunds, the Wetlands Bureau did not. We identified one shoreland application during our Bureau permit application file review where it was unclear whether a reduction in environmental impacts resulted in a fee reduction.
- Shoreland PBN Fees – Shoreland rules provided that PBN filers, by signing the PBN form, understood incomplete notifications would be rejected and the notification fee would not be returned. There was neither underlying statutory provision to forfeit shoreland PBN fees, nor a similar requirement for regular shoreland permit applications or any other Bureau application or notice.
- Collection Of Grant-in-Right Fees – Through CY 2018, the Department left unresolved our *2005 Audit* recommendations to: 1) collect statutorily-required fees, 2) seek a statutory amendment if there were legitimate reasons fees could or should

not be assessed, and 3) establish policies and procedures to ensure employees were aware of relevant requirements. The Department concurred. However, the requirement to collect a fee from grant-in-right petitioners remained in *Wetlands* throughout CY 2018, but no policies and procedures existed to ensure fees were properly collected or employees were aware of the requirement.

ARM Funds And Accounts

Administrative fees associated with ARM program revenues were to be deposited in a separate, non-lapsing account.

- ARM Funds And Accounts – The Department partially resolved our *2015 IC Review* recommendations to: 1) comply with requirements and deposit fees in distinct revenue accounts and 2) request statute be amended if it determined statutorily-directed accounts were not required. The Department concurred in part, indicated it would determine whether statutory revisions were needed, and asserted it “fully” resolved deficiencies as of CY 2018, but noncompliance persisted.

During our *2015 IC Review*, we found administrative fees were deposited: 1) in the general ARM Fund account because there was no separate account; and 2) into a general receiving account, in apparent conflict with federal regulations. In November 2018, the Department provided written confirmation from the U.S. Army Corps of Engineers on compliance with federal regulations.

However, *Wetlands* was never clarified. Management indicated separate accounts were not needed for ARM revenues, although: 1) the Department reportedly established an account for ARM Fund administrative fees in SFY 2018, 2) *Wetlands* required a separate, non-lapsing account for administrative assessments, and 3) the Council was required to approve all ARM Fund disbursements. The Council only approved ARM Fund project disbursements, and statutory language did not establish an exception for administrative disbursements.

- ARM Fund Administrative Assessments – ARM administrative assessments significantly exceeded administrative expenses over the past three SFYs, as shown in Table 19, driving up costs for those paying into the Fund.

Table 19

**Department-reported Aquatic Resource Compensatory Mitigation Fund
Administrative Revenues And Expenses, SFYs 2015–2017**

SFY	Beginning Balance ¹	Revenues ¹	Expenses ¹ (Percent Of Revenues)	Ending Balance ¹
2015 ²	\$ 119	\$ 205,045	\$ 96,247 (46.9%)	\$ 108,917
2016 ³	\$ 111,225	\$ 370,506	\$ 58,798 (15.9%)	\$ 311,708
2017 ³	\$ 422,932	\$ 263,813	\$ 109,817 (41.6%)	\$ 576,928

Notes:

1. Dollar amounts were reported by the Department and did not always appear internally consistent. We did not audit the underlying data or resolve these internal inconsistencies.
2. Before July 2015, administrative assessments were 10.0 percent.
3. In July 2015, administrative assessments were increased to 20.0 percent.

Source: Unaudited Department ARM Fund reports.

Recommendations:

We recommend Bureau management:

- review its fee structures to ensure fees are appropriate, considering factors such as the cost of permit review to the Bureau, application fee revenue, and financial sustainability, and make any recommendation for changes to the Legislature;
- expunge from rule shoreland PBN fee forfeitures;
- develop policies and procedures to handle application refunds;
- collect statutorily-required fees or seek a statutory amendment if determined there are legitimate reasons fees could or should not be assessed;
- develop and implement policies and procedures to ensure employees are aware of statutory requirements, including the collection of statutorily-related fees;
- rationalize costs to administer the ARM Fund against the administrative assessment to avoid potential applicant and environmental costs associated with over-collecting administrative fees; and
- seek clarification from the Legislature on the ARM Fund and whether administrative assessments should be a separate account within the Fund and thereby subject to Council approval prior to disbursement or whether assessments should be a separate fund.

Department Response:

We concur with the recommendations.

- *Items identified in this observation with respect to the Shoreland Rules will be clarified in the proposed rule re-write, and the Department will seek statutory changes, if needed.*
- *We will “review its fee structures to ensure fees are appropriate, considering factors such as the cost of permit review to the Bureau, application fee revenue, and financial sustainability, and make any recommendation for changes to the Legislature.” The Department has conducted analysis on fees as part of proposed legislation this year.*
- *We will “develop policies and procedures to handle application refunds.”*
- *We will “collect statutorily-required fees or seek a statutory amendment if determined there are legitimate reasons fees could or should not be assessed.”*
- *We will “develop and implement policies and procedures to ensure employees are aware of statutory requirements, including the collection of statutorily-related fees.”*
- *ARM Fund administration requires more staff than currently allowed by law. We will seek legislative changes to increase ARM Fund administrative positions which will require additional resources. A “reduction of the ARM Fund administrative assessment to avoid applicant and environmental costs associated with over-collecting administrative fees” will no longer be required. Department fee analysis includes all appropriate funding support.*
- *We will “seek clarification from the Legislature on the ARM Fund and whether administrative assessments should be a separate account within the Fund and thereby subject to Council approval prior to disbursement or whether assessments should be a separate fund.” The Department has already established separate accounting and billing for the ARM-funded staff.*

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

5. ORGANIZATION, ADMINISTRATION, AND STAFFING

The Department of Environmental Services (Department) and the Wetlands Bureau (Bureau) were created to address long-standing concerns with permitting. Employees were especially important to the Bureau's success in addressing these concerns and achieving programmatic and permitting outcomes, as permitting decisions were dependent upon employees' knowledge, skills, and abilities. Employees were also responsible for helping design, implement, and operate management control systems and for reporting issues with control effectiveness to management.

Effective, strategic organizational management required Department managers to design, implement, monitor, and improve management control systems to help:

- improve, and ultimately optimize, organizational performance;
- ensure proper stewardship of resources and avoid waste;
- ensure employees possessed appropriate knowledge and understanding of the regulatory framework and operating environment;
- facilitate data-informed decision-making;
- ensure statutory and regulatory compliance; and
- ensure transparency and accountability.

Effective controls can help prevent the creation of an operating environment and organizational culture in which operations and administration are ad hoc, and instead help create predictability and stability performance and conduct over time and under different managers. Department, Division of Water (Division), and Bureau managers held responsibility for strategic management of the Bureau's organization and employees, including the Assistant Division Director and the Land Resources Management (LRM) Administrator, a vacant position whose responsibilities were carried out by the Assistant Division Director during the audit period. In these roles, the Assistant Division Director was responsible for overseeing, coordinating, analyzing, and evaluating Bureau administration.

However, management appeared to place insufficient focus on permitting, the area of most strategic importance and greatest risk to the Bureau. Unaudited Department data on self-reported employee time allocation during the audit period (Department time allocation data) indicated Bureau employees reported allocating:

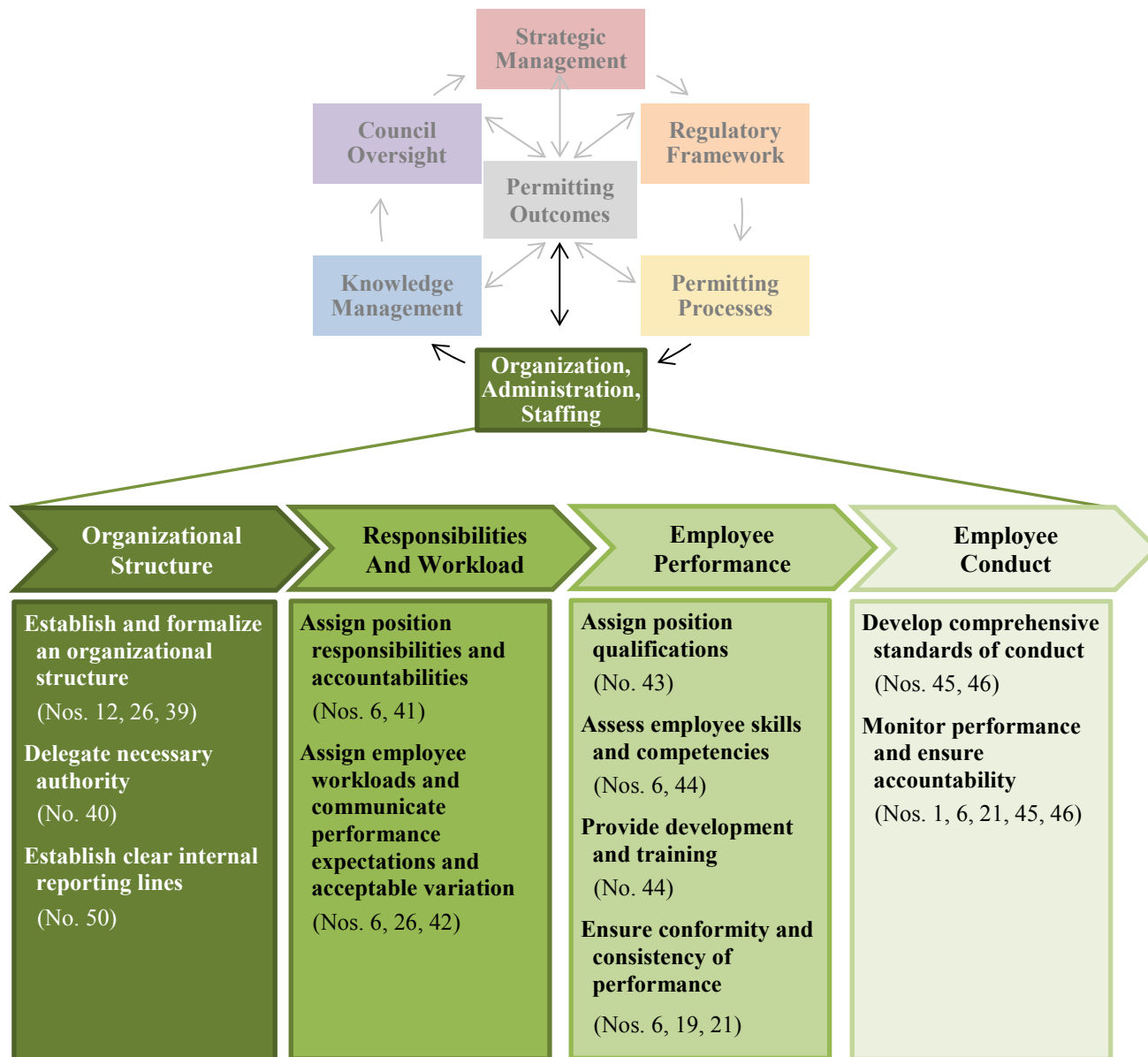
- 25.0 percent of their time (25,570 of 102,102 hours) on tasks most closely connected to permitting, including peer review, applicant assistance, and technical review of permit and Aquatic Resource Compensatory Mitigation (ARM) Fund applications; and
- 75.0 percent of their time (76,533 hours) on other tasks, including 23.1 percent (23,549 hours) on Bureau administration and program development.

While Bureau employees spent considerable time on administration, we identified numerous deficiencies with management control systems necessary for effective organization, administration, and staffing, as shown in Figure 12, which contributed to waste in several

areas—as resources were used without demonstrable outcomes—and inconsistent permitting decisions. Deficiencies also inhibited the development of an operating environment and organizational culture that recognized the importance of strategic management to achieving Bureau programmatic and permitting outcomes.

Figure 12

**Relationships Between Relevant Observations And Management Control Systems
Necessary For Effective Organization, Administration, And Staffing**



Source: Office of Legislative Budget Assistant–Audit Division (LBA) analysis.

Through State fiscal year (SFY) 2018, Department control systems necessary for effective Bureau organization, administration, and staffing were at an **initial** level of maturity, while subsystem maturity ranged from **initial** to **repeatable**, the lowest two levels of maturity. Deficient control systems contributed to process and management control deficiencies identified in 52 of our current audit's observations.

Bureau Organization

An effective organizational structure could help ensure: 1) the achievement of permitting objectives, 2) efficient and effective operations, 3) statutory and regulatory compliance, and 4) reliable communication of performance. The organizational structure consisted of the sections into which the Bureau was divided, the assignment of responsibilities and delegation of authority across sections and employees, and the reporting lines established to ensure clear internal and external communication.

The Bureau was managed by an Administrator responsible for all operations, including permitting and fiscal resources, and an Assistant Administrator responsible for permitting and support functions, including rulemaking, program development, and budgeting. The Bureau administrators oversaw seven sections, including six sections with permitting-related responsibilities divided across jurisdictional and regional areas.

- The Inland Section reviewed the majority of permit applications submitted under *Fill And Dredge In Wetlands (Wetlands)*, excluding shoreline and coastal project applications. Workload was divided across five State geographic regions.
- The Shoreland Section reviewed the majority of applications submitted under the *Shoreland Water Quality Protection Act (Shoreland)* and the majority of shoreline project applications submitted under *Wetlands*, excluding coastal project applications. Workload was typically specialized by application or notice type.
- The East and Southeast Region sections primarily reviewed coastal project applications submitted under *Shoreland* and *Wetlands*. Workload was divided across two remaining State geographic regions.
- The Public Works Section reviewed large, publicly-funded projects with major wetlands impacts, such as bridges and airports, as well as all applications submitted by the Department of Transportation.
- The Mitigation Section reviewed approvals for applications involving more than 10,000 square feet (0.2 acres) of wetland impacts and requiring mitigation, as well as administered the ARM Fund.

The Commissioner had been statutorily responsible for continually assessing the Department's organization for more than three decades. The Department's *2010-2015 Strategic Plan* (Department's 2010–2015 strategy) also included goals focused on coordinated, streamlined, and

timely provision of services, which was supposed to be supported, in part, by organizational charts and reporting lines.

However, deficient control systems over the Bureau's organizational structure contributed to waste and compromised effectiveness. Department control systems: 1) contained elements that were absent or ineffectively designed, inconsistently implemented, and unmonitored, contributing to 27 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 39

Strategically Manage Organizational Structure

Management neither developed the Bureau's organizational structure to achieve Department goals or objectives nor regularly conducted comprehensive reviews of the existing organizational structure's effectiveness or the effect that proposed organizational changes would have on workloads, performance, or full Department costs. Instead, organizational improvement efforts were focused largely on the proposed LRM reorganization, which went beyond the mandates contained in *Wetlands* and *Integrated Land Development Permit (Integrated Permit)*. No documentation demonstrated how the LRM reorganization was a more efficient and effective solution to achieving identified reorganization goals.

Objective, quantifiable analysis and strategic focus could have improved operational efficiency and effectiveness, the ability to meet goals and objectives, and adaptability to statutory and regulatory changes. However, planning efforts were performed once and not updated to reflect either the existing operating environment or known, forthcoming changes. For example, implementation of *Wetlands Program* rules (wetlands rules) revisions, anticipated in calendar year (CY) 2019 (proposed 2019 rules), would have substantially affected permitting processes, as would have shortened permit application review time limits in *Wetlands*, effective January 2019. Additionally, resources were wasted and aspects of operations were negatively affected due to factors such as: 1) limited managerial oversight of technical permit application reviewers, which contributed to inconsistency in permitting decisions; and 2) inaccurate organizational charts, which contributed to confusion about reporting relationships.

Inability To Fully Assess The Operating Environment And Business Processes

Strategically, deliberately, and formally assessing goals and objectives, statutory and regulatory requirements, and other priorities regularly could have helped management better understand demands on Bureau services and employees and provided direction and focus when developing an organizational structure and making necessary improvements. However, management lacked:

- a strategic plan, well-defined and measurable goals and objectives, and operational plans linking goals to permitting, as we discuss in Observation No. 2;
- a mechanism to transparently and comprehensively collect and analyze stakeholder and customer feedback and did not rely on the Wetlands Council (Council) in its oversight role, as we discuss in Observation Nos. 7, 8, 18, and 47; and
- comprehensive information on the work environment, resources, and training employees needed to be effective, as we discuss in Observation Nos. 6, 42, and 44.

Defining mission-critical process components, dependencies, and interconnections—particularly for permit application review and supporting processes—could have helped management better understand Bureau operations; develop efficient, effective, and compliant processes; and determine whether services were provided in a way that best met requirements and customer needs. Furthermore, ongoing assessment would have provided information needed to maintain an effective organizational structure, continuously improve mission-critical processes, ensure successful organizational outcomes, and plan for organizational changes necessary to implement improvements. However, management did not:

- have a comprehensive understanding of permitting-related processes, including necessary inputs, requirements, responsibilities, costs, interdependencies and connections, outputs, and outcomes, as we discuss principally in Observation Nos. 2 and 5;
- manage Lean events to obtain an adequate understanding of permit application review processes or identify Lean event outcomes, as we discuss principally in Observation No. 2; and
- ensure rules, policies, and standard operating procedures (SOPs) always reflected or accurately interpreted statutory or regulatory requirements, perpetuating ambiguity and confusion, as we discuss principally in Observation Nos. 9, 12, 17, and 18.

Ineffective Organizational Structure

An insufficient understanding of the Bureau’s mission, goals, objectives, and stakeholder needs and expectations—inadequately driven by the Department’s 2010–2015 strategy and lacking ongoing review—hindered the development and maintenance of an effective organizational structure and the effective implementation of the existing organizational structure. A strategically, deliberately, and formally established structure can help management achieve goals and objectives and address risk, assign responsibilities and delegate authority, establish clear reporting lines to facilitate supervision, and document and accurately communicate organizational structure and reporting lines. However:

- the Department lacked organizational rules for LRM programs and the Application Receipt Center (ARC), as we discuss in Observation Nos. 12 and 26;
- necessary authority was not delegated, as we discuss in Observation No. 40;
- some responsibilities were reportedly unclear and remained unfulfilled, as we discuss in Observation No. 41;
- managerial workloads were inequitable and apparently inappropriate, negatively affecting organizational outcomes, as we discuss in Observation No. 42;
- reporting lines were unclear, and internal communication was inadequate, as we discuss in Observation No. 50; and
- Division management knew existing organizational charts were inaccurate.

In CY 2018, we surveyed 37 Bureau and ARC employees then-employed or employed during SFY 2016 or 2017 on general Bureau operations (Bureau operations survey), of whom 32 (86.5 percent) responded. Our Bureau operations survey asked employees whether the Bureau’s existing organizational structure was adequate to achieve permitting goals and meet related targets, and:

- ten (31.3 percent), including five managers, reported *yes*;
- 11 (34.4 percent), including three managers, reported *no*; and
- 11 (34.4 percent), including two managers, reported being *unsure*.

The complete results of our Bureau operations survey are included in Appendix F.

Inability To Fully Assess Organizational Performance And Structure

Strategic, deliberate, and formal assessment of organizational performance and structure could have helped management determine whether significant organizational changes were required for permitting review process improvements, or whether performance gaps could have been addressed under the existing organizational structure. However, management:

- lacked a mechanism to measure and monitor ongoing costs to the Department and customers;
- lacked comprehensive systems to regularly measure, monitor, and manage operational and employee performance and determine whether performance fell below desired levels and by how much, as we discuss in Observation Nos. 5 and 6;
- did not allocate workloads based on data-informed analysis, as we discuss in Observation Nos. 41 and 42;
- did not routinely measure or monitor the accuracy and consistency of permitting decisions, as we discuss in Observation Nos. 6, 19, and 21;
- inadequately measured and monitored the timeliness of only certain steps within the permit application review process, as we discuss in Observation No. 22; and
- conducted a one-time review of organizational structure in anticipation of the LRM reorganization.

The lack of systematically-collected, comprehensive information also hindered management's ability to understand how significant changes to its operating environment would likely affect operations. Management was aware of statutory requirements with potentially significant effect on Bureau operations, including implementing *Integrated Permit* and changes to *Wetlands* reducing permit application review time limits, effective in January 2019. However, management conducted no analyses to understand potential effects on operations. Management was unable to demonstrate objectively whether the Bureau would be able to meet shorter permit application review time limits and whether existing staff levels would be adequate, instead speculating there would be some effect on permit application reviewer workload.

Inadequately Informed LRM Reorganization And Restructuring Efforts

Proposed LRM reorganization and restructuring efforts proceeded without systematic and comprehensive information and data collection and analyses necessary to: 1) prioritize critical Bureau processes most needing improvement, 2) determine whether and what changes to organizational structure were necessary to implement improvements, and 3) make a strategic, data-informed case for the need to invest significant time and resources in first developing, then implementing changes. Management initially identified an overarching goal to integrate LRM programs due to a need for greater efficiency, budgetary pressures, and a need to manage conflict among Bureau administrators. The Bureau could have potentially achieved cost savings and

performance improvements by revising processes, although substantial changes to the organizational structure of LRM programs may not have been necessary. While the Bureau conducted a number of events related to revising its processes, few focused on technical permit application review, there were limited connections to the Department’s 2010–2015 strategy, and measurement of event outcomes and the performance of revised processes was limited, hindering management’s ability to effectively improve processes and demonstrate success, as we discuss in Observation No. 6.

With no quantifiable analysis available to review, we sought employee views on the potential effects of proposed LRM reorganization and restructuring efforts. Our Bureau operations survey asked employees whether the proposed LRM reorganization would have affected the ability of the Bureau to achieve permitting goals and targets, and:

- six (18.8 percent), including three managers, reported it would have *increased*;
- one (3.1 percent) reported there would have been *no change*;
- five (15.6 percent), including two managers, reported it would have *decreased*; and
- 20 (62.5 percent), including five managers, reported being *unsure*.

Our Bureau operations survey also asked employees whether the proposed LRM restructuring would have affected the ability of the Bureau to achieve permitting goals and targets, and:

- five (15.6 percent), including two managers, reported it would have *increased*;
- two (6.3 percent) reported there would have been *no change*;
- two (6.3 percent), both managers, reported it would have *decreased*; and
- 23 (71.9 percent), including six managers, reported being *unsure*.

Waste

Using or expending resources without any demonstrable outcomes constituted waste. Proposed LRM reorganization and restructuring efforts were not strategically managed, which resulted in some amount of wasted time and effort developing and planning for organizational changes and implementing associated cross-training efforts, which we discuss in Observation No. 44. We were unable to quantify the amount of waste due to insufficiently detailed Department data. Additionally, several of the key efforts associated with the LRM reorganization—like cross-training—will likely need to be re-developed and re-implemented given: 1) the State Supreme Court’s May 2018 ruling on “need,” which we discuss principally in Observation Nos. 1, 9, and 13; 2) shortened application review time limits in *Wetlands*, effective in January 2019; 3) the implementation of *Integrated Permit*, effective in July 2019; and 4) forthcoming, required changes to the operating environment, such as the proposed 2019 rules.

Few LRM reorganization-related initiatives came to fruition, despite nearly a decade of planning and development. Since CY 2009, only the ARC was fully implemented, representing the only change to LRM programs’ organizational structure. Other initiatives had not reached full implementation or were placed on hold. *Integrated Permit* would have provided for the development of an integrated permit to be offered concurrently with individual LRM permits. It was enacted into law at the request of the Department during CY 2013 to become effective in CY 2015 initially. The law was first suspended at the request of the Department through July

2017 and then again through July 2019, “due to budgetary and staffing constraints.” The suspension of *Integrated Permit* reportedly centered upon the inability of key employees to find sufficient time to write necessary rules, at the same time as these employees were reportedly spending considerable time planning and developing the LRM reorganization and revising wetland rules. Division management speculated the LRM reorganization would have resulted in all changes necessary to implement *Integrated Permit* through changes to organizational structure and internal policies, SOPs, and practice.

Despite limited results, a senior Department manager reported a “staggering” amount of time and resources were devoted to the reorganization. In addition to time spent by Division, Subsurface Systems, and Alteration of Terrain managers:

- 12 Bureau and ARC employees responding to our Bureau operations survey (37.5 percent), including eight managers, reported spending time contributing to the development of the proposed LRM reorganization, and
- eight (25.0 percent), including six managers, reported spending time contributing to the development of the subsequently proposed LRM restructuring.

The Bureau tracked time employees reported allocating on the reorganization, restructuring, general program development efforts, representation in external workgroups, and attendance at meetings and conferences collectively. Unaudited Department time allocation data indicated Bureau employees collectively reported allocating 7.2 percent of their time (7,354 of 102,102 hours) on these tasks, with:

- Bureau administrators allocating 44.5 percent of their time (3,720 of 8,365 hours),
- permitting supervisors allocating 5.9 percent of their time (1,395 of 23,745 hours), and
- permitting staff allocating 3.2 percent of their time (1,288 of 39,978 hours).

It was reasonably clear that not all time was wasted, but the amount of time spent on reorganization and restructuring produced few tangible outputs, had no connection to programmatic outcomes, and had limited relationship to the existing or forthcoming operating environments.

Insufficient Assessment Of Operating Environment

Managers insufficiently assessed the needs and expectations of internal and external stakeholders in response to the proposed LRM reorganization. This limited their ability to focus improvement efforts on the most needed changes to existing operations and organizational structure. Employees expressed concerns about the LRM reorganization proposal during its formal development in CYs 2014 and 2015 and through CY 2018, raising concerns about:

- the need for the LRM reorganization generally; insufficient career mobility;
- the need for, and benefit of, additional administrative layers; and
- the importance of maintaining specialists in key environmental areas who could competently review highly complex permit applications.

External outreach and input into the LRM reorganization effort was limited until late CY 2015, when a stakeholder group asked the Governor and Executive Council to ensure the Department fully disclosed its plan for reorganization, implemented a public comment period, and sought stakeholder comments and recommendations. Informational meetings and stakeholder feedback reportedly helped the Department “understand the scope of changes needed to enhance customer service.” However, a number of stakeholders expressed concerns about the focus of the reorganization, generally indicating Bureau permitting and Bureau management were problematic; potential negative effects to the review of alteration of terrain or subsurface systems permit applications; and the potential loss of specialized knowledge when reviewing specific types of applications. Despite the Council’s statutory oversight role, the Department also did not seek its consultation or advice, even though the proposed reorganization was expected to affect Bureau operations, permitting programs, and policy.

Insufficient Assessment Of Organizational Structure

Management did not document how reorganization and the conversion of permit reviewers from specialists to generalists would have increased the efficiency and effectiveness of services provided to the public. The effects of the anticipated reorganization were reportedly “obvious” to managers. Under the existing organizational structure, managers assigned processing certain high-volume, low-complexity notices and applications to specialists, with some managers reporting a single specialist could process these notices and applications more quickly than dividing them across a number of generalist reviewers. Permitting supervisors reportedly addressed fluctuations in the number of submitted permit applications by reviewing additional applications themselves or reallocating applications across reviewers, and also reportedly reviewed the most complex applications, further demonstrating specialization had a place in any organizational structure. Furthermore, management recognized at least some permit applications required review by specialists even with the proposed LRM reorganization, as alteration of terrain permit applications were to be reviewed only by professional engineers or employees trained and overseen by professional engineers. However, the remainder of the reorganized LRM bureau would take a generalized approach, and employees were to be retrained to review all types of permit applications and eventually process a theoretical, single LRM permit application.

Additionally, no documentation demonstrated how the LRM reorganization was expected to improve employee career development or result in a more qualified workforce and improved retention. To the contrary, supplemental job descriptions (SJDs) proposed under the reorganization would have reduced professional credentialing requirements, as we discuss in Observation No. 43. Nonetheless, in response to employee concerns, management reportedly revised the proposed LRM organizational structure to provide additional opportunities for career advancement.

Insufficient Identification Of Needed Improvements

LRM permitting processes were purportedly reviewed as part of the LRM reorganization effort, but only an analysis of the administrative completeness review process was documented. Management initiated the LRM reorganization without addressing then-existing vacancies, which reportedly had an effect on the efficiency of permit application review, and without

conducting comprehensive analyses of the number of employees needed under the reorganization, reviewing only an initial proposal of the number of permit reviewers needed. Consequently, management was unable to know whether filling existing vacancies would have contributed to a sufficient improvement in permitting outcomes, or whether reorganization was needed. Subsequently, the Commissioner reportedly directed vacant positions be filled without further waiting on the LRM reorganization to proceed.

Inadequately Developing Improvement Goals

Management should have deliberately developed realistic improvement targets focused on programmatic or permitting outcomes linked to mission, supporting goals, and objectives. Ambitious goals, like the LRM reorganization focused on a theoretical single LRM permit, should have required additional consideration and may have benefited from a multi-phased approach to implementation. However, management proceeded with development of an option that went beyond even the future mandate contained in *Integrated Permit*, rather than focusing on improvement efforts needed to achieve existing operating objectives or known and forthcoming changes. Preliminary but incomplete LRM integration goals developed in CY 2011 focused on process improvements but differed from goals later formalized in January 2015, which focused primarily on implementing the LRM reorganization. Final goals publicized in CY 2017 returned focus to process improvements.

Insufficient Identification Of Possible Solutions

Management should have considered whether significant changes to Bureau processes and organizational structure were necessary only after determining whether improvements were needed, which improvements were needed most urgently, and selecting goals for improvement. LRM reorganization documentation did not demonstrate management: 1) considered alternatives to the proposed reorganization; 2) completely understood the resources, costs, risks, return on investment, or time needed to fully implement the reorganization; or 3) made data-informed decisions. Additionally, before proceeding with the reorganization, management should have assessed the capability of Division managers to oversee a significant organizational change, assessed the capability of Bureau administrators to implement significant changes, and considered how best to develop experience on a small scale before implementing large-scale changes, but did not.

Recommendations:

We recommend Department management:

- **integrate ongoing evaluations of the efficiency and effectiveness of organizational structures with strategic and workforce planning and performance management efforts;**
- **identify necessary data to inform organizational structure development and assessment and develop, implement, and refine means to routinely collect, monitor, and analyze data and integrate results into planning efforts;**

- routinely assess strategic goals, objectives, statutory and regulatory requirements, needs and expectations of customers, needs of employees, and other factors affecting the Bureau's operating environment and organizational culture in concert with the Council;
- routinely evaluate the effectiveness of permit application review processes and the extent to which processes align with the requirements and needs established in the operating environment;
- ensure organizational charts and human resources data accurately document and reflect existing organizational structures and reporting relationships;
- periodically review the Bureau's organizational structure for appropriateness and effectiveness; and
- ensure strategic management of significant organizational changes, including changes to business processes or the organizational structure, to ensure changes address the highest priority operational needs and facilitate implementation.

Department Response:

We concur with the recommendations.

The Department will enhance its efforts to identify necessary data to inform organizational structure development and assessment and develop, implement, and refine means to routinely collect, monitor, and analyze data and integrate results into planning efforts.

The Department disagrees with the auditors' characterization of LRM's cross-training and education program as waste. LRM programs share the Department's mission of protection of water quality, wetlands, and public health. Concepts provided broad applicability on use of tools and technology, delineation of wetlands (referenced in all LRM programs), shoreland protection (referenced in all LRM programs), LRM compliance field inspection techniques are applicable and valuable training to all staff. Thinking beyond one's silo allows inspectors and permit reviewers to identify issues from one program to help identify issues and best management practices across all LRM programs and sister agencies. The training also provided valuable public presentation experience and confidence to the presenters and increased the understanding of the technical permit reviewers on many issues.

LBA Comment:

The Department could not demonstrate outcomes—training, permitting, or programmatic—from LRM cross-training sessions, as we discuss in Observation No. 44, which constituted waste.

Additionally, cross-training was not developed as a result of, or informed by, an assessment of the needs of specific permit application review processes or other Bureau processes. Meanwhile, gaps in employee competencies and deficient processes negatively affected the consistency, timeliness, efficiency, and effectiveness of existing operations.

Delegations Of Authority

For more than three decades, the Commissioner was statutorily responsible for: 1) all powers enumerated to the Commissioner, Department, Division, or Bureau; and 2) formally delegating statutory authority deemed necessary and appropriate to achieve Department objectives, including those related to Bureau permitting. Such delegations were required to be in writing and kept on file.

However, the absence of a control system over delegated authority and ensuring employees with the proper authority were taking actions related to Bureau permitting, including making final decisions on permit applications and imposing permit conditions, contributed to statutory noncompliance. The Department's absent control system: 1) contributed to 28 observations in our current report, and 2) was at an **initial** level of maturity.

Observation No. 40

Formally Delegate Statutory Authority

The Commissioner had various statutory authorities to take action related to Bureau permit applications and review processes, but only two formal delegations of the Commissioner's statutory authority to Bureau employees existed. The Commissioner's statutory authority under *Wetlands* and *Shoreland* included:

- approving or denying permit applications,
- granting extensions to application review time limits or the time for which a permit was valid,
- suspending review of a permit application,
- placing conditions on approved permits, and
- entering into memoranda of agreement and cooperative agreements.

We requested delegations of authority from the Department, but none were provided. We found two formal delegations in wetlands rules, which provided: 1) the Bureau Administrator, or a designee, with authority to issue wetlands permits for minimum impact expedited (MIE) projects; and 2) the Bureau Administrator with authority to authorize emergency work. However, there were no written delegations from the Bureau Administrator identifying who else could issue MIE permits, and neither rule was adhered to during the review process. MIE permit applications were approved—with permits issued—or denied, and emergency authorizations were approved by employees without documented authority to do so.

Unaudited data listing Bureau permit applications and notices during SFYs 2016 and 2017 (Bureau permitting data) included 7,174 applications and notices, of which a Department decision had been made on 6,334 (88.3 percent). Unaudited Bureau permitting data demonstrated:

- all 490 MIE permit applications with a final decision (100.0 percent) were approved or denied by 18 technical permit reviewers—none of whom were the Bureau Administrator;
- 56 of 58 emergency authorizations (96.6 percent) were approved or denied by 17 technical permit reviewers, while the Bureau Administrator made a final decision on two (3.4 percent); and
- the remaining 5,786 permit applications and notices with a final decision were approved or denied, and conditions imposed upon approved permits, by employees without documented authority to take such actions.

Additionally, an interagency memorandum of agreement related to Bureau permitting was not signed by the Commissioner but by an employee without documented authority to do so.

Recommendations:

We recommend the Commissioner formally delegate authority to appropriate Department employees.

We also recommend Department management implement policies and procedures to ensure formal delegations of authority are followed and periodically reviewed for appropriateness.

Department Response:

We concur with the recommendation.

From the Commissioner-level down, the Department will complete a written delegation policy and develop associated procedures in identifying authorities delegated by the Commissioner, as well as delegations from program managers to subordinates. The delegations of authority will be periodically reviewed for appropriateness and updated as needed.

Management Of Employee Responsibilities

Assigning individual responsibilities to employees and organizational responsibilities to the Bureau helps ensure:

- achievement of permitting objectives;
- effective design, implementation, and operation of management controls;
- detection and remediation of issues with control effectiveness;
- efficient and effective operations; and
- statutory and regulatory compliance.

The Legislature assigned responsibilities through statute, while Department managers assigned responsibilities through SJDs, or informally as initiatives or other tasks arose. The Commissioner was statutorily responsible, for more than three decades, for delegating or assigning authority to

administer and operate programs. The Assistant Division Director, as acting LRM Administrator, was responsible for coordinating the activities of the Bureau administrators. The Bureau Administrator and Assistant Administrator were responsible for assigning work to Bureau employees, consistent with position classifications.

However, deficient control systems over employee responsibilities contributed to some unknown portion of hundreds of thousands of dollars in employee salaries being wasted, since some employees in positions classified as supervisory had no subordinates and no supervisory responsibilities. Department control systems: 1) contained elements that were absent or ineffectively designed, inconsistently implemented, and unmonitored, contributing to 49 observations in our current report; and 2) were at a **repeatable** level of maturity.

Observation No. 41

Clarify And Rationalize Employee Responsibilities

Management was responsible for communicating delegated authority and assigning responsibilities to employees, including responsibility for decision-making. However, necessary authorities were generally undelegated, and responsibilities were reportedly unclearly and inequitably assigned and likely contributed to some waste, as positions had higher classifications than necessary given assigned responsibilities.

Ineffective Policy And Procedure

Management should have assigned responsibilities to employees that allowed the Bureau to achieve its objectives, but both managers and staff inconsistently reported the assignment of responsibilities accomplished that end. Without objective data or analysis available to review, we sought employee views on their responsibilities through our Bureau operations survey. We asked employees whether the distribution of responsibilities affected the Bureau's ability to operate efficiently and effectively, and:

- seven (21.9 percent), including two managers, reported a *positive* effect;
- two (6.3 percent) managers reported *no* effect;
- ten (31.3 percent), including three managers, reported a *negative* effect; and
- 13 (40.6 percent), including three managers, reported being *unsure*.

Our Bureau operations survey also asked employees whether the distribution of responsibilities affected the Bureau's ability to achieve its permitting goals and meet related targets, and:

- four (12.5 percent), including one manager, reported a *positive* effect;
- four (12.5 percent), including two managers, reported *no* effect;
- eight (25.0 percent), including three managers, reported a *negative* effect; and
- 16 (50.0 percent), including four managers, reported being *unsure*.

Discrepancies Between Position Classifications And Responsibilities

Job descriptions should contain specific references to management control-related tasks, responsibilities, and accountabilities. However, between 41.7 and 50.0 percent of positions filled from July 2015 to June 2018 should have had supervisory responsibilities, but did not. Each position represented wasted resources, as the Department was likely paying a supervisory premium, which could have been as high as almost \$472,600 in salary alone during the audit period. This was in addition to the premium paid to have two coastal permitting section supervisors oversee sections with one, or no, staff assigned, as we discuss in Observation No. 42.

- Environmentalist IVs – From July 2015 to June 2018, the Bureau had 24 to 30 filled positions, of which eight (26.7 to 33.3 percent) were Environmentalist IV positions intended to have—and compensated for—supervision over an environmental section, program, or employees performing work that differed from their supervisor. Seven of the eight positions (87.5 percent) were actually supervisory, but one (12.5 percent) classified as Environmentalist IV since at least CY 2009 was not supervisory. The Department’s premium for the position could have been as high as almost \$56,000 in salary alone during the two-year audit period.
- Environmentalist IIIs – A substantial portion of filled Bureau positions were classified as Environmentalist III: nine of 24 (37.5 percent) in July 2015 and July 2016, ten of 24 (41.7 percent) in July 2017, 13 of 30 (43.3 percent) in February 2018, and 14 of 30 (46.7 percent) in June 2018. Environmentalist III positions were intended—and compensated—to directly supervise employees performing related or similar work to their supervisor, review direct reports’ work for accuracy, and complete direct reports’ performance evaluations. None of these positions had direct reports, and no supervisory responsibilities, such as peer review, were assigned. The Department’s premium could have been as high as almost \$46,300 per position in salary alone during the two-year audit period, or nearly \$416,700 in salary for the nine positions filled during the two-year audit period.
- ARC Staff – We also identified discrepancies between the classifications of ARC staff positions and assigned responsibilities, potentially causing confusion for staff or contributing to additional wasted resources.

Inadequately Maintained SJDs

Job descriptions should have clearly indicated each position’s degree of accountability, authority, and assigned responsibilities, but assignment of responsibilities inconsistently reflected actual duties. Many employees reported concerns about responsibilities, which reportedly affected morale and operational performance. Management was responsible for ensuring SJDs were accurate and up-to-date, but more than half of SJDs associated with positions in LRM programs had reportedly been updated in anticipation of the proposed LRM reorganization. One manager noted these updates broadened positions’ scope of work and responsibilities. Division management indicated some SJDs may need to be revisited to reflect actual—rather than

proposed—job responsibilities, but had not yet done so. Our Bureau operations survey asked employees how reflective SJDs were of all their responsibilities, and:

- 12 (37.5 percent), including five managers, reported *fully*;
- eight (25.0 percent), including one manager, reported *mostly*;
- seven (21.9 percent), including three managers, reported *somewhat*;
- two (6.3 percent), including one manager, reported *slightly*;
- one (3.1 percent) reported *not at all*; and
- two (6.3 percent) reported being *unsure*.

Managers should have also ensured direct reports understood their responsibilities, but some employees indicated not all responsibilities were clear. Our Bureau operations survey asked employees how clearly SJDs defined their responsibilities, and:

- 19 (59.4 percent), including seven managers, reported *very clearly*;
- eight (25.0 percent), including two managers, reported *somewhat clearly*;
- four (12.5 percent), including one manager, reported *not clearly*; and
- one (3.1 percent) reported being *unsure*.

Employees also commonly reported SJDs: 1) did not fully reflect the work they performed, 2) included substantially different or additionally-assigned-but-unrelated duties, 3) were not timely updated to reflect changes, or 4) were not specific enough about responsibilities. SJDs were last updated as far back as CY 2003, included references to air quality and the Department's Air Resources Division, lacked statutory duties, and contained duties not performed. Responsibilities not listed on an SJD should have only been required of an employee if such responsibilities were characteristic of their position's classification. Three employees reported spending a significant amount of time on duties that should have been assigned to employees with a higher classification and labor grade. Additionally, we identified one employee whose annual evaluation acknowledged work being performed beyond the position's classification and a second employee who was assigned Bureau administrator responsibilities.

Performance evaluations were intended not only to assess employee performance, but also to ensure responsibilities were accurate, as managers were to evaluate direct reports against SJD accountabilities. However, evaluations were inconsistently and untimely completed, as we discuss in Observation No. 6. Additionally, SJDs should have been signed by a manager and the incumbent employee to confirm accuracy, with a current, signed copy maintained by the Department. However, among the 42 SJDs active during and after the audit period, 37 (88.1 percent) were not properly maintained, of which:

- 31 (73.8 percent) were not signed by the employee and the supervisor,
- five (11.9 percent) were not signed by the employee, and
- one (2.4 percent) was not signed by the supervisor.

Uninformed Assignment Of Responsibilities

Management lacked a comprehensive system to manage employee performance, which: 1) contributed to an ad hoc and reactive approach to managing employees, 2) created insufficient clarity as to whether workloads were reasonable, and 3) negatively affected Bureau operations and morale, as we discuss in Observation Nos. 6, 42, and 50. Effective, strategic management of employees could help optimize organizational performance and ensure public accountability. Periodic and data-driven evaluation of workload allocations could have allowed management to assess and improve the efficiency and performance of Bureau operations.

Perceived Inequity Of Responsibility Distribution

Management had access to—but did not analyze—information on how employees spent their time, such as the amount of time spent on permitting tasks compared to other responsibilities. Such analyses were essential to achievement of Department strategic goals related to work environment and management of staffing resources, as we discuss in Observation No. 6. Insufficient transparency and perceptions of inequity regarding the assignment of responsibilities appeared to have created tension and contributed to low morale. In response to our Bureau operations survey, 18 employees (56.3 percent) expressed concerns with the transparency and equity of responsibility assignment.

Sixteen employees (50.0 percent) reported some employees were assigned considerably more work than others or pointed to disparities in workload across employees or permitting sections. Both managers and staff inconsistently reported responsibilities were distributed transparently, and, when our Bureau operations survey asked how frequently responsibilities were distributed equitably:

- five (15.6 percent), including one manager, reported *always*;
- seven (21.9 percent), including three managers, reported *often*;
- eight (25.0 percent), including three managers, reported *sometimes*;
- three (9.4 percent) reported *rarely*;
- three (9.4 percent), including one manager, reported *never*; and
- six (18.8 percent), including two managers, reported being *unsure*.

Concerns with assignment and equity of responsibilities affected both morale and employee retention, which in turn affected operations and increased costs. Among the 17 employees (53.1 percent) who reported having left or seriously considering leaving the Bureau, eight (47.1 percent) pointed to high workloads without commensurate pay as a reason.

Insufficient Emphasis On Permitting Responsibilities

The Bureau Administrator and some supervisors and staff reported employees were unable to spend sufficient time on permitting. Bureau employees reported allocating 25.0 percent of their time on tasks most closely connected to permitting, indicating insufficient focus on the area of most strategic importance, and greatest risk, to the Bureau. Workloads varied widely, including

the amount of time allocated to core permitting responsibilities, as shown in Figure 13, and the number of permit applications processed, as we discuss in Observation No. 42.

Employees also reported insufficient managerial emphasis on permitting. In response to our Bureau operations survey, seven employees (21.9 percent) commented:

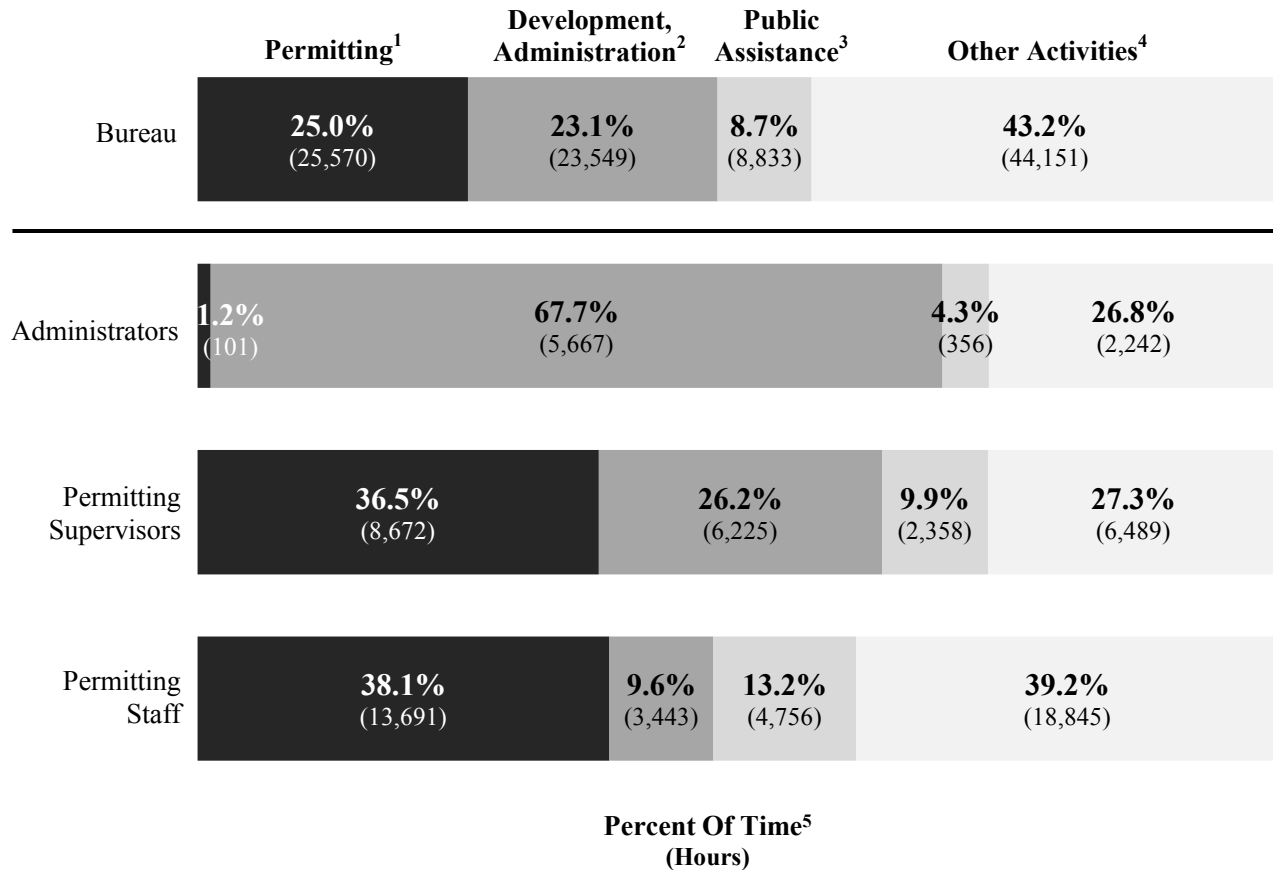
- reviewers should focus on permit application review and spend minimal time on, or not be assigned, additional non-permitting responsibilities;
- permitting workloads were not adjusted for non-permitting responsibilities; and
- Bureau administrators suggested at least some non-permitting responsibilities were of higher importance than permitting responsibilities.

Bureau administrators and permitting section supervisors also appeared to spend limited time on permitting oversight, raising questions about its effectiveness. Sufficient and effective oversight was essential to ensure consistent permitting decisions. Peer review was intended to help ensure consistency for certain high-risk applications and permitting decisions. However, Bureau administrators collectively reported allocating 1.2 percent of their time on permitting tasks, as shown in Figure 13, including review of other employees' permitting decisions. One manager reported there was little oversight because supervisors were performing staff-level work, while a second manager reported spending more time “managing personalities and personnel conflicts” than on permitting.

Management completed one analysis of historical workloads that it used to update allocation of permit application reviews across Bureau permitting sections. Workloads were simply distributed based on the number of permit applications in a reviewer's region. Permit application complexity was not considered. A measure of permit application complexity could have accounted for factors such as project classification, permit application length, and the need for mitigation. Management could then anticipate the amount of work that applications of differing complexity might involve when making assignments and assess whether variations in regional workloads were reasonable, given employee knowledge, skills, and abilities. A measure of permit application complexity—combined with a holistic performance management system—might have further allowed management to assess whether variations in regional workloads were appropriate, given all responsibilities and the use of permit application review generalists and specialists.

Figure 13

Reported Allocation Of Wetlands Bureau Employee Time, SFYs 2016–2017



Notes:

1. Permitting tasks included peer review, applicant assistance, and technical review of permit applications and Aquatic Resource Compensatory Mitigation (ARM) Fund applications.
2. Development and administration included 13.5 percent of time (13,789 hours) on program development tasks, such as rulemaking, legislation, grant application and management, and ARM Fund administration, and 9.6 percent (9,760 hours) on general administration tasks, such as staff meetings, human resources tasks, and budget preparation.
3. Public assistance tasks included public education and information and general assistance.
4. Bureau employees reported allocating to other tasks: 10.1 percent (10,271 hours) on clerical and administrative support, 8.3 percent (8,439 hours) on enforcement, 5.1 percent (5,212 hours) on inspections, 3.6 percent (3,679 hours) on training, 0.4 percent (364 hours) on hearings and appeals, 0.2 percent (230 hours) on meetings, 0.0 percent (36 hours) on data management, and 15.6 percent (15,921 hours) on leave.
5. Percentage calculated based on total available time: 102,102 hours for all employees; 8,366 hours for administrators; 23,745 hours for permitting supervisors; and 35,978 hours for permitting staff. Excludes a detailed allocation of 34,013 hours for other employees, such as compliance employees and administrative staff. Percentages may not total to 100.0 percent due to rounding.

Source: LBA analysis of unaudited Department time allocation data.

Recommendations:

We recommend Department management:

- **rationalize position classifications and employee responsibilities, particularly related to supervision and functions related to higher classifications, and eliminate waste;**
- **ensure supplemental job descriptions accurately and clearly reflect current position responsibilities;**
- **ensure supplemental job descriptions are signed by the employees holding the relevant positions and their supervisors, kept on file, used during annual performance evaluations, and provided to employees as required;**
- **ensure, to the extent possible, transparency and equity in the assignment of responsibilities to employees;**
- **ensure sufficient emphasis on the assignment and completion of permitting-related responsibilities over non-related responsibilities; and**
- **develop a measure of permit application complexity and use that information to more appropriately allocate permit application workloads across permit reviewers, regions, and sections.**

Department Response:

We concur with the recommendations.

The Department will review and rationalize responsibilities, SJDs, and position roles with respect to credentialing and actual responsibilities. We will develop training for staff, and we will continue encouraging staff to participate in training sessions presented by outside entities with expertise, as resources allow. We will seek legal advice regarding the credentialing of staff and supervisors, and we will make SJD changes according to that advice, and we will update the peer review policy, including assuring appropriate review of staff permitting decisions. We will ensure sufficient emphasis on the assignment and completion of permitting tasks over non-permitting tasks. We will evaluate developing a measure of complexity to help in assigning workloads.

Workload Management

Effective management of employee workloads can help ensure the achievement of Bureau permitting objectives, efficient and effective operations, and statutory and regulatory compliance. Ensuring efficient and effective use of Bureau administrators' and supervisors' time was particularly important, since managers were responsible for:

- performing quality control on Bureau permitting decisions to help ensure consistency and compliance with permitting requirements;
- ensuring employees clearly understood, and were accountable for, meeting their responsibilities; and

- designing, implementing, operating, monitoring, and improving management controls.

Division and Bureau managers held responsibility for managerial and employee workloads. The Assistant Division Director, as acting LRM Administrator, was responsible for aligning staffing and work priorities. The Bureau Administrator was responsible for developing approaches to handle workloads efficiently and effectively. The Assistant Bureau Administrator was responsible for setting the priorities for, and assigning work to, permitting section supervisors and staff.

However, despite long-standing concerns, deficient control systems over workload management persisted and contributed to waste. Department control systems: 1) contained elements that were absent or ineffectively designed, inconsistently implemented, and unmonitored, contributing to 47 observations in our current report; and 2) were at an **initial** stage of maturity.

Observation No. 42

Assess And Revise Managerial Workloads

The Bureau's organizational structure developed in an ad hoc and reactive manner, creating disproportionate and apparently inappropriate managerial workloads and affecting Bureau operations, including permitting. Unaudited Department time allocation data indicated Bureau administrators reported allocating negligible time to review permit applications, assist applicants, or perform peer review of supervisor and staff permitting decisions. A few supervisors were responsible for the greater part of these responsibilities, and permitting-related section staff reported allocating less than 40 percent of their time, on average, reviewing applications, and took final action on less than half of the applications received by the Bureau. Periodic and data-driven evaluation of the Bureau's organizational structure and workload allocations could have allowed management to assess and improve the efficiency and performance of Bureau operations. However, management either did not collect necessary information, or did not analyze information it did collect, and did not perform such evaluations, either routinely or when contemplating significant organizational changes.

Inadequate Management

Management was responsible for: 1) identifying responsibilities necessary to achieve Bureau goals and objectives and 2) assigning responsibilities to Bureau sections and employees to optimize operations and ensure statutory and regulatory compliance. However, management lacked relevant and reliable data and analyses to inform staffing and workload allocations and manage the Bureau, as we discuss in Observation No. 6.

