



Implementing Water Use Restrictions at Public Water Systems

In the case of drought or other emergency, water use restrictions may provide public water suppliers with useful tools for the management of the public water supply. RSA 485, the New Hampshire Safe Drinking Water Act, provides community water systems with the authority to restrict non-essential water use when there is a threat of demand exceeding supply and to terminate service to customers when restrictions are not adhered to (Env-Dw 503). Furthermore, municipalities and village districts have the authority to implement water use restrictions for water system customers and implement fines under RSA 38:26. Water systems regulated by the Public Utilities Commission have the authority to do the same, but must comply with Administrative Rule Puc 604.07. See Appendix A for law and rule references.

The New Hampshire Department of Environmental Services (NHDES) has prepared a model water use restriction ordinance that a water system owned by a municipality or village district may adopt to restrict water use when there is a declared water supply shortage. Homeowner and condo associations may reference the restriction levels in the model ordinance for incorporation into their own regulations.

Appendix A includes a summary of the required steps that a public water utility regulated by the Public Utilities Commission must take to implement a water use restriction for its public water supply system.

When a water system imposes restrictions, customers often do not understand that water use restrictions are necessary to protect, preserve, and maintain the public health. Water suppliers have indicated to NHDES that many customers believe that the water use restrictions are not really necessary or are being put in place only for the benefit of the operators of the system. Although a public water utility does not need NHDES' approval to implement water use restrictions, to obtain NHDES' written endorsement of water use restrictions, the utility should provide NHDES with a description of the nature of the water supply shortage.

The description should include at least the following information:

1. Maximum day yield in million gallons per day of existing sources based on 24-hour pumping.
2. The estimated average day and peak day water demand in gallons per day (GPD) based on 24-hour pumping.
3. Rationale and water supply/demand analysis that support the water use restrictions over the period of time that the water supply shortage is anticipated to occur.

4. The water supply management measures the water system has already taken or will take to address the water supply shortage (e.g. to restrict demand or increase supply).

In order to obtain NHDES' endorsement of the implementation of a water use restriction, send the information described above to:

Stacey Herbold
NHDES Drinking Water and Groundwater Bureau
PO Box 95, Concord, New Hampshire 03302-0095
stacey.herbold@des.nh.gov
Phone: (603) 271-6685.

MODEL WATER USE RESTRICTION ORDINANCE FOR WATER SYSTEMS OWNED OR OPERATED BY MUNICIPALITIES OR VILLAGE DISTRICTS

ARTICLE __: WATER USE RESTRICTIONS

I. PURPOSE

The purpose of this ordinance is to ensure the use of water is regulated in a manner the *[Name of Governing Body of Municipality or Village District]* deems to be in the best interest of *[Name of Municipality or Village District]*. The *[Name of Governing Body of the Village District or Municipality]* may use reasonable means to protect, preserve and maintain the public health, safety and welfare when a water supply shortage exists.

II. AUTHORITY

The *[Name of Municipality or Village District]* adopts this *by-law or Ordinance* under its authority to regulate public water systems under RSA 38:26.

III. APPLICABILITY

The requirements of this section shall apply to all water users with connections receiving water from *[Name of Water System]*.

IV. DEFINITIONS

- A. Person:** Any individual, corporation, trust, partnership, joint stock company, association, state, municipality, commission, United States government or any agency thereof, political subdivision of the State or any interstate body, or other entity.
- B. Water supply shortage:** A situation when insufficient water is available to meet the present or anticipated needs of the municipality/village district. A water supply shortage usually occurs due to drought or a major infrastructure failure.

V. REQUIREMENTS

Upon declaration of a water supply shortage or other water emergency [*Name of Governing Body of Municipality or Village District*], the [*Name of Governing Body of Water System*] shall be authorized to determine and implement a certain restriction necessary to conserve and maintain adequate reserves of the public water supply. Provided there is a declaration as noted above, the following levels of restriction will apply immediately after the public notification period specified in Section VI.

