

# Winnepesaukee River Basin Control

## Section 485-A:45

### **485-A:45 Authority to Acquire, Construct, and Operate. –**

I. The department is authorized and directed to acquire, plan, construct, and operate, to serve certain municipalities within the Winnepesaukee river basin (including, but not necessarily limited to Meredith, Laconia, Gilford, Belmont, Sanbornton, Tilton, Northfield, and Franklin) any and all sewage and waste disposal facilities (meaning only those facilities eligible for state aid) in accordance with basin and regional treatment needs consistent with federal and state requirements.

II. The word "construction" shall include all engineering services in addition to the construction of new sewage or waste treatment plants, pumping stations, and intercepting sewers; the altering, improving or adding to existing treatment plants, pumping stations, and intercepting sewers (except those intercepting sewers and facilities retained by municipalities); or any other associated work, or both, the intent being to include within the department area of responsibility all construction work considered eligible for state financial assistance under the provisions of RSA 486, and including any necessary land acquisition, easements and rights-of-way.

III. To achieve a high degree of reliability and to provide for efficient layout, construction and maintenance of pollution control facilities, the department is authorized to locate sewer and related facilities in all public roadways, whether owned or controlled by a municipality or the state subject to RSA 236:9.

IV. The department is also obligated to restore the public roads, when disturbed for the purpose indicated in paragraph III, to a condition acceptable to local and state highway authorities.

V. Nothing in this section shall be construed to impair or repeal the authority conferred upon municipalities, under RSA 149-I, to construct main drains and common sewers. Nothing in this section shall be construed to impair or repeal the authority conferred upon municipalities under RSA 147 to make and enforce regulations concerning disposal of wastes and abatement of nuisances. The municipalities served under this chapter may, by ordinance or regulation, increase the 100 foot distance contained in RSA 147:8 and RSA 147:11. Such regulations shall apply to the municipal sewerage system and to the regional facilities located within the municipality.

VI. Nothing contained in this section shall be construed to entitle municipalities to receive state aid in excess of their entitlement as provided for in connection with construction as defined in RSA 486.

VII. To produce maximum benefits with the least expenditure of federal, state, and local funds, the department, or any municipality served under this subdivision, is authorized, under terms mutually agreed upon, to accept full responsibility for the planning of sewerage projects involving a mixture of eligible and ineligible facilities as defined in RSA 486. The department and the particular municipality involved will bear their pro-rata share of the associated costs for the work performed under such an agreement.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## Section 485-A:46

**485-A:46 Existing Disposal Systems. –** Any future payments due from a municipality which has undertaken construction (or engaged in engineering study, planning or design), as outlined in RSA 485-A:45, since July 1, 1947, to pay for such construction, study, planning, or design, and the facility involved is acquired by the department, shall automatically become the obligation of the state, including engineering services and contract costs. With respect to payments for engineering services and contract

costs in connection with contracts entered into after July 1, 1967, it is the intention of this section to obligate the state only if the contract giving rise to such obligations has been entered into pursuant to the provisions of RSA 485-A:4, XII.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

### **Section 485-A:47**

**485-A:47 Administration.** – To administer the provisions of this chapter and to perform such other related duties as may be required, the department of environmental services is designated as the agency to receive and utilize any federal or other aids which may at any time be made available in the interest of water pollution control in the basin. The department is empowered to hire consulting engineering firms for purposes of project design and to employ such professional, technical, clerical, accounting, or other staff or consulting personnel as are required to implement the provisions of this subdivision and to arrange for the orderly transfer of ownership and operation of existing pollution abatement facilities to the department on behalf of the state of New Hampshire within the limits of legislative appropriations. Any personnel (other than consultants) employed by the department shall be subject to the personnel laws of the state. This subdivision shall in no way impair or render null and void existing contracts between municipalities, contractors or other parties, or any of them, in connection with pollution control projects or sewerage, sewage or waste service contracts within the basin. Nothing in this subdivision shall be construed as prohibiting future sewerage or waste service contracts otherwise authorized by law between municipalities directly connected to the regional facilities provided for by this subdivision and other persons, including but not limited to municipalities, served or to be served by such facilities but not directly connected to such facilities. All such future contracts, however, shall be submitted at least 60 days in advance of their effective dates to the department, which is empowered to disapprove the terms of any such future contract in whole or in part when in its judgment the efficient administration or the purposes of this subdivision would be adversely affected, and such contract shall not be valid to the extent it is disapproved. In any such contract, unless otherwise specifically provided in the contract, the person or persons served by such regional facility but not directly connected to such facility shall have strict responsibility for the accurate measurement of the amount of sewage or waste disposed of by such person or persons and shall be liable to the municipality directly connected to such regional facilities for the entire amount of sewage or waste, as measured, if any inaccuracy is in favor of such municipality, and for the actual amount of sewage or waste, as estimated, if any inaccuracy is in favor of such person or persons. The commissioner is authorized to adopt, pursuant to RSA 541-A and after public hearing, such rules as are necessary to implement the provisions of this subdivision.

