

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

- PART Env-Wq 401 REQUIRED BEST MANAGEMENT PRACTICES FOR GROUNDWATER PROTECTION
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REVISION NOTE:

Document #8786, effective 1-5-07, readopted with amendments and redesignated former Part Env-Ws 421 titled Best Management Practices as Env-Wq 401 pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

The prior filings for former Env-Ws 421 are: #5543, eff 12-24-92; #6947, eff 2-25-99

Statutory Authority: RSA 485-C:4, VII

Env-Wq 401.01 Purpose. The purpose of these rules is to implement RSA 485-C:11 relative to establishing best management practices for activities that are potential contamination sources, which are to be followed when using, storing, or otherwise handling regulated substances to minimize the risk of groundwater contamination.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.02 Applicability.

(a) Subject to (b), below, these rules shall apply only to persons who use, store, or otherwise handle any regulated substances in regulated containers.

(b) As provided in RSA 485-C:11, I, these rules shall not apply to:

- (1) Potential contamination sources listed in RSA 485-C:7, II(j), which are subject to requirements of RSA title XL and the department of agriculture, markets, and food; or
- (2) Those regulated substances defined as pesticides under RSA 430:29, XXVI.

(c) These rules also shall not apply to:

- (1) Aboveground storage tanks regulated under RSA 146-A and Env-Or 300;
- (2) Underground storage tanks regulated under RSA 146-C and Env-Or 400; or
- (3) On-premise-use facilities as defined in RSA 146-E:2, III.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.03 Definitions.

(a) “Department” means the New Hampshire department of environmental services.

(b) “Floor drain” means an opening in a floor into which regulated substances might be discharged.

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(c) “Impervious surface” means a surface through which regulated contaminants cannot pass when spilled. For purposes of this part, the term includes concrete and asphalt unless unsealed cracks or holes are present, but does not include earthen, wooden, or gravel surfaces or other surfaces that could react with or dissolve when in contact with the substances stored on them.

(d) “Owner” means the owner of the facility or site on which the potential contamination source is located and, if different, the person who is responsible for the day-to-day management of the facility or site.

(e) “Person” means “person” as defined in RSA 485-C:2, XI, as reprinted in Appendix B.

(f) “Potential contamination source” means, as specified in RSA 485-C:7, I, human activities or operations upon the land surface that pose a reasonably-foreseeable risk of introducing regulated substances into the environment in such quantities as to degrade the natural groundwater quality. Examples of potential contamination sources are listed in RSA 485-C:7, II.

(g) “Regulated container” means any device in which a regulated substance is stored, transported, treated, disposed of, or otherwise handled, with a capacity of greater than or equal to 5 gallons, other than a fuel tank attached to a motor vehicle for the sole purpose of supplying fuel to that motor vehicle for that vehicle’s normal operation.

(h) “Regulated substance” means any of the following, excluding substances used for the treatment of drinking water or waste water at department-approved facilities:

- (1) Oil as defined in RSA 146-A:2, III;
- (2) Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; and
- (3) Any substance listed in 40 CFR 302, 7-1-05 edition.

(i) “Secondary containment” means a structure, such as an impervious berm or dike, that is adequate to contain any spills or leaks at 110% of the volume of the largest regulated container in the storage area.

(j) “Storage area” means a place where a regulated container is kept for a period of 10 or more consecutive days.

(k) “Work sink” means a sink in which regulated substances are used.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.04 Storage of Regulated Substances.

(a) The owner shall store all hazardous wastes in compliance with applicable federal requirements and state requirements specified in RSA 147-A and Env-Hw 100 et seq.

(b) The owner shall store all regulated containers on an impervious surface, as follows:

- (1) The owner shall inspect the impervious surface prior to storage of any regulated containers and seal any cracks or holes prior to placing any regulated container in the storage area;
- (2) The owner shall re-inspect the impervious surface not less than annually for as long as the area is used for storage of regulated substances; and
- (3) Whenever the owner finds any cracks or holes in the impervious surface on which any regulated container is stored, the owner shall either:
  - a. Immediately seal all such cracks and holes; or

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b. Move the regulated substances to a different storage area that meets the requirements of this section.

(c) The owner shall secure all storage areas against unauthorized entry by any method or combination of methods that renders the storage area tamper-proof and inaccessible, including but not limited to personal or monitored surveillance and physically-restricting access using fencing or box trailers that are locked except when regulated substances are being moved into or out of the secure area.

(d) The owner shall inspect all storage areas weekly for signs of spills or leakage from regulated containers. The aisle space between regulated containers that cannot be moved by hand shall be of ample size to allow an inspector to determine the condition of individual regulated containers.

(e) Each regulated container shall be clearly and visibly labeled with the chemical and trade name of the material stored within.

