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**Readopt with amendment Env-Wt 201.01, effective 12-15-19 (Document #12802), to read as follows:**

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

- (a) Non-adjudicative hearings;
- (b) Appeals of permitting and enforcement decisions;
- (c) Requests for waivers of requirements established in subtitle Env-Wt; and
- (d) Requests for waivers under RSA 482-A:26, III(b).

**Readopt with amendment Env-Wt 202, effective 12-15-19 (Document #12802), to read as follows:**

PART Env-Wt 202 NON-ADJUDICATIVE HEARINGS

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

- (a) As required by RSA 482-A:8, for any project that:
  - (1) Would have a significant environmental impact, as defined in Env-Wt 104, on the resources protected by RSA 482-A; or
  - (2) Is of substantial public interest, as defined in Env-Wt 104.
- (b) As required by RSA 482-A:17, RSA 482-A:22, and RSA 482-A:22-a.

Env-Wt 202.02 Hearings: Timing.

- (a) The department shall issue a hearing notice and hold a public hearing under Env-Wt 202.01(a) within the time established in RSA 482-A:3, XIV(a)(3)(C) or RSA 482-A:3, XIV(a)(4)(C), as applicable.
- (b) The department shall issue a hearing notice and hold a public hearing under Env-Wt 202.01(b) in accordance with RSA 482-A:17, RSA 482-A:22, and RSA 482-A:22-a, as applicable.

Env-Wt 202.03 Hearings: Procedures. The department shall conduct any hearing held pursuant to Env-Wt 202.01 in accordance with the provisions of Env-C 200 that apply to non-adjudicative proceedings.

**Repeal Env-Wt 203.01, effective 12-15-19 (Document #12802), and renumber Env-Wt 203.02 and Env-Wt 203.03 as Env-Wt 203.01 and Env-Wt 203.02, as follows:**

~~Env-Wt 203.01 Definitions. For purposes of this part, the following definitions shall apply:~~

~~(a) “Appeal ombudsman” means the department employee designated by the commissioner to review a remand order and to:~~

- ~~(1) Work with program staff to determine whether additional field work, additional information from any party to the appeal, or consultation with legal counsel is required; and~~
- ~~(2) Assist program staff with preparing a decision on remand;~~

~~(b) “Appellant” means “appellant” as defined in rules adopted by the council;~~

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~~— (c) “Party to the appeal” means the appellant and any intervenor(s) and, in an appeal of an issued permit, the permit holder if other than the appellant;~~

~~— (d) “Program staff” means the professional technical department staff who implement the program established under RSA 482-A and subtitle Env-Wt; and~~

~~— (e) “Remand order” means an order of the council directing the department to reconsider its decision in light of the findings, rulings, and other directives of the council.~~

**Repeal Env-Wt 203.04 and Env-Wt 203.05, effective 12-15-19 (Document #12802), as follows:**

~~— Env Wt 203.04 Action on Remand: Initial Review, Determination of Additional Information Required.~~

~~— (a) If a department decision is appealed to the council and the council remands the matter to the department, the commissioner shall designate an appeal ombudsman for that remand order.~~

~~— (b) The appeal ombudsman shall review the remand order within 10 working days of:~~

~~(1) The end of the time period for filing a motion for reconsideration of the council’s remand order, if a motion is not filed; or~~

~~(2) If a motion for reconsideration of the council’s remand order is filed, the date any order on reconsideration, including any appeal thereof, becomes final.~~

~~— (c) If the appeal ombudsman, in consultation with program staff, determines that preparing a new decision on remand necessitates field work, additional submissions from any party to the appeal, or consultation with legal counsel, or any combination thereof, then:~~

~~(1) Program staff shall:~~

~~a. Conduct such field work as soon as reasonably possible, taking into account weather conditions, site accessibility, and staff availability; and~~

~~b. Identify and request the additional information from any party to the appeal;~~

~~(2) The appeal ombudsman, in coordination with program staff, shall:~~

~~a. Identify the issues on which legal advice is needed; and~~

~~b. Request a consultation with legal counsel within 10 working days of determining the need for the consultation; and~~

~~(3) Consultation with legal counsel shall be completed no later than the completion of the field work and review of additional information, as applicable.~~

~~— Env Wt 203.05 Action on Remand: Decision.~~

~~— (a) After conducting the review required by Env Wt 203.04(a), if the appeal ombudsman in consultation with program staff determines that no additional field work is needed, no additional information is needed, and no consultation with legal counsel is required, the appeal ombudsman, in consultation with program staff, shall:~~

~~(1) Prepare a draft revised decision for internal review within 10 working days of the review; and~~

~~(2) Prepare and issue a final decision no later than 25 working days after completion of the draft revised decision.~~

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~~—(b) After conducting the review required by Env-Wt 203.04(a), if the appeal ombudsman in consultation with program staff determined that preparing a new decision on remand necessitated field work, additional submissions, or consultation with legal counsel, or any combination thereof, the appeal ombudsman in consultation with program staff shall:~~

~~(1) Prepare a draft revised decision for internal review within 10 working days of:~~

~~a. Completing the field work;~~

~~b. Receiving all required information information; and~~

~~c. Consulting with legal counsel.; and~~

~~(2) Prepare and issue a final decision no later than 25 working days after preparation of the draft revised decision.~~

