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SUBTITLE Env-Wr DAM PROGRAM & RELATED

CHAPTER Env-Wr 100 ORGANIZATIONAL RULES

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Env-Wr 101.01 “100-year flood” means the flood that has a one chance in 100 of being equaled or exceeded in a period of one year.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.02 “50-year flood” means the flood that has a one chance in 50 of being equaled or exceeded in a period of one year.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.03 “Acre-foot” means the volume of water that would cover one acre to a depth of one foot.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.04 “Applicant” means the person or persons filing an application to construct or reconstruct a dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; rpld by #4491, eff 9-20-88

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.05 “Breached dam” means a dam that no longer impounds water at the level of the primary spillway or outlet structure because of a partial or full dam failure, or because a portion of the dam has been removed.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

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Env-Wr 101.06 “Classification of a dam” means “classification of a dam” as defined in RSA 482:2, I, as reprinted in Appendix C.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.07 “Construction engineer” means a professional engineer, licensed in New Hampshire, who has been hired by the owner to oversee construction or reconstruction of a dam.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.08 “Controlled breach” means an opening in a dam that extends from the top of the dam to the streambed made specifically for the purpose of lowering the level of impounded water to a safe level for the dam.

Source. #1702, eff 1-1-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.09 “Dam” means “dam” as defined in RSA 482:2, II, as reprinted in Appendix C.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.10 “Dam in disrepair” means “dam in disrepair” as defined by RSA 482:2, V, as reprinted in Appendix C.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.11 “Days” means calendar days unless otherwise specified.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.12 “Department” means the department of environmental services.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

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New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.13 “Discharge capacity” means the amount of water which can safely pass the structure through its normal discharge channels.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.14 “Emergency action plan” means “emergency action plan” as defined in RSA 482:2, VI, as reprinted in Appendix C.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.15 “Emergency condition” means:

- (a) A situation has arisen at a dam which could jeopardize the integrity of the dam; or
- (b) Failure of the dam is imminent or has occurred.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.16 “Environmentally-sensitive site” means:

- (a) A site listed and tracked by the natural heritage inventory, as maintained by the department of resources and economic development;
- (b) A prime wetland designated pursuant to RSA 482-A:15;
- (c) A river segment designated pursuant to RSA 483;
- (d) A prime habitat for resident or migratory fishes, as determined by the fish and game department; or
- (e) Surface waters that support coldwater fish communities immediately downstream of a dam, as determined by the fish and game department.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

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Env-Wr 101.17 “Flashboards” means boards which temporarily raise the pond elevation above the permanent spillway crest and are designed to automatically fall over when the water level rises to a particular level.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.18 “Freeboard” means the vertical distance from the water surface to the lowest elevation at which water would flow over the dam at a section not designed to be overflowed.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.19 “Great pond” means a water body of 10 acres or more in its natural condition.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.20 “Height” means the vertical distance from the lowest point of natural ground on the downstream side of the dam to the highest part of the dam which would impound water.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; amd by #4278, eff 6-30-87; ss by #4534, eff 11-30-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.21 “High hazard structure” means a dam that has a high hazard potential because it is in a location and of a size that failure or misoperation of the dam would result in probable loss of human life as a result of:

(a) Water levels and velocities causing the structural failure of a foundation of a habitable residential structure or a commercial or industrial structure which is occupied under normal conditions;

(b) Water levels rising above the first floor elevation of a habitable residential structure or a commercial or industrial structure which is occupied under normal conditions when the rise due to dam failure is greater than one foot;

(c) Structural damage to an interstate highway which could render the roadway impassable or otherwise interrupt public safety services;

(d) The release of a quantity and concentration of materials which qualify as “hazardous waste” as defined in RSA 147-A:2, VII; or

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(e) Any other circumstance which would more likely than not cause one or more deaths.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.22 “Inflow design flood” is the flood flow above which the incremental increase in water surface elevation downstream of the dam due to dam failure would not increase the harm or threat of harm to public safety or property downstream of the dam.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.23 “Inland public water” as used in RSA 482:79 means any public water of 10 acres or more whose level is controlled by a dam.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.24 “Low economic loss” means reversible environmental loss to undeveloped land or minor damage to uninhabited structures, such as storage sheds, or to sites listed or tracked by the natural heritage inventory, as maintained by the department of resources and economic development.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.25 “Low hazard structure” means a dam that has a low hazard potential because it is in a location and of a size that failure or misoperation of the dam would result in any of the following:

