

# TITLE L

## WATER MANAGEMENT AND PROTECTION

### CHAPTER 485

#### NEW HAMPSHIRE SAFE DRINKING WATER ACT

#### Public Water Supply Protection Program

##### Section 485:1

###### **485:1 Statement of Purpose. –**

- I. The purpose of this chapter is to provide a comprehensive drinking water protection program for the citizens of New Hampshire. It shall be consistent with and at least as stringent as the Federal Safe Drinking Water Act standards.
- II. In order to implement a comprehensive drinking water protection program, the department of environmental services shall:
- (a) Monitor the water quality of public water supplies and privately owned redistribution systems.
  - (b) Provide technical assistance to water operators and the general public.
  - (c) Review the design of proposed public water systems, privately owned redistribution systems, and alterations for existing systems. Review of the alteration of existing privately owned redistribution systems shall be limited to alterations that involve more than 500 feet of new installation of distribution piping or the addition of new exterior pumping or storage facilities.
  - (d) Periodically conduct sanitary surveys of public water systems and privately owned redistribution systems to make certain of proper safety and operation.
  - (e) Require that public water supplies comply with all pertinent federal and state statutes and rules.
  - (f) Educate citizens for the need and methods of providing safe and adequate drinking water.
  - (g) Approve sources of water used in the manufacture of bottled water.
  - (h) Monitor the operation and maintenance of privately owned redistribution systems.
  - (i) Adopt primary drinking water standards by establishing maximum contaminant limits or treatment techniques.

**Source.** 1989, 339:1. 1990, 163:1. 1996, 228:108. 1997, 155:4. 2008, 279:1, 2, eff. July 1, 2009. 2018, 368:3, eff. July 10, 2018.

##### Section 485:1-a

###### **485:1-a Definitions. –**

As used in this chapter, unless the context clearly indicates otherwise, the following words shall have the following meanings:

- I. "Community water system" means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.
- I-a. "Brackish" means a concentration in water of dissolved solids that is between 1,000 and 10,000 milligrams per liter.
- I-b. "Closed loop geothermal system" means any heating or cooling system that operates by circulating fluid through a closed loop pipe or loops of pipes installed in the subsurface or surface water for the purpose of utilizing the geothermal properties of the subsurface or surface water as a heat source or sink.
- II. "Contaminant" means any physical, chemical, biological or radiological substance or matter in the water.
- III. "Department" means the department of environmental services.
- IV. "Commissioner" means the commissioner of the department of environmental services.

V. "Feasible" means capable of being done with the use of the best technology, treatment techniques, and other means which the department finds, after examination for efficacy under field as well as laboratory conditions, is available at reasonable cost.

V-a. "Freshwater" means water with a concentration of total dissolved solids that is less than 1,000 milligrams per liter.

VI. "Household equivalent" means water usage equal to 300 gallons per day.

VII. "Maximum contaminant level" means the maximum permissible level of a contaminant in water which is delivered to the free flowing outlet of the ultimate user of a public water system, except in the case of turbidity where the maximum permissible level is measured at the point of entry to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from the definition.

VIII. "Maximum contaminant level goal" means that level of a contaminant in water at which no known or anticipated adverse effects on the health of consumers occur and which allows an adequate margin of safety, as determined by federal and state agencies.

IX. "National Drinking Water Regulations" means the drinking water regulations promulgated by the administrator of the U.S. Environmental Protection Agency under the authority of the Safe Drinking Water Act, P.L. 93-523, as amended.

X. "Non-community water system" means a public water system that is not a community water system.

XI. "Non-transient non-community water system" means a system which is not a community water system and which serves the same 25 people, or more, over 6 months per year.

XI-a. "Open loop geothermal system" means any heating or cooling system that operates by withdrawing water from a well and returning the water to the source well or another well for the purpose of utilizing the geothermal properties of the subsurface as a heat source or sink.

XII. "Operator" means the individual who has direct management responsibility for the routine supervision and operation of a public water system or of a water treatment plant or collection, treatment, storage, or distribution facility or structure that is a part of a system.

XIII. "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.

XIV. "Political subdivision" means any municipality, county, district, or any portion or combination of 2 or more thereof.

XIV-a. "Privately owned redistribution system" means a system for the provision of piped water for human consumption which does not meet the definition of public water system under paragraph XV, and meets all the following criteria: (1) obtains all of its water from, but is not owned or operated by, a public water system; (2) serves a population of at least 25 people, 10 household units, or 15 service connections, whichever is fewest, for at least 60 days per year; and (3) has exterior pumping facilities, not including facilities used to reduce pressure, or exterior storage facilities which are not part of building plumbing.

XV. "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes (1) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Any water system which meets all of the following conditions is not a public water system:

- (a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);
- (b) Obtains all of its water from, but is not owned or operated by, a public water system; and
- (c) Does not sell water to any person.

XV-a. "Source of water" means a spring, artesian well, spa, geyser, drilled well, public water supply, or other source, of any water used in the manufacture of bottled water, which has been inspected and approved by the department.

XV-b. "Salt water" means water with a concentration of total dissolved solids that exceeds 10,000 milligrams per liter.

XVI. "Supplier of water" means any person who controls, owns or generally manages a public water system.

XVII. "Water treatment plant" means that portion of the public water system which is designed to alter the physical, chemical, biological or radiological quality of the water or to remove any contaminants.

XVIII. "Wellhead protection area" means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

XIX. "Water conservation" means any beneficial reduction in water losses, waste, or use.

**Source.** 1990, 163:2. 1996, 228:68, 106. 1997, 155:5. 2002, 142:1. 2008, 279:3. 2009, 27:2-5, eff. July 7, 2009.

## **Section 485:2**

### **485:2 Administration. –**

This chapter shall be administered by the department, which is authorized to:

- I. Enter into agreements, contracts or cooperative arrangements under such terms and conditions as it deems appropriate with other state, federal or interstate agencies, municipalities, education institutions, local health departments or other organizations or individuals.
- II. Receive financial and technical assistance from the federal government and other public or private agencies.
- III. Participate in related programs of the federal government, other states, interstate agencies, or other public agencies or organizations.
- IV. Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds.
- V. Adopt rules under RSA 541-A to carry out the requirements of this chapter as listed in RSA 485:3.

**Source.** 1989, 339:1. 1996, 228:69, eff. July 1, 1996.

## **Section 485:3**

### **485:3 Drinking Water Rules. –**

I. The commissioner shall adopt under RSA 541-A, following public hearing, drinking water rules and primary drinking water standards which are necessary to protect the public health and which shall apply to all public water systems. Such rules shall include:

- (a) identification of contaminants which may have an adverse effect on the health of persons;
  - (b) After consideration of the extent to which the contaminant is found in New Hampshire, the ability to detect the contaminant in public water systems, the ability to remove the contaminant from drinking water, and the costs and benefits to affected parties that will result from establishing the standard, a specification for each contaminant of either:
    - (1) A maximum contaminant level that is acceptable in water for human consumption; or
    - (2) One or more treatment techniques or methods which lead to a reduction of the level of such contaminant sufficient to protect the public health, if it is not feasible to ascertain the level of such contaminant in water in the public water system; and
  - (c) criteria and procedures to assure compliance with the levels or methods determined under subparagraph (b), including quality control monitoring and testing procedures and standards to ensure compliance with such levels or methods; criteria and standards to ensure proper operation and maintenance of the system; requirements as to the minimum quality of water which may be delivered to the consumer; and requirements with respect to siting new facilities. Such rules shall be no less stringent than the most recent national Primary Drinking Water Regulations in effect, as issued or promulgated by the United States Environmental Protection Agency.
- II. The commissioner may adopt secondary drinking water rules, which are necessary to protect the public welfare. Such rules may apply to any contaminant in drinking water which may adversely affect the color, odor, taste or appearance of the water and consequently may cause a substantial number of persons to discontinue using a public water system, or which may otherwise adversely affect the public welfare. Such rules may vary according to geographic, economic, technical or other relevant circumstances. Such rules shall reasonably assure the protection of the public welfare and the supply of aesthetically adequate drinking water.
- III. The commissioner shall adopt under RSA 541-A all rules necessary to implement the requirements of the following sections of this chapter:
- (a) RSA 485:42.
  - (b) RSA 485:43.

