

TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 486-A

AID TO PUBLIC WATER SYSTEMS

Section 486-A:1

486-A:1 Purpose. – The purpose of this chapter is to provide a state contribution to aid all public water systems in achieving compliance with the requirements of the surface water treatment rules of the federal Safe Drinking Water Act, to provide a state contribution to aid public water systems in the formation or improvement of regional water systems that provide a benefit to public health, safety, and economic well-being, to provide a state contribution to aid public water systems in the evaluation of the groundwater contributing area of public wells that have recorded levels of chemical contaminants, excluding MTBE, and to protect sources of public drinking water that serve community or non-transient non-community water systems and associated natural resources through the acquisition of land or conservation easements within source water protection areas.

Source. 1993, 341:1. 2000, 310:1. 2003, 178:1, eff. July 1, 2003.

Section 486-A:2

486-A:2 Definitions. –

In this chapter:

I. "Construction" means:

(a) The installation or building of:

(1) New wells or well buildings;

(2) Filtration systems and associated pump stations, pump equipment, chemical treatment systems, telemetry and metering equipment, and storage tanks; and

(3) Distribution mains and valves needed to interconnect the new wells or filtration system to the existing system as may be required by the department and the EPA or to interconnect public water systems to form a regional water system.

(b) Altering, improving or adding to existing water treatment or water source, storage or transmission main facilities or regional water system interconnections in order to meet the requirements of the surface water treatment rules or to meet the water needs of a regional water system.

(c) Engineering services related to the activities identified under this paragraph, including the scientific evaluation of the groundwater contributing area of public wells with recorded levels of chemical contaminants, excluding MTBE, using a method approved by the department.

I-a. "Community water system" means a community water system as defined in RSA 485:1-a, I.

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

III. "Eligible surface water treatment costs" means the actual cost of construction and related services necessary for a municipality to comply with the surface water treatment rules of the department of environmental services and the EPA, but shall not include the following:

(a) Land acquisition, except for land which shall be an integral part of a well system or filtration system;

(b) Easements and rights-of-way necessary to the project;

(c) Distribution systems and any improvement thereto not necessary for the municipality to achieve compliance with the surface water treatment rules; and

(d) Any administrative, legal, and fiscal costs related to the project.

III-a. "Eligible water supply land protection costs" means the actual cost of permanently conserving substantially undeveloped land within one or more source water protection areas for active, proposed, or future sources of public drinking water supplying a community or non-transient non-community water system, including the cost

of land or conservation easement acquisition and associated legal and transaction costs.

III-b. "Eligible regional water system costs" means that portion of the costs of construction and related services attributable, as determined by the department, or the entire cost of permanent construction and related services attributable, as approved by the department in accordance with the provisions of RSA 485:8, for communities that qualify for United States Department of Agriculture rural utilities water and wastewater program direct loans, guarantees, and grants and public water systems that are eligible for any other needs based federal assistance to the provision of water for domestic, commercial, or fire protection purposes, whether as routine supply or emergency reserve supply, through one or more of the interconnections that form a regional water system, but shall not include any of the following:

- (a) Land acquisition, except for land which shall be an integral part of a well system or filtration system.
- (b) Easements and rights-of-way necessary to the project.
- (c) Distribution systems and any improvement thereto not necessary for the municipality to achieve compliance with the surface water treatment rules.
- (d) Administrative, legal, and fiscal costs related to the project.

III-c. "Eligible evaluation of the groundwater contribution area of public wells that have recorded levels of chemical contaminants excluding MTBE" means that portion of the actual costs of scientific evaluation of the contribution area of the sources of public drinking water, such as a well or surface water intake, through which water is likely to flow towards the source and related services attributable, as determined by the department, to the provisions of water for domestic, commercial, or fire protection purposes, whether as routine supply or emergency backup supply, through one or more interconnections that form a regional water system, but shall not include the following:

- (a) Land acquisition, except for land which shall be an integral part of a well system or filtration system;
- (b) Easements and rights-of-way necessary to the project;
- (c) Distribution systems and any improvement thereto not necessary for the municipality to achieve compliance with the surface water treatment rules; and
- (d) Any administrative, legal, and fiscal costs related to the project.

