TITLE L
WATER MANAGEMENT AND PROTECTION

CHAPTER 485-A
WATER POLLUTION AND WASTE DISPOSAL

Section 485-A:1

485-A:1 Declaration of Purpose. – The purpose of this chapter is to protect water supplies, to prevent pollution in the surface and groundwaters of the state and to prevent nuisances and potential health hazards. In exercising any and all powers conferred upon the department of environmental services under this chapter, the department shall be governed solely by criteria relevant to the declaration of purpose set forth in this section.

Source. 1989, 339:1. 1996, 228:106, 108, eff. July 1, 1996.

Section 485-A:2

485-A:2 Definitions. –

I. "Developed waterfront" property means any parcel of land upon which stands a structure suitable for either seasonal or year-round human occupancy, where such parcel of land is contiguous to or within 200 feet of the reference line, as defined in RSA 483-B:4, XVII, of:

(a) A fresh water body, as defined in RSA 483-B:4, XVI(a);

(b) Coastal waters, as defined in RSA 483-B:4, XVI(b); or

(c) A river, as defined in RSA 483-B:4, XVI(c).

I-a. "Certificate" means a certificate of competency issued by the department stating that the operator has met the particular requirements established by the department for certification at each level of operation.

I-b. "Certification committee" means those persons designated by the commissioner, and those persons elected by the New Hampshire Water Pollution Control Association to serve as the review committee for certification of wastewater treatment plant operators.

I-c. "Commissioner" means the commissioner of the department of environmental services.

II. "Development plan" means the final map, drawing, plat or chart on which the subdivider presents his plan of subdivision to the department of environmental services for approval of planned or proposed sewage or waste disposal systems.

III. "Department" means the department of environmental services.

III-a. "Encroachment waiver" means any waiver of the rules adopted in accordance with this chapter which, if granted, would affect the ability of an owner of abutting property to fully utilize his property.

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain or treat sewage or causes the discharge of sewage on the ground surface or directly into surface waters, or the effluent disposal area is located in the seasonal high groundwater table.

V. "Groundwaters" shall mean all areas below the top of the water table, including aquifers, wells and other sources of groundwater.

VI. "Industrial waste" means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources.

VII. "Lot" means a part of a subdivision or a parcel of land which can be used as a building site or intended to be used for building purposes, whether immediate or future.

VII-a. "Operator" means:

(a) The individual who has full responsibility for the daily operation of a wastewater treatment plant or a pollution control facility;

(b) The individual normally responsible for the operations shift; or

(c) Individuals who perform important operating functions.

VIII. "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.
IX. "Person" means any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity.
IX-a. "Septage" means material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial waste and any other sludge.
X. "Sewage" means the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.
XI. "Sewage disposal system" means any private sewage disposal or treatment system, other than a municipally owned and operated system.
XI-a. "Sludge" means the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department shall be considered solid waste and regulated under RSA 149-M.
XII. "Subdivider" means the legal owner or his authorized agent of a tract or parcel of land being subdivided.
XIII. "Subdivision" means the division of a tract or parcel of land into 2 or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale, rent, lease, building development, or any other reason; provided, however, that sale or other conveyance which involves merely an exchange of land among 2 or more owners and which does not increase the number of owners, and on which no sewage disposal system is to be constructed shall not be deemed a subdivision for the purposes of this chapter. Without limiting the generality of the foregoing, subdivision shall include re-subdivision, and, in the case of a lot, tract or parcel previously rented or leased, the sale, condominium conveyance, or other conveyance thereof; provided however that a re-subdivision of lots in previously approved subdivisions, where lot lines are relocated to conform to necessary changes in the plans because of errors in a survey or new street, access or siting requirements, or errors in building locations, and where the lot sizes are not substantially altered shall not be deemed a subdivision for the purposes of this chapter; and provided further that a re-subdivision in which previously approved lots are grouped together to form larger lots shall not be deemed a subdivision for the purposes of this chapter. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under this chapter.
XIV. "Surface waters of the state" means perennial and seasonal streams, lakes, ponds, and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses, and other bodies of water, natural or artificial.
XV. "Tract or parcel of land" means an area of land, whether surveyed or not surveyed.
XVI. "Waste" means industrial waste and other wastes.
XVI-a. "Wastewater treatment plant" means the treatment facility or group of treatment devices which treats domestic or combined domestic and industrial wastewater through alteration, alone or in combination, of the physical, chemical, or bacteriological quality of the wastewater and which dewaters and handles sludge removed from the wastewater.
XVII. "Bypass" means the intentional diversion of waste streams from any portion of the wastewater facilities.
XVIII. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee.
XIX. "Wastewater facilities" means the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge.
XX. "Bedroom" means a room furnished with a bed and intended primarily for sleeping, unless otherwise specified by local regulations.
XXI. "Innovative/alternative waste treatment" means treatment which differs from standardized and conventional practice, offers an advantage over such practice in a proposed application and satisfies the pollution abatement and treatment requirements for sewerage and sewage or waste treatment systems in such application.
XXII. "Biosolids" means any sludge derived from a sewage wastewater treatment facility that meets the standards for beneficial reuse specified by the department.
XXIII. "Short paper fiber" means any sludge derived from a pulp or papermill wastewater treatment facility that meets the standards for beneficial reuse specified by the department.
XXIV. "7Q10" means the lowest average flow that occurs for 7 consecutive days on an annual basis with a recurrence interval of once in 10 years on average, expressed in terms of volume per time period.

Source. 1989, 339:1. 1990, 197:1-3; 248:1; 252:9, 10. 1993, 57:1; 172:1. 1996, 219:1; 228:74-76, 105, 106, 108. 1998, 102:2, 3. 2000, 76:3; 121:1. 2008, 349:2, 3, eff. Jan. 1, 2009. 2017, 211:1, eff. Sept. 8, 2017.

Section 485-A:3

485-A:3 Policies. –

It is hereby declared, as a matter of legislative intent, that the department shall, in the administration and enforcement of this chapter, strive to provide that all sources of pollution within the state shall be abated within such times and to such degrees as shall be required to satisfy the provisions of state law or applicable federal law, whichever is more stringent. To the extent not inconsistent with the foregoing nor the aims of any joint state-federal permit program that may from time to time be agreed upon and in force pursuant to this chapter and applicable federal law, the department shall adhere to the following policies:

I. Insofar as practicable, the initial objective of the control program will be to obtain the installation of primary treatment (with adequate disinfection where sewage discharges are involved) for all discharges of sewage and industrial wastes.

II. The second objective will be to require the installation of secondary treatment whenever such additional treatment is necessary to protect the uses assigned to the particular stream classification.

III. The third objective, after all stream classification requirements throughout the state have been satisfied, will be to continue the program of pollution abatement by installing other forms of treatment desirable to maintain all surface waters of the state in as clean a condition as possible, consistent with available assistance funds and technological developments.

IV. Until such time as appropriate methodology and reasonable levels of financial assistance are made available, municipalities with combined sewer systems shall not be required to provide treatment facilities with capacity greater than that necessary to handle anticipated peak dry weather flows.

V. A further objective will be to advance the development and application of innovative/alternative waste treatment systems with guidelines, procedures, pilot projects, demonstration projects, community projects or in any other manner the department may elect.

Source. 1989, 339:1. 1993, 172:2. 1996, 228:106, eff. July 1, 1996.

Section 485-A:4

485-A:4 Duties of Department. –

It shall be the duty of the department and the department is authorized:

I. To exercise general supervision over the administration and enforcement of this chapter.

II. To study and investigate all problems connected with the pollution of the surface waters or groundwaters of the state.

III. To conduct scientific experiments, investigations and research to discover economical and practical methods for the elimination, disposal or treatment of industrial wastes to control pollution of the surface waters or groundwaters of the state.

IV. To cooperate with any other public or private agency in the conduct of such experiments, investigations and research. In order to utilize fully the facilities of the state, it shall be the duty of all other state agencies to cooperate and render such assistance as may be necessary to implement the provisions of this chapter.

V. To do all necessary work relative to the establishment of a proper and reasonable classification pursuant to RSA 485-A:9.

VI. To require the filing with the department of plans and specifications of the installation of systems and devices for handling, treating, or disposing of sewage, industrial and other wastes, at least 30 days prior to the beginning of construction.

VII. To investigate and approve after making such modification as the department deems necessary to conform to the purpose of this chapter and RSA 486, any portions of the applications of those municipalities, industries, or other persons of the state as may request state or federal aid that may at any time be made available in the interest of pollution control. The commissioner of environmental services shall receive or make agreements on behalf of the state for any federal or other moneys as may be allotted for such purposes. Those who have already

incurred expense in order to comply with a classification adopted by the legislature or made under RSA 485-A:11 shall be equally eligible to receive any federal or other moneys with those who have not incurred but who are required to incur expense by reason of such classification.

VIII. To confer with responsible authorities of other states relative to methods, means and measures to be employed to control pollution of interstate streams and other waters, and to submit to the legislature recommendations relative to the adoption of interstate compacts pertaining to pollution or its control on all said waters. After said compacts and agreements have been concluded by the necessary legislative and congressional action, the department shall carry out said agreements or compacts by appropriate orders provided for in either the compacts or the provisions of this chapter.

IX. To set standards of design and construction for sewerage and sewage or waste treatment systems and standards or design guidelines as the department determines to be appropriate for innovative/alternative waste treatment systems. Innovative/alternative waste treatment systems shall include solar and such other systems as shall be identified or accepted by the department. To reject, if necessary, or modify and approve as deemed necessary for the purposes of the state water pollution control program all engineering or other documents associated with the design and construction of pollution control projects and perform such other related engineering or inspectional work as will provide for proper design, construction and operation of the facilities involved, and take such other action as the department deems necessary, to maximize the effectiveness of sewerage and other pollution control facilities, both proposed and in construction. The department is authorized to purchase professional liability insurance annually in order to provide coverage in connection with resident construction engineering services which may be made available to municipalities by the department for projects undertaken with benefit of a federal grant under the provisions of this chapter; provided, however, that no construction engineering services shall be provided to any municipality with a population of greater than 5,000 according to the office of strategic initiatives estimate for that even decade year preceding project application to the department or when the estimated project costs exceed $2,000,000. The purpose of this paragraph is to ensure the planning, construction and operation of publicly owned pollution control facilities which in the judgment of the department will produce maximum benefits with the least expenditure of federal, state and local funds.

IX-a. Any person submitting plans and specifications to the department, as provided for in this section, for the construction of sewerage systems shall pay to the department a fee of $30 for each 300 gallon per day unit of flow for the first 10,000 gallons per day of total flow for which such systems are designed and $15 for each 300 gallon per day unit of flow in excess of such amount. A fee of $200 per plan sheet shall be paid for review of pump stations, force mains, interceptors, and wastewater treatment facilities which are submitted independently of a sewer collection system. This fee shall not apply to municipalities.

IX-b. Any person submitting a request to the department, not accompanied by plans and specifications, for a permit to discharge additional sewage or industrial wastes to a municipal sewer system shall pay to the department a fee of $50. The request, accompanied by the fee, shall be submitted through, and approved by, the affected municipality. This fee shall not apply to municipalities, counties, state agencies, or school districts. These fees shall be deposited with the state treasurer as unrestricted revenue.

IX-c. Any person submitting plans and specifications to the department for the construction or installation of facilities for the pretreatment of industrial wastes shall pay to the department a permit fee of $1,000. The discharge permit request, accompanied by the plans and specifications and the fee, shall be submitted through and approved by the affected municipality. This fee shall not apply to municipalities, state agencies, or school districts. These fees shall be deposited with the state treasurer as unrestricted revenue.

X. To provide such services and technical assistance in the area of sanitary engineering as may be required by the commissioner of the department of health and human services to implement the statutory obligations imposed upon the commissioner of the department of health and human services and the rules adopted by said commissioner.

XI. To scientifically measure and monitor residual pesticides in the waters and in the aquatic resources in the waters of the state.

XII. To review, establish maximum state participation fees and modify in any other way which in the judgment of the department will promote economy and the purposes of this chapter, and following such review or modification, approve and cosign jointly with the municipality or other governmental subdivision concerned any proposed contracts or other proposed agreements or changes in contracts or agreements for engineering services related to sewerage and other pollution control facilities. Further, the department shall prescribe the contract

documents to be employed and may provide for the assessment of liquidated damages for failure to complete the work within the time stipulated therefor. Except for the financial assistance available to municipalities under the provisions of RSA 486, nothing in this chapter shall be construed to place any additional financial obligation on the state, the department or its personnel.

XIII. To establish rules governing the prequalification of consulting engineers employed in the planning and construction of public water supply and pollution control projects. Any licensed engineering firm seeking initial prequalification shall pay to the department a fee of $200. Prequalification shall be renewed annually and shall be accompanied by a $50 renewal fee. These fees shall be deposited with the state treasurer as unrestricted revenue. The department is further empowered to prescribe the contract award procedures to be followed in the awarding of construction contracts involving state financial assistance.

XIV. To formulate a policy relating to long-term trends affecting the purity of the surface waters or groundwaters of the state. Insofar as practicable and necessary, a continuing program of sampling and subsequent chemical or biological analysis, or both, shall be conducted to establish patterns and reveal long-term trends to serve as a basis for formulating such policy. In conducting said program of sampling and analysis, the department is authorized to accept any assistance as may be proffered by persons that the department deems to be qualified. The department shall provide proper warning to the public by posting a sign indicating where water quality standards are not being attained as they relate to specified designated uses.

XV. To establish and prescribe physical, chemical and biological pretreatment standards to which waste must conform before discharge into the collection system or the sewage treatment facility of a municipality or other governmental entity being served by or under order to construct a public sewage treatment facility. In establishing and prescribing pretreatment standards, the department shall give consideration to the following:

(a) The treatment capabilities and operating efficiency of the facilities to which they apply.

(b) The discharge criteria applicable to the facility in order for it to conform to established water quality standards for the receiving water, as expressed in the discharge permit or compliance order issued to the municipality.

(c) Toxic effluent standards.

(d) Such standards as will prevent the discharge of any pollutant through the facility that interferes with, passes through without being rendered innocuous or is otherwise incompatible with the effective operation of the facility.

XVI. To enter into, with the consent of the governor and council, cooperative agreements with the United States Environmental Protection Agency or any other federal agency having jurisdiction in the premises relative to any joint state-federal water pollution enforcement abatement and control programs authorized by law, and involving the issuance of discharge permits.

XVI-a. To regulate the removal, transportation, and disposal of septage through administration of a permit system. As a condition of any permit issued under this chapter, the department may require payment of a reasonable fee, established by rules adopted under RSA 485-A:6, X-a. Funds collected under this paragraph shall be deposited with the treasurer as unrestricted revenue.

XVI-b. To regulate the removal, transportation, and disposal of sludge through administration of a permit system. As a condition of any permit issued under this chapter, the department may require payment of a reasonable fee, established by rules adopted under RSA 485-A:6, X-a. Funds collected under this paragraph shall be deposited with the treasurer as unrestricted revenue.

XVI-c. (a) To design and implement a program for state or independent third party sampling and testing of sludge or biosolid materials that are intended for land application. The department shall design the sampling methodology, in consultation with university of New Hampshire statisticians and sludge and biosolid experts, to provide a statistical evaluation of the contaminant levels contained in sludge or biosolids. The department shall concentrate its testing on those contaminants that pose greater risks to public health and the environment due to their toxicity, potential availability, concentration levels, or concentration uncertainty. The department shall maintain a database of testing results and prepare, in consultation with university of New Hampshire statisticians and sludge and biosolid experts, and make available to the public and the general court, a biennial report by November 1 of each year which analyses the compiled test results, including data from prior years, as appropriate. The analysis shall detail contaminant concentrations on both a statewide and generator level and shall indicate the statistical degree of certainty in the results of the analysis. The department shall attempt to present the report in terms that are understandable to the layperson including practical examples such as the probability that any given load of untested sludge exceeds a contaminant standard.

(b) The department shall establish a fee of $500, to be paid by sludge quality certificate holders by January 1 of each year. The fee shall be deposited in a special, nonlapsing sampling and analysis of sludge or biosolids samples fund, for exclusive use by the department to implement the program established in subparagraph (a).
XVI-d. To conduct on-site inspections of sludge or biosolid application sites to monitor adherence to all state and federal requirements for such activity.
XVII. To give notice by first-class mail to the city or town clerk of the municipality in which is located the point of discharge or point of potential discharge, and all adjacent municipalities located on the same receiving water as the water at the point of discharge, when an application is made for a new permit or when a permit is renewed by the department.
XVIII. To establish rules for dental offices relative to the use of environmentally appropriate disposal equipment or methods for amalgam waste to trap and dispose of mercury.

