LEGISLATION

Shoreland protection changes

RSA 483-B has been significantly revised, courtesy of sections 382 through 412 of HB 2 (the budget trailer bill). All changes took effect July 1, 2011. This article summarizes the more noticeable changes; more information will be available at http://des.nh.gov/organization/divisions/water/wetlands/cspa/index.htm as resources allow.

The most conspicuous change is to the title: RSA 483-B is now the "Shoreland Water Quality Protection Act" (SWQPA). Changes most likely to directly benefit all shoreland property owners include the addition of a permit by notification (PBN) for projects "that have no impact on water quality," and meet the specified notice, size and purpose requirements; the deletion of leaf/needle litter, stumps, woody debris, stones and boulders from the definition of "natural ground cover" (meaning these materials can be removed from the waterfront buffer); modifications to the scoring system for the point/grid system in the waterfront buffer to assign points to shrubs and groundcover and to increase the points assigned to various diameters of trees (meaning fewer trees and saplings are needed in any given grid section); and replacing the process for obtaining a variance from the minimum development standards with a waiver process, under which waivers are to be granted if "strict compliance with the minimum standards ... will provide no material benefit to the public and have no material adverse effect on the environment or the natural resources of the state."

Photo by Sandy Crystal, DES.

Changes that will benefit those who do not comply with the law include that DES is now allowed to enter property only after written notification to the property owner; penalties can now be assessed only against someone who violates the Act **and** "damages the public waterway" **and** fails "to make a good faith effort at remediation and restoration" after notice from DES; the maximum civil penalty has been reduced from $20,000 per day of a continuing violation to $5,000 for each continuing violation; and criminal penalties have been eliminated. ■

DES Laboratory moves to DHHS

Under recently passed legislation, the DES Laboratory is now officially the Division of Public Health Services – Public Health Laboratories—effective July 1.

The name was easy to change; the move to a new computer network, emails, website, etc. is more challenging and will not be completed until after September. Until that time, laboratory information and staff may be contacted through the DES website.

Please note that the quality of the laboratory tests has not changed, nor are there any plans to change the kinds of tests or services offered. The lab staff, phone numbers and email addresses, web links as well as test fees remain the same. The most notable change for the moment is a new address to which to send samples and to remit payment for invoices. Lab staff continue to be available to answer all questions and concerns relative to test results and requirements. Reports that are currently electronically sent to the DES Drinking Water and Groundwater Bureau will continue to do so and appropriate reports will automatically be imported into the Environmental Monitoring Database. While the laboratory transitions to a new server, all current DES web links to the laboratory are functional for information and for ordering test kits. ■

Lean project improves rulemaking process

An unusual Lean project in 2010 has resulted in revisions to the statutory rulemaking process in 2011. The project is believed to be the first in the country in which employees of both the executive and legislative branches participated to try to "lean" a process affecting both branches. Participants examined the first part of the formal rulemaking process, before proposed rules are reviewed by the Joint Legislative Committee on Administrative Rules (JLCAR). Many of the resulting recommendations to improve the process and facilitate public participation were included in SB 161, enacted as Laws of 2011, Ch. 252 (effective September 11, 2011).

One change championed by DES will legitimize public review and comment on proposed revisions to an initial proposal before an agency files a final proposal for JLCAR review. Under the current process, the only "official" opportunity for the public to comment on any changes made by an agency from the initial proposal to the final proposal is at the JLCAR hearing. Under the new process, the agency can prepare a draft final proposal and solicit public comment on it, and even may hold an additional public hearing. Depending on the comments on the draft final proposal, the agency can further revise the rules before filing the finished final proposal. Preparing a draft final proposal and seeking additional comment is not mandatory; the agency must decide whether the comments and revisions warrant the additional step. In cases where significant changes to the initial proposal are made, though, this will provide an additional opportunity for public input. ■