IV. "EPA" means the United States Environmental Protection Agency.

IV-a. "Future source of public drinking water supply" means:

- (a) Stratified-drift aquifer areas identified by the department as favorable gravel well areas not constrained by existing development; and
- (b) Other groundwater resources identified by the department as high-yielding aquifer areas not constrained by existing development.

V. "Non-transient non-community water system" means a non-transient non-community water system as defined in RSA 485:1-a, XI.

V-a. "Regional water system" means the system which results from the interconnection of 2 or more discrete public water systems to provide routine or emergency reserve supply.

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

VI. "Source water protection area" means the area around a source of public drinking water, such as a well or surface water intake, through which water is likely to flow towards the source.

VII. "Stewardship" means ongoing surveillance of water supply protection land acquired pursuant to this chapter to ensure that the conservation intent is maintained.

VIII. "Water supply land protection grantee" means an entity that receives a water supply land protection grant to acquire and maintain in perpetuity land or easements for the purpose of protecting a drinking water source. A water supply land protection grantee shall be a nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code and having public water supply or land conservation as its principal mission or a municipality.

Source. 1993, 341:1. 1996, 228:94, 106. 2000, 310:1. 2003, 178:2-4. 2008, 279:10. 2009, 227:1-3, eff. July 16, 2009.

Section 486-A:3

486-A:3 State Contribution; Surface Water Treatment Costs; Water Supply Land Protection Costs; Regional Water System Costs. –

I. (a) Any public water system which is or was required, beginning in 1986, to achieve compliance with the surface water treatment rules of the EPA or the rules of the New Hampshire department of environmental services adopted to implement the federal Safe Drinking Water Act amendments of 1986 shall be eligible for a state contribution. As its contribution, the state shall pay 20 percent of the annual amortization charges, meaning the principal and interest, on the eligible surface water treatment costs resulting from the construction of new wells or a filtration system to meet the requirements of the surface water treatment rules.

(b) To be eligible under RSA 486-A:3, I(a), construction shall be necessary in order for the public water system to comply with the surface water treatment rules of the department or the EPA, or both. Plans for construction shall be approved in accordance with the provisions of RSA 485:8.

II. The state may pay up to 25 percent of the eligible water supply land protection costs.

III. Any public water system which incurs eligible regional water system costs or eligible evaluation of contributing area of groundwaters contribution to public wells that have recorded levels of chemical contaminants costs, excluding MTBE, after the effective date of this paragraph shall be eligible for a state contribution in accordance with the provisions of this chapter. As its contribution, the state shall pay 25 percent of the annual amortization charges, meaning the principal and interest, on the bonded eligible regional water system costs, or 25 percent of non-bonded, eligible regional water system costs. Plans for construction shall be approved in accordance with the provisions of RSA 485:8.

Source. 1993, 341:1. 1996, 228:106. 2000, 310:1. 2003, 178:5, 6, eff. July 1, 2003.

Section 486-A:4

486-A:4 Additional State Contribution. –

I. In addition to any other state contribution provided in this chapter, the commissioner of the department, with the approval from the governor and council, may, upon review of plans submitted by a public water system and within the limits of available appropriations, pay 10 percent of the annual amortization charges, meaning principal and interest, on the eligible surface water treatment costs resulting from the installation and construction of water supply facilities required by the surface water treatment rules of the Safe Drinking Water Act.

II. This additional contribution may be provided when such installation or construction will result in user fees that are 20 percent above the statewide average for residential customers.

Source. 1993, 341:1. 2000, 310:1, eff. June 21, 2000.

Section 486-A:5

486-A:5 Equitable Allocation of Costs. –

The department shall not approve any contribution for surface water treatment or for the formation or improvement of a regional water system or for evaluation of contribution of groundwaters to public wells that have record levels of chemical contaminants, excluding MTBE under this chapter unless it shall first have determined that the applicant:

I. Has adopted or will adopt a system of charges to assure that each recipient of water service within the applicant's jurisdiction, as determined by the department, will pay its proportionate share of the costs of operation and maintenance, including replacement, of water services provided by the applicant. For a regional water system project, the department must also determine that each public water system that is to make payments to the applicant for water service provided through area regional water system interconnection has adopted or will adopt a system of charges to assure that each recipient of water service within the public water system will pay its proportionate share of the such payments.