- (a) No probable loss of life;
- (b) Low economic loss;
- (c) Structural damage to a town or city road or private road accessing property other than the dam owner’s which could render the road impassable or otherwise interrupt public safety services;
- (d) The release of liquid industrial, agricultural, or commercial wastes, septage, or contaminated sediment if the storage capacity is less than 2 acre-feet and is located more than 250 feet from a water body or water course; or
- (e) Reversible environmental losses to environmentally-sensitive sites.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.26 “Menace to public safety” as used in RSA 482:2, V and “menace to the public safety” as used in RSA 482:9, III, means that the failure or misoperation of the dam would threaten human life or public health or interrupt safety services. The term includes any low hazard, significant hazard, or high hazard dam but does not include any non-menace dam.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

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Env-Wr 101.27 “Mills” means “mills” as defined by RSA 482:2, VII, as reprinted in Appendix C.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.28 “Non-menace structure” means a dam that is not a menace because it is in a location and of a size that failure or misoperation of the dam would not result in probable loss of life or loss to property, provided the dam is:

- (a) Less than 6 feet in height if it has a storage capacity greater than 50 acre-feet; or
- (b) Less than 25 feet in height if it has a storage capacity of 15 to 50 acre-feet.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.29 “Non-permitted” means:

(a) For a dam constructed subsequent to 1917, that a permit, order, or authorization for construction or registration by the department or a predecessor state agency responsible for such at the time has never been issued; or

- (b) For a dam constructed prior to 1917, that the location of the dam is not on file with the department.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.30 “Normal storage capacity” means the volume of water and material which could be impounded above the natural ground elevation, when the water level is at the elevation of the lowest free-flowing discharge structure.

Source. #4278, eff 6-30-87; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.31 “Owner” means the person or persons who own a dam.

Source. #4399, eff 4-19-88, EXPIRED 4-19-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.32 “Person” means “person” as defined by RSA 482:2, VIII, as reprinted in Appendix C.

Source. #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.33 “Plans” means engineering drawings including plan views, elevations, sections, and details.

Source. #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

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Env-Wr 101.34 “Reconstruction” means “reconstruction” as defined by RSA 482:2, X, as reprinted in Appendix C.

Source. #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.35 “Removal” means the physical elimination of a dam as governed by Env-Wr 600.

Source. #4491, eff 9-20-88; ss by #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.36 “Repair” means work on a dam that does not change the height, length or discharge capacity of the structure and that does not constitute reconstruction.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.37 “Reversible environmental losses” means damage to an ecosystem which is expected to self-remediate within 5 years.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.38 “Ruins” means the remains of a dam which no longer impounds water and whose deterioration is to the extent that the original configuration can no longer be determined.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.39 “Significant hazard structure” means a dam that has a significant hazard potential because it is in a location and of a size that failure or misoperation of the dam would result in any of the following:

- (a) No probable loss of life;
- (b) Major economic loss to structures or property;
- (c) Structural damage to a Class I or II road which could render the road impassable or otherwise interrupt public safety services;
- (d) Major environmental or public health losses, including:
 - (1) Damage to a public water system, as defined by RSA 485:1-a, XV, which will take longer than 48 hours to repair; or
 - (2) The release of liquid industrial, agricultural, or commercial wastes, septage, sewage, or contaminated sediments if the storage capacity is 2 acre-feet or more; or
 - (3) Damage to an environmentally-sensitive site that does not meet the definition of reversible environmental losses.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

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Env-Wr 101.40 “Specifications” means the descriptions of materials and methods of work sufficient in quantity and detail to convey the intent of the designer.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.41 “Stage” means the depth of water or elevation of water surface.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.42 “Storage capacity” means the maximum volume of water and material which could be impounded by a dam above the natural ground elevation when the water level is at:

- (a) The top of dam; or
- (b) The highest elevation which could be hydrologically attained, if this elevation is below the top of dam.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.43 “Stream” means any watercourse delineated on a USGS topographic map as a dashed or solid line, or any watercourse not delineated on a USGS topographic map that flows continuously in a well-defined channel for at least 30% of the year.

