

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-Dw 200 RULE WAIVERS; CONFIDENTIAL BUSINESS INFORMATION; HEARING PROCEDURES

Statutory Authority: RSA 485:2, V; RSA 541-A:16, I(b)

REVISION NOTE:

Document #10607, effective 6-1-14, adopted Parts Env-Dw 201, 203, 204, and 205, and Env-Dw 202.01 and Env-Dw 202.02, under a new Chapter Env-Dw 200 entitled “Rule Waivers; Confidential Business Information; Hearing Procedures.” Document #10607 also readopted with amendments and renumbered former rule Env-Ws 301.04 entitled “Waivers” under the new subtitle as Env-Dw 202.03 through Env-Dw 202.07. The redesignation from subtitle Env-Ws to subtitle Env-Dw was done pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

The former rule Env-Ws 301.04 had last been filed under Document #8498, effective 11-30-05, but it did not expire on 11-30-13 since it was extended pursuant to RSA 541-A:14-a until replaced by the rules in Document #10607, effective 6-1-14.

Document #10607 replaces all prior filings for the former rule Env-Ws 301.04. The prior filings for this former rule, beginning with Document #6521, effective 6-4-97, which had readopted with amendments the entire Chapter Env-Ws 300, include the following documents:

#6521, eff 6-4-97
#8360, INTERIM, eff 6-4-05
#8498, eff 11-30-05

As practice and procedure rules, the rules in Chapter Env-Dw 200 under Document #10607 will not expire except pursuant to RSA 541-A:17, II.

PART Env-Dw 201 PURPOSE AND APPLICABILITY

Env-Dw 201.01 Purpose. The purpose of the rules in this chapter is to supplement the provisions of RSA 541-A and Env-C 200 relative to procedures applicable to proceedings under RSA 485 and the NH drinking water rules.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

Env-Dw 201.02 Applicability. The rules in this chapter shall apply to all procedures undertaken pursuant to RSA 485 and the NH drinking water rules.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

PART Env-Dw 202 WAIVER OF NH DRINKING WATER RULES

Env-Dw 202.01 Purpose. The purpose of the rules in this part is to accommodate situations where strict adherence to the NH drinking water rules could cause operational or economic consequences that are not outweighed by the public health benefit of complying with the rules as written.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

Env-Dw 202.02 Applicability. The rules in this part shall apply only to requirements that are not subject to the requirements of RSA 485:42 relative to variances and exemptions.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

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Env-Dw 202.03 Waiver Request Procedures.

(a) The owner of a public water system that is or would be adversely affected by the strict application of one or more rules in subtitle Env-Dw, or in Env-Ws 300 until such rules are moved to subtitle Env-Dw, who wishes to request a waiver of those rules shall request the waiver in accordance with this part.

(b) A request for a waiver shall:

- (1) Be submitted in writing to the department;
- (2) Include the information specified in Env-Dw 202.04; and
- (3) Be signed as specified in Env-Dw 202.05.

(c) Any waiver request that is submitted as part of an application for a permit or approval, or a modification thereof, shall be submitted with such application, or as soon thereafter as the need for the waiver is identified by the applicant or the department.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, *eff 6-1-14*

Env-Dw 202.04 Required Information. The request for a waiver shall include the following:

(a) Identification of the water system for which the waiver is being requested, by name, PWS identifier, and location of the system;

(b) A specific reference to each section of the rules for which a waiver is being sought;

(c) A full explanation of why a waiver is being requested, including an explanation of the operational or economic consequences of complying with the rule as written in comparison to the public health benefit of complying with the rule as written;

(d) If the owner proposes to use an alternative to the requirement for which a waiver is sought or a modification of the requirement, a complete explanation of the alternative or modification with data or other materials that support the explanation;

(e) Whether the waiver is sought for a specific period of time and, if so, how long the waiver will be needed; and

(f) A full explanation of why the owner believes that having the waiver granted will meet the criteria in Env-Dw 202.06.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, *eff 6-1-14*

Env-Dw 202.05 Signature Required.

(a) The owner shall sign and date the waiver request.

(b) The owner's signature shall constitute certification that:

- (1) The owner has personally examined and is familiar with the information submitted in or with the waiver request;
- (2) Based on the owner's inquiry of those individuals immediately responsible for obtaining the information, the owner believes that the submitted information is true and correct to the best of the individual's knowledge and belief; and

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(3) The owner understands that he or she is subject to the penalties specified in RSA 641:3 for making unsworn false statements.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

Env-Dw 202.06 Criteria.

(a) Subject to (b), below, the department shall grant a waiver if it finds that:

- (1) The requirement is not mandated by state or federal statute;
- (2) Granting the waiver, with or without conditions, will be as protective of public health as complying with the requirement as written;
- (3) Granting the waiver, with or without conditions, will not adversely impact the department's obligations under RSA 485 and obligations associated with maintaining primacy from the EPA; and
- (4) Strict adherence to the NH drinking water rules could cause operational or economic consequences that are not outweighed by the public health benefit of complying with the rules as written.

(b) The department shall consider economic, technological, practical application, and safety issues in evaluating a waiver request, but shall not grant a waiver solely on the basis of cost.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

Env-Dw 202.07 Decision.

(a) The department shall notify the owner in writing of its decision on the waiver request.

(b) If the waiver request is denied, the notice sent pursuant to (a), above, shall specifically set forth the reason(s) for the denial.

(c) If a waiver is granted, the department shall include such conditions in the waiver as are needed to ensure that the criteria specified in Env-Dw 202.06(a) are met.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

PART Env-Dw 203 CLAIMS OF CONFIDENTIALITY

Env-Dw 203.01 Purpose. The purpose of this part is to provide a mechanism by which a person who submits information to the department can protect confidential business information or trade secrets.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

Env-Dw 203.02 Procedure. Subject to Env-C 208.05, any person submitting information to the department may make a claim of confidentiality for all confidential business information, or any part thereof, pursuant to the criteria and procedures of Env-C 208.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

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PART Env-Dw 204 NON-ADJUDICATIVE PUBLIC HEARINGS

Env-Dw 204.01 Applicability. Non-adjudicative public hearings shall be held in the following cases:

- (a) When proposing to adopt public water system rules;
- (b) For any matter that is not a contested case for which the department is required by law or by the public water system rules to hold a hearing; and
- (c) For any matter normally not requiring public participation but deemed by the department to have significant public interest.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

Env-Dw 204.02 Procedure. The procedures for a non-adjudicative public hearing shall be as specified in the provisions of Env-C 200 that are applicable to non-adjudicative hearings.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

PART Env-Dw 205 ADJUDICATIVE HEARINGS

Env-Dw 205.01 Applicability. An adjudicative hearing shall be held by the department in the following cases:

- (a) To give a permittee or other affected party an opportunity to show cause why the department should not proceed with a proposed decision to suspend or revoke any permit under RSA 485 and the public water system rules; and
- (b) In any other case that is a contested case as defined by RSA 541-A, provided however that all proceedings relative to applications for permits or approvals shall be non-adjudicative proceedings under RSA 541-A:29, II(a) until such time as the department issues a final decision on the application.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

Env-Dw 205.02 Procedure. The procedures for an adjudicative hearing shall be as specified in RSA 541-A and the provisions of Env-C 200 that are applicable to adjudicative hearings.

Source. (See Revision Note at chapter heading for Env-Dw 200) #10607, eff 6-1-14

Appendix

Rule Section(s)	State Statute(s) Implemented
Env-Dw 201	RSA 485:1-16
Env-Dw 202	RSA 485:1-16; RSA 541-A:22, IV
Env-Dw 203	RSA 485:1-16
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