Perceptions Of Ineffective Bureau Administration

Division management indicated lack of clarity between the roles and responsibilities of Bureau administrators—as well as ongoing dysfunction—affected Bureau operations, including employee performance and morale. Reportedly, no attempt was made to clarify the roles of Bureau administrators within the current organizational structure. The proposed LRM reorganization was publicly presented as a way to improve operational efficiency, as we discuss in Observation No. 39, although Division management reported the impetus for the

reorganization was, in part, dysfunction between Bureau administrators. A modified proposal for LRM restructuring later became an alternative to resolve the dysfunction, according to Division management. However, neither effort had been implemented through CY 2018, and the dysfunction between administrators and its effects on operations and the Bureau's work environment reportedly persisted.

Our Bureau operations survey asked the 30 responding supervisors and staff a series of questions on the operating environment, organizational culture, and work environment. When asked how effectively the Bureau was managed:

- two employees (6.7 percent), including one supervisor, reported *very effectively*;
- ten (33.3 percent), including one supervisor, reported *somewhat effectively*;
- five (16.7 percent), including two supervisors, reported *neither effectively nor ineffectively*;
- 12 (40.0 percent), including four supervisors, reported *ineffectively*; and
- one (3.3 percent) reported being *unsure*.

When asked whether Bureau administrators' decisions were consistent with one another:

- two employees (6.7 percent), including one supervisor, reported *always*;
- three (10.0 percent), including one supervisor, reported *often*;
- 14 (46.7 percent), including five supervisors, reported *sometimes*;
- six (20.0 percent), including one supervisor, reported *rarely*;
- one (3.3 percent) reported *never*; and
- four (13.3 percent) reported being *unsure*.

When asked about individual employees' level of morale:

- seven employees (23.3 percent), including two supervisors, reported *high*;
- 13 (43.3 percent), including four supervisors, reported *moderate*; and
- ten (33.3 percent), including two supervisors, reported *low*.

When asked about the level of morale within the Bureau, perceptions were more negative:

- three employees (10.0 percent), including one supervisor, reported *high*; and
- ten (33.3 percent), including one supervisor, reported *moderate*;
- 15 (50.0 percent), including six supervisors, reported *low*; and
- two (6.7 percent) reported being *unsure*.

More than half of supervisors and staff (17 employees, 56.7 percent) also reported seriously considering, or actually, leaving the Bureau, of whom 15 (88.2 percent) reported internal work environment problems, such as with management, as a reason.

Ad Hoc Creation Of Permitting-related Sections

The current organizational structure was viewed as inefficient by a former Division Director, who indicated the distribution of permitting responsibilities across existing sections was “a legacy feature of old business processes” and less efficient than the proposed LRM reorganization would have been. Six Bureau permitting sections were divided across jurisdictional and regional areas, an organizational construct reportedly perpetuated due to differences in funding sources. Notably, the East Region and Southeast Region sections developed out of a single coastal section, reportedly due to personality conflicts between former employees. It was unclear that jurisdictional or regional distinctions needed to affect the way in which permitting responsibilities were structured organizationally, however, as it was not uncommon for permit section supervisors and staff to provide assistance on applications that had been assigned to another section and were approaching statutory review deadlines, and supervisors and section staff reviewed applications under both *Shoreland* and *Wetlands*. This practice reportedly dated back to at least CY 2006.

Insufficiently Data-informed Managerial Workloads

The Bureau’s organizational structure was not based on a comprehensive review of factors affecting the ability of administrators and supervisors to efficiently and effectively perform their responsibilities. Consequently, wide variation in managerial workloads and responsibilities, as shown in Table 20, contributed to ineffective oversight, operational inefficiency, and wasted resources. Management did not sufficiently consider and account for factors affecting managerial efficiency and effectiveness when assigning workloads, including:

- amount of permitting experience;
- skill level and competency;
- manager time allocated to permitting, as shown in column B of Table 20;
- direct reports’ time allocated to permitting, as shown in column C of Table 20; and
- complexity of responsibilities, as shown in column D of Table 20.

Management was responsible for periodically reviewing the Bureau’s organizational structure to ensure it met operational goals and objectives and was able to adapt to changes affecting operations, such as changes in the statutory environment, as we discuss in Observation No. 39. However, the existing organizational structure resulted in an inadequate level of supervision, since:

- statutory requirements, rules, policies, and procedures were not always clearly and consistently interpreted, as we discuss principally in Observation Nos. 17 and 50;
- employee and operational performance expectations were not always clearly defined, communicated, or enforced, as we discuss in Observation Nos. 6, 21, 45, and 50; and
- permitting decisions were not always consistent, as we discuss in Observation No. 19.

Table 20

Wetlands Bureau Managerial Workloads, SFYs 2016–2017

Manager	Column A	Column B	Column C	Column D
	Manager To Direct Report Ratio ¹	Percent Of Manager Time On Permitting ²	Percent Of Direct Report Time On Permitting ²	Percent Of Overall Permitting Workload Volume Overseen ³
Administrator	1:2 to 1:3	2.0	4.9	91.1
Assistant Administrator	1:7 to 1:8	0.5	55.0	83.0
Inland Supervisors	1:2 to 1:6	50.3	50.9	15.0
Shoreland Supervisor	1:3 to 1:5	39.0	35.8	53.4
Public Works Supervisor	1:1	42.9	34.9	5.5
East Region Supervisor	1:1	22.3	32.0	3.4
Southeast Region Supervisors	1:0 to 1:1	39.0	15.3	4.5
Mitigation Coordinator	1:1	26.4	11.6	0.7

Notes:

- Ratio of manager to direct reports, from July 2015 through June 2018. Ranges of ratios vary due to staffing changes.
- Percent of time employees reported allocating to tasks most closely connected to permitting, including permit application review, ARM Fund application review, applicant assistance, and peer review responsibilities, as captured on employees' timesheets. For administrators and supervisors, the percentage of time is the time reported by the individual administrator or supervisor while in their managerial position. For direct reports, the percentage of time is the average percentage of time reported by direct reports of the administrator or in the section.
- The percentage of Bureau permit and ARM Fund applications submitted under *Wetlands* and *Shoreland* on which administrators' direct reports, and their direct reports, when applicable, or on which section staff took final action. This measure presents information on the volume of permitting activity, not the complexity or length of applications.

Source: LBA analysis of unaudited Department employment data, Bureau organizational charts, unaudited Bureau permitting data, and unaudited Department time allocation data.

Insufficient Assessment Of Managerial Workload Appropriateness

The allocation of managerial responsibilities and workload was ad hoc, rather than data informed. A number of factors affected administrator and supervisor efficiency and effectiveness and should have been accounted for when management reviewed and developed the Bureau's

organizational structure. However, such analyses were neither routinely conducted, nor performed when management contemplated reorganizing or restructuring LRM programs, as we discuss in Observation No. 39. Additionally, management generally either lacked sufficient and timely organizational performance information or did not consider available information.

Experience

Management should have considered experience levels. More experienced administrators and supervisors, who oversaw more experienced direct reports, may have warranted wider spans of control, or a larger number of direct reports. At the end of SFY 2018:

- five of eight Bureau administrators and permitting and mitigation supervisors (62.5 percent) had been in their position more than 10 years, while three (37.5 percent) held their position two years or less; and
- nine of 13 permitting and mitigation section staff (69.2 percent) had less than two years' experience, while four (30.8 percent) had four years' experience or more.

Skills And Competencies

Management should have considered skills and competencies of Bureau administrators, supervisors, and section staff. Higher performing managers may have warranted wider spans of control. However, employee and operational performance expectations were inadequate and not always clearly defined or communicated. Evaluations of managers should have included assessments on: leadership, impartiality, and ability to delegate; communication skills and decision-making; ability to motivate, develop, and evaluate staff; and level of knowledge. Yet no related expectations had been developed relative to managerial responsibilities, and measures against which employees were assessed varied, as we discuss in Observation No. 6. Additionally, performance evaluations were completed inconsistently, were often late, and were qualitative.

Between SFYs 2016 and 2017, among the 11 managers:

- three (27.3 percent) did not receive any evaluations, having last been evaluated in CY 2014, in CY 2012, and prior to CY 2012;
- five (45.5 percent) had received one of two required evaluations; and
- three (27.3 percent) had received all required evaluations.

Time Spent On Core Responsibilities

Management should have considered the amount of time spent by managers and their direct reports on varying responsibilities, particularly permitting. Managers who personally spent, or had direct reports who spent, a significant amount of time on permitting responsibilities may have warranted narrower spans of control, or a smaller number of direct reports. Unaudited Department time allocation data indicated the time employees reported allocating on tasks most closely connected to permitting—permit application and ARM Fund application review, applicant assistance, and peer review of permitting decisions—varied, with:

- Bureau administrators allocating only 1.2 percent of their time (101 of 8,366 hours);
- permitting supervisors allocating 36.5 percent of their time (8,672 of 23,745 hours); and
- permitting section staff allocating 38.1 percent of their time (13,691 of 35,978 hours).

However, management lacked a control system to understand whether differences were appropriate.

Sufficient managerial oversight was particularly important, as employees responsible for permitting were inconsistently credentialed, trained, evaluated, and peer reviewed, and lacked clear, consistent guidance that was universally understood, as we discuss throughout this report. Notably, peer review was intended to help ensure consistency for certain high-risk permit applications and permitting decisions, and the Bureau Administrator was responsible for peer review of applications and decisions with the highest potential for controversy, as we discuss in Observation No. 21. However, Bureau administrators spent minimal time either conducting technical review and making final permitting decisions themselves or performing peer review of other employees' technical review and permitting decisions, raising questions about the effectiveness of permitting oversight. Additionally, while permitting supervisors spent a substantial proportion of time on permitting, some employees indicated this prevented permitting supervisors from providing adequate supervision to section staff.

Complexity Of Responsibilities

Management should have also considered the nature and complexity of responsibilities. Managers who: 1) personally had, or oversaw direct reports with, complicated, inadequately defined, or vague responsibilities; 2) oversaw direct reports with dissimilar, highly-technical, or complicated responsibilities; or 3) personally were, or oversaw direct reports who were, frequently involved in decision-making or the application of judgment, including purported or actual professional judgment, during permitting may have warranted narrower spans of control. Unaudited Bureau permitting data demonstrated output by permit application type varied:

- Bureau administrators made final decisions on five applications and notices (0.1 percent);
- permitting supervisors made final decisions on 1,576 applications and notices (24.9 percent); and
- permitting section staff made final decisions on 4,000 applications and notices (63.2 percent).

However, management lacked a control system to ensure it understood whether assignments and output by permit type were appropriate and reflected the most efficient and effective use of employees' skills and time.

Additionally, assigned responsibilities were not always clearly defined, as we discuss in Observation No. 41, and employees reported responsibilities were not always distributed equitably or transparently. One staff member noted, "[s]ome staff members have multiple [roles]... while other staff members are accountable for very little." Permitting supervisors were

also disproportionately assigned responsibilities held by Bureau administrators, varyingly adding to the complexity of their workloads. One staff member commented an administrator did not fulfill their responsibilities and “often assign[ed] work to others who were already overburdened.”

Necessary Level Of Supervision And Interaction With Direct Reports

Management should have considered the extent to which direct reports were able to operate independently or required additional training or direction, as managers overseeing direct reports needing additional guidance or supervision may have warranted narrower spans of control. However, the statutory and regulatory framework surrounding Bureau permitting was complicated and at times, unclear and insufficiently defined, as we discuss principally in Observation Nos. 9, 12, and 13. Additionally, insufficient clarity in the regulatory framework, which we discuss principally in Observation Nos. 9, 12, and 17, would have required a higher level of interaction between administrators or supervisors and staff. Many employees (13 of 31 employees, 41.9 percent) reported being *sometimes*, *rarely*, or *never* able to follow policies and procedures without additional training or guidance, and six of 19 (31.6 percent) reported being unable to implement all new information learned through training sessions without additional training or guidance.

Operating Environment Risks

Management should have considered the nature and risks of the operating environment, as managers may have warranted narrower spans of control in areas of higher risk. The Bureau was one of the Department’s most controversial programs. Permit application review was central to the Bureau’s reason to exist and Bureau operations had a high degree of scrutiny from the public and the Legislature, due in part to the level of public interaction, the number of actual and potential stakeholders, the relationship between permitting and private property rights, and the subjective nature of permitting. However, there was a lack of clarity on Bureau goals and objectives, and management did not formally document operational risks and resulting decisions.

Potentially Inappropriate Managerial Workloads

We found spans of control varied widely, and some were likely inappropriate. An ideal span of control is the number of direct reports a manager can oversee and achieve optimal effectiveness and efficiency.

- Having a narrow span of control can result in closer supervision and more opportunities for professional development. However, an overly narrow span of control can potentially result in: communication difficulties, low morale, micromanagement, higher costs, a decrease in employee or operational performance, and delays in approvals.
- Having a wide span of control can result in increased organizational flexibility and communication efficiencies. However, an overly wide span of control can potentially

result in: low morale and managers who are overloaded and cannot anticipate ground-level performance issues.

However, management lacked a control system to determine whether spans of control were appropriate and reflected the most efficient and effective use of managers. Consequently, spans of control varied widely, as shown previously in Column A of Table 20.

Bureau Administrator

The Bureau Administrator's span of control appeared narrow and insufficiently focused on permitting oversight. Between July 2015 and June 2018, the Administrator reportedly oversaw two or three employees. The Administrator's workload involved:

- non-managerial responsibilities that were highly complex and loosely defined, requiring frequent decision-making and a high level of coordination across employees and operations;
- supervision of experienced direct reports who performed a variety of responsibilities and were guided by unclear and insufficiently comprehensive rules, policies, and procedures; and
- oversight of the entire Bureau and all associated risks, the substantial majority of which were indirectly connected to permitting decisions and outcomes.

Given the Administrator's responsibilities and workload, a wider span of control under the current structure may have been more appropriate. However, the Administrator, who was a certified wetlands scientist and a certified professional in erosion and sediment control, should have likely had direct oversight of the Bureau's technical permitting review functions, as permitting was the area of most strategic importance and greatest risk to the Bureau, which may necessitate a change in reporting lines and a narrow span of control.

Assistant Bureau Administrator

The Assistant Bureau Administrator's span of control appeared too wide and overly focused on direct permitting oversight. Between July 2015 and June 2018, the Assistant Administrator reportedly oversaw seven to eight employees. The Assistant Administrator's workload involved:

- non-managerial responsibilities that were inherently complicated, vague, and required a significant amount of time;
- supervision of direct reports in varying geographic locations with varying experience who performed a variety of responsibilities, including many involved in highly technical and complex business processes, some of whom were certified wetlands scientists or held other professional licenses; and
- oversight of permitting, which was the most public, complicated, and high-risk function of the Bureau.

Given the Assistant Administrator's responsibilities and workload, a narrower span of control may have been more appropriate. However, the Assistant Administrator, who was a certified public supervisor, a certified public manager, and Lean certified, should have likely had

oversight of aspects of Bureau operations that indirectly supported permitting, such as the ARC, information and data, and compliance.

Permitting And Mitigation Section Supervisors

Section supervisors' spans of control varied widely, and some appeared too narrow, while others appeared comparatively too wide. Supervisors' workloads involved:

- non-managerial responsibilities that were highly complex and unclearly defined, requiring frequent and complex decision-making, applying judgment, and, in some cases, applying purported or actual professional judgment;
- supervision of direct reports who typically had limited permitting experience, requiring a significant amount of oversight, and were involved with highly complex and unclearly defined business processes; and
- supervision and performance of permitting, the most public, complicated, and high-risk function of the Bureau.

However, workloads did not appear to sufficiently account for factors affecting the ability of supervisors to efficiently and effectively accomplish their responsibilities. For example:

- a long-time permitting section supervisor had only one direct report, who also had significant permitting experience;
- the long-time mitigation section supervisor had only one direct report, whose responsibilities were similar to those of the business systems analyst and permitting section staff but spent minimal time on permit and ARM Fund application review;
- permitting supervisors with the most formal and informal peer review responsibilities, due to inexperience of section staff, had the highest number of direct reports; and
- supervisors spent disparate amounts of time on permitting and peer review, and the supervisor who spent the most time on these complex, technical, and high-risk tasks had the most direct reports, while the supervisor who spent the least time on permitting had the least number of direct reports—one.

A former Division Director stated the division of the coastal sections into East Region and Southeast Region sections was “no longer appropriate” and indicated the two could be combined back into a single section. Unnecessarily narrow spans of control are inefficient, due to higher Bureau costs and negative effects on morale and organizational performance, and contribute to waste. Given permitting-related section supervisors' responsibilities and workloads, a more consistent span of control may have been more generally appropriate, which could reduce the need for the current number of supervisors.

Recommendations:

We recommend Department management:

- **identify, through strategic and workforce planning and risk assessments, factors affecting Bureau managerial workloads, such as responsibilities, experience, skills, frequency of application of judgment and demands for application of**

professional judgment, competencies of employees, the level of interactions needed to ensure sufficient communication and supervision, and the nature of the operating environment;

- develop and implement methods to measure and monitor factors affecting workloads, in coordination with performance management efforts, including implementing necessary data collection efforts and analyzing data currently collected;
- conduct a comprehensive review of Bureau managerial workloads, taking into account relevant factors; and
- make necessary adjustments to managerial workloads and spans of control to improve organizational efficiency, including phasing out the current construct of two coastal sections.

Department Response:

We concur in part with the recommendations.

We concur with the recommendations, with the exception of agreeing, at this time, to phase out the current construct of two coastal sections. The current construct will be further evaluated as part of implementation of the first recommendation, and appropriate adjustments will be made based on that evaluation.

The Bureau will build upon ongoing program improvement initiatives and measures under the oversight of the Department's new manager of LRM programs.

Effective February 1, 2019, the Department, for the first time, filled a new manager position to oversee all of the LRM programs (including the Bureau). The new manager brings a fresh and independent approach to management and organization of the Bureau and will be evaluating goals, objectives, responsibilities, and managerial workloads and making changes necessary to address issues identified.

LBA Rejoinder:

The Department's response does not clarify:

- how it will address waste of public resources, despite an obligation to provide effective stewardship of public resources and a purported long-standing commitment to continuous improvement also reflected in the Department's 2010–2015 strategy; or
- why the two coastal regions established as the result of a personnel decision 15 years ago—leaving each region with its own supervisor and no more than one employee to supervise—should persist, especially when the conditions leading to the arrangement no longer exist.

Permit Reviewer Qualifications

Employees were essential to providing and improving customer service and conducting administrative and technical permit application reviews consistent with rules and policy. Due to ambiguities in the regulatory framework and permitting practice, employees had substantial leeway to apply judgment during permit application reviews. For more complex projects, permit application reviews involved engineering, wetlands science, and other disciplines. Management was responsible for establishing expectations of competence and clearly assigning and communicating authority, including decision-making authority. Additionally, management controls should have provided reasonable assurance that the professional practice of uncredentialed employees operating under statutory exemptions was equivalent to that of credentialed professionals.

However, deficient control systems over Bureau employee credentials, and the application of judgment without relevant credentials or licenses, contributed to inconsistent permitting outcomes. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 45 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 43

Clarify And Rationalize Wetlands Bureau Employee Credentialing Requirements

Since CY 2007, we have commented on management controls over ensuring positions fully reflected skills and qualifications needed to contribute to the achievement of permitting goals and objectives. Some professions, including soil or wetland science and land surveying, exempt State employees engaged in professional practice from needing to obtain certification, while others, including professional engineering and architecture, provided no exemptions from licensure for State employees. However, Bureau employees without relevant certifications or licenses reportedly engaged in both exempt and nonexempt professional practices during technical review. Uncredentialed and potentially unqualified employees reported questioning credentialed professionals' judgment. We also identified instances of this occurring during technical review. Questioning professionals' judgment added to the time of processing a permit application, likely added to applicant costs, and contributed to inconsistent permitting outcomes. Additionally, credentialing requirements were inconsistently required and enforced, and uncredentialed employees did not receive development equivalent to that of credentialed professionals.

While the complexity associated with permitting requirements increased over time, actual and proposed changes to required credentials either reduced, or would have reduced, credentialing requirements. Permit applications were approved and denied, and the substance of projects proposed in applications were materially altered, by uncredentialed and potentially unqualified reviewers based on rules with hundreds of issues, including ambiguities and ill- or un-defined technical terms central to each decision. Unqualified employees reviewing and approving or denying permit applications could increase the risk of making inconsistent and noncompliant permitting decisions, and negatively affecting property owners or the environment.

Previously Identified Deficiencies Over Permit Reviewer Qualifications

Our August 2007 *Alteration Of Terrain And Wetlands Permitting Performance Audit Report (2007 Audit)* found:

- wetlands permit application reviewers needed specific skills, as permit application review then relied upon subjective and complex decision-making and required consideration of the hydrology and biology of wetlands, wildlife impacts, and aesthetics; and
- review, approval, and modification of permit applications required adequate professional qualifications, without which, Department employees risked issuing permits that did not meet statutory or regulatory requirements.

We recommended, and the Department concurred, that managers not qualified to review and approve permit applications should not deviate from the recommendations of qualified employees without seeking legal advice on the potential consequences of their decisions, and we suggested the Division consider increasing the labor grades of multi-program positions to reflect fully the skills needed in those positions. In response to a follow-up of our *2007 Audit* recommendations conducted during our CY 2015 *Department Of Environmental Services Water Division Internal Control Review Agency-Income Revenues*, the Department asserted they had “fully resolved” our recommendation to ensure unqualified employees adhered to the recommendations of qualified employees.

However, more than a decade later:

- the proposed LRM reorganization would have increased the labor grades of certain positions but failed to progress beyond February 2017;
- credentials and responsibilities were inconsistently and irrationally required of existing Bureau positions; management reduced credentialing requirements during the audit period;
- not all managers held required credentials; and
- the proposed LRM reorganization would have also reduced credentialing requirements for supervisors and managers.

Additionally, while credentialing requirements decreased, salaries increased.

Importance Of Professional Credentials

Division and Bureau managers and employees noted the importance of proper credentialing due to ethical, credibility, technical knowledge, and public perception considerations. However, Division and Bureau managers and staff reported concerns with the controls over credentialing requirements and the use of judgment and “professional judgment.” Many Department managers reported “professional judgment” was necessary to review more complex applications, particularly wetlands applications, and to make permitting decisions. Reportedly, an employee’s “scientific” background affected their assessment of vague and undefined application requirements such as least impacting alternatives. However, one Department manager previously

stated “professional judgment” was not a sound scientific method, at least with respect to wetland evaluation, and indicated written technical guidance should be relied upon instead. Deviating from properly adopted, rule-based requirements increased the risk the Bureau would engage in ad hoc rulemaking, as we discuss in Observation No. 13.

The exercise of purported and actual professional judgment relied upon employee competence, including knowledge, skills, and abilities gained from professional experience, training, and credentials. Management was responsible for analyzing each position’s responsibilities, determining the level of judgment—including professional judgment—required, establishing expectations of competence, and ensuring employees met expectations and requirements.

Minimal Credentialing Requirements And Lack Of Compliance

Despite the importance that at least some employees hold credentials, management decreased the number of positions requiring credentials by half during the audit period, from eight to four. Requirements and changes were inconsistently applied across similar positions:

- both administrator positions (100.0 percent) were *required* to hold wetland or soil science certification, although under the proposed LRM reorganization, such credentials would have been only *strongly preferred* for the new LRM Regional Operations Administrator position;
- five of six permitting-related section supervisor positions (83.3 percent) were *required* to hold wetland or soil science certification at the beginning of the audit period, but by the end of the audit period, qualifications were *required* for two (33.3 percent), *preferred* for two (33.3 percent), and *highly desired* for two (33.3 percent); and
- one of 16 permitting section staff positions (6.3 percent) was *required* to hold wetland or soil science certification at the beginning of the audit period, but credentials were listed as *preferred* by the end of the audit period.

Furthermore, management did not systematically enforce credentialing requirements. Not all employees held credentials noted to be *required*, *preferred*, or *highly desirable* in their SJD, even though employee credentials should have matched those of the professionals with whom they were engaged and whose work they were questioning. We found that among:

- the eight employees whose SJDs *required* credentials, three (37.5 percent) held the credentials, two (25.0 percent) did not hold the credentials, and the credentials of three (37.5 percent) could not be determined;
- the two employees whose SJDs listed *preferred* credentials, one (50.0 percent) held the credentials and one (50.0 percent) did not; and
- the two employees whose SJDs listed *highly desirable* credentials, neither held the credentials.

Insufficient compliance with credentialing requirements raised potential concerns with the adequacy of technical permit application review and oversight. For example, the Assistant Bureau Administrator’s responsibilities included supervising professional wetland scientists and

performing professional wetlands scientist duties. The position's SJD required a certification in wetlands or soils science or acquisition of a certification within one year of hire. The Assistant Administrator had occupied the position since CY 2005, but held neither certification through CY 2018. The Assistant Administrator was involved in the peer review process and conducted peer review of decisions made by employees who were certified wetland scientists or were required to be a certified wetland or soil scientist, and responsible for wetlands rules revisions and permitting-related policies and procedures.

Insufficient Alignment Between Responsibilities And Credentials

The responsibilities of employees involved in technical review were similar or equivalent to those performed by certified or licensed professionals. However, among 33 Bureau employees with responsibilities related to technical review, six (18.2 percent) held related professional certifications or licenses. Workforce planning could have allowed management to determine whether employees needed certain professional credentials. However, management did not conduct workforce planning, and consequently: 1) credentialing requirements and preferences inconsistently aligned with the scope of work and accountabilities enumerated in SJDs, particularly those related to the use of judgment and professional judgment; and 2) it was unclear whether employees without credentials were acting under applicable statutory exemptions.

The 35 SJDs for positions with technical review responsibilities active during the audit period contained variation in assigned responsibilities related to permitting and the use of judgment and professional judgment, as shown in Table 21. Additionally, we identified one performance evaluation in which a supervisor commented their employee should be "incorporating the latest scientific knowledge" into technical permit application reviews. The extent to which scientific knowledge should be applied to permit application review, in addition to requirements in statute and rules, was unclear in policy, procedure, and formal assignment of responsibilities.

Inconsistent Professional Practice Requirements

Certain professional practices were regulated by the State in the public interest to protect the citizens of the State, and the professions themselves, from unqualified practitioners. When Bureau employees were exempt from professional credentialing requirements, the Department assumed responsibility for providing reasonable assurance that the practice and competency of uncredentialed employees was equivalent to that of credentialed professionals. However, we identified numerous deficiencies with management control systems surrounding professional credentialing, assignment of responsibilities, peer review, and professional development.

Additionally:

- Bureau employees' SJDs contained no explicit direction as to which positions were operating under the statutory exemption related to certification; and
- Alteration of Terrain Bureau employees were required to hold a professional engineer license to review applications that included plans stamped by professional engineers, and would have continued to do so under the proposed LRM reorganization, while

Wetlands Bureau employees did not have similar requirements, yet were in a similar position to review applications that included plans stamped by professional engineers.

Table 21

Permitting Employee Responsibilities Assigned Through Supplemental Job Descriptions, August 2018

Responsibility	Number Of SJDs				
	All (Percent Of Total)	Administrator (Percent Of Total)	Supervisors		Staff (Percent Of Total)
			Permitting (Percent Of Total)	Non- permitting (Percent Of Total)	
Permit Review					
Review Or Evaluate Technical Documents	20 (57.1%)	1 (50.0%)	2 (25.0%)	0 (0.0%)	17 (73.9%)
Supervision Of Permit Application Review	7 (20.0%)	0 (0.0%)	6 (75.0%)	1 (50.0%)	0 (0.0%)
Ensure Evaluation Criteria Are Technically Sound	7 (20.0%)	0 (0.0%)	6 (75.0%)	1 (50.0%)	0 (0.0%)
Permit Decision-making					
Oversee Permit Issuance	9 (25.7%)	0 (0.0%)	8 (100.0%)	0 (0.0%)	1 (4.3%)
Draft, Write, Or Issue Permits Or Decisions	6 (17.1%)	0 (0.0%)	0 (0.0%)	1 (50.0%)	5 (21.7%)
Establish Permit Conditions	2 (5.7%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	2 (8.7%)
Rulemaking					
Use Scientific Knowledge To Inform Rule Development	4 (11.4%)	0 (0.0%)	4 (50.0%)	0 (0.0%)	0 (0.0%)
Total	35	2	8	2	23

Source: LBA analysis of SJDs active during the audit period.

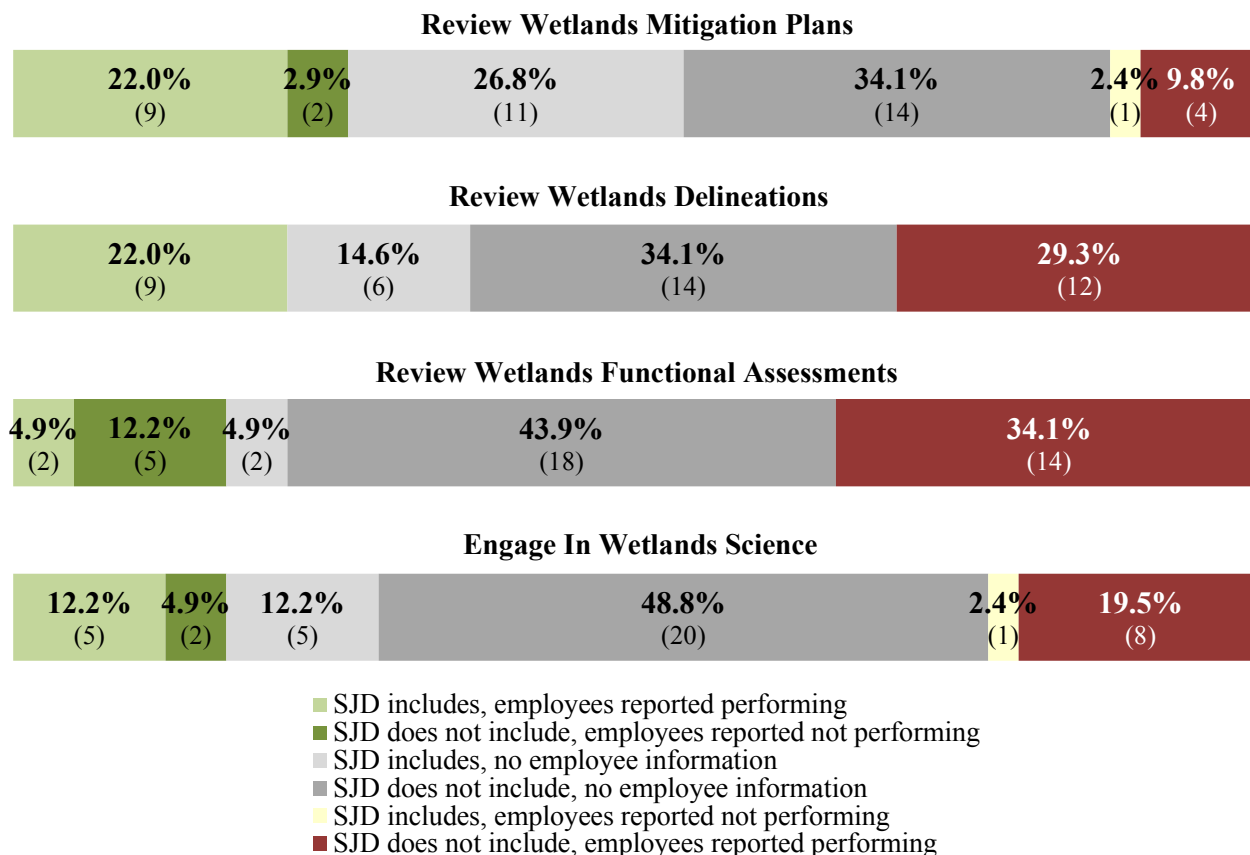
Inconsistency In Wetland Science Credentialing And Related Responsibilities

Although Division and Bureau managers and staff reported concerns over proper credentialing, focused primarily on credentials related to wetland science, five of 33 Bureau employees with technical review responsibilities (15.2 percent) held wetland scientist certifications. To become a certified wetland scientist, a professional would need to pass an examination designed to determine proficiency and qualifications; have experience in the practice of wetland science, including delineating wetland boundaries, classifying wetlands, preparing wetland function and value assessments, designing wetland mitigation, and monitoring wetland functions and values; and meet other requirements. In CY 2018, we surveyed 32 Bureau employees then-employed or employed during SFYs 2016 or 2017 on Bureau permitting-related practices (Bureau permitting

survey), of whom 22 (68.8 percent) responded. Our analysis of Bureau permitting survey results and SJDs demonstrated more employees reported performing wetlands science-related responsibilities than specified by SJDs, as shown by the red bars in Figure 14. The complete results of our Bureau permitting survey are included in Appendix G.

Figure 14

Performance Of Wetlands Science-related Responsibilities, As Assigned Through Supplemental Job Descriptions And Reported By Employees, August 2018



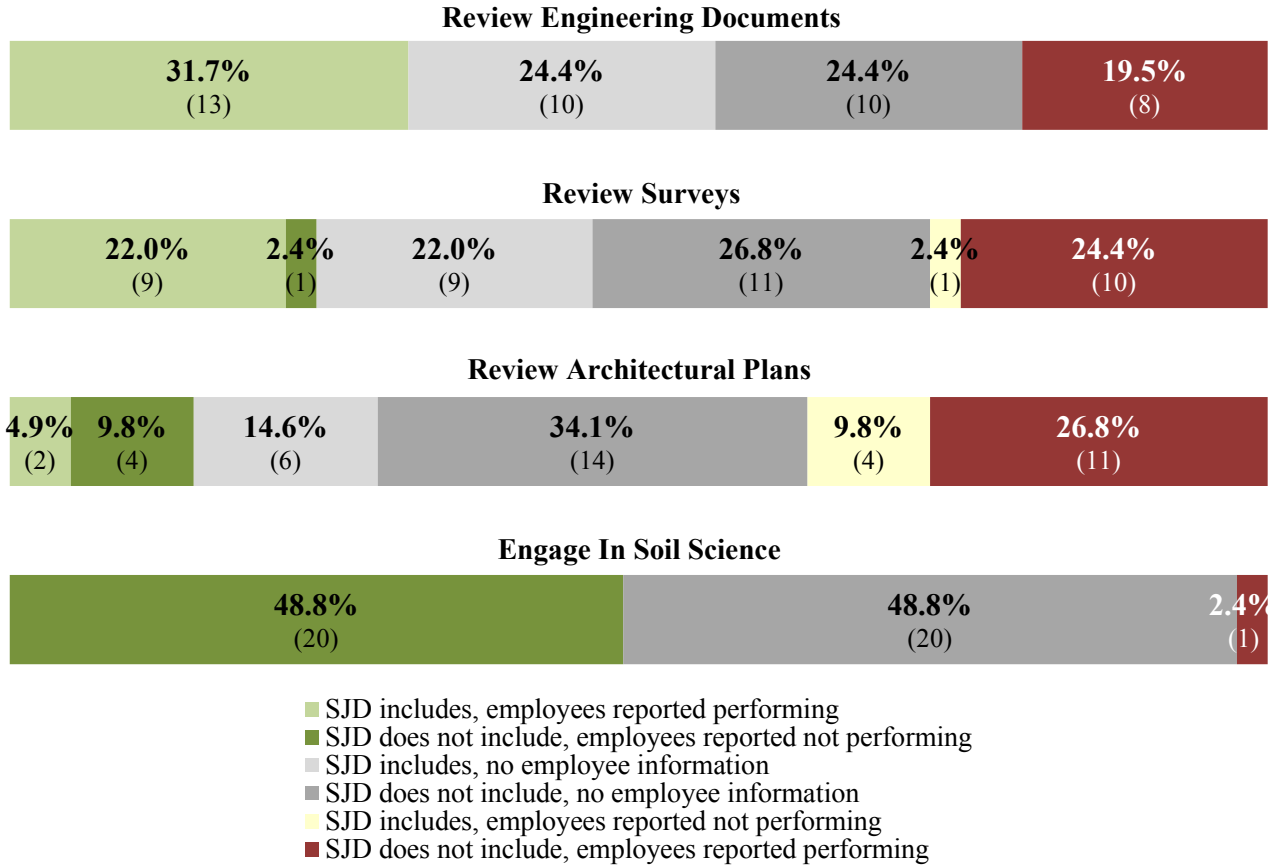
Source: LBA analysis of Department-provided SJDs and Bureau permitting survey results.

Inconsistency In Other Credentialing And Related Responsibilities

Credentialed and uncredentialed employees performed additional duties similar to functions performed by other certified or licensed professions. Two of 33 Bureau employees with responsibilities related to technical permit review (6.1 percent) held erosion and sedimentation control certifications, one (3.0 percent) held a wildlife biology certification, and one (3.0 percent) was a licensed geologist. Bureau permitting survey results and SJDs demonstrated more employees reported performing non-wetlands science-related professional responsibilities than specified by SJDs, as shown by the red bars in Figure 15.

Figure 15

Performance Of Other Professional Responsibilities, As Assigned Through Supplemental Job Descriptions And Reported By Employees, August 2018



Source: LBA analysis of Department-provided SJDs and Bureau permitting survey results.

Concerns With Questioning Credentialed Professionals

Although few employees held credentials relevant to technical review, and it was unclear whether or which employees should be engaging in professional practice under a statutory exemption, we identified several instances in which reviewers: 1) questioned the judgment of a certified or licensed professional and 2) made decisions during review that added to the time, and likely the cost, associated with an application. We reviewed hardcopy files for standard dredge and fill, shoreland, and MIE permit applications listed in Bureau permitting data as active during SFYs 2016 or 2017, of which 13 of 64 (20.3 percent) contained documentation of permit reviewers questioning the judgment of a certified or licensed professional.

- Two of the 13 applications (15.4 percent) had reviewers with credentials generally relevant to technical permit application review, but none had a reviewer with credentials relevant to the subject matter being questioned.

- Two of the 13 applications (15.4 percent) contained instances in which the reviewer re-delineated wetland boundaries. Neither reviewer held a wetland scientist certification. For the first application, the project was reclassified from a permit by notification to an MIE as a result of the re-delineation. This re-delineation differed significantly from that of the applicant's certified wetland scientist. For the second application, a local conservation commission member—who was not a certified wetland scientist—requested the Bureau confirm the delineation of certified wetland scientist. The Bureau reviewer proceeded to inspect the project site, noting “wetlands were observed beyond the limits of those delineated on the plans.” The application was ultimately denied.
- Six of the 13 applications (46.2 percent) were required to be peer reviewed, but documentation of peer review existed for three of six applications (50.0 percent).

Our Bureau permitting survey asked the 18 employees reporting involvement in technical review questions about technical review, and many—both with and without professional credentials or licenses—reported questioning certified or licensed professionals. When asked how frequently they raised concerns about the accuracy or validity of documents or information stamped by a certified or licensed professional, 15 employees (83.3 percent) reported raising concerns at some point, 11 of whom (73.3 percent) did not have a relevant certification or license. Of the 18 employees:

- one (5.6 percent) reported *often*;
- ten (55.6 percent), including five managers, reported *sometimes*;
- four (22.2), including two managers, reported *rarely*;
- one (5.6 percent) reported *never*; and
- two (11.1 percent), both managers, reported being *unsure*.

When asked how frequently they recommended changes that led to changes in a project plan, 15 (83.3 percent) reported recommending such changes at some point, 11 of whom (73.3 percent) did not have a relevant certification or license. Of the 18 employees:

- four (22.2 percent), including one manager, reported *often*;
- ten (55.6 percent), including five managers, reported *sometimes*;
- one (5.6 percent), a manager, reported *rarely*;
- one (5.6 percent) reported *never*; and
- two (11.1 percent), both managers, reported being *unsure*.

We also found several additional instances where the technical permit reviewer increased time and cost for the permit applicant and other parties, potentially raising issues with qualification or employee development requirements and likely contributing to the inconsistencies during technical review.

- One permit application was approved, but the permit conditions were subsequently revised substantively, the permit approval was appealed to the Council and remanded back the Department, and the permit conditions were again revised, twice. Revisions

and the substance of the appeal related to the adequacy of the applicant's stormwater management plan. The permit reviewer neither sent a request for more information (RFMI) to the applicant during technical review to request additional information regarding the plan nor questioned the adequacy of the plan.

- One permit application was reclassified to a major standard dredge and fill application six months after it was submitted, due to stream impacts known to the reviewer as soon as two months after it was submitted. The permit application was denied due to the applicant's untimely response to a subsequent RFMI.

Inequivalent Development To Credentialed Professionals

Uncredentialed employees did not appear to receive professional development equivalent to that of credentialed professionals. A certified wetland scientist was required to obtain at least 24 hours of continuing professional education relevant to the practice of wetland science each biennium. While cross-training sessions provided relevant information, it did not appear sufficient or complete.

- One session covered wetland identification, although it was developed and presented by employees who were not certified. More than half of the presented material covered topics not directly related to the practice of wetland science.
- One field session covered the key components of wetland identification, and the presenters were all certified. Two additional field sessions were apparently held and presented by employees with and without certification, but training materials provided by the Department did not contain related documents. One manager reported training did not address making professional judgment, such as when delineating wetlands.
- One session was purportedly held in September 2017 related to aerial mapping, but training materials provided by the Department did not contain related documents. Training appeared to be particularly important, as RFMIs could require verification of wetland delineations completed by a certified wetland scientist, based on interpretation of aerial photography by a reviewer who may or may not hold relevant credentials or experience.

Recommendations:

We recommend Department management:

- **rationalize which positions should require professional credentials, given assigned and actual responsibilities, ensure requirements are clearly specified in supplemental job descriptions, and monitor and enforce compliance with requirements;**
- **rationalize which positions qualify for statutory exemptions from professional credentialing requirements and ensure such authority is clearly delegated and requirements are clearly specified in supplemental job descriptions;**

- **update the peer review policy to require peer review by a manager who holds a relevant certification or license if an uncredentialed employee questions the accuracy or validity of documents stamped by a certified or licensed professional during technical permit application review; and**
- **develop and implement professional training and development to ensure employees operating under statutory exemptions receive appropriate training and development.**

Department Response:

We concur with the recommendations.

The Department will review and rationalize responsibilities, SJDs, and position roles with respect to credentialing and actual responsibilities. We will develop training for staff, and we will continue encouraging staff to participate in training sessions presented by outside entities with expertise, as resources allow. We will seek legal advice regarding the credentialing of staff and supervisors, and we will make SJD changes according to that advice, and we will update the peer review policy, including assuring appropriate review of staff permitting decisions.

Employee Development

Bureau employees needed to possess a wide range of knowledge, including an understanding of complex technical areas and of compliance with State and federal laws and rules. An effective employee development program could help:

- improve employee and operational performance,
- achieve Bureau goals and objectives,
- maximize efficiency and effectiveness, and
- ensure consistency in permitting outcomes.

Development tied to strategic and workforce planning and goals was integral to operational performance and the provision of services. Effective controls would have encouraged, supported, and invested in short- and long-term development. Equally important was ensuring employee expertise and mission-critical competencies remained current and focusing on developing a productive and skilled workforce capable of meeting existing and future organizational responsibilities. Division and Bureau managers, including the Assistant Division Director, were responsible for employee development, establishing training programs, and ensuring efficient Bureau operations. However, stakeholders indicated potential concerns with employee development.

Despite a related suggestion made to the Department in our *2007 Audit*, deficient control systems over employee development contributed to an unquantifiable amount of waste, inconsistent permitting outcomes, and statutory and regulatory noncompliance. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and

unmonitored, and, in some cases, knowingly circumvented, contributing to 50 observations in our current report; and 2) were at a **repeatable** stage of maturity.

Observation No. 44

Improve Employee Development Program

The Bureau inadequately implemented the Department’s strategic goal to develop and maintain a formal and comprehensive workforce development process through CY 2018. Inadequate implementation comprised State objectives to develop employees to improve service, increase efficiency and economy, and build a skilled and efficient workforce. Bureau employee development did not: 1) integrate the Department’s 2010–2015 strategy; 2) objectively assess and quantify organizational performance and knowledge gaps, identify areas for improvement, and target development programs; 3) clearly define quantifiable goals and expectations; 4) continuously monitor and periodically evaluate results; or 5) adequately, or in some cases, at all, address important topics for Bureau permitting or administration. Consequently, development efforts lacked a strategic, coordinated focus necessary to continuously improve organizational performance and wasted some resources.

Ineffective Management Of Bureau Employee Development Program

Insufficient and ineffective planning, design, and implementation limits management’s ability to ensure development programs address critical gaps in operational performance and employee competencies and are the most cost-effective solutions. Management inadequately ensured development programs:

- were integrated with, and driven by, strategic and performance planning;
- were driven by formal, comprehensive, and systematic assessments of gaps in employee knowledge, skills, and abilities and operational performance;
- addressed competencies and processes with the greatest impact on performance;
- defined development outcomes through observable and quantifiable measures;
- were selected after an assessment of costs and benefits; and
- were evaluated to assess effect on programmatic and permitting outcomes.

We found employees either inconsistently followed—or were not always aware of—established requirements, policies, and procedures of the existing operational environment. This negatively affected the consistency, timeliness, efficiency, and effectiveness of the permit application review process. Additionally, there were frequent staffing changes. Reportedly, it could take up to one year to adequately train a new employee and have “confidence” in their work. Management also had not developed policies or procedures to ensure all employees understood and were aware of development programs and expectations for participation, performance, and outcomes. Employees should have been required, or selected, to participate in programs based on development goals and priorities and their existing knowledge, skills, abilities, and attitudes.

Insufficient and inadequate evaluation can limit management’s ability to ensure development programs contribute to actual improvements in employee competencies and operational

performance. There were no effective tools to measure organizational performance, however, as we discuss in Observation Nos. 5 and 6. Management evaluation of development programs can help ensure programs performed as intended and provided the best value. Evaluation could also have allowed management to implement and target development programs to reinforce learning for specific employees who most needed it, or to specific areas if operational performance did not improve. Additionally, management could have used this information to communicate to internal and external stakeholders the importance and value of its development programs.

Ineffective Management Of Bureau Training Programs

In our *2007 Audit*, we suggested the Division expand cross-training for permit application reviewers to increase flexibility. Alteration of terrain and wetlands permit application reviews were backlogged, due in part to employee turnover and seasonal fluctuations in applications. Division management reported a long-standing desire to cross-train employees so they would be able to review applications across programs for a single project. However, the LRM cross-training program proceeded without sufficient planning, development, or implementation, focusing instead on an LRM reorganization that never occurred and assumed all permit reviewers would become generalists to handle the most complex applications, wasting resources. All LRM employees reportedly attended cross-training sessions, although management did not expect all permit application reviewers would review all LRM permit applications.

Waste

Resources are wasted when training and development programs: 1) do not correspond with how specific jobs should be done and 2) cannot produce any demonstrable outcomes or results. Insufficient and inadequate training contributed to the deficiencies in Bureau operations we identify throughout this report. Cross-training sessions focused on training employees to process multiple LRM programs permits under the anticipated LRM reorganization, but the reorganization failed to move forward, and gaps in competencies and permitting processes negatively affected the consistency, timeliness, efficiency, and effectiveness of existing operations.

Some Bureau managers knew employees had learned inconsistent application of rules, and Division and Bureau managers were aware of the importance of training to ensure consistency during permit application review and continuity of service. Sufficient and adequate training could have improved existing operations and helped management identify areas in which revisions, additions, or changes to statutes, rules, policies, and procedures were warranted.

Management should have ensured the robustness of training programs aligned with their strategic importance, as management continued to identify cross-training as a critical component of LRM programs' improvement through CY 2018. Training alone does not produce desired development outcomes and requires adequate preparation and support. Management had not connected cross-training with the needs of specific permit application review processes or other Bureau business processes. Cross-training sessions lacked measurable training objectives, which could demonstrate specific changes in competencies and facilitate measurement of development outcomes achieved by employees who participated in training. Additionally, management had

not developed pre-training activities to prepare employees or evaluate competencies prior to actual training sessions and developed one post-training activity to reinforce information learned or evaluate competencies after training, called “proficiency testing.”

We were unable to quantify exactly how much time and effort may have been wasted by training focused on future LRM reorganization instead of the existing operating environment due to insufficiently detailed Department data, as the Bureau tracked time spent on all internal and external training sessions collectively. Unaudited Department time allocation data indicated Bureau employees reported allocating 3.6 percent of their time (3,679 of 102,102 total hours) on training, with:

- Bureau administrators allocating 4.1 percent of their time (339 of 8,366 hours),
- permitting supervisors allocating 3.8 percent of their time (894 of 23,745 hours), and
- permitting section staff allocating 4.9 percent of their time (1,756 of 35,978 hours).

It was reasonably clear that not all of this time was wasted, but the focus of LRM cross-training on a nonexistent organizational structure lessened its usefulness, and nothing quantified any objective return from the Department’s investment.

No Information On Training Effectiveness

Management lacked a formal, objective process to ensure that strategic or operational changes were timely reflected in development programs and training sessions. Our Bureau operations survey asked whether employees received training following updates or changes to statute, rules, or policies and procedures, and:

- three (9.4 percent), including two managers, reported *always*;
- one (3.1 percent) reported *often*;
- six (18.8 percent), including three managers, reported *sometimes*;
- nine (28.1 percent), including four managers, reported *rarely*;
- eight (25.0 percent), including one manager, reported *never*; and
- five (15.6 percent) reported being *unsure*.

Cross-training sessions held during SFYs 2016 and 2017 did not provide training on peer review. Peer review was a critical step in permit application review processes and was intended to be a quality control process designed to help ensure permitting decision consistency, as we discuss in Observation No. 21. We reviewed a sample of 56 Bureau permit applications processed during SFYs 2016 and 2017, some of which were subject to more than one peer review requirement, and found 47 of 58 applicable peer review requirements (81.0 percent) were not met.

One cross-training session provided limited training on permit decisions, including selecting permit conditions and drafting decisions. Permitting decisions were a critical step in the permit application review process, as they resulted in the most visible and highest risk output of the review process: approval or denial. Permit conditions were intended to help ensure environmental resource protection, monitor permitting outcomes, and enforce compliance. “Findings” were used to ensure decisions were supported by laws and facts and were reviewed upon appeal.

However, policy and training conflicted. Policy provided permit application review “findings” were to be issued with decisions on applications with major wetlands impacts or requiring mitigation, but training documents indicated findings were required for: 1) all wetlands applications with conservation commission comments, with waivers of law or rule, or that were atypical; 2) permit denials; and 3) contentious decisions likely to be appealed.

The determination of “need,” “avoidance,” and “minimization” reportedly had the most potential for inconsistency, and differences of opinion persisted. While the *Wetlands Permitting Technical Review Guide* attempted to define these key terms, Division management reported it would be difficult to determine whether “need,” “avoidance,” and “minimization” requirements were met during permit application review, without more training. We identified issues with interpretation of “need,” as we discuss in Observation Nos. 1 and 13. Our Bureau permitting survey asked the 18 employees reporting involvement in technical review (81.8 percent) whether they had clear guidance on how to assess whether the need for a proposed impact was demonstrated by an application, and:

- six (33.3 percent), including two managers, reported *yes*,
- four (22.2 percent), including two managers, reported *no*, and
- eight (44.4 percent), including five managers, reported being *unsure*.

One Bureau manager reported cross-training sessions “glossed over” the technical review criteria needed to make permitting decisions, leaving employees without an adequate understanding of whether to deny or approve applications. Another manager reported cross-training alone was insufficient to enable substantive permit application reviews, emphasizing the importance of mentoring, individual development plans (IDPs), and on-the-job-training. Cross-training sessions also reportedly provided no guidance on how to ensure permitting decisions balanced economic opportunity and environmental quality, although achieving such a balance was a Department goal. Our Bureau permitting survey asked the 18 employees reporting involvement in technical review whether they had clear criteria on balancing these factors, and:

- four (22.2 percent), including two managers, reported *yes*,
- eight (44.4 percent), including three managers, reported *no*, and
- six (33.3 percent), including four managers, reported being *unsure*.

Insufficient Evaluation

Management should have collected objective, measurable performance information given the high risk associated with Bureau permit application review processes and the stated importance of training. Division and Bureau managers reported increased confidence and consistency in interpretation of terms and rules following training. However, evaluation of training effectiveness focused entirely on inputs, outputs, and qualitative measures of feedback and learning—reflective of a broader focus on measuring organizational performance through inputs and outputs, as we discuss in Observation Nos. 5 and 6—and excluded measures of behavior and results.

Management collected information on the number of cross-training sessions and the number of employees attending sessions, demonstrating resources consumed by training but insufficient to demonstrate whether improvement occurred or key goals and objectives were achieved. Between 36 and 70 cross-training sessions were reportedly held during CYs 2016 and 2017, and from September 2016 to February 2017, 38 LRM employees—including 23 Bureau employees—attended. Nothing quantified any objective return from this investment.

Management was responsible for measuring employee cross-training feedback, including satisfaction and relevance to employee responsibilities. Twenty employees responding to our Bureau operations survey (62.5 percent) reported participating in LRM cross-training sessions. When asked about their satisfaction with the training, staff generally reported less satisfaction than did managers:

- nine (45.0 percent), including seven managers, reported being *satisfied*;
- seven (35.0 percent), including one manager, reported being *neither satisfied nor dissatisfied*; and
- four (20.0 percent), including one manager, reported being *dissatisfied*.

Management should also have measured employee learning, or the degree to which employees acquired intended knowledge, skills, abilities, and attitudes based on participation. However, management conducted an insufficient evaluation of employee learning resulting from the cross-training sessions. Management erroneously relied solely on post-training proficiency tests to assess consistency, and only after some sessions, preventing identification of the systematic effect of training. Management should have assessed learning pre- and post-training. Management also maintained incomplete records on proficiency tests.

Our Bureau operations survey asked the 20 employees who participated in cross-training to what extent they learned new information related to performing their job because of cross-training, and:

- one (5.0 percent) reported *most* information was new;
- 15 (75.0 percent), including seven managers, reported *some* information was new,
- three (15.0 percent), including one manager, reported *little* information was new, and
- one (5.0 percent), a manager, reported *no* information was new.

To demonstrate training effectiveness, management was responsible for measuring and reporting on behavior and results, but did not. The LRM Balanced Scorecard (LRM BSC) was reportedly designed to demonstrate cross-training sessions had an effect on operations. Division management reported the effect would not be observed without reorganizing LRM programs. Performance measures included on the December 2016 LRM BSC (2016 LRM BSC) could not demonstrate operational effect, as we discuss principally in Observation No. 5. Management collected no information on the effect of development programs and how they contributed to improved operational performance, such as processing permit applications faster, more cost-effectively, or more consistently. Management could have used quantitative measures to assess whether permit application review processes improved by comparing—before and after training—the number of applications processed, the error rate, the average amount of time to process application types, and the cost to process an application.