**Source.** 1989, 339:1. 1996, 228:84, eff. July 1, 1996.

### **Section 485-A:48**

**485-A:48 Application of the Statutes.** – All present powers, duties and functions conferred upon municipalities within the basin in connection with the planning, construction, financing and operation of sewage or waste treatment facilities (excepting common sewers and other collector facilities considered ineligible for state grants under the provisions of RSA 486), or both, as are contained in RSA 485, 485-A, 149-I and applicable statutes, are transferred to the department. Personnel of municipalities engaged in the operation of sewage or waste treatment facilities, or both, as referred to in this subdivision, shall be given an opportunity to become employees of the department (with all benefits previously accrued) upon the effective date of the transfer of the municipal sewage or waste treatment facilities, or both, to the department. In no case shall personnel accepting state employment, as provided under this

subdivision, be paid less than the salary paid such individuals as of January 1, 1973, nor shall they suffer a loss or reduction in benefits associated with tenure of service. It shall be the responsibility of the municipality previously employing the individual to supplement such state of New Hampshire benefits if they are less than the employee might have received if his employment had continued uninterrupted with the municipality.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 485-A:49**

### **485-A:49 Expenditures. –**

I. With the approval of the governor and council, the department may use state, federal or other funds accruing to the department and funds borrowed from the state water pollution control and drinking water revolving loan fund established under RSA 486:14 for the acquisition of existing sewage or waste treatment facilities, design and construction of new sewage or waste treatment facilities, alteration, improvement or additions to existing sewage or waste treatment facilities, pumping stations and intercepting sewers, inclusive of operation and maintenance of same; the terms operation and maintenance of treatment facilities shall include maintenance of all buildings, equipment, supplies, and administrative costs associated with the management of the treatment facilities, and for such other purposes as may be involved in the operation of an effective regional pollution control program. The department may purchase, take and hold for the state such materials, lands, easements and rights-of-way as may be required for the purposes of this subdivision. If the department is unable to purchase lands, easements or rights-of-way at what is deemed reasonable compensation, the department shall request the governor and council to appoint a commission to assess the damages sustained by the owner, and thereupon proceedings shall be conducted in the same manner and in accordance with provisions of RSA 230.

I-a. In addition to the uses set forth in paragraph I, and with the approval of the governor and council, the department may evaluate the most cost effective operation of such systems, including evaluating the cost effectiveness of alternative governance structures for the Winnepesaukee River basin control program under this subdivision. The department may not make any changes to the current governance structure unless specifically authorized by statute. The department may present any recommendations concerning alternative governance structures to the general court for consideration.

II. To provide funds for the municipal share of the costs involved pursuant to this subdivision, the state treasurer is authorized to borrow upon the credit of the state not exceeding the sum of \$3,000,000 and for said purposes may issue bonds and notes in the name and on behalf of the state of New Hampshire in accordance with the provisions of RSA 6-A.

III. The payments of principal and interest on the bonds issued under paragraph II shall be made when due from the special fund established by RSA 485-A:50, VI.

**Source.** 1989, 339:1. 1996, 228:106. 2005, 117:1, eff. Aug. 14, 2005. 2016, 125:1, eff. July 19, 2016.

## **Section 485-A:50**

### **485-A:50 Municipal Assessments. –**

I. The department shall annually, at the beginning of each fiscal year, assess each municipality served by the regional sewage disposal facilities provided for by this subdivision, a sum sufficient to recover its proportional share of the total in relation to the total costs estimated to be incurred during said fiscal year in treating, transporting and disposal of sewage of the communities served and those to be served; the proportional share of each community shall be determined by the procedure provided for in paragraph

IV.