IV. The commissioner may adopt rules specifying criteria and procedures for requiring public water systems to conduct monitoring programs for contaminants which are not identified in the national primary drinking water regulations, but which have been identified by the administrator of the United States Environmental Protection Agency as "unregulated contaminants." Such rules shall require monitoring of drinking water supplied by the system and shall vary the frequency and schedule of monitoring requirements for systems. An unregulated contaminant is one for which no maximum contaminant level or treatment technique has been established under paragraph I or II. In developing such rules, the commissioner shall consider materials submitted by the department of health and human services, pursuant to RSA 125-H:3. Rules adopted under this paragraph shall list unregulated contaminants for which public water systems may be required to monitor. Any list established pursuant to this paragraph shall be consistent with, but not limited by, the list of unregulated contaminants identified in regulations promulgated by the administrator of the United States Environmental Protection Agency.

V. The commissioner may adopt rules specifying the criteria under which filtration, including coagulation and sedimentation, as appropriate, is required as a treatment technique for public water systems supplied by surface water sources. In developing such rules the commissioner shall consider the quality of source waters, protection afforded by watershed management, treatment practices such as disinfection and length of water storage and other factors relevant to protection of health. The commissioner may require any public water supply system to assist in determining the necessity of filtration in that system. The commissioner shall provide an opportunity for notice and public hearing prior to implementation of any filtration requirement. Following such hearing, the commissioner shall prescribe, by rule adopted pursuant to RSA 541-A, a compliance schedule for such filtration requirement.

VI. The commissioner may adopt rules requiring disinfection as a treatment technique for all public water systems.

VII. The commissioner may adopt rules specifying the criteria and procedures to be used to identify and notify persons who may be affected by lead contamination of their drinking water when such contamination results from either the lead content in the construction materials of the public water system or the corrosivity of the water supply, or both. The commissioner may also adopt rules prohibiting the use of lead pipes, solder and flux in the installation or repair of any public water system or any plumbing in a residential or nonresidential facility providing water for human consumption. Such rules shall not prohibit the use of leaded joints necessary for the repair of cast iron pipes.

VIII. The commissioner may adopt rules relative to defining the best available technology, treatment techniques, or other means which are feasible for the purpose of meeting the federal maximum contaminant level. In defining the best available technology, treatment technique or other means, the commissioner may consider the number of persons served by the system, other physical conditions related to engineering feasibility and cost of compliance, and information contained in health risk assessments provided by the department of health and human services pursuant to RSA 125-H:3, II and IV. Such rules shall specify all applicable criteria relative to the commissioner's determination.

IX. The commissioner may adopt rules to implement a wellhead protection program pursuant to RSA 485:48.

X. The commissioner may adopt rules to implement the Underground Injection Control Program of the federal Safe Drinking Water Act, 42 U.S.C. section 300f et seq., as well as rules pertaining to permits for the regulation and remediation of contamination from previous discharges or disposal of waste to the groundwater. The commissioner's rules shall include criteria and procedures to ensure that past and present underground injection will not endanger drinking water sources, and shall provide for consideration of varying geologic, hydrologic, or other conditions in different areas within the state.

XI. The commissioner shall adopt rules, pursuant to RSA 541-A, specifying the water quality standards and other criteria and procedures for obtaining a permit to use a source of water for the manufacture of bottled water.

XII. The commissioner may adopt rules to ensure long-term viability of public drinking water systems as required by section 119 of the federal Safe Drinking Water Act Amendments of 1996, 42 U.S.C. section 300g-9 to qualify for full eligibility for federal and state revolving fund capital grants.

XIII. The commissioner shall adopt rules, pursuant to RSA 541-A, relative to new groundwater withdrawals of 57,600 gallons or more in any 24-hour period by public water systems. Such rules shall include:

(a) Criteria and procedures for requiring public water systems to identify and address impacts of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the anticipated zone of contribution to the withdrawal.

- (b) Requirements relative to conservation management plans which demonstrate the need for the proposed withdrawals, to be submitted by the public water system seeking approval for a withdrawal.
- (c) Procedures by which the department may deny permission for withdrawals or order the applicant to provide a response policy, as provided by department rules, for provision of alternative water supply at no initial capital cost to persons whose wells are adversely affected by the proposed withdrawal or order reduced withdrawals if hydrogeologic data indicate that water-related resources are being adversely affected by the withdrawals.

XIV. The commissioner may adopt rules to:

- (a) Regulate the heat exchange fluids utilized in closed loop geothermal systems. The commissioner's rules shall include criteria and procedures to ensure that these substances when released to the environment will not endanger drinking water sources.
- (b) Prohibit the construction of open loop geothermal systems where such process will contaminate freshwater aquifers with brackish or saline groundwater.

**Source.** 1989, 339:1. 1991, 344:3. 1992, 289:53. 1995, 310:181. 1996, 228:110. 1997, 155:6; 271:1. 1998, 124:1. 2009, 27:6, eff. July 7, 2009. 2018, 368:4, eff. July 10, 2018.

### **Section 485:3-a**

**485:3-a Permit Authority.** – The department may grant operational permits for public water systems.

**Source.** 1990, 163:3. 1996, 228:106, eff. July 1, 1996.

### **Section 485:3-b**

**485:3-b Site Assessment Review Fee.** –

I. Any person, except for state and local governments including counties and political subdivisions, that requests an expedited review of environmental site assessment reports by the department shall pay to the department a review fee based on the equalized assessed valuation of the property as determined in rules adopted by the commissioner under RSA 541-A, shall be as follows:

*Fee*

\$0 to \$250,000	\$1,800
\$250,001 to \$500,000	\$2,250
\$500,001 to \$1,000,000	\$3,750
greater than \$1,000,000	\$7,500

II. The department shall provide written comments within 60 days after the date such reports and the required fees are received by the department.

**Source.** 1993, 289:2; 358:93. 2007, 219:9, eff. July 1, 2007.

### **Section 485:3-c**

**485:3-c Groundwater Management Permit Fee.** – Any person, submitting a permit application under RSA 485:3, X shall pay to the department a groundwater management permit application fee of \$2,000. Any person who has paid the environmental site assessment review fee specified in RSA 485:3-b shall be exempt from the groundwater management permit fee. State and local governments including counties and political subdivisions shall be exempt from groundwater management permit application fees, unless eligible for funding under RSA 146-D, RSA 146-E, RSA 146-F, or RSA 146-G.

**Source.** 1993, 289:2. 2007, 219:10, eff. July 1, 2007.

## Section 485:3-d

**485:3-d Annual Report Required.** – [Repealed 2015, 259:31, VI, eff. July 1, 2015.]

## Section 485:4

### **485:4 Power to Require Improvements.** –

I. The department is empowered to investigate the sanitary conditions and methods pertaining to the source, treatment, and distribution of all public water supplies for domestic use, and to require the application of any treatment or improvement in conditions and methods as it may deem necessary to insure fitness and safety and adequate protection of the public health. If the department determines that improvements are necessary, the municipality, corporation, or person shall be so notified in writing and the requirements so ordered shall be effected pursuant to RSA 38:25 within a reasonable time to be fixed by the department. Appeals of actions of the department may be made as provided in RSA 485:59. The department may set intermediate goals and time frames to assist municipalities, corporations, or persons to abide by an order of the department under this paragraph.

II. Upon complaint of not less than 10 customers of an existing public water system or not less than 10 residents not currently served by a public water supply, the department shall make an investigation of conditions regarding water quality or quantity problems described in the complaint. If, as a result of any such investigation, the department concludes that a significant public health or safety problem exists due to water supply quality or quantity, it shall perform a preliminary analysis of alternatives which address the problem. The department may request additional information from the complainants and nearby public water supply system owners, such as data on water supply quality and quantity, well characteristics, and water distribution system characteristics, as is necessary to perform its investigation and analysis. If the department determines that an extension of water service from an existing public water supply system to the area of impaired water quality or quantity is the most feasible and cost-effective alternative, that the extension is consistent with municipal master planning, local water system policies and rules, RSA 9-B, and RSA 162-C:2, V, and that the existing public water system has adequate water supply and system capacity to serve the problem area, the municipality, corporation, or person who owns the public water system shall be ordered to allow connection to its water distribution system from the identified area, regardless of existing municipal or public water system service area boundaries. The connection so ordered shall be effected pursuant to RSA 38:25 within a reasonable time to be fixed by the department and may contain limitations on water system connections unrelated to the original petition in order to limit unintended land use impacts. Appeals of actions of the department may be made as provided in RSA 485:59. The department may set intermediate goals and time frames to assist municipalities, corporations, or persons to abide by an order of the department under this paragraph. The provisions of this paragraph or of any order issued under this paragraph shall not delegate any costs associated with a connection to the person receiving the order from the department.