Management should have also measured behavior, or the degree to which employees applied what they learned to their responsibilities. Employees inconsistently reported modifying their behavior as a result of training. Our Bureau operations survey asked the 19 employees (59.4 percent) who participated in cross-training and reported learning new information whether they were able to incorporate all new information into their daily routine without additional training or guidance, and:

- ten (52.6 percent), including four managers, reported *yes*;
- six (31.6 percent), including three managers, reported *no*; and
- three (15.8 percent), including one manager, reported being *unsure*.

Our Bureau operations survey also asked the 20 employees who participated in cross-training whether they modified or changed the way they performed their job as a result of information learned during cross-training, and:

- eight (40.0 percent), including five managers, reported *yes*;
- 11 (55.0 percent), including three managers, reported *no*; and
- one (5.0 percent), a manager, reported being *unsure*.

Management should have measured results, or the degree to which desired development outcomes occurred as a result of development programs. Employees inconsistently perceived positive operational results stemming from cross-training sessions. Our Bureau operations survey asked the 20 employees who participated in cross-training whether cross-training affected the Bureau's ability to achieve its permitting goals and targets, and:

- nine (45.0 percent), including four managers, reported a *positive* effect;
- four (20.0 percent), including two managers, reported *no* effect;
- one (5.0 percent) reported a *negative* effect; and
- six (30.0 percent), including three managers, reported being *unsure*.

Our Bureau operations survey also asked the 20 employees who participated in cross-training whether cross-training affected the Bureau's flexibility in balancing resource needs, and:

- four (20.0 percent), including two managers, reported a *positive* effect;
- eight (40.0 percent), including three managers, reported *no* effect; and
- eight (40.0 percent), including four managers, reported being *unsure*.

For the most strategically important programs, management should have also measured return on investment, or a comparison of the resulting benefits to the costs, both direct and indirect, but did not.

Inadequate Integration With Performance Evaluations And IDPs

Annual performance evaluations can help identify gaps in competencies and comprehensively address employee competency and organizational performance needs. However, evaluations were inconsistently and often untimely completed, and generally lacked performance measures

on work quality. Management did not appear to rationalize development goals established through the evaluation process for employees performing similar functions. Instead, goals appeared to be assigned in an ad hoc manner and often at the request of individual employees. We identified inconsistencies among the 17 employees—eight managers and nine staff—with technical review-related responsibilities who actually received required performance evaluations during the audit period.

- Nine employees (52.9 percent), including one manager, had development goals related to professional certifications and competencies. Employees without credentials did not appear to receive development and training equivalent to that of a credentialed professional, even though some reported duties and responsibilities were the same, and the majority of reviewers reported questioning credentialed professionals, as we discuss in Observation No. 43.
- Five employees (29.4 percent), including two managers, had development goals related to management. As we discuss throughout this report, good management is integral to efficient and effective operations, and its importance cannot be underestimated.
- Two employees (11.8 percent), both managers, had geographic information systems-related development goals. Competency in geographic information systems affected all aspects of the permit review process, from project classification to RFMIs, and could potentially affect the timeliness and costs associated with review.
- Three employees (17.6 percent), including one manager, had no development goals related to continuing education or permitting-related training.

Additionally, we identified one instance in which development goals did not appear to support adequate improvement of technical review responsibilities for an employee reportedly making occasional mistakes during the review process. Development goals did not include training or mentoring on the Bureau's permitting processes, instead focusing on cross-program training in anticipation of the now-defunct LRM reorganization. Furthermore, the employee was designated to provide training *to others* on Bureau permitting processes.

Also, management rarely assigned outcomes-based measurements or results to development goals, and connections to permitting outcomes were limited. For example, one manager's professional development result was "to be determined," while another's was to use geographic information systems in permit application reviews. A staff member's result was to become certified, with no quantifiable measure to assess changes in performance. Another staff member's result was to better meet future permitting needs related to the now-defunct LRM reorganization.

Lastly, IDPs can help comprehensively address competency and performance needs through individual employees' professional development goals and help develop a better understanding of employees' professional goals, strengths, and development needs. This can result in improved workforce and development planning. However, IDPs were only piloted beginning in CY 2017;

their use was not uniform, as only four staff had IDPs in their personnel files; and follow-up IDPs were not apparently developed. Two of the four IDPs contained no personal training or professional development goals related to technical permit application review, and two contained no quantifiable measurement of how changes in performance were to be assessed.

Recommendations:

We recommend Department management:

- **integrate employee development with strategic and workforce planning efforts;**
- **identify necessary data to inform employee development planning and develop, implement, and refine means to routinely collect, monitor, and analyze data and integrate results into planning efforts;**
- **conduct formal, comprehensive, and systematic assessments of gaps in employee knowledge, skills, and abilities and operational performance, and identify deficient individual and organizational performance;**
- **prioritize development efforts based on mission-criticality and highest risk to current business processes, and actual individual and operational performance gaps;**
- **assess the costs and benefits of development efforts;**
- **establish performance improvement targets and define desired operational outcomes using observable and quantifiable performance measures;**
- **develop policies and procedures outlining available development programs, requirements for professional development, and program targets;**
- **establish pre- and post-training support to measure and reinforce learning;**
- **evaluate feedback, learning, behavior, and results of training sessions, and calculate the return on investment from development efforts;**
- **ensure individual development plans and annual performance evaluations are completed timely, include sufficient detail, and rationalize development goals across employees performing similar functions;**
- **routinely update employee development plans; and**
- **periodically communicate development program results and outcomes to internal and external stakeholders.**

Department Response:

We concur with the recommendations.

While additional work is to be done, the Department does not concur with the assertion that the training and workforce development efforts within the LRM programs have not been effectively implemented, successful, and monitored over time using measurable, observable and quantifiable metrics.

As a matter of course, at the end of each formal training session, written quizzes are completed by participants, and graded, to ensure that the individual training was successful (i.e., a "passing grade" was achieved).

After attending mandatory LRM training on IDPs, the Bureau is the first bureau in the Department to pilot the implementation of IDPs. The Department is working with its Human Resources unit to better understand when and how IDPs should and can be implemented by certain employees.

The Bureau provides employee development through development of IDPs, through standard employee performance evaluations, and attendance at regular outreach, trainings, and section meetings.

It is the Department's intent that all IDPs will be reviewed as part of the annual performance evaluation process and updated when necessary.

All new technical reviewers have attended or are scheduled to attend the University of New Hampshire's wetland delineation training, regular soils workshops, and erosion control training. This past September 2018, six Bureau employees attended the three-day Northeast Transportation and Wildlife Conference, and two employees presented at this conference. Bureau management ensures that there is a training budget so that employees can participate in important training to advance professional development.

Additionally, Bureau supervisors regularly have their staff carry out joint field inspections, joint pre-application meetings, attend Council appeal hearings, outreach, and rules listening sessions.

2016 LRM-Cross Training

LRM cross-training was intended as a Level 1 Training for LRM employees. The intent of this training was not to have technical staff begin application review immediately upon completion of the training. For example, the Alteration of Terrain Bureau provided a one-hour training. The mitigation program provided a one-hour training. Additional training and mentoring was planned if the LRM reorganization was approved. The LRM training materials are still used today, for incoming staff, as an overview of the many programs and processes contained within the LRM bureaus.

The Department will evaluate all of the recommendations in Observation No. 44 in the context of our existing training programs and available resources, and we will make the recommended improvements as resources allow.

LBA Comment:

The Department's response demonstrates its focus on measuring organizational performance through inputs and outputs, as we discuss in Observation Nos. 5 and 6. However, the Department did not, and cannot, objectively demonstrate quantifiable outcomes resulted from employee development activities, including LRM cross-training sessions. This constituted waste, as the Department was unable to demonstrate development: improved employee knowledge and competency; resulted in more compliant or consistent behavior during permitting review; improved permitting outcomes; or provided a return on investment.

That the Department engaged in development activities was not disputed, but the Department's response does not demonstrate Bureau development programs were strategically and effectively developed, implemented, or monitored, or affected employee or operational performance. Rather, as we discuss throughout the report, employees:

- inconsistently followed—or were unaware of—established requirements, policies, and procedures negatively affecting the consistency, timeliness, efficiency, and effectiveness of the permit application review process; and
- operated in an environment with an unclear, confusing, and inconsistently applied regulatory framework that did not always comport to statutory and regulatory requirements.

The Department's focus on, and measurement of, development inputs—such as the number of training sessions held and attended—and outputs—such as post-training proficiency test scores—prevented management from being able to identify these deficiencies. Additionally, “written quizzes” or “proficiency tests” could not demonstrate the “success” of cross-training, as the Department did not test employee pre-training knowledge and had no baseline against which to compare employee knowledge post-training, and some test questions were of dubious value in demonstrating competence. For example, a majority of questions from the proficiency test associated with the Department's only cross-training session on RFMIs and permit conditions—two aspects of technical permit application review that may be considered especially high-risk due to their effects on permit applicant and permittee time, costs, and due process—are shown in Figure 16. This test is one of many such tests. All the employees who took this test passed, which, according to the Department, demonstrated training was successful.

Figure 16

Select Proficiency Test Questions From The Cross-Training Session On Requests For More Information And Permit Conditions, January 2017

1. What is a Request for More Information?
 - a. A letter sent after an application receives a technical review and information is missing or unclear
 - b. A letter sent when an application is found to be administratively incomplete
 - c. A conditional approval letter
 - d. A clarification request for your timesheet

2. Who does an RFMI?
 - a. The Admin. staff
 - b. Gretchen
 - c. The Technical staff
 - d. No one

6. What is the most important thing to achieve with an RFMI?
 - a. Make the project go away
 - b. Subtly convey to the applicant that they are a fool
 - c. Be specific and clear enough to get the information back that is needed
 - d. Stop the clock

7. What is the proper layout of an RFMI letter?
 - a. Meandering paragraphs without headings, the longer the better
 - b. Puppy training paper
 - c. Numbered, itemized, underlined and bold headings of each individual item.
 - d. Large italicized font with asterisk and exclamation marks saying CALL ME

8. What is the DES timeframe for response to More Information Received?
 - a. 60 days
 - b. When it feels good
 - c. 30 days
 - d. The 12th of never

9. Under what circumstances can you *not* do an RFMI from the database?
 - a. None
 - b. When you personally know the applicant
 - c. If you write an email for simple issues, follow the format, and include the statutory time frame and consequence in the email.
 - d. You happen to have your own style

Note: Shown are six of ten proficiency test questions.

Source: Department documents on LRM cross-training session proficiency tests.

Standards Of Conduct

Establishing expectations of professional conduct and ensuring compliance helps: 1) ensure equitable treatment of applicants and the public, 2) ensure ethical and professional behavior, 3) contribute to consistent and compliant permitting decisions, and 4) promote public trust and accountability. For a decade and a half, all Department employees were required to comply with the State's Code of Ethics. Adequate management would have additionally:

- defined standards of conduct, including those related to integrity, ethical behavior, appropriate use of resources, identification and avoidance of conflicts of interest, and the use of due professional care;
- defined whether deviations would be tolerated and if so, to what extent;
- clearly communicated standards and expectations through formal policies;
- ensured employees understood standards and consequences of noncompliance;
- routinely monitored and evaluated employee performance against standards; and
- timely addressed and remediated deviations from standards.

Implementing, monitoring, and enforcing robust standards of conduct was particularly important, given long-standing concerns from external and internal stakeholders about employee professionalism, and the subjective nature of permit application review.

However, deficient control systems over standards of professional conduct contributed to compromised due process, a lack of accountability, and at least some inconsistent permitting outcomes. Department control systems: 1) contained elements that were absent or ineffectively designed, inconsistently implemented, unmonitored, and, in some cases, knowingly circumvented, contributing to 37 observations in our current report; and 2) were at an **initial** stage of maturity.

Observation No. 45

Clarify And Formalize Standards Of Professional Conduct And Monitor Compliance

The Bureau lacked current, comprehensive standards of professional conduct and a system to monitor compliance with expectations, leading to the potential for unethical behavior to occur unnoticed, or at the least, the perception of such behavior occurring unnoticed. A review of unaudited Department data demonstrated inconsistent compliance with informal standards of conduct related to recusals from permit application review. Management was responsible for building an organizational culture that emphasized the importance of integrity and ethical values and for ensuring ethical behavior among employees. However: 1) existing policies related to standards of conduct were insufficient, not always formalized, and inconsistently communicated to employees; 2) there was no monitoring of compliance with standards; and 3) employees reported concerns with the work environment.

Insufficient Expectations

The Bureau lacked sufficient standards of conduct, limiting management’s ability to ensure employees all followed the same expectations of professional conduct and ethical behavior. Management should have established measurable, understandable, and equitable expectations for employee performance and conduct, as we discuss in Observation No. 6. Furthermore, it was particularly important for management to develop comprehensive and well-developed standards, given the level of public involvement in, and the risks associated with, the permit application review process. Although several policies provided information on standards of professional conduct, they were dated, not comprehensive, and in some cases, informal.

- A Department-wide conflict of interest policy specified employees should avoid conflicts of interest or the appearance of a conflict of interest. However, the policy did not appear to provide sufficiently detailed information, and a Bureau manager indicated management disagreed in some instances over how to interpret “appearance of conflict.”
- The Bureau reportedly had an unwritten policy requiring employees recuse themselves from a review for projects located in their hometowns—either towns of current residence or in which they lived previously. However, the unwritten policy did not appear to provide sufficient information on other conditions necessitating recusal.
- A Department-wide document listed State ethics laws with which employees should be familiar. However, the list was dated, not comprehensive, and omitted relevant laws, such as *Financial Disclosure* and *Access to Governmental Records and Meetings*. Department employees inconsistently complied with *Financial Disclosure* requirements, as we discuss in Observation No. 46.
- A Department-wide work environment policy specified employees should maintain appropriate behavior at all times and “avoid exposing” others “to situations which could be considered intimidating, harassing, or hostile.” However, Bureau employees reported related concerns, including fears of retribution or retaliation, which remained unaddressed by management, as we discuss in Observation No. 1.

Unclear Communication Of Expectations

Management did not sufficiently communicate expectations related to standards of conduct, which hindered the ability of: 1) employees to comply with expectations of their professional conduct and 2) management to sufficiently address risks associated with the permitting process. Management was responsible for periodically evaluating the methods in which standards were communicated and then making necessary changes to ensure the timely communication of accurate information, as we discuss in Observation No. 50. However, there appeared to be no comprehensive system in place for management to clearly communicate all expectations of professional conduct or evaluate the effectiveness with which standards were being communicated.

Not all employees were aware of standards of conduct. Our Bureau operations survey asked employees whether there were formal standards of conduct, and:

- 18 (56.3 percent), including nine managers, reported *yes*;
- three (9.4 percent) reported *no*; and
- 11 (34.4 percent), including one manager, reported being *unsure*.

Additionally, not all employees had a clear understanding of established standards. When asked how clear and understandable standards were:

- 11 employees (34.4 percent), including five managers, reported *very clear and understandable*;
- six (18.8 percent), including two managers, reported *somewhat clear and understandable*;
- two (6.3 percent), including one manager, reported *not clear and understandable*; and
- ten (31.3 percent), including two managers, reported being *unsure*.

Although the Department provided an orientation for new employees, the Bureau did not provide supplemental training on standards specific to its operating environment, including professional conduct during permit application review. Consequently, some managers appeared to rely on Department orientation to provide all information on standards to employees. One manager indicated it would be difficult for employees to know when to recuse themselves from a permit application review, given the number of Bureau policies, while two pointed solely to the Department's conflict of interest policy. Our Bureau operations survey asked the 29 employees reporting there were, or may have been, standards of conduct (90.6 percent) whether employees had received training or guidance related to complying with standards of conduct, and:

- 17 (58.6 percent), including five managers, reported *yes*, and
- 12 (41.4 percent), including five managers, reported *no*.

Additionally, managers reported a variety of reasons employees should recuse themselves from a review: if an applicant had a familial relationship, a professional relationship, or a personal relationship; or if the application was for a project in a reviewer's hometown.

No Compliance Monitoring

Management did not have a system in place by which it could monitor employee compliance with standards, leading to the potential for abusive, unethical, or unprofessional behavior or, at least inconsistent behavior, to occur unnoticed. An employee responding to our Bureau operations survey commented there "appeared to be a difference in interpretation and application of standards." Management was responsible for continually monitoring performance and adjusting management controls as needed to ensure standards were met. Through comprehensive monitoring, management could have identified noncompliance and addressed it, determined the extent of overall noncompliance, and adjusted management controls to improve compliance.

Not all employees were aware whether management monitored compliance. Our Bureau operations survey asked the 29 employees reporting there were, or may have been, standards of conduct whether management monitored compliance, and:

- five (17.2 percent), including two managers, reported *yes*;
- five (17.2 percent), including four managers, reported *no*; and
- 19 (65.5 percent), including four managers, reported being *unsure*.

However, management did not monitor compliance with standards, and a former Division Director and Bureau managers indicated compliance was only verified if a complaint was made against an employee. The complaint process was unauditible due to inadequate documentation, and management did not document or track complaints, related investigations, or the ultimate resolution of complaints, as we discuss in Observation No. 18. A former Division Director reported being unsure as to how to monitor compliance with policies on recusals or as to whether managers would know how to monitor compliance. Bureau managers also reported being unsure and noted compliance was “almost impossible” to monitor. Additionally, sufficient data, information, and analysis to comprehensively and routinely monitor compliance with standards were lacking. The Department collected information on employees’ current hometown, but no information was collected on the previous towns in which employees lived, the names of family members or others with whom employees had a close personal or professional relationship, or other information necessary to determine compliance with recusal requirements or other standards.

Compliance with standards was inconsistent, where data was available for review. We identified 51 of 7,174 permit applications and notice filings (0.7 percent) involving 11 different reviewers where the project location matched the reviewer’s hometown. This included 26 applications (51.0 percent) reviewed by four different managers. Management did not develop an organizational culture that emphasized the importance of integrity and ethical values or demonstrate the importance of such an organizational culture through: 1) direction and guidance to employees or 2) managers’ attitudes or actions, as we discuss in Observation No. 1.

Not all employees perceived management taking timely and consistent action to address deviations. A staff member responding to our Bureau operations survey commented there was minimal communication to employees on standards and if there had been more, “there would likely be disagreement [among] upper management.” Our Bureau operations survey asked the 29 employees reporting there were, or may have been, standards of conduct how frequently Bureau administrators took timely and consistent action to address deviations from standards, and:

- three (10.3 percent), including two managers, reported *always*;
- five (17.2 percent), including four managers, reported *sometimes*;
- one (3.4 percent), reported *rarely*;
- two (6.9 percent), including one manager, reported *never*;
- 15 (51.7 percent), including three managers, reported being *unsure*; and
- three (10.3 percent) reported no deviations occurred.

Employees inconsistently viewed compliance as a Bureau priority. Our Bureau operations survey asked the 29 employees reporting there were, or may have been, standards of conduct whether compliance with standards of conduct was a Bureau priority, and:

- eight (27.6 percent), including three managers, reported *always*;
- four (13.8 percent), including one manager, reported *often*;
- five (17.2 percent), including one manager, reported *sometimes*;
- one (3.4 percent) manager reported *never*; and
- 11 (37.9 percent), including four managers, reported being *unsure*.

Additionally, five of 26 employees (17.2 percent) reporting a deviation from standards of conduct occurs, reported the breach of standards remained unaddressed by management.

Lack Of Oversight

The Council was required to provide consultation and advice to the Department on policies and operations related to wetlands and protected shorelands. In its oversight capacity, the Council could have: 1) provided input on Department standards of conduct, 2) received and reviewed information on compliance with standards, and 3) received information on how management addressed deviations from standards. However, as we discuss in Observation No. 8, the Council's statutory oversight responsibilities remained unfulfilled, and the Department had not used the Council to the full extent of its legislatively-prescribed role.

Recommendations:

We recommend Department management, in concert with the Council:

- **develop, implement, and refine written standards of professional conduct, including recusals from permit application reviews;**
- **ensure standards and expectations are clearly communicated to employees;**
- **identify data and information necessary for monitoring compliance with standards, and develop, implement, and refine means to routinely collect, monitor, and analyze data and information;**
- **routinely measure employee compliance and analyze information to identify trends and potential issues with compliance;**
- **require employees to attest to their knowledge of and adherence to standards of conduct on a routine basis;**
- **develop, implement, and refine systems to identify employee noncompliance with standards of conduct; and**
- **address noncompliance in a timely, formal, and equitable manner.**

Department Response:

We concur with the recommendations.

The Department and the Bureau are committed to ethical behavior, and this is reflected in the Department's Conflict Of Interest Policy (Policy #301) and Executive Branch Code of Ethics.

We are in agreement that more communication on these topics would be beneficial.

Financial Disclosure

Financial Disclosure was intended to ensure the performance of official duties did not give rise of a conflict of interest. Certain public officials had been required, for more than a decade, to file statements of financial interest with the Secretary of State. Those officials included agency heads, public officials designated by the agency head, and those appointed to regulatory, advisory, or administrative agencies. Verified, signed, and dated statements listing potential conflicting interests had to be filed either:

- initially, within 14 days of assuming office, if the official was newly appointed; or
- annually, by the third Friday in January, if the official was currently serving.

Knowingly failing to comply with filing requirements was a misdemeanor, and any actions taken while ineligible to serve were potentially subject to legal challenge. Department management was aware of long-standing issues with financial disclosure. We first recommended management address noncompliance with requirements pre-dating *Financial Disclosure*, more than a decade and a half ago.

However, a deficient control system over compliance with *Financial Disclosure* persisted and contributed to statutory noncompliance. The Department's control system: 1) continued to contain elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 49 observations in our current report; and 2) was at an **initial** level of maturity.

Observation No. 46

Improve Department Compliance With *Financial Disclosure* Requirements

Since at least CY 2005, we have commented on Department controls related to ensuring compliance with *Financial Disclosure* requirements. The Department had yet to develop or implement an adequate control system to ensure the statements were filed by employees, resulting in systemic and ongoing inconsistent compliance.

Untimely Resolution Of Prior Audit Findings

Our *Department Of Environmental Services Financial And Compliance Audit Report For The Fiscal Year Ended June 30, 2004 (2005 Audit)* found the then-Commissioner had not filed a required *Statement of Financial Disclosure*. Our *2005 Audit* recommended the Department: 1) implement procedures to ensure required disclosures and statements were timely filed and 2) maintain copies of filings for Department records. The Department concurred and indicated it would develop relevant procedures.

Department management was responsible for resolving prior audit findings in a timely manner, including documenting deficiencies were corrected and improvements produced. Department management also had the responsibility to develop and implement policy and procedures to facilitate statutory compliance, in order to ensure public accountability. No relevant policies or procedures were developed until October 2018.

Department Employee Noncompliance

Department employees, including those appointed by the Governor and those designated by the Commissioner, were required to annually file a statement of financial interest. Our review of Department compliance with *Financial Disclosure* was limited to managers and staff with involvement in, or oversight of, Bureau permitting processes. Employees inconsistently complied with requirements to file. From January 2015 to April 2018, nine Department employees were required to file 23 statements of financial interest.

Six statements (26.1 percent) were unfiled and affected, or potentially, affected the eligibility of four employees to serve as follows:

- the Assistant Commissioner did not file an initial statement after appointment in CY 2015;
- two employees did not file annual statements throughout CY 2015, including the Assistant Division Director and a Bureau manager; and
- three employees did not file annual statements throughout CY 2017, including the Assistant Division Director, the Bureau Administrator, and a Bureau manager.

The 17 statements (73.9 percent) that were filed were not always timely or complete. Ten statements (58.8 percent) were submitted between three and four days late, while 12 statements (70.6 percent) appeared to be incomplete for various reasons. Some deficiencies may have been sufficient to defeat the policy purpose of filing statements altogether.

Failure to file a statement made employees ineligible or potentially ineligible to serve in their position, while knowingly failing to comply with filing requirements was a misdemeanor. Noncompliance with the initial filing requirement rendered the Assistant Commissioner ineligible to serve in his position, and noncompliance with annual filing requirements may have rendered other Department employees ineligible to serve in their positions, although we identified all undertaking and participating in official actions, and receiving a salary from the State.

Shoreland Advisory Committee Noncompliance

The Shoreland Advisory Committee (Committee) was a statutorily-established Executive Branch advisory committee that made suggestions to the Commissioner related to the implementation of *Shoreland* and the regulation of shoreline structures. Committee members were appointed by the Governor and by the Commissioner. Committee members were required to file statements of financial interest, and, although the Committee was active from CY 2010 to CY 2015, our compliance review was limited to CY 2015.

During CY 2015, Committee members inconsistently complied with *Financial Disclosure* requirements. Committee members were required to file a total of 26 statements of financial interest during CY 2015. Fourteen statements (53.8 percent) were unfiled and made members ineligible or potentially ineligible to serve throughout CY 2015. The 12 statements (46.2 percent) that were filed were not always timely or complete. Three statements (25.0 percent) were not submitted timely, while three statements (25.0 percent) appeared to be incomplete for various reasons. Some deficiencies may have been sufficient to defeat the policy purpose of filing statements altogether.

Not filing statements could affect meeting quorum, subjecting decisions made during those meetings to question. Not filing could also subject individual acts to question, if a motion was made, seconded, or voted upon by ineligible or potentially ineligible members. The work of the Committee culminated in a series of recommendations to the Commissioner, all of which could potentially be tainted by the participation of ineligible, or potentially ineligible, members in Committee meetings.

Inconsistent Department Listing Of Required Filers

The Commissioner was required to provide the Secretary of State with an organizational chart identifying Department employees required to file statements. However, organizational charts were not filed during CY 2015 and 2017.

Appointees of the Governor—including the Commissioner, Assistant Commissioner, and Division Director—consistently appeared on the Department’s list of required filers. However, the list of Commissioner’s designees changed over time, with most designees removed in CY 2018. No policies or procedures existed identifying why certain employees were designated filers, but others were not, even those with similar job responsibilities, more interaction with the public, or responsibility for approving or denying permits on behalf of the Commissioner.

Additionally, the Commissioner was required to provide the Secretary of State with an organizational chart identifying Committee members required to file statements, but an organizational chart was not filed during CY 2015.

Statutory Ambiguity

In October 2018, the Department of Justice provided an opinion that decisions made by public officials who failed to file their annual financial disclosures pursuant to *Financial Disclosure* were not voidable. Eligibility to serve was only contingent upon public officials successfully filing an initial financial disclosure and was not impacted by a lack of subsequent annual financial disclosures. However, we have historically understood the statutory provision determining eligibility to serve to be contingent on both the public official’s initial filing and subsequent annual filings. Because the courts have not addressed this issue, we still conclude actions taken by public officials who failed to file their annual financial disclosure pose a risk of being questioned.

Untimely Resolution

The Department provided an SOP on employee compliance with *Financial Disclosure* requirements dated October 2018, more than 13 years after our *2005 Audit* recommendation.

Recommendations:

We suggest the Legislature consider clarifying *Financial Disclosure* regarding whether failure to file annual statements of financial interest should prohibit public officials from serving in their appointed capacity.

We recommend Department employees and members of statutorily-established Department advisory committees comply with *Financial Disclosure* requirements and timely file initial and annual statements of financial interest.

We also recommend Department management:

- **implement and refine policy and procedures to identify which employees the Commissioner should designate to file statements of financial interest;**
- **implement and refine policy and procedures to ensure ongoing employee and advisory committee member compliance with *Financial Disclosure* requirements;**
- **maintain records of individual filings;**
- **periodically review employee and advisory committee members' compliance;**
- **review prior Committee actions involving ineligible employees;**
- **seek legal advice to determine the best method by which the Department can address Committee actions tainted by the participation of ineligible members;**
- **review prior Department actions involving ineligible employees; and**
- **seek legal advice to determine the best method by which the Department can address Department actions tainted by the participation of ineligible employees.**

We also recommend the Commissioner annually submit to the Secretary of State an organizational chart of all Department staff and advisory committee members required to file statements of financial interest.

Department Response:

We concur with the recommendations.

Since July 2017, the Department has developed three standard operating procedures (SOPs) to better direct the agency in the following focus areas:

- *identifying which Department staff and advisory committee members (i.e., councils, boards, committees, etc.) meet the requirements for filing financial disclosure statements to the NH Secretary of State;*

- *compiling organizational charts for all Department staff and advisory committee members required to file financial disclosures and submit them to the Secretary of State annually;*
- *tracking and maintaining records of individual financial disclosures; and*
- *conducting periodic reviews of staff and advisory committee members' compliance to better ensure compliance with financial disclosure reporting requirements.*

The three SOPs will specifically address: 1) Department support functions for advisory committees, 2) how financial disclosures will be managed for all Department staff required to file, and 3) how the financial disclosure process will be managed for all members of advisory committees over which the Department has some oversight and/or support responsibilities.

Lists of Department staff requiring financial disclosures have been updated, and the corresponding organizational charts are being transmitted to the Secretary of State's Office. Additionally, we are in discussions with the Attorney General's Office seeking legal advice and recommendations to address any instances of Department staff or advisory committee members who were ineligible due to improperly filing their financial disclosures.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

6. KNOWLEDGE MANAGEMENT

The Wetlands Bureau's (Bureau) wetlands and protected shoreland permitting programs were regarded as the Department of Environmental Services' (Department) most controversial, due, in part, to complex and expanding requirements. Effective knowledge management can help managers: 1) disseminate and retain critical knowledge; 2) facilitate data-informed and objective decision-making; 3) achieve Bureau objectives; 4) improve efficiency and effectiveness; and 5) ensure transparency, public accountability, and compliance. Knowledge management was especially important for the Bureau to achieve outcomes and address risk, given permitting complexity, the frequency of unclear or informal requirements, and the subjectivity of decision-making. Further, decision-making was undertaken by employees with inconsistent credentials, different levels of experience, and different understanding of requirements.

Department, Division of Water (Division), and Bureau managers were responsible for knowledge management, including the Assistant Division Director and the Land Resources Management (LRM) Administrator, a vacant position whose responsibilities were carried out by the Assistant Division Director during the audit period. Department management should have established an operating environment and organizational culture that supported the importance of knowledge management. However, control system deficiencies contributed to ineffective internal and external communications, and reporting on performance and outcomes, as shown in Figure 17.

Through State fiscal year (SFY) 2018, control systems for effective Bureau knowledge management were at an **initial** level of maturity, while subsystem maturity ranged from **initial** to **repeatable**, the lowest two levels of maturity. Deficient control systems contributed to process and management control deficiencies in 53 observations in our current report.

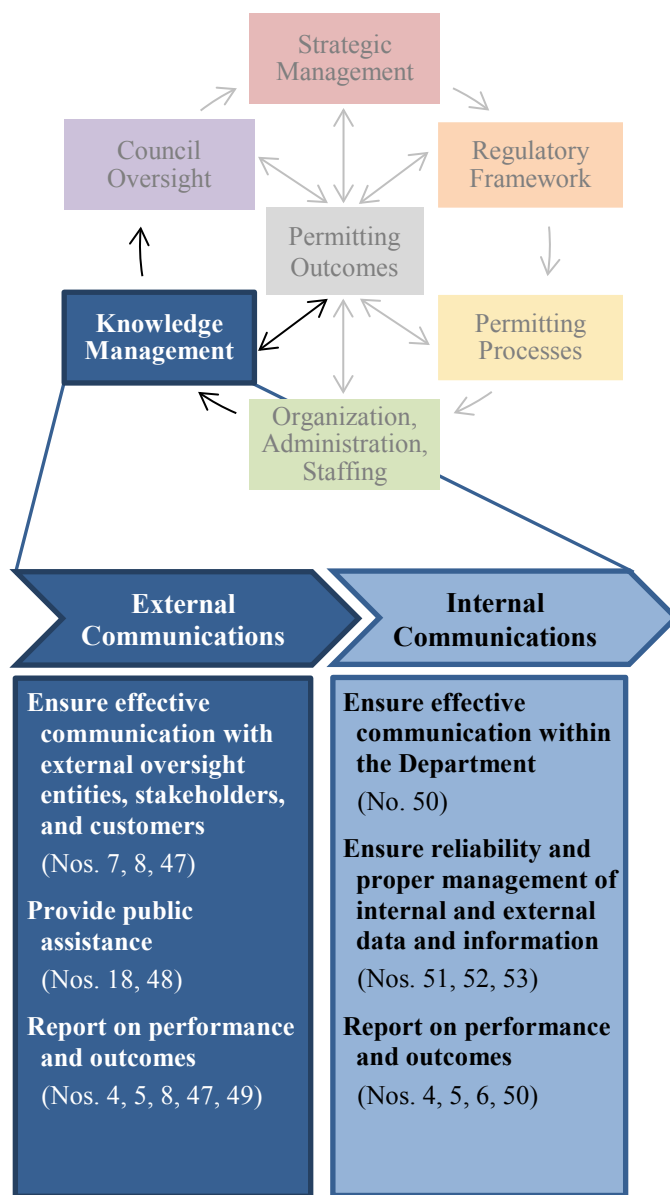
External Communications

Effective external communications were particularly important, given long-standing concerns about clarity of the permitting process and associated requirements. External communications underpin transparency and help ensure effective operation and oversight of management controls; proper stewardship of, and accountability for, public resources; and achievement of permitting outcomes. Management was responsible for external communications and facilitating effective oversight by providing information on risks, program changes, and issues affecting operations. The Assistant Division Director, serving as the LRM Administrator, was responsible for overseeing Bureau communications.

Despite related recommendations and suggestions made to the Department in five audits dating back more than two decades, deficient control systems over external Bureau communications persisted, contributing to applicant and employee confusion and to inconsistent permitting outcomes. Department control systems: 1) contained elements that were either absent or ineffectively designed, inconsistently implemented, and unmonitored, contributing to 50 observations in our current report; and 2) were at a **repeatable** level of maturity.

Figure 17

Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Knowledge Management



Source: LBA analysis.

Observation No. 47

Improve External Communications

Bureau management inadequately implemented the Department’s guiding principles and strategic goals and LRM external communications policies, compromising statutory compliance,

the achievement of Bureau goals and objectives, and effective monitoring and oversight. Bureau permitting was a controversial, high-risk Departmental operation, making timely and sufficient external communications particularly important. Management was responsible for externally communicating and receiving quality information to ensure effective operation and oversight of Bureau operations, but issues with external communications were known and long-standing.

Management was, or should have been, aware of persistent external communications issues. Multiple information sources informed management of concerns with complexity, transparency, ambiguity, and customer service in the wetlands permitting process, which had been acknowledged by the Department and stakeholders since the 1980s. Division management and Bureau managers and staff were aware of current issues with Bureau responsiveness to customers, as we discuss in Observation No. 18, and Division managers reportedly emailed Bureau employees routinely after receiving customer complaints, to remind them to return phone calls. The Department administered a survey in calendar years (CY) 2014 and 2015 (Department's 2014-2015 survey), which demonstrated employees perceived there to be broad external communication issues, and while survey results for specific bureaus were available, these results reportedly were not requested by Bureau administrators or other LRM managers. LRM programs administered a *Permit Process Questionnaire* since at least CY 1999, and also implemented an LRM *Customer Service Survey Permit Process Questionnaire* beginning in CY 2017 (2017 LRM online survey). Results demonstrated at least some customers had difficulty obtaining acceptable customer service, but no monitoring or analysis of customer survey responses reportedly occurred until CY 2016.

Misalignment Between Strategy And Practice

Although the Department's *2010-2015 Strategic Plan* (Department's 2010-2015 strategy) emphasized continuous improvement of external communications and customer service, the Bureau's approach to external communications was not aligned with Department strategy and goals. Strategy outlined three relevant guiding principles: 1) promote effective and straightforward communications, 2) provide timely and consistent responses to customers, and 3) provide meaningful opportunities for public participation. Strategy also contained ten related goals, with ongoing implementation starting in CY 2010, including: 1) ensuring easy access to information and continuously uploading as much key content as possible to the Department website, 2) maintaining a proactive approach to information dissemination, 3) conducting an agency-wide review of reporting practices to help identify gaps, and 4) obtaining necessary customer feedback. However, there were no supporting Division and Bureau strategic and operational plans guiding implementation of Department strategy.

Insufficient Policy, Procedure, And Training

External communications policies were focused on customer service and were intended to ensure: 1) courteous, professional, and timely responses to customers and stakeholders; 2) program, procedure, and process changes were communicated to stakeholders; 3) external communications products were consistently articulated and publicized; and 4) employees were consistently interpreting, applying, and presenting information on law, rules, policies, and

procedures to the public. However, we identified issues with the majority of applicable policies, including:

- a customer email response policy that was never drafted,
- the customer phone call response policy that was in draft form since July 2006,
- the LRM Communications Team policy on developing external communications products that was outdated since CY 2013,
- the “Inspector of the Day” policy that provided for the public face of Bureau communications with customers and was outdated since at least July 2016,
- an external communications policy on disseminating external communications products that was outdated since at least November 2017, and
- policies and procedures to ensure statutorily-required performance reports were developed or issued to relevant stakeholders and oversight entities were never drafted.

From September 2016 to March 2017, LRM programs held three external communications cross-training sessions primarily focused on how to locate information on the Department’s website. One session was attended only by Application Receipt Center (ARC) and non-permitting staff. Several Bureau employees commented on the potential for difficult or hostile interactions with the public or noted additional training on communicating with the public would have been useful.

Inadequate Communications With Customers

Bureau communications with customers inconsistently and ineffectively conveyed easy-to-understand and accurate information about permitting processes, creating opportunities for varied interpretations, subjectivity, and confusion and uncertainty for applicants. Inadequate communications were particularly problematic, since many of the Bureau’s customers were homeowners who may have lacked relevant technical and regulatory knowledge. The Department’s 2014-2015 survey asked whether employees agreed their bureau had: 1) all the resources and training needed to provide exceptional service to all customers and 2) adequate controls in place to solicit and address internal and external customer service feedback. However, Wetlands and Alteration of Terrain bureau employees reported lower levels of agreement than Department-wide respondents.

Stakeholders also had publicly expressed concerns, dating back more than three decades, about a lack of transparency, permitting inefficiency, complexity and lack of clarity of requirements, inconsistent permitting outcomes, and the provision of customer service. Concerns persisted through our audit period. In CY 2018, we surveyed an indeterminable number of stakeholders directly and through various stakeholder groups (stakeholders survey), of whom 278 responded. Although results cannot be generalized to the broader stakeholder community, those who did respond inconsistently viewed: permitting processes to be clear or consistent, rules to be clear, permitting to be timely, and the Bureau as effectively providing high-quality customer service or managing permitting. The complete results of our stakeholders survey are included in Appendix E. Additionally, in response to the Department’s CY 2017 online LRM survey of permit applicants, some applicants reported concerns with the usefulness of the Department’s website,

some of whom suggested better guidance on selecting the appropriate application form or more clarification and guidance on specific topics would improve its usefulness.

Inadequate Prioritization By Management

Bureau administrators reported public education and outreach was the lowest Bureau priority, and few resources were dedicated to outreach, despite the high-risk nature of permitting and long-standing issues. Additionally, the Department's Public Information and Permitting (PIP) Unit was noncompliant with statutory responsibility for all initial public contact on permits and applications, as we discuss in Observation No. 48. Employees reported insufficient managerial emphasis on permitting responsibilities, and the amount of time spent on core permitting responsibilities, including communication with applicants, varied widely across supervisor and permitting section staff.

Three related positions—a full-time Communications and Training Coordinator, a full-time Public Information Specialist, and a part-time Rules And Easement Specialist—remained vacant through State fiscal year (SFY) 2018. Collectively, these positions would have been responsible for: 1) developing, evaluating, and proposing changes to statutes, rules, and policies; 2) timely developing clear, well-written, user-friendly, and technically accurate forms, fact sheets, guidance documents, and other publications; 3) developing and providing timely and accurate public outreach, assistance, training, and guidance on interpretations of statutes, rules, procedures, standards, and guidance; and 4) summarizing customer feedback and developing customer satisfaction measures. The three vacant positions collectively could have worked up to 10,400 hours over a two-year period, and the PIP Unit should have performed some of these responsibilities, but Bureau employees performed these duties instead. Unaudited Department data on self-reported employee time allocations during the audit period (Department time allocation data) indicated Bureau employees collectively reported allocating 10.0 percent of their time (10,227 of 102,102 hours) on public assistance and rulemaking tasks, with:

- Bureau administrators allocating 4.8 percent of their time (402 of 8,366 hours);
- permitting supervisors allocating 13.8 percent of their time (3,271 of 23,745 hours);
and
- permitting staff allocating 12.1 percent of their time (4,850 of 39,978 hours).

Complex Permitting Requirements And Guidance

In order to submit a complete and approvable permit application, customers needed to be able to navigate the Bureau's regulatory framework and understand permitting requirements. However, extensive, inconsistent, and complex requirements and related guidance created opportunities for varied interpretations, subjectivity, and confusion and uncertainty for applicants. Our August 2007 *Alteration Of Terrain And Wetlands Permitting Performance Audit Report (2007 Audit)* contained nine recommendations related to rules and forms, with which the Department concurred, but none were fully resolved through CY 2018. We identified additional and continued concerns:

- rules were complex, poorly maintained, and exceeded the scope of underpinning statutory authority, as we discuss in Observation Nos. 9, 12, 13, 14, and 16;
- forms were constantly updated, not adopted in rules, some contained incorrect citations or references, and others did not align with statutory or regulatory requirements, as we discuss in Observation Nos. 13 and 15;
- external standards, such as best management practices, often contained substantive permitting requirements binding on applicants, and some were inconsistent with rules, as we discuss in Observation No. 13; and
- fact sheets and guidance documents, intended to provide clarification for applicants, at times were incorrect or incomplete, contradicted rules, or constituted ad hoc rules, as we discuss in Observation No. 13.

Additionally, Bureau implementation of the Department’s strategic goal to continuously upload as much key content as possible to its website to better fulfill customer needs did not appear to actually meet customer needs. The Bureau Administrator acknowledged the website might contain too much information, and Bureau employees knew at least some customers were having difficulty finding and understanding: 1) materials providing clarification on whether and which permits were needed, 2) which materials were needed to complete permit applications, and 3) how to successfully complete an application to obtain a permit approval.

Inadequate Implementation Of Customer Feedback Processes

Although Bureau customers had at least two methods to provide feedback on permitting processes—responding to a customer satisfaction survey, or submitting a complaint—these methods were inadequately implemented to systematically ascertain and address customer feedback, as we discuss in Observation No. 18.

- Except for a brief discontinuation in CY 2015, LRM programs distributed hardcopy or online customer satisfaction surveys to applicants since at least CY 1999. However, an LRM manager reported no monitoring or analysis of customer responses occurred until a presentation of summary statistics in CY 2016 and the issuance of the one-time LRM Balanced Scorecard (BSC) in December 2016 (2016 LRM BSC). Additionally, the surveys did not collect all information necessary to adequately assess Bureau permitting processes, and there were issues with distribution and response collection.
- Customers typically submitted process-related complaints to Department managers by phone or through intervention by elected officials. However, the complaint process was unauditable due to inadequate documentation, as management did not document or track complaints, related investigations, or the ultimate resolution of complaints.

Inadequate Communication With Stakeholders And External Oversight Entities

Communication with stakeholders and external oversight entities was inconsistent, often ineffective or untimely, and did not always provide meaningful opportunities for participation. Management, with the Wetlands Council (Council)—the Department’s statutory oversight body—minimized the Council’s role of oversight, consultation, and advice, as we discuss in

Observation No. 8. The Council did not timely receive sufficient, quality information about Bureau operations, negatively affecting Bureau oversight. In response to our *2007 Audit*, the Department indicated it would engage in ongoing consultation with the Council to develop comprehensive policies and procedures for permitting programs, but did not do so through SFY 2018. In response to our 2018 survey of Council members (Council survey), Council members reported being unfamiliar with the Department’s strategy and Bureau activities and outcomes and reported minimal oversight of, and consultation with, the Bureau, contrary to long-standing statutory requirements.

Additionally, significant stakeholder engagement did not always provide the Bureau with useful information in some areas and remained lacking in other areas, despite a substantial investment of resources. In CY 2018, we surveyed 37 Bureau and ARC employees then-employed or employed during SFYs 2016 or 2017 on general Bureau operations (Bureau operations survey), of whom 32 (86.5 percent) responded. Managers and staff inconsistently reported the Bureau provided an appropriate amount of stakeholder outreach, despite a significant investment of time and effort in stakeholder engagement. The complete results of our Bureau operations survey are included in Appendix F.

The Department reportedly held 117 stakeholder meetings from January 2014 to March 2018 to provide feedback on the development of revised *Wetlands Program* rules (wetlands rules) and “help correct glaring deficiencies.” However, the Department recognized it had “surprisingly missed the mark” in terms of stakeholder satisfaction with early versions of proposed revisions to wetlands rules. The Department’s use of these ad hoc advisory groups inhibited transparency, since there was no documentation of substantive decisions made, as we discuss in Observation No. 7. Additionally, in response to our *2007 Audit*, we suggested the Bureau work with stakeholders to improve the Bureau’s permit-by-notification process, but our suggestion remained less than fully resolved, and we identified continued concerns, as stakeholders who had submitted permits-by-notification reported in our stakeholders survey that review processes were inconsistently timely, consistent, or clear.

Noncompliant And Inadequate External Performance Reporting

Department compliance with statutory and regulatory requirements—including reporting requirements—was a fundamental expectation, and comprehensive performance measurement and reporting could have provided information on operational performance and the effectiveness of management controls. However, external performance reporting was inadequate, and the Department and Bureau:

- were inconsistently compliant with requirements, as we discuss in Observation Nos. 4 and 49;
- could not reliably evaluate or report on permit application processing timeliness or other critical programmatic outputs or outcomes, as we discuss in Observation Nos. 5, 22, and 51; and
- could not reliably evaluate or report on employee performance, including customer service, as we discuss in Observation Nos. 6, 18, and 42.

Noncompliance With Reporting Requirements

The Department inconsistently complied with external reporting requirements and lacked management controls to ensure reporting requirements were met. The Department did not provide required performance reports to the Council, hindering the oversight of Bureau operations and performance, as well as public accountability. Four LBA audits identified noncompliance with external reporting requirements dating back more than two decades. Although the Department concurred with recommendations to timely submit statutorily-required reports, our recommendations remained unresolved, and noncompliance continued through SFY 2018, as we discuss in Observation No. 49.

Inadequacy Of The LRM BSC

Our 2007 *Audit* recommended the Bureau: 1) improve its ability to accurately report activity, 2) ensure consistent and accurate data collection and reporting, and 3) implement policies to ensure its website provided reliable application information. The Department concurred and reported it had implemented new data tracking systems: the LRM BSC and a report on permit tracking turnaround times. However, we identified concerns with the accuracy, reliability, and completeness of Bureau data, and Division management reported no relevant policies existed, leaving our recommendations less than fully resolved.

The LRM BSC purportedly allowed the Department to better understand stakeholder concerns and included measures related to customer and stakeholder feedback, timely permitting reviews, outreach, and website usage. A senior Department manager reported the LRM BSC was developed to “placate” stakeholders regarding proposed organizational and operational changes, such as the LRM reorganization, and the Department held several meetings with stakeholders to select measures against which to evaluate LRM programs’ performance. However, the Council was not involved in the development of the BSC, which was plagued by data-quality issues and aggregated data for all three LRM bureaus. Additionally, customer satisfaction was measured based on inputs and outputs, rather than programmatic outcomes, as we discuss in Observation No. 18.

Inadequacy Of The Environmental Dashboard (Dashboard)

The Department’s Dashboard reported Bureau information on wetland impacts; wetlands creation, restoration, and enhancement; and conservation easements on uplands and wetlands. Dashboard measures did not address Bureau permitting outcomes or timeliness of permitting processes, the consistency of permitting decisions, the effect on development, administrative efficiency, or customer service generally.

Recommendations:

We recommend Department management:

- **improve external communications policies and procedures and ensure employees and entities within the Department responsible for communications are aware of**

and understand their responsibilities and have adequate time to perform these responsibilities;

- more effectively obtain relevant customer feedback, ensure responses are routinely analyzed, and ensure analysis is incorporated into strategic and workforce planning and process improvement efforts;
- more efficiently and effectively obtain stakeholder feedback and input, including through increased use of the Council for consultation and advice;
- ensure external performance reporting is timely, accurate, and provides relevant information necessary to assess Bureau permitting outcomes and impacts and the effectiveness of management controls related to Bureau permitting; and
- routinely evaluate the effectiveness and timeliness of external communications related to Bureau permitting, and use results to make adjustments to communications strategies.

Department Response:

We concur with the recommendations.

The Department agrees that external customer feedback, strategic planning, and communication strategies are important. Allocation of staff resources is prioritized to ensure that the necessary permit technical review staff are available to meet statutory application review turnaround times.

Permitting Assistance

The Commissioner was required to establish the PIP Unit, which was responsible for all initial public contact on permits and applications. Responsibilities included: 1) providing all permit applications and information needed for any project, as well as information on required federal or local permits; 2) assisting the public, whenever possible, with filling out permit applications by directing them to the appropriate person within the relevant division; and 3) providing all of the information necessary to meet permitting requirements.

However, deficient control systems over the PIP Unit and permitting assistance contributed to inefficiency and inconsistent permitting outcomes. Department systems of control: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 12 observations in our current report; and 2) at an **initial** level of maturity.

Observation No. 48

Ensure Public Information And Permitting Unit Practices Fully Comply With Statute

The Department's PIP Unit did not completely fulfill its statutory responsibilities. Although PIP Unit employees reportedly provided information when contacted by the public, the PIP Unit itself purportedly only became involved with projects involving multiple organizational units within the Department. Without PIP Unit involvement in all initial public contact, Bureau

employees spent a significant amount of time addressing public inquiries and other PIP Unit duties, rather than on permitting.

Employees characterized public assistance responsibilities, including “Inspector of the Day,” as “time-consuming,” pulling them away from permitting. Unaudited Department time allocation data indicated Bureau employees reported allocating 8.7 percent of their time (8,833 of 102,102 hours) on public assistance tasks, with:

- Bureau administrators allocating 4.3 percent of their time (356 of 8,366 hours);
- permitting supervisors allocating 9.9 percent of their time (2,358 of 23,745 hours); and
- permitting staff allocating 11.9 percent of their time (4,756 of 39,978 hours).

Bureau employees reportedly fielded “thousands” of customer information requests annually from a variety of sources, including the PIP Unit, Department administrative staff, and others. The Bureau developed an “Inspector of the Day” policy to address public information requests, assigning employees on a rotating basis to answer phone calls and attend meetings related to public information requests in a given day. Employees noted Inspector of the Day responsibilities often extended beyond the day assigned due to required follow-up, further detracting from permit review time. Inspector of the Day responsibilities were assigned to both experienced and inexperienced employees, and one employee expressed concerns employees were insufficiently trained in customer service to field public information requests. This likely increased the risk inconsistent information was disseminated to the public.

The Commissioner had a duty to continually reassess the Department’s organization; could reassign personnel and delegate, transfer, or assign the authority to administer and operate any program or service within the Department; and had to propose legislation to accomplish reorganizations. No proposed statutory changes to rationalize PIP Unit and Bureau duties and responsibilities were developed.

Recommendations:

We recommend Department management ensure PIP Unit roles and responsibilities fully comply with statute or seek legislative changes to align statute with practice.

Department Response:

We concur with the recommendations.

We will “ensure PIP Unit roles and responsibilities fully comply with statute or seek legislative changes to align statute with practice.” The Department will further evaluate current statutes to determine if any changes are required for the PIP Unit authority. The Department’s PIP Unit and the Bureau’s Inspector of the Day provide essential services to NH citizens.

External Performance Reporting

The Department was required to submit various operational performance reports for as long as three decades or more, and Executive Orders required reporting on resolution of LBA audits for the past five years. Department, Division, and Bureau managers held responsibility for external performance reporting. The LRM Administrator was responsible for developing and reviewing reports and for recommending actions to ensure compliance. However, three recommendations related to external reporting from three prior LBA audits remained unresolved for up to a decade and a half, and one recommendation from a federal assessment remained unaddressed for a decade.

Despite related recommendations made to the Department in three audits and a federal assessment dating back a decade-and-a-half, the persistent absence of control systems over compliance with external reporting requirements contributed to compromised transparency and a lack of public accountability. Absent Department control systems: 1) contributed to 13 observations in our current report, and 2) were at an **initial** level of maturity.

Observation No. 49

Improve Compliance With External Reporting Requirements

Since at least CY 1995, we have commented on Department controls related to ensuring compliance with reporting requirements. We previously identified noncompliance with statutory reporting requirements in our March 2002 *Department Of Environmental Services Performance-based Budgeting Audit Report (2002 Audit)*, our February 2005 *Department Of Environmental Services Financial And Compliance Audit Report For The Fiscal Year Ended June 30, 2004 (2005 Audit)*, and our October 2015 *Department Of Environmental Services Water Division Internal Control Review (2015 IC Review)*. In our *2015 IC Review*, we recommended the Department submit statutorily-required reports or, if the Department determined the reports no longer served a purpose, to seek legislation to amend reporting requirements. The Department concurred and indicated it would work with its bureaus to ensure required statutory reporting was timely. Additionally, the federal Environmental Protection Agency's CY 2008 *Quality System Assessment* found the Bureau failed to deliver required reports, recommending the Bureau remediate the issue.

We found the Department inconsistently complied with external reporting requirements and lacked management controls to ensure reporting requirements were met. Although Department compliance with statutory and regulatory requirements is a fundamental expectation, noncompliance with statutory reporting requirements continued through CY 2018.

Inconsistent Compliance With Audit Resolution Reporting Requirements

Following an LBA audit, the Department was required to: 1) develop a remedial action plan identifying remedial actions the Department planned to take, as well as identify actions requiring approval from the Legislature, Governor and Executive Council, or other party; and 2) periodically report progress in responding to the audit. However, as discussed in Observation No.

