

Ethics Issues for Land Use Professionals

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April 16, 2024

HOW DO I FIND THE LAWS AND RULES THAT APPLY TO LAND USE PROFESSIONALS?

- On the website of the New Hampshire Office of Professional Licensure and Certification:

<https://www.oplc.nh.gov/board-natural-scientists-laws-and-rules>

The screenshot shows the website of the New Hampshire Office of Professional Licensure and Certification (OPLC). At the top, there is a yellow banner with a COVID-19 alert. Below this is the OPLC logo and navigation menu. The main content area is titled "Board of Natural Scientists Laws and Rules" and includes a list of links for "Laws" and "Rules".

Board of Natural Scientists Laws and Rules
Laws and Administrative Rules governing Licensed Certified Natural Scientists.

Laws

- Purposes
- Definitions
- Application
- Business Organizations
- Expiration
- Reciprocity
- Board of Natural Scientists
- Delegation Authority
- Additional Powers
- Qualifications for Certification
- Announcements
- Certificate Procedure
- Certificates
- Expiration
- Certificate Renewal
- Failure to Renew
- Vacant
- Fees
- Disciplinary Action
- Hearings
- Violations: Penalties
- Restraint of Violations

Rules

- Sub. 100-500

Contact Us

- Enforcement
- Annual Report
- Laws and Rules
- FAQs

NH Government Careers

- NH Travel & Tourism
- NH Web Portal - NH.gov
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Definition

- Broadly speaking, certified soil scientists and wetland scientists are persons qualified by education, training, and experience to identify and classify soil types or identify, delineate, monitor, and perform other functions with respect to wetlands. RSA 310-A:76, II and II-a.

Board of Natural Resource Scientists

- Established in 1988 to “foster intelligent application of the knowledge of soil properties and wetland characteristics in planning and implementing land use decisions consistent with [DES] rules or standards adopted by the board.” RSA 310-A:75.
- Board consists of 7 members: 2 soil scientists, 2 wetland scientists not also soil scientists, and 3 public members. RSA 310-A:81, I.
- Scientist members must have been in active practice for at least 6 years prior to appointment and held a responsible position in charge of such work for at least 2 years. RSA 310-A:81, II(b).

Laws and Rules

- Laws governing Natural Resource Scientists found in RSA ch. 310-A.
- Rules found in [New Hampshire Code of Admin. Rules Soil.](#)
- Ethical Standards found in N.H. Code of Admin. Rules Soil ch. 500.

Ethical Standards

- The ethical standards are intended to establish a high standard of integrity, skill, and practice. Soil 501.01(a); see NHANRS Bylaws Section 11.1(A).
- The overriding purpose is to ensure public health and safety and instill public confidence in the profession.
- Due to the nature of the work performed by natural resource scientists, the profession must be largely self-regulating.

Do the Rules Apply to Me?

