

RULEMAKING NOTICE

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| Notice Number _____ | Rule Number _____ | Env-Dw 717 |
| 1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095 | 2. RSA Authority: _____ 3. Federal Authority: _____ 4. Type of Action: | RSA 485:2, V 40 CFR 141 Subpart S (§§400-405) |
| | Adoption _____ Amendment _____ Repeal _____ Readoption _____ Readoption w/amendment _____ | _____ _____ _____ X X |

5. Short Title: **Groundwater Monitoring and Treatment**

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-Dw 717, implement 40 CFR 141 Subpart S (§§400-405), known as the federal Ground Water Rule, promulgated by EPA under the Federal Safe Drinking Water Act and are required for the State to retain primacy. These rules establish a risk-based monitoring approach for public water systems (PWSs) using groundwater to ensure that the systems do not have fecal contamination, which is an indicator of the potential presence of viruses.

Most of the rules are scheduled to expire on November 21, 2017, and so are proposed to be readopted to ensure the continued protection of groundwater resources. **The existing rules will remain in effect pursuant to RSA 541-A:14-a, I, subject to the conditions specified therein.** As part of the readoption, amendments are proposed to (1) ensure equivalency with the federal Ground Water Rule; (2) adjust definitions to reflect Env-Dw 103; (3) clarify existing requirements and update cross-references; and (4) replace the term “owner” with “O/O” throughout Env-Dw 717 to reflect the change in terminology required by EPA.

6. (b) Brief description of the groups affected:

The rules will impact any owner/operator of a public water system having groundwater as a source.

6. (c) Specific section(s) of state statute or federal statute or regulation the rule is intended to implement:

| Rule Section(s) | State Statute(s) Implemented | Federal Regulation(s) Implemented |
|------------------------|------------------------------|---|
| Env-Dw 717.01 | RSA 485:3, I | 40 CFR 141.400(a) |
| Env-Dw 717.02 | RSA 485:3, I | 40 CFR 141.400(b) |
| Env-Dw 717.03 | RSA 485:3, I | 40 CFR 141.2, 141.400(b) & 142.16 |
| Env-Dw 717.04 | RSA 485:3, I & VI | 40 CFR 141.400(d) |
| Env-Dw 717.05 | RSA 485:3, I | 40 CFR 141.402(e) |
| Env-Dw 717.06 | RSA 485:3, I | 40 CFR 141.402 |
| Env-Dw 717.07 | RSA 485:3, I & VI | 40 CFR 141.402(f) & 141.403(b) |
| Env-Dw 717.08 | RSA 485:3, I & VI | 40 CFR 141.400(b) |
| Env-Dw 717.09 | RSA 485:3, I & VI | 40 CFR 141.400(a); 40 CFR 141.403(b)(1) |
| Env-Dw 717.10 | RSA 485:3, I & VI | 40 CFR 141.403(c) |
| Env-Dw 717.11 | RSA 485:3, I & VI | 40 CFR 141.400(a) |
| Env-Dw 717.12 | RSA 485:3, I & VI | 40 CFR 141.402(a) |
| Env-Dw 717.13 | RSA 485:3, I & VI | 40 CFR 141.402(a); 40 CFR 141.403(b)(1) |
| Env-Dw 717.14 | RSA 485:3, I & VI | 40 CFR 141.400(b) |
| Env-Dw 717.15 - 717.17 | RSA 485:3, I & VI | 40 CFR 141.402(b) |
| Env-Dw 717.18 | RSA 485:3, I & VI | 40 CFR 141.405(a) |
| Env-Dw 717.19 | RSA 485:3, I & VI | 40 CFR 141.405(b) |

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| Rule Section(s) | State Statute(s) Implemented | Federal Regulation(s) Implemented |
|-------------------------------|-------------------------------------|--|
| Env-Dw 717.20 | RSA 485:3, I & VI | 40 CFR 141.403 & 141.405(a) |
| Env-Dw 717.20 intro, (n), (s) | RSA 485:1; RSA 485:3, I & VI | 40 CFR 141.403; 40 CFR 141.405(a) |
| Env-Dw 717.21 | RSA 485:3, I & VI | 40 CFR 141.202; 40 CFR 141.203; 40 CFR 141.402(h); 40 CFR 141.404 |
| Env-Dw 717.22 | RSA 485:3, I & VI | 40 CFR 141.402(g) & 141.403(a) |
| Env-Dw 717.23 | RSA 485:3, I & VI | 40 CFR 141.400(a) |
| Env-Dw 717.24 | RSA 485:3, I & VI | 40 CFR 141.400(b) |
| Env-Dw 717.25 | RSA 485:3, I & VI | 40 CFR 141.400(a) |

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: Holly Green Title: DWGB Rules Coordinator
 Address: Dept. of Environmental Services Phone #: (603) 271-3114
 29 Hazen Drive; P.O. Box 95 Fax#: (603) 271-0656
 Concord, NH 03302-0095 E-mail: Holly.Green@des.nh.gov

The rules also can be viewed in PDF at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm> TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, January 12, 2018**

YOU MAY SUBMIT WRITTEN COMMENTS WITHOUT ATTENDING THE PUBLIC HEARING

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, January 4, 2018 at 10:00 AM**
 Place: **Room 110, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 17:163, dated 11/15/17:

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

The rules are required under the federal Safe Drinking Water Act, (42 U.S.C., § 300f) and the federal Ground Water Rule (40 CFR Subpart S (§§ 400-405)), in order for the state to retain primacy. Failure to adopt the rules could result in the loss of up to \$8 million in federal grant funding for the Department's drinking water program.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

While the proposed rules impose costs for investigative monitoring that are not directly attributable to the federal requirements, Env-Dw 717.04(c) provides that the Department will not require a political subdivision

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that owns a groundwater system to do the investigative monitoring if the political subdivision does not vote to fund investigative monitoring, unless the State pays the costs of such monitoring. The proposed rules thus do not create, modify, or expand the program in such a way as to require political subdivisions to make any expenditures, and so do not violate Part I, Article 28-a of the N.H. Constitution.