

The State of New Hampshire  
**Department of Environmental Services**



**Robert R. Scott, Commissioner**

The Town of Ossipee, New Hampshire  
P.O. Box 67  
Center Ossipee, NH 03814

Re: White Pond Road – Boat Ramp  
Wetlands Bureau File No. 2017-02356

**ADMINISTRATIVE ORDER  
No. 19-025 WD**

July 8, 2019

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division, to the Town of Ossipee, New Hampshire under the authority of RSA 483-B:5, V, and RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The New Hampshire Department of Environmental Services, Water Division, is a duly-constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive in Concord, New Hampshire.
2. The Town of Ossipee is a duly-constituted municipality of the State of New Hampshire having a mailing address of P.O. Box 67, Center Ossipee, NH 03814.

**C. STATEMENTS OF FACTS AND LAW**

1. RSA 483-B authorizes the New Hampshire Department of Environmental Services (“DES”) to regulate development activities in the protected shoreland zone established under RSA 483-B. The Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wq 1400 *et seq.* (the “Shoreland Rules”) to implement this program, in accordance with RSA 483-B:17.
2. RSA 483-B:5-b, I(a) states that no person shall commence construction, excavation, or filling activities within the protected shoreland without obtaining a permit from DES to ensure compliance with RSA 483-B.
3. RSA 482-A authorizes DES to regulate dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. The Commissioner of DES has adopted NH CODE ADMIN. RULES Env-Wt 100 *et seq.* (the “Wetland Rules”) to implement this program, in accordance with RSA 482-A:11, I.
4. RSA 482-A:3, I, states that “[no] person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES].”

[www.des.nh.gov](http://www.des.nh.gov)

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5. DES received a complaint alleging that the Town of Ossipee dredged, filled, and/or performed construction to an existing boat ramp at the end of White Pond Road where it meets White Pond in Ossipee, New Hampshire. More specifically, the complainant alleged that employees of the town dug a trench, and filled it with rocks on the side of the boat ramp, and placed gravel on the road and/or boat ramp adjacent to White Pond without a permit or proper authorization from DES.
6. White Pond is a public water of the State of New Hampshire subject to RSA 483-B.
7. RSA 483-B:4, XV, defines "Protected shoreland," for natural, fresh water bodies without artificial impoundments, for artificially impounded fresh water bodies, except private garden water features and ponds of less than 10 acres, and for coastal waters and rivers, as all land located within 250 feet of the reference line of public waters.
8. RSA 483-B:9, V(a)(1), and Env-Wq 1402.50, define "Waterfront buffer" as the protected shoreland within 50 feet of the reference line. Per Env-Wq 1403.01(a), within the waterfront buffer, no person shall undertake any activity in violation of RSA 483-B:9, V(a). Per Env-Wq 1403.01(b), DES shall proceed in accordance with RSA 483-B:5 to require the property owner to restore the waterfront buffer if DES determines that any of the provisions of RSA 483-B:9, V(a) have been violated.
9. RSA 483-B:4, XXVI, and Env-Wq 1402.49, define "Water dependent structure" as a structure that is a dock, wharf, pier, breakwater, beach, boathouse, retaining wall, or launching ramp or other similar structure, or any part thereof, built over, on, or in the waters of the state.
10. Env-Wt 101.54 defines "Jurisdiction" as the regulatory authority under RSA 482-A.
11. On August 8, 2017, DES personnel conducted an inspection of the Property. During the inspection DES personnel observed and documented that the White Pond boat ramp had been graded and a trench had been dug and filled with rocks. The White Pond boat ramp is a *water dependent structure*, in jurisdiction. The trench observed alongside the White Pond boat ramp is within the *waterfront buffer* of the *protected shoreland*. DES inspectors did not observe any temporary or permanent erosion control measures employed in the area of the boat ramp. DES had no record of any permits for the impacts observed.
12. On August 11, 2017, DES sent a letter to the Town of Ossipee about the White Pond boat ramp. In its letter, DES requested that the town install and maintain temporary erosion and sediment controls on the boat ramp; and by September 15, 2017, submit an after-the-fact Standard Wetlands Permit Application for the work conducted on the boat ramp, in jurisdiction, in accordance with applicable regulations.
13. On the morning of September 6, 2017, DES personnel collected turbidity samples in White Pond, near the boat ramp, at half hour intervals for two hours and 30 minutes. DES sampled for *E. coli* at the beginning and end of the sampling period. DES staff photographed the area around the White Pond boat ramp. Based on the information collected during a precipitation event, including photographic evidence, DES staff determined that the measurable turbidity and *E. coli* in White Pond, near the boat ramp, increased during the sampling period.
14. On September 7, 2017, DES received a letter from the Public Works Director for the Town of Ossipee. In his letter, the town official stated that the trench at the end of White Pond Road had always existed along the side of the boat ramp. The town official stated that during his 11 years

with the town, the town has only repaired the boat ramp and drainage swale on three occasions. The town official inquired about the extent of DES' jurisdiction as it relates to the grading and repairs of White Pond Road, near White Pond. The director stated that he had downloaded the DES standard wetlands permit application and was in the process of filling it out, as requested.

15. On September 14, 2017, DES issued Letter of Deficiency ("LOD") No. LRM 17-039 to Ossipee. In the LOD, DES alleged that Ossipee placed sand and gravel over an asphalt boat ramp, in jurisdiction, at the end of White Pond Road, adjacent to White Pond. In the LOD, DES also alleged that Ossipee had filled a trench with riprap asphalt alongside of the boat ramp, at the end of White Pond Road, adjacent to White Pond without a permit or approval from DES. In the LOD, DES alleged that the actions of the town had caused a water quality violation in White Pond, in that the unpermitted fill and grading resulted in turbidity in White Pond in excess of water quality standards. In the LOD, DES requested that the town place appropriate erosion control devices in the area immediately, and submit an after-the-fact wetlands standard dredge and fill permit application by October 20, 2017.