Source. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

Env-Wr 101.44 “Sunny day flow” means the flow occurring in a river or stream channel during normal hydrologic conditions.

Source. #10508, eff 1-22-14

Env-Wr 101.45 “Wave run-up” means the height of water above the still water level which would be expected to occur at a dam as a result of high winds.

Source. #10508, eff 1-22-14

PART Env-Wr 102 DUTIES OF THE DEPARTMENT

Env-Wr 102.01 Summary of Duties. Pursuant to its statutory authority under RSA 482, the department performs the following duties:

- (a) Enters interstate compacts for conserving and regulating flow, lessening flood damages and removing or preventing sources of pollution, pursuant to RSA 482:91;
- (b) Monitors flow by establishing and maintaining a network of stream flow gauging stations with cooperation from the United States Geological Survey, pursuant to RSA 482:85;
- (c) Constructs, maintains and operates small watershed projects with cooperation from the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS), pursuant to RSA 482:77;
- (d) When duly-authorized by the legislature, accepts, repairs, maintains, and operates certain dams, pursuant to RSA 482:48;

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- (e) Makes determinations whether it will be in the public interest to grant the right to erect a dam, pursuant to RSA 482:9, V(a) and RSA 482:31;
- (f) Maintains a current list of existing dams, including their size, location, classification and owner, pursuant to RSA 482:8;
- (g) Regulates the construction and reconstruction of dams, pursuant to RSA 482:7-11;
- (h) Makes determinations of whether dams are in disrepair and conducts follow-up proceedings, pursuant to RSA 482:11-a, RSA 482:61, and, if necessary, RSA 482:89;
- (i) Periodically inspects dams, pursuant to RSA 482:12;
- (j) Makes determinations of public use and benefit, pursuant to RSA 482:9, V(a), RSA 482:17 and RSA 482:31;
- (k) Grants owners of mill dams certain rights when in the public interest, pursuant to RSA 482:31;
- (l) Makes channel improvements in the public interest, pursuant to RSA 482:1;
- (m) Makes orders, conducts hearings, subpoenas and examines under oath persons and their books, records, documents, correspondence, and accounts, as necessary to carry out its obligations, pursuant to RSA 482:87;
- (n) Adopts and enforces rules, pursuant to RSA 482:87 and enforces the statute and rules pursuant to RSA 482:89;
- (o) Investigates the levels of inland public waters, pursuant to RSA 482:79; and
- (p) Monitors the ground water resources with the cooperation of the United States Geological Survey, pursuant to RSA 482:3, II.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84, EXPIRED 11-7-90

New. #5080, eff 2-22-91; ss by #6462-A, eff 2-21-97; ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

PART Env-Wr 103 ACCESS TO FILES

Env-Wr 103.01 Public Records; Access to Files.

- (a) Governmental records held by the department relating to activities under RSA 482 shall be open to public inspection unless exempt under RSA 91-A:5.
- (b) Governmental records that are available for public review may be copied pursuant to RSA 91-A:4, IV.

Source. #1716, eff 2-20-81; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; #4278, eff 6-30-87; ss by #4580, eff 2-27-89; rpld by #5080, eff 2-22-91

New. #6462-A, eff 2-21-97 (formerly Env-Wr 105.01); ss by #8288, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8412, eff 8-20-05; ss by #10508, eff 1-22-14

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CHAPTER Env-Wr 200 PROCEDURES

PART Env-Wr 201 PURPOSE AND APPLICABILITY

Env-Wr 201.01 Purpose.

(a) The rules in this chapter are intended to supplement Env-C 200 and RSA 541-A in governing proceedings before the department under RSA 482. These rules shall be construed to secure a just and speedy determination of every proceeding.

(b) The purpose of any proceeding governed by this chapter shall be to allow the department to acquire sufficient information to make a reasonable decision, and to afford persons who may be affected by decisions of the department the opportunity to present evidence and argument to the department prior to the making of that decision.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05; ss by #10509, *eff 1-22-14*

Env-Wr 201.02 Applicability. These rules shall apply to all proceedings initiated under RSA 482 relative to dams and lake level determinations.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05; ss by #10509, *eff 1-22-14*

PART Env-Wr 202 WAIVERS

Env-Wr 202.01 Purpose. The purpose of these waiver rules is to accommodate situations in which strict compliance with all applicable requirements specified in subtitle Env-Wr might not be necessary or in the best interests of human life, public safety, or the environment.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05; ss by #10509, *eff 1-22-14*

Env-Wr 202.02 Applicability. These waiver rules shall apply to any person who is or would be directly and adversely affected by the strict application of these rules who wishes to request a waiver of the rule(s) or portion(s) thereof which so affect that person.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05; ss by #10509, *eff 1-22-14*

Env-Wr 202.03 Waiver Request.

