

DIRECTIVE NUMBER:		DIRECTIVE NAME: Environmental Compliance Guidance for 3 rd Party Project Impacts within the State ROW	
ADOPTION DATE: <i>April 2, 2021</i>		LAST UPDATED: <i>April 2, 2021</i>	
DIRECTIVE APPROVED BY: <i>Assist. Commissioner, NHDOT</i>		SIGNATURE: William Cass	
RESPONSIBLE OFFICE: Division of Operations		CONTACT PERSON: David Rodrigue	
REQUIREMENTS:		PROCEDURES AND RESOURCES: <ul style="list-style-type: none"> • <i>Environmental Checklist</i> • <i>NHDOT Driveway & Excavation Permits</i> 	

DIRECTIVE SUMMARY

The New Hampshire Department of Transportation (Department) is committed to complying with Federal & State environmental laws and rules, for improvements made within the right-of-way (ROW) of the state transportation system. In order to meet this commitment, public and private developments, that propose infrastructure improvements within the State ROW to mitigate their impacts, must document and certify to the Department, that they have evaluated and obtained the necessary State and Federal environmental permits required for their projects impacts within the State ROW. This guidance was created and is implemented for compliance with Environmental Policy ENV-1, comment 5 (*NHDOT will develop, implement, and maintain management systems that encompass the environmental functions of the Department and support compliance with regulations and stewardship of the environment*).

SCOPE

This guidance is intended for use by Department staff for the consistent documentation of environmental compliance for non DOT projects. It shall apply to public and private sponsored projects, including but not limited to, applications for driveway permits, encroachment permits, and excavation permits that would impact the State’s transportation system ROWs. This Guidance may also be useful for 3rd Party Applicant/Design Engineer when they are planning and scheduling their projects. It identifies the steps and environmental documentation that will be required in order to receive construction approval and final project acceptance,

DEFINITION(S)

Definitions related to this directive may be viewed on EX 1-1 Form 1 Approved Definitions List, located on the SOS Index.

ROW (Right-of-Way): means state-owned property, easements or other interests therein, dedicated to state highway purposes (excludes Urban Compacts).

3rd Party Applicant/Design Engineer: A 3rd Party Applicant/Design Engineer, for the purpose of this guidance, is a non-NHDOT entity proposing to conduct work within the State ROW, and which may or may not also be associated with other site/off-site development work located outside the State ROW. A 3rd Party Applicant/Design Engineer may include, but is not limited to: a municipality or municipal employee, consultant, private business, and/or contractor proposing to complete the work within the State ROW, and who is responsible for completing the excavation permit, encroachment permit, and/or driveway permit; application.

Urbanized Area: A continuously built-up area with a population of 50,000 or more where the MS4 permit is in effect. (<https://www.epa.gov/npdes-permits/regulated-ms4-new-hampshire-communities>)

Municipal Separate Storm Sewer Systems (MS4): A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

- (i) Owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States;
- (ii) Designed or used for collecting or conveying stormwater;
- (iii) Which is not a combined sewer; and
- (iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined at 40 CFR 122.2.

Qualified Person: A person that by virtue of professional registration, education, experience or financial lability that takes responsibility for certifying that the project has met the requirements to be environmentally compliant with all local, state and federal rules.

COMMENTS

This Directive:

- Is effective immediately upon Commissioner or Director (if applicable) signature.
- Supersedes all previous references or guidance related to this topic.
- Remains in effect until replaced with an updated, approved directive signed by Commissioner or Director, or by a policy signed by the Commissioner.
- Has the full force and effect of policy and any employee found to have violated this directive will be subject to appropriate disciplinary action up to and including discharge from employment pursuant to PART Per 1002 of the Rules of the Division of Personnel.
- Is a document of the Standard Operating System (SOS) and all documents pertaining to it will be located in the Index on the Department's Intranet, accessible to all employees with computer access? For employees without computer access, hard copies of the SOS will be made available upon request and at all Department work facilities.

PROCEDURAL GUIDANCE

[4 Steps which outline the expectation for 3rd party projects in order to demonstrate environmental compliance to the Department:](#)

Step #1: Determining which environmental permits need to be obtained to satisfy the NHDOT Permit Application requirements

The Department highly encourages that the 3rd Party Applicant/Design Engineer meet with the Department staff at the 30% traffic mitigation and 60% plan phase to review possible construction impacts within the State ROW, discuss environmental impacts and determine if one or more of the following permits will be required.