Source. 1989, 339:1. 1990, 3:86, 87; 248:2; 252:11. 1991, 240:1; 371:1. 1993, 172:3. 1995, 310:182, 183. 1996, 228:106. 1998, 102:4; 230:2. 2000, 326:1, 2. 2002, 96:3; 240:2. 2003, 319:9. 2004, 257:44, eff. July 1, 2004. 2015, 259:9, 10, eff. July 1, 2015. 2017, 156:64, eff. July 1, 2017.

Section 485-A:5

485-A:5 Pretreatment Standards. –
I. After the effective date of any pretreatment standards established and prescribed by the department pursuant to RSA 485-A:4, XV, no person shall discharge into the collection system or the sewage treatment facility of any municipality or other governmental entity being served by or under orders to construct a public sewage treatment facility, nor discharge to the surface waters of the state if such person will be served by the public sewage treatment facility upon construction of such facility, any waste that does not comply with such pretreatment standards.
II. In setting a date for conformance to pretreatment standards, the department may establish compliance schedules providing a reasonable time for compliance and may give due consideration to expected in-service dates of public sewage and waste treatment facilities not in existence at the time of establishment of pretreatment standards applicable to such facilities. Any such compliance schedule shall be consistent with the purposes and requirements of federal law.
III. No municipality or other governmental entity owning or controlling any public sewage and waste treatment facility shall permit the discharge of any waste to such facility which does not comply with pretreatment standards established by the department.
IV. Pretreatment standards or effluent limits adopted by a municipality as part of its sewer use ordinance or industrial pretreatment program and approved by the department shall be enforceable by the department as pretreatment standards established under RSA 485-A:4, XV and rules adopted under RSA 485-A:6.
V. The department of environmental services may require the installation and operation of monitoring programs by persons subject to pretreatment standards to ensure adherence to such standards.

Source. 1989, 339:1. 1996, 228:106, 108, eff. July 1, 1996.

Section 485-A:5-a

485-A:5-a Operator Certification Required. – The department shall certify operators of wastewater treatment plants. Wastewater treatment plants shall be operated only by certified operators.

Source. 1989, 81:1. 1990, 197:4. 1996, 228:106, eff. July 1, 1996.

Section 485-A:5-b

485-A:5-b Municipal Responsibility. –
I. Each municipality shall either provide, or assure access to, a department of environmental services approved septage facility or a department approved alternative option for its residents.

II. For the purposes of paragraph I, "provide, or assure access to" shall mean a written agreement with a recipient facility, or department approved alternative option, indicating that the recipient facility agrees to accept septage generated in that municipality. The municipality shall consider providing sufficient annual capacity equal to the number of households with septic multiplied by the average septic tank capacity of 1, 000 gallons divided by the average septage pumpout frequency of 5 years.

Source. 1990, 252:12. 1996, 228:108. 2005, 98:2, eff. Jan. 1, 2006.

Section 485-A:5-c

485-A:5-c Notice of Septage or Sludge Spreading. –
I. No person shall spread septage or sludge as defined in RSA 485-A:2 before providing all property owners abutting the spreading site with written notice of the intended date and location of the spreading. Such notice shall be provided by publishing a notice at least 14 days before the intended date of the first spreading of septage or sludge each year in a newspaper of general circulation in the town or city.
II. The notice shall include the names, addresses, and telephone numbers of the following:
(a) The applicant, if applicable.
(b) The generator of the sludge, if applicable.
(c) The person responsible for managing the activities on-site, if different from the applicant under subparagraph (a).
(d) The landowner, if not given under subparagraph (a) or (c).
III. A copy of such notice shall be posted continually on the entrances to the site beginning 3 days prior to the application and ending 3 days after the application.

Source. 1998, 60:1, eff. July 11, 1998.

Section 485-A:5-d

485-A:5-d Land Application of Sludge. – Sludge or biosolids which are to be land applied in New Hampshire shall not exceed the maximum concentrations for specific chemical contaminants contained in the rules of the department, or the rules or regulations of the state in which the sludge was generated, whichever are more stringent.

Source. 1998, 230:3, eff. June 24, 1998.

Section 485-A:6

485-A:6 Rulemaking. –
The commissioner shall adopt rules, under RSA 541-A, after public hearing, relative to:
I. The classification system required by RSA 485-A:9.
II. Requirements under RSA 485-A:4, VI.
III. Requirements under RSA 485-A:4, IX and establishing the methodology and review process for approval of innovative/alternative wastewater treatment systems.
IV. The fees and contract documents required under RSA 485-A:4, XII.
V. The prequalification and contract award procedures required under RSA 485-A:4, XIII.
VI. The standards required under RSA 485-A:4, XV.
VI-a. Procedures and criteria for requesting, reviewing, and granting certifications under RSA 485-A:12, III and IV.
VII. The required information and prescribed conditions needed to implement the program described in RSA 485-A:13, I(a).
VIII. The requirements for a permit under RSA 485-A:17.
IX. The conditions for a camp license as required by RSA 485-A:24, and the safety standards in camps described in RSA 485-A:25.

X. The safety standards for swimming pools and bathing places required by RSA 485-A:26.
X-a. The requirements for permits under RSA 485-A:4, XVI-a and XVI-b.
XI. The minimum qualifications for and certification of operators of pollution control facilities.
XI-a. The contents of the written notification required in RSA 485-A:13, I(c).
XI-b. Certification of operators of wastewater treatment plants and revocation and suspension of such certificates as provided in RSA 485-A:7-d.
XI-c. The location, extent, and duration of the standards specified in RSA 485-A:8, III for the temporary partial use areas provided for in RSA 485-A:8, II.
XII. [Repealed.]
XIII. The disposal of dental office waste under RSA 485-A:4, XVIII.
XIV. Dissolved oxygen concentration water quality standards under RSA 485-A:8, II and II-a.
XV. Water quality standards consistent with RSA 485-A:8 and as required by the Clean Water Act.

Source. 1989, 339:1. 1990, 197:5; 248:4; 252:13. 1991, 371:2. 1993, 172:4. 1996, 228:110. 1998, 102:5. 2002, 96:4. 2008, 337:3, eff. Sept. 5, 2008. 2017, 211:3, eff. Sept. 8, 2017.

Section 485-A:7

485-A:7 State Guarantee. – In view of the general public benefits resulting from the elimination of pollution from the public waters of the state, the governor and council are authorized in the name of the state of New Hampshire to guarantee unconditionally, but at no time in excess of the total aggregate sum for the entire state of $50,000,000, the payment of all or any portion, as they may find to be in the public interest, of the principal of and interest on any bonds or notes issued by any municipality, town, city, county or district for construction of sewerage systems, sewage treatment and disposal plants, or other facilities necessary, required or desirable for pollution control, and the full faith and credit of the state are pledged for any such guarantee. The outstanding amount of principal and interest on such bonds and notes, the payment of which has been guaranteed by the state under the provisions of this section, shall at no time exceed the amount of $50,000,000. The state's guarantee shall be endorsed on such bonds or notes by the state treasurer; and all notes or bonds issued with state guarantee shall be sold at public sealed bidding to the highest bidder. Any and all such bids may be rejected and a sale may be negotiated with the highest bidder. In the event of default in payment of any such notes or bonds, the state may recover any losses suffered by it by action against the municipality, town, city, county or district as provided in RSA 530. Provided, further, that in accordance with RSA 35-A:29, the foregoing requirement for public sealed bidding shall not be applicable to any bonds or notes or both so guaranteed which are sold to the New Hampshire municipal bond bank, and any bonds or notes or both so guaranteed may be sold to the New Hampshire municipal bond bank at private sale in accordance with the provisions of RSA 35-A.

Source. 1989, 339:1. 1991, 179:2. 1999, 234:1. 2008, 49:1, eff. July 1, 2008.

Wastewater Operator Certification

Section 485-A:7-a

485-A:7-a Application; Special Fund. –
I. Any operator of a wastewater treatment plant seeking certification or to increase his level of certification shall file an application with the certification committee at least 6 weeks prior to the next examination date on a form provided by the department.
II. All applications shall be accompanied by a $50 fee to cover department expenses for conducting the certification program. All fees shall be deposited with the state treasurer and deposited in a special nonlapsing wastewater plant operator certification fund to be used by the department for the administration of this subdivision and for the operation of the department-owned Wastewater Plant Operator Training Center.
III. Any applicant failing the examination shall be allowed one retest at the same certification level at no additional cost to the applicant.

Source. 1990, 197:6. 1996, 228:106, eff. July 1, 1996.

Section 485-A:7-b

485-A:7-b Examinations. – The department shall prepare written examinations to determine the knowledge, ability, and judgment of operators. Such examinations shall be administered in accordance with rules adopted by the department pursuant to RSA 485-A:6.

Source. 1990, 197:6. 1996, 228:106, eff. July 1, 1996.

Section 485-A:7-c

485-A:7-c Issuance of Certificates. –

I. Upon satisfactory completion by an applicant of the established requirements, the department shall issue to the applicant a suitable certificate designating the applicant's competency. The certificate shall indicate the level of operation for which the operator is qualified. The certificate shall remain in effect for 2 years from the date of issuance.

II. Certificates shall be renewed biennially and shall be accompanied by a $50 renewal fee, which shall be deposited pursuant to RSA 485-A:7-a, II. If the renewal fee is not submitted within 90 days of the certificate's expiration date, the certified individual's name shall be removed from the current status and the certificate shall be deemed expired. The department shall charge a late fee of 50 percent of the renewal fee in addition to the renewal fee if the renewal is late.

III. Certificates may be issued, upon payment of the $50 fee, without examination, for a comparable classification to any person actively seeking employment in New Hampshire who holds a certificate issued by the appropriate certification agency of any federal, state, interstate, territorial, or other jurisdiction if, in the judgment of the committee, the certification requirements of the jurisdiction granting such certification do not conflict with the department's rules and are not less stringent than rules adopted under this subdivision. The fee shall be deposited pursuant to RSA 485-A:7-a, II.

Source. 1990, 197:6. 1996, 228:106. 1997, 261:7, eff. July 1, 1997.

Section 485-A:7-d

485-A:7-d Revocation. – The department may suspend or revoke the certificate of an operator under rules adopted pursuant to RSA 485-A:6.

Source. 1990, 197:6. 1996, 228:106, eff. July 1, 1996.

Classification of Waters

Section 485-A:8

485-A:8 Standards for Classification of Surface Waters of the State. –

It shall be the overall goal that all surface waters attain and maintain specified standards of water quality to achieve the purposes of the legislative classification. For purposes of classification there shall be 2 classes or grades of surface waters as follows:

I. Class A waters shall be of the highest quality and shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or greater than 153 Escherichia coli per 100 milliliters in any one sample; and for designated beach areas shall contain not more than a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or 88 Escherichia coli per 100 milliliters in any one sample; unless naturally occurring. There shall be no discharge of any sewage or wastes into waters of this classification. The waters of this classification shall be

considered as being potentially acceptable for water supply uses after adequate treatment.
II. Class B waters shall be of the second highest quality and shall have no objectionable physical characteristics and shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 126 Escherichia coli per 100 milliliters, or greater than 406 Escherichia coli per 100 milliliters in any one sample; and for designated beach areas shall contain not more than a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or 88 Escherichia coli per 100 milliliters in any one sample; unless naturally occurring. There shall be no disposal of sewage or waste into said waters except those which have received adequate treatment to prevent the lowering of the biological, physical, chemical or bacteriological characteristics below those given above, nor shall such disposal of sewage or waste be inimical to aquatic life or to the maintenance of aquatic life in said receiving waters. The pH range for said waters shall be 6.5 to 8.0 except when due to natural causes. The commissioner shall adopt rules, under RSA 541-A, relative to dissolved oxygen water quality standards in a manner consistent with Environmental Protection Agency guidance on dissolved oxygen water criteria published pursuant to section 304(a) of the Clean Water Act, and other relevant scientific information. Any stream temperature increase associated with the discharge of treated sewage, waste or cooling water, water diversions, or releases shall not be such as to appreciably interfere with the uses assigned to this class. The waters of this classification shall be considered as being acceptable for fishing, swimming and other recreational purposes and, after adequate treatment, for use as water supplies. Where it is demonstrated to the satisfaction of the department that the class B criteria cannot reasonably be met in certain surface waters at all times as a result of combined sewer overflow events, temporary partial use areas shall be established by rules adopted under RSA 485-A:6, XI-c, which meet, as a minimum, the standards specified in paragraph III. The commissioner shall not calculate nutrient discharge limits for aquatic life and human health criteria based on 7Q10 flow or such other flow criteria more restrictive than 7Q10.
II-a. The commissioner shall adopt rules, under RSA 541-A, relative to dissolved oxygen water quality standards for tidal and saline waters in a manner consistent with Environmental Protection Agency guidance on dissolved oxygen water criteria published pursuant to section 304(a) of the Clean Water Act, and other relevant scientific information.
III. The waters in temporary partial use areas established under paragraph II shall be free from slick, odors, turbidity, sludge deposits, and surface-floating solids of unreasonable kind or quantity, shall contain not less than 5 parts per million of dissolved oxygen; shall have a hydrogen ion concentration within the range of pH 6.0 to 9.0 except when due to natural causes; and shall be free from chemicals and other materials and conditions inimical to aquatic life or the maintenance of aquatic life. These criteria shall apply during combined sewer overflow discharges and up to 3 days following cessation of said discharge. At all other times the standards and uses specified in paragraph II shall apply.
IV. Notwithstanding anything contained in this chapter, the department in submitting classifications relating to interstate waters to the New England Interstate Water Pollution Control Commission for review and approval, as provided for under the terms of Article V of the compact whereby the interstate commission was created by RSA 484, shall submit such classifications in accordance with the standards of water quality as currently adopted by said interstate water pollution control commission provided, however, that the standards for any classification thus submitted for review and approval shall not be less than, nor exceed the standards of the classification duly adopted by the General Court as provided for in RSA 485-A:9 or 10.
V. Tidal waters utilized for swimming purposes shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 35 enterococci per 100 milliliters, or 104 enterococci per 100 milliliters in any one sample, unless naturally occurring. Those tidal waters used for growing or taking of shellfish for human consumption shall, in addition to the foregoing requirements, be in accordance with the criteria recommended under the National Shellfish Program Manual of Operation, United States Department of Food and Drug Administration.
VI. Notwithstanding anything contained in this chapter, the commissioner shall have the authority to adopt such stream classification criteria as may be issued from time to time by the federal Environmental Protection Agency or its successor agency insofar as said criteria may relate to the water uses specified in RSA 485-A:8, I and II, provided, however, that the criteria thus issued shall not result in standards that are less than nor exceed the standards of the classification duly enacted by the general court as provided for in RSA 485-A:9 or 485-A:10.
VII. All tests and sampling for the purposes of examination of waters shall be performed and carried out in a reasonable manner and whenever practicable, in accordance with the commonly accepted scientific method as

selected by the department. The waters in each classification shall satisfy all the provisions of all lower classifications. The minimum treatment for the lowest classification shall be as follows:
(a) For sewage, secondary treatment and disinfection as necessary to comply with water quality standards.
(b) For industrial wastes and combined sewer overflows, such treatment as the department shall determine. Appeal from any such determination shall be in the manner provided for in RSA 21-O:14.
VIII. In prescribing minimum treatment provisions for thermal wastes discharged to interstate waters, the department shall adhere to the water quality requirements and recommendations of the New Hampshire fish and game department, the New England Interstate Water Pollution Control Commission, or the United States Environmental Protection Agency, whichever requirements and recommendations provide the most effective level of thermal pollution control.
IX. Subject to the provisions of RSA 485-A:13, I(a), the fish and game department may use rotenone or similar compounds in the conduct of its program to reclaim the public waters of the state for game fishing.

Source. 1989, 339:1. 1991, 371:3-5. 1996, 228:77, 106, 110. 1998, 63:1, eff. July 11, 1998. 2017, 211:2, eff. Sept. 8, 2017.

Section 485-A:9

485-A:9 Classification Procedure. –
The department shall follow the procedures provided in this section and recommend to the legislature a classification for all streams, lakes, ponds, and tidal waters or section of such water.
I. A notice setting forth the contemplated classification of any stream, lake, pond, tidal water or section of such water, shall be published for 3 successive weeks in a newspaper circulated within the county or counties in which the surface water in question is situated. The last notice shall be published at least 7 days before the hearing date. The notice shall stipulate the time and place where a public hearing on the contemplated classification shall be held.
II. A public hearing shall be conducted by the department, at which hearing all interested parties shall be heard relative to their views on classification of the area or areas in question.
III. Following the hearings the department shall review the pertinent evidence and data presented.
IV. After such hearing and review of evidence the department shall determine which classification is for the best interest of the public giving consideration to the health, industrial, economic, geographical and social factors involved.