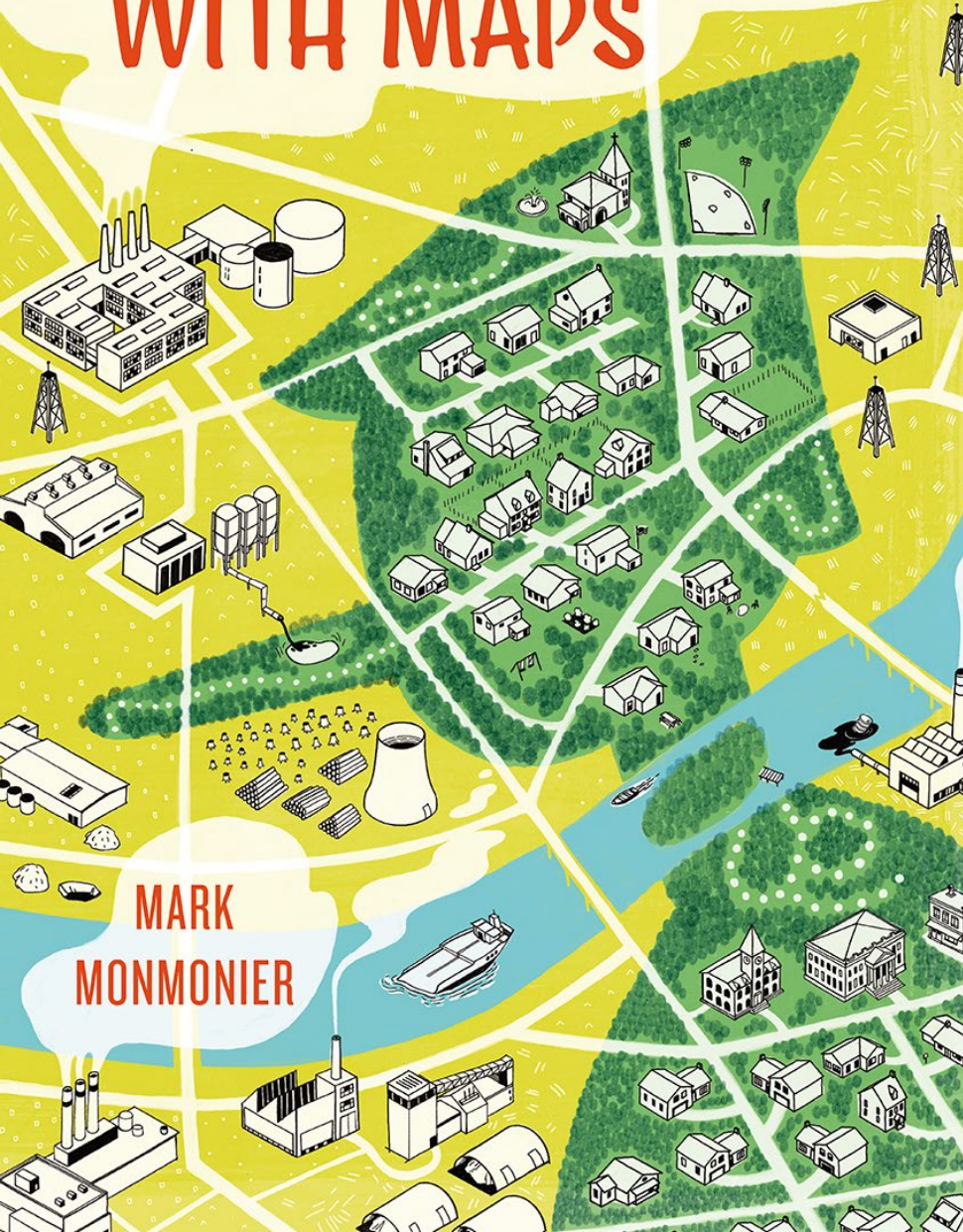
- In short, yes, if you are a wetland scientist or soil scientist. Soil 501.02(a).
- All persons certified as natural resource scientists are presumed to be familiar with Soil ch. 500. Soil 501.01(b); 501.02(b).
- Natural resource scientists are required to be forthright and candid in their communications to the Board, Soil 501.02(b), and to provide only truthful and correct information in any communication with the Board. Soil 501.02(c).

Standards of Conduct

- The standards of conduct fall into five broad categories:
 - Primacy of public health and safety. Soil 501.03(a).
 - Public Statements. Soil 501.03(b).
 - Conflict of Interest. Soil 501.03(c).
 - Solicitation of work. Soil 501.03(d).
 - Ethics and legal compliance. Soil 501.03(e).

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Standards of Conduct

- Some standards are too obvious to merit extended discussion. For example:
 - Don't do work you are not competent to do. Soil 501.03(a)(1), (6) and (8); NHANRS Bylaws Art. 11.2(B).
 - Don't lie to clients, regulators, or land use boards. Soil 501.03(a)(2) and (4). [Could have criminal consequences as well.](#)
 - Don't let anyone else use your seal. Soil 501.03(a)(9).
 - Don't offer, solicit or accept kickbacks. Soil 501.03(c)(3) and (4); 501(d)(1). Potential criminal consequences.

Standards of Conduct

Public Health and Safety

- Issue statements in an objective and truthful manner. Soil 501.03(a)(2); see NHANRS Bylaws sec. 11.2(A)(1), (4) and (5).
- Act for each employer or client as faithful agents or trustees. Soil 501.03(a)(3).
- Conduct yourself honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation and usefulness of the profession. Soil 501.03(a)(5); NHANRS Bylaws sec. 11.1(B) and (C).

Do these standards provide substantive guidance or are they merely aspirational?

Standards of Conduct

Avoid Conflicts of Interest

- Promptly inform employer or client of any business associations, interests or circumstances that could influence your judgment or the quality of your services. Soil 501.03(c)(1).
- Not accept compensation from more than one party to the same project unless the circumstances are fully disclosed to and agreed by both parties. Soil 501.03(c)(2).
- Maintain client confidences except as required by law. Soil 501.03(c)(7).

Standards of Conduct

Solicitation and Marketing

- Limit public advertising to a description of the services available. Soil 501.03(d)(7).
- In marketing materials, accurately represent pertinent facts concerning employers, employees, associated, joint ventures, and past accomplishments. Soil 501.03(d)(6).
- Compete for employment on the basis of professional qualification and competence to perform the work. Soil 501(d)(2).

Case Studies

CASE STUDY #1

You are out walking in the woods making wetland identification and delineations. You come across a smashed turtle on the dirt bike trail.

Are you obligated to report? If so, when and to whom?

CASE STUDY #2

You're working in the field and you come across all trees cut in the wetlands but no wetland impacts are visible. Same scenario but there is rutting, stream crossing, and obvious sediment.