4, the Department inconsistently complied with these requirements, and no remedial action plans were filed following the October 2015 publication of our *Department Of Environmental Services Stated-owned Dams Performance Audit Report* and the October 2015 publication of our *2015 IC Review*. A remedial action plan was filed nine months late following the May 2018 publication of our *Department Of Environmental Services Air Resources Division Performance Audit Report*. Two progress reports were filed related to our October 2015 *Stated-owned Dams Performance Audit Report*; and no progress reports were filed related to the *2015 IC Review* or the May 2018 *Department Of Environmental Services Air Resources Division Performance Audit Report*.

Annual, Not Biennial, Reports Filed On Department Operations

The Department was required to issue biennial reports summarizing its operations over two State fiscal years, beginning in CY 2015. Reports were to include: an outline of functions and organization as designated by statute and regulations; an organizational chart; significant accomplishments; and significant legislation directly affecting the Department's responsibilities. Reports were to be posted to the State's transparency website and submitted to the Governor and Executive Council and others.

During our *2002 Audit*, we found the Department did not issue department-wide reports on operations. The Department should have filed two biennial reports covering the audit period, one covering SFYs 2014 and 2015 and one covering SFYs 2016 and 2017. We found annual Department reports for SFYs 2013 through 2016, and the Department provided its annual report for SFY 2017 and transmittal letters for SFYs 2016 and 2017 reports. Reports available for SFYs 2013 through 2015 did not contain an addressee or evidence they were filed with required recipients.

Untimely Annual Reports On Administration Of The Wetlands Fees Permit Process

The Department was required to submit annually by October 1 a report on the administration of the wetlands fees permit process. Reports were to contain information on the administration of certain processes established under *Fill and Dredge in Wetlands (Wetlands)* and to be submitted to the House and Senate finance committees; the House Resources, Recreation, and Development Committee; and the Senate Energy and Natural Resources Committee.

The Department should have filed three reports affecting the audit period, in October 2015, October 2016, and October 2017. The SFY 2017 report was untimely, transmitted almost eight months late, as was the SFY 2016 report, transmitted more than one month late. The SFY 2015 report did not contain a transmittal date, an addressee, or evidence it was filed with required recipients.

No Annual Reports On The Status Of The Wetlands Program

The Department was required to annually submit a report on the status of the wetlands program. Reports were to include information on Bureau program performance, rules, and funding, as well

as the status of the federal Clean Water Act Section 404 program in the State. Reports were to be submitted to the Council.

Our *2015 IC Review* found the Department had not submitted a report during SFY 2014, and we found noncompliance continued through CY 2018. The Department should have submitted three reports for CYs 2015, 2016, and 2017, but submitted none. Although the Department indicated employees regularly attended Council meetings to provide updates on the Bureau's activities and were also available upon request, Department updates to the Council occurred irregularly and when provided, as we discuss in Observation No. 8.

Annual, Not Biennial, Aquatic Resource Compensatory Mitigation (ARM) Fund Reports

The Department was required to biennially submit a report 60 days after the close of each odd-numbered fiscal year summarizing all receipts and disbursements of the ARM Fund and describing all projects undertaken and the status of the administrative assessment account. Each report was to be in such detail with sufficient information to be fully understood by the general court and the public. Reports were to be submitted to the Fiscal Committee; the chairperson of the Resources, Recreation, and Development Committee; and the chairperson of the Senate Environment and Wildlife Committee.

Our *2015 IC Review* found the Department had prepared, but not submitted, an incomplete report during SFY 2014, and we found noncompliance continued through CY 2018. The Department should have submitted two biennial reports covering the audit period: one covering SFYs 2014 and 2015 and submitted by the end of August 2015, and one covering SFYs 2016 and SFY 2017 and submitted by the end of August 2017. However, the Department developed three annual reports, each covering a single SFY, and none were dated or contained an addressee or evidence they were filed with required recipients.

Inconsistent Quarterly Reports On Administration Of The Alteration Of Terrain Program

The Department was required to quarterly report on the administration of the terrain alteration review program. Reports were to be filed with the House and Senate finance committees; the House Resources, Recreation, and Development Committee; and the Senate Energy and Natural Resources Committee.

Our *2015 IC Review* found the Department had not submitted two of four required quarterly reports during SFY 2015. We found noncompliance continued through CY 2018, with only three of nine quarterly reports completed, published, or distributed since SFY 2016: in the fourth quarter of SFY 2016, in the fourth quarter of SFY 2017, and in the first quarter of SFY 2018.

Environmental Councils' Noncompliance With Reporting Requirements

The Commissioner was required to provide attached environmental councils with all necessary clerical and technical support. However, as we discuss in Observation No. 55, the Council inconsistently complied with external reporting requirements, and the Water Council reportedly

had not filed annual reports on its deliberations and recommendations related to policy, programs, goals, and operations of the Division.

Recommendations:

We recommend the Department:

- **develop, implement, and refine policy and procedures designed to ensure compliance with external reporting requirements; and**
- **ensure external reports with specified content are submitted as required.**

The Department may wish to seek statutory changes to simplify reporting requirements by creating a single obligation, either annual or biennial, to report on its operations and the performance of specific bureaus and programs.

We recommend Department management ensure attached environmental councils have the necessary clerical and technical support to meet their external reporting requirements.

Department Response:

We concur with the recommendations.

The Department will be updating a January 2015 Department Reporting Requirements Inventory, and communicating it to all staff. We will also be drafting a policy and developing related procedures regarding required reporting, as well putting into place a better system to help us more accurately track (and ultimately ensure better compliance with) all reporting requirements, including specified content and the specific reporting requirement references noted in the observation.

The Department has provided technical and administrative support to the Council when requested. However, the Department is currently developing a standard operating procedure (SOP) that better defines the Department's role in providing the necessary technical and administrative support to all attached environmental councils, including reminders and support for any reporting requirements.

Internal Communications

Effective internal communications can help managers: 1) optimize performance; 2) ensure proper stewardship of resources and minimize waste; 3) facilitate data-informed and objective decision-making; 4) achieve objectives and manage risks; 5) provide transparency; and 6) ensure statutory and regulatory compliance. Internal communications included information communicated at, and across, all organizational levels of the Department, and also included the management of electronic data and paper records.

Department, Division, and Bureau managers held internal communication responsibilities. The Assistant Division Director was responsible for advising the LRM Communications Team and reviewing proposed communications representing major policy changes, and, acting as the LRM administrator, was responsible for overseeing Bureau communications.

Despite related recommendations and suggestions made to the Department in three audits and in federal assessments dating back more than a decade-and-a-half, deficient control systems over internal Bureau communications persisted, contributing to employee confusion and inconsistent permitting outcomes. Department control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, and, in some cases, knowingly circumvented, contributing to 52 observations in our current report; and 2) were at a **repeatable** level of maturity.

Observation No. 50

Improve Internal Communications

Bureau management inadequately implemented the Department's guiding principle to promote effective, straightforward communication; strategic goals to establish effective knowledge transfer procedures; and LRM policies on internal communications, compromising the achievement of Bureau goals and objectives and the consistency and continuity of operations. Management was responsible for internally communicating quality information necessary to achieve objectives and ensuring communications were effective, but issues with internal communications were widespread and persisted through our current audit period.

Department Awareness Of Internal Communication Issues

Management was, or should have been, aware of issues with internal policies and SOPs dating back more than a decade, and had information from an employee survey administered in CYs 2014 and 2015 demonstrating employees perceived there were broad internal communication issues.

In our *2007 Audit*, we recommended the Division produce well-organized and written comprehensive policies and procedures for its permitting programs to help ensure quality information was communicated internally. The Department concurred, asserting it would: 1) comprehensively review all Bureau policies and SOPs, 2) incorporate existing policies into rules or SOPs, 3) incorporate SOPs into a manual in CY 2008, and 4) consult with the Wetlands and Water Councils on an ongoing basis to develop rules and SOPs. The current Bureau Administrator and Assistant Division Director, also the acting LRM Administrator, were aware of the *2007 Audit* findings and recommendations. However, the Department was still working on resolving findings related to policies and SOPs, and reported no relevant engagement with the Council through SFY 2018, as we discuss in Observation Nos. 4, 8, and 17.

In CYs 2014 and 2015, the Department surveyed employees and 365 responded. Twenty-four (6.6 percent) identified themselves as working in the Wetlands or Alteration of Terrain bureaus. Wetlands and Alteration of Terrain bureau employees reported markedly lower levels of

agreement than Department-wide respondents when asked if communication within their bureau was effective. Reportedly, survey results were never requested by Bureau administrators or other LRM managers.

Inadequate Reporting Relationships

Established reporting relationships were insufficiently effective and clear to ensure adequate communication. Management should establish reporting lines organization-wide to provide communications down, across, up, and around the organizational structure. Clear, effective reporting lines could have facilitated not only the flow of information necessary to fulfill employee and organizational responsibilities but also supervision of employees and operational performance. In response to our Bureau operations survey, both managers and staff inconsistently reported internal reporting lines were effective.

We asked employees how frequently reporting lines within individual Bureau sections allowed for adequate communication of information necessary to fulfill sections' responsibilities, and:

- three (9.4 percent), all managers, reported *always*;
- four (12.5 percent) reported *often*;
- 14 (43.8 percent), including six managers, reported *sometimes*;
- four (12.5 percent) reported *rarely*;
- two (6.3 percent), including one manager, reported *never*; and
- five (15.6 percent) reported being *unsure*.

We asked employees how frequently reporting lines with Bureau management allowed for adequate communication of information necessary to fulfill the Bureau's responsibilities, and:

- one (3.1 percent), a manager, reported *always*;
- two (6.3 percent), including one manager, reported *often*;
- 11 (34.4 percent), including five managers, reported *sometimes*;
- seven (21.9 percent), including two managers, reported *rarely*;
- two (6.3 percent), including one manager, reported *never*; and
- nine (28.1 percent) reported being *unsure*.

We asked employees how frequently reporting lines with Department management allowed for adequate communication of information necessary to fulfill the Bureau's responsibilities, and:

- one (3.1 percent), a manager, reported *always*;
- one (3.1 percent) reported *often*;
- 11 (34.4 percent), including five managers, reported *sometimes*;
- nine (28.1 percent), including three managers, reported *rarely*;
- two (6.3 percent), including one manager, reported *never*; and
- eight (25.0 percent) reported being *unsure*.

Management indicated some employees did not know to whom they reported, and organizational charts inaccurately depicted some reporting relationships, as we discuss in Observation No. 39. Some employees indicated they and others knowingly circumvented established reporting lines with Bureau management and reported directly to the Assistant Division Director, due in part to the dysfunctional managerial relationship between the Bureau administrators, which we discuss in Observation No. 1. Such actions could have created:

- confusion among employees as to whom they should be directly reporting;
- waste, as at least some issues being raised to the Assistant Division Director could have presumably been addressed by Bureau administrators;
- inadequate oversight by Bureau administrators, who were responsible for overall supervision and performance of the Bureau; and
- insufficient focus on higher-order strategic management, as time spent by the Assistant Division Director addressing day-to-day operational issues was time that could not be spent implementing, evaluating, and improving management controls necessary to ensure the effectiveness of overall operations.

Inadequate Communication Of Responsibilities

Responsibilities were inadequately communicated, negatively affecting employee and operational performance and management. Management should have clearly communicated the importance of implementing and supporting management controls necessary to achieve organizational goals and objectives and provided accountability. Such an environment was not created, as we discuss in Observation No. 1, and responsibilities related to management controls were inadequately performed, as we discuss in Observation No. 41 and throughout this report. Management was responsible for assigning and documenting employee responsibilities and delegating appropriate authority, but did not provide sufficient information or transparency about responsibilities, contributing to confusion and tension, and employees did not have formal delegations of authority, as we discuss in Observation Nos. 6, 40, and 41. Both managers and staff responding to our Bureau operations survey inconsistently reported receiving adequate communication as to what were their responsibilities.

One employee indicated confusion over whether permitting or compliance employees were responsible for processing after-the-fact permit applications. Our Bureau operations survey asked the 30 responding supervisors and staff how frequently Bureau administrators provided clear and consistent direction on overall job responsibilities or specific tasks, and:

- three (10.0 percent), including two managers, reported *always*;
- 11 (36.7 percent), including two managers, reported *often*;
- eight (26.7 percent), including one manager, reported *sometimes*;
- six (20.0 percent), including three managers, reported *rarely*; and
- two (6.7 percent) reported being *unsure*.

Insufficient performance expectations directly affected employees' ability to perform their roles and responsibilities and contribute to the achievement of Bureau goals and objectives. Expectations established by management often indicated what employees needed to accomplish,

but rarely how well they should accomplish it, and management had established no expectations related to quality of work, such as the accuracy of permit application reviews, as we discuss in Observation No. 6. The performance evaluation process also could have helped clearly communicate expectations, but mandatory annual evaluations were completed inconsistently and often untimely. We asked employees how clear expectations of their job performance were, and:

- 13 (40.6 percent), including four managers, reported *very clear*;
- 14 (43.8 percent), including five managers, reported *somewhat clear*;
- four (12.5 percent), including one manager, reported *not clear*; and
- one (3.1 percent) reported being *unsure*.

Additionally, insufficient transparency about responsibilities appeared to have created tension and contributed to low morale. One manager commented some employees seemed more overworked than others, another manager observed technical permit reviewers performed managerial tasks, such as budgeting and policy-related tasks, and one staff member perceived some employees lobbied for preferred assignments, typically not permit application reviews, while less-preferred assignments were passed to others. We asked employees whether organizational responsibilities were distributed transparently, and:

- five (15.6 percent), including one manager, reported *always*;
- six (18.8 percent), including three managers, reported *often*;
- five (15.6 percent), including three managers, reported *sometimes*;
- six (18.8 percent), including one manager, reported *rarely*; and
- ten (31.3 percent), including two managers, reported they were *unsure*.

Nine employees (28.1 percent) indicated lack of transparency was directly attributable to ineffective or insufficient communication. One manager reported assignments could be made by one Bureau administrator, who would not tell the other administrator, or by managers above the Bureau level, who would not tell either administrator.

Ineffective Knowledge Management

Management implemented several formal mechanisms to manage and transfer knowledge, but ineffectively identified, developed, and distributed the knowledge necessary to achieve Bureau objectives and improve performance. Consequently, gaps in employee knowledge and insufficient monitoring negatively affected: 1) the consistency, timeliness, efficiency, and effectiveness of the Bureau's operations, as we discuss throughout this report; and 2) continuity of operations, as we discuss in Observation No. 6. Knowledge management was critical given significant staffing changes, the potential for staffing changes to continue, and the risks associated with permitting. Losing employee expertise and experience could significantly reduce operational efficiency, resulting in costly errors, unexpected problems with quality, or significant disruptions to permit application review processes.

Communications policies were intended to ensure: 1) program and process changes were communicated to employees; 2) internal communications products were consistently articulated and publicized; 3) employees adequately understood underlying decisions, policies, rules,

statutes, or procedures; and 4) employees were consistently interpreting, applying, and presenting information. Cross-training sessions provided information on permit application review processes to allow employees to process various permits under the anticipated LRM reorganization. However, both managers and staff responding to our Bureau operations and Bureau permitting surveys inconsistently reported receiving clear and adequate information as to how to perform their current responsibilities. The complete results of our Bureau permitting survey are included in Appendix G.

Lack Of Clarity Regarding Statutes And Rules

Although *Wetlands*, the *Shoreland Water Quality Protection Act*, and Bureau rules formed the bulk of the Bureau's regulatory framework, and few major, substantive changes had been made to either statutes or rules in at least a decade, employees reported issues with the clarity of statutes and rules. Without establishing or ensuring a common understanding and interpretation of the regulatory framework, management failed to create an environment in which permitting reviews and decisions were consistent, as we discuss in Observation No. 19. Both managers and staff responding to our Bureau operations survey inconsistently reported existing rules were clear and understandable:

- three (9.4 percent), including one manager, reported rules were *very clear and understandable*;
- 20 (62.5 percent), including nine managers, reported rules were *somewhat clear and understandable*;
- four (12.5 percent) reported rules were *not clear and understandable*; and
- five (15.6 percent) reported being *unsure*.

The LRM Communications Team was supposed to approve and disseminate information on new and amended statutes to LRM employees at monthly staff meetings, to include specific examples as to how to apply the new or amended statute or rule. However, our Bureau operations survey asked employees whether Bureau-wide interpretations of existing rules were formalized and circulated, and:

- two (6.3 percent), including one manager, reported *always*;
- one (3.1 percent), a manager, reported *often*;
- 12 (37.5 percent), including seven managers, reported *sometimes*;
- seven (21.9 percent), including one manager, reported *rarely*;
- four (12.5 percent) reported *never*; and
- six (18.8 percent) reported being *unsure*.

For example, when asked which Bureau rules were less than very clear and understandable, 11 of 24 responding employees (45.8 percent) identified the stream crossing rules. Stream crossing rules were confusing, relied upon ad hoc rulemaking, and contained ambiguities and overreach, as we discuss in Observation Nos. 9, 12 and 13.

Lack Of Clarity Regarding Policies And Procedures

Well-documented and clear policies and procedures were important to ensure disseminated information was accurate, responsibilities and expectations were clear, accountability was established, and continuity of operations ensured; however, we first commented on deficiencies with Bureau policies and procedures more than a decade ago, as we discuss in Observation No. 17, and both managers and staff inconsistently reported on the clarity of policies and procedures in response to our Bureau operations survey. We asked employees how clear and understandable Bureau policies and procedures were, and:

- four (12.5 percent), including two managers, reported *very clear and understandable*;
- 16 (50.0 percent), including seven managers, reported *somewhat clear and understandable*;
- five (15.6 percent) reported *not clear and understandable*; and
- seven (21.9 percent), including one manager, reported being *unsure*.

One employee specifically indicated the Communication Team policy was less than very clear and understandable, and we observed related policies were out of date in several respects, as an employee no longer with the Department was still included as a member of the Communication Team, and the frequency of the Communication Team’s communications product review meetings had not been updated since CY 2012.

Despite apparent gaps in employee understanding of policies and procedures, related Bureau knowledge transfer processes were not sufficient to impart needed information. Cross-training sessions did not provide information on critical policies, such as the peer review policy, as we discuss in Observation No. 21, and provided minimal and reportedly unclear guidance on components of the application review process known to require judgment, including “need,” “avoidance,” and “minimization.” Additionally, permitting section supervisors were spending a large portion of their time processing permit applications, which reportedly minimized staff supervision, as we discuss in Observation No. 42. Our Bureau operations survey asked 31 responding employees (96.9 percent) whether they were able to follow policies and SOPs without additional training or guidance, and:

- one (3.2 percent), a manager, reported *always*;
- ten (32.3 percent), including four managers, reported *often*;
- seven (22.6 percent), including two managers, reported *sometimes*;
- two (6.5 percent) reported *rarely*;
- four (12.9 percent), including one manager, reported *never*; and
- seven (22.6 percent), including one manager, reported being *unsure*.

The LRM Communications Team was responsible for identifying and prioritizing communications products needing revision or development, and LRM management was responsible for informing the Communications Team of any changes to statute, rule, policies, or procedures that would prompt the need for notice to employees. However, our Bureau operations survey asked employees whether policies and standard operating procedures were updated when statute or rules changed, and:

- six (18.8 percent), including three managers, reported *yes*;
- six (18.8 percent), including three managers, reported *no*; and
- 20 (62.5 percent), including four managers, reported being *unsure*.

Ineffective Information Management

The Department was required to manage and maintain records containing adequate documentation of policies, procedures, decisions, and essential transactions, as proper records management could promote economy, efficiency, and integrity and facilitate and expedite government operations. We commented on deficiencies with data and records management more than a decade ago and identified continued significant and varied deficiencies during the course of our current audit, which we discuss in Observation Nos. 51 and 52.

Inadequate Communication And Information For Oversight

Management was responsible for communicating frequently with internal oversight entities, such as the Commissioner's Office, as well as externally, to provide information on performance, risks, major initiatives, and significant events. However, communication was inadequate, and Department management did not receive sufficient, quality information timely, including on significant matters related to management controls, negatively affecting the achievement of Bureau goals and objectives. Management acknowledged the Bureau was one of the most controversial in the Department, because of the subjectivity involved in permit application review processes and level of external stakeholder scrutiny. Consequently, the Commissioner viewed Bureau permitting to be high risk, making timely, sufficient communication particularly important.

Bureau Administrators

Division, LRM, and Bureau employees reported being aware of a long-standing, dysfunctional relationship between Bureau administrators and of issues with Bureau management and communication generally, affecting employee morale and operational performance. No attempt was reportedly made to address management issues under the current organizational structure. Bureau administrators reportedly held monthly permit meetings with employees to discuss concerns and share information but indicated such meetings had been occurring less frequently due to the LRM reorganization effort. In response to our Bureau operations survey, employees generally reported: 1) the Bureau was less than effectively managed, 2) some management decisions were inconsistent, and 3) morale within the Bureau was low, as we discuss in Observation No. 42. Furthermore, nearly half of employees reported they had seriously considered, or had actually left, the Bureau due to problems with management or other aspects of the internal work environment. Frequent staffing changes added to Bureau costs, as management had to undergo a potentially lengthy recruitment process every time a position became vacant and then spend at least one year providing a new hire with the necessary skills to independently conduct permit application reviews.

Management was responsible for ensuring employees understood they would not face reprisals for reporting adverse information that could have contributed to improvements in management

controls and operational performance. Our Bureau operations survey asked the 30 responding supervisors and staff how frequently they felt they could share concerns with Bureau administrators, without fear of retaliation or retribution, and:

- ten (33.3 percent), including two managers, reported *always*;
- eight (26.7 percent), including one manager, reported *often*;
- four (13.3 percent), including two managers, reported *sometimes*;
- four (13.3 percent), including two managers, reported *rarely*;
- two (6.7 percent) reported *never*; and
- two (6.7 percent), including one manager, reported being *unsure*.

In response to our Bureau operations and permitting surveys and during interviews, 11 employees specifically commented on various issues with Bureau communication. One employee commented communication between Bureau administrators and employees was “often on a [‘need-to-know’] basis” and a “rumor mill [ran] rampant,” also indicating Bureau administrators did “not communicate amongst themselves well... and seem[ed] to be at odds on a regular basis.”

Division Management

Reportedly, Division-level managerial review was primarily reactive, with a review of Bureau data often occurring only when a problem arose. LRM management reportedly met on an ad hoc basis, sometimes weekly and sometimes much less frequently, primarily to discuss the development of strategic initiatives, such as the LRM reorganization or restructuring, but also to discuss operations. Division management reportedly met with Bureau administrators every two weeks. A former Division Director reported management of the LRM programs, including the Bureau, occurred through the Assistant Division Director—also the acting LRM Administrator—and noted handling few Bureau issues directly.

Division management also reported reviewing some Bureau data occasionally and outstanding files reports weekly, but the applicability and usefulness of Bureau performance data was unreliable and difficult to understand. Quality purportedly improved with the implementation of the new LRM permitting database management system (DBMS). The LRM BSC was reportedly one mechanism by which Division management expected to be able to review performance, ideally quarterly, but significant deficiencies prevented this, as we discuss in Observation Nos. 5, 18, 47, and 51. Division management could point to no formal performance measurement system prior to the development of the BSC in CY 2016. The 2016 LRM BSC’s focus on outputs, rather than outcomes, also limited the Department’s ability to measure effectiveness, as we discuss in Observation Nos. 5, 18, and 51. Consequently, Division management reported:

- becoming aware of inconsistencies with employees implementing certain Bureau rules only during LRM cross-training sessions;
- being unsure as to how to assess the consistency of permitting processes, other than spot checking permit application files; and
- being generally aware of occasional differences of opinion among permit application reviewers but noting such differences typically did not come to light.

Department Management

Department-level management also reportedly became involved in Bureau oversight when problems arose. The Bureau's lack of operational plans and measurable goals, objectives, and targets tied to strategy indicated Department management did not effectively implement strategy, as management set no expectation for reporting outcome-focused measures regarding either operational or employee performance, as we discuss in Observation Nos. 2, 5, and 6.

Department-level management also reported being unaware of a number of issues we identify in this report, or the magnitude to which issues were occurring. Additionally, Department-level management was reportedly not receiving timely information about significant Bureau activities and did not receive quantitative reports from Division management on Bureau performance but reported "knowing" Division management monitored such information. Department-level management also referred to the 2016 LRM BSC, completed once, as the way to review Bureau goals, targets, and expected outcomes, but suggested there were limitations with the measures. Additionally, the Department's Dashboard contained only data on outputs related to wetlands loss and wetlands mitigation, but no information on Bureau permitting or compliance with statutory and regulatory requirements.

No Evaluation Of Internal Communication

Management did not periodically evaluate communication methods to ensure quality information was being, or could have been, communicated timely. Management also did not make use of available information on internal communications, such as the Department's 2014-2015 employee survey, which was reportedly not conducted again until CY 2018. Such analyses could have helped detect potentially significant communication issues. Our Bureau operations survey asked employees whether it was clear when new policies and SOPs were issued or when existing policies and SOPs were changed, while:

- seven (22.6 percent), including three managers, reported *yes*;
- 16 (51.6 percent), including five managers, reported *no*; and
- eight (25.8 percent), including one manager, reported being *unsure*.

Recommendations:

We recommend Department management:

- **establish clear reporting lines to ensure necessary information is communicated between management, supervisors, and staff;**
- **clearly communicate in writing organizational and employee responsibilities and expectations for performance;**
- **implement a formal knowledge transfer process, identify key positions and employees where potential knowledge loss is imminent or would be most detrimental, and develop a plan to capture and transfer knowledge;**
- **improve internal communications policies and procedures and ensure employees and entities within the Department responsible for communications are aware of**

and understand their responsibilities and have adequate time to perform these responsibilities;

- **identify data, information, and analyses necessary for sufficient oversight at each management level;**
- **develop, implement, and refine means to routinely collect, monitor, and analyze data and integrate results into planning efforts;**
- **ensure periodic and consistent updates at each management level; and**
- **routinely evaluate the effectiveness and timeliness of internal communications within the Bureau and at all levels of management, and use results to make adjustments to communications strategies.**

Department Response:

We concur with the recommendations.

The development of knowledge transfer plans, identification of data necessary for management oversight, and development of internal policies and procedures will require time and resources to effectively put in place.

We offer the following:

- *The Department has participated in several Department and Division inventories, assessments and reviews of existing SOPs and policies since the 2007 Audit. The results of these compendiums—two binders of policies and SOPS— have been provided to the LBA.*
- *The Bureau places a high priority on assessment, revising and updating the policies and SOPs. In fact, several of these policy issues are addressed through the proposed rules.*
- *The Department will be reviewing the recommendations on reporting lines of communication as part of the Department-wide employee survey Communication Team recommendations to the Department's Senior Leadership Team.*
- *The Department will be reviewing the knowledge transfer recommendation as part of the Department-wide employee survey Workforce Team recommendations to the Department's Senior Leadership Team.*
- *We will assess and evaluate the communication strategies within the Bureau as a result of this audit.*

Information Management

Control system over the collection and storage of data, records, and information can help ensure their reliability, and the reliability of resulting analyses and reports. Accurate and reliable data

collection and analysis were critical for strategic management, measuring performance, making operational decisions, and reporting. Additionally, effective and efficient records management was a fundamental obligation to: 1) protect the legal and financial rights of the State and the public; 2) ensure transparency and provide the greatest possible public access to the Department's actions, discussions, and records; and 3) inform decision-making.

The Department's continuous improvement policy covered data quality systems to help ensure the credibility and quality of data. Department, Division, and Bureau managers were responsible for data and records management, including:

- the Division Director, statutorily responsible for more than three decades for internal Bureau data and reporting;
- the LRM Administrator, responsible for LRM programs' information system management; and
- the Commissioner, statutorily responsible for more than three decades for making and maintaining records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the Department.

Additionally, all Department employees were responsible for complying with statutory public records requirements, which had been in place, in some cases, for more than five decades.

However, Division and LRM management acknowledged potential limitations with permitting data completeness, accuracy, and validity, and the Bureau did not participate in the Department's quality assurance self-audit, a "critical" quality system component intended to ensure transparency and consistency. Additionally, one prior LBA audit issued four recommendations and one suggestion related to data management dating back more than a decade.

Nonetheless, control system deficiencies with information management persisted, contributing to ineffective performance management, lack of transparency, and inconsistent permitting outcomes. Department systems of control over the Bureau's electronic data and information and paper records: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to 42 observations in our current report; 2) were at a **repeatable** level of maturity for information technology (IT) systems and electronic data quality; and 3) were an **initial** level of maturity for paper records management.

Observation No. 51

Improve Management Of Information Technology And Data Quality

The Department did not effectively manage IT systems and ensure data quality, making it impossible to fully evaluate permitting efficiency and compliance with statutory time limits using reports derived from electronic records. Bureau permitting data resided in the LRM database, which relied on a DBMS with an interface for employees to enter permitting-related information. Our *2007 Audit* recommended the Department evaluate and improve Bureau IT systems, improve the tracking of permit timeliness, and ensure data quality. However, the

conditions that led to our *2007 Audit* recommendations were not resolved through the end of our current audit period, and the Bureau was reliant on a paper-based permitting process and recordkeeping despite procurement of a new LRM DBMS in CY 2017. Compliance monitoring between key permit milestones and corresponding statutory time limits based on Bureau permitting data was impossible as the DBMS overwrote key permitting dates and did not collect other permitting dates at all. The Bureau lacked data quality standards, whether the data was internally or externally owned and maintained, and data entry was inconsistent across permit reviewers, further limiting data reliability and performance reporting and monitoring.

Unconnected Strategy And Partially Resolved External Audits And Assessments

Department systems of control over Bureau IT systems were inadequate, even though Department policy required the Bureau use credible data of known quality appropriate for intended uses. The effectiveness of IT systems management and use directly affected data quality, compliance, and reporting. As such, management should effectively control IT systems to ensure data completeness, accuracy, and validity. Management should also effectively control the acquisition, development, and maintenance of IT systems.

Conditions leading to prior audit recommendations were not resolved, despite Department assurances in their responses to our *2007 Audit* that they would, and relevant strategic goals and objectives were unfulfilled. Our *2007 Audit* made several IT systems management recommendations. We found: 1) the DBMS in use at that time did not meet the Bureau's needs, and 2) the Department needed to transfer Bureau permitting data to a new DBMS that would allow applicants to electronically submit applications. The Department asserted the Bureau's IT systems needed a substantial upgrade and indicated upgrades through an electronic permitting system or other means would occur as resources allowed. We also recommended management:

- identify database limitations in providing useful information,
- perform a cost-benefit analysis for meeting the Bureau's data needs,
- improve the Bureau's ability to track application timeliness and accurately report activity,
- establish written data entry procedures,
- provide greater oversight to ensure data are collected and reported consistently and accurately, and
- train employees on data entry procedures.

Additionally, the federal Environmental Protection Agency's CYs 2008, 2012, and 2017 *Quality System Assessments* found the Department had not provided quality assurance awareness training to management or staff since CY 2005. The Environmental Protection Agency recommended the Department provide training to, in part, ensure consistent implementation of the quality system, and suggested using an annual self-audit to identify training needs. We found data quality issues persisted, affected in part by inconsistent data entry by employees. The CYs 2008 and 2017 *Quality System Assessments* also found the Bureau had not participated in the Department's quality assurance self-audit program. Although participation was mandatory, there were reportedly no consequences for Bureau noncompliance from either the Department or the Environmental Protection Agency. Finally, the CY 2008 *Quality System Assessment* found

incorrect data in a report submitted to the Environmental Protection Agency and recommended the Bureau review management processes for ensuring accuracy.

The Bureau created some data entry policies and reportedly trained employees in data entry procedures, although management did not provide documentation on the content of trainings purportedly held, making it unclear as to which employees attended the sessions, and whether and to what extent data entry and data quality policies and procedures were discussed. Other prior audit recommendations remained unsolved. Data collection gaps in the LRM database persisted, and quality standards did not exist for Bureau data, despite:

- strategic goals to conduct a Department-wide inventory and review of data collection and identify data collection gaps, and train employees and develop SOPs to ensure data collection, results, reporting, and recordkeeping adhere to appropriate data standards; and
- Bureau goals to develop database tracking and reporting functions, create and implement a business plan for enhancing the database to accommodate Bureau processes, and train employees in new database procedures.

Ineffective System Design

The Bureau continued to use the same DBMS until emergency conditions forced migration to a new DBMS, demonstrating a reactive rather than strategic approach to IT systems management and design. The Bureau was unable to validate data quality due to limitations in the DBMS and which we identified in the *2007 Audit*. The Department maintained the same antiquated DBMS we found problematic during our *2007 Audit* until January 2017, when a replacement DBMS was installed as an emergency measure to replace the unstable then-existing DBMS. The migration did not involve an evaluation of operational needs or streamlining of IT systems. Instead, the legacy DBMS was replaced by another using the existing database structure, and employees subsequently had to clean data by eliminating duplicate records caused by the design of the legacy system. The Department also developed a new interface for Bureau employees to enter data into the DBMS, which purportedly improved upon the previous interface, though employees identified deficiencies in the new interface requiring technical support to remediate. Proper planning could have allowed the Department to evaluate operational needs, design specifications to meet those needs, obtain a product or service to meet needs, and manage associated risks.

Design limitations, ongoing since at least CY 2007, weakened internal controls by forcing employees to rely upon paper records to evaluate how effectively the Bureau complied with statutory time limits. The Bureau could not, for example, evaluate how effectively it complied with statutory time limits for permitting using IT systems because two important dates needed to evaluate the timeliness of permit processing—the application receipt date and the sign-off date—could be overwritten in the LRM database. There was no field for the ARC administrative completeness determination date separate from the date the permit application was initially received by the Department. Instead, the administrative completeness date overwrote the application receipt date in the LRM database. This was problematic for assessing the timeliness of processing: 1) standard dredge and fill (SDF) permit applications, because of the 14-day statutory time limit established for administrative completeness determinations, and 2) shoreland

and minimum impact expedited (MIE) permit application processing, because of the 30 day statutory and rule-based processing time limits. All processing time limits were calculated from the application receipt date. The date a permit was approved or denied could also be overwritten when subsequent changes to a permit occurred, such as an amendment, extension, or change of name for the permit holder.

Furthermore, employees acknowledged not all important milestones and information related to the timeliness of permit processing were accommodated in the DBMS, making performance reporting impossible without the accompanying paper record. We reviewed 86 hardcopy Bureau permit application files for SDF, MIE, and shoreland permit applications (permit application file review) and found permit review extensions used in nine of 58 SDF applications (15.5 percent) were not recorded in the LRM database. Employees worked around these limitations by writing review extension information in the project description field. However, information in the project description field was also overwritten following permit approval, making it impossible to determine using Bureau permitting data if an extension took place without reviewing documentation in the paper record. Additionally, the LRM database did not collect information necessary to:

- inform performance measurement, as we discuss in Observation Nos. 5 and 6;
- verify peer review compliance, as we discuss in Observation No. 21;
- evaluate timeliness of expedited permit application review under extraordinary circumstances, as we discuss in Observation No. 28;
- verify compliance issuing deemed approved permits, as we discuss in Observation No. 35;
- support oversight of requests for more information (RFMI), as we discuss in Observation No. 32;
- determine timeliness of approving emergency authorizations, as we discuss in Observation No. 36;
- evaluate timeliness of processing after-the-fact permit applications, as we discuss in Observation No. 37; and
- determine compliance with conservation commission timelines, as we discuss in Observation Nos. 29, 30, and 31.

Inadequate Data Quality

Data quality issues were well known and persisted, despite Department policy requiring the Bureau to use credible data. The Bureau had data entry policies and reportedly trained employees in data entry procedures, but lacked a data quality policy and adequate management oversight to ensure credible information was used. Employees reportedly tracked whether a permit had an enforcement action or was approved after-the-fact by reviewing the project description field for terms such as “after-the-fact” or “retain,” instead of using independent fields in the DBMS for each of these situations. Analysis of unaudited LRM permitting data indicated enforcement and after-the-fact fields in the LRM database were inconsistently used by employees. For instance, out of 2,288 applicable SDF and shoreland applications, 117 (5.1 percent) were incorrectly coded regarding their after-the-fact status.

Bureau data quality was affected by: 1) inconsistent data entry by employees and 2) the design of the DBMS, which overwrote data or set incorrect dates. The migration to the current DBMS in CY 2017 highlighted data quality issues with duplicate records and missing dates, some of which reportedly had not been resolved as of April 2018. Our analysis demonstrated, among other things, employees inconsistently entered RFMI issuance dates where the LRM database indicated an RFMI was sent. Employees also could not readily separate enforcement action and after-the-fact permits, both lacking statutory deadlines, from normal permit reviews due to insufficient data entry and inadequate database design. We also noted data entry inconsistencies with town clerk dates and information related to conservation commissions. Besides internal data issues we noted data quality issues with information obtained from external sources, such as the Natural Heritage Inventory (NHI), the U.S. Fish and Wildlife Services' National Wetlands Inventory (NWI), and prime wetlands maps, as we discuss in Observation No. 53.

Ineffective Performance Measurement

Data quality issues, whether caused by deficient DBMS design or inconsistent data entry by employees, undercut the Bureau's ability to use electronic data to evaluate the timeliness of permit processing, forcing a reliance on inconsistently documented paper records as discussed in Observation No. 52. The LRM BSC was intended to measure operational performance. However, the primary measure reported on the LRM BSC to evaluate the timeliness of permit application reviews—the percentage of days used for statutory first review—was also limited by the same inadequate database design and inconsistent data entry. Other permitting timeliness reports, including the outstanding files report, were similarly affected, as we discuss in Observation Nos. 5 and 22. We further note our permit application file review indicated the Bureau's management of its permitting records was inconsistent, and thus a reliance on paper records increased the risk that management could not evaluate timeliness of permitting regardless of the data source.

Recommendations:

We recommend Department management:

- **create a wetlands permitting data quality policy with objective quality standards, train employees on data-related policies, and monitor employee compliance;**
- **evaluate to what extent Bureau IT systems meet operational needs to achieve Bureau outcomes, management's needs to measure programmatic performance, and stakeholders needs to understand programmatic performance holistically;**
- **work with the Department of Information Technology to modify the Bureau's IT systems to allow for holistic performance measurement and assessment of related compliance with permit review time limits; and**
- **ensure system changes include formal cost-benefit analysis.**

Department Response:

We concur with the recommendations.

We will implement the suggested improvements as staff and IT resources allow. LRM programs share a Business Systems Analyst, and LRM has acquired part of a full-time-equivalent of an IT Developer position. We have also requested capital budget funds for IT improvements. IT upgrades are completed as resources allow.

Observation No. 52

Improve Paper Records Management

Bureau records management was inconsistent, and records were incomplete, due to poor systems of control. Our *2007 Audit* suggested the Bureau improve its records management system, and Department and Bureau policies detailed some employee records retention responsibilities. However, instances of missing, misplaced, and incomplete records during the audit period demonstrated inadequate control over records management persisted.

The Bureau did not follow statutory and policy requirements to maintain complete and accurate documentation in files. Bureau policy required employees retain decision and action letters, permits, approved plans, inspection reports, and photographs for all completed permit and compliance files. However, our permit application file review of 86 SDF, shoreland, and MIE permit application files showed: 1) three (3.5 percent) lacked a formal RFMI letter when documentation suggested one was sent and 2) one (1.2 percent) lacked a permit decision letter when the application was denied. Additionally, Bureau employees:

- inconsistently documented informal RFMIs, as we discuss in Observation No. 32;
- inconsistently documented circumstances surrounding reclassification of project type, as we discuss in Observation No. 34;
- inconsistently documented correspondence related to conservation commission intervention and feedback, as we discuss in Observation No. 29;
- inconsistently documented permit review extension letters, as we discuss in Observation No. 33;
- inconsistently documented peer review of permit application decisions, as we discuss in Observation No. 21; and
- SOPs did not specify which documents employees should include in a complete permitting file.

Inadequate control over Bureau records management led to inefficiency. Bureau policy required employees to store paper records in an efficient, organized manner, but existing systems did not adequately ensure the Bureau could consistently locate paper records. Employees inconsistently followed records management procedures, resulting in lost permit review time. Our *2007 Audit* suggested the Bureau maintain adequate controls over paper records to ensure files were tracked and available when needed, but during our permit application file review, we identified several records were not properly filed, with three records never found, and two permit application files located by auditors in an unsecure Department office outside of the Bureau's designated storage and work areas. Other missing files were eventually found, but only after extended

correspondence between a Bureau administrator and several employees over the course of several weeks.

Inadequate records management and incomplete records also affected:

- strategic management, as we discuss in Observation No. 2;
- management of training, as we discuss in Observation No. 44;
- improvement of permit application processing , as we discuss in Observation No. 22;
- complaint management, as we discuss in Observation No. 6;
- policies and procedures, as we discuss in Observation No. 17;
- transparency, as we discuss in Observation No. 7;
- external communications, as we discuss in Observation No. 47;
- underpinnings of regulatory framework, as we discuss in Observation Nos. 10 and 11; and
- external reporting, as we discuss in Observation Nos. 7 and 49.

Coupled with incomplete and inadequate electronic permit records management, as we discuss in Observation Nos. 5 and 51, the risk the Bureau would be unable to evaluate its performance or protect the legal and financial rights of the State and those affected by Bureau permitting was increased.

Recommendations:

We recommend Department management:

- **develop, implement, and refine comprehensive recordkeeping requirements to ensure records contain adequate and proper documentation of the Department’s functions, policies, decisions, procedures, and essential transactions; and**
- **develop, implement, and refine Department policies and procedure to help ensure employees conform to recordkeeping requirements.**

We recommend Bureau management:

- **refine policy and procedure designed to track the location of Bureau records;**
- **develop, implement, and refine policy on the minimum standard content for completed application and other records to protect the legal and financial rights of the State and of persons directly affected by the Bureau’s activities;**
- **develop, implement, and refine Bureau policy to help ensure employees consistently maintain records according to policy and procedure; and**
- **consider adopting policy requiring the ARC certify the completeness of each completed permit application file.**

Department Response:

We concur with the recommendations.

As a general matter, it is the Department's intention to review all policies and procedures related to recordkeeping for RFMI, e-mails, meetings, and phone contacts, and update as necessary. See Department response to audit Observation Nos. 17 and 18.

We do not believe there is benefit to “adopting policy requiring the ARC certify the completeness of each completed permit application file.” An entire ARC-related policy/procedures binder is already in place and is currently being reviewed and updated by staff. The Department has also responded to recommendations related to the ARC in Observation No. 26.

Management Of Third-party Data

Third-party data were used to screen permit applications to identify special resource issues and historical concerns, coordinate with other agencies, and assess the potential impact on wetlands functions and values near proposed projects. The LRM Administrator was responsible for LRM programs’ information system management, including assuring the quality of third-party data. Bureau employees could access as many as 13 external data sources when reviewing a particular permit application. To obtain wetlands permit approval, an applicant may have to contact 22 or more other government agencies, depending upon the scope of the proposed project. Other agencies, such as the Fish and Game Department (F&G) and Department of Natural and Cultural Resources’ (DNCR) Natural Heritage Bureau (NHB) frequently became involved in Bureau applications as a result.

However, third-party data control system deficiencies contributed to inconsistent permitting outcomes. Department control systems over the use of third-party data: 1) contained elements that were absent, ineffectively designed, inconsistently implemented, and unmonitored, contributing to 27 observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 53

Assure Third-party Data Quality

The Department had insufficient controls to assure reliability of third-party data the Bureau depended upon to review permit applications. The Bureau had no systems of control over data quality or procedures to ensure data quality, even though reliability issues with at least three key data sets were well known: NHI, prime wetlands maps, and NWI maps. We found the Department insufficiently mitigated the risk of incorrect permit decisions by the Bureau being based on inaccurate third-party data. Furthermore, Bureau requirements related to third-party data were imposed upon applicants without corresponding rules.

The ad hoc approach and reliance on unreliable data were inconsistent with federal and State requirements, and Departmental strategies indicating: 1) the Department lacked effective controls to enforce data quality policy and strategy and 2) the Bureau was either unaware of, or disregarded, Department policy and strategy. The Bureau must use credible, quality, and reliable data reasonably free from bias and significant errors to achieve objectives. Bureau management should evaluate internal and external data reliability. Relying on inconsistently accurate data, the Bureau potentially increased costs to applicants through additional requirements.

Known Limitations With NHI

Under a memorandum of agreement between the Department, DNCR, and F&G, the Department agreed to screen project areas associated with applications using NHI data and coordinate with the NHB and F&G for any projects with potential negative impacts on certain resources. The Bureau used the NHI, a database of information on endangered and threatened plant and animal species and exemplary communities administered by the NHB, to evaluate wetland and shoreland permit applications.

Inadequately Reliable And Outdated Data

The Department and NHB employees knew NHI data were outdated and inconsistently reliable. A CY 2017 NHB study of 266 exemplary wetland community records found 182 (68.4 percent) were still exemplary, 69 (25.9 percent) were no longer considered exemplary, and 15 (5.6 percent) required resurveying to determine if they were still exemplary. Furthermore, 65 of the 182 wetlands categorized as exemplary (35.7 percent) needed to be resurveyed due to issues with how and when they were surveyed. In July 2013, the NHB reported 2,075 of the 7,300 (28.4 percent) species and exemplary communities in NHI data had no recorded instances in the past 20 years, undermining the utility of this data for current permit reviewing purposes. The NHB report suggested that such instances should have a field survey to determine whether the species or exemplary community still existed in that particular location. The NHB acknowledged the limited nature of the NHI by stating there has been no comprehensive search of the State for rare species or exemplary communities. Consequently, the Bureau added a disclaimer about NHI data to every permit, making permittees ultimately responsible for potential impacts to rare species and exemplary natural communities even though the project was screened and found acceptable.

Unclear Use When Reclassifying Applications

While the Bureau vetted permit applications for potential negative impacts to protected species and exemplary communities using the NHI, it lacked rules defining how technical reviewers would review permit applications where potential negative impact was found based on NHI data, and on what basis the Department could require applicants to address potential impacts. The Bureau's rules classified an SDF project with potential issues identified using NHI data as major impact and could require mitigation for the project, though rule did not specify how reviewers would make such determinations. Bureau rules also:

- required applicants for minor and major SDF permits demonstrate by plan and example the project's impact to rare, special concern species, State- and federally-listed threatened and endangered species, species at the extremities of their ranges, and exemplary natural communities;
- categorized as a major impact any project in wetlands identified by using NHI data as an exemplary natural community or that had documented occurrences of state or federally listed endangered or threatened species;
- established mitigation thresholds for a project that did not impact an exemplary natural community as defined or identified using NHI data;

- categorized stream-crossing projects with potential impacts identified using NHI data as a major project; and
- required applicants obtain an NHI report indicating that the portion of natural woodland buffer impacted by a project had been screened for species of special concerns.

Imposition Of Ad Hoc Requirements

Ad hoc requirements to use NHI data potentially increased costs to applicants through additional engagement with F&G, the NHB, and third-party consultants, and through changes to applications. If a project was determined to have potential negative impact using NHI data, Bureau employees would require applicants to follow-up with NHB and F&G to address these issues. The criteria for determining negative impact and the follow-up requirement with NHB and F&G were not included in rule. In practice, follow-up with NHB and F&G sometimes included NHB and F&G recommendations the applicant revise the proposed project to use specific construction methods and materials and monitor sites for protected species. The Bureau usually incorporated recommendations into permit conditions.

Bureau requirements for additional correspondence with F&G potentially increased cost to applicants through potential project delays. Our permit application file review identified three of 86 applications (3.5 percent) demonstrating the Bureau required applicants to follow-up with the F&G on NHI reports of protected species one to three months after technical review started.

Incorporating F&G and NHB conditions on permits could also increase costs to applicants. Six of 86 permit application files (7.0 percent) we reviewed contained F&G or NHB correspondence that led to proposed or final permit conditions from the Bureau, potentially adding to applicant costs and inconsistent permitting outcomes.

- The first application was elevated to a major impact after the Bureau review determined potential negative impact based on NHI data. The Bureau stated the project would require mitigation, though this requirement was later dropped after F&G found the project would have no potential impact to protected species.
- In the second application, the Bureau, on recommendation from the F&G, required an applicant protect a potential habitat of an endangered species while the applicant found such requirements would make the project unsafe and unviable. The Bureau later denied the application, because the applicant refused to incorporate these requirements into the project, among other reasons.
- In the third application, the Bureau required, based on F&G recommendations, the applicant use specific types of animal-friendly material for erosion control and document any instances of activity by certain protected species.
- In the fourth application, the Bureau sent an informal RFMI to an applicant informing them that they needed to contact the NHB regarding a protected species in the project area identified using NHI data. In correspondence with the applicant, NHB requested

the Bureau add a condition to the permit that a survey be conducted for the protected species prior to certain aspects of the project.

- For the fifth application, the applicant engaged a consultant prior to application submission to conduct surveys for seven protected plant species based on NHI data, finding one. The Bureau included conditions on the permit based on NHB recommendations.
- In the sixth application, F&G requested the applicant use specific types of animal-friendly material for erosion control and document any instances of activity by certain protected species. This correspondence took place prior to application submission, and the F&G suggestions were incorporated as conditions in the permit by the Bureau.

Additionally, the applicants in the last two applications appeared to engage the NHB and the F&G prior to submitting applications due to the Bureau's ad hoc requirements specifying applicants correspond with and address concerns raised by NHB and F&G.

Outdated NWI Maps

The Bureau used outdated NWI maps, among other data sources of unknown quality, to determine jurisdictional impact through a geographic information systems review of each application. In the mid-1980s the federal NWI project took aerial photographs statewide, which were used to create a series of maps to show the location, size, and type of wetlands. NWI maps were later incorporated into the State's geographic information system, and formed the basis for wetlands delineation. However,

- the NWI was not comprehensive and only wetlands between one and three acres in size were mapped;
- wetlands delineation using NWI aerial photography had limitations, including misclassification of wetland type and difficulty in interpreting photos of forested wetlands and areas with cloud cover;
- NWI photographs were taken in the spring, and thus wetlands delineated on associated maps were not necessarily indicative of year round conditions;
- the NWI was conducted between CY 1985 and CY 1987, and wetlands boundaries changed since that date due to development and natural factors; and
- the agencies involved in supporting the State's geographic information system made no claim about data reliability or validity.

Despite these limitations, the Bureau continued to use NWI maps, though employees used other data to potentially address NWI limitations. At least three of 86 permit application files (3.5 percent) we reviewed demonstrated the Bureau questioned the wetlands delineation included with the application. One of these contained evidence that Bureau employees used NWI maps to question a wetlands delineation completed by a certified wetland scientist, and the project was elevated from a wetlands permit-by-notification to an MIE based on NWI and other maps with their own limitations. The applicant not only had their project delayed, but incurred additional costs through increased permit fees and added correspondence with Bureau employees.

Outdated And Inaccurate Prime Wetlands Maps

Prime wetland maps the Bureau used to assess wetland and shoreland permit applications were outdated and inaccurate, even though applications for projects impacting these areas received additional scrutiny from reviewers. Applications for projects located in or near prime wetlands were considered major impacts by the Bureau, and had additional requirements depending on the project including public hearings and notice to the municipality, local conservation commission, and other interested parties. The Bureau's rules also prohibited some projects if they were located within or near a prime wetland. Basing review on potentially inaccurate prime wetlands maps meant applicants could have incurred unnecessary costs through increased permit and consultant fees, project delays, project revisions, and permit conditions or the Bureau might allow an impact in an excluded area. We found no quantification of the error in prime wetlands maps. However, during the process to update wetlands rules, Bureau management proposed adding rule requirements requiring municipalities complete delineations of their prime wetlands with Department employees on site to help ensure reliability.

Recommendations:

We recommend Department management:

- **develop procedures to ensure the reliability of data permit approval processes rely upon;**
- **use reliable data to support all Bureau processes;**
- **promulgate rules incorporating all data reviews integral to the permitting process, specify criteria for how the Bureau will determine negative impact, under what circumstances the Bureau will require mitigation, and other requirements imposed upon applicants; and**
- **inform applicants of any reliability issues with data they are required by the Bureau to use during permitting processes.**

Department Response:

We concur in part with the recommendations.

The Department understands the importance of utilizing quality-controlled third-party data for permitting decisions. Critical information provided by third-party entities has data limitations that are out of the Department's direct control. These datasets are used as a baseline screening tool, in conjunction with other information, to make permit decisions. We will log data quality issues identified in third-party data used in permitting and notify data owners of quality issues.

LBA Rejoinder:

The Department directly controls the permitting decision and relying on inaccurate data may compromise the reasonableness of those decisions. Applicants should be informed of data quality issues affecting their application.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

7. WETLANDS COUNCIL MANAGEMENT

The Legislature established the Wetlands Council (Council) to implement provisions of law conferring on the Department of Environmental Services (Department) authority to decide on matters affecting State resources regulated under *Fill and Dredge in Wetlands (Wetlands)* and *Shoreland Water Quality Protection Act (Shoreland)*. To achieve this end, the quasi-independent Council was statutorily required for more than two decades to:

- provide consultation and advice on Department policy, programs, goals, and operations related to wetlands and protected shorelands, with particular emphasis on long-range planning and public education;
- meet with the Commissioner at least quarterly, and annually report on its deliberations and recommendations to the Commissioner, as well as the Governor and Executive Council;
- consider, and potentially object to, Department rules related to wetlands and protected shorelands prior to their adoption by the Commissioner, which could occur only after any Council objections had been addressed; and
- approve disbursements of the Aquatic Resource Compensatory Mitigation Fund.