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

Section 485-A:10

485-A:10 Reclassification Procedure. – After adoption of a classification for any surface water or section of such water by the legislature, the department may, by its own motion, or upon the petition of not less than 100 persons, legal inhabitants of the county or counties in which the surface water in question is situated, reinvestigate the conditions of pollution in said surface water or section of such water by following the procedure above outlined, and may at any time make recommendation to the legislature for reclassification.

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

Section 485-A:11

485-A:11 Public Waters Classified. – All lakes and ponds defined as public waters of the state by RSA 271:20 shall be classified by the passage of this section as not less than Class B, as set forth in RSA 485-A:8 relating to standards for classification of surface waters of the state.

Source. 1989, 339:1. 1999, 232:2, eff. Jan. 1, 2000.

Enforcement

Section 485-A:12

485-A:12 Enforcement of Classification. –

I. After adoption of a given classification for a stream, lake, pond, tidal water, or section of such water, the department shall enforce such classification by appropriate action in the courts of the state, and it shall be unlawful for any person or persons to dispose of any sewage, industrial, or other wastes, either alone or in conjunction with any other person or persons, in such a manner as will lower the quality of the waters of the stream, lake, pond, tidal water, or section of such water below the minimum requirements of the adopted classification. If the department shall set a time limit for abatement of pollution under paragraph II, and it becomes apparent at any time during the compliance period that full compliance with the adopted classification will not be attained by the end of such period due to the failure of any person to take action reasonably calculated to secure abatement of the pollution within the time specified, the department shall notify such person or persons in writing. If such person or persons shall fail or neglect to take appropriate steps to comply with the classification requirements within a period of 30 days after such notice, the department shall seek appropriate action in the courts of the state.

II. If, after adoption of a classification of any stream, lake, pond, or tidal water, or section of such water, including those classified by RSA 485-A:11, it is found that there is a source or sources of pollution which lower the quality of the waters in question below the minimum requirements of the classification so established, the person or persons responsible for the discharging of such pollution shall be required to abate such pollution within a time to be fixed by the department. If such pollution is of municipal or industrial origin, the time limit set by the department for such abatement shall be not less than 2 years nor more than 5 years. For good cause shown, the department may from time to time extend any time limit established under this paragraph. Any determination by the department under this paragraph shall be subject to appeal as provided for in RSA 485-A:19.

III. No activity, including construction and operation of facilities, that requires certification under section 401 of the Clean Water Act and that may result in a discharge, as that term is applied under section 401 of the Clean Water Act, to surface waters of the state may commence unless the department certifies that any such discharge complies with the state surface water quality standards applicable to the classification for the receiving surface water body. The department shall provide its response to a request for certification to the federal agency or authority responsible for issuing the license, permit, or registration that requires the certification under section 401 of the Clean Water Act. Certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide assurance that the proposed discharge complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

IV. No activity that involves surface water withdrawal or diversion of surface water that requires registration under RSA 488:3, that does not otherwise require the certification required under paragraph III, and which was not in active operation as of the effective date of this paragraph, may commence unless the department certifies that the surface water withdrawal or diversion of surface water complies with state surface water quality standards applicable to the classification for the surface water body. The certification shall include any conditions on, modifications to, or monitoring of the proposed activity necessary to provide reasonable assurance that the proposed activity complies with applicable surface water quality standards. The department may enforce compliance with any such conditions, modifications, or monitoring requirements as provided in RSA 485-A:22.

Source. 1989, 339:1. 1996, 228:106. 2008, 337:2. 2009, 26:1, eff. July 7, 2009.

Section 485-A:13

485-A:13 Water Discharge Permits. –

I. (a) It shall be unlawful for any person or persons to discharge or dispose of any sewage or waste to the surface water or groundwater of the state without first obtaining a written permit from the department of environmental

services. Applications for permits shall be made upon forms prescribed by the department of environmental services and shall contain such relevant information as the department of environmental services may require. The department of environmental services shall include in such permits effluent limitations, which may be based upon economic and technological factors, upon the classification enacted by the legislature, upon the projected best use of the surface water downstream or upon the requirements of the Federal Water Pollution Control Act as amended from time to time, and all regulations, guidelines and standards promulgated thereunder, whichever provides the most effective means to abate pollution. The department of environmental services may also prescribe such other reasonable conditions as may be necessary or desirable in order to fulfill the purpose of this chapter or applicable federal law. Such permits may contain, in the case of sources not in compliance with such effluent limitations at the time the permit is issued, compliance schedules, including interim requirements necessary or desirable in order to fulfill the purposes or requirements of this chapter, and any such compliance schedules may be imposed without regard to the time limits for abatement of pollution referred to in RSA 485-A:12, II and shall be consistent with the purposes and requirements of applicable federal law. The department of environmental services may prescribe a monitoring program to be performed by the applicant with periodic reports to the department of environmental services, including, where appropriate in terms of the nature of the effluent, continuous monitoring. Permits shall be issued for a fixed term, not to exceed 5 years. The department of environmental services may revise, modify or suspend in whole or in part or terminate any permit, following hearing, upon a finding that just cause exists for such action. Further, whenever in its judgment the purposes of this chapter will be best served, the department of environmental services may require as a condition to the granting of such permits that either the ownership and operation of the collection and treatment facilities involved be vested in the municipality or any subdivision thereof in which the system is located, if said municipality by legal action agrees thereto, or such other reasonable conditions as will ensure continuous and continuing operation and maintenance of the facilities. No permit shall be granted to utilize the entire assets of the surface water, or in any other case in which the department of environmental services determines that the grant of a permit would be inconsistent with the purposes of this chapter. Any determination by the department of environmental services under this paragraph shall be subject to appeal as provided for in RSA 485-A:19.

(b) Notwithstanding any other provision of law, no permit to discharge sewage or waste shall be issued authorizing any of the following discharges:

(1) The discharge of any radiological, chemical or biological warfare agent or high level radioactive waste.

(2) Any discharge into navigable waters which the secretary of the army of the United States acting through the chief of engineers determines would substantially impair anchorage and navigation.

(3) Any discharge to which the regional administrator of the United States Environmental Protection Agency, or his successor in jurisdiction, has objected in writing pursuant to any right to object each provided such official in section 402(d) of the Federal Water Pollution Control Act, as amended from time to time; provided, that this subparagraph and subparagraph (2) above shall not preclude the department of environmental services or any other person from availing itself of the judicial review of any such objection, or any determination by the secretary of the army, available under applicable federal law.

(4) Any discharge from a point source which is in conflict with a plan or amendment to such plan approved pursuant to section 208(b) of the Federal Water Pollution Control Act, as amended from time to time.

(c) Any person responsible for a bypass or upset at a wastewater facility shall give immediate notice of the bypass or upset to all public or privately owned water systems drawing water from the same receiving water and located within 20 miles downstream of the point of discharge. The permittee shall maintain a list of persons, and their telephone numbers, who are to be notified immediately by telephone. In addition, written notification, which shall be postmarked within 3 days of the bypass or upset, shall be sent to such persons.

II. On application of the department of environmental services, the superior court or any justice of such court, in term time, or in vacation may enjoin any act in violation of any lawful order of the department of environmental services.

III. In the interim between the effective date of classification legislation hereafter enacted affecting any surface water of the state or section of such water, and the time limit for abatement of pollution set thereafter either by the department of environmental services under RSA 485-A:12, II or by the legislature, it shall be unlawful for person or persons to dispose of any sewage or waste into said surface water of the state in excess of the maximum quantity or of a different character, than that being disposed of during the period of one year prior to the effective date of such legislative classification without first obtaining written permission from the department of environmental services.

Source. 1989, 339:1. 1990, 248:3. 1996, 228:108, eff. July 1, 1996.

Section 485-A:13-a

485-A:13-a Groundwater Permit Fee. – Any person, except for state, and local governments, including counties, and political subdivisions, issued a groundwater permit under RSA 485-A:13, I(a) shall pay to the department a fee of $1,000 for the 5-year permit. Said fee shall be for processing such permits, including any necessary inspections and monitoring performed by the department in enforcing the terms and conditions of such permits. The fees shall be deposited with the state treasurer as unrestricted revenue.

Source. 1990, 3:89. 1996, 228:106, eff. July 1, 1996.

Section 485-A:14

485-A:14 Prohibited Acts. –

I. The lawful owner of any petroleum-powered vehicle or petroleum container that becomes partially or completely submerged in the surface waters of the state shall remove the vehicle or container from the water within 48 hours or as soon thereafter as safety and weather conditions permit. Petroleum-powered vehicles include, but are not limited to, cars, trucks, motorcycles, snowmobiles, motorized boats, off highway recreational vehicles, all terrain vehicles, construction equipment, trains, and airplanes. Petroleum containers include, but are not limited to, drums, barrels, tanks, pails, cans, jugs, or equipment which contains oil.

II. The lawful owner of the submerged vehicle or container shall notify the department of environmental services in accordance with RSA 146-A, and the department shall investigate any possible contamination and ensure the safe removal of the vehicle or container from the body of water involved. Any partially or completely submerged vehicle or petroleum container shall be presumed to be discharging oil into the surface waters of the state and shall be subject to the reporting, removal, and strict liability requirements of RSA 146-A.

III. The lawful owner of a vehicle shall notify the department of safety, division of state police, if any person is injured or killed in an incident involving a submerged vehicle.

IV. If the owner refuses or fails to remove a submerged vehicle or container as required by paragraph I, or if no owner can be identified, the department of environmental services may contract for the removal of the vehicle or container in question. The owner of the submerged vehicle or container shall be strictly liable for the costs of removing the vehicle or container and the costs of the investigation, containment, cleanup, removal, and corrective measures associated with the discharge. The cost shall be recoverable by the state in an action of debt brought by the attorney general in the name of the state. If the owner of the vehicle or container has been identified, the contractor who removes the vehicle or container shall impound the recovered vehicle or container, at the expense of the owner. No contractor shall release the vehicle or container to the owner until informed by the department that all costs incurred by the state have been paid by the owner of the vehicle or container or that the impounded vehicle or container otherwise may be released. Upon receiving approval from the department to release the impounded vehicle or container, the contractor shall dispose of the impounded vehicle or container in accordance with RSA 262:36-a. If no owner can be identified after reasonable efforts, the contractor who removes the vehicle or container shall deliver the vehicle or container to an appropriate salvage yard. Neither the state nor the contractor shall be liable for such delivery of the vehicle or container to anyone subsequently claiming ownership of the vehicle or container.

V. (a) Any person who fails to remove a submerged or partially submerged vehicle or container, as required by paragraph I, shall be guilty of a violation. Agents of the department of safety, division of state police, or any police officer of the municipality in which the vehicle or container is submerged may issue citations for a violation of this section and issue fines of $500 for each day the vehicle remains in the water. No citation or fine so issued shall preclude the department of environmental services from taking action pursuant to subparagraph (b).

(b) The department of environmental services may take action against any person who fails to remove a submerged or partially submerged vehicle or container, as required by paragraph I, in accordance with RSA 485-A:22. No action initiated by the department of environmental services under RSA 485-A:22 shall preclude the issuance of citations and fines pursuant to subparagraph (a).

VI. Unless otherwise provided in this chapter, any person who knowingly fails to remove a submerged or partially submerged vehicle or container, as required by paragraph I, shall be guilty of a class B felony if the surface water is the source, or a tributary to a source, from which the domestic water supply of a city, town, or village is taken, in whole or in part.

Source. 1989, 339:1. 1996, 228:108. 2006, 254:4. 2009, 190:1. 2011, 224:271, 272, eff. July 1, 2011. 2014, 141:1, eff. Aug. 15, 2014.

Section 485-A:15

485-A:15 Penalties. –

I. It shall be unlawful for any person to put or place, or cause to be put or placed into a surface water of the state or on the ice over such waters, or on the banks of such waters, any solid waste as defined in RSA 149-M or hazardous waste as defined in RSA 147-A, including but not limited to bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, tires, old automobiles or parts thereof, trees or parts thereof, or similar litter.

II. For any violation of this section any authorized member or agent of the department of environmental services shall order the immediate removal of material involved in the violation, by the person responsible for the material in question.

III. If the person or persons responsible for a violation of paragraph I refuse or fail to obey the order of any authorized member or agent of the department of environmental services, the department of environmental services or authorized member or agency may contract for the removal of the material in question and the cost of the removal shall be recoverable by the state in an action of debt brought by the attorney general in the name of the state.

IV. Any person who recklessly violates paragraph I shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

V. Any person who purposely or knowingly violates paragraph I shall be guilty of a class B felony.

Source. 1989, 339:1. 1996, 228:108. 2009, 190:2, 3, eff. Jan. 1, 2010.

Section 485-A:16

485-A:16 Emergency. – If the department finds that an emergency has arisen from failure of or casualty to facilities for the control of pollution, the department may, if it finds that the best interests of the public will not unduly suffer, authorize any person for a reasonable time to discharge sewage or other wastes into surface waters or groundwaters, although such discharge would have the effect of lowering the quality of such waters below the adopted classification.

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

Section 485-A:17

485-A:17 Terrain Alteration. –

I. Any person proposing to dredge, excavate, place fill, mine, transport forest products or undertake construction in or on the border of the surface waters of the state, and any person proposing to significantly alter the characteristics of the terrain, in such a manner as to impede the natural runoff or create an unnatural runoff, shall be directly responsible to submit to the department detailed plans concerning such proposal and any additional relevant information requested by the department, at least 30 days prior to undertaking any such activity. The operations shall not be undertaken unless and until the applicant receives a permit from the department. The department shall have full authority to establish the terms and conditions under which any permit issued may be exercised, giving due consideration to the circumstances involved and the purposes of this chapter, and to adopt such rules as are reasonably related to the efficient administration of this section, and the purposes of this chapter. Nothing contained in this paragraph shall be construed to modify or limit the duties and authority conferred upon the department under RSA 482 and RSA 482-A.

II. The department shall charge a fee for each review of plans, including project inspections, required under this section. The fee shall be based on the extent of contiguous area to be disturbed. Except for RSA 483-B:9, the fee for plans encompassing an area of at least 100,000 square feet but less than 200,000 square feet shall be $1,250. For the purposes of RSA 483-B:9, the fee for plans encompassing an area of at least 50,000 square feet but less than 200,000 square feet shall be $1,250. An additional fee of $500 shall be assessed for each additional area of up to 100,000 square feet to be disturbed. No permit shall be issued by the department until the fee required by this paragraph is paid. All fees required under this paragraph shall be paid when plans are submitted for review and shall be deposited in the terrain alteration fund established in paragraph II-a.
II-a. There is hereby established the terrain alteration fund into which the fees collected under paragraph II shall be deposited. The fund shall be a separate, nonlapsing fund, continually appropriated to the department for the purpose of paying all costs and salaries associated with the terrain alteration program.
II-b. In processing an application for permits under RSA 485-A:17:
(a) Within 50 days of receipt of the application, the department shall request any additional information required to complete its evaluation of the application, together with any written technical comments the department deems necessary. Any request for additional information shall specify that the applicant submit such information as soon as practicable and shall notify the applicant that if all of the requested information is not received within 120 days of the request, the department shall deny the application.
(b) If the department requests additional information pursuant to subparagraph (a), the department shall, within 30 days of the department's receipt of the information:
(1) Approve the application in whole or in part and issue a permit; or
(2) Deny the application and issue written findings in support of the denial; or
(3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.
(c) If no request for additional information is made pursuant to subparagraph (b), the department shall, within 50 days of receipt of the application:
(1) Approve the application, in whole or in part and issue a permit; or
(2) Deny the application, and issue written findings in support of the denial; or
(3) Extend the time for rendering a decision on the application for good cause and with the written agreement of the applicant.
(d)(1) The time limits prescribed by this paragraph shall supersede any time limits provided in any other provision of law. If the department fails to act within the applicable time frame established in subparagraphs (b) and (c), the applicant may ask the department to issue the permit by submitting a written request. If the applicant has previously agreed to accept communications from the department by electronic means, a request submitted electronically by the applicant shall constitute a written request.
(2) Within 14 days of the date of receipt of a written request from the applicant to issue the permit, the department shall:
(A) Approve the application, in whole or in part, and issue a permit; or
(B) Deny the application and issue written findings in support of the denial.
(3) If the department does not issue either a permit or a written denial within the 14-day period, the applicant shall be deemed to have a permit by default and may proceed with the project as presented in the application. The authorization provided by this subparagraph shall not relieve the applicant of complying with all requirements applicable to the project, including but not limited to requirements established in or under this section and RSA 485-A relating to water quality.
(4) Upon receipt of a written request from an applicant, the department shall issue written confirmation that the applicant has a permit by default pursuant to subparagraph (d)(3), which authorizes the applicant to proceed with the project as presented in the application and requires the work to comply with all requirements applicable to the project, including but not limited to requirements established in or under this section and RSA 485-A relating to water quality.

