

Contents

Introduction	iii
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PART I: Options

Option 1: Reclassification of Groundwater to GAA or GA1	I-1
Option 2: Adoption of a Local Health Ordinance in Conjunction with Reclassification of Groundwater to GAA or GA1	I-5
Option 3: Adoption of a Local Health Ordinance for Wellhead or Groundwater Protection without Reclassification	I-6
Summary	I-7

PART II: Model Health Ordinance to be Used in Conjunction with Reclassification of Groundwater (Option 2)

Article I: Authority	II-1
Article II: Purpose	II-1
Article III: Inventory of Potential Contamination Sources (PCSs)	II-2
Article IV: Local Wellhead Protection Management Program	II-2
Article V: Other Regulations	II-12
Article VI: Severability	II-12
Article VII: Certification of Adoption	II-13

Attachments and Appendices for PART II

Attachment I: Potential Contamination Sources Identified by the New Hampshire Wellhead Protection Program	II-15
Attachment II: Sample Educational Material/ Flyer	II-16
Attachment III: Sample Letter to Property Owners	II-17
Attachment IV: DES PCS Inventory and Inspection Form	II-18
Attachment V: Sample Certificate of Compliance with Best Management Practices	II-25
Attachment VI: Sample Written Warning	II-26
Attachment VII: Sample Cease And Desist Order	II-27
Attachment VIII: Sample Removal Order	II-28
Appendix I: N.H. Code Of Administrative Rules Env-Ws 421	II-29
Appendix II: Information on Fines for BMP Violations	II-35

Contents (continued)

PART III: Model Health Ordinance for Wellhead or Groundwater Protection Independent of Groundwater Reclassification (Option 3)

Article I:	Authority	III-1
Article II:	Purpose	III-1
Article III:	Inventory of Potential Contamination Sources (PCSs)	III-2
Article IV:	Local Wellhead or Groundwater Protection Management Program	III-2
Article V:	Other Regulations	III-10
Article VI:	Severability	III-10
Article VII:	Certification of Adoption	III-11

Attachments and Appendices for PART III

Attachment I:	Potential Contamination Sources Identified by the New Hampshire Wellhead Protection Program	III-13
Attachment II:	Sample Educational Material	III-14
Attachment III:	Sample Letter To Property Owners	III-15
Attachment IV:	DES PCS Inventory and Inspection Form	III-16
Attachment V:	Sample Certificate Of Compliance With Best Management Practices	III-23
Attachment VI:	Sample Written Warning	III-24
Attachment VII:	Sample Removal Order	III-25
Appendix I:	NH Code Of Administrative Rules Env-Ws 421	III-26
Appendix II:	Information on Fines for BMP Violations	III-32

List of Tables and Fact Sheets

Summary of Groundwater Classifications	I-2
Groundwater Reclassification Fact Sheet	I-3

Introduction

This document contains two model health ordinances that can be used by municipalities to carry out local programs for groundwater or wellhead protection. Wellhead (or groundwater) protection is an approach to protecting areas that contribute water to public water supply wells and other locally important groundwater. The basic idea behind New Hampshire's Wellhead Protection Program is to authorize local entities to implement protection programs which include: delineation of the areas to be protected, identification of threats to groundwater within those areas, and active management of the threats through a combination of education and inspections. This approach to protecting valuable groundwater is based on the concept that hazardous substances regulated by the Environmental Protection Agency **can** be used in a manner that minimizes the risk of a spill or other release to groundwater. Accordingly, the focus of a wellhead or groundwater protection program is on management as opposed to prohibition of land uses which utilize regulated substances.

While this document does not describe prohibitory, or zoning-based, approaches to water supply protection, such programs may be appropriate in some situations. For example, zoning approaches might be appropriate where the wellhead or groundwater area has little or no non-residential development and the municipality has land outside the wellhead or groundwater area that is suitable for such development and adequate to meet the municipality's goals for economic development.

Management of potential sources of contamination can be achieved through a combination of education and inspections. While education activities involve all residents and landowners in the wellhead or groundwater area, inspections involve only those activities that utilize large quantities of regulated substances. The purpose of the inspections is to ensure that best management practices (BMPs) are being followed. BMPs are common-sense operational procedures for handling, storing and disposing of regulated substances. They have been adopted in the form of N.H. Administrative Rules Env-Ws 421. Although they apply to all potential contamination sources in the state, a local official would only inspect those activities operating in areas designated for protection.

There are a number of approaches to implementing wellhead or groundwater protection programs based on active management of potential contamination sources. One option is to reclassify groundwater as allowed for under State law RSA 485-C. Another is through the adoption of a local health ordinance in conjunction with reclassification. A third is to adopt a local health ordinance independent of reclassification. This document begins by presenting each of these options and identifying the advantages and disadvantages associated with each. It then presents two model health ordinances, one to be used in conjunction with reclassification and one designed to implement a protection program without reclassifying groundwater.

PART I: Options

Options

Option 1: **Reclassification of Groundwater to GAA or GA1**

RSA 485-C, the Groundwater Protection Act, establishes a groundwater classification system which is summarized in Table 1 (page 3). By obtaining a reclassification of groundwater to either of the two highest classes, a local entity is authorized to implement a protection program to actively manage potential threats. Prior to reclassification the local entity must delineate or otherwise define the area to be reclassified. To reclassify a wellhead protection area (WHPA) as GAA, the WHPA must be delineated according to proper procedures. For information on delineating wellhead protection areas, contact the Wellhead Protection Program at 271-1168. To reclassify other locally-valuable groundwater as GA1, the area must be defined. A potential contamination source inventory and management program are also prerequisites to reclassification of groundwater. Pages 4 and 5 contain a fact sheet on the reclassification process.

Advantages

One advantage of reclassifying groundwater is that it provides the local entity with all the necessary authority to implement a protection program based on education and inspections. Under RSA 485-C:16, a local health officer may issue cease and desist orders for violations of the BMP rules in Env-Ws 421. Reclassification to GAA provides two additional benefits. First, the statute prohibits a few high risk land uses within class GAA groundwater, including: hazardous waste disposal facilities, solid waste landfills, outdoor bulk storage of road salt, junkyards, snow dumps, and wastewater or septage lagoons. Second, groundwater monitoring wells are also required for existing high risk land uses. These can be useful to verify that groundwater contamination is not taking place. Monitoring wells also allow for early detection and remediation of groundwater contamination.

Disadvantages

One disadvantage of reclassification alone is that currently there is no provision in the law for local entities to charge fees to cover the cost of compliance inspections. Another disadvantage is that although the local health officer can conduct compliance inspections and even issue cease and desist orders, he or she is unable to enforce those orders in the event of persistent violations. Enforcement must be referred to New Hampshire DES, which has limited resources for inspections and enforcement.

TABLE I

SUMMARY OF GROUNDWATER CLASSIFICATIONS

Class	Groundwater Included	Effect of Classification
GAA	Groundwater within delineated WHPAs	Class identified Local wellhead protection program authorized High risk uses prohibited and/or monitored
GA1	Groundwater of high value for present or future water supply	Class identified Local wellhead protection program authorized
GA2	Groundwater within aquifers identified as highly productive for potential use as public water supply by the USGS	Class identified Local wellhead protection program not authorized
GB	Groundwater not assigned to other classes	Class identified Local wellhead protection program not authorized

Source: RSA 485-C, the Groundwater Protection Act of 1991.

Note: Although RSA 485-C does not specifically authorize local wellhead or groundwater protection programs for class GA2 and GB groundwater, it does not in any way limit the authority of local officials to adopt water resource protection measures under the existing planning and land use statutes.

Groundwater Reclassification Fact Sheet

fact sheet, page 2

**Option 2:
Adoption
of a Local Health
Ordinance in
Conjunction with
Reclassification of
Groundwater to
GAA or GA1**

RSA 147:1, I. authorizes local health officers to make regulations (or ordinances) that, in their judgement, are required for the health and safety of the people. Protection of public drinking water supply wells or other locally important groundwater clearly falls within this broad grant of power. A health ordinance is relatively easy to adopt. It takes effect when approved by the selectmen, recorded by the town clerk, and published in a newspaper of general circulation in the town, or when copies of it have been posted in two or more public places in town.