III. The department may investigate the sanitary conditions and methods pertaining to pumper stations, piping, storage, and treatment facilities of privately owned redistribution systems which present a threat to public health and safety. If the department determines that action, such as disinfection, is necessary, the municipality, corporation, or person shall be so notified in writing and the action so ordered shall be effected within a reasonable time to be fixed by the department. Replacement of existing infrastructure shall only be required in response to a specific public health threat. Appeals of actions of the department may be made under RSA 485:59. The department may set intermediate goals and time frames to assist municipalities, corporations, or persons to abide by an order of the department under this paragraph.

**Source.** 1989, 339:1. 1990, 33:1. 1995, 88:1. 1996, 228:106. 1997, 206:6. 2002, 141:3. 2008, 279:4, eff. July 1, 2009.

## Section 485:5

**485:5 Power to Require Acquisition of Land.** – The acquisition of adjacent or marginal lands necessary to provide reasonable sanitary control over the quality of a public water supply shall be deemed an improvement in

sanitary conditions which is within the power of the department to require under the provisions of RSA 485:4. Municipalities shall comply with such order pursuant to RSA 38:25.

**Source.** 1989, 339:1. 1996, 228:106. 1997, 206:6, eff. July 1, 1997.

### **Section 485:6**

**485:6 Disinfection.** – Any public water supply system which utilizes any of the surface water of the state, as defined in RSA 485-A, as the source of supply, shall, as a minimum means of treatment, be provided with suitable chlorination or other disinfection facilities installed, operated and maintained in accordance with rules of the department adopted under this chapter.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:7**

**485:7 Penalty.** – Any municipality, corporation or person who shall fail to install or to operate and maintain disinfection facilities in accordance with the foregoing requirements shall be guilty of a violation for each day of failure to so install, operate or maintain such equipment. Said penalty shall not be invoked in the event of a bona fide emergency arising from an unavoidable or unforeseen failure or casualty to such treatment facilities. It shall be the duty of the municipality, corporation or person in responsible charge of said public water supply system to give immediate notice of the emergency condition to the department in order that appropriate action to safeguard the public health may be taken.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:8**

#### **485:8 Approval of Construction Plans. –**

I. No person, proposing to supply water for domestic uses through a public water system or privately owned redistribution system, shall construct any new system, or enlarge any existing system, for supplying water to the public without first submitting detailed plans of the proposed construction to the department and securing its approval of such plans. The department shall examine the topography and the watershed, complete an engineering review of the plans and specifications for said proposed construction, and make chemical and bacteriological analysis of the waters of the proposed supply, before approval is granted. The requirements of this paragraph shall only apply to privately owned redistribution systems if the construction or enlargement of an existing system involves more than 500 feet of new installation of distribution piping or the addition of any new exterior pumping or water storage facility. Any review of plans for a privately owned redistribution system shall be completed within 30 days of the submission of such plans.

II. No new construction, addition, or alteration involving the source, treatment, distribution, or storage of water in any public water system or privately owned redistribution system shall be commenced until the plans and specifications have been submitted to and approved in accordance with rules adopted by the department; except, if such construction, addition, or alteration is exempted by the department because it will have no effect on public health or welfare, then such submission and approval is not required. In granting approval of plans and specifications, the department may require modifications, conditions, or procedures to ensure, as far as feasible, the protection of the public health. The department may require the submission of water samples for analysis to determine the extent of treatment required. Records of construction, including, where possible, plans and descriptions of existing public water systems and privately owned redistribution systems, shall be maintained by such systems and shall be made available to the department upon request. The requirements of this paragraph shall only apply to privately owned redistribution systems if the construction, addition, or alteration of an existing system involves more than 500 feet of new installation of distribution piping or the addition of any new exterior pumping or water storage facility. Any review of plans for a privately owned redistribution system shall be completed within 30 days of the submission of such plans.

III. Any person submitting detailed plans to the department, as provided in this section, for a new public water system, or an existing public water system where conversion from transient use to residential-type use is proposed, shall pay to the department a fee of \$45 per residential unit. When usage cannot be apportioned by residential units at new public water systems, the fee shall be based on the flow proportioned equivalent to that of a single family residential unit. The commissioner shall adopt rules pursuant to RSA 541-A defining flow proportioned equivalency.

IV. The fees required under paragraph III shall be for reviewing such detailed plans and making site inspections as may be necessary. The fee shall be paid at the time said detailed plans are submitted and shall be deposited with the state treasurer as unrestricted revenue. The department shall establish by rule, adopted pursuant to RSA 541-A, a minimum threshold below which no fee is required and a maximum level above which the fee will not increase.

V. Any person proposing to install new public sewerage or sewage treatment facilities, or to extend, renovate, replace or substantially repair any such existing facilities, shall submit, at least 30 days in advance of construction, detailed plans and specifications for such facilities to the department and secure its approval of such plans and specifications. The foregoing provisions shall also be applicable to any institution accommodating 30 or more people, which provides its own sewage disposal facilities.

**Source.** 1989, 339:1. 1996, 228:70, 106. 2008, 279:5, eff. July 1, 2009.

### **Section 485:9**

**485:9 Highway Construction.** – No public highway, access roads, or private ways of any sort, shall be constructed so as to traverse any watershed tributary to a lake, pond or reservoir used for the storage of public drinking water without first obtaining the approval of the department.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:10**

**485:10 Approval.** – No person supplying water to the public for domestic use shall resort to, hold in reserve, or maintain, a connection through which water may be received from any auxiliary or emergency source of supply, unless such source shall have been duly declared to, registered, and approved by the department.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:11**

**485:11 Backflow Device Requirements and Tests, Installations, Repairs and Replacements.** – There shall be a backflow prevention device installed at every connection to a public water system if the facility connected may pose a hazard to the quality of water supplied by the public water system as determined by the department. Where applicable, the facility receiving water from a public water supply shall be responsible for having such drinking water distribution system protective backflow prevention devices inspected and tested by individuals certified by a third party who has been approved by the department to conduct backflow device inspection and testing certification. The facility shall also have backflow devices installed, maintained, repaired, and replaced by individuals qualified by either a plumbers license or by certification by the department under RSA 332-E:3, III proving competency in distribution system operation. The activities to be conducted by qualified individuals shall be specifically limited to the inspection and testing, maintenance, repair or replacement, and installation of the water meters, meter horns, backflow preventers, and assembly devices directly adjacent to and required as part of the protection for the drinking water distribution system. Testing of drinking water distribution system protective backflow prevention devices, where applicable, shall occur after installation or repair to ensure that new and repaired devices are working properly. There shall be a backflow prevention device installed at every connection to a public water system if the facility connected may pose a hazard to the quality of water supplied by the public water system as determined by the department of environmental services. The facility receiving

water from a public water supply shall be responsible for having such backflow prevention devices installed, serviced, and tested by individuals qualified by license or certification to perform these activities. Testing of backflow devices shall occur twice annually unless the public water supplier determines the facility poses a low hazard, in which case testing shall be performed on an annual basis. The facility receiving water from a public water supplier is responsible for ensuring that the backflow prevention device is working properly to prevent backflow into the public water system. Testing shall also occur twice annually for any high hazard devices and facilities. When the public water supplier determines that the facility poses a low hazard, testing shall occur annually. A residential property containing a non-testable device shall not be considered a hazard facility and shall not require annual testing. A residential property may be considered a high hazard facility if it has an irrigation system, private well connection, or other feature that may cause a public health risk. If an outside irrigation system is the sole reason a residential property is considered a hazard to the public water supply distribution system, such irrigation system shall be tested annually during the period when the irrigation system is operated. The facility receiving water from a public water supplier is responsible for ensuring that the backflow prevention device is working properly to prevent backflow into the public water system.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2013, 50:1, eff. Aug. 3, 2013. 2014, 304:4, eff. Sept. 30, 2014. 2015, 50:1, eff. Aug. 1, 2015.

## **Section 485:12**

**485:12 Sealed Valves.** – All valves or gates used in the connection here described, in the case of sources maintained for public fire protection, shall also be subject to the special seal and inspection of the department. Whenever it shall become necessary to break such seal, or to resort to an unapproved emergency source for public fire protection, notice of such action shall, within 24 hours, be sent to the said department by telephone or telegraph and also by mail.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 485:13**

**485:13 Control of Intakes.** – The department shall have general control and oversight of emergency intakes. It may, when feasible and deemed necessary for the protection of the public health, upon reasonable notice, require the abandonment of any existent emergency source and the adoption of other means of supply.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 485:14**

### **485:14 Use of Fluoride.** –

I. No fluoride shall be introduced into a public water system unless and until the municipality or municipalities served by such system have each held a public hearing as to the introduction of fluoride into the public water system, and the registered voters of such municipality or municipalities have approved such action pursuant to RSA 44:16, RSA 31:17-a, RSA 52:23, or RSA 485:14-a. For purposes of this section "municipality" means a municipality that has 100 or more user connections that are served from the public water system.