- NH Wetlands Dredge and Fill,
(<https://www.des.nh.gov/organization/divisions/water/wetlands/index.htm>)

- NH Shoreland
(<https://www.des.nh.gov/organization/divisions/water/wetlands/cspa/index.htm>)
- Alteration of Terrain,
(<https://www.des.nh.gov/organization/divisions/water/aot/index.htm>)
- EPA National Pollutant Discharge Elimination System
 - Small MS4 General Permit, (<https://www.epa.gov/npdes-permits/new-hampshire-small-ms4-general-permit>)
 - Construction General Permit, (<https://www.epa.gov/npdes/stormwater-discharges-construction-activities>)
- Department of Army
 - State Programmatic General Permit
(<https://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/New-Hampshire-General-Permit/>), or
 - Individual Permit,
(<https://www.nae.usace.army.mil/Missions/Regulatory/>)

Early discussion between the Department staff and the permit applicants/ Design Engineers, of project impacts can facilitate permit reviews and a timely issuance of Department permits. A brief memo to document the Applicant/Design Engineers decision on why each of the identified federal or state permits is not required or, if required, how it's been addressed, can also facilitate permit review. Failure to meet with the Department staff will not absolve the 3rd Party Applicant/Design Engineer from their responsibility of certifying that they have obtained the required Federal and State environmental permits. Additionally, copies of the approved permits must be provided to the Department prior to beginning any construction activity within the State ROW therefore early definition and application for environmental permits is critical for timely Department permit review and approval.

Step #2: Work within the state ROW in urbanized area (MS4):

The NHDOT is responsible for verifying that work proposed by a third party within the State ROW, is compliant with the State's MS4 permit requirements when:

1. There is a point discharge from a catchment(s) greater than an acre.
2. The point discharge enters a Water of the US. (navigable surface water or wetland)
3. The point discharge comes from a Municipal Separate Storm Sewer System (pipe or ditch, but not a culvert)
4. The point discharge is in the Urbanize Area

When a project meets or exceed the MS4 permit thresholds, the 3rd Party Applicant/Design Engineer shall provide a technical memorandum that specifically identifies how the project addressed the environmental permits for the proposed improvements within the State ROW. A brief narrative on each permit and how the permit addresses impact within the State Highway System:

The technical memorandum shall also include a section to document compliance with Part 2.3.6 of the MS4 permit to include to the following:

- Project area
- A pavement area analysis, as outlined in Part 2.3.6 of the MS4 Permit, and description of proposed structural treatment by catchment
- A plan of the proposed structural stormwater treatment by catchment including necessary ROW or easements
- A statement on responsible parties for operation and maintenance of the proposed structural treatment as described in Part 2.3.7 of the MS4 permit.
- A Copy of US Fish and Wildlife Service and/or National Marine Fisheries correspondence including a current IPaC search and concurrences to listed species
- A copy of any National Historic Preservation Act correspondence including an effects memo and MOA if necessary
- A signed statement of compliance in accordance with Appendix B B.11.D of the MS4 permit.

The Department's permit review staff will be responsible to evaluate and either;

1. concur with the mitigation measures proposed and certified by the Applicant/Design Engineer or,
2. make recommendations to bring the mitigation into compliance.

Early discussions and coordination on the mitigation measures should facilitate the Department's permit review and approval process.

Step #3: Environmental documentation required after Final Design is complete, but prior to receiving Department approval to begin Construction

The 3rd Party Applicant/Design Engineer shall provide the Department with a copy of the EPA Construction General Permit (CGP) Authorization, if the proposed work is over an acre and within the Urbanized Area. This is generally an e-mail from EPA noting Construction General Permit (CGP) Coverage Status is Active with the project ID and NPDES ID.

They must also submit a final copy of the certified NHDOT Environmental checklist, signed by the Applicant or a Qualified person, which will document that the Federal and State environmental permits have been obtained.

And finally they must submit copies of the relevant permits for the work to be performed within the State ROW.

Step #4: Post Construction

The permit Applicant (project Owner, sponsor or Design Engineer) shall be responsible for providing the Department a set of As-built-plans that are signed, & dated by a NH Professional Engineer, and a CGP Notice of Termination if the project was Authorized in step #3 prior to being given approval to use the improvements or access to the State ROW.

Conclusion

The intent of this guidance is to outline the Department’s expectations on documenting environmental compliance for work within the State transportation ROW. It is also intended to provide consistency with the documentation needed to support Department permit application. Finally, it reinforces the Department’s direction that the relevant Federal and State environmental permits for construction impacts within the State ROW, must be obtained prior to commencing construction within the State ROW.

For 3rd party sponsored projects, that have impacts within the State ROW, the responsible to obtain the required environmental permits, and satisfy MS4 compliance, lies with the 3rd party applicant /Design Engineer.

Finally, this document identifies that the 3rd Parties Applicants/Design Engineers shall have a qualified person certify to the Department that they have obtained the environmental permits for their project impacts within the State ROW. Additionally, to support the certification, copies of the environmental permits must be provided to the Department prior to approval being granted to begin construction within the State ROW and, As-Built documents are required prior to project acceptance and use.

AMENDMENT RECORD

This directive is reviewed every two years to ensure its continuing relevance and accuracy. The record of amendments is recorded below.

Date	Comments	Name	Title
	Original Directive Adopted		