II. The department shall annually, at the beginning of each fiscal year, assess each municipality served or to be served by the regional sewage disposal facilities provided for by the provisions of this subdivision the costs estimated to be incurred during said fiscal year in administering this subdivision, plus a charge for amortization charges on such costs of all facilities amounting to 5 percent of the total amortization charges, meaning principal and interest, on such charges. The proportional share of each community's costs shall be determined by the procedure provided for in paragraph IV.

III. The respective share of the assessments made in paragraphs I and II shall be paid to the department by each municipality quarterly on July fifteenth, October fifteenth, January fifteenth, and April fifteenth of that fiscal year, except for capital cost recovery assessments which shall be paid annually on July fifteenth. After the close of each fiscal year, the department shall ascertain its actual total expenses in accordance with the foregoing provisions, and then shall adjust the assessment for the second quarterly payment of the new fiscal year for each such municipality served for any under-payment or over-payment by each such municipality served for the prior fiscal year.

IV. The assessments provided to be made by this section shall be made by taking into account the volume and strength of the industrial, domestic, commercial, and all other waste discharges treated or the estimated volume and strength of the industrial, domestic, commercial and all other waste discharges to be treated and techniques of treatment required. Proportional costs as determined by the department, associated with transporting raw and treated sewage through a major interceptor from a municipality at which it is generated or is to be generated to the point of treatment or discharge shall be allocated to the municipality which uses or will use the interceptor on the basis of volume and distance traveled or estimated volume and distance traveled. In determining said assessments for each municipality, the department shall abide by federal regulations which govern the allocation of costs and receipt of payments by industry for industrial discharges. Any operating and maintenance costs over and above what has been determined to be proportional by the department shall be an obligation of the state.

V. The municipality may recover charges assessed by means of user charges, connection fees, or such other techniques as may be utilized under state and local law, including sewage, sewerage, and waste service contracts, except that municipalities with industrial waste must abide by federal and state regulations which govern recovery of costs from said industries.

VI. All funds collected by the department by virtue of the assessments authorized under this section shall be paid to the state treasurer who shall keep the same in a special fund.

VII. Any municipality aggrieved or dissatisfied with any annual assessment levied against it under the provisions of this section may file a motion for reconsideration by the department control in the same manner and as provided in RSA 485-A:40.

VIII. The charges assessed by the department shall be made against the municipalities which are directly connected to the regional facilities provided for by this subsection and shall include:

(a) any sewage or waste generated within the municipality and transported to such regional facilities, and

(b) any sewage or waste generated outside the municipality and being transported through such municipality's sewage system. Such municipality may recover the charges assessed in accordance with paragraph V.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2007, 5:1, eff. July 1, 2007.

## **Section 485-A:51**

### **485-A:51 Replacement Fund Established. –**

I. There is established a nonlapsing, revolving fund to provide capital for repair and replacement of major components of the water pollution control facilities administered under this subdivision which

cannot be absorbed as regular budgetary items. The replacement fund is to be capitalized by contributions from the members served by the facilities based on each member's projected usage of the facilities.

II. The fund shall equal 5 percent of the equipment and other depreciable assets of the treatment facilities. The value of the equipment and other depreciable assets shall be computed every 5 years, beginning in 1990, and shall be based on current replacement costs.

III. Each member's share of the total fund shall be contributed over a period of 10 years after the initial establishment of the fund and shall be paid as a yearly surcharge to the member's operating charges. Thereafter, each member's surcharge shall be prorated as membership and design changes require.

IV. Once a member has fully funded its share of the replacement fund, the member shall make no further contributions until the fund is utilized for repair or replacement of a facility used by that member. Expenses for which the fund is used shall be proportionally charged against each member's contributions to the fund for the facilities utilizing the fund, which will subsequently be reimbursed by the member in successive years in addition to the member's yearly contribution to the fund, until the member's share of the fund is fully restored.

V. If a repair or replacement cost exceeds the value of the fund established for that particular facility, the repair cost shall be paid out of the portion of the fund established for other facilities, but reimbursement to the fund shall always be assessed back to members based on their projected usage of the facilities needing repair.

VI. As new facilities, if any, are added to the system, additional assessments shall be made to the members benefiting from these facilities, prorated on the basis of projected use.

VII. If a new member joins the system, the assessments shall be modified to reflect the new member's benefit from the facilities, and excess prior payments made by other members, if any, shall be credited to their accounts.