II. Has legal, institutional, managerial, and financial capability to ensure adequate construction, operation, and maintenance of water works throughout the applicant's jurisdiction.

Source. 1993, 341:1. 1996, 228:106. 2000, 310:1. 2003, 178:7, eff. July 1, 2003.

Section 486-A:6

486-A:6 Application for Funding. – Application for payments under the provisions of this chapter shall be made in accordance with rules adopted by the commissioner under RSA 541-A, and, for surface water treatment projects and regional water system projects and evaluation of groundwaters contributing area of public wells, shall be based upon reports filed with the commissioner prior to January 31, in the calendar year for which payment is being requested.

Source. 1993, 341:1. 1996, 228:110. 2000, 310:1. 2003, 178:8, eff. July 1, 2003.

Section 486-A:7

486-A:7 Applicant Agreement. –

I. Applications for state grants for surface water treatment and for regional water systems and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants shall contain an agreement that the applicant:

- (a) Has installed or will install the water works facilities in accordance with the plans and specifications approved by the department;
- (b) Will provide proper and efficient operation and maintenance of facilities;
- (c) Agrees that failure to install the facilities in accordance with the approved plans and specifications or to provide proper and efficient operation and maintenance of such facilities shall result in loss of payments of the annual grant installment next following such failure. The loss of payment of the annual grant installment shall continue in effect until such time as the applicant has completed the steps necessary to install the facilities in accordance with plans and specifications approved by the department, or made provisions for proper and efficient operation and maintenance of the facilities in accordance with department instructions or both;
- (d) For a grant to aid in the development of a regional water system and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants, agrees to participate in regional and statewide water supply planning initiatives and to consider the results of such initiatives for purposes of long-term water supply planning and infrastructure development.

II. Applications for water supply land protection grants shall contain a statement that the applicant shall comply with the following conditions:

- (a) The applicant shall purchase the land or conservation easement from a willing seller, and the purchase shall include only land within the source water protection area of an active or proposed public drinking water source supplying a community or non-transient non-community water system or only small portions of land beyond the source water protection area under circumstances which make subdivision impractical;
- (b) The land or conservation easement shall be owned, in perpetuity, by a water supply land protection grantee;
- (c) The land shall be maintained in perpetuity to protect the drinking water source and no land use or development shall occur that would diminish the quantity or quality of the drinking water;
- (d) The land, if purchased in fee simple, shall not be posted to prohibit hiking, hunting, and fishing, unless the department deems such posting necessary to protect the associated water supply or other natural resources;
- (e) The applicant shall provide required stewardship and submit annual stewardship reports to the department.

Source. 1993, 341:1. 1996, 228:106. 2000, 310:1. 2003, 178:9, eff. July 1, 2003.

Section 486-A:8

486-A:8 Priority of Applications. –

I. For surface water treatment projects, the department shall establish and maintain a priority list of projects eligible to receive grants under RSA 486-A:3. The priority list shall include the highest priority projects ready for construction and anticipated to receive grants from appropriated funds within the next fiscal year. The list required by this section shall not be considered rules subject to the provisions of RSA 541-A.

II. For water supply land protection projects, the department shall prioritize projects in accordance with rules established under RSA 486-A:11. Prioritization factors shall include, but not be limited to:

- (a) Distance from and relation to the drinking water source.
- (b) Size of the area proposed for protection relative to the size of the source water protection area.
- (c) Natural resource values, including wetlands, habitat protection, and recreational uses.
- (d) Current protection status of the source water protection area.
- (e) Ability of the applicant to pay for water supply land protection.

III. For regional water system projects and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants, the department shall adopt prioritization factors by rule under RSA 541-A, to assist in determining which new projects to fund under this chapter. Prioritization factors shall include, but not be limited to:

- (a) The population of the service area that would receive water through the regional water system interconnection.
- (b) The degree to which the public's health, safety, and economic well-being will benefit.
- (c) The fiscal impact on user fees and taxes in the area of the regional water system.
- (d) The consistency with land use master plans in the affected municipalities and with the provisions of RSA 9-B and RSA 162-C:2, V, to the extent that a proposed regional water system project may impact the municipality's growth and development patterns.

Source. 1993, 341:1. 2000, 310:1. 2003, 178:10, eff. July 1, 2003.