II. Paragraph I, RSA 44:16, RSA 31:17-a, RSA 52:23, and RSA 485:14-a shall not apply to a public water system's receipt of fluoridated water from another public water system. If a public water system that does not fluoridate its water receives fluoridated water from another system, it shall, prior to receipt, provide written information to its water users that includes the following:

- (a) A statement, approved by the department, that the water contains fluoride for the purpose of improving community oral health and, in the event the fluoride levels are diluted from other sources of water or degraded, that the fluoride levels may be too low to effectively prevent tooth decay;
- (b) An identification of the source of the fluoridated water; and

(c) The most recent compliance sample result for fluoride that the supplier of water that fluoridated the water has submitted to the department.

**Source.** 1989, 339:1. 2004, 225:1, eff. July 1, 2004. 2018, 258:5, eff. Aug. 11, 2018.

## **Section 485:14-a**

### **485:14-a Referendum Procedure for Public Water Systems Serving More Than One Political Subdivision. –**

I. Upon the written application of the aggregate of 10 percent of the registered voters in all of the towns served by a water system, presented to the clerk of the town owning the water system at least 90 days before the day prescribed for an annual town meeting or city election, the clerk shall forward a copy of the petition to each town served by the water system. Upon receipt of the petition, the selectmen of the town shall insert on the warrant or the official ballot the following question: "Shall fluoride be used in the public water system?" Beside this question shall be printed the word "yes" and the word "no" with the proper boxes for the voter to indicate his or her choice. If a majority of those voting in a water system that serves multiple towns does not approve the use of fluoride in the public water system, no fluoride shall be introduced into the public water system for said towns. After such popular referendum, the selectmen shall not insert an article relative to the use of fluoride in the public water system in the warrant nor shall such question be inserted on the official ballot for a minimum period of 3 years from the date of the last popular referendum and only upon written application at that time of not less than the aggregate of 10 percent of the registered voters of all of the towns.

II. In this section:

(a) "Town" means town as defined in RSA 21:5.

(b) "Selectmen" means selectmen as defined in RSA 21:28.

**Source.** 2004, 225:2. 2008, 230:5, eff. Aug. 19, 2008.

## **Section 485:14-b**

### **485:14-b Fluoride Statement Required. –**

I. If a public water supply is fluoridated, the following notice shall be posted in the water system's consumer confidence report: "Your public water supply is fluoridated. According to the Centers for Disease Control and Prevention, if your child under the age of 6 months is exclusively consuming infant formula reconstituted with fluoridated water, there may be an increased chance of dental fluorosis. Consult your child's health care provider for more information."

II. The notice shall be located in the section of the consumer confidence report dedicated to water quality.

**Source.** 2012, 122:1, eff. Aug. 4, 2012.

## **Section 485:15**

**485:15 Appeal.** – If the department shall require the abandonment of any such emergency source the person, corporation or association aggrieved by such action shall have an appeal to the superior court, said appeal to be taken within 30 days from the receipt of the order from said department, and said court may make such order on the appeal as justice may require.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 485:16**

**485:16 Penalty.** – Whoever violates any of the provisions of RSA 485:8-13, but not RSA 485:8, II, or fails to comply with the lawful orders and requirements of the department duly made pursuant to those sections, or

whoever hinders or obstructs any inspector in the pursuit of his lawful duty in respect to such sections, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Methyl Tertiary Butyl Ether (MTBE)**

### **Section 485:16-a**

#### **485:16-a Drinking Water Standards and Notification. –**

- I. The commissioner, in consultation with the commissioner of health and human services, shall adopt primary and secondary drinking water standards pursuant to RSA 485:3, and ambient groundwater quality standards pursuant to RSA 485-C:6, applicable to MTBE. The commissioner shall not commence rulemaking for these standards until after the department has reviewed the scientific record on the risks posed by the presence of MTBE in drinking water supplies. Such review shall be completed at the earliest possible date, but no later than January 1, 2000. The commissioner shall commence rulemaking no later than January 1, 2000.
- II. Any public water system delivering water with greater than 5 parts per billion of MTBE shall notify each customer of the MTBE content.

**Source.** 1999, 313:2, eff. July 16, 1999.

### **Section 485:16-b**

#### **485:16-b Authority to Limit MTBE in Gasoline; Penalties. –**

- I. Except as provided for in RSA 485:16-d, the commissioner shall seek all necessary authorizations from the Environmental Protection Agency to opt out of the federal reformulated gasoline program as soon as possible, but in no case later than January 1, 2004. The department of environmental services shall prepare and submit to the Environmental Protection Agency as soon as possible, but in no case later than January 1, 2002, all documentation necessary to accomplish this task.
- II. In addition to the provisions of paragraph I, the commissioner, after consultation with the commissioner of health and human services, shall limit to the greatest extent practicable, with the approval of the governor and council, the concentration of MTBE allowed in any gasoline sold in all or part of the state after first holding a public hearing on the issue and certifying to the air pollution advisory committee established in RSA 125-J:11 that gasolines which meet such limit are:
  - (a) Readily available to New Hampshire consumers at a reasonable price;
  - (b) Less hazardous overall to humans and the environment than gasoline having higher MTBE concentrations taking into account all exposure routes, including air and water; and
  - (c) Approved for use in New Hampshire by the Environmental Protection Agency without a requirement to substitute additional air emissions reductions beyond those adopted under RSA 485:16-c.
- III. Nothing in this section shall prohibit the commissioner from phasing in any limitations approved under paragraph II.
- IV. Retail sellers of gasoline and the suppliers to such retail sellers shall comply with the provisions of paragraph II or be subject to the enforcement provisions of RSA 485:58.
- V. The limitations on MTBE concentrations established under the provisions of this section shall be exempt from the requirements of RSA 541-A, the administrative procedure act. The department shall file, however, in the office of legislative services a copy of all rules adopted, amended, or repealed under this section by the department.

**Source.** 1999, 313:2. 2001, 293:2, eff. July 17, 2001.

### **Section 485:16-c**

**485:16-c Adoption of Other Air Pollution Control Measures.** – In order to reduce air emissions and receive federal credit for such reductions, the commissioner shall be authorized to establish limits on the manufacture, use, or sale of consumer products in accordance with RSA 125-C:6, XVII.

**Source.** 2001, 293:3. 2004, 175:5, eff. May 27, 2004.

## **Section 485:16-d**

### **485:16-d Regional and Federal Efforts.** –

I. The commissioner is authorized to promote such regional or federal efforts as may be required to reduce the ongoing contamination threat posed by MTBE and other gasoline ethers, including but not limited to efforts to eliminate the federal oxygen mandate in the federal Clean Air Act, secure waivers from federal fuel requirements, or implement cleaner, more protective reformulation of gasoline.

II. If an alternative regional or federal approach to cleaner gasoline is developed which provides equal or greater effectiveness in reducing concentrations of MTBE and other gasoline ethers than opting out of the federal reformulated gasoline program under RSA 485:16-b, I, or does so in a manner that requires less costly substitute emission control measures under RSA 485:16-c, then the commissioner may implement such alternative regional or federal approach. Such alternative regional or federal approach may substitute for opting out of the federal reformulated gasoline program under RSA 485:16-b, I if undertaken prior to January 1, 2004.

**Source.** 2001, 293:3, eff. July 17, 2001.

## **Perfluorochemicals**

### **Section 485:16-e**

[2018, 368:5, eff. July 10, 2018, added the subdivision heading.]

**485:16-e Perfluorochemicals.** – By January 1, 2019, the commissioner shall, in consultation with the commissioner of the department of health and human services and other interested parties, initiate rulemaking in accordance with RSA 541-A to adopt a maximum contaminant limit for perfluorooctanoic acid (PFOA), perfluorooctanesulfonic acid (PFOS), perfluorononanoic acid (PFNA), and perfluorohexanesulfonic acid (PFHxS).

**Source.** 2018, 368:5, eff. July 10, 2018.

## **Water Pollution Control**

### **Section 485:17**

#### **485:17 Penalty.** –

I. If a person shall recklessly place, leave, or cause to be placed or left, in or near a lake, pond, reservoir or stream tributary thereto, from which the domestic water supply of a city, town, or village is taken, in whole or in part, any material, substance, or fluid that may cause such water to become impure or unfit for such purposes, such person shall be guilty of a misdemeanor if a natural person or guilty of a felony if any other person.

II. If a person shall purposely or knowingly place, leave, or cause to be placed or left, in or near a lake, pond, reservoir, or stream tributary thereto, from which the domestic water supply of a city, town, or village is taken, in whole or in part, any material, substance, or fluid that may cause such water to become impure or unfit for such purposes, such person shall be guilty of a class B felony.

