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### EPA Seeks Comments on Proposed Guidelines to Control Pollution from Construction Sites



These guidelines include new source performance standards to control the discharge of pollutants from construction sites, and will require these construction sites to implement a range of erosion and sediment control measures to control pollutants in stormwater discharge. For the first time EPA has put a numerical allowable turbidity value of stormwater discharging construction sites at 13 NTU's for sites greater than 30 acres that also fall into other categories. In our experience, this is a very low NTU reading, with most well-managed construction sites falling below the 50 NTU discharge, but above 13 NTU's. For additional information from the USEPA, you may contact Enesta Jones (202) 564-4355 or [jones.enesta@epa.gov](mailto:jones.enesta@epa.gov). You may also contact Mickey Marcus at NEE [mmarcus@neeinc.com](mailto:mmarcus@neeinc.com) for additional information on how these regulations may affect construction activities.

The deadline for public comment on this proposal is February 26, 2009. [Click here for the web link for the proposed Effluent Guideline for the Construction and Development industry: http://www.epa.gov/waterscience/guide/construction/index.htm](http://www.epa.gov/waterscience/guide/construction/index.htm)

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### Changes in Army Corps Wetland Determinations



Two developments in 2008 are affecting the way the Corps is determining regulated federal wetlands in New England. A memorandum entitled "Clean Water Act Jurisdiction Following the U. S. Supreme Court's Decision in Rapanos v. United States & Carabell v. United States" was released to Environmental Protection Agency regional offices and U.S. Army Corps of Engineers districts on December 2, 2008. Also in 2008, the New England District of the Corps reached important milestones in progress toward implementation of a regional supplement to the 1987 Wetlands Delineation Manual. The December 2, 2008 Guidance is a 13-page document intended to clarify which areas will be considered "waters of the United States" in light of recent Supreme Court decisions. In particular, it spells out the criteria which are to be used to decide when adjacent wetlands have a "significant nexus with a traditional navigable water", and are thereby jurisdictional. The full document is available on the Corps website at

[http://www.usace.army.mil/CECW/Documents/cecwo/reg/cwa\\_guide/cwa\\_juris\\_2dec08.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/cwa_guide/cwa_juris_2dec08.pdf)

This guidance document revises the site specific wetlands data which wetland scientists collect on project sites, and also revises the way in which Jurisdictional Determinations are reviewed by the Corps.

On July 3, 2008, the Corps of Engineers released a Draft Regional Supplement to the 1987 Corps Delineation Manual for the north central and north east region. Corps headquarters had begun the process of developing Regional Supplements to the 1987 Manual in 2003. Formerly glaciated parts of the north east and the mid west were lumped into one delineation region. The delineation regions do not follow the outlines of Corps districts, but are based on shared ecological characteristics such as climate, landforms, geology, plant communities, and soils. The north central and north east region extends from the northeastern half of Minnesota to the Atlantic. The New England District lies entirely within the north central and northeast region.

The Draft Regional Supplement for our region has been undergoing peer review and field testing since its release. Following this process, some time in 2009, the Corps will release an Interim Supplement. Delineations which are performed after release of the Interim Supplement must use its delineation procedures and criteria. The Draft Supplement has significant changes in the criteria for assessing the three parameters which are used to determine the existence of wetlands: vegetation, soils, and hydrology. The Draft Supplement is a 145-page document which can be found at the following link: [http://www.usace.army.mil/CECW/Documents/cecwo/reg/int\\_nc\\_ne\\_supp.pdf](http://www.usace.army.mil/CECW/Documents/cecwo/reg/int_nc_ne_supp.pdf)

Interim Supplements have already been published for several delineation regions, and are expected to be published for all regions by the end of 2010. Meanwhile, the Corps intends to revise the 1987 Manual to bring it in line with the Regional Supplements. This process is supposed to begin in 2009. There is also an intention to revise the National List of Plant Species That Occur in Wetlands, which was formerly published by the U.S. Fish and Wildlife Service, and has now been assigned to the Corps of Engineers.