Additionally, the Council had responsibility to:

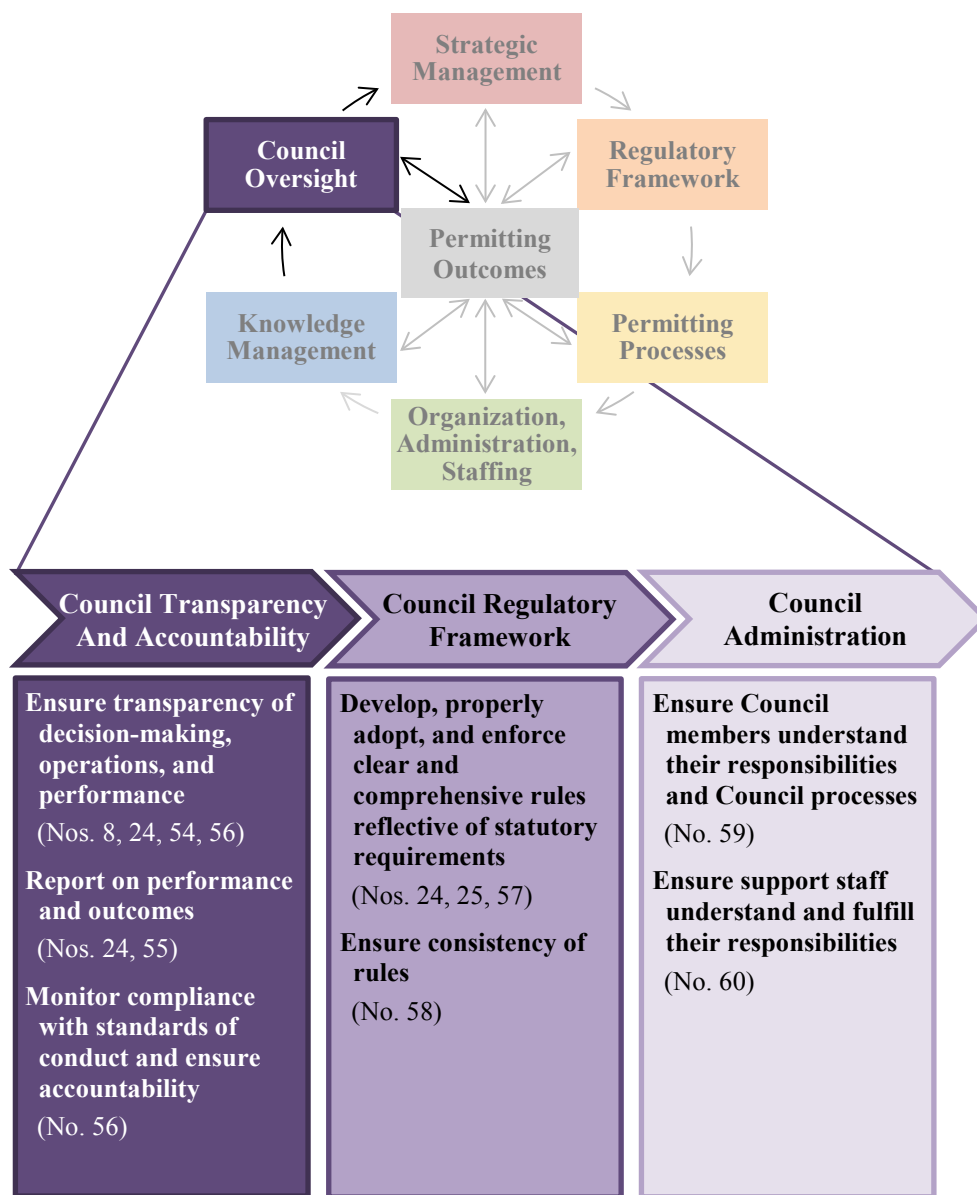
- hear all administrative appeals from Department decisions made under *Wetlands* or *Shoreland*;
- determine whether Department decisions were reasonable and lawful;
- remand unreasonable and unlawful decisions back to the Department; and
- adopt rules governing its proceedings.

The comprehensiveness of the Council's roles and responsibilities amounted to oversight.

The Council was required to comply with numerous general statutes to help ensure transparency, accountability, public access, equitable treatment, and due process. The Council was responsible for designing, implementing, monitoring, and improving its management control systems to ensure its statutory responsibilities were fulfilled. The Council and Commissioner shared responsibility for control systems over clerical and technical support the Department provided the Council. Management controls—such as formal plans, policies, and procedures—should have prescribed how the Council operated and how Council members and supporting staff were expected to perform and conduct themselves. Adequate controls could have provided reasonable assurance the Council: 1) complied with statutory and regulatory requirements; 2) achieved intended outcomes; and 3) was an effective steward of public resources. However, we found deficient control systems over key components of Council management during the audit period, as shown in Figure 18.

Figure 18

Relationships Between Relevant Observations And Management Control Systems Necessary For Effective Wetlands Council Oversight And Management



Source: Office of Legislative Budget Assistant-Audit Division (LBA) analysis.

Through State fiscal year (SFY) 2018, Department and Council control systems necessary for effective Council oversight and management were at an **initial** level of maturity, the lowest level of maturity. Deficient control systems contributed to process and management control deficiencies identified in 10 of our current audit's observations.

Transparency And Public Accountability

Public accountability and transparency are fundamental to the proper functioning of State government, and the Council—as an administrative agency—was required to comply with various statutory requirements designed to ensure accountability and transparency.

The Right-to-Know Law

Access to Governmental Records and Meetings, commonly referred to as the Right-to-Know law, imposed a number of requirements on Council meetings and recordkeeping to assure openness in the conduct of public business; provide the greatest possible public access to the actions, discussions, and records of the Council; and provide public accountability. The Commissioner was generally required to provide the Council with administrative support, including support to prepare, distribute, and maintain meeting notices and other public records as required under the Right-to-Know law, and prepare and maintain public records, such as official Council meeting minutes. Noncompliance with the Right-to-Know law could result in the invalidation of Council actions.

However, deficient Council control systems over its compliance with the Right-to-Know law contributed to statutory noncompliance. Council control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to eight observations in our current report; and 2) were at an **initial** level of maturity. Related Department control systems over its support for the Council: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored; and 2) were at an **initial** level of maturity.

Observation No. 54

Improve Wetlands Council Compliance With The Right-to-Know Law

Since at least calendar year (CY) 2015, the Council inconsistently complied with certain requirements of the Right-to-Know law. Through July 2015, the Council consisted of 14 members, and eight eligible members were required to achieve a quorum and conduct business related to matters over which the Council had jurisdiction. In August 2015, Council membership was reduced to 13, and seven eligible members were required to achieve a quorum.

Meeting Without A Quorum Of Eligible Members

We reviewed 38 Council meeting minutes from January 2015 through April 2018 and found the Council inconsistently conducted meetings with a quorum of eligible members due to a failure to file financial disclosure statements. In CY 2015, each of the Council's 11 meetings appeared to lack a quorum, but the Council accepted and denied appeals, heard and deliberated on appeals, adopted decisions and orders, adopted reports, provided comments on Department rules, and approved Aquatic Resource Compensatory Mitigation Fund distributions.

Statute prohibited the Council from conducting official business without a quorum of eligible members present, as actions taken at such a meeting could be subject to legal challenge.

Although the Council had basic procedures in place to ensure a physical quorum was present, *Wetlands Council* rules (Council rules) appeared to misinterpret statutory requirements by improperly calculating the number of members who counted towards a quorum, as we discuss in Observation No. 57.

Furthermore, the Council lacked policies or procedures to ensure members filed statements of financial interest as required by *Financial Disclosure* and never reviewed compliance with filing requirements to ensure members were eligible to serve, as we discuss in Observation No. 56. Eight members who did not file at all, or did not file timely, variously attended 24 of 38 meetings (63.2 percent) held from January 2015 to April 2018. Attendance by ineligible and potentially ineligible members may have tainted the proceedings of those meetings. We conducted a limited review of Council minutes and found ineligible and potentially ineligible members: 1) made and seconded both administrative and substantive motions, 2) participated in voting on both administrative and substantive actions, 3) participated in an appeal hearing and subsequent deliberation, and 4) were elected as Council officers. Potential ramifications of ineligible and potentially ineligible members' participation in Council proceedings are further discussed in Observation No. 56.

Additionally, full representation of stakeholders was not achieved, as not all Council positions were filled during the audit period. Having a representative quorum of Council members was essential. The position held by a member of the marine industry remained vacant from at least CY 2015 through at least CY 2018, and the municipal official position remained vacant from at least CY 2015 through June 2016. The Council chair reported that the association nominating the marine industry representative did not think it was worthwhile to have a representative on the Council. However, lack of full Council membership exacerbated quorum issues in CY 2015 and potentially compromised the effectiveness of the Council by limiting Legislatively-intended representation.

Improper Meeting Notice

The Council was required to provide notice of a meeting's time and place in two appropriate locations, which may include the Council's website, 24 hours prior to the meeting. We found notice provided on the New Hampshire Environmental Councils' website, which the Council shared, occurred in full for 36 of 38 meetings (94.7 percent). One meeting was not noticed at all, while notice for the second meeting provided only the place but not the time of the meeting. Council rules required the Department-assigned Council clerk to publicize meeting notices as required by the Right-to-Know law and to maintain a record demonstrating that all statutory notice requirements had been met. We found the Council was unable to provide such a record. Failure to provide proper notice could result in meetings being invalidated.

Inadequate Substance Of Minutes

The Council was required to include in its minutes the names of persons appearing before the Council, a brief description of subject matters discussed and final decisions, and a clear description of motions. Council rules required the Council clerk to prepare and distribute

meeting minutes for all regular and special Council meetings, although the Council itself appeared to provide limited oversight. We reviewed Council minutes for 38 meetings and found:

- eight (21.1 percent), all of which were hearings, did not document the names of persons appearing before the Council, such as the appellant, Department staff other than the appeals clerk, or intervenors;
- 11 (28.9 percent) documented that some, but not all, final decisions were made through a motion; and
- 13 (34.2 percent) did not document any discussion of final decisions or motions.

Failure to prepare adequate minutes impeded the purpose of the Right-to-Know law. Furthermore, the Council chair indicated noncompliance with the Right-to-Know law had also occurred prior to SFYs 2016 and 2017, as the Council had not always prepared minutes for hearings, until it received a complaint.

We also found Council minutes for two regular meetings recorded the Council going into “executive session.” The Council chair indicated each was a meeting with the Council’s attorney—or a non-meeting—rather than a non-public, or “executive,” session of a public meeting. The use of “executive session” introduced ambiguity, as no additional information was provided in the meeting minutes as to the purpose or substance of these sessions.

Inadequate Availability Of Minutes

Minutes were a permanent part of the Council’s records and were to be written and open to public inspection not more than five business days after a meeting. However, we found Council rules related to the public review of minutes appeared inconsistent with statutory requirements, as we discuss in Observation No. 57. Council rules specified minutes were to be available for inspection within 144 hours from the close of the meeting or vote in question, equivalent to six calendar days, not five business days. While draft minutes could be used to satisfy the requirement for public inspection of records until final minutes were completed and accepted by the Council, we found many posted minutes were still marked as draft three or more years after the meeting was held.

Furthermore, as of January 1, 2018, the Council was required to: 1) post approved minutes in a consistent and reasonably accessible location on its website or 2) post and maintain a notice on its website stating where minutes may be reviewed. Through May 7, 2018, neither the Council’s CY 2018 minutes nor a notice were posted on Council’s website. Additionally, Council rules did not specify how the Council or its Department-assigned support staff were expected to ensure compliance with this requirement, as we discuss in Observation No. 60. Failure to make minutes available as required impeded the purpose of the Right-to-Know law. We informed the Council of this deficiency during its May 8, 2018 meeting, and minutes for five of the six meetings held from January to May 2018 were posted to the website that day. However, we observed continued noncompliance through April 2019.

Ineffective Department Guidance And Procedures

The Department prepared guidance on the responsibilities of Department-assigned Council support staff in October 2011. The guidance specified the Council clerk was responsible for preparing and issuing all notices required under the Right-to-Know law and preparing and maintaining official meeting minutes as required by the Right-to-Know law, and noted Council meetings, including those scheduled solely for the purpose of deliberating on an appeal, required public notice under the Right-to-Know law.

The Department provided a standard operating procedure (SOP) on Council support staff responsibilities dated October 2018, with the intention of ensuring the Council was appropriately served and had the necessary clerical and technical support.

Recommendations:

We recommend the Council comply with statute and:

- **develop, implement, and refine policy and procedures to ensure the Council and its meetings comply with statute, Council members are eligible to serve, and the Council only holds meetings with a quorum of eligible members physically present;**
- **review past Council meeting minutes for quorum issues and seek legal counsel to determine how to ratify prior Council actions taken in meetings without a quorum;**
- **obtain full representation of members, or seek Legislative changes to ensure full representation of members can be attained and that relevant stakeholders are adequately represented by replacing associations unwilling to nominate Council members with similar associations;**
- **comply with Right-to-Know requirements regarding content and availability of meeting minutes;**
- **develop and formalize rules or a memorandum of agreement detailing clerical requirements of the Department related to online posting of Council minutes; and**
- **clearly indicate in meeting minutes when the Council is temporarily adjourning a meeting for the purpose of meeting with its attorney as opposed to entering into non-public or “executive” session.**

We recommend Department management ensure the Council has the necessary clerical support to meet requirements under the Right-to-Know Law.

Council Response:

We concur in part with the recommendations.

Some of the recommendations in Observation No. 54 are the result of findings described in Observation No. 56. Past actions taken in meetings with quorum issues were ratified by the Council on September 11, 2018, as recommended by our counsel.

Meeting Minutes

The Council will be and, as indicated in the findings, already has started to refine its meeting notice and minutes procedures. The Council believes its current practice is consistent with requirements. To the extent that there are any inconsistencies with meeting minutes and the Right-to-Know law, the Council, in February 2019, requested review by its counsel and will adopt practices consistent with advice from the Office of the Attorney General.

The Council does not concur with the apparent recommendation to increase the detail of its minutes. The Council's actions in appeals are issued through written decisions, rulings, orders, and letters, all of which are publicly available on its website; added detail in minutes is unnecessary and could be an opportunity for alleged inconsistency between minutes and official action.

The Council intends to be clear in identifying meetings in minutes when the Council is temporarily adjourning a meeting for the purpose of meeting with its attorney, as opposed to entering into non-public or "executive" session, in the future.

Member Representation

The Council does not concur with the recommendation to replace the association unwilling to nominate its Council member at this time. Improvements to the remand process through revised statutes and rules may result in return to participation.

Meetings

The Department and Environmental Councils drafted an SOP addressing policy and procedure related to member eligibility and holding meetings only with a quorum of eligible members physically present. A draft is currently being circulated; finalization of the SOP and administrative procedures is expected in the first quarter of CY 2019.

Department Clerical Requirements

The Department, in concert with all the Environmental Councils, is developing an SOP for administrative support. A draft is currently being circulated; finalization of the SOP and administrative procedures is expected in the first quarter of CY 2019.

LBA Rejoinder:

While the Council's response provided timelines for resolving some elements of our recommendations, it did not provide an overall timeline for resolving all Right-to-Know compliance deficiencies in its response to Observation Nos. 8 or 54. Specifying a timeline

for full resolution of deficiencies would help stakeholders understand whether, and when, the Council intends to become compliant with the Right-to-Know law.

To ensure transparency, limit overreach, and maintain popular control, the Legislature required conformance with the Right-to-Know law, ensuring the Council acted publicly, helping balance disproportionate access to information inherently existing between the Council and the public, and furthering the application of due process to Council activities. Minutes are supposed to be the record of official Council actions. By failing to develop and make available minutes and records compliant with Right-to-Know requirements, the Council abdicated certain statutory responsibilities.

While the Council “believes” its practices related to meeting minutes were compliant with the Right-to-Know law, noncompliance related to the posting of meeting minutes continued through April 2019. Additionally, there were statutorily-required elements clearly missing from Council minutes, and Council records available on its website were incomplete.

While the Council indicates it does not concur with our recommendation to obtain full representation of members, by maintaining the status quo, it provides no timeline for resolving representation issues or any assurance the Council’s proposed solution will resolve representation issues. Achieving quorum and full representation on the Council by Legislatively-designated entities was important to the Council’s effectiveness.

Also, while a Department-drafted SOP may contribute to the control environment, it does not constitute a system of Council control over member eligibility and holding meetings only with a quorum of eligible members physically present. The Council must also exercise adequate control over member eligibility and quorum.

Department Response:

We concur with the recommendation.

The Department drafted an SOP that identifies Department responsibilities in providing technical and administrative support to the Council in Observation No. 54.

External Reporting Requirements

The Council was statutorily required to submit a number of reports to external stakeholders on operational performance. Publicly communicating performance: 1) facilitates the achievement of objectives and management of risk; 2) contributes to oversight of, and accountability for, operations; and 3) underpins transparency.

However, the absence of Council control systems over its compliance with external reporting requirements contributed to statutory noncompliance. Absent Council control systems: 1) contributed to seven observations in our current report; and 2) were at an **initial** level of

maturity. Related and absent Department control systems over its support for the Council were at an **initial** level of maturity.

Observation No. 55

Improve Wetlands Council External Reporting

The Council inconsistently complied with external reporting requirements and lacked relevant policy, procedures, and rules to establish support staff requirements related to external reporting.

The Council was required to issue biennial reports summarizing its operations, and reports were to cover periods ending on June 30 in odd-numbered years, beginning in CY 2015. Reports were to be posted to the State’s transparency website and submitted to the Governor and Executive Council and other stakeholders; include an organizational chart, and term expiration dates for Council members; and outline statutory and regulatory functions and significant accomplishments. However, we found no biennial reports on Council operations for SFYs 2015 or 2017.

The Council was also required to file annually with the Governor and Executive Council and the Commissioner a report on its deliberations and recommendations related to wetlands and protected shorelands policy, programs, goals, and operations. While the Council completed and published reports annually during CYs 2015, 2016, and 2017, none contained an addressee or evidence they were filed with required recipients, nor did the reports provide detailed information on deliberations and recommendations related to wetlands or protected shorelands policy, programs, goals, and operations. Rather, reports indicated only that “operations were reviewed” and advice was provided “to the department as authorized.”

The Department provided an SOP on Council support staff responsibilities dated October 2018, with the intention of ensuring the Council was served appropriately and had the necessary clerical and technical support to meet its external reporting requirements.

Recommendations:

We recommend the Council:

- **develop policy and procedures designed to ensure compliance with external reporting requirements,**
- **formalize external reporting rules or a memorandum of agreement detailing clerical and technical requirements of the Department, and**
- **ensure external reports with specified content are submitted as required.**

The Council may wish to seek statutory changes to simplify reporting requirements by creating a single obligation, either annual or biennial, to report on its activities, deliberations, and recommendations.

We recommend Department management ensure the Council has the necessary clerical and technical support to meet its external reporting requirements.

Council Response:

We concur in part with the recommendations.

The Council believes that it is complying with reporting requirements as of February 2019.

Beginning in CY 2019, future reports will be submitted with the specified content and record kept of report transmittal.

We suggest the Legislature eliminate the statutory biennial reporting requirement for agencies, such as the Council, required by their enabling statutes to provide more frequent reports.

LBA Rejoinder:

The Council appears to fully *concur* with our recommendations but did not comment on our recommendations to develop policies and procedures or formalize clerical and technical support requirements of the Department related to external reporting.

Department Response:

We concur with the recommendation.

The Department drafted an SOP that identifies Department responsibilities in providing technical and administrative support to the Council in Observation No. 55.

Financial Disclosure Requirements

Financial Disclosure was intended to ensure the performance of official duties did not give rise to a conflict of interest. Certain public officials, including those appointed to administrative agencies, were required to file statements of financial interest with the Secretary of State. Verified, signed, and dated statements listing potential conflicting interests had to be filed either: 1) initially, within 14 days of assuming office, if the official was newly appointed or 2) annually, by the third Friday in January, if the official was currently serving. Knowingly failing to comply with filing requirements was a misdemeanor, and any actions taken while ineligible to serve were potentially subject to legal challenge.

However, the absence of a Council control system over compliance with *Financial Disclosure* contributed to statutory noncompliance. An absent Council control system: 1) contributed to seven observations in our current report; and 2) was at an **initial** level of maturity. Related Department control systems were: 1) ineffectively designed, inconsistently implemented, and unmonitored; and 2) at an **initial** level of maturity.

Observation No. 56

Improve Wetlands Council Compliance With *Financial Disclosure* Requirements

Since at least CY 2015, Council members inconsistently complied with *Financial Disclosure* requirements. Noncompliance appears to have affected meeting quorum, and may have tainted the proceedings of other meetings where a quorum of eligible members was present but ineligible or potentially ineligible members participated in official Council business.

Noncompliance With Filing Requirements

Council members were required to file statements of financial interest. Although legal counsel reportedly provided informal advice to the Council that Executive Branch employees designated to serve on the Council did not have to file statements, the applicability of filing requirements to designees had been clarified and affirmed by the Executive Branch Ethics Committee in CY 2010.

Eighteen individuals served on the Council during the audit period and were required to file 51 statements of financial interest from January 2015 through April 2018. The 39 statements (76.5 percent) filed were not always timely or complete.

- Seven annual statements (17.9 percent) were submitted between three and 91 days late, and six Council meetings were held in CY 2018 during periods of potential member ineligibility, during which potentially ineligible members: 1) made, seconded, and voted on motions, including motions to accept, deny, and reconsider appeals, and 2) participated in appeals hearings and deliberations.
- Eleven statements (28.2 percent) appeared to be incomplete for various reasons, including not listing the Council as an appointment and a failure to list obvious special interests. Some deficiencies may have been sufficient to defeat the policy purpose of filing statements altogether.

We found 12 unfiled statements (23.5 percent), which affected or potentially affected the eligibility of ten members to serve as follows:

- five Council members did not file an annual statement throughout CY 2015;
- two Council members did not file an initial statement after appointment in CY 2016;
- two Council members did not file an annual statement throughout CY 2016;
- one Council member did not file an initial statement after appointment in CY 2017; and
- two Council members did not file an annual statement through at least April 20, 2018.

The Department reportedly provided annual reminders to Council members to file statements, which potentially made non-filers knowingly noncompliant—a misdemeanor. The Council itself lacked policies or procedures to ensure: 1) members filed and never reviewed compliance with filing requirements to ensure members were eligible to serve, and 2) quorum was assured.

Additionally, the Council chair was required to provide the Secretary of State with an organizational chart identifying Council members required to file statements. However, organizational charts were unfiled during CYs 2015, 2016, 2017, and through at least April 2018.

Potential Effects Of Noncompliance

Not filing statements could affect meeting quorum, as discussed in Observation No. 54, subjecting decisions made during those meetings to question. Not filing could also subject individual acts to question, if ineligible or potentially ineligible members made, seconded, or voted on motions, or otherwise influenced Council business. Our limited review of Council meeting minutes identified examples of potential problems caused by ineligible and potentially ineligible members' actions.

- In February 2015, non-filing, and potentially ineligible, members: 1) made and seconded both administrative and substantive motions and 2) participated in voting on both administrative and substantive actions, including those electing Council officers.
- In February 2016, non-filing, and ineligible and potentially ineligible, members: 1) made and seconded both administrative and substantive motions, 2) participated in voting on both administrative and substantive actions, and 3) participated in an appeal hearing and subsequent deliberations.
- In January 2018, non-filing, and potentially ineligible, members: 1) made and seconded both administrative and substantive motions, 2) participated in voting on both administrative and substantive actions, and 3) participated in an appeal hearing. Additionally, a non-filing and potentially ineligible member was nominated as, and elected to be, the Council's vice chair.

Such actions could also have potential implications for the extent to which appellants or permittees were involved with the appeals process, or the cost of their involvement. For example, during our limited review of appeals dockets active during SFYs 2016 or 2017 (appeals docket review), we identified one appeals docket in which the Council: 1) voted to accept the appeal in February 2016, with two potentially ineligible members participating in the vote; 2) heard the case in August 2016, with two ineligible or potentially ineligible members attending; 3) deliberated on the case, with two ineligible or potentially ineligible members participating; and 4) voted to issue the decision in December 2016, with one ineligible member seconding the motion and three ineligible and potentially ineligible members voting on the motion. The appeal was denied on a five-to-five vote by the Council, with no indication as to how ineligible or potentially ineligible members voted. As a result, we were not able to fully assess the consequences of these actions.

Statutory Ambiguity

In October 2018, the Department of Justice (DOJ) provided an opinion that decisions made by public officials who failed to file their annual financial disclosures pursuant to *Financial Disclosure* were not voidable. Eligibility to serve was only contingent upon public officials

successfully filing an initial statement and was not impacted by a lack of subsequent annual statements. However, we have historically understood the statutory provision determining eligibility to serve to be contingent on both the public official's initial filing and subsequent annual filings. Because the courts have not addressed this issue, we still conclude actions taken by public officials who failed to file their annual financial disclosure pose an unnecessary risk of being questioned.

Department Procedures

The Department provided an SOP on Council support staff responsibilities related to *Financial Disclosure* dated October 2018, with the intention of ensuring Council members filed financial disclosure statements, but noting it was ultimately the responsibility of the Council chair to ensure members filed.

Recommendations:

We recommend Council members comply with *Financial Disclosure* requirements and timely file initial and annual statements, and the Council:

- **develop, implement, and refine policy and procedures to ensure ongoing Council member compliance;**
- **periodically review members' compliance; and**
- **develop, implement, and refine policy and procedures to ensure only eligible members conduct Council business.**

We also recommend the Council's chair annually submit to the Secretary of State an organizational chart of all Council members required to file statements.

We recommend Department management develop policy and procedures to help ensure supported councils, including the Wetlands Council, receive necessary administrative and clerical support to comply with *Financial Disclosure* requirements.

We suggest the Legislature consider clarifying *Financial Disclosure* regarding whether failure to file annual financial disclosures should prohibit public officials from serving in their appointed capacity.

Council Response:

We concur with the recommendations.

The SOP referenced in the Council's response to Observation No. 54 will include a compliance process for financial disclosure. This process will be in place for the required January 2019 disclosures. We note that a portion of the observation is inconsistent with an opinion issued by the DOJ after the audit team produced the observation.

The Council concurs with the recommendation to annually submit an organizational chart to the Secretary of State. This task will be included in the next revision of the SOP as part of the annual submission of Financial Disclosure filings.

LBA Comment:

While a Department-drafted SOP may contribute to the control environment, it does not constitute a system of Council control over *Financial Disclosure* requirements. The Council must also exercise adequate control over *Financial Disclosure* requirements. This was evidenced by continued noncompliance with the requirement to submit an organizational chart of all Council members required to file financial disclosure statements through February 2019.

Additionally, the DOJ's opinion:

- **was guidance for the Executive Branch of government and does not affect our analysis and assessment of risks and compliance or our recommendations to help mitigate risks and ensure compliance;**
- **was untested in court, so the risk of challenges to Council decisions remains; and**
- **appeared inconsistent with Legislative intent.**

If the heightened sensitivity to conflicts of interest, actual or perceived, was of such paramount importance to the Council, as it suggested in responding to Observation No. 8, it would ensure—irrespective of the details within the DOJ's opinion—that members annually file statements to avoid becoming misdemeanants and unnecessarily subjecting Council decisions to the risk of legal action.

Department Response:

We concur with the recommendation.

The Department drafted an SOP that identifies Department responsibilities in providing technical and administrative support to the Council in Observation No. 56.

Regulatory Framework

Rules were essential for the Council to effectuate its oversight of Department implementation of *Wetlands* and *Shoreland*, its oversight of Department permitting decisions through appeals and remands, and its own internal management and compliance with statutory requirements. In exercising its quasi-legislative authority, the Council had to conform to the *Administrative Procedure Act (Act)*, which was designed to ensure transparency and due process were embedded into Council rulemaking, and with provisions in other statutes relevant to its appeals processes. Rules could not add to, detract from, or modify statutes, and rules that did so exceeded the Council's authority.

Adequacy Of Rules

Various statutory requirements guided development and operationalization of rules. The Council was required to adopt rules of practice setting forth the nature and requirement of all formal and informal procedures, including rules governing appeal proceedings, and should have adopted rules to: 1) implement, interpret, or make specific a statute enforced or administered by the Council or 2) prescribe or interpret a Council policy, procedure, or practice requirement binding on persons other than Council staff. Council requirements were not valid or enforceable without proper adoption in rule.

However, the absence of Council control systems over its rules contributed to statutory and regulatory noncompliance, as well as inconsistent appeals and remands outcomes. Absent Council control systems: 1) contributed to eight observations in our current report; and 2) were at an **initial** level of maturity. Related and absent Department control systems over its support for Council rulemaking were at an **initial** level of maturity.

Observation No. 57

Improve Wetlands Council Compliance With The *Administrative Procedure Act*

Council rules inconsistently addressed, inconsistently applied, or misinterpreted: 1) appeal proceeding requirements, 2) meeting requirements, and 3) quorum requirements. Additionally, Council rules were outdated, having last been revised in CY 2008, and the Council operated since September 2011 with at least 16 sections containing expired rules. Certain rule inadequacies were recognized by the Council chair and the Department, and several Council members indicated revising Council rules could improve the appeals process. In addition to statutory noncompliance, inadequate Council rules:

- affected the clarity of appeals procedures and requirements;
- inhibited the timely resolution of appeals;
- imposed an undue burden on appellants or other parties to appeals, including potential higher costs;
- affected due process rights; and
- limited the sufficiency and availability of information to appellants, other parties to appeals, and the public.

Improve Precision

Council rules were to provide sufficient detail about proceedings to ensure clarity, but:

- inconsistently identified relevant paraphrased statutes;
- inconsistently identified relevant statutes when rules required statutory compliance;
- inconsistently and incompletely identified provisions of statutes being implemented;
- unclearly defined the 30-day window for filing a revised appeal;
- did not explicitly state that the Council could affirm decisions of the Department;

- were silent on the effect an appeal filing had on permit holders and their ability or inability to proceed with a permitted project while under appeal;
- lacked statutory conditions for deciding on a petition for intervention, and lacked clarity on other aspects of the intervention process;
- did not specify the time period parties had to apply for a rehearing;
- did not structure remands to the Department, as we discuss in Observation No. 25; and
- unclearly described how to make an objection to a *ruling*, describing only how to make an objection in response to a *motion*.

Additionally, rules must be specific and avoid ambiguous language, which could leave it unclear as to when rules applied or less than full compliance was acceptable. However, Council rules:

- used terminology that differed from that used in corresponding statute;
- included ambiguous terms such as “appropriate” and “reasonable;”
- vaguely phrased decision-making criteria; and
- used “may” to refer to actions taken by the Council itself, rather than limiting the use of “may” to options available to persons other than the Council.

Resolve Internal Inconsistencies And Omissions

Council rules appeared to contain several internal inconsistencies, such as inaccurate internal references or inaccurate terminology. Such inconsistencies could reduce clarity to appellants and other parties to appeals, and even negatively affect the timeliness of the appeals process. For example, Council rules specified that a notice for appeal should include certification that a copy of the notice was delivered to all persons, as required by rule; however, the internal reference was inaccurate. The Council was aware of the inaccurate reference, as it included language to that effect in letters sent to appellants upon receipt of their notice, and the chair acknowledged the deficiency. We found, through our appeals docket review, that several appellants had not met this particular requirement for filing, necessitating they correct and resubmit their appeal.

Council rules specified the “service list” was to be used for appeals-related notifications; however, rules on initiating an appeal specified documents were to be sent to the “copy list.” Council rules also specified a party wishing to file an appearance had 20 days from the date a corrected petition for appeal was filed; however, the internal reference was inaccurate. If a hearing was held in a party’s absence, rules provided the party could file a motion to reconvene the hearing; however, the internal reference was inaccurate. We also found Council rules inconsistently and incompletely referenced other rules related to filing requirements.

Additionally, some Council rules omitted requirements specified in statute, potentially hampering the public’s right to know about Council actions and proceedings. Council rules related to public requests for information did not include the Council’s mailing address, telephone, or fax numbers required by statute. Adjudicative proceeding rules were required by statute to provide various information, including a retention schedule for final, written Council decisions; however, Council rules did not include information on records retention.

Align Meeting-related Rules With Statute

Council rules could not add to, detract from, modify, or otherwise conflict with statute. However, misinterpretations and contradictions related to Council meetings and meeting minutes potentially:

- affected timeliness of appeals processes and may have increased costs to appellants, given the length of time between Council meetings—as we discuss in Observation No. 24, the appeals process could take more than two years to achieve resolution;
- affected public access to the actions and discussions of the Council, in turn affecting public accountability, as we discuss in Observation No. 54;
- contributed to noncompliance with quorum requirements in CY 2015; and
- affected the legitimacy of Council actions taken at meetings without a quorum of eligible members present, or at meetings where ineligible or potentially ineligible members participated, as we discuss in Observation Nos. 54 and 56.

The Council also misinterpreted statutory requirements specifying meeting frequency. The Council was required to meet with the Commissioner at least quarterly, or at the call of the Chair or three members, to continually consult with and advise the Commissioner on wetlands and shorelands policy, programs, goals, and operations. Council rules reflected this requirement. However, the requirement to meet quarterly with the Commissioner was erroneously applied by the Council to *all* of its meetings, including meetings where appeals were addressed. Appeals stemmed from a separate statutory mandate, without a required meeting frequency. The Council's chair expressed reluctance to schedule meetings to address one item, such as a petition for appeal, due to the costs of convening the meeting.

Additionally, Council rules contradicted statutory requirements related to public availability of meeting minutes, as we discuss in Observation No. 54; and did not accurately reflect the statutory calculation of quorum, based on the total membership of the Council, as rules indicated that quorum was to be calculated based on the number of appointed members, regardless of vacancies.

Align Rules With Statutory Requirements Related To Appeals Proceedings

Council rules inconsistently reflected statute, and while statutory provisions should have trumped incompatible rule-based requirements, due process for appellants or other parties could have potentially been affected if discrepant rule-based requirements were followed.

Requirements Related To Time Periods

- Petitions for intervention had to be filed at least three days before a hearing, but Council rules required petitions to be filed no later than 30 days prior to a hearing.
- Decisions on a motion for rehearing were to be made within ten days of the motion, but Council rules provided decisions to grant or deny a motion would happen no later than the first regularly-scheduled meeting occurring at least ten days after receipt of a

motion and any related objections. The Council typically met every one to two months, which could have potentially extended decisions on a motion to one or two months beyond the statutory deadline.

- Upon request, the Council could extend time periods not mandated by statute; however, Council rules provided permitted time extension of statutorily-established time limits for appeals of orders or decisions issued under *Shoreland*.

Requirements Related To Providing Information

- The Council was required to specify the factual and legal basis for its determinations, as well as identify the evidence in the record used to support its decisions; however, Council rules specified the Council was to issue a written decision for each appeal, as well as identify reasons for its decision *only* if it found the Department's decision to be unlawful or unreasonable.
- Appeal hearings notices were required to include the time and place of the hearing, the nature of the hearing, the legal authority under which the hearing was to be held, a reference to the sections of statutes and rules involved, the issues involved, and that each party could have an attorney present. However, Council rules required notice to include *only* the hearing's date, time, and location.

Requirements On Parties

- The presiding officer could, upon motion of any party or upon the presiding officer's own motion—but was not required by law—to schedule prehearing conferences to informally settle a matter before beginning formal proceedings; however, Council rules required a prehearing conference be scheduled, unless all parties agreed in writing that such a conference would not aid in the timely disposition of the appeal.
- Upon request and payment of costs, the Council was to transcribe the entirety of all oral proceedings related to a hearing; however, Council rules specified only a duplicate tape recording of the hearing would be provided.

Requirements Related To Evidence

- An appeal record was to include matters placed on the record after *ex parte* communication; however, Council rules inconsistently reflected this requirement, variously indicating *ex parte* communications were to be placed on, or excluded from, the record.
- *Ex parte* communications were prohibited with officials or Council staff; however, Council rules appeared to narrow statutory requirements by only prohibiting *ex parte* communications with Council members, and not staff.

- Parties must be provided with notice and opportunity to participate in communications; however, it was unclear from Council rules whether and how parties were notified when ex parte communications were placed on the record.
- Official notice could be taken of relevant evidence, including codes or standards adopted by certain entities; however, Council rules did not provide for this type of notice.

Requirements Related To Hearing Notice

For appeals of permitting decisions, the Council was required to send hearing notice to permit applicants; property owners, if different from the applicant; local governing bodies; planning boards; municipal conservation commissions; and known abutting landowners. However, Council rules specified all notices were to be sent to persons on the service list, which included applicants; appellants, if different from the applicant; the Department; municipal conservation commissions, if the commission filed an appearance; interveners; and anyone who filed a motion to intervene that had not yet been ruled on.

By rule, unless the local governing body, the planning board, the municipal conservation commission, and all known abutting landowners had filed a motion to intervene, or if the municipal conservation commission had filed an appearance, none of these entities would receive notice.

Standing To Appeal Department Orders

Persons who could appeal a Department order under *Wetlands* were those subject to the order; however, Council rules broadened the requirement to also allow any person otherwise aggrieved by the order and with standing to appeal the order. Given statutory limitations, it was unclear who else would have standing, aside from the person subject to the order, and could potentially allow numerous parties to become involved in any given appeal.

Update Rules To Reflect Statutory Changes

A number of statutory changes occurred since Council rules were updated in CY 2008. While statutory provisions should prevail over outdated, and in some cases expired, rules, Council rules should nonetheless accurately reflect statute. Inconsistencies could lead to confusion for potential and actual appellants and other parties to an appeal.

- Role of the Hearing Officer – Effective September 2010, the DOJ was to appoint a hearing officer for Council appeals. However, Council rules contained no reference to the role or responsibilities of the hearing officer, and at least 16 sections containing rules related to the hearing officer’s responsibilities expired as of September 2011.
- Considerations of Appeals Decisions – Effective June 2012, the Council was required to consider only those grounds set forth in the notice of appeal when making appeal decisions. However, Council rules were never updated to reflect this constraint.

- Department Process to Reconsider Permit Decisions – Effective August 2013, the process for the Department to reconsider permitting decisions before an appeal to the Council was removed. However, outdated references to the Department’s former reconsideration process remained not only in Council rules, but also in Department rules. Such references could add not only to confusion, but also potentially to the amount of time before an appellant would submit an appeal.

Adopt Rules On Relevant Appeal Procedures

Council rules were to: 1) provide information on certain appeal proceedings, 2) include minimum due process requirements, and 3) provide sufficient detail about proceedings, but did so incompletely.

- Preliminary Notice Of Appeal – Any person aggrieved by a Department permitting decision could file a Preliminary Notice of Appeal and an offer to enter into settlement discussions. Council rules lacked relevant requirements. Furthermore, the Council lacked required rules defining or adopting the Preliminary Notice of Appeal form.
- Withdrawal Of Appeal – Council rules mentioned only once, and in a different context, a process whereby the Council could request an appellant withdraw a settled appeal, but Council rules provided insufficient information on related requirements.
- Providing Requested Status Report On Appeal – Council rules mentioned only once, and in a different context, a process whereby the Council could request a status report on an appeal, but Council rules provided insufficient information on related requirements.

Recommendations:

We recommend the Wetlands Council:

- **revise and amend rules to comply with rulemaking requirements and ensure rules reflect underpinning statutes;**
- **ensure any requirements intended to be binding upon anyone other than the Council are adopted in rule and are clear;**
- **correct improper citations in rules;**
- **seek necessary assistance from the Department to attain and maintain compliance with State law; and**
- **meet as frequently as its workload demands, dispensing with the misapplication of the quarterly requirement to meet with the Commissioner to all of its business.**

We recommend Department management provide legal and technical support to coordinate and assist the Council with rulemaking to help ensure the Council attains and maintains ongoing compliance with State law.

Council Response:

We concur in part with the recommendations.

The Council, in conjunction with the other Environmental Councils (Air, Waste, and Water) began a process in CY 2014, recently dormant, to create more consistent rules. We will restart this process in CY 2019 following the next legislative session, so as to include any statutory changes resulting from the audit in administrative rules, with target completion in CY 2020.

We do not concur with the recommendation to seek assistance from the Department's Legal Unit in this revised rulemaking as the Department is authorized to provide administrative not legal support to the Council. We will seek assistance from the DOJ's Civil Law Bureau.

We do not concur with the recommendation to meet more frequently as workload demands; the Council believes it already does so. In CY 2018 and in the past the Council has met twice a month to keep up with appeal volume, we would increase meeting frequency again if necessary.

LBA Rejoinder:

The Council appears to *concur in part* with our recommendation to “meet as frequently as workload demands” by acknowledging it has, and will, increase meeting frequency to keep up with appeals. However, the Council should accommodate the full scope of its workload including rulemaking; evaluating appeals process effectiveness; developing a strategic plan; consulting with and advising the Commissioner on Department policy, programs, goals, operations, and long-range planning; and considering Department rules.

The Council's response misrepresents our recommendation to “seek necessary assistance from the Department,” including clerical or technical support. Clerical and technical support may be administrative, clerical, or technical, which includes legal support. Statute provided permitting fees “shall be expended by the department for paying per diem and expenses of the public members of the council,” but not for the Council to seek outside technical assistance.

Department Response:

We concur with the recommendation.

We will coordinate our assistance of the Council with the needs that the Council identifies, and we will document the Council and the Department's understanding of the assistance in writing.

Consistency Of Environmental Councils' Rules

Since CY 2010, the Environmental Councils assigned to the Department—Wetlands, Water, Waste Management, and Air Resources—were statutorily required to adopt rules governing

administrative appeals that were consistent with each other, to the extent possible. The Department held responsibility for providing administrative support.

However, the absence of Council control systems related to the consistency of Environmental Councils' rules and Department control systems over facilitating consistency contributed to statutory noncompliance. Absent Council and Department control systems: 1) contributed to six observations in our current report; and 2) were at an **initial** level of maturity.

Observation No. 58

Improve Consistency Of Environmental Councils' Rules

The Department and the Environmental Councils recognized rules, including those related to appeals proceedings, were not reasonably consistent, and the Department drafted rules in January 2014 for the councils to use as a template to achieve consistency (draft 2014 rules). The draft 2014 rules indicated the Department and the Council were apparently aware of at least some issues we identified with the Council's rules, which we discuss in Observation No. 24, as the draft rules could have remedied a number of deficiencies. However, final rules were never adopted, leaving rules in place that, at least for the Council, affected the clarity and timeliness of the appeals process and were noncompliant with statutory requirements, potentially affecting due process rights and imposing an undue burden on appellants, as we discuss in Observation No. 57. Statute did not establish a deadline for the four Environmental Councils, even with support from the Department, to adopt consistent rules.

The draft 2014 rules also raised questions about specific aspects of appeals processes, such as remands. Only Council rules referenced a process to remand appeals back to the Department, with authority to do so coming from *Wetlands*, yet the draft rules for all the councils referenced a remand process, without any statutory authority apparent for the other councils.

Recommendations:

We recommend the Wetlands Council revisit and revive the dormant revised rules and process with the Department and the other Environmental Councils to achieve rule consistency across councils and fulfill this statutory requirement.

We recommend Department management provide all necessary support to assist the Environmental Councils with rulemaking to help ensure the councils' rules are consistent with each other to the extent possible, and they attain and maintain ongoing compliance with State law.

Absent any progress in developing consistent rules across Environmental Councils, the Legislature may wish to: 1) amend statute and consider creating a temporary committee comprised of members from the Environmental Councils, with DOJ staff providing advice and administrative support, to develop consistent rules, and establish a deadline for the councils to adopt harmonized rules, or 2) repeal the requirement altogether.

Council Response:

We concur in part with the recommendations.

The Council, in conjunction with the other Environmental Councils (Air, Waste, and Water) began a process in CY 2014, recently dormant, to create more consistent rules. We will restart this process in CY 2019 following the next legislative session, so as to include any statutory changes resulting from the audit in administrative rules, with target completion in CY 2020.

LBA Rejoinder:

The Council appears to fully concur with our recommendations.

Department Response:

We concur with the recommendation.

The Department will provide administrative and/or technical support requested by the Council.

Council Administration

Effective knowledge management and assignment of responsibilities helps ensure: 1) critical organizational knowledge is disseminated and retained; 2) data-informed and objective decision-making; 3) achievement of Council objectives; 4) efficiency and effectiveness of operations; and 5) transparency, accountability, and compliance.

Member Orientation

The Council was required to provide orientation information for its new members, which could include Council practices and procedures and other pertinent information, such as statutes with which the Council and its members—in their capacity as public officials—were required to comply with, such as filing statements of financial interest.

However, the absence of a Council control system over member orientation contributed to statutory noncompliance. An absent Council control system: 1) contributed to nine observations in our current report; and 2) was at an **initial** level of maturity. A related and absent Department control system over its support for Council orientation was at an **initial** level of maturity.

Observation No. 59

Improve Wetlands Council Member Orientation

The Council lacked policies or procedures to facilitate compliance with orientation requirements, and members did not receive standardized orientation information. Instead, new members were

encouraged to review past appeals decisions and the Council's rules on the New Hampshire Environmental Councils' website. Additionally, the DOJ annually provided administrative law training for bodies like the Council and published regular updates to the *Attorney General's Memorandum on New Hampshire's Right-to-Know Law, RSA 91-A (Memorandum)*, providing instructions and examples designed to facilitate compliance with the law. Although Council members were neither required to attend DOJ training nor provided the DOJ's *Memorandum*, some members reportedly attended training sessions.

In CY 2018, we surveyed 16 then-serving and former Council members who served during SFYs 2016 or 2017 (Council survey). Eleven members (68.8 percent) responded. Council members inconsistently agreed on the adequacy of the orientation provided when they began their term of service, with;

- four members (36.4 percent) reporting it was *adequate*,
- four (36.4 percent) reporting it was *inadequate*, and
- three (27.3 percent) reporting being *unsure*.

The complete results of our Council survey are included in Appendix D.

However, since at least CY 2015, the Council inconsistently complied with requirements of the Right-to-Know law, *Financial Disclosure*, statutory reporting requirements, and the *Act*, as we discuss in Observation Nos. 54, 55, 56, and 57. Noncompliance may have resulted in failure to provide proper public notice of meetings or make meeting minutes available as required, made individual members ineligible or potentially ineligible to serve, could have affected meeting quorum, and could have subjected Council decisions to question.

Department Procedures

The Department formally adopted an SOP on Council support staff responsibilities in October 2018, with the intention of ensuring the Council was appropriately served and had the necessary clerical and technical support.

Recommendations:

We recommend the Council comply with State law and develop and implement a standard orientation process for new members and consider including information on the Council's practices and procedures, the Right-to-Know law, *Financial Disclosure* requirements, statutory reporting requirements, and the *Administrative Procedure Act*.

We recommend Department management ensure the Council has the necessary clerical and technical support to meet its requirement to provide orientation for members.

Council Response:

We concur with the recommendations.

As part of our existing January organization meetings, we will review Council activities, procedures, statutes, and rules and plan for additional discussion as necessary.

New member orientation will include distribution of relevant rules, statutes, SOPs for administrative staff, and provision of certain State Supreme Court decisions. Orientation materials will be issued whenever a new member is appointed.

New members will be required and continuing members encouraged to attend the annual DOJ training seminar. The Council expects that the DOJ training seminar will include a session for adjudicative bodies similar to the Council that differ from the numerous professional license boards that have dominated the training in the past.

Department Response:

We concur with the recommendation.

The Department drafted an SOP that identifies Department responsibilities in providing technical and administrative support to the Council in Observation No. 59.

Support Staff Guidance

The Council was required to adopt rules on practice and procedure. The Department was required to provide the Council with necessary clerical and technical support, and the DOJ was required to appoint a hearing officer for Council appeals.

However, deficient Council control systems over its support staff contributed to statutory noncompliance related to its administration. Council control systems: 1) contained elements that were ineffectively designed, inconsistently implemented, and unmonitored, contributing to eight observations in our current report; and 2) were at an **initial** level of maturity. Related and absent Department control systems over its staff supporting the Council were at an **initial** level of maturity.

Observation No. 60

Clarify Roles Of Staff Supporting The Wetlands Council

Council rules inconsistently established expectations of supporting Department and DOJ staff. The Council had no memorandum of agreement or understanding with either the Department or the DOJ related to the roles and responsibilities of support staff and instead established some expectations through its rules. However, Council rules neither provided sufficient guidance as to what was expected of staff nor established the administrative support necessary for the Council to comply with statutory requirements. Furthermore, some expectations were inconsistent with statute.

Clarify Role Of The DOJ Hearing Officer

Since September 2010, statute required the DOJ to appoint a hearing officer for Council appeals, who would: 1) regulate procedural aspects of appeals, including presiding over prehearing conferences and the appeal hearing; 2) decide all questions of law and reach conclusions on mixed questions of law and fact; and 3) prepare and issue written decisions on all motions and on the appeal itself. Council rules had not been updated since December 2008, as we discuss in Observation No. 57. As a result, Council rules contained no reference to the role or responsibilities of the hearing officer, specifying instead that the presiding officer was the Council chair or a designated member, referencing the presiding officer in the context of Council appeals in at least 16 sections, and assigning a hearing officer's statutory responsibilities to the Council in at least four sections. Rules were not allowed to conflict with statute, and the Council's rules should accurately reflect statutory language. The Council and the Department were apparently aware of the deficiencies, as the CY 2014 draft rules for the Environmental Councils included rules specifically on the hearing officer's role and responsibilities.

Clarify Role Of Department Staff Providing Clerical And Technical Support

Council rules established no expectations on Department legal staff providing assistance with rulemaking, and the Council's rules did not specify how Department clerical and support staff were expected to provide services to help ensure Council compliance with:

- the Right-to-Know law requirement to post minutes;
- *Financial Disclosure* requirements, including filing statements of financial interest;
- external reporting requirements; and
- the requirement to provide member orientation.

In responding to our Council survey, Council members inconsistently agreed on the adequacy of support provided by Department clerical and support staff with:

- seven members (63.6 percent) reporting administrative support and four members (36.4 percent) reporting legal support were *adequate*;
- one member (9.1 percent) reporting administrative support and one member (9.1 percent) reporting legal support were *not adequate*; and
- three members (27.3 percent) reporting they were *unsure* about the adequacy of administrative support, and six members (54.5 percent) reporting they were *unsure* about the adequacy of legal support.

Rules were not allowed to conflict with statute, and the Council's rules should have accurately reflected statutory language. Inconsistencies could lead to confusion for clerical and support staff as to their roles and responsibilities, potentially hindering the ability of the Council to fulfill its obligations.

Department Guidance And Procedures

The Department prepared guidance on the responsibilities of Department-assigned Council support staff in October 2011. The guidance document specified responsibilities of the Council clerk and Council appeals clerk, as discussed in Observation Nos. 24 and 54.

The Department provided two SOPs on Council support staff responsibilities dated October 2018, with the intention of ensuring the Council was appropriately served and had the necessary clerical and technical support.

Clarify The Role Of The Council

Rules on the role of the Council itself were also unclear: 1) statute specified the presiding officer was responsible for granting or denying petitions for intervention; however, Council rules appeared to place that responsibility on the Council; and 2) statute specified the presiding officer was responsible for excluding irrelevant, immaterial, or unduly repetitious evidence from proceedings; however, Council rules inconsistently assigned responsibility for making evidence-related decisions to the presiding officer or the Council.

Recommendations:

We recommend the Council:

- **ensure its rules reflect underpinning statutes;**
- **ensure requirements the Council may have of its clerical and technical staff, including the DOJ hearings officer and Department legal staff, are clearly detailed in rule or a memorandum of agreement; and**
- **obtain necessary support and services from the Department to attain and maintain compliance with State law.**

We recommend Department management ensure the Council has the necessary clerical and technical support.

Council Response:

We concur with the recommendations.

The role of the Council, presiding officer, and Hearing Officer will be clarified in the revised Council Rules. The Council has been operating under current statute not outdated rules.

As indicated in the Council's response to Observation No. 54, the Council and Department will be clarifying the role of clerical support staff.

Department Response:

We concur with the recommendation.

The Department will provide the Council with all technical and clerical support that it requests.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**APPENDIX A
SCOPE, OBJECTIVES, AND METHODOLOGY**

Scope and Objectives

In November 2017, the Legislative Performance Audit and Oversight Committee approved an audit of Wetlands Bureau (Bureau) permitting focused on: 1) permitting delays, 2) employee duties and responsibilities, and 3) arbitrary interpretations of permitting-related rules, all of which purportedly had a negative effect on the public. The topic was approved by the Fiscal Committee of the General Court at its December 2017 meeting. We held an entrance conference with the Department of Environmental Services (Department) Commissioner and Division of Water (Division) Director in February 2018 and discussed the audit's scope with Department management in March 2018. The scope was approved, with modifications, at the Legislative Performance Audit and Oversight Committee's March 2018 meeting.

We designed the audit to answer the following question:

How effectively did the Department manage Wetlands Bureau permitting during State fiscal years (SFYs) 2016 and 2017?

We focused on Department management control systems over:

- strategy, planning, and operations;
- the regulatory framework;
- permitting processes and outcomes;
- human resources management; and
- knowledge management.

We also focused on management control systems affecting the Bureau that were influenced or operated by the Wetlands Council (Council).

Methodology

To gain an understanding of each of our objectives, we conducted interviews and attended meetings; surveyed internal and external stakeholders; developed a maturity model to assess management controls; and reviewed and analyzed relevant documents, data, and information.

Interviews And Meetings

We:

- interviewed select Department, Division, and Bureau managers and staff;
- interviewed the Council chair and select Department-assigned support staff;
- interviewed select Council members responding to our Council survey;

- interviewed select stakeholders responding to our stakeholders survey;
- interviewed select Bureau employees responding to our Bureau surveys;
- interviewed Application Receipt Center (ARC) staff then-employed or employed during the audit period;
- attended six Council meetings, including public and nonpublic sessions; and
- attended eight Department wetlands rule revision sessions.

Review Of Documents And Information

We obtained, reviewed, and analyzed:

- relevant State and federal laws, rules, orders, rulings, and opinions;
- relevant policies, procedures, practices, plans, reports, studies, guidelines, reports, and similar materials;
- other states' audits of similar programs;
- related external audits and assessments, and evaluated the status of relevant past audit and assessment recommendations;
- relevant public and nonpublic State records and data;
- public and nonpublic Council minutes and external reporting;
- financial information;
- Department human resource management practices, organizational charts, and supplemental job descriptions;
- financial interest statements filed by Department employees, Shoreland Advisory Committee members, and Council members;
- Department and Council rulemaking practices; and
- Council appeals and remands.

Surveys

We conducted four surveys supporting the audit's objectives.

Council Survey

To obtain feedback from Council members on Department, Bureau, and Council operations and performance, we surveyed then-serving and former Council members. We sent out 16 surveys and received 11 complete responses for a 68.8 percent response rate. The survey provided respondents an opportunity to subsequently meet with the audit team and discuss particular concerns a respondent might have had. One member took this opportunity.

The results of this survey are in Appendix D.