**Source.** 1989, 339:1. 2009, 210:5, eff. Jan. 1, 2010.

## Section 485:17-a

[RSA 485:17-a effective July 1, 2019.]

### **485:17-a Lead in Drinking Water in Schools and Licensed Child Care Facilities. –**

I. Upon the effective date of this section, and within every 5-year period thereafter, public and private schools and licensed child care facilities that have not sampled in the prior 2 years shall test for the presence of lead in drinking water at all locations at the facility that is available for consumption by children. Such testing shall be in accordance with guidance from the department of environmental services. If test results demonstrate the presence of lead in a concentration that exceeds the applicable standard established by the Environmental Protection Agency, the school or licensed child care facility shall, within 5 business days, notify parents and guardians and shall, as an interim measure, ensure that the children are provided only drinking water that meets the standard. The school or licensed child care facility shall also implement a remediation plan, as approved by the department, within 30 days of notification of parents or, in consultation with the department, as soon as practicable. The department shall review the plan and any associated submittals within 30 days of receiving them. If 3 consecutive rounds of sampling performed every 5 years are below the standard, further testing shall not be required.

II. Any time the applicable federal standard for lead in drinking water is changed, public and private schools and licensed child care facilities shall within 30 days compare the results of their most recent testing with such new standard and, in the event any such results exceed the new standard, proceed with the requirements of paragraph I relative to notice, remediation, and interim measures.

**Source.** 2018, 4:18, eff. July 1, 2019.

## Section 485:18

**485:18 Removal of Polluting Substance. –** The health officer of the town, or the water commissioners having charge of the water supply, or the proprietors of the water supply, may remove such material, substance, or fluid and may recover the expense of removal from the person who placed the same, or caused it to be placed, in or near the water, in a court of competent jurisdiction.

**Source.** 1989, 339:1. 2009, 210:6, eff. Jan. 1, 2010.

## Section 485:19

**485:19 Willful Pollution. –** [Repealed 2009, 210:9, eff. Jan. 1, 2010.]

## Section 485:20

### **485:20 Injunctions. –**

I. The superior court shall have power to issue injunctions restraining any person from violating the provisions of RSA 485:17.

II. Municipalities may apply to a justice of the superior court for injunctive relief against existing or impending violations of RSA 485:17. The municipality shall give notice of any such action to the attorney general and the commissioner of environmental services, who may take such steps as they deem necessary to ensure uniform statewide enforcement, including but not limited to joining the action, assuming sole prosecution of the action, or, as of right, dismissing the action without prejudice. Such notice shall be given at least 30 days prior to the commencement of any such action, unless more immediate action is necessary to prevent irreparable environmental damage or other serious public harm, in which case such notice shall be given as soon as practicable, but in no event later than the date of commencement of the action. This paragraph shall not be construed to affect, in any manner, existing authority of municipalities to act based upon the provisions of other statutes or local ordinances.

**Source.** 1989, 339:1. 1991, 340:3. 2009, 210:7, eff. Jan. 1, 2010.

### **Section 485:21**

**485:21 Fishing; Ice Racing; Penalty.** – Said local legislative bodies and officers may also adopt all reasonable rules regarding fishing and the use of boats in and upon any such lake, pond or reservoir, and regarding racing or speeding horses upon the ice of such water body, which they may deem expedient. Any person who shall violate any of said rules after notice of such rules shall be guilty of a misdemeanor.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 485:22**

**485:22 Bathing.** – If any person shall bathe in such lake, pond or reservoir, within the limits prescribed for the protection of said water supply by the local board of health or health officer or the department, he shall be guilty of a misdemeanor.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:23**

#### **485:23 Petition to Protect Water Supplies.** –

I. Whenever any board of water commissioners, local board of health, local health officer or 10 or more citizens of any town or city have reason to believe that a public water or ice supply is being contaminated or is in danger of contamination, and that the local regulations are not sufficient or effective to prevent such pollution, they may petition the department to investigate the case, and to adopt rules under RSA 541-A as the department may deem necessary for the protection of the said supply against any pollution that in its judgment would endanger the public health. Citizens petitioning under this section shall designate a signatory of the petition as the person to whom the department shall send its response.

II. Whenever any board of water commissioners, local board of health, or other owner of a public water supply has reason to believe that a public water supply is in danger of being contaminated or is otherwise threatened and that an emergency condition exists such that a petition pursuant to paragraph I to the department and the adoption of rules would not adequately protect the water supply, the board or owner may petition the governor to declare a state of emergency for the public water supply. At the request of the governor, the department shall consult with the owner of the water supply and make a recommendation as to emergency protections that may be necessary. If the governor declares a state of emergency for a public water supply, those additional protections that the governor deems necessary shall be effective immediately and for the duration of the emergency. The declaration of a state of emergency for a public water supply shall not exceed 6 months. The governor may renew the declaration one time for up to 6 additional months upon further request by the original petitioner. At such time as any of the emergency protections are to become permanent, the department shall initiate rulemaking in accordance with RSA 485:24. Any protections in the governor's declaration shall be enforced in the same manner as rules adopted pursuant to RSA 485:24 or RSA 485:25 with violations of the protections subject to RSA 485:4 and RSA 485:58.

**Source.** 1989, 339:1. 1996, 228:106. 2002, 141:1, eff. May 13, 2002.

### **Section 485:23-a**

**485:23-a Review of Private Access Facilities.** – No private boat access facility shall be constructed to any public waters which serve as a public water supply for a public or private water utility company, without the approval of the department of environmental services upon consultation with the public water access advisory board and notification to the public utilities commission for any water utility under its jurisdiction.

**Source.** 1996, 224:2, eff. Aug. 9, 1996.

## **Section 485:24**

### **485:24 Investigations; Rules. –**

I. The department shall respond in writing to a petition filed under RSA 485:23, I, after due investigation, but not later than 30 days after receipt of the petition, informing the petitioners of the department's intended action. In response to a petition, or upon its own motion, the department shall adopt such rules under RSA 541-A as it may deem best to protect the water or ice supply against any dangerous contamination. If requested by the department, the local board of water commissioners, the local board of health, or the local health officer, shall enforce such rules in cooperation with the department.

II. In the case of water supplies any part of which may be outside the town or city concerned, the health officer of such town or city may act as an agent of the department for the enforcement of these rules when so designated by the department. The department may empower the board of water commissioners, local board of health, or local health officer and their agents of the affected municipality to enforce rules adopted under the provisions of this section.

**Source.** 1989, 339:1. 1996, 228:106. 2002, 141:2, eff. May. 13, 2002.

## **Section 485:25**

**485:25 Interstate Waters. –** To protect the purity of interstate waters used as sources of public drinking water supply by adjoining states, the commissioner is authorized, at the request of the state health department of an adjoining state, to adopt rules under RSA 541-A for the protection of the purity of the waters of any lakes, ponds, streams, and reservoirs within any specified drainage area in this state.

**Source.** 1989, 339:1. 1996, 228:110, eff. July 1, 1996.

## **Section 485:26**

**485:26 Penalty for Violation of Rules. –** Any person violating rules adopted pursuant to RSA 485:24 or 25 shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 485:27**

**485:27 Power to Require Improvements in Sewage Treatment. –** The department is empowered to investigate the conditions and methods pertaining to existing systems of sewerage and sewage treatment works and to require the application of any treatment, improvement or enlargement of such facilities as will insure their proper operation and provide adequate protection of the public health. Issuance of orders requiring changes or improvements in such sewerage systems or treatment works shall be in the manner as prescribed in RSA 485:4.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 485:28**

**485:28 Power to Require the Installation of Sewage Facilities. –** The department is hereby empowered to investigate the conditions and methods relating to the disposal of sewage in any municipality, as set forth in RSA 486:1, and to require the installation of public sewers, as defined in RSA 147:8, whenever such investigation demonstrates that individual sewage disposal systems are inadequate or incapable of protecting the health and welfare of the citizens of the affected municipality or preventing pollution of the surface waters of the state, as defined in RSA 485-A. Before issuing an order requiring the installation of public sewer facilities, the

department shall notify the municipality of its findings and shall give the municipality an opportunity to be heard. After such hearing if it shall be determined that said facilities are necessary, the municipality shall be so notified in writing and the requirements so ordered shall be effected pursuant to RSA 38:25 within a reasonable time to be fixed by the department. If any municipality whose duty it is to act shall fail or refuse for a period of 10 days after the expiration of the time fixed by said order, or, in the case of appeal for a period of 10 days after final judgment shall have been entered, to obey the same or in good faith to begin to make the installation as ordered, such municipality so failing shall be fined not more than \$1,000 for each day of failure to comply with the order of the department. Said fine shall be paid to the state and may be recovered in an action of debt brought by the attorney general in the name of the state treasurer.