A local health ordinance is not required to implement a wellhead or groundwater protection program based on education and inspection. However, a health ordinance can complement the benefits of reclassification as described under the advantages section.

Advantages

One advantage of coupling a health ordinance with a reclassification is the ability to expand the list of potential contamination sources in order to regulate additional land uses that are of local concern. The health ordinance can also strengthen the benefits of reclassification by prescribing best management practices that are not included in the N.H. Admin. Rules Env-Ws 421. Also, under RSA 41:9-a, an annual or special town meeting may authorize the selectmen to establish or amend fees. If such a vote has been taken, and the health ordinance is ratified by a vote at town meeting, fees to cover the cost of BMP compliance inspections can be instituted by the ordinance.

A health ordinance also gives the health officer enforcement powers in addition those that come with reclassification. With a health ordinance in force, the health officer may issue removal orders in cases of serious or persistent violations. Those orders may be enforced on the local level through the courts, independent of enforcement action by New Hampshire DES.

A health ordinance may also help to more clearly define the procedures and responsibilities for local implementation of the management program to assure consistency with the town's existing administrative and regulatory processes.

Disadvantages

The disadvantage of adopting a local health ordinance in conjunction with reclassification is that, if the program to be implemented is fully consistent with RSA 485:C, a local ordinance is unnecessary. Another disadvantage is that enforcement of local removal orders may require the use of town funds.

Option 3:
Adoption
of a Local Health
Ordinance for
Wellhead or Ground-
water Protection
Independent of
Reclassification of
Groundwater to
GAA or GA1

A local health ordinance can be adopted independently of reclassification to implement a wellhead or groundwater protection program.

Advantages

The advantage of adopting a health ordinance for wellhead or groundwater protection independent of reclassification of groundwater is the flexibility to design a local management program that is tailored to suit a municipality's individual needs. This may be appropriate for a small town that does not have adequate staff to implement all of the inventory and inspection requirements associated with reclassifying groundwater. The health officer may choose to include only the land uses that are of local concern on the list of potential contamination sources and to include more specific best management practices for those land uses. The option to include inspection fees is an additional benefit.

Disadvantages

The disadvantages of an independent health ordinance are that high risk land uses would not be prohibited in wellhead or groundwater areas by reclassification of groundwater. The same holds true for the groundwater monitoring requirements for existing high risk land uses. These uses could, however, be prohibited or be required to meet design or performance standards included in the local zoning ordinance. Finally, while the local health officer has the ability to enforce the BMP rules, New Hampshire DES does not. The enforcement of local removal orders may require the use of town funds.

Summary

The different options for implementing local wellhead and groundwater protection programs presented in this document are all based on active management of potential contamination sources rather than prohibition of land uses. The most appropriate approach or combination of approaches for a municipality should be based on local needs and priorities. Therefore, two model health ordinances are presented here to allow for a choice of options. The first model is designed to be used in conjunction with reclassification of groundwater while the second is to be used independently of reclassification to protect valuable groundwater.

For further information about New Hampshire's Wellhead Protection Program, the Groundwater Protection Act (RSA 485-C), and/or groundwater reclassification, please contact the Department of Environmental Services at 271-1168.

**PART II: Model Health Ordinance to be Used in
Conjunction with Reclassification of Groundwater
(Option 2)**

**PART II: Model Health Ordinance to be Used
in
Conjunction with Reclassification of Groundwater**

MODEL ORDINANCE

EXPLANATORY NOTES

Article I. Authority:

This ordinance was recommended by the Health Officer and approved by the Board of Selectmen of _____ (Town/City) under the authority granted in RSA 147:1, entitled "Local Regulations".

"RSA 147:1,I. The Health Officers of towns may make regulations for the prevention or removal of nuisances and such other regulations relating to the public health as in their judgement the health and safety of the people require, which shall take effect when approved by the selectmen, recorded by the town clerk, and published in some newspaper printed in the town, or when copies thereof have been posted in 2 or more public places in the town."

Article II. Purpose:

To provide the framework for the potential contamination source (PCS) management program for the areas that have been reclassified as [GAA or GA1] under the groundwater protection act (RSA 485-C); to complement the benefits of reclassification of groundwater; and to protect the public health and safety of the people of the Town/City of _____.

A local health ordinance is not required to implement a PCS management program in accordance with RSA 485-C:8, III. However, a health ordinance can complement the benefits of reclassification as described in Part I.

(Note: See A Guide to the New Hampshire Wellhead Protection Program and the Groundwater Protection Act, (Department of Environmental Services, October 1991), for a description of the groundwater classification program.)

MODEL ORDINANCE**EXPLANATORY NOTES****Article III. Inventory of Potential Contamination Sources (PCSs)**

An inventory of PCSs that are located within areas that have been reclassified as [GAA or GA1] groundwater was prepared prior to the adoption of this ordinance.

An inventory of PCSs is required as a prerequisite to reclassification of groundwater. Guidance for performing the inventory is available from the N.H. Wellhead Protection Program (271-1168).

Section III.01 Place of Filing

The inventory, which is on file in the office of the health officer, is available for public review during regular business hours.

Attachment I presents the list of PCSs contained in the Groundwater Protection Act of 1991 (RSA 485-C:7, II). A municipality has the option to include additional land uses on the list of PCSs that is adopted in a local health ordinance. This allows a municipality to go beyond the authority granted by reclassification to address local concerns that are not addressed by the Groundwater Protection Act. If a municipality chooses to expand the list, the additional land uses should also be included in the PCS inventory.

Section III.02 PCS Inventory Update

The inventory of PCSs shall be updated by the health officer at least once every three years.

RSA 485-C:8,III requires that the inventory of PCSs be updated at intervals not to exceed three years in order to maintain a classification of GAA or GA1.

Article IV. Local Wellhead Protection Management Program

The key to a protection program that is consistent with the State's Wellhead Protection Program is active management including: education of all PCSs and periodic inspection of activities using larger than household quantities of regulated substances. The following sections detail how this should be accomplished.

MODEL ORDINANCE

EXPLANATORY NOTES

The groundwater classification process requires that a public informational meeting be held locally prior to applying for reclassification. This meeting provides a forum to explain the details of the program to citizens that may either be interested in or affected by reclassification. It should provide a forum for education, discussion and development of local support for the wellhead program.

It is recommended that the coordinating mechanism for implementing a protection program consist of a local wellhead protection team including representatives of such groups as the public water supplier, board of health, board of selectmen, planning board, conservation commission and local business association or chamber of commerce.

Section IV.01 Applicability:

MODEL ORDINANCE

This ordinance shall apply to all PCSs within areas that have been reclassified as [GAA or GA1] groundwater in the Town/City of _____.

(Note: These areas are delineated on a map that is available for public viewing in the office of the health officer.)

EXPLANATORY NOTES

A GA1 area is an area of locally important groundwater.

A GAA area is a wellhead protection area. RSA 485:1-a, defines a wellhead protection area as "...the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field."

DES has delineated many wellhead protection areas and has developed a methodology for those remaining. Wellhead protection area delineation information can be obtained by contacting the Wellhead Protection Program at 271-1168.

Whatever area is to be protected should be delineated on a map and included as an integral part of the water resources section of the master plan.

Section IV.02 Best Management Practices (BMPs) Required

MODEL ORDINANCE

BMPs described in N.H. Admin. Rule Env-Ws 421 (Appendix I), shall be utilized by all PCSs in New Hampshire which use larger than household quantities of regulated substances, including those located within the areas reclassified as [GAA or GA1] in the Town/City of _____.

(Note: Through reclassification and this ordinance, the municipality is authorized to manage PCSs in reclassified areas in order to ensure compliance with BMPs.)

EXPLANATORY NOTES

RSA 485-C:8, III (d) requires that the management program for areas reclassified as GAA or GA1 include ensuring PCSs are in compliance with the BMPs adopted by DES as N.H. Admin. Rule Env-Ws 421.