Stakeholder Survey

We surveyed various Bureau stakeholders—representing local government, environmental, land development, and land-owner interests—to inform our audit work evaluating the effectiveness

and efficiency of Bureau permitting. We sent out web links to our survey to 35 stakeholder groups and received 278 complete responses. Due to the subjective nature of survey distribution, which necessarily ran through third parties, results of this survey cannot be considered a full and accurate representation of all stakeholder views. The survey provided respondents an opportunity to subsequently meet or discuss their responses with the audit team and discuss particular concerns a respondent might have had. Eighteen stakeholders took this opportunity.

The results of this survey are in Appendix E.

Employee Survey On Bureau Operations

We surveyed Bureau and ARC employees to evaluate the efficiency and effectiveness of Bureau operations supporting permitting. We sent individualized web links to our survey to 37 then-employed and former Bureau and ARC employees and received 32 complete responses for a response rate of 86.5 percent. The survey provided respondents an opportunity to subsequently meet with the audit team and discuss particular concerns a respondent might have had. Three employees took this opportunity.

The results of this survey are in Appendix F.

Employee Survey On Bureau Permitting-related Practices

We surveyed Bureau employees regarding permitting-related practices to evaluate the efficiency and effectiveness of Bureau permitting. We sent individualized web links to our survey to 32 then-employed and former Bureau employees and received 22 complete responses for a response rate of 68.8 percent. The survey provided respondents an opportunity to subsequently meet with the audit team and discuss particular concerns a respondent might have had. Three employees took this opportunity.

The results of this survey are in Appendix G.

Management Controls

Our audit work focused on six key management control systems and sub-systems, which were all necessary to achieve effective Bureau permitting: 1) strategic management; 2) regulatory framework; 3) permitting outcomes and processes; 4) organization, administration, and staffing; 5) knowledge management; and 6) Council oversight. In order to be effective and for the Bureau to achieve statutorily-envisioned outcomes, each system and subsystem required key components. Given the interconnectedness of control systems, deficiencies with a single control could contribute to deficiencies with many others.

Maturity Assessment

To assess the maturity of the Department's and the Council's relevant control systems and subsystems related to the audit's objectives, we developed a maturity model suitable for application to permitting management control systems. Maturity models establish a systematic

basis of measurement for describing the developmental state of an organization or process. The use of a maturity model can enable continuous improvement of performance, which the Department purportedly long-ago adopted as a tenet of its strategic management practices. While outcome measures can provide the ultimate criteria for measuring the effectiveness of a program, understanding how effectively the processes leading to those outcomes are designed and functioning can facilitate systematic process improvements. Relevant components of the maturity model were: strategic planning and strategy, managing process and performance, and managing resources. Generally, the first, or lowest, level was characterized by ad hoc processes with minimal or no controls, while the fifth, or highest, level was reserved for optimized process execution. The model is shown in Table 22.

Review Of Department Files

We conducted four file reviews supporting the audit's objectives.

Review Of Bureau Permit Applications

To evaluate the efficiency and effectiveness of Bureau permitting, and assess relevant management controls, we subjectively sampled and reviewed 86 standard dredge and fill (SDF), shoreland, and minimum impact expedited (MIE) hard copy permit application files listed in Bureau permitting data during SFYs 2016 and 2017. Sixty-four of the files were examined for compliance with key requirements throughout the entire review process, while 22 were denials and subjected to a more limited review. SDF, shoreland, and MIE application types were chosen for review due to: 1) the high volume processed during the audit period and 2) public interest and interaction concerning these application types. Using unaudited Bureau permitting data, up to six SDF, shoreland, and MIE permit applications were randomly selected for each of the 29 then-employed and former Bureau and ARC employees the data identified as the reviewer for the respective permit application. Permit applications were subjectively substituted for a different permit application if the employee's action solely entailed post-permit review work, such as mitigation, enforcement, permit extensions, or peer review. Information from permit applications sampled was limited by inadequate documentation by Bureau employees, including missing formal and informal correspondence, and files altogether missing.

Peer Review File Review

We selected three peer review requirements against which to assess Bureau compliance and reviewed a subjectively-selected sample of 56 Bureau permit applications processed during SFYs 2016 and 2017, some of which were subject to more than one peer review requirement.

Review Of Permit Application Requests For Expedited Evaluation Of Permit Applications Under Extraordinary Circumstances

We reviewed all 42 requests to the Commissioner's Office for expedited evaluation of wetland and shoreland permit applications under extraordinary circumstances filed during SFYs 2016 and 2017 to evaluate the efficiency of processing and appropriateness of decision-making.

Table 22

**Maturity Model For Control Systems Related To Bureau Permitting
And Associated Maturity Levels For The Department And Wetlands Council**

Maturity Scale	Level 1: Initial	Level 2: Repeatable	Level 3: Integrated	Level 4: Managed	Level 5: Optimized
Planning And Strategy					
Strategic Planning	Little or no strategic planning	Some plans Small planning team Strategy dictated to rest of organization	Structured and open planning Tied to all strategic goals and objectives	Operationalized through quantitative goals and measures	Continuously improved through quantitative management
Operational Planning	Little or no operational planning	Some plans Not tied to all strategic goals and objectives	Tied to all strategic goals and objectives		
Short-term Planning	Little or no short-term planning	Some plans Not tied to all strategic goals and objectives	Tied to all strategic goals and objectives		
Managing Process And Performance					
Policies And Procedures	Nonexistent or informal	Defined for some essential processes	Defined for all essential processes	Compliance measured through quantitative goals and measures	Continuously improved and managed through quantitative goals and measures
Process Improvement	Little or no process improvement efforts	Some process improvement efforts Not tied to goals and objectives	Tied to all operational goals and objectives	Quantitative goals and measures tied to operational plans	Continual improvement, quantitative goals set and achieved
Results	Little or no planning for achievement of outputs or outcomes	Some planning for achievement of outputs for essential functions	Plans made, follows up on achievement of outputs and some outcomes for all functions	Measures and manages output and outcome achievement using quantitative goals and metrics	Continuously improved output and outcome achievement using quantitative goals and metrics
Performance Measurement	Little or no performance data collected	Some performance data collected on outputs	Performance data on outputs and some outcomes is collected	Quantitative performance data is used to improve outcome achievement	Continuously improved outcome achievement through quantitative performance data
Communication	Little or no communication	Management communicates overall issues	Management communications more formal and structured	Matured communications approaches applied Standard communication tools used	Proactive communications of issues based on trends
Managing Resources					
Organization/ Staff	No definitions of accountability and responsibility	Informal definitions of accountability and responsibility Confusion about accountability and responsibility	Responsibility and accountability defined Owners identified Staff purposefully organized	Responsibility and accountability accepted Owners discharge responsibilities Staff organization well defined	Effectiveness of organization regularly reviewed and updated Owners empowered to make decisions and take action

Source: LBA analysis.

Review Of Department Personnel Files

We reviewed documentation in personnel files of 37 then-employed and former Bureau and ARC employees, as well as the Assistant Division Director, to evaluate the effectiveness of Department performance management and compliance during SFYs 2016 and 2017. Documents reviewed included performance evaluations; records of training, licensure, or certification; letters of commendation; and letters of disciplinary action.

Review Of Department Data

Bureau Permitting Database

We analyzed unaudited data for 7,174 wetland and shoreland applications and notices listed in the Land Resources Management (LRM) permitting database during SFYs 2016 and 2017 to evaluate Bureau permitting efficiency and compliance with statutory requirements. Our analysis was limited due to the incomplete, inconsistent, and inaccurate nature of the data, which stemmed from information technology system deficiencies and inconsistent data entry practices. We did not audit general and application controls of the LRM database management system from which the data were derived.

Time Allocation Data

We analyzed unaudited time allocation data for 32 then-employed and former Bureau employees to analyze self-reported time allocation during SFYs 2016 and 2017. We did not audit general and application controls of the time allocation database from which the data were derived.

Review Of Council Appeals Dockets

We reviewed documentation related to nine subjectively-sampled Council appeals active during CYs 2016 and 2017, where the appeal was related to a wetlands or shoreland permit approval or denial, to evaluate the efficiency and effectiveness of the appeals process. Information from Council appeals sampled was limited by inadequate documentation, including missing notice of appeals letters.

Exclusions

To constrain the scope and duration of the audit, we excluded certain components of potential audit work related to Bureau permitting. We did not:

- evaluate the Bureau holistically, as we did not audit the effectiveness of other Bureau activities not directly related to permitting, such as enforcement;
- conduct independent general and application controls testing of Department information technology systems LRM programs rely upon;
- demonstrate actual historic or project potential future programmatic outcomes;
- independently assess user and customer satisfaction;
- examine contracting processes or contract management; or

- audit program finances, including grant compliance and structural solvency.

Audit Work Outside The Audit Period

The audit period included SFYs 2016 and 2017. However, audit work was not limited to the audit period where management control weaknesses outside the audit period affected Bureau permitting effectiveness during the audit period.

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**APPENDIX B
DEPARTMENT OF ENVIRONMENTAL SERVICES RESPONSE TO AUDIT**



The State of New Hampshire
Department of Environmental Services

Robert R. Scott, Commissioner



April 12, 2019

The Honorable Mary Jane Wallner, Chairman
Fiscal Committee of the General Court
and Members of the Committee
State House
Concord, NH 03301

RE: State of New Hampshire Department of Environmental Services, Wetlands Bureau Permitting
Performance Audit Report dated May 2019

Dear Madam Chair Wallner and Members of the Committee:

Thank you for the opportunity to comment on the "Department of Environmental Services, Wetlands Bureau Permitting Performance Audit Report," May 2019 (Audit) written by the Legislative Budget Assistant's (LBA's) Audit Division.

The Department of Environmental Services (NHDES) views an audit as an important opportunity to improve by receiving an independent, outside, fact-based perspective on its performance. While this Audit appears conducted with a bias to the negative, we still find the ultimate recommendations applicable and plan to use them to improve the management, efficiency, and operations of NHDES and the Wetlands Bureau (the Bureau). We very much appreciate that the State of NH devoted significant resources to this Audit, in the form of more than 12 months of LBA attention to our programs and many hours of NHDES staff assisting and responding to the LBA auditors. Particularly useful was the "deep dive" into our existing and proposed administrative rules. This resulted in significantly better rule development to address the "ad hoc" rulemaking concerns.

We do have concerns in several areas, including tone, content and lack of context, and conclusions that are overly critical of the Bureau without clear foundation and without balancing criticism with discussion of framework and progress of the Bureau. For example, New Hampshire was the first state in the nation to negotiate a coordinated and streamlined process known as the State Programmatic General Permit (SPGP) with the Army Corps of Engineers (Corps) for wetland permitting. (Now known as General Permits.) Since reaching this achievement in 1992, New Hampshire's process has served as a model for other states. The SPGP process allows the vast majority of NHDES permits to also fulfill federal permitting requirements, substantially reducing overall permit processing times and eliminating duplication of efforts and confusion for permit applicants, which are substantial and very specific customer benefits. This program has been independently monitored by the Corps with substantially positive results. Further, our newly proposed wetlands rules clarify and increase consistency with the federal permit requirements, already addressing many of the findings. Finally, the Audit also does not recognize that the Bureau has received many national, regional, and state recognitions and awards, reflecting a broader performance context than found in the Audit report.

The Audit also narrowly reads the Wetlands statute, RSA 482-A, leading to mischaracterization of the success of the Bureau in demonstrating outcomes anticipated by the public purpose of the statute. The Audit states that the Bureau's purpose with regard to this statute is to "prevent despoliation of wetlands". By presenting this abridged statement, the Audit implies that the Bureau's purpose is to prevent all damages to wetlands. If this were the true intent, development in wetland areas would need to be prohibited, and success would be measured by the

www.des.nh.gov
29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • Fax: 271-2867 • TDD Access: Relay NH 1-800-735-2964

The Honorable Mary Jane Wallner, Chairman
Fiscal Committee of the General Court
April 12, 2019
Page 2

amount of development prevented. A closer read of the statute indicates that the purpose is to prevent “despoliation and unregulated alteration because such despoliation and unregulated alteration will adversely affect the value of such areas as”... “sources of nutrients for fish and wildlife, habitats and reproduction areas for plants, fish and wildlife, contributing to commerce, recreation, and aesthetic enjoyment.” The statute grants NHDES the authority to permit various types of projects in wetlands. Therefore, our understanding of the statute, and the Bureau goal, is to balance protecting wetland resources and supporting economic activity. Our interpretation of the statute has been upheld by the New Hampshire Supreme Court in appeals of permitting decisions, and information on these cases was provided to the auditors.

Regarding strategic management, the absence of a state-adopted body of knowledge on management controls means that many of the findings are perhaps misleading by comparing the management of any program with systems that have not been established by the legislature.

In terms of strategic management and outcomes, the Bureau issues an average of 3,000 wetlands and shoreland permits annually, with an annual average of approximately 60 acres of impacts to wetland resources. Through the Bureau’s technical review of applicant-requested projects, permitted impacts to wetlands have been reduced on annual average by approximately 20 percent from those originally requested. In other words, approximately 20 percent less wetlands are damaged annually than the amount that would have been damaged without the Bureau’s work to enable economic growth while protecting wetlands. Further, on an annual basis, the Bureau requires an average of about 700 acres of land conservation and funds the protection of an additional 2,800 acres of conservation lands. We believe the number of permits issued, in addition to the acres of land conserved, is an important outcome of the Bureau’s work in balancing support of economic activity with protecting wetland resources as each permit issued indicates economic activity facilitated.

Further, in terms of strategic management, each year, bureau permitting staff spend 84 percent of their time on activities directly related to issuing these 3,000 wetland and shoreland permits and conducting activities to support permit compliance. Our calculation of the time spent on permitting differs from that presented in the Audit. This variance results from three differences between the parameters of our analysis and those of the Audit analysis: 1) NHDES calculated the percentage of time based on the total number of hours worked, minus leave time taken, rather than the total number of hours for which staff was paid. 2) Our calculation does not include the time of the Bureau Administrator and Assistant Administrator, nor does it include the time of the two positions devoted to administering the Aquatic Resources Mitigation Fund because the regular tasks of these four positions focus on program administration rather than permitting. 3) Our tracking accounts for all tasks that we identified as permitting-critical; such as, participation in pre-application permit meetings with applicants and consultants, permit data entry, permit application administrative review, Geographic Information Systems (GIS) screening of permit applications, permit writing, and permit compliance activities, including preparation and research for permit compliance inspections. The Audit analysis includes leave time in the total number of hours, administrators’ time, and a more limited list of tasks than our analysis. The tasks we included in our analysis are essential permit steps that make permit issuance possible and facilitate economic activity in New Hampshire.

NHDES agrees that it would be beneficial to strengthen management systems and controls and directly relate inputs and outputs to outcomes, but the context is critical. Each year, the Wetlands Bureau must meet statute-

The Honorable Mary Jane Wallner, Chairman
Fiscal Committee of the General Court
April 12, 2019
Page 3

required permit processing times while responding to over 18,000 telephone inquiries, participating in more than 500 permit pre-application meetings, responding to over 200 permit complaints, and processing 3,000 permit applications. All of these activities represent the key outcome of customer service, with impacts across the state and into communities.

Based on the Audit findings, we have developed an initial corrective action plan that addresses the recommendations from agency management through programmatic and adaptive management. As the Audit recognizes, completion of all of the corrective actions will be a multi-year effort. Additionally, timing of the related improvement projects will be dependent upon available funding and personnel, and will need to be coordinated with the many other priorities of the agency, and balanced against statutory requirements on permit issuance. However, we are committed to addressing all of the Audit recommendations over time.

It is ultimately the responsibility of management to select and prioritize improvement projects. To support the corrective action plan, and in the immediate timeframe, actions have already begun. Most of the Audit findings related to the wetlands rules are being addressed through our current rulemaking effort. On March 20, 2019, NHDES filed proposed rules with the Office of Legislative Services. This rewrite aligns rules with statutes, clarifies statutory exemptions and processes, streamlines processes, defines key terms, incorporates forms and technical manuals, increases uniformity with federal regulatory requirements, and increases NHDES' ability to make consistent permit decisions. Further, NHDES has, after a substantial recruiting and organizational effort, brought on two new Water Division managers; an Administrator for the Land Resources Management programs, which include the Wetlands Bureau, and a Director for the Water Division. Sarah Yuhas Kirn was hired as the Administrator of Land Resources Management, effective February 1, 2019, and Tom O'Donovan was appointed as Water Division Director on March 13, 2019. These new leaders bring a fresh perspective to management, and they will oversee corrective action plan development, implementation, progress reporting and adaptation in compliance with Executive Order # 2014-03. If the committee desires, we also would welcome the opportunity to attend future Fiscal Committee meetings to present corrective action progress reports and address any concerns the committee may have.

We greatly appreciate the resources that the State of NH devoted to identifying areas in which the Wetlands Bureau can improve its permitting process, and we intend to implement the recommendations to enhance this process and others throughout the agency. Thank you.

Sincerely,



Robert R. Scott
Commissioner

THIS PAGE INTENTIONALLY LEFT BLANK

**DEPARTMENT OF ENVIRONMENTAL SERVICES AND OFFICE OF LEGISLATIVE BUDGET
ASSISTANT–AUDIT DIVISION COMMENTS ON CERTAIN OBSERVATIONS**

The Department of Environmental Services (Department) provided comments in addition to responses to audit recommendations on several observations. These comments and any accompanying Office of Legislative Budget Assistant–Audit Division (LBA) comments are presented in this section.

**Observation No. 2
Improve Strategic Management And Planning**

In response to Observation No. 2, the Department additionally noted:

The Audit states, “Employees gave conflicting statements as to whether the Department still used the 2010-2015 strategy document, with some recognizing the need to update the strategy to more fully reflect current issues facing the agency.” The Department is fully aware that its 2010-2015 strategy is in need of an update, especially since more detailed implementation steps were embedded in the Plan vs. maintained as a separate strategic implementation document. There are also a number of reasons for the delayed strategy update. As already stated in prior Department responses, the Department’s 2010-2015 Strategic Plan (Department’s 2010-2015 strategy) remains in full force and is used and referenced by many bureaus and programs throughout the agency, including the Wetlands Bureau (Bureau) and others. This is possible because the seven goals and related sub-goals (above the specific action steps) are as timely and relevant to the Department’s mission and guiding principles (and to current environment) as they were when they were drafted when the plan was first created. See Department response to Observation No. 18 (for example) which demonstrates that many of the Department strategies and goals have been executed and are functioning. Many Department strategies and initiatives have been carried out as documented in Department and program annual reports itemizing Department work from customer service, Lean, partnerships (NH Stream Crossing Initiative), and to climate change.

LBA Comment:

The Department cannot demonstrate outcomes from efforts to achieve strategic goals without an adequate control system over strategic management and planning. The anecdotes provided are not a substitute for a current strategy, a supporting strategic plan, complimentary Division of Water (Division) and Bureau plans, performance measures for each goal, and tracking of actual performance tied to statutory outcomes. Documenting outputs related to customer service, lean activities, or other tasks accomplished is not equivalent to achieving strategic outcomes.

The Audit states, “Of 32 current and former Bureau employees responding to our 2018 survey, 11 employees (34.3 percent), including seven managers, were familiar with the Department’s strategy. When these 11 employees were asked if the strategy guided Bureau planning and operations, six employees (54.5 percent), including four managers, responded yes; two

managers (18.1 percent), responded no; and three employees (27.2 percent), including one manager responded they were unsure.” As noted above, the Department’s 2010-2015 strategy was structured to be just strategic and aspirational, and not delve into specific bureau- or program-level details. Strategic management for program specific goals and actions are done at the bureau level. The Department’s strategy is broad enough to help any bureau or program consider how they are operating in terms of contributions (positive and negative) to climate change and natural resource protection, and especially across goals 3-7 which are more focused on “how” the Department conducts its business. It is fully acknowledged that a refresh is in order and that the strategy needs to be better communicated across the agency. Through the Department’s rewards and recognition program through the Town Meeting and Annual awards presentations, the Commissioner and Senior Leadership recognize good works identified in the Department strategy that includes the following awards: Exemplary Customer Service Award, Employee of the Year, David Chase Memorial Science award, Partnership award, and the Teamwork award. The criteria for selection of these employees is drawn directly from the Department Strategy.

LBA Comment:

The Department cannot demonstrate outcomes from efforts to achieve strategic goals without an adequate control system over strategic management and planning Department-wide. The observation does not recommend Department strategy “delve into specific bureau- or program-level details.”

The Audit states, “Reporting, such as the [Land Resources Management (LRM)] BSC and the [Department’s Environmental Dashboard (Dashboard)], was not holistically connected to strategy to evaluate progress toward achieving strategic goals and objectives. Measures used in the LRM BSC and Bureau reports also focused more on outputs than actual outcomes.” The LRM BSC was drawn directly from the Department Strategy. The proposed metrics were vetted through Department managers and LRM stakeholders. The Department acknowledges that the strategy was not as closely aligned with the Dashboard as it might have been. As indicated in prior audit observation responses, the purpose and intent of the LRM BSC has been misrepresented and misconstrued. The Department acknowledges that there is room for improvement in this area.

LBA Comment:

“Drawn from” strategy is not “holistically connected to strategy.” 2016 LRM BSC elements may have had commonality with elements of strategy but the few connections could not have been described as holistic, and the BSC focused on outputs, not outcomes. Nothing published explicitly described progress towards achieving strategic goals and objectives, or outcomes.

Observation No. 3
Establish And Formalize Risk Management Policy And Practices

In response to Observation No. 3, the Department additionally noted:

We do not concur with the finding, "neither the Department nor the Bureau systematically managed risk." This statement incorrectly and unfairly characterizes risk management at the Department. While the agency does not have a single, over-arching Risk Management document, there are a number of controls in place that effectively mitigate risk in its many forms. Some examples include:

- *Statutes and rules;*
- *Multiple employee policies - Department Employee Policies Manual and other policies on the Department's Intranet site;*
- *Multiple program-level electronic data systems;*
- *Multiple department-wide electronic data systems for time/leave management, financial transactions, performance measures (i.e., work plans and quarterly progress reporting via MTRS), document approvals (i.e., Item Request Tracking);*
- *Performance Partnership Agreements with U.S. Environmental Protection Agency Region I, along with comprehensive, negotiated work plans with regularly reporting;*
- *Department-wide SOP Inventory with initial focus on financial- and safety related processes. There are approximately 1,600 procedures currently being tracked by the Department;*
- *Quality Management Plan, System, and Quality Assurance Self-Audits;*
- *Quality Assurance Project Plan Inventory and Library;*
- *Mandatory Training Requirements for all new and many current staff:*
 - *Defensive Driving,*
 - *Governor's Respect in the Workplace,*
 - *Governor's Respect in the Workplace for Supervisors,*
 - *Active Shooter (CRASE),*
 - *Employee Assistance Program's Dignity & Respect in the Workplace,*
 - *Customer Service,*
 - *Foundations of Supervision (Mandatory for Supervisor's Only),*
 - *Computer Policy Training,*
 - *Sexual Harassment Prevention, and*
 - *Lean White Belt Training;*
- *Dedicated staff to track all legislation-related activities (e.g., LSRs, bills, fiscal notes, letters of testimony, and legislative calendar);*
- *Continuity of Operations of Plan and Building Evacuation Plan;*
- *Dedicated File Review and Legal Unit staff to manage "Right-to-Know" requests;*
- *Dedicated Training and Safety Coordinator;*
- *Department Safety Committee and "FAST" Team;*
- *Confidential Employee Survey and Anonymous Suggestion Box (to gather staff feedback) and addresses issues that might not have been otherwise raised; and*
- *LRM Compliance Training Manuals and other training opportunities.*

LBA Comment:

Management control systems do not operate in isolation. Conducting general risk mitigation-related activities and training does not mean the Department had efficient and effective control systems over risk management related to Bureau permitting operations. The Department's comments make this clear by noting the lack of an overarching document codifying the Department's approach to managing Bureau risks and demonstrating risks were effectively controlled. Risk management controls were interconnected with controls over strategic management, transparency, information technology (IT), performance measurement, and human resource management, among others. Proper controls over risk management could have helped Department, Division, and Bureau management mitigate risks in the Bureau's operating environment. Absent or ineffective controls can increase the likelihood of inefficiency and ineffectiveness, like those detailed in observations throughout this report.

Observation No. 4

Timely Resolve External Audit And Assessment Findings

In response to Observation No. 4, the Department additionally noted:

The Department did not deliberately mishandle previous audit findings. Over the years, the Department made attempts to address a number of issues, many of which are not in the direct control of the agency (i.e., those which require extensive interaction with stakeholders, or which require multiple external approvals).

LBA Comment:

The observation focused on the absence of control systems over resolving observations to ensure more than "attempts" to resolve issues were made, and did not state the Department "deliberately" mishandled resolution of prior audit findings.

In terms of the Environmental Protection Agency's multiple Quality Assurance System assessments, the Department Quality Assurance Manager has been in direct contact with Environmental Protection Agency Region I Quality Assurance staff through the use of Corrective Action Plans that have closely tracked each and every assessment finding and recommendation (not required) that has been communicated to the agency.

LBA Comment:

The Department's emphasis that resolution of federal Environmental Protection Agency assessment recommendations was not required is inconsistent with its "core" principle of continuous improvement. Timely resolution of audit and assessment findings is required for the Department to meet the commitments framed in its strategy.

No finding or observation has been purposely or inadvertently been ignored, and each one is tracked over time until it has been officially closed out to the satisfaction of Environmental Protection Agency Region I. The Quality Assurance Manager is well aware (and has been in constant contact with Environmental Protection Agency Region I) regarding any outstanding findings, such as creating an online Quality Assurance Awareness Training module, which has been worked on between many other conflicting priorities. While some of the findings and recommendations have taken longer than hoped to close out (due to limited time and resources), every one of them is being worked on in full transparency with the Environmental Protection Agency Region I auditors.

LBA Comment:

The observation focused on the absence of control systems over resolving observations and the lack of resolution, and did not state the Department “purposely or inadvertently” ignored Environmental Protection Agency assessment recommendations.

Observation No. 5

Improve And Expand Performance Measurement System

In response to Observation No. 5, the Department additionally noted:

The opening paragraph was inaccurate, over-generalized, and presented a very misleading and overly negative characterization of the Department's use of information, its data systems, and management control of performance measurement. The Auditors have omitted information regarding the full extent of the Department's IT capabilities and systems and the Department's extensive use of information at many levels to manage operations. The auditors have also not included a description of the Department's many efforts in recent years to further improve and enhance its data systems and its ability to better align strategy and plans with performance measures.

LBA Comment:

While the Department may have had elements of a performance measurement system and tools in place, they could not demonstrate outcomes were achieved.

The following sentences are inaccurate:

- *“The Department, Division, and Bureau lacked a systematic performance measurement system tied to strategy and risk management, and could not evaluate the efficiency and effectiveness of Bureau operations due to incomplete and inadequate data collection and reporting.”*
- *“Performance data collected was incomplete, data quality was inconsistent, and reporting was untimely, leaving the Department management inadequate means to evaluate Bureau performance.”*

- *“The performance measures used by the Bureau were focused towards meeting a limited subset of outputs rather than achieving actual program outcomes.”*
- *“The Department's control over performance measurement was at an initial stage of maturity.”*

The Department has many IT tools already in place (described below) to assist with aligning strategy, planning, work plan details, and desired outcomes. The Department could, however, make improvements in this area.

Regarding customer satisfaction surveys, LRM is one of the few programs at the Department with a long history of collecting customer feedback. It should have been acknowledged in the audit observation that this is positive practice and should be emulated by other programs as well. Instead, the Audit implies that this is a negative practice with a poor survey tool and inadequate controls. We disagree with this conclusion. While it is true that there was a period of time when the previous paper copies of the surveys were not uploaded to the former database, LRM did collect and review the submitted feedback. Within the last two years, the survey was re-vamped and converted into an electronic format. A piece of paper with a link to the customer feedback survey is included (and has been for some time) with every permit decision (approvals and denials) that leaves the Department. Management reviews the electronic survey results and discusses them with staff. Every permit applicant to which a decision has been sent has the opportunity to provide frank, anonymous feedback. We cannot, and should not, control who takes the survey. The Audit seems to imply that we should. Regarding frequency, equal access to the survey is provided with every permit decision, as it should be. We disagree with the parts of the comment, that “the survey lacked questions regarding customer satisfaction, with 1) the permitting process, 2) timeliness of processing, 3) staff use of requests for more information, and 4) the economic effect of permitting.” Please see the Department’s responses to Observation No. 18.

LBA Comment:

The Department does not demonstrate any quantifiable outcome from customer service surveys. Obtaining feedback from customers and using this information may be useful when tied to outcomes. However, information from the Bureau’s current customer service surveys would provide insights on outputs, but not on outcomes. Limitations with the approach to these surveys made results only potential indicators as they did not systematically demonstrate performance.

Under "Uncoordinated Performance Measurement," the Audit indicates that the "we found no evidence Department management created performance measures for the Department’s 2010-2015 strategy or for Bureau long-term plans." Many parts of the Department’s 2010-2015 strategy have been implemented, and it remains in full force at the Department. Much work has been accomplished under its direction. For example, the Department has implemented a wetlands pre-application process, SOP, webpage, and process that provides for integrated pre-application meetings with state (includes wetlands, shoreland, alteration of terrain) and federal

partners which serves as a New England model (See Udall study provided to Auditors). Additionally, the Department has maintained important customer service resources, surveys, developed a new Customer Service Award, and Kudos internal feedback tool, and metrics. See the Department's response to Observation No. 18.

LBA Comment:

The Department does not demonstrate any quantifiable outcome from activities cited.

The Audit fails to acknowledge the Department's comprehensive performance measurement system which has been in place since 2000. MTRS is a database that serves as the Department-wide performance measurement system. As far as the Department is aware, this system is unique amongst State government agencies. MTRS has three basic modules that allow for linking the Department's strategy to its comprehensive work plan, and further, to a set of outcomes and environmental indicators. While the capability has been there for some time, achieving an ideal state whereby all three elements are cleanly aligned and where a concise set of department-wide performance outcomes AND environmental indicators is in place has been a vision not yet achieved by the agency.

LBA Comment:

The Department does not demonstrate how use of MTRS contributed to achievement of outcomes, and its comments here show it has not achieved necessary connections between strategy, plans, and outcomes, as we concluded in the observation. The Department's use of MTRS illustrates how having and using a system does not necessarily translate into more efficient and effective operations. The Department's 2010-2015 strategy was never connected to outcomes using this system.

The following is a partially inaccurate statement, "...further, the Department's 2010-2015 strategy stated the Department would connect operations to relevant outcomes and environmental indicators, and establish a web-based portal to present real-time trend information on the State's environment and key agency outcomes. However, these goals were only partially fulfilled as there was no wetland water quality measure or other Bureau outcome measure on the Dashboard." There is, in fact, a wetland measure on the Dashboard located online.

LBA Comment:

There was no wetlands water quality measure or other Bureau outcome measure on the Dashboard. The sole wetlands-related element in the Dashboard was an output metric.

The Audit incorrectly states, "the Department relied upon its Dashboard to report on purported agency effectiveness, while the Bureau used the BSC once in an attempt to illustrate the effectiveness of certain aspects of its operations." The purpose of the Dashboard (with its 16 environmental indicators) is to provide a summary evaluation of current environmental conditions or trends. It is not a performance dashboard. The purpose of the Wetlands Loss and Mitigation Indicator was not designed to comprehensively demonstrate Bureau effectiveness.

LBA Comment:

The Department’s comment undermines the assertion that the Dashboard had an outcome measure related to wetlands. Additionally, a Department manager explained the Dashboard had good measures and related to the Department’s overall mission of protecting the environment and public health. Another Division manager stated information on the Dashboard would translate into whether LRM permitting was having problems or successes.

Under “Untimely Performance Measurement,” the purpose and intent of the Bureau BSC was misinterpreted. The BSC was a developmental effort to help ensure that the measures used in the Bureau were balanced across the four basic BSC “perspectives” of: 1) Financial (or achievement of mission for nonprofits); 2) Customer; 3) Internal processes; and 4) Learning and Growth. This was never designed to track all measures for the Bureau. It was a learning opportunity and an additional element to be considered in measuring progress. The BSC information served as important quantitative information to supplement query measures of productivity.

LBA Comment:

The Department’s comment underscores our conclusion that the Bureau lacked an adequate control system over performance measurement. Bureau documents and managers indicated the LRM BSC’s purpose was to: 1) “develop a strategic management system...that provides performance feedback on what [the Bureau does] and what [the Bureau needs] to do well to achieve...strategic goals and measures;” 2) be a “method to translate vision to performance goals [and] activities;” 3) show effectiveness and efficiency of permitting; and 4) monitor data on Bureau employee performance and permitting outcomes.

Observation No. 11

Understand And Quantify Economic Effect Of Regulatory Framework

In response to Observation No. 11, the Department additionally noted:

We do not concur with the finding regarding a “lack of systematic, objective method to evaluate the cost of rules on permit applicants increases the risk of negative economic impact to the regulated community and undermines Department strategy.” The observation did not identify any instance in which the application of existing rules has resulted in a negative economic impact to the regulated community, nor identified a statutory requirement for cost/benefit analysis as a part of daily wetlands permitting.

LBA Comment:

The Department's comments illustrate a misapprehension of statutory requirements related to rulemaking and requirements to evaluate the economic effect of regulation sourced from wetlands rules and Department strategy.

The Department's fiscal impact statement submissions, statutorily required for all rulemaking, were vague and lacked any specific fiscal impacts. Additionally, *Wetlands* allowed the Department to promulgate reasonable rules, but the Department lacked relevant controls to provide assurance its rules were reasonable, as we discuss in Observation Nos. 9, 10, 12, and 13. Without adequate controls to demonstrate an objective basis for rules, including an understanding of economic effect, rule reasonableness was unsupported.

Economic effect determinations were part of daily wetlands permitting and were required by rules. Bureau practices, such as those surrounding determining practicability of a proposed project, constituted ad hoc rulemaking and involved determinations of economic effect. Department rules required applicants and staff to make such analyses, particularly related to determining project practicability. Additionally, Department staff publicly stated rules had economic effects during the development of the 2019 draft revised wetlands rules.

The Department lacked controls to demonstrate strategic goals related to evaluating economic effect of regulation were achieved. The Department's 2010-2015 strategy contained goals to: 1) consider the quality of life and economic vitality of citizens while pursuing the Department's statutory responsibilities, 2) develop cost-effective solutions, and 3) consider long-term, cumulative effects of policies, programs, and decisions.

In many situations where the applicant asserts a potential negative impact, for instance where a parking lot needs to be expanded to accommodate additional parking due to increased business activity, the Bureau has worked closely with the applicant to find a way to accommodate the business need while preserving wetlands to the extent practicable.

LBA Comment:

The Department's response demonstrates rule-based economic tests have to be applied in permitting decisions, but they were handled in an ad hoc manner. The Department acknowledges Bureau employees evaluated permit applications based on considerations of economic effect, yet in previous responses stated such activity would be "ad hoc rulemaking." The observation identified instances where Department actions led to project delays, certified professional engagement requirements, and additional compliance conditions on permits - all three factors were reported to be sources of increased applicant costs. In Observation Nos. 13, 19, and 43, and throughout our report, we note Department rules imposed cost upon applicants.

We do not concur with the following findings: "Statute, rule, policy, and practice lacked any specific, objective standards or method by which the Bureau would assess economic impacts and

balance benefits and costs” and “Bureau-level practice was imbalanced, with an objective to increase public understanding of wetlands value and sustain economic vitality of the State through wetlands preservation without any corresponding goal to evaluate economic impact of its regulations.” These comments appear to assert that RSA 482-A and RSA 541-A require the Department to adopt rules that “balance benefits and costs”, but nothing in any applicable statute has such a requirement. Indeed, the purpose of RSA 482-A is to “protect and preserve [the state’s] submerged lands under tidal and fresh waters and its wetlands, (both salt water and fresh-water),...from despoliation and unregulated alteration” (RSA 482-A:l). Compare this with the purpose of RSA 125-C relative to Air Pollution Control, which explicitly identifies that the policy and purpose of the statute includes “[promoting] the economic and social development of this state” (RSA 125-C:1).

Most of the requirements in the rules for certified professionals reflect statutory requirements in Office Of Professional Licensure And Certification; most of the requirements in permits that reflect other agencies requirements are due to other statutes.

LBA Comment:

Office Of Professional Licensure And Certification, regulating natural scientists, did not give the Department authority to require applicants obtain services from a certified professional. If permitting rules reflect other agency requirements, the Department should cite the statutory or regulatory basis in rule for such requirements.

The Administrative Procedures Act (Act) requires a fiscal analysis to be done when rules are proposed; there is no statutory requirement for such analysis for rules in place or in daily permitting activities.

LBA Comment:

Statute, rules, and the Department’s 2010-2015 strategy required the Bureau to evaluate economic effects of regulation.

When the Department conducted over 30 listening sessions on draft proposed rules concepts and discussion guides, we heard from stakeholders and the business community on the potential impacts of proposed changes. The Department modified thresholds to address potential negative impacts.

LBA Comment:

This statement appears to confirm rules have costs, and the Department considered those costs.

The Department released draft rules in 2018 and heard from stakeholders and focus interests on potential impacts of the draft rules. The Department made extensive changes to the draft rules to address stakeholder impacts and to address potential economic impacts. In the summer of 2018

the Department held nine workgroup meetings and over 24 other focus group meetings to hear potential impacts of the rules.

LBA Comment:

This statement appears to confirm rules have costs.

The Department’s stakeholder outreach, specifically with regards to rulemaking, was not transparent, as we discuss in Observation No. 7. These findings undermine the Department’s inference that stakeholder feedback during this period constitutes sufficient feedback to conclude on whether the economic impact of wetlands rules was “reasonable.”

The Department conducted two extensive Lean events that reviewed the existing process, mapped out a future regulatory state and sought and obtained legislative changes to increase streamlining and process efficiencies.

LBA Comment:

Our analysis of Department lean efforts showed these events were largely undocumented and not well integrated with strategy, and did not include cost-benefit analyses or performance measurement efforts to show impact of changes implemented.

The Bureau as required by statute provides financial impact analysis of proposed legislation and during rule-making.

The Bureau would need additional staff resources to provide required data analysis and audit analysis as recommended.

LBA Comment:

The Bureau would need to optimize its performance before assessing whether additional staff would be required to fulfill its current obligations. The Bureau reported spending 25.0 percent of its available time during the audit period on permitting. Bureau resources were inefficiently allocated, as we discuss in Observation Nos. 6, 39, and 42, indicating the Department has more flexibility with resource use than it asserts.

The majority of wetland permit applications received by the Department are approved. Bureau staff work closely with applicants and provide technical assistance so that applicants may meet state and federal requirements and receive both a state permit and a permit through the U.S. Army Corps of Engineers under the Clean Water Act.

**Observation No. 13
Discontinue Ad Hoc Rulemaking**

In response to Observation No. 13, the Department additionally noted:

Statute clearly references “public good and welfare of the state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands.” Full text below:

Finding of Public Purpose. — It is found to be for the public good and welfare of this state to protect and preserve its submerged lands under tidal and fresh waters and its wetlands, (both salt water and fresh-water), as herein defined, from despoliation and unregulated alteration, because such despoliation or unregulated alteration will adversely affect the value of such areas as sources of nutrients for finfish, crustacea, shellfish and wildlife of significant value, will damage or destroy habitats and reproduction areas for plants, fish and wildlife of importance, will eliminate, depreciate or obstruct the commerce, recreation and aesthetic enjoyment of the public, will be detrimental to adequate groundwater levels, will adversely affect stream channels and their ability to handle the runoff of waters, will disturb and reduce the natural ability of wetlands to absorb flood waters and silt, thus increasing general flood damage and the silting of open water channels, and will otherwise adversely affect the interests of the general public.

LBA Comment:

The reference to public good established why the Legislature chose to compromise private property rights. The purpose of *Wetlands* was to prevent despoliation and unregulated development. No provision of *Wetlands* empowered the Department to determine whether an applicant’s private project had a public benefit, that an applicant must demonstrate to the satisfaction of the Department that their project would have public benefits, or allowed the Department to promulgate rules to these effects.

Observation No. 17

Produce And Maintain Comprehensive Policies And Procedures

In response to Observation No. 17, the Department additionally noted:

Regarding requests for more information (RFMI), statute was revised after the 2007 Audit to allow the Department to exchange e-mailed RFMI requests.

Regarding the Environmental Protection Agency assessment findings on Standard Operating Procedures (SOP) – the 2017 Assessment included three references to SOPs via observations (not assessment findings), which had to do with: 1) internal SOPs associated with the operation of the Department’s Quality Assurance System itself (in conjunction with the Department’s Quality Management Plan); 2) a positive reference to the Department’s extensive “SOP Inventory” initiative with the recommendation to focus the next phase on ensuring written procedures for environmental data management; and 3) a recommendation for improving the system by which documented SOPs are reviewed.

Observation No. 18
Improve Provision, Measurement, And Controls Over Customer Service

In response to Observation No. 18, the Department additionally noted:

Throughout Observation No. 18, the calculations of percentages of positive and negative audit survey responses is biased to the negative because the "unsure" responses have been repeatedly used to indicate a negative response. In our experience, when a survey participant responds with "unsure," this typically indicates insufficient information to respond to a particular question, or a lack of understanding of a question, rather than a negative response. For example, the audit provides the following analysis:

"We surveyed an indeterminable number of stakeholders either directly or through various stakeholder groups, and received 278 complete responses. When asked how effectively the Bureau provided high-quality customer service:

- *103 (37.1 percent) responded effectively,*
- *55 (19.8 percent) responded somewhat effectively,*
- *27 (9.7 percent) responded neither effectively nor ineffectively,*
- *10 (3.6 percent) responded somewhat ineffectively,*
- *11 (4.0 percent) responded ineffectively, and*
- *72 (25.9 percent) responded they were unsure"*

Our analysis of the same data reveals that 72 of 278 respondents selected "unsure," which is essentially a "non-response" and should have been excluded from the total number of responses. Excluding the "unsure" responses from the total, 77 percent of the responses indicate the Bureau provided "effective" or "somewhat effective" high-quality customer service.

LBA Comment:

The full results of our surveys to give a reader proper context, and *unsure* responses were part of that context. We note many explanations could be behind an *unsure* response, and all are equally speculative. Reengineering analyses of survey results to provide more favorable impressions of Department activities does not change conclusions about the adequacy of related controls. An organization fully committed to continuous improvement would likely view *unsure* responses as an opportunity to further improve.

The Department has been collecting customer satisfaction survey information from wetland permit recipients since 2008. As part of the development of the wetlands and LRM BSC, the Bureau evaluated all customer satisfaction responses received between 2008 and 2016. Review of the surveys yields the following results:

- 1. 85 percent had direct contact with Department staff (51/60)*
- 2. 96 percent found staff to be professional, courteous or helpful (49/51)*
- 3. 86 percent were able to communicate to **proper person quickly** (44/51)*
- 4. 85 percent found the process was **clearly explained to them** (50/59)*

5. 63 percent had their application accepted as complete (41/65)
6. 89 percent received an answer in the time frame promised (58/68)
7. 66 percent found application questions were **simple and easy** to understand (40/60)
8. 72 percent were able to understand information needed on the application (43/60)
9. 94 percent found the permit conditions reasonable and clear (49/52)

The Department averaged the results from last seven bullets 2-8 to calculate a customer satisfaction score of 81 percent.

LBA Comment:

The 81 percent customer satisfaction score calculation presented cannot be replicated from the Department's comments.

The Department has a performance measurement tied to customer service goals and so it is unclear why the LBA Auditors find the "Data collection and methods unreliable."

LBA Comment:

The Department cannot demonstrate a quantifiable outcome based on its customer service data collection methods and data obtained. The Department obtained feedback from 60 respondents to customer service surveys over a 10-year period when thousands of applications and notices were received annually. Additionally, the survey results were one of six units of measure in the 2016 LRM BSC intended to measure customer satisfaction. The deficiencies with the Department's collection of customer satisfaction data are discussed further in Observation No. 18.

The Audit states "Of the strategy's 13 customer service sub-goals, none were directly linked to the BSC." However, this is inaccurate. The Department's guiding principles which are part of the Department's 2010-2015 strategy provide:

"We provide timely and consistent responses to all customers." This guiding principle is directly tied to the third bullet surveyed above in the permit questionnaire survey and the LRM calculation of customer satisfaction.

LBA Comment:

The Department's comment is misleading: 1) it addresses only half of the strategic principle by ignoring *consistency* and 2) the LRM BSC did not include customer service questionnaire data as a unit of measure to indicate timeliness. Timely reviews were a measure in the LRM BSC to achieve clear and consistent processes, and the Department established as a measure the number of days used to statutory first review, which we note in the observation was insufficient, and which we further discuss in Observation Nos. 22 and 51.

Per the Department's strategic customer service sub-goal Goal 6.1- "NHDES will provide prompt, knowledgeable, consistent, fair, and clear responses to inquiries from customers." The Department's Wetlands Bureau permit process questionnaire results directly relate to this strategic goal. The Department continues to issue customer survey questionnaires to all LRM permit recipients on a daily basis.

LBA Comment:

Questionnaire results from LRM permit recipients were not indicative of Bureau performance. The 2016 LRM BSC makes no distinction between subsurface systems, wetlands, shoreland, or alteration of terrain permit recipients and could not systematically inform the Department on whether the Bureau provided prompt, knowledgeable, consistent, fair, and clear responses to inquiries from customers.

Per the Department's strategic customer service action/objective 6.1.2 – "NHDES will provide consistent, effective, and customer-service oriented 'live' front-desk and phone access." The Department and Bureau meet this goal by providing "live" receptionists as well as a designated Inspector of the Day" who is a technical specialist available to respond to public inquiries each day.

LBA Comment:

The Department's comments do not clarify how providing live receptionists and "Inspectors of the Day," neither of which were a unit of measurement in the BSC, measured customer satisfaction. The comments focus on accomplishing tasks, not achieving outcomes.

Per the Department's strategic customer service action/objective 6.1.3 – "NHDES will conduct mandatory customer service training for its employees." The Department conducts and tracks mandatory customer service training to meet this goal.

LBA Comment:

The Department's comments do not clarify how training was linked to the BSC measures for customer satisfaction or how measuring an output demonstrated an outcome. Additionally, the Department's comments do not address our survey of former and current managers and staff, which indicated several were unaware of customer service policies and procedures.

Per the Department's strategic customer service action/objective 6.3.1 – "NHDES will develop and implement effective methods for measuring customer satisfaction and providing customer feedback to its programs and leadership." The Department has implemented an on-line intranet tool that allows supervisors, employees, and managers to receive customer feedback and that recognizes positive customer feedback through the External Kudos recognition note system. These recognitions are automatically emailed to employees and noted at Town meetings and placed in personnel files.

Per the Department's strategic customer service action/objective 6.4.2 "NHDES will create and maintain an 'Exemplary Customer Service Award Program' for NHDES employees." This award program is in place and the Department has presented quarterly customer service awards since 2013.

LBA Comment:

The Department's comments do not clarify how customer service awards, not a unit of measurement within the BSC, measured customer satisfaction or how measuring an output demonstrated an outcome.

The Department's comments provided no evidence a Bureau performance measurement system existed. The 2016 LRM BSC was a one-time effort focused on LRM programs aggregate performance and not on Bureau performance. The observation focuses on the lack of a system to measure and improve customer satisfaction. Customer satisfaction was measured primarily based on outputs, not on outcomes.

Observation No. 22

Improve Efficiency, Timeliness, And Effectiveness Of Wetlands Bureau Permitting

In response to Observation No. 22, the Department additionally noted:

The filling of vacant positions has been done to improve timeliness of permit turnaround times.

Additionally, since the 2007 Audit, database reports have been developed and updated.

The Department is seeking additional funding to enhance data systems.

Final the Department permit issuance date is dictated by when the Department receives complete information to process an application. Oftentimes, an applicant seeks a time extension to respond to the Department's request for more information.

LBA Comment:

Several deficiencies with IT systems and data quality which affected reporting, are discussed throughout the report, particularly in Observation Nos. 5 and 51.

Applicant response times were excluded from our analysis of Department compliance with its statutory and regulatory time limits.

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**APPENDIX C
WETLANDS COUNCIL RESPONSE TO AUDIT**



THE STATE OF NEW HAMPSHIRE

Wetlands Council

George Kimball, Chairman

PO Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095
Council Clerk/Secretary (non-appeal related): (603) 271-3434; Appeals Clerk (appeal related only): (603) 271-6072
TDD Access: Relay NH 1-800-735-2964
Council Website: <http://www.nhec.nh.gov>

April 23, 2019

The Honorable Mary Jane Wallner, Chairman
Joint Legislative Fiscal Committee of the General Court
and Members of the Committee
State House
Concord, NH 03301

Re: State of New Hampshire Department of Environmental Services, Wetlands Bureau
Permitting Performance Audit Report, May 2019
Wetlands Council Response

Dear Chairman Wallner and Members of the Committee:

The Wetlands Council thanks the Committee for the opportunity to comment on the Wetlands Bureau Permitting Performance Audit Report and offers the following.

I. Comments on process – Unfamiliar Methods

The LBA performance audit process and resulting report was not conducted in the manner that Council members are familiar with in the course of their personal work experience. The Council felt that the particularities of the process made responding more difficult than it could have been.

Specific example of such include the following:

A. Failure of observations to identify specific statute, rule, or practice.

The audit's initial observations submitted to the Wetlands Council did not include statutory references to the alleged Council non-performance. The audit did provide the statutory references upon request and generally, although not completely, thereafter.

B. Failure to identify specific instances of non-conformance.

The audit failed to state specific incidents of non-performance, such as dates of meeting minutes or appeal docket numbers, which allegedly failed to meet statutory requirements. In one instance, the audit refused to provide the Council with the appeal docket number that was allegedly deficient.

C. Observations inconsistent with Council attorneys' guidance.

The audit observations and recommendations are frequently at odds with the legal interpretations of statute determined by the Council's AG Civil Division attorneys. The Council was

Wetlands Council Audit Response

April 23, 2019

put in the unenviable position of trying to reconcile different interpretations of statute. It would have been helpful if the audit coordinated these observations with the AG Civil Division attorneys.

D. Including recommendations with initial observation.

As part of their initial observations the audit made recommendations for corrective action. In normal commercial practice, the auditee, who has the experience and responsibility for the work, would propose corrective action; the audit could then respond. This sequence creates buy-in from the auditee for the corrective action. By providing specific recommendations up front, the process seemed to favor auditor-proposed solutions at the expense of Council input based on its experience.

E. Failure of audit process to disseminate lessons learned to state agencies.

The LBA performance audit process fails the State by not transferring knowledge learned in one audit to all applicable State entities. A specific example is the observation of RSA 15-A:6, personal financial interest forms filing, on meeting quorum. This was noted years ago in an audit of DRA and in at least one other audit. RSA 15-A:6 applies to all State agencies, yet neither the audit nor the LBA committee disseminated this prior observation on to other agencies. It does not appear that transferring lessons learned is the responsibility of anyone involved in the current audit process. Transference is also hampered by the non-public nature of the audit.

F. Perceived flaws in initial survey of Council members.

The Council expressed unease in the survey process, including observing that there was no flexibility in answering the online questions. Also, several members (at least four) had been on the Council for less than a year when this audit began, making it nearly impossible to answer any questions that required historical perspective. At least one member chose not to complete the survey because of concerns in the survey process. The Council questions the validity/completeness of those observations that were formed based on such survey.

G. Needlessly adversarial process.

The Council felt that the audit process was unnecessarily adversarial. Many Council members expected a simple process of questions and answers, followed by the issuance of a report. Instead, the Council was surprised with the audit process, in that it felt like defending litigation against a party who is advocating for its position, in an attempt to convince the other it is wrong.

II. Response to audit Executive Summary – Oversight

The Executive summary states, (page 2, penultimate paragraph) the Council was “created to oversee” and refers to Council “control” “oversight” and “accountability”. Also at page 335, Wetlands Council Management, first paragraph final sentence, “amounted to oversight”. The Council refrains from wading into the nuanced waters of statutory interpretation. That said, the

Council disagrees with the audit's legal conclusions and notes that the words "oversee", "control", "oversight", and "accountability" do not appear in the Council enabling statute (RSA 21-O: 5-a).

If the Council did have oversight and control of Department Wetlands activities to the degree the audit suggests, this would seem to create a clear conflict of interest with the Council's RSA 21-O:5-a, V appeal function and may raise due process concerns (complaints that the Council has heard in the past).

The audit's creation of Council oversight that does not exist in statute not only undercuts the Executive Summary's validity but also extends to other observations and recommendations throughout the report.

III. Overview of Council Response to Audit Observations

The following requirements: RSA 15-A:6 quorum, RSA 15-A:4 organization chart, RSA 20-B:1 orientation information, and RSA 20:7 biennial report were unknown to the Council; the Council addressed these items during the audit.

Where audit recommendations are at odds with the Council's AG Civil Division attorneys' interpretations, the Council will continue to follow its attorneys' advice.

Several observations included items requiring statutory modifications, these were known to the Council before the audit; corrective action is included in SB203, sponsored by Senator Bradley, currently before the legislature.

The Council has been aware its rules are outdated and has developed draft replacement rules with the assistance of DES legal staff. Following action on SB203 statutory changes, the Council will revise the draft rules, have them reviewed by its attorney, and adopt them.


At this time, a few observations may lack specific Council response. The Council believes its clerical and appeal processing to be consistent with constitutional, statutory, and rule requirements, if discrepancies arise, the Council will follow its attorneys' advice.

IV. Conclusion.

This letter does not include discussion of all process and factual disagreement between the Council and the audit. If there is a desire by Committee members for further information the Council would be glad to provide it.

Again, the Council thanks the Committee and appreciates being given the opportunity to comment on this exhaustive process.

New Hampshire Wetlands Council



George W. Kimball, Chairman

cc: Michael Kane, LBA
Atty. Jon Lavalley, AG, Civil Division

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**APPENDIX D
SURVEY OF WETLANDS COUNCIL MEMBERS**

The Wetlands Council (Council) held oversight responsibilities, was responsible for advising the Department of Environmental Services (Department) on wetlands and protected shoreland planning, policy, programs, goals, and operations; reviewing proposed rules; and deciding on appeals from Department permitting decisions related to its jurisdiction. We sent surveys to 16 current and recently serving members of the Council and received 11 complete responses for a 68.8 percent response rate. We combined and simplified similar answers to many open-ended questions and presented them in topical categories; multipart responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could respond multiple times to the same question.