[Paragraph II-b(e) effective until January 1, 2019; see also paragraph II-b(e) set out below.]

(e) The time limits under this paragraph shall not apply to an application from an applicant that has previously

been found in violation of this chapter pursuant to RSA 485-A:22-a or an application that does not otherwise comply with the department's rules relative to the permit application process.

[Paragraph II-b(e) effective January 1, 2019; see also paragraph II-b(e) set out above.]

(e) The time limits under this paragraph shall not apply to an application from an applicant that has been found in violation of this chapter pursuant to RSA 485-A:22-a within the 5 years preceding the application or an application that does not otherwise substantially comply with the department's rules relative to the permit application process.

[Paragraph II-b(f) effective until January 1, 2019; see also paragraph II-b(f) set out below.]

(f) The department may extend the time for rendering a decision under subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an applicant who previously has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this section or any rule adopted or permit or approval issued under this section, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this section, pursuant to an action initiated under RSA 485-A:22. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

[Paragraph II-b(f) effective January 1, 2019; see also paragraph II-b(f) set out above.]

(f) The department may extend the time for rendering a decision under subparagraphs (b)(3) and (c)(3), without the applicant's agreement, on an application from an applicant who, within the 5 years preceding the application, has been determined, after the exhaustion of available appellate remedies, to have failed to comply with this section or any rule adopted or permit or approval issued under this section, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by this section, pursuant to an action initiated under RSA 485-A:22. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application, and shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.

(g) The department may suspend review of an application for a proposed project on a property with respect to which the department has commenced an enforcement action against the applicant for any violation of this section, RSA 482-A, RSA 483-B, or RSA 485-A:29-44, or of any rule adopted or permit or approval issued pursuant to this section, RSA 482-A, RSA 483-B, or RSA 485-A:29-44. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action initiated under RSA 482-A:13, RSA 482-A:14, RSA 482-A:14-b, RSA 483-B:18, RSA 485-A:22, RSA 485-A:42, or RSA 485-A:43.

II-c. Beginning October 1, 2007 and each fiscal quarter thereafter, the department shall submit a quarterly report to the house and senate finance committees, the house resources, recreation, and economic development committee, and the senate energy, environment, and economic development committee relative to administration of the terrain alteration review program.

II-d. All permits issued, except for projects covered by paragraph II-e, pursuant to this section shall be valid for a period of 5 years. Requests for extensions of such permits may be made to the department. The department shall grant an extension of up to 5 additional years, provided the applicant demonstrates all of the following:

(a) The permit for which extension is sought has not expired prior to the date on which a written extension request from the permittee is received by the department.

(b) The permit for which extension is sought has not been revoked or suspended without reinstatement.

(c) Extension would not violate a condition of statute or rule.
(d) Surface water quality will continue to be protected as under the original permit.
(e) The project is proceeding towards completion in accordance with plans and other documentation referenced by the permit.
(f) If applicable, any inspection reports have been completed and submitted as required by the permit.
(g) The permit has not previously been extended, unless the subdivision plat or site plan associated with the permit has been deemed substantially complete by the governing municipal planning board in accordance with RSA 674:39, II, in which case subsequent extensions of the permit are allowed.
II-e. A permit issued under this section that is associated with the ongoing excavation or mining of materials from the earth shall not expire for the life of the project identified in the permit application, provided that the permit holder submits a written update of the project's status every 5 years from the date of the permit issuance using a form obtained from the department as specified in department rules.
III. Normal agricultural operations shall be exempt from the provisions of this section. The department may exempt other state agencies from the permit and fee provisions of this section provided that each such agency has incorporated appropriate protective practices in its projects which are substantially equivalent to the requirements established by the department under this chapter.
IV. Timber harvesting operations shall be exempt from the fee provisions of this section. Timber harvesting operations shall be considered in compliance with this section and shall be issued a permit by rule provided such operations are in accordance with procedures prescribed in the Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire, published by the department of natural and cultural resources, and provided that the department of revenue administration's intent to cut form is signed.
V. Trail construction operations for the purposes of modifying existing biking and walking trails shall be exempt from the provisions of this section. Such operations shall be considered in compliance with this section and shall be issued a general permit by rule provided such operations are implemented by a non-profit organization, municipality, or government entity, are limited to a disturbed area no more than 12 feet in width, and are in accordance with procedures prescribed in the Best Management Practices for Erosion Control During Trail Maintenance and Construction, published by the department of natural and cultural resources, bureau of trails in 2004.

Source. 1989, 339:1. 1992, 157:3. 1996, 228:106, 109. 2003, 224:5. 2005, 32:1. 2007, 263:30. 2009, 208:3. 2010, 295:8-10. 2012, 148:1, eff. Aug. 6, 2012. 2017, 156:14, I, eff. July 1, 2017. 2018, 279:8, eff. Jan. 1, 2019.

Section 485-A:18

485-A:18 Investigation and Inspection; Records. –
I. Any authorized member or agent of the department may enter any land or establishment for the purpose of collecting information that may be necessary to the purposes of this chapter and no owner of such establishment shall refuse to admit any such member or employee.
II. The department, its employees and authorized agents shall at reasonable times have access to any records and monitoring equipment and shall have the authority to sample effluents of any person subject to RSA 485-A:13, I(a) and RSA 485-A:5. Upon written request of the department, such person shall provide to the department such information pertaining to any activities of such person to which this chapter applies as the department may reasonably require. Any information obtained pursuant to this section or under this chapter shall be available to the public at the offices of the department, subject to paragraph III.
III. Any other provisions of law notwithstanding, upon a showing satisfactory to the department by any person that any record, report, or information or any particular part thereof, to which the department has access, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the department shall consider such record, report, information or particular part thereof confidential, and it shall thereafter not be disclosed to the public. All financial information shall be considered confidential for purposes of this chapter. Nothing in this section shall preclude the department from transmitting any such confidential information to any agency of the United States having jurisdiction over water pollution, provided that such agency is authorized by law to maintain the confidentiality of such information and agrees to maintain the confidentiality of any such information. In no case, however, shall effluent data, standards or limitations, names or addresses of permit applicants or permittees, nor permit applications or permits be considered confidential information.

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

Section 485-A:19

485-A:19 Review of Orders. – The procedure for rehearings and appeal shall be that prescribed by RSA 21-O:14.

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

Section 485-A:20

485-A:20 Summons; Oath. – The department shall have power to subpoena witnesses and administer oaths in any proceeding or examination instituted before or conducted by it, and to compel the production of any account books, contracts, records, documents, memoranda and papers of any kind necessary to the purposes of this chapter.

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

Section 485-A:21

485-A:21 Witnesses; Perjury. – Witnesses summoned before the department shall be paid the same fee as witnesses summoned to appear before the superior court, and such summons issued by any justice of the peace shall have the same effects as though issued for appearance in court. No person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

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

Section 485-A:22

485-A:22 Penalties and Other Relief; Failure to Provide Facility. –

I. Any person who willfully or negligently violates any provision of this subdivision or RSA 485-A:4-6; or any rule of the department adopted pursuant to this subdivision or RSA 485-A:4-6 or any condition or limitation in a permit issued under this subdivision or RSA 485-A:4-6; or who knowingly makes any material false statement, representation, or certification in any application, record, report, plan, or other document required to be filed or maintained pursuant to this subdivision or RSA 485-A:4-6 or pursuant to a rule adopted by the department under this subdivision or RSA 485-A:4-6 or who knowingly makes any such statement, representation, or certification in connection with any permit issued under this subdivision or RSA 485-A:4-6; or who knowingly renders inaccurate, falsifies, or tampers with any monitoring device or method required under this subdivision or RSA 485-A:4-6 or rule of the department adopted under this subdivision or RSA 485-A:4-6 or required in connection with any permit issued under this subdivision or RSA 485-A:4-6; or who knowingly fails, neglects, or refuses to obey any lawful order of the department, shall, notwithstanding the provisions of RSA title LXII, be punished by a fine of not more than $25,000 for each day of such violation or imprisoned for not more than 6 months or both.

II. Any person who shall violate any provisions of this subdivision or RSA 485-A:4-6, or any lawful regulation of the department issued pursuant to this subdivision or RSA 485-A:4-6, or any condition or limitation in a permit issued under this subdivision or RSA 485-A:4-6, or who shall fail, neglect, or refuse to obey any order lawfully issued pursuant to this subdivision or RSA 485-A:4-6, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

III. The department shall issue a written cease and desist order against any discharge or act in violation of this subdivision or RSA 485-A:4-6 or lawful regulation of the department made under them or any condition of any permit lawfully issued by the department, and any such discharge or act may be enjoined by the superior court upon application of the attorney general, whether the court is in term time or vacation. Municipalities shall comply with such orders pursuant to RSA 38:25.

III-a. Municipalities may apply to a justice of the superior court for injunctive relief against existing or

impending violations of RSA 485-A:17, or any rule or order issued under that section. 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.

IV. The written cease and desist order issued pursuant to the provisions of paragraph III shall be recorded by the department in the registry of deeds for the county in which the property is situated and, upon recordation, said order shall run with the land; provided, however, that an appropriate description of the land involved including the accurate name of the owner of the land shall be incorporated in the cease and desist order. No fee shall be charged for recording such an administrative order; however, the fee for discharge of any such order shall be the same as for the discharge of a real estate property.

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 subdivision or, RSA 485-A:4-6, any rule adopted under this subdivision or RSA 485-A:4-6, or any permit issued under the authority of this subdivision or RSA 485-A:4-6. 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, rules adopted under this chapter, and permits issued under this chapter, as provided above.

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

V-a. Upon receipt of information by the department that a municipality has not complied with RSA 485-A:5-b relative to septage disposal, the department shall issue an order directing said municipality to provide or assure access to an approved septage disposal facility not later than 180 calendar days following issuance of the order. Any municipality to whom such an order is directed may appeal in accordance with RSA 21-O:14.

V-b. If any municipality fails to comply with an order under paragraph V-a, it shall be subject to an administrative fine pursuant to paragraph V. Each day of continuous violation shall constitute a separate offense. The department shall take the following steps:

(a) The department shall conduct an investigation of opportunities for joint action with other municipalities, the availability of private facilities, and possible facility sites within the municipality.

(b) The department shall report findings to the precinct and municipality, and seek local agreement to an acceptable solution to the septage problem.

(c) If no agreement is reached within 60 calendar days after the findings are delivered, the department shall schedule and hold a public hearing in the municipality. The hearing shall be held to solicit alternative septage disposal solutions for the municipality. Notice of the hearing shall be posted in 2 or more public places in the municipality for at least 14 calendar days before it is held, and shall be published in a newspaper of local circulation, at least twice, not less than 10 days prior to the hearing date.

(d) If no agreement is reached within 45 calendar days after the hearing, the department shall either order the municipality to participate in an existing or planned approved facility, or shall recommend that land within the municipality be taken by eminent domain for the establishment of an approved facility.

(e) Before land is taken by eminent domain, the department shall hold a public hearing in the municipality. Such hearing shall be noticed pursuant to the provisions of subparagraph (c).

(f) If the department determines that land shall be taken, the department shall institute eminent domain proceedings.

(g) The department shall be responsible for the facility's design and construction.

V-c. If land is taken for construction of a facility:

(a) The property shall be held in the name of the state and shall not be taxed.

(b) Upon completion, the facility shall be operated by the municipality in accordance with the facility plan.

(c) At the time of the taking, the department shall certify to the commissioner of revenue administration the costs

of establishing the facility. The certification shall be revised when the facility is complete to reflect actual costs, including land, buildings, equipment, administration, planning, consultants, and any other necessary costs.
(d) The commissioner of revenue administration shall assess the costs on the municipality over a 20-year period. Each annual assessment shall include the interest on any debt incurred by the state for this purpose. The assessment shall be made as provided in RSA 21-J:15 and RSA 81.
(e) When all costs and interest are paid, the property shall be deeded to the municipality, or in the case of an unincorporated town or unorganized place, to the county.
VI. The provisions of RSA 651:1 shall not apply to offenses under this chapter.

Source. 1989, 339:1. 1990, 252:14, 17. 1991, 340:4. 1995, 217:7. 1996, 228:78, 106. 1997, 206:8. 1999, 232:3, 4, eff. Jan. 1, 2000. 2013, 247:6, eff. Mar. 24, 2014.

Section 485-A:22-a

485-A:22-a Cease and Desist Orders; Penalty. –
The director of the division of forests and lands, department of natural and cultural resources, or his or her authorized agents, may:
I. Issue a written cease and desist order against any timber operation in violation of this chapter. Any such violation may be enjoined by the superior court, upon application of the attorney general. A person failing to comply with the cease and desist order shall be guilty of a violation.
II. Prosecute any violation of this chapter as a violation. This provision shall not limit the state's enforcement authority under this chapter.

Source. 1989, 214:19. 1990, 29:4. 2005, 32:2, eff. July 9, 2005. 2017, 156:14, I, eff. July 1, 2017.

Safety Regulations for Camps, Pools, and Bathing Places

Section 485-A:23

485-A:23 Definitions. –
In this subdivision:
I. "Recreation camp" means any place set apart for recreational purposes for boys and girls. It shall not be construed to apply to private camps owned or leased for individual or family use, or to any camp operated for a period of less than 10 days in a year.
II. "Youth skill camp" means a nonprofit or for-profit program that lasts 8 hours total or more in a year for the purpose of teaching a skill to minors. Such camps include, but are not limited to, the teaching of sports, the arts, and scientific inquiry.

Source. 1989, 339:1. 1994, 16:1, eff. June 21, 1994. 2013, 250:2, eff. Jan. 1, 2014.

Section 485-A:24

485-A:24 Recreation Camp License; Youth Skill Camp Certification of Criminal Background Check. –
I. No person shall for profit or for charitable purposes operate any recreation camp, as defined in RSA 485-A:23, I, designed or intended as a vacation or recreation resort, without a license issued by the department. Said license is to be conditioned upon the maintenance of clean, healthful sanitary conditions and methods, as determined and approved by said department, good only for the calendar year in which it is issued and subject to suspension or revocation at any time for cause. The fee for such license shall be $200 which shall be paid into the recreation camp and youth skill camp fund established in RSA 485-A:24-a.
II. (a) No person or entity shall for profit or for charitable purposes operate any youth skill camp, as defined in RSA 485-A:23, II, without maintaining an appropriate policy regarding background checks for camp owners, employees and volunteers who may be left alone with any child or children. Certification of background checks shall be made to the department demonstrating that no individual has a criminal conviction for any offense

involving:
(1) Causing or threatening direct physical injury to any individual; or
(2) Causing or threatening harm of any nature to any child or children.
(b) Any person or entity required to perform background checks and provide certification to the department pursuant to subparagraph (a) shall pay a fee of $25 to the department. All such fees collected by the department shall be deposited into the recreation camp and youth skill camp fund established in RSA 485-A:24-a.
(c) Subparagraphs (a) and (b) shall not apply to any person or entity which owns property used to operate a youth skill camp or any buildings or structures on such property used in the operation of a youth skill camp, provided such person or entity obtains written certification signed by the youth skill camp operator stating that background checks in accordance with this paragraph have been completed.
(d) Nothing in this section shall preclude more stringent requirements for background checks on the part of camp owners, directors, or operators.
(e) Such policies shall be made available to the department and shall include the frequency of the background checks and the sources used to conduct the background checks. The department shall provide information on each youth skill camp's policy on the department's website.
(f) If an employee or volunteer has been the subject of a background check performed by another person or entity within 12 months, the previous background check may, with the signed and written consent of the employee or volunteer, be shared with the operator of the youth skill camp and may be used to satisfy the requirements of this paragraph, notwithstanding any other law providing for the confidentiality of such information.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2013, 250:3, eff. Jan. 1, 2014.

Section 485-A:24-a

485-A:24-a Recreation Camp and Youth Skill Camp Fund. – There is established in the office of the state treasurer a nonlapsing fund to be known as the recreation camp and youth skill camp fund to be administered by the commissioner of the department of environmental services, and which shall be kept distinct and separate from all other funds. All moneys in the fund shall be continually appropriated to the commissioner of the department of environmental services for the purpose of paying costs associated with administering the provisions of RSA 485-A:24 and 485-A:25.

Source. 2013, 250:4, eff. Jan. 1, 2014.