The BMPs (see Appendix I) apply only to those PCSs that use larger than household quantities of regulated substances. The BMPs required by Env-Ws 421 are basic, common sense operating procedures. They include such requirements as structural containment in storage areas to contain potential spills and the use of drip pans for transferring chemicals.

Not all PCSs listed in the statute are covered by the BMPs. In the future DES will develop either administrative rules or educational guidance materials for the potential contamination sources that are not currently addressed.

In the interim, specific requirements for such things as residential heating oil tanks, road salt storage areas, and septic system maintenance procedures can be developed locally and adopted as part of a health ordinance.

All PCSs on Attachment I should be sent groundwater protection educational material. Attachment II gives an example of an educational flyer that can be used.

MODEL ORDINANCE

Groundwater protection educational materials shall be provided to all PCSs at least once every three years.

Section IV.03 Notification of PCS Owners:

In addition, the owner of each PCS which is located within areas reclassified as GAA or GA1 shall receive a notification letter from the health officer, at least once every three years, which indicates:

The date when the health officer will perform the next BMP compliance inspection;

the purpose of that inspection; and

a statement that activities performed on-site are subject to inspection by the local entity for compliance with BMPs required by N.H. Admin. rules Env-Ws 421.

Section IV.04 Best Management Practices (BMP) Compliance Inspection Required:

All PCSs using larger than household quantities of regulated substances located within areas reclassified as GAA or GA1 groundwater shall be inspected by the local health officer in order to assure compliance with BMPs at intervals not to exceed once every three years.

EXPLANATORY NOTES

Note: It is recommended that the local entity send the educational material contained in Attachment II and III to all residential properties and businesses within the area to be protected that are not on the PCS list, even though they aren't using large quantities of regulated substances. This will help to minimize the risk from these land uses.

RSA 485-C:8, III (b) requires that each owner of a PCS using larger than household quantities of regulated substances in an area classified as either GAA or GA1 be notified by a letter stating that the activity is being conducted within the contributing area of a class of groundwater designated for protection because of its high value for drinking water supply.

The letter must also state that the activity is subject to BMPs, in accordance with state administrative rules, and provide information concerning where copies of BMPs can be obtained.

A sample correspondence that could be used to develop a letter specific to a municipality's individual needs and priorities is presented in Attachment II.

RSA 485-C:15 authorizes any Health Officer to enter any land or establishment for the purpose of administering provisions of RSA 485-C, and at reasonable times, to have access to any facility subject to the statute. RSA 147:5 also authorizes the Health Officer to

MODEL ORDINANCE

The health officer shall fill out an inspection form upon completion of each BMP compliance inspection. One copy of the form shall be provided to the PCS owner and one copy shall be kept in the official records of the health officer.

Section IV.05 Determination of Compliance or Violation of BMPs:

a. Certificate of Compliance:

1. A certificate of compliance shall be issued by the health officer, if the PCS is found to employ BMPs in accordance with N.H. Code of Admin. Rules Env-Ws 421, based upon a site inspection performed in accordance with Article IV.04 of this ordinance. The certificate shall be good for a period of three years.

EXPLANATORY NOTES

employ assistants that could assume responsibility for performing BMP compliance inspections.

Attachment IV presents the draft BMP compliance inspection form developed by DES for implementation of the local management program for groundwater reclassified as GAA or GAI. Revisions may be necessary if a municipality proposes additional BMPs that are not contained in N.H. Admin. Rules Env-Ws 421.

Note: When completing the first portion of the inspection form, if it is determined that the facility does not use larger than household quantities of regulated substances, it is unnecessary to complete the inspection. The facility should remain on the inventory so that in three years it can be reevaluated for its use of regulated substances.

A certificate of compliance can be issued after a satisfactory inspection of a PCS. (Note: A management program authorized by reclassification alone does not require issuance of certificates of compliance, although it is a suggested practice. This section is optional for programs jointly authorized by reclassification of groundwater and the adoption of a local health ordinance.)

MODEL ORDINANCE

A certificate of compliance, issued in accordance with this ordinance, is not intended in any way to limit the powers of the health officer to enter property to perform additional inspections for the purpose of administration of this ordinance.

b. Written Warning of Violation

1. A written warning of violation shall be issued by the health officer within thirty days, if the PCS is found to not employ BMPs in accordance with Env-Ws 421; and the violation is not an immediate threat to public health and safety, in the opinion of the health officer.

2. The written warning shall:

- Specify the actions or conditions which violate BMPs;
- identify what needs to be done to correct the violation(s); and
- specify a reasonable time frame within which the violation shall be corrected.

3. One copy of the written warning shall be provided to the PCS owner and one shall be kept in the official records of the health officer.

EXPLANATORY NOTES

The Health Officer may issue a certificate of compliance for a finite period. The dates of issuance of current certificates can be used to establish an ongoing schedule for notification and inspection.

Attachment V is a sample certificate of compliance form that can be used as a model to develop one that is specific to a municipality's individual needs and administrative processes.

This allows the health officer the discretion to issue a written warning after an unsatisfactory inspection of a PCS, if the violation is not an immediate threat to public health and safety. This administrative option provides the opportunity to foster a good working relationship between the health officer and the PCS landowner.

Attachment VI is a sample written warning form that can be used as a model to develop one that is specific to a municipality's individual needs and administrative processes.

MODEL ORDINANCE

EXPLANATORY NOTES

c. Cease and Desist Order

1. A cease and desist order shall be issued by the health officer if the PCS is found to not employ BMPs in accordance with Env-Ws 421 and Section IV.02 of this Ordinance and an immediate threat to public health and safety exists in the opinion of the health officer; or a violation is not corrected within the time frame specified in a written warning issued by the health officer. Any person to whom a cease and desist order has been issued may request review of the order by the Department of Environmental Services as specified in RSA 485-C:16 I.

Following an unsatisfactory inspection of a PCS where the violation either is an immediate threat to public health and safety, or a violation has not been corrected within the time frame specified in a written warning issued by the health officer, the health officer can issue either a cease and desist order or a removal order. The choice depends on which enforcement process (see Section IV.06) is preferred.

RSA 485-C:16 authorizes local health officers to have concurrent jurisdiction to issue cease and desist orders against any violation of the BMP rules.

2. The order shall:

- Specify the actions or conditions which violate BMPs;
- identify what needs to be done to correct the violation(s); and
- specify the time frame within which the violation shall be corrected.

Such orders shall spell out the specific acts which are alleged to be in violation and the specific activities that are to be enjoined.

Attachment VII is a sample cease and desist order form that can be used as a model to develop one that is specific to a municipality's individual needs and administrative processes.

3. One copy of the cease and desist order shall be provided to the PCS owner, one copy shall be sent to the State of N.H., DES, Wellhead Protection Program, 6 Hazen Drive, Concord, N.H. 03301, and one shall be kept in the official records of the health officer.

This is similar to the procedure currently used by the Division of Public Health Services for health officer inspection reports for residential child care agencies in accordance with N.H. Code of Admin. Rules He-C 4002.13.

MODEL ORDINANCE**EXPLANATORY NOTES****d. Removal Order**

1. A removal order shall be issued by the health officer if the PCS is found to not employ BMPs in accordance with Section IV.02 of this ordinance and an immediate threat to public health and safety exists in the opinion of the health officer; or if a violation is not corrected within the time frame specified in a written warning issued by the health officer.

A removal order is another option the health officer has to correct a violation of the BMP rules. A removal order can be issued after an unsatisfactory inspection of a PCS, where the violation either: is an immediate threat to public health and safety; or a violation has not been corrected within the time frame specified in a written warning issued by the health officer.

2. The removal order shall:

- Specify the actions or conditions which violate BMPs;
- identify what needs to be done to correct the violation(s); and
- specify the time frame within which the violation shall be corrected, based on the degree of threat to public health and safety.

RSA 147:4 authorizes the Health Officer to notify the owner or occupant of any building, vessel, premises or property to remove or destroy any nuisance or other thing therein deemed by them, on examination, to be injurious to the public health, within a limited time.