For more information, contact Bruce Griffin 413-256-0202 or [bgriffin@neeinc.com](mailto:bgriffin@neeinc.com)

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## **New Vernal Pool Certification Criteria Proposed for Massachusetts**



The NHESP is currently in the process of revising the Massachusetts Vernal Pool Certification Criteria by making this process more consistent with the verbiage in the Wetlands Protection Act (310 CMR 10.04). In Massachusetts, vernal pools are protected (310 CMR 10.00, 310 CMR 15.00, 3.04 CMR 11.00, and 314 CMR 4.00, and in some cases under municipal regulations) when they provide habitat for vernal pool wildlife. The wildlife dependent upon vernal pools are what have been used in the past to identify and protect these areas. The Natural Heritage & Endangered Species Program (NHESP) certifies vernal pools based on a set of biological and physical criteria, including the presence of obligate amphibians or invertebrates, facultative amphibians or invertebrates, and the absence of fish.

The highlights of these changes includes reducing the facultative species that can be used to document and certify a vernal pool, eliminating all facultative reptiles and invertebrates from the certification criteria, increasing the number of spotted salamander and wood frog eggmasses from 1 to 5 for pool certification, and eliminating the dry pool certification method.

The revised Guidelines will be available at the Massachusetts Association of Conservation Commissions (MACC) Annual Meeting on February 28, 2009. For more information, visit:

[http://www.mass.gov/dfwele/dfw/nhosp/vernal\\_pools/pdf/rec\\_rev\\_vp\\_cert.pdf](http://www.mass.gov/dfwele/dfw/nhosp/vernal_pools/pdf/rec_rev_vp_cert.pdf) or contact: Christin McDonough 413-256-0202 or [cmcdonough@neeinc.com](mailto:cmcdonough@neeinc.com).

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## **New Guidance from New Hampshire Department of Environmental Services**



There are significant revisions to the regulations that govern land disturbance under the Alteration of Terrain program, a revamping of the New Hampshire Stormwater Manual, and a new handbook that we can use to help design projects.

Within the regulations, available at

<http://des.nh.gov/organization/divisions/water/aot/index.htm>, NH Department of Environmental Services (NHDES) is requiring more base information such as site specific soil maps and infiltration testing. In project design, they are looking for inclusion of more low impact development techniques, including infiltration and bio-retention for stormwater treatment. Additionally, the regulations recognize the Certified Professional in Erosion and Sediment Control (CPESC) designation for individuals developing erosion control plans for a project.

We would also like to make you aware that after more than 15 years, NH DES has revised and updated their stormwater manual. The new manual comes in three volumes

- Volume 1: Stormwater and Antidegradation
- Volume 2: Post-Construction Best Management Practices Selection and Design
- Volume 3: Erosion and Sediment Controls During Construction

The New Hampshire Stormwater Manual is available online at

<http://des.nh.gov/organization/divisions/water/stormwater/manual.htm>

Last October, NHDES issued another guidance document titled Innovative Land Use Planning Techniques: A Handbook for Sustainable Development, to address the need for guidance and technical assistance on Innovative Land Use Controls by municipalities.

The handbook includes sections dealing with development density, environmental characteristics, and site level design. The document can be found at

[http://des.nh.gov/organization/divisions/water/wmb/repp/innovative\\_land\\_use.htm](http://des.nh.gov/organization/divisions/water/wmb/repp/innovative_land_use.htm)

As part of its continuing outreach, New England Environmental is assisting the NH Department of Environmental Services in bringing the CPESC training to NH. Randall Shuey, CSS, CWS, CPESC will be providing the CPESC review class for people who would like to prepare for the exam. The review class is scheduled for March 17<sup>th</sup> at the NHDES offices on Hazen Drive in Concord. For registration information contact Randall at [rshuey@neeinc.com](mailto:rshuey@neeinc.com). Information about the CPESC program can be found at [www.cpesc.net](http://www.cpesc.net).

If you would like to discuss any of these changes or how our Concord office can assist your project please call Randall Shuey at (603) 224-5741 or [rshuey@neeinc.com](mailto:rshuey@neeinc.com).

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