16. On November 3, 2017, DES received a letter from the town, signed by the members of the Ossipee Select Board. In the letter, the Select Board members stated that the work conducted by the town highway department on White Pond Road was in conjunction with routine maintenance of a town right-of-way and did not disturb, or cause damage to, White Pond. The Select Board members stated that they had voted unanimously against filing the wetlands permit application requested by DES. In their letter, the Select Board members asserted that responsibility to maintain the White Pond boat ramp belonged to the New Hampshire Fish & Game Department, and that the town's actions were a result of that agency's negligence.

17. On March 21, 2018, DES staff inspected the boat ramp at the end of White Pond Road where it meets White Pond. The Ossipee Public Works Director and the Town Administrator were present during the inspection. During the inspection DES personnel observed and documented the following conditions in, and around, the White Pond boat ramp:

- a. White Pond Road, as a Class V roadway, ends perpendicular to the boat ramp and becomes a Class VI road;
- b. In winter, the town plows snow along the Class V section of White Pond Road, up to, and onto the boat ramp which may contribute to the transport of sediment into White Pond;
- c. Based upon statements by the town officials, DES staff determined that the town has been repairing the boat ramp, by adding fill over the bed and banks of White Pond, over the years in response to complaints from boaters whose trailers get stuck in ruts in the area; and
- d. DES staff notified the town officials that DES believes the boat ramp is a *water dependent structure* and any work to the ramp requires a permit from DES.

18. On March 26, 2018, DES sent a letter to the town summarizing the meeting at the boat ramp on March 21, 2018. In its letter, DES also set out the history of the complaint investigation, and requested that the town take certain, specific actions to come into compliance.

19. On June 13, 2018, DES received a letter from the Town of Ossipee. In the letter, the members of the Ossipee Select Board reaffirmed the town's refusal to submit a wetlands application to DES for the work conducted on the White Pond boat ramp.

20. On May 6, 2019, DES staff inspected the boat ramp at the end of White Pond Road where it meets White Pond. The original complainant and New Hampshire Department of Transportation staff were present during the inspection. During the inspection DES personnel observed and documented the following conditions in, and around, the White Pond boat ramp:

- a. Gravel material was still present over the asphalt boat ramp;
- b. A washout gully ran down the ramp to the lake;
- c. The drainage ditch/swale on the side of the ramp had not been maintained and was filled with sediment; and
- d. A delta of sediment was observed in the water where the ramp enters the lake.

21. RSA 482-A:14, III, provides that “[f]ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A.”

#### D. DETERMINATION OF VIOLATIONS

1. The Town of Ossipee, New Hampshire, violated RSA 482-A:3, I, by placing fill on the White Pond boat ramp, in jurisdiction, without a permit from DES.
2. The Town of Ossipee, New Hampshire, violated RSA 483-B:5(b), by constructing and/or repairing a swale alongside the White Pond boat ramp, within the waterfront buffer of the protected shoreland, without a permit from DES.

#### E. ORDER

Based on the above findings and determinations, DES hereby orders the Town of Ossipee, as follows:

1. **Within 10 days of the date of this Order**, Ossipee shall install appropriate temporary erosion and sediment controls at the White Pond boat ramp to limit the potential transport of sediment into White Pond.
2. **Within 30 days of the date of this Order**, Ossipee shall submit a restoration plan to DES for review and approval, to remove all the gravel previously placed on the White Pond boat ramp, and to repair the swale. The plan should include installation of appropriate erosion, sediment and turbidity controls to limit the potential for sediment transport into White Pond.
3. Ossipee shall send **all** correspondence, data, reports, and other submissions made in connection with this Administrative Order, *other than appeals*, to DES as follows:

Jeffrey Blecharczyk, Compliance Supervisor  
Wetlands Bureau, Land Resources Management Program  
DES Water Division  
P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-4061  
E-mail: jeffrey.blecharczyk@des.nh.gov


#### F. APPEAL

Any person aggrieved by this Order may appeal the Order to the N.H. Wetlands Council ("Council") by filing an appeal that meets the requirements specified in RSA 482-A:10, RSA 21-O:14, and the rules adopted by the Council, Env-WtC 100-200. The appeal must be filed **directly with the Council within 30 days** of the date of this decision and must set forth fully **every ground** upon which it is claimed that the decision complained of is unlawful or unreasonable. Only those grounds set forth in the notice of appeal can be considered by the Council.

Information about the Council, including a link to the Council's rules, is available at <http://nhec.nh.gov/> (or more directly at <http://nhec.nh.gov/wetlands/index.htm>). Copies of the Council's rules also are available from the DES Public Information Center at (603) 271-2975.

#### G. OTHER PROVISIONS

Please note that RSA 483-B:18, RSA 482-A:13, and RSA 482-A:14, provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. Ossipee remains obligated to comply with all applicable requirements, in particular RSA 483-B, RSA 482-A, the Shoreland Protection Rules, and the Wetland Rules. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

  
Robert R. Scott, Commissioner  
Department of Environmental Services

cc: DES Legal Unit

ec: Public Information Officer, DES PIP Office  
K. Allen Brooks, Chief, AGO-Environmental Protection Bureau  
New Hampshire Fish & Game Department  
New Hampshire Department of Transportation