Attachment VIII is a sample removal order form that can be used as a model to develop one that is specific to a municipality's needs and administrative processes.

3. One copy of the removal order shall be provided to the PCS owner and one shall be kept in the official records of the health officer.

Section IV.06 Enforcement of BMPs

The Health Officer of the Town of _____ shall be responsible for enforcement of the provisions of this ordinance in areas where groundwater has been reclassified as [GAA or GA1] .

The health ordinance should define who is responsible for enforcement of BMPs. It is important that correspondence related to enforcement matters be well documented in local records since they may later be subject to legal proceedings.

MODEL ORDINANCE

a. Failure to Comply with a Cease and Desist Order:

In the event that the owner or operator of a facility fails to comply with a cease and desist order issued under Section IV.05(c) of this ordinance within the specified time period, the health officer shall have the authority to file a request for the Commissioner of the Department of Environmental Services to initiate proceedings for issuance of fines, penalties and other relief as prescribed in RSA 485-C:18 and 19.

b. Failure to Comply with a Removal Order:

In the event that the owner or operator of a facility fails to comply with a removal order issued under Section IV.05(d) of this ordinance within the specified time period, the health officer shall have the authority to cause the nuisance to be removed or destroyed.

In the event that the owner or operator of a facility fails to comply with a removal order issued under Section IV.05(d) of this ordinance within the specified time period, the health officer shall have the authority to commence an action for collection of nuisance abatement costs in accordance with RSA 147:7-b.

EXPLANATORY NOTES

The Commissioner of the Department of Environmental Services may impose administrative fines in accordance with RSA 541. Appendix II contains information on fines associated with violation of specific BMPs.

RSA 485-C:19 (I) states that any person who knowingly violates the Groundwater Protection Act or any rule, permit or order adopted or issued under it shall be guilty of a misdemeanor if a natural person and a felony if any other person. That person is subject to a civil penalty not to exceed \$25,000 for each violation or for each day of a continuing violation.

RSA 147:4 authorizes the Health Officer to forcibly enter and cause the nuisance or other thing to be removed or destroyed if the landowner fails to do so. This may require the up-front use of town funds.

RSA 147:7-b authorizes a municipality to recover nuisance abatement costs, provided that proper notice is given to the owner in accordance with RSA 147:7-a.

In accordance with RSA 147:7-b, abatement costs constitute a lien against real estate, enforceable in the same manner as real estate taxes, including possible loss of the property for nonpayment.

MODEL ORDINANCE**EXPLANATORY NOTES****Section IV.07 Fee For Site Inspection
(Optional)**

There shall be a fee for inspection of potential contamination sources, to be paid by the owner or operator of the facility. A fee schedule shall be established by the Board of Selectmen, which reasonably represents the cost of performing an inspection on various types of facilities.

The inspection fee shall be paid prior to issuance of a certificate of compliance by the health officer, as specified in Article IV.05.

The procedure for adoption of the fee schedule shall be as provided for in RSA 41-9:a.

VIII includes the elements of notice that are required by RSA 147:7-a in order for a municipality to collect nuisance abatement costs. It can be used to develop a letter to meet a municipality's individual needs and administrative processes.

*A fee for site inspections is not authorized by RSA 485-C. However, it is an option that a municipality may wish to consider adopting as part of a local health ordinance to support reclassification of groundwater. Local action at town meeting is **required** before a health ordinance can be used to institute inspection fees.*

*RSA 41:9-a authorizes towns to vote at an annual or special town meeting to authorize the selectmen to establish or amend fees. This vote remains in effect until rescinded. If such a vote has not been taken it **must** be proposed prior to establishing inspection fees for a local wellhead protection program.*

*RSA 41:9-a, II (a) only specifies that fees are authorized for issuance of licenses or permits that are part of a regulatory program established by a vote at a town meeting. Such a vote would be **required** to establish the management program locally, prior to instituting any fees.*

RSA 41-9:a, IV requires that the procedure for adoption of fees include a public hearing notice posted in two public places at least seven days prior to the hearing and published in a news paper of general circulation in the town. The notice shall include the proposed schedule of fees.

MODEL ORDINANCE

EXPLANATORY NOTES

Article V. Other Regulations:

When the provisions herein specified for groundwater protection conflict with those of other ordinances or regulations, the most stringent requirements shall apply.

This type of requirement is recommended to assure that the ordinance does not compromise the strength of other local ordinances and regulations.

Article VI. Severability:

In the event that any part or provision of this ordinance is found to be invalid, this shall not have the effect of invalidating other provisions of the ordinance.

Some type of saving clause is commonly included in local ordinances and regulations to assure that any court action that declares a portion of the ordinance to be invalid does not nullify the entire ordinance.

Article VII. Certification of Adoption

A. We, the undersigned do hereby attest that this health ordinance was adopted by a majority vote of the _____(Town) Board of Selectmen at their duly noticed public meeting on:

Date

Chairman, Board of Selectmen

Selectman

Selectman

B. This health ordinance was recorded with the _____ (Town) Town Clerk on:

Date

Town Clerk

C. A summary of this health ordinance was published in _____,
(Local Newspaper) on _____ (Date), with a notice of where the ordinance was posted in Town.

D. This health ordinance was posted at _____ and
_____,(Two Public Places) as of _____ (Date).

E. Effective Date: _____

F. In accordance with RSA 147:1, III, a copy of this health ordinance was forwarded to the Division of Public Health Services, in the Department of Health and Human Services, by the

Town Clerk on _____ (Date).

Attachments and Appendices for PART II

ATTACHMENT I

Potential Contamination Sources Identified by the New Hampshire Wellhead Protection Program

Vehicle Service and Repair Shops

- automobile, truck and equipment service or repair shops, auto body shops
- aircraft fueling, deicing and maintenance areas

General Service and Repair Shops

- furniture stripping, painting and refinishing
- photographic processing
- printing
- appliance and small engine repair
- boat repair, service and refinishing
- refrigeration, heating, ventilating and air conditioning

Metalworking Shops

- machine shops
- metal plating, heat treating, smelting
- jewelry making shops

Manufacturing Facilities

- electronics and chemical manufacturing, processing and reclaiming
- paper, leather, plastic, fiberglass, rubber, silicon and glass making
- pharmaceutical production
- pesticide manufacture
- chemical preservation of wood and wood products

Underground and Above Ground Facilities for Oil and Hazardous Substances

Waste and Scrap Processing and Storage

- junkyards, scrap yards and auto salvage yards
- wastewater treatment plants
- dumps, landfills, transfer stations and other solid waste facilities
- wastewater or septage lagoons

Transportation Corridors

- highways and railroads

Septic Systems

Laboratories and Professional Offices

- medical, dental and veterinary offices
- research and analytical laboratories

Use of Agricultural Chemicals

- golf courses
- feed lots, kennels, piggeries and manure stockpiles
- parks
- nurseries and sod farms
- usage of registered pesticides

Salt Storage and Use for Winter Road and Parking Lot Maintenance

Snow Dumps

Stormwater Infiltration Ponds or Leaching Catch Basins

Cleaning Services

- dry cleaners, Laundromats
- beauty salons
- car washes

Food Processing Plants

- meat packing and slaughter houses
- dairies
- processed food manufacture

Fueling and Maintenance of Excavation and Earth Moving Equipment

Concrete, Asphalt and Tar Manufacture

Cemeteries

Hazardous Waste Facilities

Source: Chapter 485-C, the Groundwater Protection Act, 1991.

ATTACHMENT II - FLYER

ATTACHMENT III

SAMPLE LETTER TO PROPERTY OWNERS

TOWN OF _____ WELLHEAD/ GROUNDWATER PROTECTION PROGRAM

Dear Property Owner/Operator:

As you may know, the Town of _____ is undertaking a groundwater protection program in order to ensure that we all have good quality drinking water.

The purpose of this letter is to inform you that your business/home is located in the area from which it is likely that groundwater is drawn to our well(s) (if a wellhead protection area. If a groundwater protection area, state that the business/home is located in the area we are trying to protect) and to ask for your cooperation with this program. If we are all careful substances that could pollute drinking water will never find their way to our wells/groundwater.