VIII. All contracts paid for using the fund shall be submitted to the governor and council for approval.

IX. This nonlapsing, revolving special purpose fund is continually appropriated to be used by the department in accordance with this subdivision. All moneys shall be deposited with the state treasurer who shall keep this money in a separate fund, notwithstanding RSA 6:12. The state treasurer shall invest the moneys deposited with him as provided by law. Interest received on investments made by the state treasurer shall also be credited to the fund. All such interest shall be added to each member's share of the fund based on each member's contribution to it.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996.

## **Section 485-A:52**

### **485-A:52 Advisory Board Established. –**

I. There is established a Winnepesaukee River advisory board consisting of one member, from each community, appointed by the board of selectmen of a town or the city council of a city involved. The term of office of each member shall be one year commencing July 1, 1972, and each member shall serve until his or her successor shall have been appointed. The advisory board shall annually elect a chairman by majority vote of its members, and the board shall meet at least quarterly upon the call of the chairman or at least 3 members of the board in order to consider matters properly coming before it for attention. The advisory board shall meet with the department at suitable intervals to review matters of mutual concern. An annual budget shall be submitted to the advisory board by the department, for review and comment, 60 days prior to the beginning of the new fiscal year. Members of the advisory board shall receive no per diem but shall be entitled to reimbursement for expenses including mileage when in the

performance of duties required under this subdivision. Each municipality shall provide funds necessary to reimburse its members to the advisory board.

II. The advisory board shall make a recommendation to the governor and executive council on each request for a contract to plan, design, or construct capital improvements using moneys for expenditures under RSA 485-A:49. The department of environmental services shall include a letter from the advisory board to the governor and executive council documenting the decision and recommendations of the advisory board on such contract for the governor and executive council's consideration before approving or denying such contract.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2016, 104:1, eff. July 18, 2016.

### **Section 485-A:53**

**485-A:53 Insurance.** – The department shall purchase insurance, including extended coverage insurance, to protect the pollution control facilities administered under this subdivision against fire, vandalism, and malicious mischief. The cost of the insurance shall be included in the user fee. If the department determines that any of the foregoing insurance is unavailable or uneconomical, it may request the governor and council to waive the provisions of this section for the term of the coverage. Nothing in this section shall be construed as a waiver of the state's sovereign immunity regardless of the department's ability to procure the types of insurance described in this section.

**Source.** 1989, 339:1. 1996, 228:106, eff. July 1, 1996. 2014, 327:69, eff. Aug. 2, 2014; 146:1, eff. Aug. 15, 2014.

### **Section 485-A:54**

#### **485-A:54 Enforcement and Penalties.** –

I. The department may issue an order to any person in violation of this subdivision, a rule adopted under this subdivision, or any condition in any contract or permit issued or entered into under this subdivision. This order may require such remedial or corrective measures as may be necessary. Any person to whom such an order is directed may appeal in accordance with RSA 21-O:14.

II. If the department determines that the discharge to any state-owned treatment facility presents an imminent threat to the environment or to the operation of the treatment facility, the department may issue an order requiring such action as may be necessary to meet the emergency, or may take necessary action to block the public sewer to prevent the discharge of the waste into the treatment facility. Any order issued under this authority shall take effect immediately. A person to whom such an order is issued or any person affected by action taken by the department under this paragraph may appeal to the commissioner or designee for a hearing on such order or action, which shall be held within 2 working days after receipt of the request for the hearing. The person may appeal the decision on such hearing pursuant to RSA 21-O:14.

III. Any person who violates any of the provisions of this chapter, or any rule adopted or order issued under this subdivision, shall be subject to a civil penalty not to exceed \$10,000 for each violation, or for each day of a continuing violation.

IV. Any violation of the provisions of this subdivision, or of any rule adopted or order issued under it, or of any condition in any permit issued or contract entered into under the authority of this subdivision, may be enjoined by the superior court upon application by the attorney general.

V. The commissioner of environmental services, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this subdivision, any rule adopted under this subdivision, or any permit or contract

entered into under the authority of this subdivision. Rehearings and appeals from a decision of the commissioner under this paragraph shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this subdivision. The proceeds of administrative fines levied pursuant to this paragraph shall be deposited by the department in the replacement fund established pursuant to RSA 485-A:51. The commissioner shall adopt rules, under RSA 541-A, relative to:

(a) A schedule of administrative fines which may be imposed under this paragraph for violations of this chapter as provided above.

(b) Procedures for notice and hearing prior to the imposition of an administrative fine.

**Source.** 1989, 339:1. 1995, 217:9. 1996, 228:85, 106, eff. July 1, 1996.