Section 486-A:8-a

486-A:8-a Public Notice. –

I. For surface water treatment projects, regional water system projects, and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants the commissioner of environmental services or designee shall hold an annual public hearing to receive testimony on the projects recommended by the department, in accordance with RSA 486-A:8, to receive grants in the next fiscal year. After considering the testimony offered at the hearing, the commissioner shall finalize the priority list for the next fiscal year, and project assistance shall be granted accordingly.

II. The department shall provide notice by certified mail to the municipality in which the land is located of each water supply land protection project recommended by the department, in accordance with RSA 486-A:8, to receive a grant, and shall wait 20 days for a hearing request. Upon request of the governing body of the municipality in which the land is located, the commissioner of environmental services or designee shall hold a public hearing to receive testimony on any project recommended to receive a grant. The department shall provide notice of any such hearing at least 30 days prior to the hearing by notices posted in at least one public place in the municipality and in at least 2 newspapers of general circulation in the region, and by certified mail to the governing body of the municipality. After considering the testimony offered at all of the public hearings requested for that year's recommended projects, the commissioner shall finalize the priority list for the next fiscal year, and project assistance shall be granted accordingly. If no hearing is requested, the department shall select projects for funding without a public hearing.

Source. 2000, 310:2. 2003, 178:11, eff. July 1, 2003.

Section 486-A:9

486-A:9 Administration. –

I. The department shall perform the following functions related to the administration of the provisions of this chapter applicable to surface water treatment and to any regional water system and evaluation of groundwaters contributing area of public wells with recorded levels of chemical contaminants:

- (a) Assist public water systems to:
 - (1) Develop an acceptable grant application for funding under RSA 486-A.
 - (2) Conduct pre-construction conferences.
- (b) Review the defined project and confirm that it meets the surface water treatment rule requirements of the state of New Hampshire and the EPA in accordance with the requirements of 40 C.F.R., part 141, subpart H.
- (c) Review and approve preliminary and final facilities' plans for the defined project.

- (d) Review construction plans and specifications in accordance with RSA 485:8.
 - (e) Process grant applications for state approval.
 - (f) Approve construction plans and specifications and issue authorizations to advertise contracts for bids.
 - (g) Review and approve any revisions to plans and specifications prior to formal advertisement by the public water system.
 - (h) Review and approve formal addenda to plans and specifications during the formal advertising process.
 - (i) Review bid documentation to establish the low responsive and responsible bidder.
 - (j) Issue authorization to award the construction contract to the lowest responsive and responsible bidder.
 - (k) Perform periodic site inspections to ensure compliance with executed construction contract documents.
 - (l) Review and approve operation and maintenance manuals.
 - (m) Review and approve change orders during the construction period.
 - (n) Review all invoices related to the project submitted to the grantee on a monthly basis.
 - (o) Conduct a final inspection of completed facilities and certify substantial completion.
 - (p) Based upon a satisfactory final project inspection, review and approve final eligible surface water treatment costs, regional water system project costs and evaluation costs of groundwaters contributing area of public wells with recorded levels of chemical contaminants, and authorize release of retainage.
 - (q) Evaluate the defined project for consistency with municipal master planning, RSA 9-B, and RSA 162-C:2, V and require limitations on future water system connections where appropriate.
 - (r) For a regional water system project and evaluation of groundwaters contributing area of public wells with recorded levels of contaminants, evaluate the defined project to ensure that it is designed to provide an overall benefit to public health, safety, and economic well-being and that it is a cost-effective means of achieving these benefits.
- II. The department shall perform the following functions related to the administration of this chapter applicable to water supply land protection grants:
- (a) Assist applicants with water supply land protection grant applications.
 - (b) Review defined projects and confirm that they meet eligibility criteria.
 - (c) Prioritize projects in accordance with the procedures established under RSA 486-A:8.
 - (d) Select projects for funding and administer grant funds.
 - (e) Review all invoices related to the project submitted to the department by the grantee.
 - (f) [Repealed.]

Source. 1993, 341:1. 1996, 228:106. 2000, 310:3. 2003, 178:12-14, eff. July 1, 2003. 2015, 259:31, III, eff. July 1, 2015.