Question 1. When were you appointed? (Month and year)	
Comments	Count
Respondents who provided a comment.	11
<i>provided comment</i>	11

Question 2. When did your Council service end?		
Answer Options	Count	Percent
Not applicable – I am still serving.	10	90.9
Please provide your end date.	1	9.1
<i>respondent answered question</i>	11	
<i>respondent skipped question</i>	0	

Question 3. When you began your term of service with the Council, did you receive adequate orientation to the specific requirements of your duties and general obligations you had as a public official?		
Answer Options	Count	Percent
Yes	4	36.4
No	4	36.4
Unsure	3	27.3
<i>respondent answered question</i>	11	
<i>respondent skipped question</i>	0	

Question 4. What was inadequate about your orientation?	
Comments	Count
There was no orientation.	3
Chair gave a brief overview, but there was not any kind of orientation, book, or paperwork with information. I had never served on anything like this and really had little idea what to do.	1
<i>provided comment</i>	4
<i>not asked question</i>	7

Question 5. Did the Council's membership adequately represent relevant stakeholders?		
Answer Options	Count	Percent
Yes	9	81.8
No	0	0.0
Unsure	2	18.2
	<i>respondent answered question</i>	11
	<i>respondent skipped question</i>	0

Question 6. Which stakeholders were inadequately represented?	
Comments	Count
There are no responses.	0
<i>provided comment</i>	0
<i>not asked question</i>	11

Question 7. Was the administrative support provided by Department employees adequate?		
Answer Options	Count	Percent
Yes	7	63.6
No	1	9.1
Unsure	3	27.3
	<i>respondent answered question</i>	11
	<i>respondent skipped question</i>	0

Question 8. Why was the administrative support provided by the Department inadequate?	
Comments	Count
It turns out the person in the position of the Council's Appeals Clerk was not handling the appeals properly.	1
<i>provided comment</i>	1
<i>not asked question</i>	10

Question 9. Was the legal support provided by the Department (not the dedicated attorney assigned by the Department of Justice) adequate?		
Answer Options	Count	Percent
Yes	4	36.4
No	1	9.1
Unsure	6	54.5
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 10. Why was the legal support provided by the Department inadequate?		
Comments	Count	
The legal support provided by the Department typically manifested itself only at times of rulemaking, and usually with not enough time for adequate review.	1	
<i>provided comment</i>		1
<i>not asked question</i>		10

Question 11. Were you familiar with the Department strategic plan?		
Answer Options	Count	Percent
Yes	2	18.2
No	9	81.8
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 12. Was the Department strategic plan current and up-to-date?		
Answer Options	Count	Percent
Yes	1	9.1
No	0	0.0
Unsure	10	90.9
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 13. Was the Department strategic plan adequate?		
Answer Options	Count	Percent
Yes	1	9.1
No	1	9.1
Unsure	9	81.8
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 14. Why was the Department strategic plan inadequate?	
Comments	Count
Not distributed for ongoing review with some primary goals totally ignored.	1
<i>provided comment</i>	1
<i>not asked question</i>	10

Question 15. To your knowledge, did the Department accomplish these goals?		
Answer Options	Count	Percent
Yes	2	18.2
No	3	27.3
Unsure	6	54.5
<i>respondent answered question</i>	11	
<i>respondent skipped question</i>	0	

Question 16. Why do you believe the Department did not accomplish these goals?	
Comments	Count
Goal 7 lacks any possible empirical standing, Goal 6 is spotty at best with some customers treated with indifference, Goal 5 does seem to me to be improving, possibly more from grass roots awareness than from Department efforts, Goal 4 must be a well-kept secret, because the Council never sees any such results reported, Goal 3 could better be characterized as insular rather than integrated, Goal 2 is wishful thinking, and lastly, Goal 1, though listed first, is entirely lacking in implementation.	1
Goal 5, environmental compliance is not high in New Hampshire.	1
It is not one of the best places to work and has not fulfilled its coordination with applicants.	1
<i>provided comment</i>	3
<i>not asked question</i>	8

Question 17. How often did the Council meet with the Department's Commissioner and provide advice on policy, programs, goals, and operations related to wetlands and protected shorelands with particular emphasis on long-range planning?		
Answer Options	Count	Percent
Quarterly	0	0.0
Annually	1	9.1
At some other interval	2	18.2
Never	2	18.2
Unsure	6	54.5
<i>respondent answered question</i>	11	
<i>respondent skipped question</i>	0	

Question 18. What other interval did the Council meet with the Department's Commissioner?	
Comments	Count
Council meets with Commissioner representatives quarterly or more, but seldom meets with the Commissioner.	1
If you are asking how often the Commissioner came to Council meetings, I would say less than annually. The Council chairman and the Commissioner may have met annually on their own, but I don't know.	1
<i>provided comment</i>	2
<i>not asked question</i>	9

Question 19. Did the Council ever meet with other Department employees to provide advice on policy, programs, goals, and operations related to wetlands and protected shorelands with particular emphasis on long-range planning?		
Answer Options	Count	Percent
Yes	7	63.6
No	4	36.4
<i>respondent answered question</i>	11	
<i>respondent skipped question</i>	0	

Question 20. With whom did the Council meet to provide advice on policy, programs, goals, and operations related to wetlands and protected shorelands with particular emphasis on long-range planning? (Please select all that apply.)		
Answer Options	Count	Percent
The Assistant Commissioner	0	0.0
The Water Division Director	3	42.9
The LRM Program Administrator/the Assistant Water Division Director	1	14.3
The Wetlands Bureau Administrator	5	71.4
The Wetlands Bureau Assistant Administrator	3	42.9
The Wetlands Bureau Mitigation Coordinator	4	57.1
Unsure	3	42.9
Other (please specify)	2	28.6
<i>respondent answered question</i>	7	
<i>respondent skipped question</i>	0	
<i>not asked question</i>	4	

Question 20. Text Responses, Other:	Count
Aquatic Resource Compensatory Mitigation (ARM) Representative.	1
Various staff represent the Bureau when the Bureau administrator is unavailable.	1
<i>provided comment</i>	2

Question 21. What other entities influenced policy, programs, goals, and operations related to wetlands and protected shorelands with particular emphasis on long-range planning? (Please select all that apply.)		
Answer Options	Count	Percent
The enabling statutes	8	72.7
The Office of the Governor	2	18.2
The Water Council	2	18.2
Construction or development industry-oriented stakeholders	4	36.4
Environmental protection-oriented stakeholders	6	54.5
Federal agencies (e.g., the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers)	8	72.7
Other (please specify)	3	27.3
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 21. Text Responses, Other:	Count
Permit applicants.	1
Can't answer; doesn't seem relevant to our charge.	2
<i>provided comment</i>	3

Question 22. Was the Council sufficiently influential in developing <u>Department</u> long-range plans and policy, programs, goals, and operations related to wetlands and protected shorelands?		
Answer Options	Count	Percent
Yes	0	0.0
No	4	36.4
Unsure	7	63.6
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 23. Why do you believe the Council was not influential?	
Comments	Count
We shared concerns raised by specific cases, but the scope of your question is larger than our charge.	1
The nature of appeals produces a defensive posture from the Department and if a case is remanded to them, we never hear the resulting consequence. If rules are amended as a consequence, again we are not apprised of the rationale. i.e., There is no feedback loop beyond subsequent appeals that are by necessity discrete, one from another.	1
Focused on immediate, short term issues.	1
Council is not in charge of these functions, merely reviews and comments.	1
I do not believe we had any influence in the development of the Department long-range plans and policy, programs, goals, and operations.	1
<i>provided comment</i>	5
<i>not asked question</i>	6

Question 24. Was the Council sufficiently influential in developing <u>Wetlands Bureau</u> long-range plans and policy, programs, goals, and operations related to wetlands and protected shorelands?		
Answer Options	Count	Percent
Yes	1	9.1
No	3	27.3
Unsure	7	63.6
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 25. Why do you believe the Council was not sufficiently influential?		
Comments	Count	
Again, focused on the immediate.	1	
Most of the decisions were made prior to Council involvement.	1	
I do not believe we were ever asked for input into the development of such plans. The chairman may have provided it individually.	1	
<i>provided comment</i>		3
<i>not asked question</i>		8

Question 26. Are you aware of any specific goals, objectives, or targets related to the <u>Wetlands Bureau</u> set in the <i>Department strategic plan</i>?		
Answer Options	Count	Percent
Yes	4	36.4
No	4	36.4
Unsure	3	27.3
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 27. What were the specific goals, objectives, or targets?		
Comments	Count	
Cross training personnel to improve review efficiency.	2	
Instituting a combined initial application review process.	1	
Protect the state's natural resources and quality of life; ensure environmental compliance; educate.	1	
The goals outlined following Question 10 are the only features of the strategic plan of which I am aware. Serving over four years on the Wetlands Council has not informed me to any significant degree as to strategic planning efforts of Department other than the rules update which is proceeding clumsily at best.	1	
<i>provided comment</i>		4
<i>not asked question</i>		7

Question 28. To your knowledge, did the Wetlands Bureau accomplish these goals, attain these objectives, and reach these targets?		
Answer Options	Count	Percent
Yes	3	75.0
No	1	25.0
Unsure	0	0.0
	<i>respondent answered question</i>	4
	<i>respondent skipped question</i>	0
	<i>not asked question</i>	7

Question 29. Are you aware of any goals, objectives, or targets specifically related to Wetlands Bureau permitting?		
Answer Options	Count	Percent
Yes	7	63.6
No	3	27.3
Unsure	1	9.1
	<i>respondent answered question</i>	11
	<i>respondent skipped question</i>	0

Question 30. What were the specific goals, objectives, or targets?	
Comments	Count
Making the process timely, uniform, and transparent, while still giving each application individualized review.	2
Better customer service.	1
Simplification, consistency among different types of permits, clarity of application processes, and streamlining of partner collaboration in the review process.	1
Clean water.	1
Revision of Wetlands rules.	1
Establishing a single entry point for applications with cross training to ensure that review begins promptly.	1
To obtain compliance and work with the public to get projects permitted properly.	1
	<i>provided comment</i>
	7
	<i>not asked question</i>
	4

Question 31. To your knowledge, did the Wetlands Bureau accomplish these goals, attain these objectives, and reach these targets?		
Answer Options	Count	Percent
Yes	3	42.9
No	1	14.3
Unsure	3	42.9
	<i>respondent answered question</i>	7
	<i>respondent skipped question</i>	0
	<i>not asked question</i>	4

Question 32. Did you receive updates on Wetlands Bureau permitting <u>timeliness</u>?		
Answer Options	Count	Percent
Yes	3	27.3
No	4	36.4
Unsure	4	36.4
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 33. How timely were Wetlands Bureau permitting processes?		
Answer Options	Count	Percent
Usually timely	5	45.5
Sometimes timely	1	9.1
Rarely timely	1	9.1
Never timely	0	0.0
Unsure	4	36.4
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 34. Why were Wetlands Bureau permitting processes something other than <u>usually timely</u>?		
Comments	Count	
The public tends to use the State process as a battle ground so care must be taken by the Department to understand each application and any site history.	1	
Virtually every project has a request for more information that pushes out time frames.	1	
<i>provided comment</i>		2
<i>not asked question</i>		9

Question 35. Did you receive updates on Wetlands Bureau permitting process <u>consistency</u>?		
Answer Options	Count	Percent
Yes	1	9.1
No	7	63.6
Unsure	3	27.3
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 36. How <u>consistent</u> were Wetlands Bureau permitting processes?		
Answer Options	Count	Percent
Usually consistent	1	9.1
Sometimes consistent	6	54.5
Rarely consistent	0	0.0
Never consistent	0	0.0
Unsure	4	36.4
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 37. Why were Wetlands Bureau permitting processes something other than usually consistent?		
Comments	Count	
There is some subjectivity between reviewers.	2	
Depends upon the training of the staff.	1	
In my experience as a consultant, there are sometimes inconsistencies between wetland inspectors in rule interpretation and information requirements.	1	
Seemingly similar applications have different results, or laws and regulations are applied in differently on different applications.	1	
Case by case decisions are sometimes necessary.	1	
Because sometimes they gave more weight to certain processes than others.	1	
<i>provided comment</i>		6
<i>not asked question</i>		5

Question 38. Did you receive updates on the <u>clarity</u> of Wetlands Bureau permitting processes?		
Answer Options	Count	Percent
Yes	2	18.2
No	6	54.5
Unsure	3	27.3
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 39. How <u>clear</u> were Wetlands Bureau permitting processes?		
Answer Options	Count	Percent
Usually clear	5	45.5
Sometimes clear	4	36.4
Rarely clear	1	9.1
Never clear	0	0.0
Unsure	1	9.1
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 40. Why were Wetlands Bureau permitting processes something other than usually clear?	
Comments	Count
Process can be complicated; too difficult for the average person to figure out the rules.	2
Anyone can file a permit, even with no wetlands background or experience; can be a good learning process for applicant.	1
Several of the appeals to come to the Wetlands Council were the direct result of lack of clarity (insider assumptions not obvious to average applicants). Whether that represents a significant sampling, I cannot say, but it clearly is a problem to some extent.	1
Subjective decisions between reviewers.	1
Consistency seems to be the major problem.	1
<i>provided comment</i>	5
<i>not asked question</i>	6

Question 41. Did the Council have any role in overseeing the Department objective to provide high-quality customer service?		
Answer Options	Count	Percent
Yes	2	18.2
No	5	45.5
Unsure	4	36.4
<i>respondent answered question</i>	11	
<i>respondent skipped question</i>	0	

Question 42. Should the Council have any role in overseeing Department customer service provided by the Wetlands Bureau?		
Answer Options	Count	Percent
Yes	4	36.4
No	5	45.5
Unsure	2	18.2
<i>respondent answered question</i>	11	
<i>respondent skipped question</i>	0	

Question 43. What was the state of the science underpinning Wetlands Bureau permitting?		
Answer Options	Count	Percent
There are clear, causal relationships (i.e., permitting processes directly contribute to preservation or improvement of wetlands values) between permitting requirements and preservation or improvement of wetlands values	3	27.3
There is correlation between permitting requirements and preservation or improvement of wetlands values	6	54.5
There is association between permitting requirements and preservation or improvement of wetlands values	2	18.2
There is no connection between permitting requirements and preservation or improvement of wetlands values	0	0.0
Other	0	0.0
Unsure	0	0.0

respondent answered question **11**
respondent skipped question **0**

Question 44. What other types of relationships underpin the science of Wetlands Bureau permitting?	
Comments	Count
There are no responses.	0

provided comment **0**
not asked question **11**

Question 45. Do you know what the <u>full costs</u> of Wetlands Bureau <u>permitting</u> to the Department were?		
Answer Options	Count	Percent
Yes – the Department regularly reported on the <u>full costs</u> incurred by the Wetlands Bureau to process permits	1	9.1
Yes – the Department intermittently reported on the <u>full costs</u> incurred by the Wetlands Bureau to process permits	3	27.3
No – there was no reporting on the <u>full costs</u> incurred by the Wetlands Bureau to process permits	5	45.5
Unsure	2	18.2

respondent answered question **11**
respondent skipped question **0**

Question 46. Do you know what the full costs of complying with Wetlands Bureau rules and regulations were, including preparing applications, pre-application meetings, fees, and other costs, to those subject to their requirements?

Answer Options	Count	Percent
Yes – the Department regularly reported on the <u>full costs</u> of complying with Wetlands Bureau rules and regulations	0	0.0
Yes – the Department intermittently reported on the <u>full costs</u> of complying with Wetlands Bureau rules and regulations	3	27.3
No – there was no Department reporting on the <u>full cost</u> of compliance with Wetlands Bureau rules and regulations	6	54.5
Unsure	2	18.2

respondent answered question **11**
respondent skipped question **0**

Question 47. Department documents indicate permitting decisions must strike a balance between economic opportunity and environmental quality. Did Wetlands Bureau permitting accomplish this objective?

Answer Options	Count	Percent
Yes	3	27.3
No	2	18.2
Unsure	6	54.5

respondent answered question **11**
respondent skipped question **0**

Question 48. Were there clear decision criteria for the Wetlands Bureau to use in balancing economic opportunity and environmental quality?

Answer Options	Count	Percent
Yes	2	18.2
No	6	54.5
Unsure	3	27.3

respondent answered question **11**
respondent skipped question **0**

Question 49. Were existing Wetlands Bureau rules adequate?

Answer Options	Count	Percent
Yes	3	27.3
No	6	54.5
Unsure	2	18.2

respondent answered question **11**
respondent skipped question **0**

Question 50. In what way are existing Wetlands Bureau rules inadequate?	
Comments	Count
Rules are outdated and not very clear for applicants.	3
Rules are confusing; need to be better organized for the regulated public.	2
Lacks adequate definitions, misalignment of cross references, inconsistent to federal policy and rules.	2
	provided comment 6
	not asked question 5

Question 51. Were <u>existing</u> Wetlands Bureau rules more restrictive than State law required?		
Answer Options	Count	Percent
Yes	4	36.4
No	3	27.3
Unsure	4	36.4
	respondent answered question 11	
	respondent skipped question 0	

Question 52. Did the Department consult with the Council on an ongoing basis to develop the <u>existing</u> Wetlands Bureau rules?		
Answer Options	Count	Percent
Yes	3	27.3
No	3	27.3
Unsure	5	45.5
	respondent answered question 11	
	respondent skipped question 0	

Question 53. Did the Department consult with the Council on an ongoing basis to develop the <u>draft proposed</u> Wetlands Bureau rules currently under development?		
Answer Options	Count	Percent
Yes	5	45.5
No	4	36.4
Unsure	2	18.2
	respondent answered question 11	
	respondent skipped question 0	

Question 54. Did the Council provide the Department any objections to the <u>draft proposed</u> Wetlands Bureau rules?		
Answer Options	Count	Percent
Yes	6	54.5
No	3	27.3
Unsure	2	18.2
	respondent answered question 11	
	respondent skipped question 0	

Question 55. Did the Department ever present a written reply to the Council detailing the reasons for adopting a rule over the objections of the Council?		
Answer Options	Count	Percent
Yes	0	0.0
No	2	18.2
Unsure	9	81.8
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 56. To what extent were Wetlands Bureau permit application requirements based on something in addition to rules, such as Best Management Practices (BMPs), Department-issued guidance documents and fact sheets, or other documents?		
Answer Options	Count	Percent
Always	0	0.0
Mostly	1	9.1
Somewhat	6	54.5
Seldom	3	27.3
Not at all	0	0.0
Unsure	1	9.1
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 57. Did the Council have sufficient input into non-rule, requirements-setting documents?		
Answer Options	Count	Percent
Yes – all guidance documents are reviewed by Council and input provided	1	9.1
No – the Council did not have sufficient input	2	18.2
Not applicable – the Council does not have a role in reviewing non-rule, requirement-setting documents	4	36.4
Unsure	4	36.4
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 58. Should the Council have a role in reviewing non-rule, requirements-setting documents?		
Answer Options	Count	Percent
Yes	6	54.5
No	1	9.1
Unsure	4	36.4
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 59. Did the Department consult with the Council in development of internal practice on an ongoing basis?		
Answer Options	Count	Percent
Yes	1	9.1
No	7	63.6
Unsure	3	27.3
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 60. Should the Council have a role in the development of internal Department practice?		
Answer Options	Count	Percent
Yes	4	36.4
No	4	36.4
Unsure	3	27.3
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 61. How <u>effective</u> was the appeals process?		
Answer Options	Count	Percent
Effective	6	54.5
Neither effective nor ineffective	5	45.5
Ineffective	0	0.0
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 62. How <u>efficient</u> was the appeals process?		
Answer Options	Count	Percent
Efficient	1	9.1
Neither efficient nor inefficient	10	90.9
Inefficient	0	0.0
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 63. What areas of the appeals process needed improvement?	
Comments	Count
Need new or updated rules that provide better direction and clarity to those wishing to appeal.	2
Applicant understanding.	2
Department feedback after a remand needed.	2
Timeliness.	2
From whose standpoint? Public, the Department, or Council? The question was unclear.	1
The Department and hearings officer should make an effort to resolve appeals.	1
Clarity on timing of receipt of documents.	1
Having a presiding officer assigned to appeals has been a tremendous improvement.	1
Appeals could move faster if the Council was required to meet and act more frequently.	1
Member preparation, especially for hearings.	1

provided comment **11**

Question 64. Were appeals to the Council remanded back to the Department acted upon effectively?		
Answer Options	Count	Percent
Yes – the Department was responsive to the Council’s findings	1	9.1
Sometimes – the Department was inconsistently responsive to the Council’s findings	1	9.1
No – the Department was not responsive to the Council’s findings	2	18.2
Unsure	7	63.6

respondent answered question **11**

respondent skipped question **0**

Question 65. Were appeals to the Council remanded back to the Department acted upon timely?		
Answer Options	Count	Percent
Yes – the Department acted on the Council’s findings timely	1	9.1
Sometimes – the Department sometimes acted on the Council’s findings timely	2	18.2
No – the Department did not act on the Council’s findings timely	0	0.0
Unsure	8	72.7

respondent answered question **11**

respondent skipped question **0**

Question 66. Do you have anything else to add that will help us better understand the Council's operations or Wetlands Bureau permitting?		
Answer Options	Count	Percent
No	5	45.5
Yes (please elaborate)	6	54.5

respondent answered question **11**
respondent skipped question **0**

Question 66. Text Responses, Additional Comments:	Count
The environment is important to a high quality life and deserves protecting with reasonable regulation. The Department and its employees do a great job balancing all the considerations to a permit or appeal.	1
A formal appeal to the Council is a very lengthy process and can be extremely costly to the appellant. It may be hoped that those aggrieved parties that are thereby excluded from this process of justice may nonetheless benefit in the long run, by procedural corrections and modifications that the Department undertakes subsequent to our findings that may indirectly impact their particular issue going forward. I suppose that concentrated wealth may pose a relatively greater threat to environmental resources, but lack of financial resource should not preclude redress from bureaucratic abuse, which, sad to say, does occur.	1
The Council is a volunteer body. As such, it does not and probably cannot meet frequently enough to fulfill its statutory charge to the maximum. It would also have to be taken by the Bureau and the Department as "board of directors" that is actually in charge; but it is not. The failure of the statute to clearly require the Department to implement a decision under remand timely and exactly as determined by the Council undermines the entire Council mission of being an oversight board. Contrast with the ARM process that requires Council approval by statute; Council comments are taken seriously by ARM staff.	1
Unsure of the Council's prior relationship and interactions with the Department. In most cases, Wetlands Bureau staff are helpful and reasonable, despite some inconsistencies among the staff in rule interpretation. Their heavy workload pushes wetland permit application review to the end of the allotted time in most cases, while shoreland permit application review is often quicker than anticipated.	1
The only persons in the application process who seem to be subject to consequences for their actions are the applicants. It might be a better, more efficient system if both the Bureau and the Council also were subject to consequences for both their actions and inaction.	1

Question 66. Text Responses, Additional Comments (Continued):	Count
Question 6: Legal support was limited and on case-by-case basis. Question 7: I do not understand what high quality “customer service” (a bad choice of words to begin with, has what to do with the Council). Question 11: Council was sent an annual letter, but never met. Question 20: Usually timely, but the cases we see are so limited. Question 21: Unsure; possibly not there for that meeting. Question 27: No and I do not think it is in our charge. Question 37: Existing rules have been a work in progress for years. I can only speak to the last few years. Question 43: I do not think this is in our charge. Question 45: We have noted some inconsistencies in cases that if solved might have avoided an appeal. Question 50: It has bothered me that we are not always apprised of results of remands. I feel my answers are probably suspect because of the way this questionnaire was designed.	1
<i>provided comment</i>	6

Question 67. Would you like us to contact you to further discuss issues or concerns you may have?		
Answer Options	Count	Percent
No	9	81.8
Yes (please elaborate)	2	18.2
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

Question 68. Would you like to receive notification when we release our final report on Wetlands Bureau permitting?		
Answer Options	Count	Percent
No, thank you	2	18.2
Yes (please provide email address)	9	81.8
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		0

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**APPENDIX E
SURVEY OF STAKEHOLDERS**

We sent surveys to an indeterminable number of Wetlands Bureau stakeholders directly and through various stakeholder groups. We received 278 complete responses. We combined and simplified similar answers to open-ended questions and presented them in topical categories; multipart responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could respond multiple times to the same question.

The survey results were used to inform our audit work and should not be considered an accurate representation of all stakeholders' views, because of the nonrandom selection of survey respondents.

Question 1. Which of the following best describes you or your organization?		
Answer Options	Count	Percent
Land development-related industry	24	8.6
Water-related recreation industry (e.g., water sports)	9	3.2
Environmental-related advocacy	34	12.2
Local government	120	43.2
Other (please specify)	91	32.7
	<i>respondent answered question</i>	278
	<i>respondent skipped question</i>	0

Question 1. Text Responses, Other:	Count
Property owner.	32
Lake association.	11
Utility company.	8
Citizen.	6
Conservation commission.	4
Engineering consultant.	3
Environmental consultant.	3
Local advisory committee.	2
Forest industry.	2
Regional planning commission.	2
State government.	1
Real estate.	1
Miscellaneous.	18
	<i>provided comment</i>
	91

Question 2. Which of the following best describes your organization?		
Answer Options	Count	Percent
Local or district conservation commission	27	22.3
Regional planning commission	0	0.0
Municipality	87	71.9
Other (please specify)	7	5.8
	<i>respondent answered question</i>	121
	<i>respondent skipped question</i>	157

Question 2. Text Responses, Other:	Count
Conservation district.	1
Local advisory committee.	1
Municipality.	1
Miscellaneous.	4
	<i>provided comment</i>
	7

Question 3. Which of the following <u>best</u> describes the field of work in which you or your organization are/is involved?		
Answer Options	Count	Percent
Engineering	9	29.0
Construction	6	19.4
Forest industry	0	0.0
Landscaping	1	3.2
Property development	5	16.1
Other (please specify)	10	32.3
	<i>respondent answered question</i>	31
	<i>respondent skipped question</i>	247

Question 3. Text Responses, Other:	Count
River protection and restoration.	2
Environmental permitting.	2
Wetland science.	1
Miscellaneous.	5
	<i>provided comment</i>
	10

Question 4. Which of the following best describes your role in Wetlands Bureau permitting? If you are responding on behalf of an organization, select those that best describe your organization's role. (Please select all that apply.)

I am a/an:

Answer Options	Count	Percent
Land-owner and self-applicant	69	24.8
Agent for a land-owner applicant	41	14.7
Consultant on an application	33	11.9
Contributor to Wetlands Bureau rule development	17	6.1
Contributor to Wetlands Bureau policy, practice, and procedure development (e.g., best management practices, Bureau guidance publications)	17	6.1
Other (please specify)	155	55.8

respondent answered question **278**
respondent skipped question **0**

Question 4. Text Responses, Other:	Count
Municipal employee-town clerk.	60
Review permit applications.	15
Conservation commission.	13
Municipal employee.	8
Lake association.	7
Land owner.	7
Local advisory committee.	6
Miscellaneous.	48

provided comment **155**

Question 5. How were you involved in Wetlands Bureau permitting processes between July 1, 2015 and June 30, 2017? Please select the option that best describes your involvement.

Answer Options	Count	Percent
I/my organization prepared or submitted one or more permit applications on behalf of another	68	24.5
I prepared and submitted one or more permit applications on my own behalf	29	10.4
I was not involved in permitting processes	181	65.1

respondent answered question **278**
respondent skipped question **0**

Question 6. What types of Wetlands Bureau permit applications did you or your organization prepare and/or submit? (Please select all that apply.)		
Answer Options	Count	Percent
Forestry Notification	6	6.1
Permit by Notification	49	49.5
Seasonal Dock Notification	18	18.2
Shoreland	45	45.5
Shoreland Permit by Notification	41	41.4
Wetlands Minimum Impact	48	48.5
Wetlands Minimum Impact Expedited	42	42.4
Wetlands Minor Impact	38	38.4
Wetlands Major Impact (i.e., Standard Dredge and Fill)	41	41.4
Unsure	2	2.0
Other (please specify)	12	12.1

respondent answered question **99**
respondent skipped question **179**

Question 6. Text Responses, Other:	Count
Utility maintenance.	2
Emergency authorization.	1
Forest harvesting.	1
Septic system.	1
Trail.	1
Miscellaneous.	6

provided comment **12**

Question 7. The Wetlands Bureau had statutory time limits within which it was required to process permit applications. How timely were Wetlands Bureau permitting processes?		
Answer Options	Count	Percent
Always timely	48	48.5
Often timely	27	27.3
Sometimes timely	11	11.1
Rarely timely	6	6.1
Never timely	1	1.0
Unsure	6	6.1

respondent answered question **99**
respondent skipped question **179**

Question 8. Why were Wetlands Bureau permitting processes not always timely?	
Comments	Count
Request for more information-sent late in technical review timeframe.	12
Insufficient staff.	3
Incomplete application.	3
Project size/complexity.	3
No response from the Department.	2
Took too long.	2
Request for more information.	2
Not sure.	4
Other.	16

provided comment **44**
respondent skipped question **234**

Question 9. Please specify which permit types were not always timely. (Please select all that apply.)		
Answer Options	Count	Percent
Forestry Notification	1	2.3
Permit by Notification	3	6.8
Seasonal Dock Notification	3	6.8
Shoreland	10	22.7
Shoreland Permit by Notification	4	9.1
Wetlands Minimum Impact	9	20.5
Wetlands Minimum Impact Expedited	10	22.7
Wetlands Minor Impact	14	31.8
Wetlands Major Impact (i.e., Standard Dredge and Fill)	24	54.5
Unsure	5	11.4
Other (please specify)	3	6.8

respondent answered question **44**
respondent skipped question **234**

Question 9. Text Responses, Other:	Count
Routine Roadway.	1
Miscellaneous.	2

provided comment **3**

Question 10. How consistent were Wetlands Bureau permitting processes?		
Answer Options	Count	Percent
Always consistent	40	40.8
Often consistent	23	23.5
Sometimes consistent	16	16.3
Rarely consistent	5	5.1
Never consistent	4	4.1
Unsure	10	10.2
<i>respondent answered question</i>		98
<i>respondent skipped question</i>		180

Question 11. Why were Wetlands Bureau permitting processes not always consistent?		
Comments	Count	
Different reviewer interpretations.	20	
Decisions change by project.	4	
Unsure.	4	
Other.	22	
<i>provided comment</i>		49
<i>respondent skipped question</i>		229

Question 12. Please specify which permit type(s) were not always consistent. (Please select all that apply.)		
Answer Options	Count	Percent
Forestry Notification	0	0.0
Permit by Notification	7	14.3
Seasonal Dock Notification	1	2.0
Shoreland	15	30.6
Shoreland Permit by Notification	12	24.5
Wetlands Minimum Impact	10	20.4
Wetlands Minimum Impact Expedited	13	26.5
Wetlands Minor Impact	15	30.6
Wetlands Major Impact (i.e., Standard Dredge and Fill)	21	42.9
Unsure	7	14.3
Other (please specify)	3	6.1
<i>respondent answered question</i>		49
<i>respondent skipped question</i>		229

Question 12. Text Responses, Other:	Count	
Miscellaneous.	3	
<i>provided comment</i>		3

Question 13. How clear were Wetlands Bureau permitting processes?		
Answer Options	Count	Percent
Always clear	40	40.8
Often clear	26	26.5
Sometimes clear	21	21.4
Rarely clear	7	7.1
Never clear	2	2.0
Unsure	2	2.0
<i>respondent answered question</i>		98
<i>respondent skipped question</i>		180

Question 14. Why were Wetlands Bureau permitting processes not always clear?		
Comments	Count	
Ambiguous/unclear rules.	15	
Complicated process/rules.	13	
Different reviewer interpretations.	10	
Decisions change by project.	2	
Other issues with rules.	2	
Takes too long.	2	
Other.	20	
<i>provided comment</i>		56
<i>respondent skipped question</i>		222

Question 15. Please specify which permit type(s) were not always clear. (Please select all that apply.)		
Answer Options	Count	Percent
Forestry Notification	1	1.8
Permit by Notification	6	10.7
Seasonal Dock Notification	2	3.6
Shoreland	19	33.9
Shoreland Permit by Notification	6	10.7
Wetlands Minimum Impact	15	26.8
Wetlands Minimum Impact Expedited	17	30.4
Wetlands Minor Impact	19	33.9
Wetlands Major Impact (i.e., Standard Dredge and Fill)	20	35.7
Unsure	10	17.9
Other (please specify)	6	10.7
<i>respondent answered question</i>		56
<i>respondent skipped question</i>		222

Question 15. Text Responses, Other:	Count
Alteration of Terrain.	1
Maintenance permit.	1
Minimum impact stream restoration.	1
Prime.	1
Roads, culverts, etc.	1
Miscellaneous.	1
<i>provided comment</i>	6

Question 16. Could you provide us estimates for the <u>total costs</u> you or a client incurred to obtain a permit from the Wetlands Bureau?		
<u>Total costs</u> includes the costs derived of preliminary planning, pre-application meetings or conferences, permit fees, costs of responding to requests for more information, costs of waiting for permit application approval, costs of appealing a Wetlands Bureau permit decision, and all other relevant information.		
Answer Options	Count	Percent
Yes	27	48.2
No	5	8.9
Unsure	24	42.9
<i>respondent answered question</i>		56
<i>respondent skipped question</i>		222

Question 17. If so, could we contact you and obtain this information?		
Answer Options	Count	Percent
No	8	29.6
Yes (please provide email address)	19	70.4
<i>respondent answered question</i>		27
<i>respondent skipped question</i>		251

Question 18. How did you obtain necessary information and forms to fill out and submit permit applications? (Please select all that apply.)		
Answer Options	Count	Percent
I called the Department	35	35.7
I used the Department's website	69	70.4
I visited a Department office	12	12.2
Not applicable	8	8.2
Other (please specify)	20	20.4
<i>respondent answered question</i>		98
<i>respondent skipped question</i>		180

Question 18. Text Responses, Other:	Count
Consultant.	12
Meeting with Department staff.	2
Website.	2
Miscellaneous.	6

provided comment **20**

Question 19. Was it clear from Department-provided information how to submit a complete application (one that did not receive requests for additional information from Wetlands Bureau staff)?

Answer Options	Count	Percent
Yes – I obtained everything I needed from Department documentation	53	54.1
No – I needed to contact Department staff to ensure I understood requirements or provided materials needed for permit approval	31	31.6
Unsure	14	14.3

respondent answered question **98**

respondent skipped question **180**

Question 20. How often did you receive a request for more information from the Department prior to approval or denial of permit applications? A request for more information might come via a letter, email, or phone call.

Answer Options	Count	Percent
Never	34	34.7
Typically once for each application	37	37.8
Typically two to five times for each application	12	12.2
Typically more than five times for each application	0	0.0
Unsure	15	15.3

respondent answered question **98**

respondent skipped question **180**

Question 21. Did the Department make you aware you could request 60-day extensions to the initial 60 days you had to respond to a request for more information?

Answer Options	Count	Percent
Yes	62	63.3
No	36	36.7

respondent answered question **98**

respondent skipped question **180**

Question 22. How familiar are you with the Wetlands Bureau's existing rules?		
Answer Options	Count	Percent
Familiar	72	25.9
Somewhat familiar	111	39.9
Neither familiar nor unfamiliar	25	9.0
Somewhat unfamiliar	21	7.6
Unfamiliar	41	14.7
Unsure	8	2.9
<i>respondent answered question</i>		278
<i>respondent skipped question</i>		0

Question 23. How clear were Wetlands Bureau existing rules?		
Answer Options	Count	Percent
Always clear	39	21.3
Often clear	67	36.6
Sometimes clear	63	34.4
Rarely clear	5	2.7
Never clear	0	0.0
Unsure	9	4.9
<i>respondent answered question</i>		183
<i>respondent skipped question</i>		95

Question 24. Why are Wetlands Bureau's existing rules less than always clear?		
Comments	Count	
Ambiguous/unclear rules.	39	
Rules/subject matter complicated.	23	
Rules-other issues.	20	
Inconsistent interpretations.	10	
Conflicting language.	6	
Rules cannot cover every situation.	6	
Too many rules.	6	
Project differences.	3	
Better educate public.	2	
Unfamiliar due to infrequent use.	5	
Unsure.	4	
Other.	31	
<i>provided comment</i>		135
<i>skipped question</i>		143

Question 25. How effective were Wetlands Bureau's <u>existing rules</u> in maintaining overall environmental quality of wetlands in New Hampshire?		
Answer Options	Count	Percent
Effective	84	45.9
Somewhat effective	53	29.0
Neither effective nor ineffective	4	2.2
Somewhat ineffective	12	6.6
Ineffective	6	3.3
Unsure	24	13.1

respondent answered question **183**
respondent skipped question **95**

Question 26. Why did you think Wetlands Bureau's <u>existing rules</u> were not always effective in maintaining overall environmental quality of wetlands in New Hampshire?	
Comments	Count
Insufficient enforcement.	27
Circumvention of wetlands rules.	10
Insufficient staff.	5
Complicated rules.	3
Insufficient funding.	3
Inconsistent/vague rules.	3
Rules-other issues.	3
Use of mitigation.	3
Complicated process.	2
Lack of focus on environmental protection.	2
No wetlands buffer protection.	2
Rules not strong enough.	2
Unsure.	3
Other.	26

provided comment **75**
not asked question **203**

Question 27. How familiar are you with the Wetlands Bureau's <u>draft proposed rules</u>?		
Answer Options	Count	Percent
Familiar	18	6.5
Somewhat familiar	59	21.2
Neither familiar nor unfamiliar	36	12.9
Somewhat unfamiliar	15	5.4
Unfamiliar	141	50.7
Unsure	9	3.2

respondent answered question **278**
respondent skipped question **0**

Question 28. How clear are the Wetlands Bureau's <u>draft proposed rules</u>?		
Answer Options	Count	Percent
Always clear	14	18.2
Often clear	21	27.3
Sometimes clear	19	24.7
Rarely clear	11	14.3
Never clear	0	0.0
Unsure	12	15.6
<i>respondent answered question</i>		77
<i>respondent skipped question</i>		201

Question 29. Why are the Wetlands Bureau's <u>draft proposed rules</u> less than always clear?		
Comments	Count	
Ambiguous/unclear wording.	13	
Rules-other issues.	12	
Rules/subject matter complicated.	9	
Need time to become familiar.	6	
Conflicting wording/referencing.	3	
Rules incomplete.	3	
More input needed.	2	
Other.	11	
<i>provided comment</i>		51
<i>respondent skipped question</i>		227

Question 30. One of the goals of the Department of Environmental Services was to provide <u>high-quality customer service</u>. Based on your interactions, how effectively did the Wetlands Bureau provide <u>high-quality customer service</u>?		
Answer Options	Count	Percent
Effectively	103	37.1
Somewhat effectively	55	19.8
Neither effectively nor ineffectively	27	9.7
Somewhat ineffectively	10	3.6
Ineffectively	11	4.0
Unsure	72	25.9
<i>respondent answered question</i>		278
<i>respondent skipped question</i>		0

Question 31. Why did you think the Wetlands Bureau did not always effectively provide high-quality customer service?

Comments	Count
Insufficient staff.	18
Communication issues.	17
Laborious process.	7
Timeliness.	7
Insufficient enforcement.	6
Helpful staff.	5
Inconsistent decisions/inexperienced staff.	4
Rule issues.	4
Confusion for applicant.	3
Insufficient funding.	3
Requests for more information.	3
Unprofessional conduct.	3
N/A.	13
Other.	31

provided comment **104**
respondent skipped question **174**

Question 32. How effectively did the Wetlands Bureau manage permitting?

Answer Options	Count	Percent
Effectively	96	34.5
Somewhat effectively	55	19.8
Neither effectively nor ineffectively	11	4.0
Somewhat ineffectively	10	3.6
Ineffectively	8	2.9
Unsure	98	35.3

respondent answered question **278**
respondent skipped question **0**

Question 33. Do you have anything else to add that will help us better understand Wetlands Bureau permitting?

Comments	Count
Staff-positive comments.	14
Simplify rules/process.	10
Ambiguous/unclear wording in rules.	8
Insufficient funding/staff.	8
Improve public outreach.	7
Insufficient enforcement.	6
Staff-negative comments.	5
Department staff not timely in response on applications.	4
Permitting process complicated.	4
Permitting process not consistent.	4

Question 33. Do you have anything else to add that will help us better understand Wetlands Bureau permitting? (Continued)	
Permitting process time consuming.	4
Permitting process costly.	3
Department staff engaged in ad hoc rulemaking.	2
Improve transparency.	2
Issues with Division of Historical Resources involvement.	2
Issues with statute.	2
No.	48
Other.	58

provided comment **164**
respondent skipped question **114**

Question 34. If you would like us to contact you to further discuss issues or concerns you may have, please provide your information below.	
Comments	Count
(contact information provided)	86

provided comment **86**
respondent skipped question **192**

Question 35. Would you like to receive email notification when we release our final report on Wetlands Bureau permitting?		
Answer Options	Count	Percent
No	123	45.1
Yes (please provide email address)	150	54.9

respondent answered question **273**
respondent skipped question **5**

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**APPENDIX F
SURVEY OF WETLANDS BUREAU OPERATIONS**

We sent surveys to 37 current and former managers and staff employed in the Wetlands Bureau or Application Receipt Center (ARC) during State fiscal years 2016 or 2017. We received 32 responses for an 86.5 percent response rate. We combined and simplified similar answers to open-ended questions and presented them in topical categories; multipart responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could respond multiple times to the same question.

Question 1. Are you familiar with the details of the 2010-2015 DES strategic plan?		
Answer Options	Count	Percent
Yes	11	34.4
No	21	65.6

respondent answered question **32**
respondent skipped question **0**

Question 2. Did the DES strategic plan provide the Wetlands Bureau with strategic guidance in planning and operations?		
Answer Options	Count	Percent
Yes	6	54.5
No	2	18.2
Unsure	3	27.3

respondent answered question **11**
respondent skipped question **21**

Question 3. Was the Wetlands Bureau responsible for achieving specific goals or targets from the DES strategic plan?		
Answer Options	Count	Percent
Yes	5	45.5
No	1	9.1
Unsure	5	45.5

respondent answered question **11**
respondent skipped question **21**

Question 4. Did the Wetlands Bureau achieve or successfully contribute to the achievement of these goals or targets?		
Answer Options	Count	Percent
Yes	4	80.0
No	0	0.0
Unsure	1	20.0
<i>respondent answered question</i>		5
<i>respondent skipped question</i>		27

Question 5. What information or documentation is available, if any, that would help us to understand your response?		
Answer Options	Count	Percent
None	0	0.0
Unsure	1	20.0
Other (please explain)	4	80.0
<i>respondent answered question</i>		5
<i>respondent skipped question</i>		27

Question 5. Text Responses, Other:	Count
Annual Wetlands Bureau reports prepared for the U.S. Environmental Protection Agency.	3
DES Strategic Plan.	1
ARC and related standard operating procedures (SOP).	1
Lean events.	1
Customer service surveys.	1
Kudos.	1
Permit turnaround times.	1
Balanced score card planning and development.	1
Audit reports already provided.	1
<i>provided comment</i>	4

Question 6. Which of the following best described the expectations Bureau management established for the Bureau's performance as an organization?		
Answer Options	Count	Percent
Focus on maintaining a level of performance that exceeds expectations established by laws and regulations	13	43.3
Focus on maintaining a level of performance that meets expectations established by laws and regulations	8	26.7
Focus on maintaining a level of performance that is less than expectations established by laws and regulations	1	3.3
Unsure	8	26.7
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 7. Were any goals and targets related to the Wetlands Bureau's <u>permit application review processes</u> established?		
Answer Options	Count	Percent
Yes – formally	3	9.4
Yes – informally	2	6.3
Yes – both formally and informally	6	18.8
No – neither formally nor informally	1	3.1
Unsure	20	62.5
	respondent answered question	32
	respondent skipped question	0

Question 8. What goals and targets were established?	
Comments	Count
Permit application processing and review timeliness.	10
Public assistance, communication, and outreach.	3
Permit application review standardization, SOPs.	2
Permit application review consistency, fairness.	2
Compliance with statutory and/or regulatory requirements.	2
Employee training.	2
Permit application processing efficiency.	1
Permit application simplicity.	1
Reorganization of the Bureau.	1
Continuous process improvement.	1
Preservation of water quality.	1
Interagency coordination.	1
	provided comment
	11
	respondent skipped question
	21

Question 9. How clearly defined were goals and targets related to the Wetlands Bureau's <u>permit application review processes</u>?		
Answer Options	Count	Percent
Very clearly defined	3	27.3
Somewhat clearly defined	5	45.5
Not clearly defined	2	18.2
Unsure	1	9.1
	respondent answered question	11
	respondent skipped question	21

Question 10. Was the Bureau's organization structure adequate to achieve the Bureau's permitting goals and meet related targets?		
Answer Options	Count	Percent
Yes	10	31.3
No	11	34.4
Unsure	11	34.4
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 11. What, if anything, could be improved about the Bureau's organizational structure in order to achieve permitting goals and meet related targets? If nothing, please indicate so.		
Comments	Count	
Additional employees and/or employees dedicated to specific functions.	10	
Improve, provide more outreach and guidance to the public.	6	
Improve internal communications and information sharing.	5	
Improve, increase focus on permitting responsibilities.	4	
Land Resources Management (LRM) or Bureau organizational structure.	3	
Improve workload distribution, make equitable.	2	
Opportunities for advancement.	2	
Retain specialization of permit reviewers.	2	
Improve management.	2	
Ensure supervisors review staff work to ensure consistency.	1	
No answer.	1	
Unsure.	3	
None.	3	
<i>provided comment</i>		32
<i>respondent skipped question</i>		0

Question 12. Did you spend time developing or contributing to the development of the proposed reorganization?		
Answer Options	Count	Percent
Yes	12	37.5
No	20	62.5
Unsure	0	0.0
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 13. Would the <u>proposed reorganization</u> of LRM programs have affected the ability of the Bureau to achieve permitting goals and targets?		
Answer Options	Count	Percent
No – <u>no change</u> in ability to achieve permitting goals and targets	1	3.1
Yes – <u>increased</u> ability to achieve permitting goals and targets	6	18.8
Yes – <u>decreased</u> ability to achieve permitting goals and targets	5	15.6
Unsure	20	62.5
	respondent answered question	32
	respondent skipped question	0

Question 14. Did you spend time developing or contributing to the development of the proposed restructuring?		
Answer Options	Count	Percent
Yes	8	25.0
No	23	71.9
Unsure	1	3.1
	respondent answered question	32
	respondent skipped question	0

Question 15. Would the <u>proposed restructuring</u> of LRM programs have affected the ability of the Bureau to achieve goals and targets related to permitting?		
Answer Options	Count	Percent
No – <u>no change</u> in ability to achieve permitting goals and targets	2	6.3
Yes – <u>increased</u> ability to achieve permitting goals and targets	5	15.6
Yes – <u>decreased</u> ability to achieve permitting goals and targets	2	6.3
Unsure	23	71.9
	respondent answered question	32
	respondent skipped question	0

Question 16. How frequently did established reporting lines <u>within individual Bureau sections</u> allow for adequate communication of information necessary for sections to fulfill their overall responsibilities?		
Answer Options	Count	Percent
Always	3	9.4
Often	4	12.5
Sometimes	14	43.8
Rarely	4	12.5
Never	2	6.3
Unsure	5	15.6
	respondent answered question	32
	respondent skipped question	0

Question 17. How frequently did established reporting lines <u>with Bureau management</u> allow for adequate communication of information necessary for the Bureau to fulfill its overall responsibilities?		
Answer Options	Count	Percent
Always	1	3.1
Often	2	6.3
Sometimes	11	34.4
Rarely	7	21.9
Never	2	6.3
Unsure	9	28.1
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 18. How frequently did established reporting lines <u>with DES management</u> allow for adequate communication of information necessary for the Bureau to fulfill its overall responsibilities?		
Answer Options	Count	Percent
Always	1	3.1
Often	1	3.1
Sometimes	11	34.4
Rarely	9	28.1
Never	2	6.3
Unsure	8	25.0
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 19. How effective was the leadership provided by Bureau management?		
Answer Options	Count	Percent
Very effective	2	6.7
Somewhat effective	8	26.7
Neither effective nor ineffective	9	30.0
Ineffective	10	33.3
Unsure	1	3.3
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 20. How effectively was the Bureau managed?		
Answer Options	Count	Percent
Very effectively	2	6.7
Somewhat effectively	10	33.3
Neither effective nor ineffectively	5	16.7
Ineffectively	12	40.0
Unsure	1	3.3
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 21. How frequently did Bureau managers make decisions that were consistent with one another?		
Answer Options	Count	Percent
Always	2	6.7
Often	3	10.0
Sometimes	14	46.7
Rarely	6	20.0
Never	1	3.3
Unsure	4	13.3
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 22. How frequently did Bureau managers treat one another with respect?		
Answer Options	Count	Percent
Always	1	3.3
Often	9	30.0
Sometimes	8	26.7
Rarely	1	3.3
Never	2	6.7
Unsure	9	30.0
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 23. How frequently did Bureau managers treat Bureau staff with respect?		
Answer Options	Count	Percent
Always	10	33.3
Often	8	26.7
Sometimes	7	23.3
Rarely	2	6.7
Never	1	3.3
Unsure	2	6.7
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 24. How frequently did you feel you could share concerns with Bureau management, without fear of retaliation or retribution?		
Answer Options	Count	Percent
Always	10	33.3
Often	8	26.7
Sometimes	4	13.3
Rarely	4	13.3
Never	2	6.7
Unsure	2	6.7
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 25. In general, what was <u>your</u> level of morale?		
Answer Options	Count	Percent
High	7	23.3
Moderate	13	43.3
Low	10	33.3
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 26. In general, what was the level of morale <u>within the Bureau</u>?		
Answer Options	Count	Percent
High	3	10.0
Moderate	10	33.3
Low	15	50.0
Unsure	2	6.7
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 27. Did you leave, or have you seriously considered leaving, the Bureau?		
Answer Options	Count	Percent
Yes	17	56.7
No	11	36.7
Unsure	2	6.7
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 28. For what reasons did you leave, or consider leaving, the Bureau? <i>Please select all that apply.</i>		
Answer Options	Count	Percent
Limited opportunity for career advancement.	13	76.5
Problems with the internal work environment (such as management).	15	88.2
Problems with the external work environment (such as with applicants).	5	29.4
High workload without commensurate pay.	8	47.1
Retirement from State service.	0	0.0
Other (please specify).	7	41.2
<i>respondent answered question</i>		17
<i>respondent skipped question</i>		15

Question 28. Text Responses, Other:	Count
Management actions negatively affecting morale.	5
Management actions negatively affecting Bureau operations.	3
Insufficient opportunity for advancement, low salary.	2
Vilification of employees by the public.	1
Management actions negatively affecting environmental protection.	1
Management actions negatively affecting employee development.	1
Unsure.	1
<i>provided comment</i>	7
<i>respondent skipped question</i>	25

Question 29. Was the distribution of organizational responsibilities done equitably?		
Answer Options	Count	Percent
Always	5	15.6
Often	7	21.9
Sometimes	8	25.0
Rarely	3	9.4
Never	3	9.4
Unsure	6	18.8
<i>respondent answered question</i>	32	
<i>respondent skipped question</i>	0	

Question 30. In what ways were responsibilities not distributed equitably?	
Comments	Count
Disparity in responsibilities and workload.	13
Ineffective management.	4
Insufficient number of staff to address section workload.	1
Disparity in compensation, relative to experience.	1
Organizational structure not always followed.	1
Unsure.	1
N/A.	2
<i>provided comment</i>	21
<i>respondent skipped question</i>	11

Question 31. Was the distribution of organizational responsibilities done transparently?		
Answer Options	Count	Percent
Always	5	15.6
Often	6	18.8
Sometimes	5	15.6
Rarely	6	18.8
Never	0	0.0
Unsure	10	31.3
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 32. In what ways were responsibilities not distributed transparently?		
Comments	Count	
Ineffective, insufficient communication.	9	
Ineffective management.	6	
Inequitable distribution of responsibilities.	3	
Inequitable opportunities for development.	1	
Unsure.	2	
N/A.	2	
<i>provided comment</i>		17
<i>respondent skipped question</i>		15

Question 33. Did the distribution of responsibilities affect the Bureau's ability to <u>operate efficiently and effectively</u>?		
Answer Options	Count	Percent
Yes – positive effect	7	21.9
Yes – negative effect	10	31.3
No – no effect	2	6.3
Unsure	13	40.6
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 34. Did the distribution of responsibilities affect the Bureau's ability to <u>achieve its permitting goals and meet related targets</u>?		
Answer Options	Count	Percent
Yes – positive effect	4	12.5
Yes – negative effect	8	25.0
No – no effect	4	12.5
Unsure	16	50.0
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 35. How clearly defined were your job responsibilities? *Your job responsibilities can be found on your supplemental job description, under the “accountabilities” section.*

For staff formerly employed in the Wetlands Bureau, please respond to the best of your knowledge.

Answer Options	Count	Percent
Very clearly defined	19	59.4
Somewhat clearly defined	8	25.0
Not clearly defined	4	12.5
Unsure	1	3.1

respondent answered question **32**
respondent skipped question **0**

Question 36. What about your responsibilities was less than very clearly defined? *Please provide a summary.*

Comments	Count
SJD not substantially reflective of work performed.	4
SJD not specific enough.	4
SJD not inclusive of additional assigned duties unrelated to responsibilities.	3
SJD not updated timely to reflect changes in responsibility.	3
N/A.	1

provided comment **12**
respondent skipped question **20**

Question 37. How reflective was your supplemental job description of all of your job responsibilities? *Your job responsibilities can be found on your supplemental job description, under the “accountabilities” section. While some supplemental job descriptions may include the phrase “and all other duties as assigned” (or similar wording), please consider only those accountabilities specifically listed out in your supplemental job description when responding.*

For staff formerly employed in the Wetlands Bureau, please respond to the best of your knowledge.