No one wants to drink polluted water. Who would pour gasoline, motor oil, paint, garden chemicals or household chemicals into their drinking water? Yet the equivalent is done when someone pours any of these products down their toilet, sink drain, or onto the ground. To help you avoid activities that could threaten water quality we are enclosing a Do's and Don'ts flyer.

For inclusion in letters to PCSs that use larger than household quantities of regulated substances:

The well(s) we are trying to protect are located at _____.

According to our inventory, the present use of your property is _____. Typically, such activities use large quantities of regulated substances, and therefore are considered to have the potential for groundwater contamination. We are enclosing a copy of the Best Management Practices Rules (Env-Ws 421). Compliance with these rules is mandatory if you use, store, handle, or dispose of regulated substances in larger than household quantities. By complying with these rules and implementing the suggested practices contained in the flyer you will both help us to protect groundwater and reduce your own environmental liability. Any unpermitted discharges to groundwater or contamination of groundwater is illegal under RSA 485-A:13 and Env-Ws 410.

Providing you with this information is the first phase of the groundwater protection program we are undertaking. In the future we will be contacting you to arrange an appointment to inspect your facility for compliance with the attached rules. In the interim please feel free to contact me if you have any questions regarding these materials or our groundwater protection program. Or, you can call the N.H. Department of Environmental Services at 271-1168.

Please take the time to review and implement the practices contained in the enclosed material. We need your help to protect our valuable drinking water!

Sincerely,

Contact Person's Name and Title

ATTACHMENT IV

ATTACHMENT V

SAMPLE CERTIFICATE OF COMPLIANCE

PUT THIS LETTER ON YOUR LETTERHEAD

CERTIFICATE OF COMPLIANCE

WITH BEST MANAGEMENT PRACTICES

ESTABLISHED BY ENV-WS 421

Dear _____ (Facility Owner),

Thank you for participating in the inspection for compliance with the Best Management Practices Rules, Env-Ws 421 that I performed at your facility, _____ (name of facility) on ____ (Date). I am pleased to inform you that I found no violations of these rules. Therefore, you will not hear from me again until the next round of compliance inspections, which we anticipate will be conducted in ____ (Insert year you intend to do inspections again.)

In the meantime, if you have any questions concerning these rules or our groundwater protection program please do not hesitate to contact me at ____ (Phone number).

Thanks for your help in keeping our drinking water safe.

Sincerely

Contact person's name, title

ATTACHMENT VI

SAMPLE WRITTEN WARNING

PUT THIS LETTER ON YOUR OWN LETTERHEAD

Dear _____ (Customer, Neighbor, Facility Owner - fill in appropriate term),

Thank you for participating in the inspection for compliance with the Best Management Practices Rules, Env-Ws 421 that I performed at your facility, _____ (name of facility) on _____ (Date). During the course of the inspection I discovered that certain activities occurring at your property were not being performed in accordance with best management practices established by N.H. Code of Administrative Rules Env-Ws 421. The purpose of this letter is to ask that the following activities be corrected by _____ (Date).

Rule Violated:	Comments (including description of corrective action needed):
_____	_____
_____	_____
_____	_____

Please note that failure to comply with this request will result in a referral to the New Hampshire Department of Environmental Services (DES) which is authorized to pursue substantial fines and in some instances, cease and desist orders per RSA 485-C. Fines can range from \$250 to \$1,000 per violation, and up to \$2,000 for non-compliance with a cease and desist order. Failure to comply may also result in a removal order under RSA 147. If a removal action is required due to your negligence, you will be held responsible for the corrective costs incurred by the Town. Such costs shall constitute a lien against your property, enforceable in the same manner as property taxes, including possible loss of the property if not paid. I will be contacting you in the near future to schedule an inspection to verify compliance with this request.

If you need clarification of the rules or the waiver provisions contained in them, please contact DES directly at 271-1168.

Thank you in advance for your willingness to help protect our valuable source of drinking water.

Sincerely

Contact person's name, title

Enclosure: Completed inspection form

SAMPLE CEASE AND DESIST ORDER

CEASE AND DESIST ORDER

To Whom It May Concern:

You are hereby informed that based on an inspection performed by the health officer on _____ (date), activities occurring at your property are not being performed in accordance with best management practices established by N.H. Code of Administrative Rules Env-Ws 421. You are hereby ordered to cease and desist these activities and to take the following corrective actions within _____ working days:

Rule Violated:

Comments:

A copy of the inspection report which details the nature of the violation at hand is enclosed. A copy of this order has been forwarded to the Commissioner of the Department of Environmental Services for consideration of penalties and other relief as prescribed in RSA 485-C:19. Any person who violates any provision of the Groundwater Protection Act, shall be guilty of a misdemeanor, if a natural person and a felony, if any other person and subject to a civil penalty not to exceed \$25,000 for each violation or for each day of a continuing violation.

Sincerely,

Town Health Officer

Encl.: Copy of Inspection Report

ATTACHMENT VIII

SAMPLE REMOVAL ORDER

PUT THIS LETTER ON YOUR OWN LETTERHEAD

Dear (PCS Owner, Property Owner, etc.):

You are hereby notified that activities occurring at your property are in violation of the best management practices required by Article IV, Section IV.02 (check your health ordinance to make sure the correct section is cited) of the Health Ordinance of the Town of ____ . It has been determined, based upon an inspection performed by the health officer on ____ (date), that conditions at your property constitute a danger to the public health and safety under provisions of the Ordinance. A copy of the inspection report which provides details about the nature of the violation is enclosed for your records. (If an inspection form is not used, the letter must describe the nuisance or other threat to public health.)

You are also notified that you are required to take the corrective action(s) listed below to remove the threat to public health within ____ working days of receipt of this notice. (The number of days to be determined by the health officer, based on the seriousness of the danger to public health.) Failure to do so may result in the health officer or his/her assistant exercising the authority provided under RSA 147:4 to enter your property and to perform corrective actions on behalf of the Town and/or referral to the N.H. Department of Environmental Services (DES). DES is authorized to pursue substantial fines and in some instances cease and desist orders per RSA 485-C. Fines can range from \$250 to \$1,000 per violation, and up to \$2,000 for non-compliance with a cease and desist order. I hope we can avoid the involvement of DES in this matter. If a removal action is required due to your negligence, you will be held responsible for the corrective costs incurred by the Town. Such costs shall constitute a lien against your property, enforceable in the same manner as property taxes, including possible loss of the property if not paid.

Section Violated:

Comments (and corrective action needed):

Please contact me at _____, if you have any questions regarding this notice or how to comply with the corrective actions required by it. I will be in touch with you again prior to the end of the time period previously specified to arrange a mutually acceptable time for a compliance inspection.

Sincerely,

Town Health Officer

NOTE: To be adequate for a municipality to collect nuisance abatement costs, the sample removal order must be sent by registered mail, return receipt requested to the last known post office address: of the current owner, if known; or of the person against whom taxes are assessed for the property; and to any tenant, occupant, owner's agent or other person known

by the health officer to exercise control over the premises. (RSA 471:7-a, II)

APPENDIX I

NH CODE OF ADMINISTRATIVE RULES ENV-WS 421

APPENDIX II

ADMINISTRATIVE FINES FOR BMP VIOLATIONS

**PART III: Model Health Ordinance for Wellhead or
Groundwater Protection Independent of Groundwater
Reclassification
(Option 3)**

PART III: Model Health Ordinance for Wellhead or Groundwater Protection Independent of Groundwater Reclassification (Option 3)

MODEL ORDINANCE

EXPLANATORY NOTES

Article I. Authority:

This ordinance was recommended by the Health Officer and approved by the Board of Selectmen of _____ (Town/City) under the authority granted in RSA 147:1, entitled "Local Regulations".

"RSA 147:1, I. The Health Officers of towns may make regulations for the prevention or removal of nuisances and such other regulations relating to the public health as in their judgement the health and safety of the people require, which shall take effect when approved by the selectmen, recorded by the town clerk, and published in some newspaper printed in the town, or when copies thereof have been posted in 2 or more public places in the town."

