



# THE WETLAND EDGE

## Special Vernal Pool Permitting Issue

### *DES to Adopt Vernal Pool Rules:*



The Department of Environmental Services Wetlands Bureau will be adopting rules regarding the delineation of vernal pools. Under Env-Wt 301.01, which deals with the delineation of wetland boundaries, each vernal pool on a site is to be delineated. Thus, an existing conditions plan or plat, which is prepared for permitting, is required to show vegetated wetlands, surface waters and vernal pools. This is not an expansion of the wetland boundary on a site, as these vernal pools must meet either the criteria for wetlands or the criteria for surface waters. The addition of vernal pools to plans or plats is more an identification of a resource, rather than a physical expansion of the wetland boundary. This addition of vernal pools to the rules is meant to match the requirements of the State Programmatic General

Permit that was issued by the US Army Corps of Engineers in the summer of 2007. It also means that future wetland delineations will have to carry a contractual component of identification of vernal pools. This can be an issue, given that vernal



of 2009. For any minor or major applications, in addition to rare or threatened species, the impact of the proposed project to vernal pools must be assessed. As with wetlands, not all vernal pools are equal. Some vernal pools may not be very productive, and will contain only one or two egg masses. Other vernal pools may contain tens to hundreds of egg masses. These vernal pools are considered to be very productive and projects in or adjacent to them may be determined to have a detrimental impact by either DES or by the Army Corps. In light of these rule changes, our clients will be well served by GES staff experience with both vernal pools and permitting. Bottom line is no vernal pool survey is complete if there is no count of egg masses in each vernal pool.

pools are most effectively identified only in the spring. Bottom line is that we are encouraging all our clients to have vernal pool surveys done in the spring if there is any possibility of permitting action that might occur on a site in 2008 or into the first

### *A Quick Guide to Vernal Pool Surveys:*

What is a vernal pool? It is a location that in the spring provides breeding habitat for a variety of salamanders and frogs. Env-Wt 101.70 "Primary vernal pool indicators" means the presence or physical evidence of successful breeding by marbled salamander, wood frog, spotted salamander, Jefferson-blue spotted salamander complex or fairy shrimp. In the spring, scientists wade through the pools looking for egg masses that identify the species listed above. When one is looking for vernal pools when

it is not spring, secondary vernal pool indicators can be used. However, there was testimony given at a recent rules hearing that use of secondary vernal pool indicators would lead to false positives, i.e. some areas that are identified as vernal pools using secondary indicators may not be vernal pools if checked in the spring. Thus, with vernal pools there is a window of opportunity and the best determination for vernal pools is done in the spring.

When to look for egg masses will vary from year to year, and is not the same for all indicator species. In general, a survey should be conducted just after the peak breeding period, a couple of weeks after hearing the first peepers and wood frogs:

#### Wood frogs

Southern NH: 4/7 - 4/21  
Northern NH: 4/15 - 5/15

#### Salamanders

Southern NH: 4/10 - 5/21  
Northern NH: 4/25 - 5/31

#### GES Staff Directory (603) 778-0644

- Jim Gove— Principal x11
- Eric Fontaine x13
- Luke Hurley x14
- Lindsay O'Reilly x19
- Brendan Quigley x17
- James Walden x15
- Administrative x0

#### E-Mail Addresses:

firstinitialsurname@gesinc.biz  
or info@gesinc.biz



## Wetland Permitting: When does the U.S. EPA Get Involved?

In a recent presentation at DES, Mark Kern of the EPA explained when and how the EPA is involved in permitting, and is summarized below:

- Normally Federal agencies briefly review all applications for major and minor impacts. The EPA will also review impacts that involve special resources, even if the impacts are small (author's note: less than 3,000 sq. ft.).
- Not all wetlands are created equal. Impacts to a 0.1-acre drainage ditch is not evaluated the same as a 0.1-acre vernal pool.
- Typical reasons for EPA kicking out a project: No vernal pool survey (it must be done for the entire site, not just impact areas: some exceptions), large in-direct impacts, weak mitigation plan, water quality concerns.
- **Any large project of 10 acres of undeveloped land or more would be a candidate for a vernal pool survey.**

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## General Permit Changes Enhance Vernal Pool Protection

The season is ripe for vernal pools, and changes to regulations will enhance protection of these rich habitats. Given that most of the projects in the State of New Hampshire (those with less than 1 acre of direct wetland impact) will fall under the General Permit, the requirement to evaluate and consider the impacts to vernal pools will need to be done for virtually any minor or major project in the state. GES has compiled this special issue to alert out clients to these changes, which are especially critical at this time of year.

## Quick Answers to Common Vernal Pool Questions

**Question: When did the rule and regulations of vernal pools change?**

**Answer:** A new general permit (NAE-2007-461) was issued on June 28, 2007. The key change was General Permit Condition No. 26. The section pertaining to vernal pools (VP) is summarized below:

- Minimize impacts to the surrounding upland, with efforts in accordance with the value of the VP.
- Limit site clearing, grading, and construction activities to less than 25% of the seasonal pool terrestrial habitat (a 750' buffer area around a valuable VP).
- Exclude roads and driveways from the VP envelope (a 100' buffer area around a valuable VP).
- VP delineation in accordance with federal standards for all Major/Minor Impact projects.

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