Section 485-A:25

485-A:25 Rulemaking. –
I. The commissioner shall adopt rules under RSA 541-A relative to:
(a) Issuance of licenses to recreation camp operators under RSA 485-A:24, I.
(b) Requirements for performing criminal background checks at youth skill camps and certifying acceptable results as required under RSA 485-A:24, II(a) and establishing appropriate sanctions and penalties for failing to perform the required background checks.
(c) Water quality-related issues for the protection of persons using recreation camp facilities regulated under RSA 485-A:24, I.
II. The commissioner, in consultation with the department of health and human services, shall adopt all other necessary rules under RSA 541-A, relative to public health and safety issues for the protection of persons attending recreation camps regulated under RSA 485-A:24, I.

Source. 1989, 339:1. 1994, 174:1. 1995, 310:181. 1996, 228:110, eff. July 1, 1996. 2013, 250:3, eff. Aug. 23, 2013.

Section 485-A:25-a

485-A:25-a Statement of Health for Recreational Camps. – Notwithstanding any law or rule to the contrary, any physical examination which is required before a child may enter a recreational camp may be conducted by a physician, a licensed advanced nurse practitioner or a physician assistant.

Source. 1990, 102:1, eff. April 13, 1990.

Section 485-A:25-b

485-A:25-b Possession and Use of Epinephrine Auto-Injectors at Recreation Camps. –
A recreation camp shall permit a child with severe, potentially life-threatening allergies to possess and use an epinephrine auto-injector, if the following conditions are satisfied:
I. The child has the written approval of the child's physician and the written approval of the parent or guardian. The camp shall obtain the following information from the child's physician:
(a) The child's name.
(b) The name and signature of the licensed prescriber and business and emergency numbers.
(c) The name, route, and dosage of medication.
(d) The frequency and time of medication administration or assistance.
(e) The date of the order.
(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
(g) Specific recommendations for administration.
(h) Any special side effects, contraindications, and adverse reactions to be observed.
(i) The name of each required medication.
(j) Any severe adverse reactions that may occur to another child, for whom the epinephrine auto-injector is not prescribed, should such a pupil receive a dose of the medication.
II. The recreational camp administrator or, if a nurse is assigned to the camp, the nurse shall receive copies of the written approvals required by paragraph I.
III. The child's parent or guardian shall submit written verification from the physician confirming that the child has the knowledge and skills to safely possess and use an epinephrine auto-injector in a camp setting.
IV. If the conditions provided in this section are satisfied, the child may possess and use the epinephrine auto-injector at the camp or at any camp-sponsored activity, event, or program.
V. In this section, "physician" means any physician or health practitioner with the authority to write prescriptions.

Source. 2003, 50:2, eff. Aug. 15, 2003.

Section 485-A:25-c

485-A:25-c Use of Epinephrine Auto-Injector. – Immediately after using the epinephrine auto-injector, the child shall report such use to the nurse or another camp employee to enable the nurse or camp employee to provide appropriate follow-up care.

Source. 2003, 50:2, eff. Aug. 15, 2003.

Section 485-A:25-d

485-A:25-d Availability of Epinephrine Auto-Injector. – The recreational camp nurse or, if a nurse is not assigned to the camp, the recreational camp administrator shall maintain for the use of a child with severe allergies at least one epinephrine auto-injector, provided by the child, in the nurse's office or in a similarly accessible location.

Source. 2003, 50:2, eff. Aug. 15, 2003.

Section 485-A:25-e

485-A:25-e Immunity. – No recreational camp or camp employee shall be liable in a suit for damages as a result of any act or omission related to a child's use of an epinephrine auto-injector if the provisions of RSA 485-A:25-b have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an epinephrine auto-injector by a child.

Source. 2003, 50:2, eff. Aug. 15, 2003.

Section 485-A:25-f

485-A:25-f Possession and Use of Asthma Inhalers at Recreation Camps. –
A recreation camp shall permit a child to possess and use a metered dose inhaler or a dry powder inhaler to alleviate asthmatic symptoms, or before exercise to prevent the onset of asthmatic symptoms, if the following conditions are satisfied:
I. The child has the written approval of the child's physician and the written approval of the parent or guardian. The camp shall obtain the following information from the child's physician:
(a) The child's name.
(b) The name and signature of the licensed prescriber and business and emergency numbers.
(c) The name, route, and dosage of medication.
(d) The frequency and time of medication administration or assistance.
(e) The date of the order.
(f) A diagnosis and any other medical conditions requiring medications, if not a violation of confidentiality or if not contrary to the request of the parent or guardian to keep confidential.
(g) Specific recommendations for administration.
(h) Any special side effects, contraindications, and adverse reactions to be observed.
(i) The name of each required medication.
(j) At least one emergency telephone number for contacting the parent or guardian.
II. The recreational camp administrator or, if a nurse is assigned to the camp, the nurse shall receive copies of the written approvals required by paragraph I.
III. The child's parent or guardian shall submit written verification from the physician confirming that the child has the knowledge and skills to safely possess and use an asthma inhaler in a camp setting.
IV. If the conditions provided in this section are satisfied, the child may possess and use the inhaler at the camp or at any camp sponsored activity, event, or program.
V. In this section, "physician" includes any physician or health practitioner with the authority to write prescriptions.

Source. 2003, 51:4, eff. Aug. 15, 2003.

Section 485-A:25-g

485-A:25-g Immunity. – No recreational camp or camp employee shall be liable in a suit for damages as a result of any act or omission related to a child's use of an inhaler if the provisions of RSA 485-A:25-f have been met, unless the damages were caused by willful or wanton conduct or disregard of the criteria established in that section for the possession and self-administration of an asthma inhaler by a child.

Source. 2003, 51:4, eff. Aug. 15, 2003.

Section 485-A:26

485-A:26 Swimming Pools and Bathing Places. –
I. No person shall install, operate or maintain an artificial swimming pool or bathing place open to and used by the public, or as a part of a business venture, unless the construction, design and physical specifications of such

pool or bathing place shall have received prior approval by the department. A fee of $100 shall be paid to the department upon submission of such plans for review. Fees collected under this paragraph shall be deposited with the state treasurer as unrestricted revenue. The commissioner shall adopt rules relative to safety standards to protect persons using said facilities. Nothing in this section shall be deemed to affect the powers of local health officers or the department of health and human services, with respect to nuisances.
II. The department may take samples of the water of any such facility for analysis to determine compliance with water quality requirements. The costs of such sampling and analysis shall be paid by the owner or operator of such facility. The costs recovered for such sampling shall be deposited in the general fund as unrestricted revenue. The costs recovered for analysis shall be consistent with the fee structure established in RSA 131:3-a and deposited as provided in RSA 131:3-a. Any municipality which establishes a program of sampling and analysis which is equivalent to the department's program shall not be subject to additional sampling and analysis by the department.

Source. 1989, 339:1. 1990, 3:88. 1995, 310:181. 1996, 228:79. 1997, 267:1, eff. July 1, 1997.

Section 485-A:27

485-A:27 Injunction. – Any person operating or maintaining a recreation camp, youth skill camp, public swimming pool**,** or bathing place without the same having been approved by the department may be enjoined by the superior court or any justice of the court upon petition brought by the attorney general.

Source. 1989, 339:1. 1996, 228:106. 1997, 267:1, eff. July 1, 1997. 2013, 250:5, eff. Jan. 1, 2014.

Section 485-A:28

485-A:28 Penalty; Administrative Fines. –
I. Whoever violates any of the provisions of this subdivision, or rules adopted under this subdivision shall be guilty of a violation if a natural person, or guilty of a misdemeanor if any other person.
II. The commissioner, after notice and hearing, may impose an administrative fine not to exceed $2,000 for each offense upon any person who violates any provision of this subdivision, any rule adopted under this subdivision, or any license or approval issued under this subdivision. 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 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; and
(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

Source. 1989, 339:1. 1997, 267:2, eff. July 1, 1997.

Sewage Disposal Systems

Section 485-A:29

485-A:29 Submission and Approval of Plans and Specifications. –
I. Any person proposing either to subdivide land, except as provided in RSA 485-A:33, or to construct a sewage or waste disposal system, shall submit 2 copies of such locally approved plans as are required by the local planning board or other local body having authority for the approval of any such subdivision of land, which is subject to department approval, and 2 copies of plans and specifications for any sewage or waste disposal systems which will be constructed on any subdivision or lot for approval in accordance with the requirements of the department as provided in this paragraph. In the event that such subdivision plans which receive final local approval differ from the plans which are reviewed by the department, the person proposing the subdivision shall resubmit those plans to the department for reapproval. The planning board or other local body having final local

approval authority shall submit one copy of such plans which receive final local approval to the department for informational purposes within 30 days of granting such final approval. The department shall adopt rules, pursuant to RSA 541-A, relative to the submission of plans and specifications as necessary to effect the purposes of this subdivision. The rules shall specify when and where the plans and specifications are to be submitted, what details, data and information are to be contained in the plans and specifications, including the location of known burial sites or cemeteries within or adjacent to the property on which the proposed sewage or waste disposal system is to be located, what tests are to be required, what standards, guidelines, procedures, and criteria are to be applied and followed in constructing any sewage or waste disposal system, and other related matters. The rules shall also establish the methodology and review process for approval of innovative/alternative wastewater treatment systems and for approval of a plan for operation, maintenance, and financial responsibility for such operations. For any part or parts of the subdivisions where construction or waste disposal is not contemplated, only the lot lines, property boundaries drawn to scale, and general soil and related data shall be required. The constructed sewage or waste disposal systems shall be in strict accordance with approved plans, and the facilities shall not be covered or placed in operation without final inspection and approval by an authorized agent of the department. All inspections by the department shall be accomplished within 7 business days after receipt of written notification from the builder that the system is ready for inspection. Plans and specifications need not be submitted for subdivision approval for subdivisions consisting of the division of a tract or parcel of land exclusively in lots of 5 or more acres in area. The presence of hydric soils on lots of 5 or more acres in area shall be insufficient, without additional supporting data, to classify these lots as wetlands, or to make such lots unsuitable for sewage or waste disposal systems designed for poorly drained soils. This exemption in no way relieves any person from responsibility for obtaining approval under this chapter for construction of individual or other sewage or waste disposal systems or both in any exempted lots. In such cases, it shall be the responsibility of the subdivider to provide to the lot purchasers satisfactory assurance as the purchasers may require at the time of sale that lots sold shall be adequate to support individual sewage or waste disposal systems or both in accordance with rules adopted by the department and the requirements of this subdivision.

II. The department shall develop and approve an outline of brief instructions for the periodic maintenance, care and proper usage of waste disposal systems, including a warning of the potential public health hazard and pollution of public and private water supplies and surface water of the state from improperly maintained sewage and waste disposal systems.

III. The department shall not approve any plan which will cause a violation of the setback requirements in RSA 289:3, III.

Source. 1989, 339:1. 1991, 379:2. 1993, 172:5. 1994, 198:1. 1995, 93:1. 1996, 228:106; 233:9. 2006, 87:1, 2, eff. July 4, 2006. 2017, 238:1, eff. Sept. 16, 2017.

Section 485-A:30

485-A:30 Fees. –

I. Any person submitting plans and specifications for a subdivision of land shall pay to the department a fee of $300 per lot. Said fee shall be for reviewing such plans and specifications and making site inspections. Any person submitting plans and specifications or an application for a permit by rule as provided in RSA 485-A:33, IV for sewage or waste disposal systems shall pay to the department a fee of $290 for each system. Said fee shall be for reviewing such plans and specifications or application for permit by rule, making site inspections, the administration of sludge and septage management programs, and establishing a system for electronic permitting for waste disposal systems, subdivision plans, and permits and approvals under the department's land regulation authority. The fees required by this paragraph shall be paid at the time said plans and specifications or application for permit by rule are submitted and shall be deposited in the subsurface systems fund established in paragraph I-b. For the purposes of this paragraph, the term "lot" shall not include tent sites or travel trailer sites in recreational parks which are operated on a seasonal basis for not more than 9 months per year.

I-a. In addition to fees required under paragraph I, any person submitting plans and specifications or an application for a permit by rule as provided in RSA 485-A:33, IV for sewage or waste disposal systems shall pay to the department a fee of $10 for each system for use in the septage handling and treatment facilities grant program to municipalities under RSA 486:3, III. The fees required by this paragraph shall be paid at the time

said plans and specifications or application for permit by rule are submitted and shall be deposited in the septage management fund established in paragraph I-c.
I-b. There is hereby established the subsurface systems fund into which the fees collected under paragraph I shall be deposited. The fund shall be a separate, nonlapsing fund, continually appropriated to the department for the purpose of paying all costs and salaries associated with the subsurface systems program.
I-c. There is hereby established the septage management fund into which the fees collected under paragraph I-a shall be deposited. The fund shall be a separate, nonlapsing fund, continually appropriated to the department for the purpose of paying costs associated with the septage handling and treatment facilities grant program or for research, engineering analysis, or septage sampling and analysis by the department to advance septage management in the state of New Hampshire.
II. [Repealed].
III. Any person submitting plans and specifications as a resubmission for reapproval of such shall not be required to pay any additional fee under RSA 485-A:30, I or I-a if changes to such plans and specifications would not constitute a new subdivision under the provisions of RSA 485-A:2, XIII.

Source. 1989, 339:1. 1990, 252:15. 1991, 379:3. 1994, 198:2. 1996, 228:106; 233:5, 7, II, 8. 2001, 128:2, 3. 2003, 246:2. 2005, 141:1. 2009, 144:43. 2012, 174:1, eff. June 11, 2012.

Section 485-A:30-a

485-A:30-a Notice Requirements; Encroachment Waivers. –
I. (a) Any person intending to submit an application for approval of a sewage or waste disposal system, which application will include a request for an encroachment waiver, shall notify the local code enforcement officer or other appropriate designated authority and all abutters as defined in RSA 672:3 that the person intends to file the application. Such notification shall include:
(1) The name and address of the property owner.
(2) Identification of the property for which an encroachment waiver is being requested, including tax map and lot numbers.
(3) Names of abutters, together with applicable tax map and lot numbers.
(4) A description of the specific waivers being requested.
(5) A reasonable facsimile of the plan.
(6) Identification of any local code or ordinance for which a waiver, variance or exception is required, and whether such waiver, variance or exception has been obtained.
(7) Notice that the department is required by law to act on the application within 15 working days of receipt of the application, and that objections to the proposed encroachment waiver may be submitted to the department during the review process or by filing a motion for reconsideration of the decision with the department within 20 days of the department's decision on the application.
(b) Encroachment waiver requests shall appear on the plans. No application which includes any request for an encroachment waiver shall be accepted by the department unless the application includes a copy of the notice, a list of the names and addresses of the abutters to whom the notice was mailed, and a statement signed by the applicant or property owner certifying that the notices were sent by certified mail to the abutters listed.
II. No construction permit shall be issued for a septic system until the department has received a copy of the recorded notice showing that all easements and encroachment waivers associated with the application have been recorded by the property owner in the registry of deeds.

Source. 1989, 79:2. 1996, 228:106, eff. July 1, 1996.