Although not required, it is recommended that the selectmen and the health officer hold a public hearing prior to adoption of a health ordinance.

Article II. Purpose:

To provide for the prevention or removal of nuisances and to protect the public health and safety of the people of the Town/City of _____.

Under the auspices of protecting the public health and safety, a municipality may choose a more specific purpose for the health ordinance. For example, the purpose may be to provide a framework for a wellhead area or a valuable groundwater protection program based on active management of potential contamination sources (PCSs).

MODEL ORDINANCE**EXPLANATORY NOTES****Article III. Inventory of Potential Contamination Sources (PCSs)**

An inventory of PCSs that are located within the areas of groundwater designated for protection was prepared prior to the adoption of this ordinance.

An inventory of PCSs is recommended prior to adoption of a local health ordinance for wellhead or groundwater protection. Guidance for performing the inventory is available from the NH Wellhead Protection Program (271-1168).

Section III.01 Place of Filing

The inventory, which is on file in the office of the Health Officer, is available for public review during regular business hours.

Attachment I presents the list of PCSs contained in the Groundwater Protection Act of 1991 (RSA 485-C:7, II). A municipality has the option to include additional land uses in the list of PCSs that is adopted in a local health ordinance. This allows a municipality to go beyond the authority granted by reclassification to address local concerns that are not addressed by the Groundwater Protection Act. If a municipality chooses to expand the list, the additional land uses should also be included in the PCS inventory.

Section III.02 Inventory Update

The inventory of PCSs shall be updated by the Health Officer at least once every three years.

For consistency with RSA 485-C, the inventory of PCSs should be updated at intervals not to exceed three years.

Article IV. Local Wellhead or Groundwater Protection Management Program

It is recommended that the local wellhead or groundwater protection program that a health ordinance is designed to implement be based on active management of PCSs through a combination of education of all PCSs and periodic inspection of activities using larger than household quantities of regulated substances.

MODEL ORDINANCE

EXPLANATORY NOTES

It is also recommended that a municipality begin development of a local wellhead or groundwater protection program by holding a public meeting to explain the program to citizens that may be interested in or affected by its requirements. Such a meeting can provide a forum for education, discussion, and development of support for the wellhead program.

A local wellhead or groundwater protection team including representatives of the board of health, board of selectmen, planning board, conservation commission, and local business association or chamber of commerce is recommended as a coordinated mechanism for implementation of a local wellhead or groundwater program.

Section IV.01 Applicability:

This ordinance shall apply to all land uses that are listed in Attachment I as PCSs located within the following areas in the Town/City of _____.

Attachment I presents a list of PCSs that was developed by the State Wellhead Protection Program for inclusion in the Groundwater Protection Act of 1991 (RSA 485-C:7, II). A local health ordinance can either adopt this list of land uses to regulate or revise it, based upon local priorities.

Geographic Option 1: All Wellhead Protection Areas Within the Town. These areas are delineated on a map that is available for public viewing in the office of the Health Officer.

The wellhead protection areas should be delineated on a map and included as an integral part of the water resources section of the municipal master plan.

RSA 485-C:2, XVIII defines a wellhead protection area as "...the surface and subsurface area surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or well field."

MODEL ORDINANCE

EXPLANATORY NOTES

This statutory definition of a wellhead protection area can be adopted as the area that is the focus of a local health ordinance.

DES has delineated many wellhead protection areas and has developed a methodology for those remaining. Wellhead protection area delineation information can be obtained by contacting the Wellhead Protection Program at 271-1168.

Geographic Option 2: All Areas of Valuable Groundwater Within the Town. These areas are delineated on a map that is available for public viewing in the office of the Health Officer.

The town may choose to delineate areas of valuable groundwater in the municipal master plan to serve as the focus of the local health ordinance. It may also choose to implement a comprehensive groundwater protection program on a town-wide basis, depending upon local priorities.

Section IV.02 Best Management Practices (BMPs) Required:

MODEL ORDINANCE

BMPs described in Appendix I of this health ordinance and N.H. Admin. Rules Env-Ws 421, shall be utilized by all PCSs in New Hampshire which utilize larger than household quantities of regulated substances, including those located within the area(s) delineated for protection in the Town/City of _____.

(Note: Through this ordinance the municipality is authorized to manage PCSs to ensure compliance with BMPs.)

Section IV.03 Notification of PCS Landowners:

EXPLANATORY NOTES

The BMP rules (Env-Ws 421) contained in Appendix I were developed for the State Wellhead Protection Program. These rules apply only to PCSs that use larger than household quantities of regulated substances. They are basic, common sense operating procedures including such requirements as structural containment in storage areas to contain potential spills and the use of drip pans for transferring chemicals. In the future, DES will be developing guidance to manage PCSs that are not currently regulated by Env-Ws 421.

In the interim, more specific requirements for such things as residential heating oil tanks, outdoor road salt storage areas, and septic system maintenance procedures can be developed locally and adopted as part of a health ordinance.

MODEL ORDINANCE

Groundwater protection educational materials shall be provided to all PCSs at least once every three years.

In addition, the owner of each PCS which is located within areas delineated for protection shall receive a notification letter from the health officer, at least once every three years, which indicates the date when the Health Officer will perform the next BMP compliance inspection; the purpose of that inspection; and a statement that activities performed on site are subject to inspection by the local entity for compliance with BMPs, required by N.H. Admin. Rules Env-Ws 421.

**Section IV.04 Best Management Practices
(BMP) Compliance Inspection Required:**

All PCSs using larger than household quantities of regulated substances located within areas delineated for protection shall be inspected by the local Health Officer at intervals not to exceed once every three years in order to assure compliance with BMPs.

EXPLANATORY NOTES

All PCSs on Attachment I should be sent groundwater protection educational material. Attachment II gives an example of an educational flyer that can be used.

Note: It is recommended that all residential properties and businesses not on the PCS list within the area to be protected be sent the educational material in Attachments II and III even though they are not using large quantities of regulated substances.

Owners of PCSs using larger than household quantities of regulated substances in an area delineated for protection should also be notified by a letter stating that the activity is being conducted within an area delineated for protection.

The letter must also state that the activity is subject to BMPs, in accordance with State administrative rules, and provide information concerning where copies of BMPs can be obtained.

A sample correspondence that could be used to develop a letter specific to a municipality's individual needs and priorities is presented in Attachment III.

RSA 128:5, III authorizes the local health officer to: (upon reasonable information, personal knowledge or belief, in order to safeguard public health or to prevent pollution of any aquifer or body of water) enter onto private property but not into any living

MODEL ORDINANCE

The Health Officer shall fill out an inspection form upon completion of each inspection. One copy of the form shall be provided to the PCSs owner and one copy shall be kept in the official records of the Health Officer.

Section IV.05 Determination of Compliance with or Violation of BMPs:

a. Certificate of Compliance

A certificate of compliance shall be issued by the Health Officer, if the PCS is found to employ BMPs, based upon a site inspection performed in accordance with Article IV Section IV.04 of this ordinance. The certificate shall be good for a period of three years.

A certificate of compliance, issued in accordance with this ordinance, is not intended in any way to limit the powers of the Health Officer to enter property to perform additional inspections for the purpose of administration of this ordinance.

EXPLANATORY NOTES

quarters, and to investigate and, if necessary, take appropriate action to prevent further pollution.

Attachment IV presents a sample inspection form that can be used as a model to develop a form that is specific to a municipality's individual needs and priorities. It was developed by DES for compliance inspections under the State BMP rules. Therefore, revisions may be necessary if a municipality proposes BMPs that are not contained in those rules.

Note: When completing the first portion of the inspection form, if it is determined that the facility does not use larger than household quantities of regulated substances, it is unnecessary to complete the inspection. The facility should remain on the inventory so that in three years it can be reevaluated for its use of regulated substances.