**Source.** 1989, 339:1. 1996, 228:106. 1997, 206:7, eff. July 1, 1997.

### **Section 485:29**

**485:29 Appeal.** – Any person aggrieved by any decision, regulation, ruling or order made by the department pursuant to the provisions of RSA 485:24, 27, and 28 may appeal such decisions pursuant to RSA 21-O:14.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:30**

**485:30 Discharge of Sewage; Penalty.** – No person, association or corporation shall cause or permit the discharge of sewage or other deleterious waste from any dwelling, camp, factory, hotel, boardinghouse, or other commercial establishment into any stream, lake, pond, or river not previously polluted, without first submitting detailed plans of said proposed discharge to the department and securing the approval of the said department. Any person who violates the provisions of this section shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:31**

#### **485:31 Tampering With Public Water Systems. –**

I. Any person who tampers with, attempts to tamper with, or makes a threat to tamper with a public water system shall be guilty of a class B felony if a natural person and guilty of a felony if any other person.

II. Notwithstanding RSA 651:2, a natural person may, in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$50,000 if found guilty of tampering with a public water system, and not more than \$25,000 if found guilty of an attempt to tamper with or making a threat to tamper with a public water system. Each day of violation shall constitute a separate violation.

III. Any person who tampers, attempts to tamper, or makes a threat to tamper with a public water system shall be liable to the state, upon suit brought by the attorney general, for a civil forfeiture not to exceed \$50,000 for such tampering or not to exceed \$25,000 for such attempt or threat.

IV. In this section, the term "tamper" means:

- (a) To introduce a contaminant into a public water system with the purpose of harming persons; or
- (b) To otherwise interfere with the operation of a public water system with the purpose of harming persons.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 485:32**

**485:32 Injuring Property.** – Any person who shall willfully injure any of the property of any water company or of any city or town, used by it in supplying water to its inhabitants, shall be guilty of a misdemeanor if a

natural person, or guilty of a felony if any other person, and such person shall also forfeit and pay to such water company, city or town 3 times the amount of actual damages sustained, to be recovered in an action on the case.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Private Water Sources**

### **Section 485:33**

**485:33 Analyses; Prohibiting Use.** – Whenever any well, spring or other water supply is suspected of being polluted by sewage or other matter dangerous to health, the health officer of the town where it is located may cause an analysis of the water to be made by a competent chemist, without expense to the owner. If the analysis shows the water to be unfit for drinking purposes they may, with the approval of the department, prohibit its use, and, if it be from a well, may cause the well to be closed.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:34**

**485:34 Enforcement.** – The department shall have concurrent jurisdiction with local boards and officers to enforce the provisions of this subdivision.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:35**

**485:35 Prohibiting Use; Penalty.** – Whenever the department, upon investigation, becomes satisfied that a well, spring or other supply of water, used for domestic purposes, has become polluted so as to endanger the public health, it is authorized to prohibit the person or corporation owning or controlling said supply from furnishing such water for domestic purposes, until it becomes satisfied that said water supply has been purified and made fit for domestic use. Any person who knowingly violates the order of the department is guilty of a class B felony for each day he or she continues to furnish water after the order of the department has been served on such person.

**Source.** 1989, 339:1. 1996, 228:106. 2008, 161:1, eff. Jan. 1, 2009.

### **Section 485:35-a**

**485:35-a Protective Well Radii.** – [Repealed 1991, 215:3, eff. Aug. 9, 1991.]

### **Section 485:36**

**485:36 Injunctions to Enforce.** – The superior court shall have jurisdiction in equity, upon application of the department, to enforce the orders of the department issued under RSA 485:35.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485:37**

**485:37 Fencing or Covering.** – No person who owns or occupies land shall knowingly allow any well which is within 500 feet of a dwelling or within 200 feet of any highway to remain open on such land, unless there is around such well a substantial fence or protection at least 3 feet high so constructed that no child can crawl

through or under it. Any such well shall be deemed to be open unless it is protected by a covering strong enough to hold 1,000 pounds and secured so that it cannot be easily removed by children. The term "well" as used in this subdivision shall mean any artificially made hole in the surface of the earth (a) which is more than 4 feet deep and (b) which is more than 8 inches in diameter and less than 16 square feet in area at the top and (c) the sides of which are steeper than a 60 degree slope.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 485:38**

**485:38 Nuisance.** – Any open well which is not fenced or protected as provided in RSA 485:37 is declared a nuisance and the same may be ordered abated by any court of competent jurisdiction on complaint of any prosecuting officer.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 485:39**

**485:39 Penalty.** – Whoever violates any provision of RSA 485:37 or RSA 485:38 shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

**Source.** 1989, 339:1, eff. Jan. 1, 1989.

### **Section 485:40**

**485:40 Emergency Planning.** – The department shall develop plans, with the advice and assistance of the division of homeland security and emergency management, and of the public water systems of the state, for emergency conditions and situations that may endanger the public health or welfare by contamination of drinking water. Such plans may include potential sources of contaminants and situations or conditions that could place them in the sources of public drinking water, techniques and methods to be used by public water systems to reduce or eliminate the dangers to public health caused thereby, methods and times for analysis or testing during such emergency conditions or situations, alternate sources of water available to public water systems, and methods of supplying drinking water to consumers if a public water system cannot supply such water.

**Source.** 1989, 339:1. 1996, 228:71. 2002, 257:10. 2003, 319:128. 2004, 171:20. 2008, 361:15, eff. July 11, 2008.

### **Section 485:41**

**485:41 Duties of Department.** –

The department shall:

I. Monitor the operation and maintenance of new and existing public water systems and privately owned redistribution systems.

II. Adopt rules governing the maintenance and operation of public water systems to ensure compliance with drinking water standards and to protect the public health.

III. Adopt rules governing the installation of pipes, fixtures and other apparatus which are used to connect the water system or privately owned redistribution system to a building. Such rules shall be considered minimum standards. The department shall adopt the International Plumbing Code as published by the International Code Council by reference, provided the department specifies which sections of the code are in force in New Hampshire and makes specific any discretionary provisions in the code subject to approval by the state building code review board. The department shall periodically review the rules adopted under this paragraph to assure that they are no less stringent than the requirements of the current code.

IV. Adopt rules establishing recordkeeping, reporting and testing requirements for public water systems.

V. Enter, and authorize its employees and agents to enter, the premises of all public water systems and privately owned redistribution systems for the purpose of carrying out inspection and for the purpose of taking water samples, to determine compliance with the provisions of this chapter or rules adopted under it, and to inspect any and all records and facilities of such public water supply or privately owned redistribution system in order to determine compliance with this chapter and rules adopted under it.

VI. Undertake long-range planning and studies, within available state and federal funding, relating to the purity of drinking water in the state.

VII. Make available to the public the analytical results of all monitoring and testing undertaken pursuant to this chapter.

VIII. Adopt a fee system in recognition of services provided by the water supply engineering bureau including the issuance of an operational permit for public water systems subject to this chapter. The commissioner shall adopt rules establishing the application process for the issuance of operational permits pursuant to RSA 541-A. The fee category for community systems per year shall be \$300, but in no case shall the fee exceed \$10 per household or household equivalent. The fee category for non-transient and non-community systems shall be \$150 per year. All fees shall be paid to the department for deposit in the operational permits account. Moneys in the operational permits account shall be used to pay the salaries, benefits and expenses of the staff in the department's drinking water supply program. Any revenues generated in excess of the costs of funding the drinking water supply program's expenses, shall lapse to the general fund at the close of each fiscal year to be used to offset the future general fund appropriation for the water supply program.

IX. Adopt rules applying to privately owned redistribution systems requiring:

(a) Periodic monitoring of coliform bacteria and public notification, and remedial action in case of violation of bacterial water quality standards, consistent with the rules which apply to public water systems for such bacterial water quality standards.

(b) Retention of a primary water operator who maintains an operating certificate at a minimum grade 1-A level.

(c) Inspection and maintenance of exterior pumping stations, distribution networks, and exterior storage tanks.

(d) Design standards for new and replacement facilities consistent with the rules which apply to public water systems as limited by the provisions of RSA 485 concerning privately owned redistribution systems, and provided that such rules require that any plans review required by RSA 485 shall be completed within 30 days of the submission of such plans.

