

## RULEMAKING NOTICE

Notice Number _____  1. Agency Name & Address:  Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Rule Number <b>Env-Wq 402.05, 402.24, 402.25, 402.255</b>  2. RSA Authority: <u>RSA 485-A:6, VII; RSA 485:3, X</u> 3. Federal Authority: <u>40 CFR 144, 145, &amp; 146</u> 4. Type of Action: Adoption <span style="float: right;"><u>  X  </u></span> Amendment <span style="float: right;"><u>          </u></span> Repeal <span style="float: right;"><u>          </u></span> Readoption <span style="float: right;"><u>          </u></span> Readoption w/amendment <span style="float: right;"><u>  X  </u></span>
5. Short Title: <b>Amendments relative to Groundwater Discharges of Wastewater Containing 1,4-Dioxane and the Required Response to Exceedances of Ambient Groundwater Quality Standards</b>	

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

1,4-Dioxane is a water contaminant of increasing concern. It is a likely human carcinogen and is prevalent in many commercially-available products, including personal care products. 1,4-Dioxane also is present in many industrial chemicals including solvents, cleaning chemicals, and ethylene glycol. It also is completely miscible in water and so travels with groundwater flow if it reaches that environment. The current ambient groundwater quality standard (AGQS) for 1,4-dioxane is being reduced in a separate rulemaking based on revised toxicity data that the U.S. EPA issued after the Department established the current AGQS. The Department had not reduced the AGQS previously because the reduced AGQS could be problematic for wastewater treatment facilities (WWTFs) that discharge to groundwater. The Department has now identified a source-control approach by which WWTFs that discharge to groundwater can accommodate the reduced AGQS. The approach is proposed to be added to Env-Wq 402, which establishes standards, criteria, and procedures for groundwater discharge permits, groundwater discharge registrations, and holding tank registrations to prevent pollution and protect groundwater. The focus of Env-Wq 402 is to minimize groundwater contamination from the improper disposal of waste and wastewater containing various contaminants produced by human activities. The rules are proposed to be amended to create the above-noted approach for WWTFs that discharge to groundwater.

Revisions to the required response to AGQS exceedances also are being proposed, to provide more detail about what testing must be done for exceedances and the time frame for responses.

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

The rules will affect any person that discharges wastewater to groundwater if any regulated contaminant in the groundwater discharge exceeds an AGQS.

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 Regulations Implemented
Env-Wq 402 (also see specific sections listed below)	RSA 485-C:1; RSA 485-C:4, VII; RSA 485-C:11	
Env-Wq 402.05	RSA 485-C:6	40 CFR 144, 145, & 146
Env-Wq 402.24, 402.25, 402.255	RSA 485-A:13, I(a)	40 CFR 144, 145, & 146

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

Name:	Debra Sonderegger	Title:	Principal Planner
Address:	Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-2862
		Fax#:	(603) 271-0656
		E-mail:	<a href="mailto:Debra.Sonderegger@des.nh.gov">Debra.Sonderegger@des.nh.gov</a>

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, February 2, 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 25, 2018 at 1:00 PM**  
Place: **Room 208C, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 17:176, dated 12/11/17:

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

When compared to the existing rules, the proposed rules will increase costs to independently owned businesses and political subdivisions that own a facility that discharges to ground water and exceeds an applicable Ambient Groundwater Quality Standard (AGQS). Not applicable to Env-Wq 402.255 as this is a new rule.

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

The federal Safe Drinking Water Act (42 U.S.C. section 300f) and the federal Underground Injection Control (UIC) program (40 CFR Part 144) require discharges to groundwater to be regulated to protect drinking water supplies. State rules must be kept current in order for the state to retain primacy. Failure to adopt rules could result in the loss of up to \$8 million in federal funding for the Department's drinking water programs.

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

The cost of the proposed rules will be higher for any political subdivision or independently owned business that owns a facility that discharges to groundwater and experiences an exceedance of the AGQS, due to the proposed requirements to investigate the exceedance more thoroughly. These costs cannot be determined due to a variety of factors that cannot be predicted.

**A. To State general or State special funds:**

None.

**B. To State citizens and political subdivisions:**

There will be no cost or benefit to State citizens. See #3 above for political subdivisions.

**C. To independently owned businesses:**

See #3 above.

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

While the proposed rules may result in increased costs to a limited number of political subdivisions, the Department believes that any increased costs do not violate Part I, Article 28-a of the N.H. Constitution under the decision of the N.H. Supreme Court in *City of Concord v. State*, 164 N.H. 130 (2012). In that case, the Court concluded that "to constitute a new, expanded or modified 'responsibility,' the state action must impose some substantive change to an underlying function, duty or activity performed or to be performed by local government." 164 N.H. at 141-142. Since any owner of a facility that discharges to groundwater has always been responsible for ensuring compliance with AGQS and for investigating any exceedances, the rules do not impose any substantive changes.