

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-Wr 900 OFFICIAL LIST OF PUBLIC WATERS

PART Env-Wr 901 PURPOSE AND APPLICABILITY

Env-Wr 901.01 Purpose. The purpose of these rules is to establish the procedures for the publication and maintenance of the official list of public waters required by RSA 271:20.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

Env-Wr 901.02 Applicability. These rules shall apply to the creation and maintenance of the official list of public waters.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

PART Env-Wr 902 DEFINITIONS

Env-Wr 902.01 “Department” means the New Hampshire department of environmental services.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

Env-Wr 902.02 “Official list” means the official list of public waters required by RSA 271:20.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

Env-Wr 902.03 “Status” means whether a water meets one or more of the categories listed in Env-Wr 903.01 and, if so, which one(s).

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

Env-Wr 902.04 “Water” means a surface water body or water course.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

PART Env-Wr 903 CONTENTS AND DETERMINATIONS

Env-Wr 903.01 Waters Listed.

(a) The official list shall include the following:

- (1) “Great pond” as defined by RSA 4:40-a, as reprinted in Appendix B;
- (2) “Public water” as defined in RSA 215-A:1, as reprinted in Appendix B;
- (3) “Public bodies of water” as defined in RSA 233-A:1, as reprinted in Appendix B;
- (4) “State-owned public waters” as described in RSA 271:20, I, as reprinted in Appendix B;
- (5) “Public waters” as defined in RSA 371:17, as reprinted in Appendix B;
- (6) “Public waters” as defined in RSA 482-A:16 and RSA 482-A:21, as reprinted in Appendix B;
- (7) “Publicly-owned bodies of water” or “public-owned water bodies” as defined in RSA 482-A:16, as reprinted in Appendix B;
- (8) “Public waters” as defined in RSA 483-B:4, XVI, as reprinted in Appendix B;
- (9) Public tidal waters as described by the New Hampshire supreme court in Purdie v. Attorney General, 143 N.H. 661 (1999); and
- (10) Public rivers or streams as described by the New Hampshire supreme court in St. Regis Paper Co. v. New Hampshire Water Resources Board, 92 N.H. 164 (1942).

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(b) The official list shall indicate which statute(s) each listed water is subject to.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

Env-Wr 903.02 Determinations. The department shall determine the status of water in New Hampshire based on best available evidence, including the following:

- (a) Geographical information system database sets created or maintained by:
  - (1) The department;
  - (2) The U.S.D.A. Natural Resources Conservation Service;
  - (3) The United States Geological Survey (“USGS”);
  - (4) The United States Environmental Protection Agency;
  - (5) The complex systems research center of the university of New Hampshire; or
  - (6) Any combination of the above.
- (b) Current and historic USGS topographic mapping;
- (c) Other historic maps;
- (d) Historic photographs, including aerial photographs;
- (e) Depth contour mapping;
- (f) Physical evidence such as shoreline soil, slope and vegetative conditions;
- (g) Historical public uses of the water; and
- (h) Any other data collected by the department to determine the status of a water.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

Env-Wr 903.03 Publication of the Official List.

- (a) The department shall make paper copies of the official list available at its offices.
- (b) The department shall post the official list on its internet site.
- (c) The department shall identify the date the official list was last updated on the list.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

PART Env-Wr 904 REVIEW AND REVISION OF THE OFFICIAL LIST

Env-Wr 904.01 Official List Maintenance and Updates.

- (a) The department shall maintain the official list to reflect the most accurate information, as listed in Env-Wr 903.02, that becomes available.
- (b) The department shall publish each revised official list as specified in Env-Wr 903.03.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13

Env-Wr 904.02 Initiation of Investigation. The department shall conduct an investigation into the listed status of a water whenever:

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- (a) It receives conflicting information from credible sources regarding the status of a water; or
- (b) So requested by the attorney general.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13  
(from Env-Wr 904.01)

Env-Wr 904.03 Posting of Notice.

(a) If the department initiates an investigation pursuant to Env-Wr 904.02, it shall issue a notice that identifies the following:

- (1) The name(s) of the water and the town(s) in which the water is located;
- (2) The current listed status of the water;
- (3) The sources of the conflicting information and a summary of the conflict;
- (4) The deadline for submitting factual information for consideration in its decision, which shall be no sooner than 30 days from the date the notice is issued; and
- (5) The name and telephone number of the contact person at the department.

(b) The department shall send a copy of the notice to:

- (1) The attorney general;
- (2) The department of resources and economic development;
- (3) The fish and game department;
- (4) The office of energy and planning;
- (5) The department of safety;
- (6) The department of transportation;
- (7) The public utilities commission; and
- (8) The governing body of each community in which the water is located.

(c) The department also shall post the notice on its website.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13  
(from Env-Wr 904.02)

Env-Wr 904.04 Time for Public Comment. Any person may provide factual information pertaining to the status of the water to the department prior to the deadline specified in the notice.

Source: #8383, eff 6-22-05; ss by #10417, eff 9-24-13  
(from Env-Wr 904.03)

Env-Wr 904.05 Decision.

(a) The department shall issue a final determination on the status of the water within 120 days of the posting of the notice.

(b) The department shall send a copy of the decision to all who were sent a copy of the notice pursuant to Env-Wr 904.03(b).

(c) The department shall post a copy of the decision on the department’s website.

(d) If the decision results in a change to the official list, the department also shall revise the official list by publishing an updated list as specified in Env-Wr 903.03.

Source. #10417, eff 9-24-13 (from Env-Wr 904.04)

**Appendix A**

<b>Rule Section(s)</b>	<b>State Statute Implemented</b>
Env-Wr 900	RSA 271:20, II

**Appendix B: Statutory Definitions**

RSA 4:40-a: For the purposes of this section great pond is defined as a public water of more than 10 acres.

RSA 215-A:1, XI: “Public water” means any public body of water as defined by RSA 271:20 which has been frozen over and is sufficient to hold any person or vehicle, whatsoever.

RSA 233-A:1, V: “Public bodies of water” means public waters as defined in RSA 271:20 and any impoundment of a stream, lake, pond, or tidal or marine waters of 10 acres or more, or any other body of water owned by the state or by a state agency or department.

RSA 271:20, I: All natural bodies of fresh water situated entirely in the state having an area of 10 acres or more are state-owned public waters, and are held in trust by the state for public use; and no corporation or individual shall have or exercise in any such body of water any rights or privileges not common to all citizens of this state; provided, however, the state retains its existing jurisdiction over those bodies of water located on the borders of the state over which it has exercised such jurisdiction.

RSA 371:17: For the purposes of this section, “public waters” are defined to be all ponds of more than 10 acres, tidewater bodies, and such streams or portions thereof as the [public utilities] commission may prescribe.

RSA 482-A:16: For the purposes of this subdivision, “public waters” means all natural ponds of more than 10 acres, and “publicly-owned bodies of water” or “public-owned water bodies” means those bodies of water whose artificial high water level is maintained by the state’s exercise of its flowage rights on these ponds.

RSA 482-A:21, I: For the purposes of this subdivision, “public waters” are defined as all natural ponds of more than 10 acres.

RSA 483-B:4, XVI: “Public waters” shall include:

- (a) All lakes, ponds, and artificial impoundments greater than 10 acres in size.
- (b) Coastal waters, being all waters subject to the ebb and flow of the tide, including the Great Bay Estuary and the associated tidal rivers.

(c) Rivers, meaning all year-round flowing waters of fourth order or higher and all rivers and river segments designated as protected under RSA 483:15. ...