**Source.** 1989, 339:1. 1990, 163:4. 1991, 380:3. 1996, 228:72, 106. 2002, 8:9. 2008, 279:6-9, eff. July 1, 2009.

## **Section 485:42**

### **485:42 Variances and Exemptions. –**

I. The department may, after notice and opportunity for hearing, grant one or more variances from an applicable state drinking water regulation to a public water system if the variance will not result in an unreasonable risk to the public health, and if:

(a) Because of the characteristics of the raw water sources reasonably available to the system, the system cannot meet the maximum contaminant levels of such drinking water regulation despite application of the best available technology, treatment techniques or other means. The department's finding of the best available technology treatment, treatment technique or other means may vary depending upon the number of persons served by the system or for other physical conditions related to engineering feasibility and cost of compliance with maximum contaminant levels as considered appropriate by the department; or

(b) Where a specified treatment technique for a contaminant is required by the state drinking water regulations, the system demonstrates to the department's satisfaction that such treatment technique is not required to protect the public health because of the nature of the raw water source. Variances may be conditioned on monitoring, testing, analyzing or other requirements to ensure the protection of the public health, and variances granted under subparagraph (a) shall include a compliance schedule under which the public water system will meet each contaminant level for which a variance is granted as expeditiously as is feasible.

II. The department may, after notice and opportunity for hearing, grant one or more exemptions from an applicable maximum contaminant level or treatment technique in the state drinking water rules to a public water system if:

(a) The exemption will not result in an unreasonable risk to the public health;

(b) The public water system is unable to comply with the rule due to compelling factors, which may include economic factors; and

(c) The public water system was in operation on the earliest effective date, under present or prior law, of the contaminant level or treatment technique requirement. Each exemption shall be conditioned on monitoring, testing, analyzing or other requirements to ensure the protection of the public health, and shall include a compliance schedule under which the public water system will meet each contaminant level or treatment technique for which an exemption is granted as expeditiously as is feasible, but not later than 12 months after the date of issuance of the exemption. The department may extend the final date for compliance provided in any schedule required under this section for a period not to exceed 3 years after the date of the issuance of the exemption if the public water system establishes that:

- (1) The system cannot meet the standard without capital improvements which cannot be completed within the period of such exemption;
- (2) In the case of a system which needs financial assistance for the necessary improvements, the system has entered into an agreement to obtain such financial assistance; or
- (3) The system has entered into an enforceable agreement to become part of a regional public water system; and the system is taking all practicable steps to meet the standards.

If a system serves fewer than 500 service connections and needs financial assistance for necessary improvements, an exemption granted under subparagraph (c)(1) or (c)(2) of this subparagraph may be renewed for one or more additional 2-year periods, if the system establishes that it is taking all practicable steps to meet the requirements of any compliance schedule established under this section.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 485:43**

### **485:43 Notification of Noncompliance; Water Quality. –**

I. A public water system shall, upon granting of a variance or exemption or upon determination of its noncompliance with any primary drinking water standard or any rule adopted under this chapter or with any other requirement of this chapter notify the department of such noncompliance within 48 hours and shall notify its users of such noncompliance in accordance with rules adopted by the department under RSA 485:3.

II. Each community public water system shall annually notify each of its users of the results of water quality tests required by RSA 485:41. Such notification shall be in the form prescribed by rule adopted by the commissioner, pursuant to RSA 541-A, under RSA 485:3, VII. Such notification shall include, but not be limited to, a listing of contaminants identified under rules adopted pursuant to RSA 485:3, I, and the results of testing for various bacteriological agents. Where multiple tests have been conducted, a summary or average level of contaminants or biological agents may be provided.

**Source.** 1989, 339:1. 1996, 228:106, 110, eff. July 1, 1996.

## **Laboratory Accreditation**

### **Section 485:44**

#### **485:44 Water Testing Laboratory Accreditation. –**

I. Any laboratory conducting water analysis tests for the purpose of determining compliance of a public water supply with the provisions of RSA 485:3 and any laboratory conducting environmental analyses in this state for any other governmental purpose where a requirement of certification or accreditation is specified shall first obtain accreditation.

II. The department shall establish and administer a program to accredit on an annual basis the facilities, equipment, procedures, methods of analysis, analytical assurance and quality control, recordkeeping and traceability, analytical performance, and qualifications of personnel of any laboratory for the purposes of RSA 485:44, I. The program shall be in conformance with and consistent with the national accreditation standards approved by the National Environmental Laboratory Accreditation Conference. The purpose of the accreditation

program shall be to ensure that environmental laboratories provide sufficiently accurate, precise, and consistent results of tests, analyses, and measurements.

III. The department shall, upon request of a laboratory accredited pursuant to paragraph II of this section, accredit such laboratory in conformance with and consistent with the national accreditation standards approved by the National Environmental Laboratory Accreditation Conference, provided that such laboratory demonstrates capability to analyze samples with precision and accuracy.

IV. A laboratory may subcontract tests which it is not accredited to perform to another laboratory which is so accredited, provided that the test report clearly indicates which tests were subcontracted and that laboratory test records which specify the name and address of the laboratory which performed the work are maintained and made accessible to the department upon request.

V, VI. [Repealed.]

VII. The department shall accredit laboratories accredited in other states upon request by reciprocity, provided that the accreditation program in such states is in conformance with and consistent with the national accreditation standards approved by the National Environmental Laboratory Accreditation Conference.

VIII. An alternate laboratory test method may be acceptable only if it is in conformance with and consistent with the performance based method requirements set forth in the national accreditation standards approved by the National Environmental Laboratory Accreditation Conference.

IX. Accreditation may be denied, revoked, suspended, or modified as determined by rules of the department. A laboratory which has had accreditation revoked or suspended shall be reaccredited at such time as it again meets criteria for accreditation provided, that such laboratory has not had its accreditation revoked or suspended more than 3 times in the preceding 2 years. Upon notification of the fourth such revocation or suspension, such laboratory shall not be eligible for reaccreditation for one year from the date of such notice, except that, upon appeal by such laboratory, the commissioner may waive such extended period of revocation or suspension if such laboratory can demonstrate to the commissioner good cause for the immediate reaccreditation of such laboratory.

X. Changes in laboratory ownership, location, personnel, methodology, or other factors significantly affecting the performance of analyses for which it was originally accredited shall be reported in writing to the accreditation officer of the department within 5 business days of the change.

XI. The department shall establish by rule, under RSA 541-A, a reasonable time frame for the completion of the accreditation process. The provisions under which any laboratory is certified on January 1, 1990 shall not be affected in any way, except as provided in paragraph IX of this section, before the completion of the accreditation process within the time frame established by the department.

XII. Participation of laboratories in the accreditation program shall be voluntary.

**Source.** 1989, 339:1. 1992, 191:1, 2. 1996, 228:73. 1998, 152:2-4, 8, I, eff. Aug. 7, 1998.

## **Section 485:45**

**485:45 Testing of Water Supplies.** – The state laboratory shall make periodic inspections and analyses of the public water supplies of the state and any special investigations of such water supplies that may be called for; also, when requested or as may be deemed by them necessary or expedient in the interests of the public health, make inspections or analyses of sources furnishing water to institutions, schools, hotels, camps, other places of public resort and individuals, and advise in connection with the same.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

## **Section 485:46**

### **485:46 Fees; Advertising.** –

I. The department shall adopt rules under RSA 541-A, after public hearing, establishing a schedule of reasonable fees to be paid by any laboratory applying for accreditation.

II. The schedule of fees shall be designed to recover the costs associated with the accreditation services provided under RSA 485:44, and such fees shall be available to the department to be used to defray the expenses for such services. Funds received shall be deposited in a special revolving fund account maintained by the department

which shall be continuously appropriated to the department to offset the costs of the accreditation program. Any balance in excess of \$1,000 remaining at the end of the fiscal year shall lapse to the general fund.

III. A laboratory shall provide each prospective New Hampshire client with a list which clearly indicates the specific analytes which the laboratory is accredited to test. In the event that a client has paid a fee to a laboratory in anticipation of testing services before the receipt of said test sampling materials, and the client subsequently determines upon receipt of the test materials that the laboratory is not accredited to provide testing services to meet the client's needs, the client may cancel the order for any testing services which have not yet been performed, and the laboratory shall make full refund to the client. Test reports shall clearly identify those specific analytes for which a laboratory has accreditation and shall specifically identify any analyses which were subcontracted to other laboratories.

**Source.** 1989, 339:1. 1992, 191:3. 1998, 152:5, eff. Aug. 7, 1998.

## **Section 485:47**

### **485:47 Rulemaking. –**

The department shall adopt rules, under RSA 541-A, relative to:

I. Procedures and standards for accreditation of laboratories, including but not limited to the form and content of approval and accreditation application forms, analytical techniques to be employed, standard collection and testing procedures, performance on proficiency test samples, as well as qualifications for laboratory personnel.