(f) Each regulated container shall remain closed and sealed at all times except to add or remove regulated substances. Regulated containers equipped with spigots, valves, or pumps shall be considered closed and sealed when the spigots, valves, or pumps are closed or in the "off" position, provided that drip pans are placed and maintained under the spigots, valves, or pumps.

(g) Spill control and containment equipment, including at the minimum absorbents to pick up spills and leaks, shall be located in the immediate area where regulated substances are transferred, used, or stored.

(h) Regulated containers in outdoor storage areas shall:

(1) Have secondary containment;

(2) Be kept covered at all times unless the regulated containers are in the process of being transferred to another location;

(3) Have a durable covering that keeps the regulated container and the secondary containment structure free of rain, snow, and ice; and

(4) Not be stored within any of the following set-backs:

a. For surface waters, 50 feet;

b. For private wells, 75 feet;

c. The sanitary protective radius of any public water supply well; or

d. For storm drains, 50 feet.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.05 Transferring Regulated Substances. Regulated substances shall be transferred from or to regulated containers only under the following conditions:

(a) Funnels and drip pans shall be used; and

(b) Fueling or transferring shall be done only over an impervious surface.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

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Env-Wq 401.06 Floor Drains. Interior floor drains shall discharge only as authorized by one of the following:

- (a) A groundwater discharge permit obtained pursuant to Env-Wq 402;
- (b) A discharge registration for a holding tank obtained pursuant to Env-Wq 402;
- (c) A national pollutant discharge elimination system (NPDES) permit; or
- (d) A local authorization to discharge to the local wastewater treatment facility.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.07 Work Sinks. Work sinks shall discharge only as authorized by one of the following:

- (a) A groundwater discharge permit obtained pursuant to Env-Wq 402;
- (b) A discharge registration for a holding tank obtained pursuant to Env-Wq 402;
- (c) An NPDES permit; or
- (d) A local authorization to discharge to the local wastewater treatment facility.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.08 Holding Tanks. Holding tanks that receive discharges from floor drains or work sinks shall be registered and maintained in accordance with Env-Wq 402.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.09 Release Response Information.

(a) The owner shall post release response information in accordance with (b), below, at every storage area.

(b) Release response information shall include the information necessary to contact emergency response personnel, including the following:

- (1) The name of the individual designated by the owner to be contacted if a spill occurs;
- (2) The method by which the designated individual can be contacted when there is a release, such as by phone or in-person at the main office;
- (3) The procedure for spill containment; and
- (4) Emergency phone numbers including 911 and, depending on local protocol:
  - a. State police;
  - b. Local police and fire department;
  - c. Local hospital;
  - d. Department of environmental services;
  - e. Poison control center; and
  - f. Office of emergency management.

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Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.10 Inspections. Potential contamination sources in any area shall be subject to inspections by the department.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15 (from Env-Wq 401.02(d))

Env-Wq 401.11 Waivers.

(a) Any person who is subject to these rules who wishes to obtain a waiver of specific rules in this part shall request the waiver in accordance with this section.

(b) The person requesting the waiver(s) shall submit the following information in writing to the department:

- (1) The name, mailing address, daytime telephone number, and email address, if any, of the person who is requesting the waiver and, if the person is other than an individual, the name, daytime telephone number, and email address, if any, of an individual who can be contacted by the department relative to the request;
- (2) A description of the facility or site to which the waiver request relates, including the name, address, and identification number of the facility or site;
- (3) Identification of the specific section of the rules from which a waiver is being sought;
- (4) A full explanation of why a waiver is being requested;
- (5) Whether the waiver is needed for a limited or indefinite period of time;
- (6) A full explanation with supporting data of the alternative(s), if any, proposed to be implemented or used in lieu of the requirement(s) for which the waiver is requested; and
- (7) A full explanation of how granting a waiver with the proposed alternative(s), if any, will meet the criteria specified in (c), below.

(c) The department shall not grant a waiver unless it determines that:

- (1) The requirement to be waived is not established by statute, unless the statute that establishes the requirement expressly authorizes the department to grant waivers of the requirement;
- (2) The intent of RSA 485-C to preserve and protect the natural quality of groundwater resources will be met; and
- (3) Granting a waiver will not result in any adverse effect on human health or the environment.

(d) The department shall include such conditions, including time limitations, as are necessary to ensure that the activities conducted pursuant to the waiver will meet the criteria specified in (c), above.

(e) The department shall issue a written response to a request for a waiver within 90 days of receipt of the request. If the department denies the request, the reasons(s) for the denial shall be clearly stated in the written response.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15 (from Env-Wq 401.10)

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APPENDIX A

<b>Rule Section(s)</b>	<b>State Statute(s) Implemented</b>	<b>Federal Regulations Implemented</b>
Env-Wq 401 (also see specific section listed below)	RSA 485-C:1; RSA 485-C:11	
Env-Wq 401.11	RSA 541-A:22, IV	

APPENDIX B: STATUTORY DEFINITIONS

**485-C:2**

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