A certificate of compliance can be issued after a satisfactory inspection of a PCS. The health officer may issue the certificate for a finite period. The dates of issuance of current certificates can be used to establish an ongoing schedule for notification and inspection.

Attachment V is a sample certificate of compliance form that can be used as a model to develop one that is specific to a municipality's individual needs and administrative processes.

MODEL ORDINANCE**EXPLANATORY NOTES****b. Written Warning of Violation**

1. A written warning of violation shall be issued by the Health Officer if the PCS is found to not employ BMPs, in accordance with Article IV, Section IV.02 of this ordinance and the violation is not an immediate threat to public health and safety in the opinion of the Health Officer.
2. The written warning shall:
 - Specify the actions or conditions which violate BMPs;
 - identify what needs to be done to correct the violation(s); and
 - specify a reasonable time frame within which the violation shall be corrected.
3. One copy of the written warning shall be provided to the PCS owner and one shall be kept in the official records of the Health Officer.

A written warning can be issued after an unsatisfactory inspection of a PCS, where the violation is not an immediate threat to public health and safety.

The written warning allows the opportunity for a facility owner to show a good faith effort to correct an unintentional violation within a reasonable time frame.

Attachment VI is a sample written warning form that can be used as a model to develop one that is specific to a municipality's individual needs and administrative processes.

c. Removal Order

1. A removal order shall be issued by the health officer if the PCS is found to not employ BMPs in accordance with Section IV.02 of this ordinance and an immediate threat to public health and safety exists, in the opinion of the health officer or, if a violation is not corrected within the time frame specified in a written warning issued by the Health Officer.

A removal order can be issued after an unsatisfactory inspection of a PCS, where the violation either: is an immediate threat to public health and safety or a violation has not been corrected within the time frame specified in a written warning issued by the health officer.

MODEL ORDINANCE

EXPLANATORY NOTES

2. The removal order shall:

- Specify the actions or conditions which violate BMPs;
- identify what needs to be done to correct the violation(s); and
- specify the time frame within which the violation shall be corrected, based on the degree of threat to public health and safety.

3. One copy of the removal order shall be provided to the PCS owner and one shall be kept in the official records of the Health Officer.

RSA 147:4 authorizes the Health Officer to notify the owner or occupant of any building, vessel, premises or property to remove or destroy any nuisance or other thing therein deemed by them, on examination, to be injurious to the public health, within a limited time.

Attachment VII is a sample removal order form that can be used as a model to develop one that is specific to a municipality's needs and administrative processes.

Section IV.06 Enforcement of BMPs: Failure to Comply with a Removal Order

The Health Officer of the Town of _____, shall be responsible for enforcement of the provisions of this ordinance in the areas delineated for protection.

In the event that the owner or operator of a facility fails to comply with a removal order issued under Section IV.06(d) of this ordinance within the specified time period, the health officer shall have the authority to cause the nuisance to be removed or destroyed.

The health ordinance should define who is responsible for enforcement. It is important that correspondence related to enforcement matters be well documented in local records since they may later be subject to legal proceedings.

RSA 147:4 authorizes the health officer to forcibly enter and cause the nuisance or other things to be removed or destroyed if the landowner fails to do so. This may require the up-front use of town funds.

MODEL ORDINANCE

In the event that the owner or operator of a facility fails to comply with a removal order issued under Section IV.06(d) of this ordinance within the specified time period, the Health Officer shall have the authority to commence an action for collection of nuisance abatement costs in accordance with RSA 147:7-b.

Section IV.07 Fee For Site Inspection (Optional)

There shall be a fee for inspection of PCSs, to be paid by the owner or operator of the facility. A fee schedule shall be established by the Board of Selectmen which reasonably represents the cost of performing an inspection on various types of facilities.

EXPLANATORY NOTES

RSA 147:7-b authorizes a municipality to recover nuisance abatement costs, provided that proper notice is given to the owner in accordance with RSA 147:7-a. In accordance with RSA 147:7-b, abatement costs constitute a lien against real estate, enforceable in the same manner as real estate taxes, including possible loss of the property for nonpayment.

The sample letter presented in Attachment VI includes the elements of notice that are required by RSA 147:7-a in order for a municipality to collect nuisance abatement costs. It can be used to develop a letter to meet a municipality's individual needs and administrative processes.

In addition to the powers of the health officer under RSA 147, if the violation is also a violation of the BMP rules Env-Ws 421, a referral can be made to N.H. DES for imposition of administrative fines in accordance with RSA 541. Appendix II provides information on fines associated with violations of specific BMPs.

*Local action at town meeting is **required** before a health ordinance can be used to institute inspection fees. RSA 41:9-a authorizes towns to vote at an annual or special town meeting to authorize the selectmen to establish or amend fees. This vote remains in effect until rescinded. If such a vote has not been taken, it **must** be proposed, prior to establishing inspection fees for a local wellhead protection program.*

MODEL ORDINANCE

The inspection fee shall be paid upon issuance of a certificate of compliance by the Health Officer, as specified in Article IV, Section IV.05.

The procedure for adoption of the fee schedule shall be as provided for in RSA 41-9:a.

Article V. Other Regulations:

When the provisions herein specified for groundwater protection conflict with those of other ordinances or regulations, the most stringent requirements shall apply.

Article VI. Severability:

In the event that any part or provision of this ordinance is found to be invalid, this shall not have the effect of invalidating other provisions of the ordinance.

EXPLANATORY NOTES

*RSA 41:9-a, II (a) specifically authorizes fees for issuance of any license or permit that is issued as part of a regulatory program established by a warrant article at town meeting. A warrant article **must** be passed to establish the local wellhead protection program if the health ordinance is to include a provision for fees.*

RSA 41-9:a, IV requires that the procedure for adoption of fees include a public hearing notice posted in two public places at least seven days prior to the hearing and published in a news paper of general circulation in the town. The notice shall include the proposed schedule of fees.

This type of requirement is recommended to assure that the ordinance does not compromise the strength of the other local ordinances and regulations.

Some type of saving clause is commonly included in local ordinances and regulations to assure that any court action that declares a portion of the ordinance to be invalid does not nullify the entire ordinance.

Article VII. Certification of Adoption

A. We, the undersigned do hereby attest that this health ordinance was adopted by a majority vote of the _____(Town) Board of Selectmen at their duly noticed public meeting on:

Date

Chairman, Board of Selectmen

Selectman

Selectman

B. This health ordinance was recorded with the _____ (Town) Town Clerk on:

Date

Town Clerk

C. A summary of this health ordinance was published in _____

(Local Newspaper) on _____ (Date), with a notice of where the ordinance was posted in Town.

D. This health ordinance was posted at _____ and

_____ (Two Public Places) as of _____ (Date).

E. Effective Date: _____

F. In accordance with RSA 147:1, III, a copy of this health ordinance was forwarded to the Division of Public Health Services in the Department of Health and Human Services by the Town Clerk on _____ (Date).

Attachments and Appendix for PART III

ATTACHMENT I

Potential Contamination Sources Identified by the New Hampshire Wellhead Protection Program

Vehicle Service and Repair Shops

- automobile, truck and equipment service or repair shops, auto body shops
- aircraft fueling, deicing and maintenance areas

General Service and Repair Shops

- furniture stripping, painting and refinishing
- photographic processing
- printing
- appliance and small engine repair
- boat repair, service and refinishing
- refrigeration, heating, ventilating and air conditioning

Metalworking Shops

- machine shops
- metal plating, heat treating, smelting
- jewelry making shops

Manufacturing Facilities

- electronics and chemical manufacturing, processing and reclaiming
- paper, leather, plastic, fiberglass, rubber, silicon and glass making
- pharmaceutical production
- pesticide manufacture
- chemical preservation of wood and wood products

Underground and Above Ground Facilities for Oil and Hazardous Substances**Waste and Scrap Processing and Storage**

- junkyards, scrap yards and auto salvage yards
- wastewater treatment plants
- dumps, landfills, transfer stations and other solid waste facilities
- wastewater or septage lagoons

Transportation Corridors

- highways and railroads

Septic Systems**Laboratories and Professional Offices**

- medical, dental and veterinary offices
- research and analytical laboratories

Use of Agricultural Chemicals

- golf courses
- feed lots, kennels, piggeries and manure stockpiles
- parks
- nurseries and sod farms
- usage of registered pesticides

Salt Storage and Use for Winter Road and Parking Lot Maintenance**Snow Dumps****Stormwater Infiltration Ponds or Leaching Catch Basins****Cleaning Services**

- dry cleaners, Laundromats
- beauty salons
- car washes

Food Processing Plants

- meat packing and slaughter houses
- dairies
- processed food manufacture

Fueling and Maintenance of Excavation and Earth Moving Equipment**Concrete, Asphalt and Tar Manufacture****Cemeteries****Hazardous Waste Facilities Regulated Under the Resource Conservation and Recovery Act**

Source: Chapter 485-C, the Groundwater Protection Act, 1991.