Answer Options	Count	Percent
Fully reflective	12	37.5
Mostly reflective	8	25.0
Somewhat reflective	7	21.9
Slightly reflective	2	6.3
Not at all reflective	1	3.1
Unsure	2	6.3

respondent answered question **32**
respondent skipped question **0**

Question 38. How did your responsibilities differ in practice from those listed on your supplemental job description? Differences may include additional responsibilities you undertook, or responsibilities that you did not perform due to the nature of your job. Please provide a summary.

Comments	Count
Additional responsibilities than listed on my SJD.	9
Substantially different responsibilities than listed on my SJD.	4
Fewer responsibilities than listed on my SJD.	2
Responsibilities listed on SJD do not fill a workday.	1
Do not feel qualified to perform all responsibilities listed on my SJD.	1
Unsure.	1
N/A.	2
<i>provided comment</i>	20
<i>respondent skipped question</i>	12

Question 39. How frequently did you receive clear and consistent direction from Bureau management on your overall job responsibilities or specific tasks you were responsible for completing?

Answer Options	Count	Percent
Always	3	10.0
Often	11	36.7
Sometimes	8	26.7
Rarely	6	20.0
Never	0	0.0
Unsure	2	6.7
<i>respondent answered question</i>	30	
<i>respondent skipped question</i>	2	

Question 40. How clear were expectations of your job performance, including the outcomes you were expected to achieve?

Answer Options	Count	Percent
Very clear	13	40.6
Somewhat clear	14	43.8
Not clear	4	12.5
Unsure	1	3.1
<i>respondent answered question</i>	32	
<i>respondent skipped question</i>	0	

Question 41. Did expectations of your job performance set realistic standards?		
Answer Options	Count	Percent
Always	8	25.0
Often	11	34.4
Sometimes	9	28.1
Rarely	1	3.1
Never	0	0.0
Unsure	3	9.4
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 42. To what extent were expectations of your job performance aligned with goals and targets established for the Wetlands Bureau, LRM programs, the Water Division, and the DES?		
Answer Options	Count	Percent
Fully aligned	7	21.9
Mostly aligned	11	34.4
Somewhat aligned	0	0.0
Slightly aligned	3	9.4
Not at all aligned	0	0.0
Unsure	11	34.4
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 43. Were expectations of your job performance clear and measurable?		
Answer Options	Count	Percent
Yes – clear	8	25.0
Yes – measurable	1	3.1
Yes – both clear and measurable	10	31.2
No – neither clear nor measurable	5	15.6
Unsure	8	25.0
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 44. Was your job performance measured?		
Answer Options	Count	Percent
Yes	19	59.4
No	3	9.4
Unsure	10	31.2
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 45. In practice, how similar were your job responsibilities to those of other staff in your section?		
Answer Options	Count	Percent
Identical or mostly similar	8	26.7
Somewhat similar	13	43.3
Not at all similar	6	20.0
Unsure	2	6.7
Not applicable – no other staff in my section	1	3.3
	respondent answered question	30
	respondent skipped question	2

Question 46. How reflective were your minimum job qualifications of the skills and abilities you used to be successful at your job? <i>Your minimum job qualifications can be found on your supplemental job description.</i>		
<i>For staff formerly employed in the Wetlands Bureau, please respond to the best of your knowledge.</i>		
Answer Options	Count	Percent
Fully reflective	14	43.8
Mostly reflective	9	28.1
Somewhat reflective	6	18.8
Slightly reflective	1	3.1
Not at all reflective	0	0.0
Unsure	2	6.3
	respondent answered question	32
	respondent skipped question	0

Question 47. For what reasons were your minimum job qualifications less than fully reflective of the skills and abilities you used to be successful at your job?		
Comments	Count	
Not reflective of expertise or education needed to perform key responsibilities.	6	
Omitted people management, diplomacy skills.	5	
Omitted oral communication, presentation skills.	2	
Omitted IT knowledge and skills.	1	
Omitted management skills.	1	
Not reflective of expertise needed to assist with others' responsibilities when required due to staff absences.	1	
Received "on the job" training.	1	
Not reflective of actual responsibilities performed.	1	
N/A.	3	
Unsure.	2	
	provided comment	18
	respondent skipped question	14

Question 48. How clear and understandable were the Bureau's existing rules?		
Answer Options	Count	Percent
Very clear and understandable	3	9.4
Somewhat clear and understandable	20	62.5
Not clear and understandable	4	12.5
Unsure	5	15.6
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 49. Which Wetlands Bureau rules were less than very clear and understandable?		
Comments	Count	
Stream crossing rules (Env-Wt 900s).	11	
All wetland and shoreland rules.	4	
Project classification rules (Env-Wt 300s).	3	
Various wetland and shoreland rules.	2	
Insufficient guidance.	2	
<i>Wetlands and Shoreland</i> statutes.	1	
Prime wetland rules.	1	
Bank.	1	
Need.	1	
Mitigation.	1	
Definitions.	1	
Which type of application to use.	1	
Key terms allow for differences in interpretation.	1	
Being clarified through revisions to wetland rules.	1	
Blanket requirement to "comply" with a manual.	1	
Rules re-adopted in 2013 were a draft of the previously approved set.	1	
N/A.	1	
Unsure.	2	
<i>provided comment</i>		24
<i>respondent skipped question</i>		8

Question 50. Were Bureau-wide interpretations of existing rules formalized and circulated among staff?		
Answer Options	Count	Percent
Always	2	6.3
Often	1	3.1
Sometimes	12	37.5
Rarely	7	21.9
Never	4	12.5
Unsure	6	18.8
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 51. Did you spend time developing or contributing to the development of the proposed draft rules?		
Answer Options	Count	Percent
Yes	14	43.8
No	18	56.3
Unsure	0	0.0
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 52. Would the proposed draft rules have affected the clarity of permit application requirements? Consider the ability of applicants or their agents to understand requirements in selecting your response.		
Answer Options	Count	Percent
No – no change in clarity	2	6.3
Yes – increased clarity	5	15.6
Yes – decreased clarity	11	34.4
Unsure	14	43.8
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 53. Would the proposed draft rules have affected the simplicity of permit application requirements? Consider the ability of applicants or their agents to understand requirements in selecting your response.		
Answer Options	Count	Percent
No – no change in simplicity	7	21.9
Yes – increased simplicity	2	6.3
Yes – decreased simplicity	8	25.0
Unsure	15	46.9
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 54. How clear and understandable were Wetlands Bureau policies and standard operating procedures?		
Answer Options	Count	Percent
Very clear and understandable	4	12.5
Somewhat clear and understandable	16	50.0
Not clear and understandable	5	15.6
Unsure	7	21.9
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 55. Which Wetlands Bureau policies or standard operating procedures were less than very clear and understandable?	
Comments	Count
Difficulty locating SOPs, not well communicated.	9
Often no standard operating procedures or unwritten policies.	4
Standard operating procedures not always followed.	4
Standard operating procedures or needed changes not always developed timely.	3
Standard operating procedures that changed on a case-by-case basis.	3
Telecommuting/inclement weather policies.	2
Frequent changes to standard operating procedures.	1
Standard operating procedures are not always comprehensive.	1
Forestry standard operating procedures.	1
Document retention policy.	1
Env-Wt 404.	1
Discussing proposed changes to wetland policy among the wetland policy team.	1
We had a database switch not long ago and all the SOP's should have been and would have had to have been updated.	1
The public doesn't understand any of them.	1
Mitigation requirements for certain projects.	1
Pulling certain files for priority review.	1
N/A.	2
Unsure.	6
<i>provided comment</i>	28
<i>respondent skipped question</i>	4

Question 56. Were you able to follow Wetlands Bureau policies and standard operating procedures, without additional training or guidance from supervisors or other staff?		
Answer Options	Count	Percent
Always	1	3.2
Often	10	32.3
Sometimes	7	22.6
Rarely	2	6.5
Never	4	12.9
Unsure	7	22.6
<i>respondent answered question</i>	31	
<i>respondent skipped question</i>	1	

Question 57. Was it clear to you when <u>new</u> policies and standard operating procedures were issued or when <u>existing</u> policies and standard operating procedures were changed?		
Answer Options	Count	Percent
Yes	7	22.6
No	16	51.6
Unsure	8	25.8
<i>respondent answered question</i>		31
<i>respondent skipped question</i>		1

Question 58. When statute or rules changed, were related policies and standard operating procedures updated?		
Answer Options	Count	Percent
Yes – verbally	2	6.3
Yes – in writing	1	3.1
Yes – both verbally and in writing	3	9.4
No – neither verbally nor in writing	6	18.8
Unsure	20	62.5
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 59. How <u>timely</u> were related policies and standard operating procedures updated when statute or rules changed?		
Answer Options	Count	Percent
Very timely	3	50.0
Somewhat timely	2	33.3
Not timely	1	16.7
Unsure	0	0.0
<i>respondent answered question</i>		6
<i>respondent skipped question</i>		26

Question 60. Was there a <u>formal</u> code of ethics or standards of conduct?		
Answer Options	Count	Percent
Yes – the DES published a code or standards	17	53.1
Yes – the Bureau published a code or standards	0	0.0
Yes – both the DES and the Bureau published a code or standards	1	3.1
No – neither the DES nor the Bureau published a code or standards	3	9.4
Unsure	11	34.4
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 61. How clear and easily understandable were applicable standards of conduct?		
Answer Options	Count	Percent
Very clear and understandable	11	34.4
Somewhat clear and understandable	6	18.8
Not clear and understandable	2	6.3
Not applicable – no formal or informal standards of conduct	3	9.4
Unsure	10	31.3
	<i>respondent answered question</i>	32
	<i>respondent skipped question</i>	0

Question 62. For what reasons were Bureau standards of conduct less than very clear and understandable?		
Comments	Count	
Unaware of Bureau standards.	7	
Communication issues.	4	
Management issues.	2	
With or without a Code of Conduct, it is incumbent for an employee, whether in the private or public sector, to be courteous, helpful and professional with everyone.	1	
Unsure.	3	
N/A.	2	
	<i>provided comment</i>	18
	<i>respondent skipped question</i>	14

Question 63. Did you receive training or guidance on adhering to standards of conduct?		
Answer Options	Count	Percent
Yes	17	58.6
No	12	41.4
	<i>respondent answered question</i>	29
	<i>respondent skipped question</i>	3

Question 64. Was compliance with standards of conduct a Bureau priority?		
Answer Options	Count	Percent
Always	8	27.6
Often	4	13.8
Sometimes	5	17.2
Rarely	0	0.0
Never	1	3.4
Unsure	11	37.9
	<i>respondent answered question</i>	29
	<i>respondent skipped question</i>	3

Question 65. Was compliance with standards of conduct tracked by Bureau management or supervisors?		
Answer Options	Count	Percent
Yes	5	17.2
No	5	17.2
Unsure	19	65.5
<i>respondent answered question</i>		29
<i>respondent skipped question</i>		3

Question 66. Did Bureau management take timely and consistent action to address deviations from standards of conduct?		
Answer Options	Count	Percent
Always	3	10.3
Often	0	0.0
Sometimes	5	17.2
Rarely	1	3.4
Never	2	6.9
Unsure	15	51.7
Not applicable – no deviations occurred	3	10.3
<i>respondent answered question</i>		29
<i>respondent skipped question</i>		3

Question 67. Did you ever observe a breach of the code of ethics or standards of conduct by a Bureau employee that was not addressed by Bureau or Division management?		
Answer Options	Count	Percent
Yes	5	19.2
No	10	38.5
Unsure	11	42.3
<i>respondent answered question</i>		26
<i>respondent skipped question</i>		6

Question 68. Did you participate in the LRM cross-training sessions?		
Answer Options	Count	Percent
Yes	20	62.5
No	12	37.5
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 69. Did the cross-training sessions provide adequate information needed to perform your job responsibilities, regardless of the types of permits you were reviewing?		
Answer Options	Count	Percent
Yes	13	65.0
No	4	20.0
Unsure	3	15.0
<i>respondent answered question</i>		20
<i>respondent skipped question</i>		12

Question 70. In what areas did cross-training sessions not provide adequate information needed to perform your job responsibilities?		
Comments	Count	
Detailed understanding of technical concepts.	2	
In-depth review of law, rules.	2	
Standards for Subsurface, wetlands stream crossings.	1	
No database entry training.	1	
Information not relatable to job responsibilities.	1	
Not very helpful.	1	
N/A.	1	
<i>provided comment</i>		7
<i>respondent skipped question</i>		25

Question 71. Overall, what was your level of satisfaction with the cross-training sessions?		
Answer Options	Count	Percent
Satisfied	9	45.0
Neither satisfied nor dissatisfied	7	35.0
Dissatisfied	4	20.0
Unsure	0	0.0
<i>respondent answered question</i>		20
<i>respondent skipped question</i>		12

Question 72. To what extent did you learn new information <u>related to performing your job</u> as a result of the cross-training sessions?		
Answer Options	Count	Percent
All information was new	0	0.0
Most information was new	1	5.0
Some information was new	15	75.0
Little information was new	3	15.0
No information was new	1	5.0
<i>respondent answered question</i>		20
<i>respondent skipped question</i>		12

Question 73. Did you feel able to incorporate all new information <u>related to performing your job</u> into your daily routine, without additional training or guidance from supervisors or other staff?		
Answer Options	Count	Percent
Yes	10	52.6
No	6	31.6
Unsure	3	15.8
<i>respondent answered question</i>		19
<i>respondent skipped question</i>		13

Question 74. For what reasons did you not feel able to incorporate new information <u>related to performing your job</u> into your routine, without additional training or guidance from supervisors or other staff?		
Comments	Count	
Cross-training is only an initial step.	2	
Lack of clarity with rules, their interpretation, or their application.	1	
No substitute for actual permitting experience.	1	
I was looking for guidance in order to achieve consistency.	1	
Unsure.	1	
N/A.	1	
<i>provided comment</i>		6
<i>respondent skipped question</i>		26

Question 75. Did you modify or change the way you performed your job as a result of the information obtained through cross-training sessions?		
Answer Options	Count	Percent
Yes	8	40.0
No	11	55.0
Unsure	1	5.0
<i>respondent answered question</i>		20
<i>respondent skipped question</i>		12

Question 76. For what reasons did you modify or change the way you performed your job as a result of the information obtained through cross-training sessions?		
Comments	Count	
Already performing cross-program actions.	2	
Applied new aspects of other programs to project review for consideration.	2	
Better understanding of how others do their job and how that relates to my job.	1	
Better understanding of GIS-related data.	1	
Better trained in conducting field inspections.	1	
Comply with information learned in cross training.	1	
Process coordination, rules interpretation, and increased confidence.	1	
<i>provided comment</i>		9
<i>respondent skipped question</i>		23

Question 77. Overall, did cross-training sessions affect the Bureau's ability to achieve its permitting goals and targets?		
Answer Options	Count	Percent
Yes – cross-training sessions had a positive effect	9	45.0
Yes – cross-training sessions had a negative effect	1	5.0
No – cross-training sessions had no effect	4	20.0
Unsure	6	30.0
	<i>respondent answered question</i>	20
	<i>respondent skipped question</i>	12

Question 78. To what extent did cross-training sessions affect the Bureau's ability to achieve its permitting goals and targets?		
Answer Options	Count	Percent
Large effect	1	10.0
Moderate effect	4	40.0
Small effect	3	30.0
Unsure	2	20.0
	<i>respondent answered question</i>	10
	<i>respondent skipped question</i>	22

Question 79. Did cross-training sessions affect the Wetlands Bureau's flexibility in balancing resource needs?		
Answer Options	Count	Percent
Yes – cross-training sessions had a positive effect	4	20.0
Yes – cross-training sessions had a negative effect	0	0.0
No – cross-training sessions had no effect	8	40.0
Unsure	8	40.0
	<i>respondent answered question</i>	20
	<i>respondent skipped question</i>	12

Question 80. How frequently did you receive training following updates or changes to statute, rules, or policies and procedures?		
Answer Options	Count	Percent
Always	3	9.4
Often	1	3.1
Sometimes	6	18.8
Rarely	9	28.1
Never	8	25.0
Unsure	5	15.6
	<i>respondent answered question</i>	32
	<i>respondent skipped question</i>	0

Question 81. The DES established <u>high-quality customer service</u> as a strategic objective. Did the Wetlands Bureau or the DES define what it meant for staff to provide high-quality customer service?		
Answer Options	Count	Percent
Yes – the DES defined high-quality customer service	11	34.4
Yes – the Bureau defined high-quality customer service	3	9.4
Yes – both the DES and the Bureau defined high-quality customer service	4	12.5
No – neither the DES nor the Bureau defined high-quality customer service	6	18.8
Unsure	8	25.0
	respondent answered question	32
	respondent skipped question	0

Question 82. How was <u>high-quality customer service</u> defined?	
Comments	Count
Return phone calls or emails in a timely manner.	9
Being responsive to customers, applicants to best of ability.	8
Answering phone calls.	2
DES customer service training.	2
LRM customer surveys.	2
As high-quality customer service.	1
Told customer service is extremely important.	1
Through ‘effective customer service training.	1
To meet or exceed permit deadlines.	1
By example.	1
Setting out-of-office messages with alternative contacts and a return date.	1
Positive comments on performance; no complaints of inaccuracy, inconsistency.	1
Through the mission statement.	1
Unsure.	1
	provided comment
	18
	respondent skipped question
	14

Question 83. How clear and understandable were Bureau policies and procedures related to customer service?		
Answer Options	Count	Percent
Very clear and understandable	14	43.8
Somewhat clear and understandable	13	40.6
Not clear or understandable	5	15.6
	respondent answered question	32
	respondent skipped question	0

Question 84. Which Wetlands Bureau policies and procedures related to customer service were less than very clear and understandable?	
Comments	Count
Inspector of the day policies, procedures.	7
No formal policies, unaware of policies, policies generally unclear.	6
Customer service policy.	1
Communication team policy.	1
Walk-in customer policy.	1
Responding to customers within 24 hours does not equal good customer service.	1
A wide range of what's tolerated and acceptable regarding customer service.	1
Policies and procedures don't work when the workload is too heavy.	1
Management does not effectively address failings with policies and procedures.	1
Bureau reviewers receiving phone calls about other LRM or other Department polices, rules, requirements, etc.	1
Balancing permitting with the contentious and negative view of regulations and/or the Bureau held by many members of the public.	1
Treat all applicants with respect.	1
There is no communication.	1
Need customer service training in addition to that provided by the Department.	1
If abutters and the general public are considered to be our customers, then there is little guidance beyond a directive to return emails and calls within 24 hrs.	1
Permitting sends out a survey with each permit to each applicant.	1
Unsure.	1
N/A.	1

provided comment **18**
respondent skipped question **14**

Question 85. Based on your <u>interactions with the public</u>, was the information available on the DES website related to completing a permit application <u>easy to find</u> for applicants and their agents?		
Answer Options	Count	Percent
Yes	11	34.4
No	14	43.8
Unsure	5	15.6
Not applicable – I did not have interactions with the public	2	6.3

respondent answered question **32**
respondent skipped question **0**

Question 86. Based on your <u>interactions with the public</u>, was the information available on the DES website related to completing a permit application <u>clear and easy to understand</u> for applicants and their agents?		
Answer Options	Count	Percent
Yes	9	30.0
No	14	46.7
Unsure	7	23.3
<i>respondent answered question</i>		30
<i>respondent skipped question</i>		2

Question 87. How appropriate was the amount of outreach the Bureau conducted with stakeholders, including interest groups, related industries, applicant groups, and professional associations?		
Answer Options	Count	Percent
Appropriate – <u>the right amount</u> of outreach	10	31.3
Inappropriate – <u>too little</u> outreach	11	34.4
Inappropriate – <u>too much</u> outreach	0	0.0
Unsure	11	34.4
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 88. Are there any ways in which the Wetlands Bureau’s operations could be made more efficient or effective?		
Answer Options	Count	Percent
No	1	3.1
Yes (please elaborate)	31	96.9
<i>respondent answered question</i>		32
<i>respondent skipped question</i>		0

Question 88. Text Responses, Elaborate:	Count
Increase and improve public outreach and communication, including guidance documents and the website.	12
Increase and improve internal communication.	8
Improve Bureau management and administrator interactions.	7
Additional staff.	7
Improve internal guidance and policies, ensure timely updates.	5
Minimize amount of time reviewers spend on non-permitting activities or ensure sufficient time for non-permitting activities.	4
Upgrade, improve information technology, data management and focus on data.	4
Clarify, simplify statutes and rules.	3
Ensure consistent application of rules, enforce internal policies.	3
Ensure allocation of responsibilities and performance expectations are similar for employees with similar positions.	3

Question 88. Text Responses, Elaborate: (Continued)	
Improve the physical work environment, reduce noise.	2
Increase time spent on supervision to ensure permitting consistency.	1
Hire employees with permitting experience and relevant educational backgrounds.	1
Support career advancement.	1
Develop a strategic plan.	1
Allow employees to work overtime.	1
Smartphones for field staff.	1
Limit time spent on reorganization.	1
Allow employees to do their job and not be questioned by violators.	1
Improve electronic recordkeeping.	1
Too many to describe.	1
Unsure.	3

provided comment **31**
respondent skipped question **1**

Question 89. Would you like us to contact you to further discuss issues or concerns you may have? In lieu of providing work-related contact information, you may provide us with personal contact information (cell phone or personal email address) if you prefer.		
Answer Options	Count	Percent
No	28	87.5
Yes (please provide your name and contact information)	4	12.5

respondent answered question **32**
respondent skipped question **0**

THIS PAGE INTENTIONALLY LEFT BLANK

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**APPENDIX G
SURVEY OF WETLANDS BUREAU PERMITTING-RELATED PRACTICES**

We sent surveys to 32 current and former Wetlands Bureau (Bureau) employees. We received 22 responses for a 68.8 percent response rate. We combined and simplified similar answers to open-ended questions and presented them in topical categories; multipart responses were counted in multiple categories where applicable. Some totals in the following tables may not add up to 100 percent due to rounding or where respondents could respond multiple times to the same question.

Question 1. With which of the following types of permit applications were you involved? (Please select all that apply, regardless of how frequently you were involved.)		
Answer Options	Count	Percent
Shoreland permits	13	59.1
Wetlands permits	15	68.2
Alteration of Terrain permits	4	18.2
Subsurface permits	2	9.1
None of the above	4	18.2
Other (please specify)	2	9.1

respondent answered question **22**
respondent skipped question **0**

Question 1. Text Responses, Other:	Count
Miscellaneous.	1
N/A.	1

provided comment **2**

Question 2. Generally, how clear and understandable were permitting-related Bureau rules?		
Answer Options	Count	Percent
Very clear and understandable	2	11.1
Mostly clear and understandable	7	38.9
Somewhat clear and understandable	8	44.4
Rarely clear and understandable	0	0.0
Unclear and not understandable	0	0.0
Unsure	1	5.6

respondent answered question **18**
respondent skipped question **4**

Question 3. Why?	
Comments	Count
Rules are confusing.	6
Rules are clear.	2
Rules are outdated.	2
Ad hoc rulemaking.	1
Applicants are not familiar with environmental terms and concepts.	1
Bureau employees explain permitting process to applicants.	1
Identify customer needs.	1
Need policies.	1
Poor customer service.	1
Reviewers are inconsistent.	1
Rules are ambiguous.	1
Supplemental materials help applicants.	1
Too many rules.	1
N/A.	2

provided comment **16**
respondent skipped question **6**

Question 4. Generally, how clear and understandable were Bureau permitting-related policies and procedures?		
Answer Options	Count	Percent
Very clear and understandable	5	27.8
Mostly clear and understandable	6	33.3
Somewhat clear and understandable	4	22.2
Rarely clear and understandable	2	11.1
Unclear and not understandable	0	0.0
Unsure	1	5.6

respondent answered question **18**
respondent skipped question **4**

Question 5. Why?	
Comments	Count
Bureau employees were inconsistent.	4
Poor communication.	4
Rules were unclear.	4
Policies were not enforced.	3
Policies were clear.	2
Applicants were not familiar with permitting process.	1
Employees did not document decisions.	1
Policies were unclear.	1

Question 5. Why? (Continued)	
Policies were outdated.	1
Rules and policies were inconsistent.	1
N/A.	1

provided comment **13**
respondent skipped question **9**

Question 6. Were you involved in reviewing permit applications which required pre-application meetings?		
Answer Options	Count	Percent
Yes	15	83.3
No	3	16.7
Unsure	0	0.0

respondent answered question **18**
respondent skipped question **4**

Question 7. Did you attend pre-application meetings?		
Answer Options	Count	Percent
Yes	15	100.0
No	0	0.0

respondent answered question **15**
respondent skipped question **7**

Question 8. Did applicants or their agents appear to receive any of the following from pre-application meetings? Please select all that apply.		
Answer Options	Count	Percent
Improved clarity of Department application-related procedural requirements	15	100.0
Improved clarity of Department technical, project-specific requirements	15	100.0
Improved understanding of project particulars by Department staff	14	93.3
Reduced frequency of request for more information	12	80.0
Improved timeliness of review	11	73.3
Unsure	0	0.0
Other (please specify)	1	6.7

respondent answered question **15**
respondent skipped question **7**

Question 8. Text Responses, Other:	Count
Applicants received necessary documents and information.	1

provided comment **1**

Question 9. How frequently did permit review decisions made later in the permitting process align with Department guidance provided during pre-application meetings?		
Answer Options	Count	Percent
Always	6	40.0
Often	9	60.0
Sometimes	0	0.0
Rarely	0	0.0
Never	0	0.0
Unsure	0	0.0

respondent answered question **15**
respondent skipped question **7**

Question 10. Why?	
Comments	Count
Applicants receive information through pre-application meetings.	4
Applicants change their project after pre-application meetings.	3
Application provided for technical review includes different information than that discussed in the pre-application meeting.	3
New information obtained during technical review.	2
Department cannot conclude on permit application based on pre-application meeting.	1
Pre-application meetings help streamline Department review.	1
Department works with applicants when project impact elevates during technical review.	1
N/A.	1

provided comment **9**
respondent skipped question **13**

Question 11. Did you ever find an administrative completeness determination was inaccurate?		
Answer Options	Count	Percent
Yes	6	33.3
No	7	38.9
Unsure	5	27.8

respondent answered question **18**
respondent skipped question **4**

Question 12. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on <u>determining technical completeness of a permit application</u>?		
Answer Options	Count	Percent
Very clear and easy to apply	3	16.7
Somewhat clear and easy to apply	11	61.1
Not clear and easy to apply	1	5.6
Unsure	3	16.7
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 13. How frequently were Bureau permit application requirements based on something in addition to State statutes or rules (e.g., best management practices, Department-issued guidelines)?		
Answer Options	Count	Percent
Always	1	5.6
Often	3	16.7
Sometimes	4	22.2
Rarely	6	33.3
Never	2	11.1
Unsure	2	11.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 14. Upon which of the following were your decisions on application technical completeness based? (Please select all that apply.)		
Answer Options	Count	Percent
Statutes	15	83.3
Rules	16	88.9
Application instructions or checklists	10	55.6
Bureau policies	7	38.9
Best management practices	10	55.6
Department guidelines or fact sheets	6	33.3
Professional judgment	9	50.0
Precedence	8	44.4
Other (please specify)	2	11.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 14. Text Responses, Other:	Count
N/A.	2
<i>provided comment</i>	2

Question 15. How clear and understandable were permit application forms and instructions regarding what and how information should be submitted to ensure a technically complete application?		
Answer Options	Count	Percent
Very clear and understandable	5	27.8
Mostly clear and understandable	6	33.3
Somewhat clear and understandable	4	22.2
Rarely clear and understandable	1	5.6
Unclear and not understandable	0	0.0
Unsure	2	11.1

respondent answered question **18**
respondent skipped question **4**

Question 16. Did you evaluate any of the following types of <u>technical documents or information</u>? Please select all that apply, regardless of how frequently you evaluated each type of document.		
Answer Options	Count	Percent
Architectural plans	10	55.6
Engineering plans	16	88.9
Land surveys	14	77.8
Wetland delineations	16	88.9
Wetland functional assessments	13	72.2
None of the above	1	5.6
Other (please specify)	4	22.2

respondent answered question **18**
respondent skipped question **4**

Question 16. Text Responses, Other:	Count
Restoration plans, homeowner plans, river morphology plans, etc.	1
Hydraulic assessments; recorded deeds, plans, and easements; past permitting history; etc.	1
Stream Crossing Designs.	1
N/A.	1

provided comment **4**

Question 17. How frequently did you raise concerns about the accuracy or validity of technical documents or information stamped by a certified or licensed professional?		
Answer Options	Count	Percent
Always	0	0.0
Often	1	5.6
Sometimes	10	55.6
Rarely	4	22.2
Never	1	5.6
Unsure	2	11.1

respondent answered question **18**
respondent skipped question **4**

Question 18. How frequently did you recommend changes that led to changes in the project plan?		
Answer Options	Count	Percent
Always	0	0.0
Often	4	22.2
Sometimes	10	55.6
Rarely	1	5.6
Never	1	5.6
Unsure	2	11.1

respondent answered question **18**
respondent skipped question **4**

Question 19. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to assess the <u>impact on functions and values of wetland resources</u>?		
Answer Options	Count	Percent
Very clear and easy to apply	3	16.7
Somewhat clear and easy to apply	9	50.0
Not clear and easy to apply	3	16.7
Unsure	3	16.7

respondent answered question **18**
respondent skipped question **4**

Question 20. What types of technical documents did you prepare? (Please select all that apply, regardless of how frequently you prepared each type of document.)		
Answer Options	Count	Percent
None	13	72.2
Soil maps	1	5.6
Wetland maps	2	11.1
Wetland delineations	1	5.6
Wetland function and value assessments	1	5.6
Other (please specify)	5	27.8

respondent answered question **18**
respondent skipped question **4**

Question 20. Text Responses, Other:	Count
Wildlife action plan maps, StreamStats drainage maps, etc.	1
Project sketch/plans.	1
Fetch maps to verify exposure to wave action.	1
N/A.	2

provided comment **5**

Question 21. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on <u>coordinating with applicants or their agents during the technical review process?</u>		
Answer Options	Count	Percent
Very clear and easy to apply	9	50.0
Somewhat clear and easy to apply	6	33.3
Not clear and easy to apply	1	5.6
Unsure	2	11.1

respondent answered question **18**
respondent skipped question **4**

Question 22. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on <u>coordinating with other Department programs, such as the Alteration of Terrain, Subsurface, or Watershed Management Bureaus?</u>		
Answer Options	Count	Percent
Very clear and easy to apply	9	50.0
Somewhat clear and easy to apply	7	38.9
Not clear and easy to apply	2	11.1

respondent answered question **18**
respondent skipped question **4**

Question 23. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on coordinating with other State agencies, such as the Fish and Game Department or the Natural Heritage Bureau?

Answer Options	Count	Percent
Very clear and easy to apply	11	61.1
Somewhat clear and easy to apply	7	38.9
Not clear and easy to apply	0	0.0
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 24. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on coordinating with federal agencies, such as the U.S. Army Corps of Engineers or the U.S. Environmental Protection Agency?

Answer Options	Count	Percent
Very clear and easy to apply	11	61.1
Somewhat clear and easy to apply	6	33.3
Not clear and easy to apply	1	5.6
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 25. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to assess whether mitigation requirements were met?

Answer Options	Count	Percent
Very clear and easy to apply	7	38.9
Somewhat clear and easy to apply	5	27.8
Not clear and easy to apply	3	16.7
Unsure	3	16.7
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 26. For projects requiring mitigation, how frequently did you design mitigation plans or recommend improvements or changes to mitigation plans in an application?

Answer Options	Count	Percent
Always	0	0.0
Often	1	5.6
Sometimes	5	27.8
Rarely	4	22.2
Never	4	22.2
Unsure	4	22.2
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 27. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on <u>how and when to send out requests for more information?</u>		
Answer Options	Count	Percent
Very clear and easy to apply	8	44.4
Somewhat clear and easy to apply	8	44.4
Not clear and easy to apply	0	0.0
Unsure	2	11.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 28. By what means did you send requests for more information to applicants or their agents?		
Answer Options	Count	Percent
Informal requests via email or phone	0	0.0
Formal requests via letter	3	16.7
Both informal and formal requests	13	72.2
Unsure	2	11.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 29. On average, by project classification, how many requests for more information, including both formal and informal requests, did you send to applicants or their agents?							
Answer Options	None	One	Two	Three to five	Six or more	N/A	Response Count
Major	0 (0.0%)	5 (27.8%)	2 (11.1%)	5 (27.8%)	2 (11.1%)	4 (22.2%)	18
Minor	0 (0.0%)	7 (38.9%)	0 (0.0%)	2 (11.1%)	4 (22.2%)	5 (27.8%)	18
Minimum	0 (0.0%)	6 (33.3%)	1 (5.6%)	2 (11.1%)	4 (22.2%)	5 (27.8%)	18
MIE	0 (0.0%)	6 (33.3%)	1 (5.6%)	3 (16.7%)	3 (16.7%)	5 (27.8%)	18
PBN	3 (16.7%)	6 (33.3%)	2 (11.1%)	1 (5.6%)	1 (5.6%)	5 (27.8%)	18
Notifications	2 (11.1%)	3 (16.7%)	1 (5.6%)	1 (5.6%)	2 (11.1%)	9 (50.0%)	18
Shoreland	5 (27.8%)	4 (22.2%)	2 (11.1%)	0 (0.0%)	0 (0.0%)	7 (38.9%)	18
Shoreland PBN	5 (27.8%)	3 (16.7%)	1 (5.6%)	0 (0.0%)	0 (0.0%)	9 (50.0%)	18
<i>respondent answered question</i>							18
<i>respondent skipped question</i>							4

Question 30. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on <u>how to review and process</u> responses to requests for more information?		
Answer Options	Count	Percent
Very clear and easy to apply	9	50.0
Somewhat clear and easy to apply	7	38.9
Not clear and easy to apply	0	0.0
Unsure	2	11.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 31. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on whether to approve an extension of the time provided to respond to a request for more information by an applicant?		
Answer Options	Count	Percent
Very clear and easy to apply	12	66.7
Somewhat clear and easy to apply	2	11.1
Not clear and easy to apply	1	5.6
Unsure	3	16.7
Other (please specify)	0	0.0
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 32. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures when determining the duration of an extension to the time provided to respond to a request for more information for an applicant?		
Answer Options	Count	Percent
Very clear and easy to apply	9	50.0
Somewhat clear and easy to apply	2	11.1
Not clear and easy to apply	3	16.7
Unsure	4	22.2
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 33. How often did you use the <i>Time Extension Agreement</i> form to document extensions given to the applicant?		
Answer Options	Count	Percent
Always	3	16.7
Often	3	16.7
Sometimes	4	22.2
Rarely	1	5.6
Never	5	27.8
Unsure	2	11.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 34. How clear and understandable was policy and procedure on reclassifying a proposed project (e.g., reclassifying a project from minimum impact to a minor project)?		
Answer Options	Count	Percent
Very clear and understandable	8	44.4
Somewhat clear and understandable	4	22.2
Not clear and understandable	0	0.0
Not applicable – no policies or procedures	3	16.7
Unsure	3	16.7
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 35. Was clear guidance provided by State statutes, rules, and Bureau policies and procedures on how to assess whether the <u>need for the proposed impact</u> was demonstrated by the application?		
Answer Options	Count	Percent
Yes	6	33.3
No	4	22.2
Unsure	8	44.4
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 36. How was “need” defined in this context?	
Comments	Count
The need to impact a wetland.	6
Minimize impact to wetlands.	4
“Need” does not mean “want.”	4
Applicant must justify impacts to wetlands.	3
Unclear/there is no definition.	3
The public need for the project.	2
Defining need is difficult for certain projects.	1

Question 36. How was “need” defined in this context? (Continued)	
Inability to avoid impact to the wetland.	1
The landowner need for the project.	1
Where a project is allowed within a certain area according to statute and rules.	1
N/A.	5
<i>provided comment</i>	18
<i>respondent skipped question</i>	4

Question 37. Was clear guidance provided by State statutes, rules, Bureau policies and procedures on how to assess whether the application demonstrated potential impacts were avoided to the maximum extent practicable?		
Answer Options	Count	Percent
Yes	10	55.6
No	2	11.1
Unsure	6	33.3
<i>respondent answered question</i>	18	
<i>respondent skipped question</i>	4	

Question 38. How was “maximum extent practicable” defined in this context?	
Comments	Count
To reduce/minimize impacts to wetlands.	8
To balance costs to applicant while minimizing impact to wetlands.	3
The definition is in/based on rule.	2
There is no definition.	2
Employees need more guidance about how to define maximum extent practicable.	1
Technically possible.	1
To balance public safety concerns while minimizing impact to wetlands.	1
The project can “pass the straight face test.”	1
Using science and techniques.	1
N/A.	4
<i>provided comment</i>	18
<i>respondent skipped question</i>	4

Question 39. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to assess whether <u>minimization requirements</u> were sufficiently met?		
Answer Options	Count	Percent
Very clear and easy to apply	5	27.8
Somewhat clear and easy to apply	10	55.6
Not clear and easy to apply	1	5.6
Unsure	2	11.1
<i>respondent answered question</i>	18	
<i>respondent skipped question</i>	4	

Question 40. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to <u>assess the alternative proposed is the one with the least impact to wetlands or surface waters?</u>		
Answer Options	Count	Percent
Very clear and easy to apply	6	33.3
Somewhat clear and easy to apply	8	44.4
Not clear and easy to apply	1	5.6
Unsure	3	16.7
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 41. Were clear decision criteria developed by the Bureau or the Department to be used when considering the public good or interest?		
Answer Options	Count	Percent
Yes	3	16.7
No	4	22.2
Unsure	11	61.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 42. How was “public good” defined in this context?		
Comments	Count	
Will the project benefit the public?	4	
The project will have no adverse impact beyond permitted activity.	2	
Will the project affect public safety?	2	
It depends.	1	
Mostly used in reviewing public projects.	1	
Project should protect public waters.	1	
Public good is defined in statute.	1	
There is no definition.	1	
Will the project adversely impact the public?	1	
Will the project have environmental benefits?	1	
Unsure.	3	
N/A.	4	
<i>provided comment</i>		18
<i>respondent skipped question</i>		4

Question 43. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to conduct an environmental impact assessment?

Answer Options	Count	Percent
Very clear and easy to apply	4	22.2
Somewhat clear and easy to apply	2	11.1
Not clear and easy to apply	4	22.2
Unsure	8	44.4

respondent answered question **18**

respondent skipped question **4**

Question 44. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to assess cumulative and indirect impacts?

Answer Options	Count	Percent
Very clear and easy to apply	4	22.2
Somewhat clear and easy to apply	5	27.8
Not clear and easy to apply	3	16.7
Unsure	6	33.3

respondent answered question **18**

respondent skipped question **4**

Question 45. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to ensure project designs protected water quality?

Answer Options	Count	Percent
Very clear and easy to apply	7	38.9
Somewhat clear and easy to apply	8	44.4
Not clear and easy to apply	0	0.0
Unsure	3	16.7

respondent answered question **18**

respondent skipped question **4**

Question 46. Were clear decision criteria developed by the Bureau or the Department on assessing impacts to water quality?

Answer Options	Count	Percent
Yes	10	55.6
No	2	11.1
Unsure	6	33.3

respondent answered question **18**

respondent skipped question **4**

Question 47. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to assess the adequacy of an applicant's responses to the "20 Questions"?		
Answer Options	Count	Percent
Very clear and easy to apply	3	16.7
Somewhat clear and easy to apply	6	33.3
Not clear and easy to apply	4	22.2
Unsure	5	27.8
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 48. Why?		
Comments	Count	
Applicants inconsistently address 20 Questions.	5	
The 20 Questions are subjective.	4	
Rules are unclear regarding the 20 Questions.	2	
The interpretation of the 20 Questions depends on the project.	2	
Policy is unclear regarding the 20 Questions.	2	
Employees are insufficiently trained regarding interpretation of 20 Questions.	1	
Unsure.	1	
N/A.	3	
<i>provided comment</i>		15
<i>respondent skipped question</i>		7

Question 49. Upon which of the following were your permitting decisions based? (Please select all that apply.)		
Answer Options	Count	Percent
Statutes	16	88.9
Rules	16	88.9
Bureau policies	9	50.0
Best management practices	11	61.1
Department fact sheets	4	22.2
Professional judgment	10	55.6
Precedence	9	50.0
Supervisor or Bureau administration guidance	9	50.0
Other (please specify)	3	16.7
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 49. Text Responses, Other:	Count	
Peer Review.	1	
N/A.	2	
<i>provided comment</i>		3

Question 50. In deciding to approve or deny a permit application, did you have clear criteria to use when balancing economic factors and environmental quality?		
Answer Options	Count	Percent
Yes	4	22.2
No	8	44.4
Unsure	6	33.3
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 51. In deciding to approve or deny a permit application, did you have clear criteria to use when determining whether a practicable alternative with less adverse impact existed?		
Answer Options	Count	Percent
Yes	8	44.4
No	2	11.1
Unsure	8	44.4
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 52. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to select appropriate conditions for particular project-types?		
Answer Options	Count	Percent
Very clear and easy to apply	9	50.0
Somewhat clear and easy to apply	6	33.3
Not clear and easy to apply	1	5.6
Unsure	2	11.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 53. How clear and easy to apply was guidance provided by State statutes, rules, and Bureau policies and procedures on how to write findings?		
Answer Options	Count	Percent
Very clear and easy to apply	9	50.0
Somewhat clear and easy to apply	7	38.9
Not clear and easy to apply	0	0.0
Unsure	2	11.1
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 54. How clear and understandable were Bureau policies and procedures related to <u>instances when you might not sign a permit approval</u> and instead transfer it to a supervisor or manager for approval?		
Answer Options	Count	Percent
Very clear and understandable	5	27.8
Somewhat clear and understandable	4	22.2
Not clear and understandable	2	11.1
Not applicable – no policies or procedures	2	11.1
Unsure	5	27.8
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 55. Were you ever pressured to make a permitting decision you believed was contrary to State statutes or rule?		
Answer Options	Count	Percent
Yes	4	22.2
No	9	50.0
Unsure	5	27.8
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 56. For what reasons did you feel pressured to make a permitting decision contrary to State statutes or rule?		
Comments	Count	
Political pressure.	3	
Management involvement.	2	
Lack of a policy.	1	
The Bureau gives in to political pressure.	1	
The Department focuses on providing services rather than protecting the environment.	1	
Unclear rules.	1	
<i>provided comment</i>		4
<i>respondent skipped question</i>		18

Question 57. How frequently did you modify the substance of a permit <u>after</u> approval, without going through a formal amendment process?		
Answer Options	Count	Percent
Always	0	0.0
Often	0	0.0
Sometimes	0	0.0
Rarely	0	0.0
Never	13	72.2
Unsure	5	27.8
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 58. How clear and understandable were Bureau peer review policies and procedures?		
Answer Options	Count	Percent
Very clear and understandable	11	61.1
Somewhat clear and understandable	6	33.3
Not clear and understandable	1	5.6
Not applicable – no policies or procedures	0	0.0
	respondent answered question	18
	respondent skipped question	4

Question 59. How frequently did you follow peer review policies and procedures?		
Answer Options	Count	Percent
Always	14	77.8
Often	1	5.6
Sometimes	0	0.0
Rarely	0	0.0
Never	0	0.0
Unsure	3	16.7
	respondent answered question	18
	respondent skipped question	4

Question 60. Why?	
Comments	Count
I do not know the peer review procedure.	1
Peer review is used to ensure consistency of permit reviews.	1
N/A.	2
	provided comment
	4
	respondent skipped question
	18

Question 61. How adequate was the level of expertise and review provided by <u>section supervisors</u> during peer review?		
Answer Options	Count	Percent
Adequate	13	72.2
Neither adequate nor inadequate	2	11.1
Inadequate	1	5.6
Unsure	2	11.1
Not applicable	0	0.0
	respondent answered question	18
	respondent skipped question	4

Question 62. How adequate was the level of expertise and review provided by <u>Bureau administrators</u> during peer review?		
Answer Options	Count	Percent
Adequate	6	33.3
Neither adequate nor inadequate	1	5.6
Inadequate	2	11.1
Unsure	3	16.7
Not applicable	6	33.3
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 63. Was compliance with peer review policies and procedures a Bureau priority?		
Answer Options	Count	Percent
Yes	8	44.4
No	2	11.1
Unsure	8	44.4
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 64. Was compliance with peer review policies and procedures tracked by Bureau administrators or supervisors?		
Answer Options	Count	Percent
Yes	2	11.1
No	3	16.7
Unsure	13	72.2
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 65. How <u>timely</u> were Bureau permitting processes?		
Answer Options	Count	Percent
Always timely	11	61.1
Often timely	4	22.2
Sometimes timely	0	0.0
Rarely timely	0	0.0
Never timely	0	0.0
Unsure	3	16.7
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 66. Why?	
Comments	Count
Bureau employees are aware of timeliness requirements and track timeliness.	1
Bureau employees have to balance timeliness with the need to obtain necessary information from the applicant.	1
Bureau timeliness was dependent on actions by external groups like town approval, Fish and Game Department/Natural Heritage Bureau review, and Local Advisory Committee review.	1
Bureau employee turnover adversely impacted timeliness.	1
Emergency authorizations delayed reviews for other applications.	1
Enforcement actions are exempted from timeliness requirements.	1
Poor quality applications increased review times.	1
N/A.	2
<i>provided comment</i>	7
<i>respondent skipped question</i>	15

Question 67. How often did a statutory deadline get extended <u>by request of the Department</u> with the concurrence of the applicant?		
Answer Options	Count	Percent
Always	0	0.0
Often	0	0.0
Sometimes	5	27.8
Rarely	6	33.3
Never	3	16.7
Unsure	4	22.2
<i>respondent answered question</i>	18	
<i>respondent skipped question</i>	4	

Question 68. How frequently did permit applications that received expedited review (<u>NOT</u> minimum impact expedited projects or MIEs) conform with the Department's policy on expedited permit application requests?		
Answer Options	Count	Percent
Always	6	33.3
Often	1	5.6
Sometimes	0	0.0
Rarely	0	0.0
Never	0	0.0
Unsure	11	61.1
<i>respondent answered question</i>	18	
<i>respondent skipped question</i>	4	

Question 69. Why?	
Comments	Count
The Commissioner's Office and management were involved with certain expedited applications.	2
Unsure.	4
N/A.	6
	provided comment 12
	respondent skipped question 10

Question 70. Across the Bureau, how <u>consistent</u> were permit decisions and permit conditions for similar types of projects? (i.e., did similar applications result in similar outcomes)		
Answer Options	Count	Percent
Always consistent	6	33.3
Often consistent	6	33.3
Sometimes consistent	2	11.1
Rarely consistent	0	0.0
Never consistent	0	0.0
Unsure	4	22.2
	respondent answered question 18	
	respondent skipped question 4	

Question 71. Why?	
Comments	Count
Bureau employees strive for consistency.	3
Bureau permit decisions and conditions are not consistent.	2
The Bureau cannot achieve 100 percent consistency.	2
Bureau employees receive no formal training on permit consistency.	1
Bureau employees use standard permit conditions.	1
Bureau rules guide permit reviews.	1
Each application entails a different project.	1
Political influence affects consistency of permit decisions.	1
Poor communication to Bureau employees.	1
There is no employee peer review.	1
N/A.	1
	provided comment 12
	respondent skipped question 10

Question 72. Were any policies and procedures established related to staff recusals from permit application reviews?		
Answer Options	Count	Percent
Yes - formally	3	16.7
Yes - informally	6	33.3
Yes – both formally and informally	2	11.1
No – neither formally nor informally	2	11.1
Unsure	5	27.8
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 73. Were policies and procedures related to staff recusals from permit application reviews clear and easily understandable?		
Answer Options	Count	Percent
Very clear and understandable	5	45.5
Somewhat clear and understandable	4	36.4
Not clear and understandable	2	18.2
<i>respondent answered question</i>		11
<i>respondent skipped question</i>		11

Question 74. Are there any ways in which permit application review processes could be made more efficient or effective?		
Answer Options	Count	Percent
No	1	5.6
Yes (please elaborate)	17	94.4
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 74. Text Responses, Elaborate:	Count
Change to electronic permit review.	3
Improve external communication.	3
Improve application forms.	2
Improve clarity of rules.	2
Provide more peer review.	2
Allow employees to send multiple requests for more information.	1
Applicants submit incomplete applications.	1
Change permit review procedures.	1
Combine different permit types into one permit.	1
External groups should not influence permit decisions.	1
Formalize permit review checklists.	1
Hire more permit reviewers.	1
Improve clarity of policies.	1
Improve clarity of statute.	1
Improve employee training.	1

Question 74. Text Responses, Elaborate: (Continued)	
Improve internal communication.	1
Management does not have the political will to improve rules.	1
Reduce interruptions of Bureau employees.	1
Remove political influence.	1
Review database entries for permit reviews.	1
The Bureau can always improve.	1
N/A.	1
<i>provided comment</i> 17	

Question 75. We will be contacting staff who would like to discuss additional issues or concerns related to both Bureau operations (the first survey you received) and permitting-related practices (the current survey). If you have issues or concerns in both areas, please also provide your contact information here.

In lieu of providing work-related contact information, you may provide us with personal contact information (cell phone or personal email address) if you prefer.

Answer Options	Count	Percent
No	13	72.2
Yes (please provide your name and contact information)	5	27.8
<i>respondent answered question</i>		18
<i>respondent skipped question</i>		4

Question 76. Would you like to receive email notification when we release our final report on Wetlands Bureau permitting?

Answer Options	Count	Percent
No	15	68.2
Yes (please provide your name and contact information)	7	31.8
<i>respondent answered question</i>		22
<i>respondent skipped question</i>		0

**STATE OF NEW HAMPSHIRE
DEPARTMENT OF ENVIRONMENTAL SERVICES
WETLANDS BUREAU PERMITTING**

**APPENDIX H
STATUS OF PRIOR AUDIT OBSERVATIONS**

We previously reviewed Department of Environmental Services (Department) processes and management controls relevant to the current audit in four prior Office of Legislative Budget Assistant–Audit Division (LBA) audits:

- *Department Of Environmental Services Water Division Internal Control Review Agency-Income Revenues*, published in October 2015 (*2015 IC Review*);
- *Alteration Of Terrain And Wetlands Permitting Performance Audit Report*, published in August 2007 (*2007 Audit*);
- *Department Of Environmental Services Financial And Compliance Audit Report For The Fiscal Year Ended June 30, 2004*, published in February 2005 (*2005 Audit*); and
- *Department Of Environmental Services Performance-based Budgeting Audit Report*, published in March 2002 (*2002 Audit*).

We evaluated the Department’s status towards resolving the recommendations from 26 relevant observations, shown in Table 23.

Table 23

Status Of Prior Audit Observations And Status Key

Status	Key	Total
Resolved	● ●	1
Resolution in process (action beyond meeting and discussion)	● ○	14
Unresolved	○ ○	11
	Total	26

Source: LBA analysis.

A copy of all prior audits can be accessed at our website, <http://www.gencourt.state.nh.us/LBA/>.

2015 IC Review

The following is the status of three applicable observations contained in our *2015 IC Review*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
4.	Establish A Formal Risk Assessment Process (<i>See current Observation No. 3</i>)	○ ○
6.	Account For, And Report, Receipts In The Dedicated Funds And Accounts (<i>See current Observation No. 38</i>)	● ○
12.	Submit Statutorily-Required Reports (<i>See current Observation No. 49</i>)	○ ○

2007 Audit

The following is the status of all 19 observations contained in our 2007 Audit.

<u>No.</u>	<u>Title</u>	<u>Status</u>	
1.	Write Rules For Expediting Permits <i>(See current Observation No. 28)</i>	○	○
2.	Amend Or Implement Statute That Automatically Approves Permits <i>(See current Observation No. 35)</i>	○	○
3.	Clarify And Comply With minimum impact MIE Time Limits <i>(See current Observation No. 30)</i>	●	○
4.	Rules Needed On Issuing Requests For More Information <i>(See current Observation No. 32)</i>	○	○
5.	Change Time Limits When Conservation Commissions Intervene <i>(See current Observation No. 29)</i>	●	○
6.	Amend Statutory And Rule-Based Time Limits To Account For Modified Applications <i>(See current Observation No. 34)</i>	●	○
7.	Rules Needed For Amending Permits <i>(See current Observation No. 34)</i>	●	○
8.	Establish Comprehensive Policies And Procedures <i>(See current Observation No. 17)</i>	●	○
9.	Reduce Backlog Of AoT Applications	●	○
10.	Clarify SDF Fees For Applicants <i>(See current Observation No. 38)</i>	●	●
11.	Ensure Disputed Permit Decisions Are Adequately Reviewed <i>(See current Observation No. 21)</i>	○	○
12.	Maintain Appropriate Balance Between Public Safety And Mitigation Requirements <i>(See current Observation Nos. 12 and 43)</i>	○	○
13.	Change PBN Rules And Improve Procedures <i>(See current Observation No. 31)</i>	●	○
14.	Adhere To PBN Time Limit For Information Requests <i>(See current Observation No. 31)</i>	●	○
15.	Reclassify PBNs Consistently <i>(See current Observation Nos. 31 and 34)</i>	●	○
16.	Improve Wetlands Bureau Database <i>(See current Observation No. 51)</i>	●	○
17.	Improve Permit Tracking And Reporting Data <i>(See current Observation No. 51)</i>	●	○
18.	Document Changes To Application Type Consistently <i>(See current Observation Nos. 34 and 51)</i>	●	○
19.	Continue Improving AoT Management Information Systems	○	○

2005 Audit

The following is the status of three applicable observations contained in our *2005 Audit*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
10.	Formal Fraud Risk Mitigation Efforts Should Be Developed And Implemented (<i>See current Observation No. 3</i>)	○ ○
22.	Required Fees Should Be Assessed/Collected Or Action Taken To Remove Requirement (<i>See current Observation No. 38</i>)	○ ○
24.	Conflict of Interest Pledge and A Statement of Financial Disclosure Should Be Filed (<i>See current Observation No. 46</i>)	● ○

2002 Audit

The following is the status of the single applicable observation contained in our *2002 Audit*.

<u>No.</u>	<u>Title</u>	<u>Status</u>
3.	Department Of Environmental Services Needs To Issue Annual Reports (<i>See current Observation No. 49</i>)	○ ○

THIS PAGE INTENTIONALLY LEFT BLANK