- A. If *Name of Governing Body of Water System* issues a Level 1 restriction, then**
 - i. The public is requested to refrain voluntarily from landscape watering and to limit the amount of water used outdoors for other purposes.
 - ii. Landscape watering shall not occur between the hours of 8AM and 7PM.

- B. If *Name of Governing Body of Water System* issues a Level 2 restriction, then**
 - i. Landscape watering by odd numbered addresses is allowed on odd numbered days.
 - ii. Landscape watering by even numbered addresses is allowed on even numbered days.
 - iii. Landscape watering shall not occur between the hours of 8AM and 7PM.

- C. If *Name of Governing Body of Water System* issues a Level 3 restriction, then**
 - i. Landscape watering by odd numbered addresses is allowed on Mondays and Thursdays.
 - ii. Landscape watering by even numbered addresses is allowed on Tuesdays and Fridays.
 - iii. Landscape watering shall not occur between the hours of 8AM and 7PM.

- D. If *Name of Governing Body of Water System* issues a Level 4 restriction, then**
 - i. Landscape watering is prohibited.

Note: The following additional restrictions may be added to each level as necessary. Otherwise, they shall be deleted.

- i. The filling of swimming pools is prohibited.
- ii. Use of automated landscape sprinkler systems is prohibited.
- iii. Washing of streets, driveways, sidewalks or other impervious areas is prohibited.
- iv. Washing of cars and boats at a non-commercial facility shall be restricted to odd/even days by address as described above.
- v. Washing of cars or boats at a non-commercial facility shall be prohibited.

VI. PUBLIC NOTIFICATION OF A WATER SUPPLY SHORTAGE

Notification of intent to implement water use restrictions by the [*Name of Governing Body of Water System*] due to a water supply shortage shall be posted in two public locations and published in a newspaper of general circulation within the [*Name of Municipality or Village District*] or by such other means reasonably determined to notify all affected water users.

VII. TERMINATION OF A NOTICE OF A WATER SUPPLY SHORTAGE

Upon a determination that the water supply shortage no longer exists, the governing body of the [*Name of Municipality or Village District*] may terminate a State of Water Supply Shortage. Public notification of the termination of a State of Water Supply Shortage shall be given in accordance with Section VI.

VIII. EXCEPTIONS TO RESTRICTIONS

- A. Hand irrigation of crops used for food by residents at a residential property shall not be restricted.
- B. Water to sustain animal life shall not be restricted.
- C. Despite the authority granted by Section II of this Ordinance, orders imposing water use restrictions shall not apply to uses that obtain water from sources other than the public water supply, unless it can be clearly demonstrated that the use of such water directly affects the public water supply. Note: Municipalities or village districts have the authority to implement lawn watering restrictions in accordance with RSA 41:11-d applicable to all water users (including residential wells and other water users on private wells) under state declared drought conditions. See NHDES guidance in “Restricting Residential Lawn Watering During State or Federal Declared Droughts.”

IX. PENALTIES

Any person failing to comply with the restrictions imposed pursuant to this Ordinance shall be subject to a fine and/or be subject to imposition of civil penalties pursuant to RSA 38:26, II not to exceed \$10,000 per day of such violation. Recovered penalties shall be used as the [*Name of Municipality or Village District*] may direct. In addition to the foregoing penalties, the [*Name of Municipality or Village District*] is authorized to discontinue the furnishing of water where orders and restrictions have been violated. Such discontinuance shall be made pursuant to RSA 38:31 and may be continued so long as there is evidence that the violations will continue.

First violation: Warning.

Second violation: \$[*Insert amount*] fine.

Third violation: \$[*Insert amount*] to \$10,000 fine and discontinuance of water service. A reactivation fee of \$[*Insert amount*] will be charged before water service is restored.