The procedures and standards shall be in conformance with and consistent with the national accreditation standards approved by the National Environmental Laboratory Accreditation Conference.

II. [Repealed.]

III. Procedures and conditions under which accreditation of water testing laboratories may be revoked, suspended, or modified.

IV. Information to be disclosed when tests are subcontracted.

V. Procedures and criteria for laboratory reaccreditation.

VI. Procedures for the accreditation of laboratories which have been accredited by other states.

VII. Procedures for approval of alternate testing methodology.

VIII. Fees for accreditation, including rules for accounting of the fees.

IX. Procedures and standards for testing of water under any expanded accreditation program.

X. A time frame for the completion of the accreditation process.

XI-XIII. [Repealed.]

**Source.** 1989, 339:1. 1998, 152:6-8, II, III, eff. Aug. 7, 1998.

## **Wellhead Protection**

### **Section 485:48**

#### **485:48 Wellhead Protection. –**

The department may institute a wellhead protection program as described in section 1428 of the federal Safe Drinking Water Amendments of 1986. The program shall be consistent with the provisions of RSA 485-C and shall include, but not be limited to, the following:

I. Determination of the responsibilities of state and local government units, and those of public drinking water supply systems with respect to wellhead protection.

II. Determination of the extent of the wellhead protection area, based on reasonably available hydrogeologic data, groundwater flow, recharge, discharge, and other data the department deems necessary to such determination.

III. Identify within each wellhead protection area all potential anthropogenic sources of contaminants which may have any adverse effect on human health, through consideration of all potential sources of such contaminants.

IV. Technical assistance, financial assistance, implementation of control measures, education, training, and demonstration projects to protect the water supply within wellhead protection areas from such contaminants.

V. Contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants.

VI. Procedures, including, but not limited to, the establishment of technical and citizens' advisory committees, to encourage the public to participate in developing the protection program for wellhead areas. Such procedures shall include notice and opportunity for public hearing on the state program before it is submitted to the administrator, United States Environmental Protection Agency, for approval.

**Source.** 1989, 339:1. 1991, 344:2. 1996, 228:106, eff. July 1, 1996.

## **Future Supplies of Water for Domestic Use**

### **Section 485:49**

**485:49 Declaration of Need.** – It is declared that there is statewide need for long-range planning in order that the health and safety of the people of the state may be protected in respect to adequate water supplies for domestic use.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 485:50**

**485:50 Domestic Water Supply Study.** – The department of environmental services is authorized and directed to study the probable domestic water supply requirements of groups of towns or cities, or both, which appear likely to have increased industrial and population growths for the next 50 years. In connection with said studies the department shall determine the most feasible and economic sites for sources of water supply for such long-range planning.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 485:51**

**485:51 Assistance.** – The department of environmental services is authorized, within the limits of the appropriations made therefor, to employ engineers and other assistants to make the studies authorized by this subdivision.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 485:52**

**485:52 Reports.** – Whenever any study of a group plan for domestic water supply projects is made the department of environmental services shall report the same to the next session of the legislature together with its recommendations to make secure the availability of those sites which the department of environmental services finds will best meet the future needs of the particular locality studied.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

### **Section 485:53**

**485:53 Advice to Municipalities.** – Upon request the department of environmental services shall consult with and advise any municipality which is considering a change in its domestic water supply due to an approaching critical situation in the municipality.

Source. 1989, 339:1, eff. Jan. 1, 1990.

## Protection of Sources of Ice

### Section 485:54

**485:54 Ice Cutting.** – No person shall cut or take ice from any lake, pond or reservoir used as the source of a domestic public water supply, unless he shall first comply in all respects with such reasonable rules regarding the manner and place of such cutting and taking as may be prescribed by the local legislative body, or officers of a water company, who may have charge of the works of any city or town supplying its inhabitants with water from such source.

Source. 1989, 339:1, eff. Jan. 1, 1990.

### Section 485:55

**485:55 Ice; Penalty.** – Any person who knowingly or willfully shall cut or take ice for domestic purposes from any waters which are polluted with sewage or other substance deleterious or dangerous to life or health, or from waters which a board of health, local health officer or the department has condemned, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### Section 485:56

**485:56 Ice Inspection.** – Health officers of the cities and towns of the state, and the department of environmental services, shall examine and inspect the sources from which ice is cut, or is proposed to be cut, for domestic use in such cities and towns, and to employ any necessary means to determine whether the waters of such sources of ice supply have been polluted, or whether ice taken from such sources will be deleterious to the public health.

Source. 1989, 339:1. 1996, 228:108, eff. July 1, 1996.

### Section 485:57

**485:57 Ice; Notice of Pollution.** – If the waters of the sources of ice supplies shall be found so polluted that the ice taken from those sources will be unsafe for domestic use, the local health officer or the department of environmental services shall immediately notify such person who may have taken, or who proposes to take, ice from such polluted source for domestic use, of the dangerous character of the waters inspected, and that the taking of such ice for domestic use must cease.

Source. 1989, 339:1. 1996, 228:108, eff. July 1, 1996.

## Enforcement; Appeals

### Section 485:58

**485:58 Enforcement and Penalties.** –

I. If the department determines that a primary standard has violated, or that, in its judgment, a condition exists in a public water system which will cause a violation of a primary standard and may result in a serious risk to public health, it may issue an order requiring:

(a) The prohibition of transportation, sale, distribution or supplying of water;

- (b) The repair, installation or operation of purification equipment or methods;
- (c) The notification of all potential users of the system, including travelers, of the nature, extent and possible health effects of the imminent hazard, and precautions to be taken by users; or
- (d) The testing, sampling or other analytical operations required to determine the nature, extent, duration or termination of the imminent hazard.

The superior court shall place any action filed by the department to enforce an order under this section at the top of its calendar of cases and shall provide an expeditious hearing on such order.

II. Any reckless violation of any provision of this chapter, any rule adopted under this chapter, any term or condition of an approval, exemption, variance or order issued under this chapter, or any misstatement of a material fact required to be disclosed under this chapter shall constitute a misdemeanor for a natural person and a felony for any other person.

III. Unless otherwise provided, any purposeful or knowing violation of any provision of this chapter, any rule adopted under this chapter, any term or condition of an approval, exemption, variance, or order issued under this chapter, or any misstatement of a material fact required to be disclosed under this chapter shall constitute a class B felony.

IV. Any person who violates any provision of this chapter or any rule adopted or any term or condition of an approval, exemption, variance or order issued under this chapter shall be liable to the state, upon suit brought by the attorney general, for a civil forfeiture in an amount not to exceed \$25,000 for each day of such violation.

V. The commissioner of environmental services, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter including any rule adopted under the provisions of this chapter. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this chapter. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the department in the general fund. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph for violations of this chapter as provided above.

(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

VI. Any act or failure to act in violation of RSA 485:8, II; 31; 42; 43; 46; or 48; or any rule adopted under RSA 485:2; 3; 4; 40; 41; 44; or 47 may be enjoined.

VII. Notwithstanding RSA 651:2, any person may, in addition to any sentence of imprisonment, probation or conditional discharge, be fined not more than \$25,000 if found guilty of any violation of paragraph II or III of this section. The court may also order the person to pay the costs of remediation. Each day of violation shall constitute a separate offense.

**Source.** 1989, 339:1. 1990, 33:2. 1995, 88:2; 217:6. 1996, 228:106. 2009, 210:8, eff. Jan. 1, 2010.

## **Section 485:59**

**485:59 Appeals.** – Actions of the department under RSA 485:1-4; 8, II; 31; 41-44; 46-48, or 58, I may be appealed under RSA 21-O:14.

**Source.** 1989, 339:1. 1995, 88:3. 1996, 228:106, eff. July 1, 1996.

## **Section 485:60**

**485:60 Special Acts.** – Nothing in this chapter shall repeal any special act applying to cities and towns.

**Source.** 1989, 339:1, eff. Jan. 1, 1990.

# **Rules for Water Conservation**

## **Section 485:61**

**485:61 Rules for Water Conservation. –**

I. The department shall adopt rules, pursuant to RSA 541-A, for water conservation practices for water users. These rules shall strike a reasonable balance between environmental, energy, and economic impacts and be consistent with current industry standards and practices for different types of water users.

II. The water conservation rules in paragraph I of this section shall apply to all new permit applicants and applications for water withdrawals subject to the provisions of RSA 485:3, RSA 485:48, RSA 485-C:21 and section 401 of the Clean Water Act.

III. Water conservation rules shall be consistent with applicable state or federal rules and regulations.

**Source.** 2002, 142:2, eff. July 12, 2002.