

STATE OF NEW HAMPSHIRE
INTER-DEPARTMENT COMMUNICATION

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Bureau Administrator

Date May 6, 2010

Offices

Dept of Environmental Services
Water Division

SUBJECT Background Information and references for
WQSAC work on HB 1305 and HB 1348

TO Water Quality Standards Advisory
Committee

SITUATION

WQSAC has agreed to advise the House Resources, Recreation and Development Committee on four legislative proposals, contained in HB 1305 and HB 1348, that were referred to interim study by the 2010 Legislature:

In summary, the proposed legislation of HB 1305 and 1348 would:

- 1) Clarify the RSA 485-A definition of surface waters so that it is consistent with the Clean Water Act and with RSA 483-A
- 2) Specify in statute all the designated beneficial uses of New Hampshire surface waters
- 3) Incorporate Clean Water Act antidegradation requirements into statute.
- 4) Make all activities that cause violations of surface water quality standards unlawful and give DES enforcement powers. Current law is limited to discharges that cause violations.

This memo provides background information and website links that can serve as references and resources for WQSAC members and the workgroups for the topics above

CLEAN WATER ACT

The Clean Water Act (CWA) is federal legislation, adopted in 1972 as Public Law 92-500. It is also known as the 1972 Amendments to the Federal Water Pollution Control Act and 33 U.S.C. §1251 et seq. (1972). Congress made major amendments in 1977, and further amendments in 1981 and 1987.

See the EPA website <http://www.epa.gov/lawsregs/laws/cwa.html> for information about the CWA. A site with more information can be found at <http://www.epa.gov/watertrain/cwa/>

The full text of the current CWA with all amendments can be found at http://www.law.cornell.edu/uscode/33/usc_sup_01_33_10_26_20_I.html. This edition has the official numbering system of the United States Code. Sections of the CWA are more commonly referred to using the numbering system of the original legislation. The text of the CWA with the original numbering system can be found at <http://epw.senate.gov/water.pdf>

SURFACE WATER QUALITY STANDARDS (WQS)

I. Federal

The EPA website for WQS is at <http://www.epa.gov/waterscience/standards/>. A good place to start exploring this site is <http://www.epa.gov/waterscience/standards/about/>.

EPA has published a handbook which is a compendium of information on subjects related to WQS: <http://www.epa.gov/waterscience/standards/handbook/>

State WQS must have three components: designated uses; criteria to support the uses, and; an antidegradation policy. The first two components are required by the CWA section 303(b)(2)(A), which requires that “Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses.” Antidegradation is required by [40 CFR 131.12](#). It is a little hard to find the federal statutory language in the CWA that is the basis for this regulation. The federal history of antidegradation is at <http://www.epa.gov/waterscience/standards/handbook/chapter04.html#section1>

NH WQS are reviewed and approved by EPA Region I. The last official review and approval was in 1999. EPA approval means that NH WQS are at least as stringent as the CWA requires, and are enforceable in federal jurisdiction as well as in state. If EPA were to fail to approve the state WQS, then EPA would need to publish WQS for NH that meet CWA requirements. This would be done in the Federal Register. It has happened to other states (most recently Florida nutrient criteria), but not to NH.

II. State

State WQS consist of statutes [RSA 485-A:8 to RSA 485-A:11](#) and DES’ Surface Water Quality Regulations (SWR) [Env-Wq 1700](#). Like other New England states, New Hampshire had a surface water classification system and WQS in state statute long before the CWA was enacted in 1972. That system (which originally had four classes of surface water – A through D, but now has only two – A and B) was not changed as a result of the CWA, and there is still no direct correspondence between the language in state WQS and the three components of WQS that the CWA requires states to adopt.