ATTACHMENT II - SAMPLE EDUCATIONAL MATERIAL

ATTACHMENT III - SAMPLE LETTER TO PROPERTY OWNERS

TOWN OF _____ WELLHEAD/ GROUNDWATER PROTECTION PROGRAM

Dear Property Owner/Operator:

As you may know, the Town of _____ is undertaking a groundwater protection program in order to ensure that we all have good quality drinking water.

The purpose of this letter is to inform you that your business/home is located in the area from which it is likely that groundwater is drawn to our well(s) (*if a wellhead protection area. If a groundwater protection area, state that the business/home is located in the area we are trying to protect*) and to ask for your cooperation with this program. If we are all careful substances that could pollute drinking water will never find their way to our wells/groundwater.

No one wants to drink polluted water. Who would pour gasoline, motor oil, paint, garden chemicals or household chemicals into their drinking water? Yet the equivalent is done when someone pours any of these products down their toilet, sink drain, or onto the ground. To help you avoid activities that could threaten water quality we are enclosing a Do's and Don'ts flyer.

For inclusion in letters to PCSs that use larger than household quantities of regulated substances:

The well(s) we are trying to protect are located at _____.

According to our inventory, the present use of your property is _____. Typically, such activities use large quantities of regulated substances, and therefore are considered to have the potential for groundwater contamination. We are enclosing a copy of the Best Management Practices Rules (Env-Ws 421). Compliance with these rules is mandatory if you use, store, handle, or dispose of regulated substances in larger than household quantities. By complying with these rules and implementing the suggested practices contained in the flyer you will both help us to protect groundwater and reduce your own environmental liability. Any unpermitted discharges to groundwater or contamination of groundwater is illegal under RSA 485-A:13 and Env-Ws 410.

Providing you with this information is the first phase of the groundwater protection program we are undertaking. In the future we will be contacting you to arrange an appointment to inspect your facility for compliance with the attached rules. In the interim please feel free to contact me if you have any questions regarding these materials or our groundwater protection program. Or, you can call the N.H. Department of Environmental Services at 271-1168.

Please take the time to review and implement the practices contained in the enclosed material. We need your help to protect our valuable drinking water!

Sincerely,

Contact Person's Name and Title

ATTACHMENT IV - PCS INVENTORY AND INSPECTION FORM

ATTACHMENT V

SAMPLE CERTIFICATE OF COMPLIANCE

CERTIFICATE OF COMPLIANCE WITH BEST MANAGEMENT PRACTICES ESTABLISHED BY ENV-WS 421

PUT THIS LETTER ON YOUR OWN LETTERHEAD

Dear _____ (Customer, Neighbor, Facility Owner - fill in appropriate term),

Thank you for participating in the inspection for compliance with the Best Management Practices Rules, Env-Ws 421 that I performed at your facility, _____ (name of facility) on ____ (Date). I am pleased to inform you that I found no violations of these rules. Therefore, you will not hear from me again until the next round of compliance inspections, which we anticipate will be conducted in ____ (Insert year you intend to do inspections again.)

In the meantime, if you have any questions concerning these rules or our groundwater protection program please do not hesitate to contact me at ____ (Phone number).

Thanks for your help in keeping our drinking water safe.

Sincerely

Contact person's name, title

ATTACHMENT VI

SAMPLE WRITTEN WARNING

ATTACHMENT VII

PUT THIS LETTER ON YOUR OWN LETTERHEAD

Dear _____ (Customer, Neighbor, Facility Owner - fill in appropriate term),

Thank you for participating in the inspection for compliance with the Best Management Practices Rules, Env-Ws 421 that I performed at your facility, _____ (name of facility) on _____ (Date). During the course of the inspection I discovered that certain activities occurring at your property were not being performed in accordance with best management practices established by N.H. Code of Administrative Rules Env-Ws 421. The purpose of this letter is to ask that the following activities be corrected by _____ (Date).

Rule Violated:	Comments (including description of corrective action needed):
_____	_____
_____	_____
_____	_____

Please note that failure to comply with this request will result in a removal order under RSA 147. If a removal action is required due to your negligence, you will be held responsible for the corrective costs incurred by the Town. Such costs shall constitute a lien against your property, enforceable in the same manner as property taxes, including possible loss of the property if not paid. In addition to issuing a removal order, the health officer will refer the violation(s) of Env-Ws 421 to the New Hampshire Department of Environmental Services (DES), which is authorized to pursue substantial fines and in some instances, cease and desist orders per RSA 485-C. Fines can range from \$250 to \$1,000 per violation, and up to \$2,000 for non-compliance with a cease and desist order. I will be contacting you in the near future to schedule an inspection to verify compliance with this request.

If you need clarification of the rules or the waiver provisions contained in them, please contact DES directly at 271-1168.

Thank you in advance for your willingness to help protect our valuable source of drinking water.

Sincerely

Contact person's name, title

Enclosure: Completed inspection form

SAMPLE REMOVAL ORDER

PUT THIS LETTER ON YOUR OWN LETTERHEAD

Dear (PCS Owner, Property Owner, etc.):

You are hereby notified that activities occurring at your property are in violation of the best management practices required by Article IV, Section IV.02 (check your health ordinance to make sure the correct section is cited) of the Health Ordinance of the Town of ____ . It has been determined, based upon an inspection performed by the health officer on ____ (date), that conditions at your property constitute a danger to the public health and safety under provisions of the Ordinance. A copy of the inspection report which provides details about the nature of the violation is enclosed for your records. (If an inspection form is not used, the letter must describe the nuisance or other threat to public health.)

You are also notified that you are required to take the corrective action(s) listed below to remove the threat to public health within ____ working days of receipt of this notice. (The number of days to be determined by the health officer, based on the seriousness of the danger to public health.) Failure to do so may result in the health officer or his/her assistant exercising the authority provided under RSA 147:4 to enter your property and to perform corrective actions on behalf of the Town and/or referral to the N.H. Department of Environmental Services (DES). DES is authorized to pursue substantial fines and in some instances cease and desist orders per RSA 485-C. Fines can range from \$250 to \$1,000 per violation, and up to \$2,000 for non-compliance with a cease and desist order. I hope we can avoid the involvement of DES in this matter. If a removal action is required due to your negligence, you will be held responsible for the corrective costs incurred by the Town. Such costs shall constitute a lien against your property, enforceable in the same manner as property taxes, including possible loss of the property if not paid.

Section Violated:

Comments (and corrective action needed):

Please contact me at _____, if you have any questions regarding this notice or how to comply with the corrective actions required by it. I will be in touch with you again prior to the end of the time period previously specified to arrange a mutually acceptable time for a compliance inspection.

Sincerely,

Town Health Officer

NOTE: To be adequate for a municipality to collect nuisance abatement costs, the sample removal order must be sent by registered mail, return receipt requested, to the last known post office address: of the current owner, if known; or of the person against whom taxes are assessed for the property; and to any tenant, occupant, owner's agent or other person known by the health officer

to exercise control over the premises. (RSA 471:7-a, II)

APPENDIX I

N.H. CODE OF ADMINISTRATIVE RULES ENV-WS 421

APPENDIX II

ADMINISTRATIVE FINES FOR BMP VIOLATIONS