~~—(c) If the remand is of a permitting decision, the department shall send a copy of the final decision to:~~

~~(1) The council;~~

~~(2) The appellant;~~

~~(3) The permit holder, if other than the appellant; and~~

~~(4) Each intervenor.~~

~~—(d) If the remand is of an enforcement decision, the department shall send a copy of the final decision to:~~

~~(1) The council;~~

~~(2) The appellant;~~

~~(3) Each person to whom a copy of the original enforcement decision was sent; and~~

~~(4) Each intervenor who is not covered by (3), above.~~

**Readopt with amendment Env-Wt 204.03, effective 12-15-19 (Document #12802), as amended effective 12-24-19 (Document #12953), to read as follows:**

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

(a) The name, mailing address, daytime telephone number including area code, and email address of the applicant, and, if no email address is available, the applicant’s fax number;

(b) If the applicant is making the request on behalf of someone else, the name, mailing address, daytime telephone number including area code, and email address of the person the requestor represents, and, if no email address is available, a fax number for that person;

(c) The location of the property to which the waiver request relates;

(d) If the request is to waive a requirement established in subtitle Env-Wt, the number of the specific section of each rule for which a waiver is sought;

(e) If the request is for a waiver under RSA 482-A:26, III(b), identification of the specific standard(s) to which a waiver is being requested;

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(f) A complete explanation of why a waiver is being requested and how the applicable criteria in Env-Wt 204.05 are met;

(g) If applicable, a complete explanation of the alternative that is proposed to be substituted for the requirement in subtitle Env-Wt, including written documentation or data, or both, to support the alternative; and

(h) Whether the waiver is needed for a limited duration and, if so, an estimate of when the waiver will no longer be needed.

**Readopt with amendment Env-Wt 204.04 and Env-Wt 204.05, effective 12-15-19 (Document #12802), to read as follows:**

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

- (a) The applicant shall sign and date the request;
- (b) If the applicant is making the request on behalf of someone else, the person represented shall:
  - (1) Sign and date the request; or
  - (2) Sign and date a separate authorization for the applicant to act on the person's behalf in connection with the request; and
- (c) The signature(s) shall constitute certification that:
  - (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
  - (2) The signer understands any waiver granted based on false, incomplete, or misleading information shall be subject to revocation.

Env-Wt 204.05 Criteria for Waivers.

(a) In addition to the requirements of any other applicable rule or law, the department shall grant a waiver of a rule if it determines that:

- (1) Granting the waiver will not result in:
  - a. An adverse effect on public safety or the environment that is greater than adherence to the applicable rule; and
  - b. An adverse impact on abutting properties that is more significant than that which would result from complying with the rule;
- (2) The purposes and intent of RSA 482-A will be met if the waiver is granted; and
- (3) Granting the waiver will not have the effect of waiving or modifying a statutory requirement.

(b) If the department determines that an applicant is unable to meet the standard in (a)(1), the department shall grant a waiver of a rule if it determines that:

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

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- (2) Any adverse effect or impact is minimized to the maximum extent practicable; and
- (3) The requirements in (a)(2) and (3) are met.

(c) The department shall grant a waiver pursuant to RSA 482-A:26, III(b) only if it determines that the criteria listed in RSA 482-A:26, III(b) are met.

**Repeal Env-Wt 204.06, effective 12-15-19 (Document #12802), and renumber Env-Wt 204.07 and Env-Wt 204.08 as Env-Wt 204.06 and Env-Wt 204.07, as follows:**

~~Env Wt 204.06 Criteria for Waivers under RSA 482 A:26, III(b). The department shall grant a waiver under RSA 482 A:26, III(b) if:~~

~~(a) The waiver will not result in:~~

- ~~(1) An avoidable adverse impact on the environment or natural resources of the state, public health, or public safety;~~
- ~~(2) Any interference with the public trust in waters held by the state; or~~
- ~~(3) An adverse impact on abutting properties that is more significant than that which would result from complying with the rule; and~~

~~(b) The following criteria from RSA 482 A:26, III(b) are met:~~

- ~~(1) The effect of the requested repair or reconstruction represents greater protection of public water or the environment;~~
- ~~(2) Such repair or reconstruction does not change a recreational, water based activity to a land-based, residential or commercial activity;~~
- ~~(3) There will be no expansion of the existing footprint, outside dimensions, or square footage of floor space; and~~
- ~~(4) There will be a net reduction in the total square footage of kitchen, bathroom, shower, and toilet facilities.~~

**APPENDIX A**

<b>Rule(s)</b>	<b>State Statutes Implemented</b>
Env-Wt 201.01	RSA 482-A:8; RSA 482-A:10; RSA 482-A:11; RSA 482-A:26, III(b); RSA 541-A:22, IV
Env-Wt 202.01 Env-Wt 202.02 Env-Wt 202.03	RSA 482-A:8; RSA 482-A:11
Env-Wt 203.01 (repeal) Env-Wt 203.04 (repeal) Env-Wt 203.01 (repeal)	RSA 482-A:10; RSA 482-A:11
Env-Wt 204.03 Env-Wt 204.04 Env-Wt 204.05	RSA 482-A:26, III(b); RSA 541-A:22, IV
Env-Wt 204.06 (repeal)	RSA 482-A:26, III(b)