Section 486-A:10

486-A:10 Notice to Public Utilities Commission. – Any public water system regulated by the public utilities commission shall notify the public utilities commission when it receives funds under the provisions of this chapter, to ensure that the money received is not used in calculating rate setting.

Source. 1993, 341:1, eff. June 30, 1993.

Section 486-A:11

486-A:11 Rulemaking. –

The department shall adopt rules, pursuant to RSA 541-A, relative to providing water supply land protection grants. Such rules shall include, but not be limited to:

- I. Appraiser and surveyor standards.
- II. Eligibility determination criteria and procedures.
- III. Application requirements and procedures.
- IV. Project selection and prioritization requirements and procedures.
- V. Stewardship requirements and procedures, including annual reporting to the department by the grantee.

Source. 2000, 310:4, eff. June 21, 2000.

Section 486-A:12

486-A:12 Water Supply Land Protection Grant Match. – The percent match supplied by the water supply land protection grantee for water supply land protection projects shall consist of cash, expenses necessary to complete the transaction including associated legal and transaction costs, donations of source water protection lands or conservation easements assessed at fair market value and protected in perpetuity, or a combination of cash, transaction expenses, and such donations. Gifts of land and interests in land must be held by a water supply land protection grantee.

Source. 2000, 310:4, eff. June 21, 2000.

Section 486-A:13

486-A:13 Public Trust. –

I. The lands and interests in lands acquired by the state or other public entity with a water supply land protection grant under this chapter shall be held in public trust and used and applied for the purposes of this chapter. Notwithstanding any other provision of law relating to the disposal of publicly-owned real estate, no deviation in the uses of any land or interest in land so acquired to uses or purposes not consistent with the purposes of this chapter shall be permitted. The sale, transfer, conveyance, or release of any such land or interest in land from public trust is prohibited except when the conditions of RSA 486-A:13, II or III are met.

II. Land may be released from public trust in order to be converted to another use if:

- (a) The municipality, holding title to the land or conservation easement proposed for release from the program, votes in favor of such a release by a two-thirds vote of its legislative body;
- (b) A public hearing is held prior to the municipal vote, after the municipality provides notice of such hearing at least 30 days prior to the hearing by notices sent to the department, notices posted in at least one public place in the municipality, certified notice to any other municipality whose water supply might be affected by the proposed release, and notices in at least 2 newspapers of general circulation in the region;
- (c) All other municipalities using the water supply protected by the land or conservation easement vote to release the land by a two-thirds vote of their legislative bodies and after holding a public hearing noticed according to the procedures set forth in subparagraph (b);
- (d) The land proposed for release from the program will be publicly owned after its release from the program; and
- (e) The municipality proposing to release the land or conservation easement from the program repays the department the amount of the water supply land protection grant plus interest compounded annually at the rate of 10 percent, which repayment shall be used by the department to further the water supply land protection purposes of this chapter.

III. Land may be released from public trust due to termination of use if:

- (a) The grantee has successfully demonstrated to the department that the source of drinking water that the land or conservation easement is intended to protect is not and will not be viable due to the inability to remediate contamination or to provide treatment which improves water quality so that it is suitable for human consumption; and
- (b) The municipality voting to release the land or conservation easement from the program repays the department the amount of the water supply land protection grant plus interest compounded annually at the rate of 3.5 percent, which repayment shall be used by the department to further the water supply land protection purposes of this chapter.

Source. 2000, 310:4, eff. June 21, 2000.

Section 486-A:14

486-A:14 Administrative Fines. –

I. The commissioner of the department, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$500 for each offense upon any person who violates the reporting requirement

of RSA 486-A:7, II(e). Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. The commissioner shall adopt rules, under RSA 541-A, relative to procedures for notice and hearing prior to the imposition of an administrative fine.

II. The proceeds of administrative fines levied pursuant to paragraph I shall be used by the department to further the water supply land protection purposes of this chapter.

Source. 2000, 310:4, eff. June 21, 2000.

Section 486-A:15

486-A:15 Repayment Responsibility. – Any party found, by means of a scientific or hydrogeological study, or other evaluation as approved by the department, of the groundwaters contributing area of public wells with recorded levels of contaminants, to be responsible for contaminating a wellhead area, shall be required to repay to the state, the amount the state contributed for the evaluation.

Source. 2003, 178:16, eff. July 1, 2003.