Section 485-A:30-b

485-A:30-b Protective Well Radii. –
I. All lots on which wastewater is or will be disposed on-site and all lots on which a private well serving a public water system exists or will be installed, including lots created prior to August 20, 1989, shall be subject to the following conditions:
(a) Rules adopted under this section concerning such lots shall include provisions allowing abutting lot owners

to overlap their respective well radii for their mutual benefit and provisions allowing well radii to extend over property lines onto state and locally-mandated property line setbacks, recorded easements, or land which is permanently dedicated to a use which precludes development.
(b)(1) For any private well being installed or utilized to serve one or more new commercial buildings or a non-community public water system, the entire protective well radius shall be located on one or more of the following: on-lot, on a recorded easement, on land which is permanently dedicated to a use which precludes development, or on state or locally mandated property line setbacks.
(2) A private well may be installed without being located as required by subparagraph (1) only if it is needed to replace a well serving one or more existing commercial buildings or a public water system, there will be no increase in water use to a level that requires a larger protective well radius under rules adopted by the department, and the lot is not part of a larger parcel that is being subdivided. In such cases, the on-lot protective radius shall be maximized to the extent practicable and the owner of the property shall sign a standard release form prepared by the department, upon which the actual protective radius shall be noted together with a narrative description of the location of the well, to acknowledge the potential loss of the protection of any portion of the radius which extends over the property line. The owner shall record the release form in the registry of deeds and shall file a copy of the recorded release form with the department.
(3) If a private well installed under the provisions of subparagraph (2) is not regulated as a public water supply well under RSA 485, the department shall require such water quality monitoring, recordkeeping, and reporting as is needed to ensure the water is suitable for its intended uses.
(4) For the purposes of this section, the term "commercial building" means a building that houses a commercial use but shall not include a residence which is also used for commercial purposes unless the total water withdrawal exceeds 600 gallons per day. A new commercial building means a new structure intended for commercial use, an existing residential structure being converted to commercial use, or an increase in water use at an existing commercial building to a level that requires a larger protective well radius under rules adopted by the department.
(c) For private wells serving buildings other than commercial buildings, if the protective well radius cannot be wholly maintained on an existing lot of record due to the size or other physical characteristics of the lot, then the on-lot protective radius shall be maximized to the extent practicable. Subject to the foregoing sentence, the protective well radius shall be maintained on one or more of the following: on-lot, on a recorded easement, on land which is permanently dedicated to a use which precludes development, or on state and locally mandated property line setbacks.
(d) Any person submitting plans and specifications for a sewage or waste disposal system for a property which is or will be served by an on-lot well, shall show the location or proposed location of the well, or a designated area within which the well will be located, on such plans and shall show the protective radius as specified in the department's rules.
(e) Whenever the department approves a septic plan with an on-lot well radius which is less than the optimum standard, the department shall notify the applicant of the consequences of such reduced radius and advise the applicant whether special precautions should be taken relative to well installation.
(f) If the well is not installed prior to the sewage or waste disposal system being constructed, then the property owner shall provide the water well contractor with a copy of the approved plan showing the location of the well, and the water well contractor shall ensure, to the best of his ability that the well is installed in accordance with the approved plan.
(g) When, for reasons of the condition of the lot or the placement of buildings thereon, the well cannot be installed as shown on the approved plan, the water well contractor shall advise and consult with the property owner, or the property owner's agent, on the best possible alternative location, considering distance to property boundaries and to the sewage or waste disposal system. Using a standard release form prepared by the department, the water well contractor shall alert the owner to the consequences of the alternate installation, including the potential loss of the protection of any portion of the radius which extends over the property line. The owner, or the owner's agent, may defer to the designer of the sewage or waste disposal system or may allow the water well contractor to proceed in the identified alternative location. Prior to installing the well in the identified alternative location, the well contractor shall, using the standard release form, obtain a written acknowledgment, from the property owner, or the owner's agent, that the consequences are understood. The designer shall prepare an amended plan showing the actual location of the well. The property owner shall forward the amended plan, together with a copy of the signed release form, to the department and the local code

enforcement officer or other appropriate designated local official prior to using the well. If the on-lot protective well radius is less than the optimum prescribed standard, the owner shall record the release form, upon which the actual protective radius shall be noted, together with a narrative description of the location of the well in the registry of deeds, and a copy of the recorded release form shall be filed with the department.
II. For lots approved under RSA 485-A:29, the rules adopted under this section concerning such lots shall include provisions allowing abutting lot owners to overlap their respective well radii for their mutual benefit by allowing well radii to extend over property lines, onto state and locally mandated property line setbacks, recorded easements, or land which is permanently dedicated to a use which precludes development. If after a lot is created pursuant to this section, the well cannot be installed as shown on the subdivision plan, then the provisions of RSA 485-A:30-b, I(d), (e), (f), and (g) shall apply.
III. For the purposes of this paragraph, the term "cluster development" means a form of residential subdivision that permits dwelling units to be grouped on sites or lots with dimensions, frontages, and setbacks reduced from conventional requirements, provided that the remaining land area is permanently designated as open space for cluster development. For cluster developments the following provisions shall apply:
(a) Where the sewage waste disposal systems are located off of the individual home lots or the cluster development is served by municipal sewers, the wells and associated protective radii serving those home lots need not be confined to the individual lot which each well serves so long as all wells and their associated protective radii are confined within the tract of home lots and common land permanently designated as open space, and shall not encumber property situated outside of the cluster development except by recorded easement.
(b) Where the home lots are serviced by on-lot sewage or waste disposal systems, wells and their protective radii may be located wholly or partially on common land permanently designated as open space, and shall not encumber adjacent lots or property situated outside of the cluster development except by recorded easement. The department shall not approve such off-lot wells and radii unless the lot owner or developer demonstrates to the department's satisfaction, by means of recorded easements, land use restrictions or other appropriate mechanisms, that the well owner will be able to maintain and service the well in perpetuity and that the area covered by the protective well radius is permanently dedicated to a use which precludes development.
IV. The commissioner shall adopt rules under RSA 541-A providing for protective well radii for private water wells, and for regulation of land use within the radii boundary.

Source. 1991, 215:2. 1996, 228:106, 110, eff. July 1, 1996. 2015, 236:3, eff. Sept. 11, 2015.

Section 485-A:31

485-A:31 Action on Applications. –
I. Subject to paragraphs II and III, the department shall give notice in writing to the person submitting the plans and specifications for subdivision of land of its approval or disapproval of such plans and specifications within 30 days of the date such plans and specifications and the required fees are received by the department and shall give notice in writing to the person submitting plans and specifications for sewage or waste disposal systems of its approval or disapproval of such plans and specifications within 15 working days of the date such plans and specifications and the required fees are received by the department. Unless such written disapproval shall be mailed to the person submitting plans and specifications within 30 days in the case of plans and specifications for subdivision of land and 15 working days in the case of plans and specifications for sewage or waste disposal systems from the date of receipt with the required fees by the department, the plans and specifications shall be deemed to have been approved. The department shall send a copy of the approval or disapproval of such plans and specifications to the planning board or board of selectmen of the affected municipality.
II. The department may extend the time for rendering a decision under paragraph I, without the applicant's agreement, on an application from an applicant who previously has been determined, after the exhaustion of available appellate remedies, to have failed to comply with RSA 485-A:29-44, or any rule adopted or permit or approval issued pursuant to RSA 485-A:29-44, or to have misrepresented any material fact made in connection with any activity regulated or prohibited by RSA 485-A:29-44, pursuant to an action initiated under RSA 485-A:42 or RSA 485-A:43. The length of such an extension shall be no longer than reasonably necessary to complete the review of the application and shall not exceed 30 days unless the applicant agrees to a longer extension. The department shall notify the applicant of the length of the extension.
III. The department may suspend a review of an application for a proposed project on a property with respect to

which the department has commenced an enforcement action against the applicant for any violation of RSA 485-A:29-44; RSA 482-A; RSA 483-B; or RSA 485-A:17, or of any rule adopted or permit or approval issued pursuant to RSA 485-A:29-44; RSA 482-A; RSA 483-B; or RSA 485-A:17. Any such suspension shall expire upon conclusion of the enforcement action and completion of any remedial actions the department may require to address the violation; provided, however, that the department may resume its review of the application sooner if doing so will facilitate resolution of the violation. The department shall resume its review of the application at the point the review was suspended, except that the department may extend any of the time limits under this paragraph and its rules up to a total of 30 days for all such extensions. For purposes of this subparagraph, "enforcement action" means an action initiated under RSA 482-A:13; RSA 482-A:14; RSA 482-A:14-b; RSA 483-B:18; RSA 485-A:22; RSA 485-A:42; or RSA 485-A:43.

Source. 1989, 339:1. 1996, 228:106. 2010, 295:11, eff. Sept. 11, 2010.

Section 485-A:32

485-A:32 Prior Approval; Permits. –

I. No person shall construct any building from which sewage or other wastes will discharge or construct a sewage or waste disposal system without prior approval of the plans and specifications of the sewage or waste disposal system by the department. Nothing herein shall be construed to modify or lessen the powers conferred upon local authorities by other statutes; provided, however, that in all instances the requirements contained in this chapter shall be considered as minimum.

II. Any person submitting an application and plans for construction approval shall also certify in writing that he has complied with all local government requirements as relate to water supply and sewage disposal which must be complied with prior to application to the department of environmental services in those municipalities where regulations require prior local approval; and, at the same time, a copy of the certification shall be sent to the board of selectmen of the town or the city council of the city.

II-a. Any person submitting an application and plans for construction approval to replace a subsurface sewage disposal system in failure as defined in RSA 485-A:2, IV shall be exempt from presenting a certification of compliance with local government requirements as required by paragraph II.

III. No person required to submit subdivision plans pursuant to paragraph I shall commence the construction of roads within the lot, tract, or parcel proposed to be subdivided, by clearing the land thereof of natural vegetation, placing any artificial fill thereon, or otherwise altering the land, nor shall he do any other act or acts which will alter the natural state of the land or environment, unless the subdivision plan relating thereto has been submitted and approved in accordance with the requirements of this chapter. Nothing in this paragraph shall be construed to prevent the taking of test borings, the digging of test pits, or any other preliminary testing and inspection necessary to comply with the requirements of the department of environmental services relative to information necessary for review and approval of the subdivision plans.

Source. 1989, 339:1. 1996, 228:106, 108, eff. July 1, 1996. 2017, 238:2, eff. Sept. 16, 2017.

Section 485-A:33

485-A:33 Exemptions. –

I. No plans and specifications shall be required whenever the proposed sewage or waste disposal system will be connected to any public sewer system operated by any municipality or other governmental body within the state.

II. No plans and specifications shall be required whenever land is subdivided and the purpose of such subdivision is to correct or conform boundary lines or when land is exchanged between abutters and no building is contemplated on the exchanged land.

III. No plans and specifications shall be required for subdivision whenever land is proposed to be subdivided solely for the purpose of a bona fide gift of a lot or lots, and the person intending to subdivide the land certifies upon forms provided by the department that the proposed subdivision is a gift; provided that this limited exemption shall not relieve the donee of the lot, or lots, of the responsibility, and it shall be the responsibility of such donee to submit plans and specifications in accordance with this chapter in the event that such donee subsequently intends to (1) convey to others for consideration any such lot, or lots, or (2) intends to construct

thereon a structure from which sewage or other waste will be discharged.
IV. (a) The repair or replacement in-kind of a sewage effluent disposal area shall qualify for a permit by rule, provided all of the following criteria are met:
(1) The existing system receives only domestic sewage.
(2) There is no increase in sewage loading proposed for the repaired or replacement system.
(3) The bottom of the bed is located no less than 24 inches above the seasonable high water table.
(4) The system is located 75 feet or more from an abutter's well unless there is a standard well release form recorded with the registry of deeds in accordance with RSA 485-A:30-b or there is an existing department waiver to the distance for the abutter's well.
(5) The system is located 75 feet or more from the owner's well unless there is an existing department waiver to the distance for the owner's well.
(6) The existing system received prior construction and operational approval from the department and the replacement or repaired system will conform to the provisions of such approval, provided the department may by rule require a minimum septic tank size of 1,000 gallons.
(7) The system is not within 75 feet of any surface water, water supply well, or very poorly drained soil unless authorized by the prior departmental approval described in subparagraph (6).
(8) No new waivers to the department's rules are requested.
(9) The system has not been previously repaired or replaced under a permit by rule in accordance with the provisions of this paragraph.
(b) Construction of the system may proceed upon the submission of an application to the department by a permitted designer under RSA 485-A:35 and receipt of the permit by rule from the department.
(c) The repaired or replacement system shall not be covered or placed in operation without final inspection and approval by an authorized agent of the department. All inspection by the department shall be accomplished within 7 business days after receipt of written notice from the installer that the system is ready for inspection. The installer shall provide the authorized agent of the department, at the time of the inspection, a copy of the previously approved plan bearing the state approval stamp and associated operational approval, and an existing conditions plan bearing the seal of the permitted designer performing work under the permit by rule.
(d) The applicant submitting the permit by rule application shall assume all liability and responsibility for the components of the design that are part of the system being repaired or replaced under the permit by rule.
(e) The installer constructing the system shall assume all liability and responsibility for the construction of the system components repaired or replaced under the permit by rule.
(f) For purposes of this paragraph, "in-kind" shall mean a repair or replacement of the effluent disposal area in strict accordance with what is shown on the previously approved plan.

Source. 1989, 339:1. 1996, 228:106. 2012, 174:2, eff. June 11, 2012.

Section 485-A:34

485-A:34 Soil Testing; Inspections. –
I. The department shall require soil data describing soil types and their physical and related characteristics as exist in the proposed subdivision. Such soil data will consist of soils maps and charts as prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or equivalent. The data provided by the soils map will supplement the information obtained by percolation tests and such other independent examination as the department may require to establish the adequacy of the proposed sewage or waste disposal facilities.
II. Lot sizes will be in accordance with the type of soil and its ability to absorb wastes without polluting water supplies or adjoining waters.
III. In all cases involving inspection of sewage or waste disposal systems in cities or towns which employ a full time health officer and/or building inspector, the department may delegate to such officer or inspector the responsibility for inspecting the proposed system as required under paragraph I of this section. In cities and towns which do not maintain full time health officers and/or building inspectors, the department may delegate the responsibility for such inspections to any local official deemed qualified by the department to fulfill the requirements of paragraph I of this section. All inspections delegated by the department under this paragraph to health officers, building inspectors or any other local officials shall be accomplished within 2 business days after receipt of written notification from the builder that such system is ready for inspection.

IV. The department may reject applications for septic tank disposal systems in those areas where there is already a high concentration of septic tanks on adjacent, contiguous or nearby areas or if the application is an obvious expansion, addition or annexation to an area which has already reached the maximum allowable concentration of sewage disposal through septic tanks and leaching systems.

Source. 1989, 339:1. 1995, 206:2. 1996, 228:106, eff. July 1, 1996.

Section 485-A:35

485-A:35 Permit Eligibility; Exemption. –

I. (a) All applications, plans, and specifications submitted in accordance with this chapter for subsurface sewage or waste disposal systems shall be prepared and signed by the individual who is directly responsible for them and who has a permit issued by the department to perform the work. The department shall issue a permit to any individual who applies to the department, pays a fee of $80, and demonstrates a sound working knowledge of the procedures and practices required in the site evaluation, design, and operation of subsurface sewage or waste disposal systems. The department shall require an oral or written examination or both to determine who may qualify for a permit. Permits shall be issued from January 1 and shall expire December 31 of every other year, subject to the grace periods specified in subparagraphs (c) and (d). Permits shall be renewable upon proper application, payment of a biennial permit fee of $80, and documentation of compliance with the continuing education requirement of subparagraph (b). A permit issued to any individual may be suspended, revoked or not renewed only for just cause and after the permit holder has had a full opportunity to be heard by the department. An appeal from a decision to revoke, suspend, or not renew a permit may be taken pursuant to RSA 541. All fees shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

(b) Permitted designers shall complete a minimum of 6 hours biennially of continuing education approved by the department. Any permitted designer who is also a permitted septic system installer under RSA 485-A:36 may fulfill the continuing education requirements for both permits with the same approved 6 hours of continuing education.

(c) A permitted designer who fails to file a complete application for renewal, the biennial permit fee, and documentation that the required continuing education has been completed with the department prior to the expiration of the permit shall pay an additional late renewal fee of $80 with the renewal application, biennial permit fee, and documentation, provided such fees, application, and documentation are filed with the department within 30 days of the permit expiration date.

(d) If the renewal application, biennial permit fee, late renewal fee, and documentation are not filed within 30 days of the permit expiration date, the permit shall be deemed suspended. The permit holder may request reinstatement of the permit within 60 days of the suspension by submitting a complete application for renewal, the biennial permit fee specified in subparagraph (a), the late renewal fee specified in subparagraph (c), documentation that the required continuing education has been completed, and a reinstatement fee of $80. If the individual does not request reinstatement within 60 days of the suspension, the permit shall be deemed void. Any individual whose permit has become void who wishes to obtain a designer's permit shall apply as for a new permit pursuant to subparagraph (a).

(e) No individual whose permit has been suspended or voided pursuant to subparagraph (d) shall submit any design to the department for a subsurface sewage or waste disposal system. Submittal of such a design after the designer's permit has been suspended or voided pursuant to subparagraph (d) shall constitute a violation of the provisions of this subdivision that is subject to the penalties specified in RSA 485-A:43.

II. Any person who desires to submit plans and specifications for a sewage or waste disposal system for the person's own domicile shall not be required to obtain a permit under this paragraph provided that the person attests to eligibility for this exemption in the application for construction approval. The commissioner shall adopt rules, prepared under the supervision of a professional engineer licensed to practice engineering in the state of New Hampshire, pursuant to RSA 541-A, relative to requiring a permit holder to be a licensed professional engineer with a civil or sanitary designation in order to submit applications for construction approval in certain complex situations. All fees collected pursuant to this section shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

Source. 1989, 339:1. 1994, 312:1. 1996, 228:80, 106. 2008, 349:4. 2009, 144:44. 2010, 342:1, 2, eff. Sept. 18, 2010.