(a) The person requesting the waiver(s) shall submit the request to the department in writing.

(b) If the waiver is needed in conjunction with an application filed under Env-Wr 400, the waiver request shall be submitted with the application or as soon thereafter as the need for the waiver is identified.

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- (c) The waiver request shall contain the following information:
- (1) A description of the dam to which the waiver request relates, including name, address, and dam number;
 - (2) A citation to the specific section(s) of the rules from which a waiver is sought;
 - (3) A complete explanation of why a waiver is being requested, including an explanation of the economic and operational consequences of complying with the rule;
 - (4) A complete explanation of any proposed alternative(s) to the rule(s) for which a waiver is sought, with appropriate supporting information;
 - (5) Whether the need for the waiver is temporary and, if so, the length of time the waiver is needed; and
 - (6) A complete explanation of how granting a waiver would be consistent with the criteria specified in Env-Wr 202.04(a).
- (d) The person requesting the waiver(s) shall sign and date the request.
- (e) The person's signature shall constitute certification that:
- (1) The information provided is true, complete, and not misleading to the knowledge and belief of the signer; and
 - (2) The signer understands that any waiver granted based on false, incomplete, or misleading information shall be subject to revocation.

Source. #8413, eff 8-20-05; ss by #10509, eff 1-22-14

Env-Wr 202.04 Action on Waiver Request.

- (a) Subject to (b), below, the department shall grant a waiver upon determining that:
- (1) Granting a waiver will be consistent with the intent of RSA 482;
 - (2) Human life, public safety, and the environment will be protected; and
 - (3) Any benefit to the public or the environment from strict compliance with the rule is outweighed by the economic and operational consequences of strict compliance with the rule.
- (b) No waiver shall be granted of a requirement that is prescribed by statute, unless a waiver is expressly allowed by the statute that would be waived.
- (c) The department shall issue a written decision on a request for a waiver. If the request is denied, the decision shall specify the reason(s) for the denial.
- (d) If the need for the waiver is temporary, the department shall identify the expiration date of the waiver in its written decision.
- (e) If the department determines that conditions are necessary for the criteria specified in (a), above, to be met, the department shall include such conditions as are necessary in the waiver.

Source. #10509, eff 1-22-14

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PART Env-Wr 203 PROCEEDINGS

Env-Wr 203.01 Public Hearings. Any hearing held to receive public comment under the following statutory provisions shall be conducted in accordance with the provisions of Env-C 200 applicable to non-adjudicative hearings:

- (a) RSA 482:6 relative to the management and control of the outlet of a great pond;
- (b) RSA 482:9, V(a) relative to public benefit of a proposed significant hazard or high hazard dam;
- (c) RSA 482:30 relative to public benefit of a dam proposed under RSA 482:29; and
- (d) RSA 482:79 relative to lake level determinations.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss by #6462-B, eff 2-21-97; ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05; ss by #10509, eff 1-22-14

Env-Wr 203.02 Permit Proceedings. The processing of an application for approval to construct or reconstruct a dam shall be a non-adjudicative proceeding in accordance with RSA 541-A:29, II(a).

Source. #8413, eff 8-20-05; ss by #10509, eff 1-22-14

PART Env-Wr 204 DECISION AND APPEALS

Env-Wr 204.01 Department Decisions.