Appendix A

AUTHORITY FOR ALL PUBLIC WATER SYSTEMS TO IMPOSE RESTRICTIONS

Env-Dw 503.19 Short-Term Water Supply Inadequacies

(a) *Whenever it appears that demand will exceed supply on an emergency or short-term basis, the water system owner shall take appropriate action(s) to reduce nonessential demand.*

(b) *Reduction of demand shall be considered as an emergency response achievable by directive from the water system to its customers.*

(c) *The water system shall define “nonessential demand” in the rules adopted pursuant to Env-Dw 503.08.*

(d) *A water system owner shall inform the department of any action(s) taken or directed to reduce customer demand on a short-term or emergency basis within 3 working days of taking or directing such action(s).*

(e) *If a water shortage necessitating the reduction of nonessential demands occurs on an annual basis, the shortage shall not be considered an emergency situation that can be addressed under this section.*

Env-Dw 503.09 Termination of Service

(a) *For purposes of this section, “termination of service” means the suspension of service until such time as the underlying reason for the suspension has been corrected or otherwise resolved.*

(b) *Subject to (g), below, the water system owner may terminate a customer’s service for cause as specified in the water system’s rules.*

(c) *If the water system has not adopted rules covering termination of service, the owner shall terminate a customer’s service for cause only as provided in this section.*

(d) *In the absence of system-specific rules, any of the following shall constitute cause for termination of service:*

(1) *Failure to pay a bill that is not being disputed under applicable legal procedures;*

(2) *Misappropriation of water by the customer;*

(3) *Refusal by the customer to give reasonable access to the customer’s premises for necessary inspection of water system property;*

(4) Failure by the customer to address a condition that could contaminate the water system;

(5) Failure by the customer to repair or replace customer-controlled equipment that is allowing water to flow when such flow is not intended;

(6) Violation of water use bans imposed by the water system, including but not limited to, exterior water use when a use restriction has been imposed by the water system;

(7) Violation of formally adopted water system rules provided that the rules identify service termination as a penalty for violation; or

(8) Tampering with water system property.

AUTHORITY THAT ALLOWS THE ADOPTION OF WATER USE RESTRICTIONS AND/OR BYLAWS BY WATER SYSTEMS OWNED BY MUNICIPALITIES OR VILLAGE DISTRICTS

RSA 38:26 Bylaws and Ordinances –

I. In municipalities with public water systems the governing body, or the board of water commissioners, if any, may adopt such ordinances and bylaws relating to the system or structures as required for proper maintenance and operation.

II. Any person who violates any ordinance or bylaw adopted pursuant to paragraph I of this section shall be subject to a civil penalty not to exceed \$10,000 per day of such violation.

AUTHORITY FOR WATER UTILITIES REGULATED BY THE PUBLIC UTILITIES COMMISSION TO RESTRICT WATER USE

Puc 604.07 – Shortage of Supply

(a) The utility shall furnish a continuous and adequate supply of water to its customers and to avoid any shortage or interruption of delivery thereof except when prevented from doing so by emergencies the effect of which prudent planning would not have avoided.

(b) If a utility finds that it is necessary to restrict the use of water it shall give the commission and its customers' written notice, except in emergency conditions, no less than 24 hours in advance, before such restriction becomes effective.

(c) Such notifications shall specify:

a. The reason for the restriction;

- b. The nature and extent of the restriction, such as restrictions on outdoor use of water or use by certain classes of customers;*
- c. The date such restriction is to go into effect; and*
- d. The probable date of termination of such restriction.*

(d) During times of threatened or actual water shortage each utility shall equitably apportion its available water supply among its customers with due regard to public health and safety

Penalties or other enforcement actions must be in accordance with the company's tariff, PUC rules or as otherwise approved by the PUC. For more information, contact PUC at: 21 South Fruit Street, Suite 10 Concord, NH 03301-2429; Phone: (603) 271-2431; Fax: (603) 271-3878.

Revised: May 2020