Section 485-A:36

485-A:36 System Installer Permit. –

I. (a) No individual shall engage in the business of installing subsurface sewage or waste disposal systems under this subdivision without first obtaining an installer's permit from the department. The permit holder shall be responsible for installing the subsurface sewage or waste disposal system in strict accordance with the approved plan. The department shall issue an installer's permit to any individual who submits an application provided by the department, pays a fee of $80 and demonstrates a sound working knowledge of RSA 485-A:29-35 and the ability to read approved waste disposal plans. The department shall require an oral or written examination or both to determine who may qualify for an installer's permit. Permits shall be issued from January 1 and shall expire December 31 of every other year. Permits shall be renewable upon proper application, payment of a biennial permit fee of $80, and documentation of compliance with the continuing education requirement of subparagraph (b). The installer's permit may be suspended, revoked or not renewed for just cause, including, but not limited to, the installation of waste disposal systems in violation of this subdivision or the refusal by a permit holder to correct defective work. The department shall not suspend, revoke or refuse to renew a permit except for just cause until the permit holder has had an opportunity to be heard by the department. An appeal from such decision to revoke, suspend or not renew a permit may be taken pursuant to RSA 21-O:14. All fees shall be deposited in the subsurface systems fund established in RSA 485-A:30, I-b.

(b) Permitted installers shall complete a minimum of 6 hours biennially of continuing education approved by the department. Any permitted installer who is also a permitted designer under RSA 485-A:35 may fulfill the continuing education requirements for both permits with the same approved 6 hours of continuing education.

(c) A permitted installer who fails to file a complete application for renewal, the biennial permit fee, and documentation that the required continuing education has been completed with the department prior to the expiration of the permit shall pay an additional late renewal fee of $80 with the renewal application, biennial permit fee, and documentation, provided the fees, renewal application, and documentation are filed with the department within 30 days of the permit expiration date.

(d) If the renewal application, biennial permit fee, late renewal fee, and documentation are not filed within 30 days of the permit expiration date, the permit shall be deemed suspended. The permit holder may request reinstatement of the permit within 60 days of the suspension by submitting a complete application for renewal, the biennial permit fee specified in subparagraph (a), the late renewal fee specified in subparagraph (c), documentation that the required continuing education has been completed, and a reinstatement fee of $80. If the individual does not request reinstatement within 60 days of the suspension, the permit shall be deemed void. Any individual whose permit has become void who wishes to obtain an installer's permit shall apply as for a new permit pursuant to subparagraph (a).

(e) No individual whose permit has been suspended or voided pursuant to subparagraph (d) shall install any subsurface sewage or waste disposal system. Installation of such a system after the installer's permit has been suspended or voided pursuant to subparagraph (d) shall constitute a violation of the provisions of this subdivision that is subject to the penalties specified in RSA 485-A:43.

II. Any person who desires to install or repair a waste disposal system for his own domicile shall not be required to obtain an installer's permit as provided in paragraph I, provided he complies with rules adopted by the department relative to such systems.

Source. 1989, 339:1. 1996, 228:106. 2008, 349:5. 2009, 144:45. 2010, 342:3, 4, eff. Sept. 18, 2010.

Section 485-A:37

485-A:37 Maintenance and Operation of Subsurface Septic Systems. – Any person who has installed or otherwise acquired a subsurface sewage or waste disposal system installed in accordance with the provisions of this subdivision is required to operate and maintain said system in such a manner as to prevent a nuisance or potential health hazard due to failure of the system. Failure to so operate and maintain shall be considered a

violation of this chapter and shall be subject to the penalty as provided in RSA 485-A:43, IV. The department or its duly authorized agents are authorized to enter any and all premises at all reasonable hours for the purpose of inspecting and evaluating the maintenance and operating conditions of subsurface sewage or waste disposal facilities. As circumstances warrant, the department or its duly authorized agents are empowered to issue compliance orders in writing under the provisions of this section. Nothing in this section shall be construed to limit or modify the authority conferred upon the department or local health officers under the provisions of RSA 147 or upon local officials certified by the department under the provisions of RSA 485-A:42.

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

Section 485-A:38

485-A:38 Approval to Increase Load on a Sewage Disposal System. –

I. Prior to expanding any structure or occupying any existing structure on a full-time basis, which would increase the load on a sewage disposal system, the owner of such structure shall submit an application for approval of the sewage disposal system to the department. Application for approval shall include one of the following:

(a) Evidence that the existing sewage disposal system meets the requirements of the department for the intended usage or the town's minimum standards for use or occupancy prescribed under RSA 48-A:11, whichever is more stringent.

(b) The design for a new system which meets the requirements of the department for the intended use or the town's minimum standards for use or occupancy, whichever is more stringent.

II. The fee for application under this section shall not exceed fees charged for new design applications.

II-a. (a) No construction or operational approval shall be required from the department prior to expanding, relocating, or replacing any structure that does not increase the load on a sewage disposal system, as long as all of the following conditions are met:

(1)(A) The lot is served by a sewage disposal system that received construction and operational approval from the department within 20 years of the date of the issuance of a building permit for the proposed expansion, relocation, or replacement; or

(B) The lot is 5 acres or more in size; or

(C) The lot is served by an off lot effluent disposal area.

(2) If the property is nonresidential, no waivers were granted in the construction or operational approval of any requirements for total wastewater lot loading, depth to groundwater, or horizontal distances to surface water, water supply systems, or very poorly drained soils.

(3) When applicable, the proposed expansion, relocation, or replacement complies with the requirements of the shoreland water quality protection act, RSA 483-B.

(b) An owner of a project that requires department approval to proceed because neither of the conditions of subparagraphs (a)(1)(A) or (B) are met, may either submit for approval a design for a new sewage disposal system or apply for a permit by rule for in-kind replacement under RSA 485-A:33, IV. Under either approach, once approval for the sewage disposal system is received from the department, work may commence on expanding, relocating, or replacing the structure. Construction of the sewage disposal system is not required to satisfy the requirements of this subparagraph.

III. The commissioner shall adopt rules under RSA 541-A requiring a person to comply with the provisions of paragraph I before taking any action which would increase the load on a sewage disposal system.

Source. 1989, 339:1. 1996, 228:106, 110. 2010, 342:5. 2011, 224:411. 2012, 147:1, eff. June 7, 2012. 2017, 238:3, eff. Sept. 16, 2017.

Section 485-A:39

485-A:39 Waterfront Property Sale; Site Assessment Study. –

I. Prior to the execution of a purchase and sale agreement for any developed waterfront property using a septic disposal system, the owner of the property shall, at the owner's expense, engage a permitted subsurface sewer or waste disposal system designer to perform a site assessment study to determine if the site meets the current standards for septic disposal systems established by the department. The site assessment study shall include an

on-site inspection. If the site assessment is not complete prior to the time that the buyer and seller enter into a purchase and sale contract, the contract shall be subject to the buyer's acceptance of the completed site assessment.
II. The site assessment study form shall become a part of the purchase and sale agreement.
III. The site assessment study form, with stated findings, shall be given to the buyer and the seller and receipt of the form shall be acknowledged in writing by the buyer and the seller.
IV. Failure of the seller or the seller's agent to notify the buyer of the findings or deliver the completed site assessment study form pursuant to paragraph III of this section shall be a violation and, notwithstanding RSA 651:2, shall be punishable by a fine not to exceed $500.
V. The site assessment study shall consist of 3 sections:
(a) Section A shall include the name, address, and telephone number of the seller and the seller's agent and the location and a brief description of the property, including the tax map reference and lot number.
(b) Section B shall include the lot size, slope, loading (based on the number of bedrooms in the structure), water source, soil type, and estimated seasonal high water table information from U.S. Natural Resources Conservation Service maps. A space shall be included on the form for the permitted designer to write his assessment of the site for the current use of the system, based upon the criteria and information required in this subparagraph.
(c) Section C shall include information about the present septic disposal system, if available. If the installed system was approved by the department, a copy of the approval form, approval number and plan shall be attached to the site assessment study.
VI. The department shall design the site assessment form pursuant to paragraph V of this section. The commissioner shall adopt rules pursuant to RSA 541-A relative to the procedures for the availability and distribution of the form to interested parties.
VII. An assessment indicating that the site fails to meet any of the criteria established under this section shall not prohibit the sale of the property but shall be disclosed to the buyer as full and proper notice of the possible limitations of the site for a septic disposal system.
VIII. If the septic disposal system designer, during the course of a site assessment, discovers evidence that there is sewage discharge on the ground surface or directly into surface waters, the designer shall notify, in writing, the department and the local health officer, and shall include that information in the site assessment report.

Source. 1989, 339:1. 1992, 278:2. 1995, 206:2. 1996, 228:81, 106. 2007, 177:1. 2008, 349:1, eff. Jan. 1, 2009.

Section 485-A:40

485-A:40 Reconsideration and Appeal Procedure. –
If any person submitting plans and specifications to the department for its approval is aggrieved or dissatisfied with its decision, he may file a motion for reconsideration and shall have a right of appeal from the decision of the department in the following manner:
I. Within 20 days after any decision of the department, any person whose rights may be directly affected may apply to the department for reconsideration of any matter determined by the department in its decision, specifying in the motion for reconsideration the grounds therefor, and the department may reconsider and revise its decision if in the opinion of the department good reason therefor is stated in said motion.
II. Such motion shall set forth fully every ground upon which it is claimed that the decision of the department is unlawful or unreasonable. No appeal from any decision of the department shall be taken unless the appellant shall have made application for reconsideration as provided in this section, and when such application shall have been made, no ground not set forth in such application shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.
III. Upon the filing of a motion for reconsideration, the department shall within 30 days either grant or deny the motion, and, at the same time, shall affirm, modify or reverse its decision.
IV. Within 30 days after the application for reconsideration is denied, or if the application is granted, then within 30 days after the decision on such reconsideration, the applicant may appeal by petition to the superior court.
V. Upon the hearing, the burden of proof shall be upon the party seeking to set aside the decision of the department to show that the same is unreasonable or unlawful, and all findings of the department upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or

decision appealed from shall not be set aside or vacated, except for errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it, that the decision is unjust or unreasonable.
VI. Any person whose rights may be directly affected by said appeal may appear and become a party, or the court may order such persons to be joined as parties as justice may require.
VII. Upon the filing of an appeal, the clerk of court shall issue a summons requiring a certified copy of the record appealed from to be filed with the court. The filing of an appeal shall not suspend the decision appealed from, unless the court, on application and for good cause shown, shall grant a restraining order.
VIII. All evidence transferred by the department shall be, and all additional evidence received may be, considered by the court regardless of any technical rules which might have rendered the same inadmissible if originally offered in the trial of an action at law.
IX. The final judgment upon every appeal shall be a decree dismissing the appeal, or vacating the decision complained of in whole or in part, as the case may be; but in case such decision is wholly or partly vacated the court may also, in its discretion, remand the matter to the department for such further proceedings, not inconsistent with the decree, as justice may require.
X. An order of court to send up the record may be complied with by filing either the original papers or duly certified copies, or of such portions of such papers, as the order may specify, together with a certified statement of such other facts as show the grounds of the action appealed from.
XI. The court may take evidence or appoint a referee to take such evidence as it may direct and report the same with his findings of fact and conclusions of law.
XII. Costs shall not be allowed against the department unless it shall appear to the court that it acted with gross negligence, or in bad faith, or with malice in making the decision appealed from.
XIII. All proceedings under this chapter shall be entitled to a speedy hearing. If such hearing cannot be had within 30 days after the filing of the appeal, upon request of the appellant the matter shall be referred to a master.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2014, 204:30, eff. July 11, 2014.

Section 485-A:41

485-A:41 Rulemaking; Duties of the Commissioner. –
The commissioner shall:
I. Exercise general supervision over the administration and enforcement of this subdivision.
II. Employ necessary personnel.
III. Prohibit construction of systems which would pollute the surface waters or groundwaters of the state, until an acceptable and practicable method exists which will prevent the pollution.
IV. Adopt rules, pursuant to RSA 541-A and after public hearing, relative to the implementation of this subdivision. The commissioner shall adopt rules relative to the circumstances under which the commissioner may grant a waiver of any rule, except that no waivers of rules relating to site loading or set-back distances to ground or surface waters shall be allowed for sewage or waste disposal systems on lots in subdivisions created after September 1, 1989. A waiver must be consistent with the intent of this subdivision and have a just result. In particular, an encroachment waiver shall meet the following criteria:
(a) The proposed waiver shall not encroach upon the right of the owner of abutting property to fully utilize his land, unless said property owner has granted consent in the form of a signed waiver or deeded easement; and
(b) Denial of the waiver would result in unnecessary hardship to the owner due to special characteristics of the property.
V. Adopt rules relative to the application for and granting of permits by rule for repair or replacement of certain sewage or waste disposal systems under RSA 485-A:33, IV.

Source. 1989, 339:1. 1996, 228:82, 110. 2012, 174:3, eff. June 11, 2012.

Section 485-A:42

485-A:42 Enforcement. –
I. (a) The department may issue an order to any person in violation of this chapter, of rules adopted under this chapter, or of any condition of a permit issued under this chapter.

(b) The department may require such remedial measures as are necessary to correct the violation.
(c) Such order may be appealed in accordance with RSA 21-O:14.
II. The written order issued under the provisions of paragraph I shall be recorded by the department in the registry of deeds for the county in which the property is situated and, upon recordation, the order shall run with the land; provided, however, that an appropriate description of the land involved including the accurate name of the land's owner shall be incorporated in the order. No fee shall be charged for recording such an administrative order; however, the fee for discharge of any such order shall be the same as for the discharge of a real estate lien.
III. Upon certification by the department, local officials are hereby authorized and fully empowered to exercise concurrent jurisdiction in the enforcement of this subdivision.

Source. 1989, 339:1. 1996, 228:83, 106, eff. July 1, 1996.

Section 485-A:43

485-A:43 Penalties. –
I. Any person who shall violate any of the provisions of this subdivision or who shall knowingly fail, neglect or refuse to obey any order of the department or member or authorized agent of the department issued under the authority of this subdivision, or who shall knowingly make any misstatement of material fact for which said person is personally responsible in connection with an application for an approval pursuant to this subdivision shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.
II. Any person who knowingly produces any erroneous or fallacious data with regard to any application or plan submitted pursuant to this subdivision shall bear the full responsibility for same, and shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.
III. Notwithstanding any other penalty or fine for which liability is provided under this subdivision, any person may be liable to the state, in an action commenced in the name of the state, for a civil forfeiture of not more than $10,000 per day per violation for such violation, failure, neglect, refusal or any misstatement for which said person is personally responsible. Such forfeiture may be levied by the superior court in connection with actions for injunctive relief commenced pursuant to RSA 485-A:44. The proceeds of any civil forfeiture levied under this section shall be utilized in the enforcement of this subdivision. In determining a civil forfeiture, the court may take into consideration all relevant circumstances, including the degree of noncompliance, the extent of harm caused by the violation, the nature and persistence of the violation, the time and cost associated with the investigation by the state and the economic impact of the penalty on the liable person. The cost of corrective action shall not be considered in determining the civil forfeiture.
IV. Any person neglecting or refusing to comply with the provisions of RSA 485-A:37 shall be subject to a civil forfeiture not to exceed $1,000 for each day of neglect or refusal after notice as provided for in RSA 485-A:37.
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 subdivision 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 subdivision. 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 subdivision as provided above.
(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

Source. 1989, 339:1. 1995, 217:8. 1996, 228:106. 2008, 169:1, eff. Jan. 1, 2009.

Section 485-A:44

485-A:44 Injunction to Enforce. –
I. On application of the department, the superior court or any justice of the court, in term time or in vacation, may enjoin any act in violation of this subdivision.
II. Municipalities may apply to a justice of the superior court for injunctive relief against existing or impending

violations of this subdivision. The municipality shall give notice of any such action to the attorney general and the commissioner of environmental services, who may take such action 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, 340:5. 1996, 228:106, eff. July 1, 1996.

Winnipesaukee River Basin Control

Section 485-A:45

485-A:45 Authority to Acquire, Construct, and Operate. –

I. The department is authorized and directed to acquire, plan, construct, and operate, to serve certain municipalities within the Winnipesaukee river basin (including, but not necessarily limited to Meredith, Laconia, Gilford, Belmont, Sanbornton, Tilton, Northfield, and Franklin) any and all sewage and waste disposal facilities (meaning only those facilities eligible for state aid) in accordance with basin and regional treatment needs consistent with federal and state requirements.

II. The word "construction" shall include all engineering services in addition to the construction of new sewage or waste treatment plants, pumping stations, and intercepting sewers; the altering, improving or adding to existing treatment plants, pumping stations, and intercepting sewers (except those intercepting sewers and facilities retained by municipalities); or any other associated work, or both, the intent being to include within the department area of responsibility all construction work considered eligible for state financial assistance under the provisions of RSA 486, and including any necessary land acquisition, easements and rights-of-way.

III. To achieve a high degree of reliability and to provide for efficient layout, construction and maintenance of pollution control facilities, the department is authorized to locate sewer and related facilities in all public roadways, whether owned or controlled by a municipality or the state subject to RSA 236:9.