- (a) All final department decisions under RSA 482 shall be issued in writing.
- (b) A final decision to grant a permit application shall be distributed as follows:
 - (1) Subject to Env-Wr 404.02(b), the original shall be sent to the applicant; and
 - (2) Copies shall be sent to all municipalities that were notified of the application pursuant to Env-Wr 304.03 or Env-Wr 402.07.
- (c) A final decision to deny a permit application shall be distributed as follows:
 - (1) The original shall be sent to the applicant; and
 - (2) Copies shall be sent to all municipalities that were notified of the application pursuant to Env-Wr 304.03 or Env-Wr 402.07.
- (d) Copies of a final decision in a lake level investigation shall be sent to:
 - (1) The owner of the dam that is the subject of the order;
 - (2) The person(s) who requested the investigation, if any;
 - (3) Each municipality in which the impounded water is located; and
 - (4) Each person who participated in the investigation who specifically requested to be notified of the decision.
- (e) Copies of an order issued pursuant to RSA 482:11 or RSA 482:12 shall be sent to:
 - (1) The owner of the dam that is the subject of the order; and

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(2) Each municipality in which the impounded water is located.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #4336, eff 11-5-87; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (from Env-Wr 205.01); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05; ss by #10509, eff 1-22-14

Env-Wr 204.02 Appeals. Appeals of department decisions under RSA 482 shall be directed to the water council in accordance with RSA 21-O:14 and Env-WC 200.

Source. #1644, eff 10-7-80; ss by #2207, eff 12-13-82; ss by #2900, eff 11-7-84; ss by #5080, eff 2-22-91; ss and moved by #6462-B, eff 2-21-97 (from Env-Wr 205.02); ss by #8285, INTERIM, eff 2-21-05, EXPIRES: 8-20-05; ss by #8413, eff 8-20-05; ss by #10509, eff 1-22-14

Appendix A: Statutes Implemented

Rule Section(s)	State Statute(s) Implemented
Env-Wr 101	RSA 482
Env-Wr 102	RSA 482
Env-Wr 103	RSA 482; RSA 91-A:4
Env-Wr 201	RSA 482:1 <u>et seq.</u> ; RSA 541-A:16, I(b)
Env-Wr 202	RSA 541-A:16, I(b); RSA 541-A:22, IV
Env-Wr 203	RSA 482:6; RSA 482:9, V(a); RSA 482:30; RSA 482:79; RSA 541-A:16, I(b)
Env-Wr 204	RSA 482:1 <u>et seq.</u> ; RSA 541-A:16, I(b)

[No Appendix B for these chapters]

Appendix C: Statutory Definitions

RSA 482:2

I. “Classification of a dam” means the potential hazard classification placed on a dam by the department based on the potential threat to life and the potential extent of property damage in the event of accidental damage to, or failure of, the dam structure. The classifications shall be “non-menace,” “low hazard potential,” “significant hazard potential,” or “high hazard potential.”

II. (a) “Dam” means any artificial barrier, including appurtenant works, which impounds or diverts water and which has a height of 6 feet or more, or is located at the outlet of a great pond. A roadway culvert shall not be considered a dam if its invert is at the natural bed of the water course, it has adequate discharge capacity, and it does not impound water under normal circumstances. Artificial barriers which create surface impoundments for liquid industrial or liquid commercial wastes, septage, or sewage, regardless of height or storage capacity, shall be considered dams.

(b) An artificial barrier at a storm water detention basin, which impounds 0.5 acre-foot or less of water during normal conditions, shall not be considered a dam unless its height is 10 feet or greater or its maximum storage is 6 acre-feet or greater.

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V. "Dam in disrepair" means a dam which is a menace to public safety and is incapable of safely impounding flood waters to its crest, or is incapable of maintaining a reasonably constant level of waters impounded, or is one which does not contain adequate gates and sluiceways to provide for the holding or controlled discharge of waters impounded.

VI. "Emergency action plan" means a written document delineating a prescribed sequence of actions to be taken by a dam owner to inform the authorities and others downstream of an impending or actual sudden release of water caused by an accident to, or failure of, the dam. This plan shall be developed in consultation with local officials and notification of the plan shall be given to the general public who would be affected by a sudden release of water caused by an accident or other failure of the dam. The plan shall be kept on file with the local emergency management director and other local officials as deemed appropriate by the department.

VII. "Mills" shall include both manufacturing plants and plants at which electric power is generated for public distribution or for the operation of mills, railroads or public utilities.

VIII. "Person" means any individual, partnership, association, corporation, company, organization or legal entity of any kind.

X. "Reconstruction" means:

- (a) A change in the height, length, or discharge capacity of the structure;
- (b) Restoring a breached dam or one in ruins;
- (c) Modification of flashboards which either increases their height or increases the headwater elevation at which the flashboards will fail; or
- (d) A change in the structural configuration of a dam.