Is this cutting a notifiable event? If so, when and to whom?

Case Studies

You delineate wetlands on a planned development site. The client obtains all required approvals for the project. Your work is complete and you leave the site. Six months later you happen to drive by the site and notice that excavation activities have occurred in the wetlands. You contact your client, who assures you “everything is okay” and “not to worry about it.”

Are you obligated to report? If so, when and to whom?

Case Studies

CWS #1 flags wetland and gets paid. Client immediately does not like the wetland flagged position and hires CWS # 2 to remove existing flags and re-flag the wetland.

- Any problem with removing the flags?
- When CWS #2 gets the job, does CWS #2 have any obligation to contact CWS #1?
- If so, when? Before or after CWS #2 removes the flags and does new fieldwork?
- What should CWS #2 tell CWS #1?

What if CWS #1 flagged the wetlands 6 years ago? Does this change anything?

Would this be different if CWS #2 is hired by the client's attorney and CWS #2 is asked to review the wetlands for a legal matter.

Case Studies

The cart before the horse scenario.

- NH Permitted Septic Designer has already performed perc and test pit soil excavations before the CWS can start the wetland delineation.
- If the CWS places a wetland flag within 50 to 75 feet of the new test pits onsite, must the CWS notify the licensed designer and client?
- If so, when?

Case Studies

CWS is hired to flag the wetlands in springtime and CWS observes primary and secondary vernal pool species onsite.

- Is the CWS obligated to inform the client of these observations?
- If so, when must the CWS inform the client?

If the client then hires an engineering firm to prepare the wetland permit application and use the CWS's wetland delineations, is the CWS obligated to tell the PE of his field observations?

Case Studies

- In 1968, approximately 10,000 square feet of wetlands were filled.
- In 2021, client hires CWS to delineate wetlands in preparation for the construction of an office building.
- CWS flags 500 square feet of visible wetlands that will be impacted, and CWS discovers what appears to be approximately 10,000 square feet of previous wetland impact.
 - 1) Is CWS obligated to investigate to see if the previous wetland impacts are what the CWS suspects they are?
 - 2) If so, how much investigation must the CWS do?
 - 3) If the CWS believes that those previous wetland impacts are real, what should the CWS do?

Case Studies

- The members of a town conservation commission are very interested in protecting any and all wetlands in the town. There is one particularly large wetland complex in town, and the commission asks a CWS to do a prime wetland study because it is their understanding that such a designation will best protect the wetland.
- The CWS is aware that current state law requires that all of the "fingers and toes" of the prime wetland have to be cut off in order to meet state law standards.
- Knowing that this will effectively cut off much of the valuable parts of a prime wetland where most of the flood storage happens, groundwater recharge is often highest, and wildlife game trails are the most frequent, what should the CWS advise the members of the conservation commission?
- What options can the CWS offer the conservation commission?

Case Studies

- You are a wetland scientist licensed in New Hampshire. You are hired to assist with a site plan application. While you are delineating wetlands on the property, you see a new outbuilding that appears to have been built on recent fill in a wetland. What are your legal and ethical obligations, if any, with regard to that fill and structure?

(3) Act for each employer or client as faithful agents or trustees;

(4) Refrain from deceptive acts;

(5) Conduct themselves honorably, responsibly, ethically, and lawfully so as to enhance the honor, reputation, and usefulness of the profession; ...

- Are you required to do anything? If so, what?

Case Studies

Same fact pattern, but this time you are the second wetland scientist evaluating the property because the landowner wanted a second opinion. You inspect the property and agree with the first scientist's flagging, but the first scientist did not note the recent fill and new structure. What are your obligations, if any, with regard to the first wetland scientist's failure to flag the partially filled wetland?

- What if the landowner told you that the landowner asked the first wetland scientist to ignore the new building, and the wetland scientist agreed to ignore it? What obligations do you have?

(2) Cooperate with another soil scientist or wetland scientist with an interchange of information where such interchange does not conflict with confidential matters between the soil scientist or wetland scientist and his/her client;

(4) If he/she has knowledge or reason to believe that another person or firm may be in violation of any of these provision or provisions of RSA 310-A, present such information to the board in writing and cooperate with the board in furnishing such further information or assistance as may be required by the board; and ...

Case Studies

You are a wetland scientist licensed in New Hampshire. Another wetland scientist who does a lot of work for the landowner/developer has already delineated the wetlands on the property, but the developer thought that the first wetland scientist was overzealous on this property.

You are asked to review the work and flag the wetlands yourself. You tell the developer that you are familiar with the first wetland scientist and that you think the scientist is a bit of a tree hugger and may have flagged some areas that are not wetlands. You inspect the site and end up agreeing with flags of the first wetland scientist. Nevertheless, for future projects, the developer calls you and stops hiring the other wetland scientist. Did you violate your ethical standards?

(5) Not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another; and