IV. The department is also obligated to restore the public roads, when disturbed for the purpose indicated in paragraph III, to a condition acceptable to local and state highway authorities.

V. Nothing in this section shall be construed to impair or repeal the authority conferred upon municipalities, under RSA 149-I, to construct main drains and common sewers. Nothing in this section shall be construed to impair or repeal the authority conferred upon municipalities under RSA 147 to make and enforce regulations concerning disposal of wastes and abatement of nuisances. The municipalities served under this chapter may, by ordinance or regulation, increase the 100 foot distance contained in RSA 147:8 and RSA 147:11. Such regulations shall apply to the municipal sewerage system and to the regional facilities located within the municipality.

VI. Nothing contained in this section shall be construed to entitle municipalities to receive state aid in excess of their entitlement as provided for in connection with construction as defined in RSA 486.

VII. To produce maximum benefits with the least expenditure of federal, state, and local funds, the department, or any municipality served under this subdivision, is authorized, under terms mutually agreed upon, to accept full responsibility for the planning of sewerage projects involving a mixture of eligible and ineligible facilities as defined in RSA 486. The department and the particular municipality involved will bear their pro-rata share of the associated costs for the work performed under such an agreement.

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

Section 485-A:46

485-A:46 Existing Disposal Systems. – Any future payments due from a municipality which has undertaken construction (or engaged in engineering study, planning or design), as outlined in RSA 485-A:45, since July 1, 1947, to pay for such construction, study, planning, or design, and the facility involved is acquired by the department, shall automatically become the obligation of the state, including engineering services and contract costs. With respect to payments for engineering services and contract costs in connection with contracts entered into after July 1, 1967, it is the intention of this section to obligate the state only if the contract giving rise to such obligations has been entered into pursuant to the provisions of RSA 485-A:4, XII.

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

Section 485-A:47

485-A:47 Administration. – To administer the provisions of this chapter and to perform such other related duties as may be required, the department of environmental services is designated as the agency to receive and utilize any federal or other aids which may at any time be made available in the interest of water pollution control in the basin. The department is empowered to hire consulting engineering firms for purposes of project design and to employ such professional, technical, clerical, accounting, or other staff or consulting personnel as are required to implement the provisions of this subdivision and to arrange for the orderly transfer of ownership and operation of existing pollution abatement facilities to the department on behalf of the state of New Hampshire within the limits of legislative appropriations. Any personnel (other than consultants) employed by the department shall be subject to the personnel laws of the state. This subdivision shall in no way impair or render null and void existing contracts between municipalities, contractors or other parties, or any of them, in connection with pollution control projects or sewerage, sewage or waste service contracts within the basin. Nothing in this subdivision shall be construed as prohibiting future sewerage or waste service contracts otherwise authorized by law between municipalities directly connected to the regional facilities provided for by this subdivision and other persons, including but not limited to municipalities, served or to be served by such facilities but not directly connected to such facilities. All such future contracts, however, shall be submitted at least 60 days in advance of their effective dates to the department, which is empowered to disapprove the terms of any such future contract in whole or in part when in its judgment the efficient administration or the purposes of this subdivision would be adversely affected, and such contract shall not be valid to the extent it is disapproved. In any such contract, unless otherwise specifically provided in the contract, the person or persons served by such regional facility but not directly connected to such facility shall have strict responsibility for the accurate measurement of the amount of sewage or waste disposed of by such person or persons and shall be liable to the municipality directly connected to such regional facilities for the entire amount of sewage or waste, as measured, if any inaccuracy is in favor of such municipality, and for the actual amount of sewage or waste, as estimated, if any inaccuracy is in favor of such person or persons. The commissioner is authorized to adopt, pursuant to RSA 541-A and after public hearing, such rules as are necessary to implement the provisions of this subdivision.

Source. 1989, 339:1. 1996, 228:84, eff. July 1, 1996.

Section 485-A:48

485-A:48 Application of the Statutes. – All present powers, duties and functions conferred upon municipalities within the basin in connection with the planning, construction, financing and operation of sewage or waste treatment facilities (excepting common sewers and other collector facilities considered ineligible for state grants under the provisions of RSA 486), or both, as are contained in RSA 485, 485-A, 149-I and applicable statutes, are transferred to the department. Personnel of municipalities engaged in the operation of sewage or waste treatment facilities, or both, as referred to in this subdivision, shall be given an opportunity to become employees of the department (with all benefits previously accrued) upon the effective date of the transfer of the municipal sewage or waste treatment facilities, or both, to the department. In no case shall personnel accepting state employment, as provided under this subdivision, be paid less than the salary paid such individuals as of January 1, 1973, nor shall they suffer a loss or reduction in benefits associated with tenure of service. It shall be the responsibility of the municipality previously employing the individual to supplement such

state of New Hampshire benefits if they are less than the employee might have received if his employment had continued uninterrupted with the municipality.

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

Section 485-A:49

485-A:49 Expenditures. –

I. With the approval of the governor and council, the department may use state, federal or other funds accruing to the department and funds borrowed from the state water pollution control and drinking water revolving loan fund established under RSA 486:14 for the acquisition of existing sewage or waste treatment facilities, design and construction of new sewage or waste treatment facilities, alteration, improvement or additions to existing sewage or waste treatment facilities, pumping stations and intercepting sewers, inclusive of operation and maintenance of same; the terms operation and maintenance of treatment facilities shall include maintenance of all buildings, equipment, supplies, and administrative costs associated with the management of the treatment facilities, and for such other purposes as may be involved in the operation of an effective regional pollution control program. The department may purchase, take and hold for the state such materials, lands, easements and rights-of-way as may be required for the purposes of this subdivision. If the department is unable to purchase lands, easements or rights-of-way at what is deemed reasonable compensation, the department shall request the governor and council to appoint a commission to assess the damages sustained by the owner, and thereupon proceedings shall be conducted in the same manner and in accordance with provisions of RSA 230.

I-a. In addition to the uses set forth in paragraph I, and with the approval of the governor and council, the department may evaluate the most cost effective operation of such systems, including evaluating the cost effectiveness of alternative governance structures for the Winnipesaukee River basin control program under this subdivision. The department may not make any changes to the current governance structure unless specifically authorized by statute. The department may present any recommendations concerning alternative governance structures to the general court for consideration.

II. To provide funds for the municipal share of the costs involved pursuant to this subdivision, the state treasurer is authorized to borrow upon the credit of the state not exceeding the sum of $3,000,000 and for said purposes may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A.

III. The payments of principal and interest on the bonds issued under paragraph II shall be made when due from the special fund established by RSA 485-A:50, VI.

Source. 1989, 339:1. 1996, 228:106. 2005, 117:1, eff. Aug. 14, 2005. 2016, 125:1, eff. July 19, 2016.

Section 485-A:50

485-A:50 Municipal Assessments. –

I. The department shall annually, at the beginning of each fiscal year, assess each municipality served by the regional sewage disposal facilities provided for by this subdivision, a sum sufficient to recover its proportional share of the total in relation to the total costs estimated to be incurred during said fiscal year in treating, transporting and disposal of sewage of the communities served and those to be served; the proportional share of each community shall be determined by the procedure provided for in paragraph IV.

II. The department shall annually, at the beginning of each fiscal year, assess each municipality served or to be served by the regional sewage disposal facilities provided for by the provisions of this subdivision the costs estimated to be incurred during said fiscal year in administering this subdivision, plus a charge for amortization charges on such costs of all facilities amounting to 5 percent of the total amortization charges, meaning principal and interest, on such charges. The proportional share of each community's costs shall be determined by the procedure provided for in paragraph IV.

III. The respective share of the assessments made in paragraphs I and II shall be paid to the department by each municipality quarterly on July fifteenth, October fifteenth, January fifteenth, and April fifteenth of that fiscal year, except for capital cost recovery assessments which shall be paid annually on July fifteenth. After the close of each fiscal year, the department shall ascertain its actual total expenses in accordance with the foregoing

provisions, and then shall adjust the assessment for the second quarterly payment of the new fiscal year for each such municipality served for any under-payment or over-payment by each such municipality served for the prior fiscal year.
IV. The assessments provided to be made by this section shall be made by taking into account the volume and strength of the industrial, domestic, commercial, and all other waste discharges treated or the estimated volume and strength of the industrial, domestic, commercial and all other waste discharges to be treated and techniques of treatment required. Proportional costs as determined by the department, associated with transporting raw and treated sewage through a major interceptor from a municipality at which it is generated or is to be generated to the point of treatment or discharge shall be allocated to the municipality which uses or will use the interceptor on the basis of volume and distance traveled or estimated volume and distance traveled. In determining said assessments for each municipality, the department shall abide by federal regulations which govern the allocation of costs and receipt of payments by industry for industrial discharges. Any operating and maintenance costs over and above what has been determined to be proportional by the department shall be an obligation of the state.
V. The municipality may recover charges assessed by means of user charges, connection fees, or such other techniques as may be utilized under state and local law, including sewage, sewerage, and waste service contracts, except that municipalities with industrial waste must abide by federal and state regulations which govern recovery of costs from said industries.
VI. All funds collected by the department by virtue of the assessments authorized under this section shall be paid to the state treasurer who shall keep the same in a special fund.
VII. Any municipality aggrieved or dissatisfied with any annual assessment levied against it under the provisions of this section may file a motion for reconsideration by the department control in the same manner and as provided in RSA 485-A:40.
VIII. The charges assessed by the department shall be made against the municipalities which are directly connected to the regional facilities provided for by this subdivision and shall include:
(a) any sewage or waste generated within the municipality and transported to such regional facilities, and
(b) any sewage or waste generated outside the municipality and being transported through such municipality's sewage system. Such municipality may recover the charges assessed in accordance with paragraph V.

Source. 1989, 339:1. 1996, 228:106. 2007, 5:1, eff. July 1, 2007.

Section 485-A:51

485-A:51 Replacement Fund Established. –
I. There is established a nonlapsing, revolving fund to provide capital for repair and replacement of major components of the water pollution control facilities administered under this subdivision which cannot be absorbed as regular budgetary items. The replacement fund is to be capitalized by contributions from the members served by the facilities based on each member's projected usage of the facilities.
II. The fund shall equal 5 percent of the equipment and other depreciable assets of the treatment facilities. The value of the equipment and other depreciable assets shall be computed every 5 years, beginning in 1990, and shall be based on current replacement costs.
III. Each member's share of the total fund shall be contributed over a period of 10 years after the initial establishment of the fund and shall be paid as a yearly surcharge to the member's operating charges. Thereafter, each member's surcharge shall be prorated as membership and design changes require.
IV. Once a member has fully funded its share of the replacement fund, the member shall make no further contributions until the fund is utilized for repair or replacement of a facility used by that member. Expenses for which the fund is used shall be proportionally charged against each member's contributions to the fund for the facilities utilizing the fund, which will subsequently be reimbursed by the member in successive years in addition to the member's yearly contribution to the fund, until the member's share of the fund is fully restored.
V. If a repair or replacement cost exceeds the value of the fund established for that particular facility, the repair cost shall be paid out of the portion of the fund established for other facilities, but reimbursement to the fund shall always be assessed back to members based on their projected usage of the facilities needing repair.
VI. As new facilities, if any, are added to the system, additional assessments shall be made to the members benefiting from these facilities, prorated on the basis of projected use.
VII. If a new member joins the system, the assessments shall be modified to reflect the new member's benefit

from the facilities, and excess prior payments made by other members, if any, shall be credited to their accounts.
VIII. All contracts paid for using the fund shall be submitted to the governor and council for approval.
IX. This nonlapsing, revolving special purpose fund is continually appropriated to be used by the department in accordance with this subdivision. All moneys shall be deposited with the state treasurer who shall keep this money in a separate fund, notwithstanding RSA 6:12. The state treasurer shall invest the moneys deposited with him as provided by law. Interest received on investments made by the state treasurer shall also be credited to the fund. All such interest shall be added to each member's share of the fund based on each member's contribution to it.

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

Section 485-A:52

485-A:52 Advisory Board Established. –
I. There is established a Winnipesaukee River advisory board consisting of one member, from each community, appointed by the board of selectmen of a town or the city council of a city involved. The term of office of each member shall be one year commencing July 1, 1972, and each member shall serve until his or her successor shall have been appointed. The advisory board shall annually elect a chairman by majority vote of its members, and the board shall meet at least quarterly upon the call of the chairman or at least 3 members of the board in order to consider matters properly coming before it for attention. The advisory board shall meet with the department at suitable intervals to review matters of mutual concern. An annual budget shall be submitted to the advisory board by the department, for review and comment, 60 days prior to the beginning of the new fiscal year. Members of the advisory board shall receive no per diem but shall be entitled to reimbursement for expenses including mileage when in the performance of duties required under this subdivision. Each municipality shall provide funds necessary to reimburse its members to the advisory board.
II. The advisory board shall make a recommendation to the governor and executive council on each request for a contract to plan, design, or construct capital improvements using moneys for expenditures under RSA 485-A:49. The department of environmental services shall include a letter from the advisory board to the governor and executive council documenting the decision and recommendations of the advisory board on such contract for the governor and executive council's consideration before approving or denying such contract.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2016, 104:1, eff. July 18, 2016.

Section 485-A:53

485-A:53 Insurance. – The department shall purchase insurance, including extended coverage insurance, to protect the pollution control facilities administered under this subdivision against fire, vandalism, and malicious mischief. The cost of the insurance shall be included in the user fee. If the department determines that any of the foregoing insurance is unavailable or uneconomical, it may request the governor and council to waive the provisions of this section for the term of the coverage. Nothing in this section shall be construed as a waiver of the state's sovereign immunity regardless of the department's ability to procure the types of insurance described in this section.

Source. 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2014, 327:69, eff. Aug. 2, 2014; 146:1, eff. Aug. 15, 2014.

Section 485-A:54

485-A:54 Enforcement and Penalties. –
I. The department may issue an order to any person in violation of this subdivision, a rule adopted under this subdivision, or any condition in any contract or permit issued or entered into under this subdivision. This order may require such remedial or corrective measures as may be necessary. Any person to whom such an order is directed may appeal in accordance with RSA 21-O:14.

II. If the department determines that the discharge to any state-owned treatment facility presents an imminent threat to the environment or to the operation of the treatment facility, the department may issue an order requiring such action as may be necessary to meet the emergency, or may take necessary action to block the public sewer to prevent the discharge of the waste into the treatment facility. Any order issued under this authority shall take effect immediately. A person to whom such an order is issued or any person affected by action taken by the department under this paragraph may appeal to the commissioner or designee for a hearing on such order or action, which shall be held within 2 working days after receipt of the request for the hearing. The person may appeal the decision on such hearing pursuant to RSA 21-O:14.
III. Any person who violates any of the provisions of this chapter, or any rule adopted or order issued under this subdivision, shall be subject to a civil penalty not to exceed $10,000 for each violation, or for each day of a continuing violation.
IV. Any violation of the provisions of this subdivision, or of any rule adopted or order issued under it, or of any condition in any permit issued or contract entered into under the authority of this subdivision, may be enjoined by the superior court upon application by the attorney general.
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 subdivision, any rule adopted under this subdivision, or any permit or contract entered into under the authority of this subdivision. 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 subdivision. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the department in the replacement fund established pursuant to RSA 485-A:51. 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.

Source. 1989, 339:1. 1995, 217:9. 1996, 228:85, 106, eff. July 1, 1996.

Certain Household Cleansing Products Prohibited

Section 485-A:55

485-A:55 Definitions. –
In this subdivision:
I. "Household cleansing product" means any product, including but not limited to, soaps and detergents used for domestic cleaning purposes, including, but not limited to, the cleansing of fabric, dishes, food utensils and household premises.
II. "Phosphorus" means elemental phosphorus.
III. "Trace quantity" means an incidental amount of phosphorus which is not part of the household cleansing product formulation, is present either as a consequence of manufacturing, to assure product performance for purposes other than cleansing, or to assure container stability, and does not exceed 0.5 percent of the content of the product by weight, expressed as elemental phosphorus.

Source. 1994, 303:1, eff. Jan. 1, 1995.

Section 485-A:56

485-A:56 Products Prohibited. – No household cleansing products except those used for lead exposure hazard control purposes shall be distributed, sold or offered for sale in this state, which contain a phosphorus compound in concentrations in excess of a trace quantity.

Source. 1994, 303:1. 1995, 306:7. 2009, 282:1, eff. July 1, 2010.

Section 485-A:57

485-A:57 Penalty. – Any person who violates the provisions of this subdivision shall be subject to a civil penalty not to exceed $50.

Source. 1994, 303:1, eff. Jan. 1, 1995.