

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-Wr 900 OFFICIAL LIST OF PUBLIC WATERS

PART Env-Wr 901 PURPOSE AND APPLICABILITY

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

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

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

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

PART Env-Wr 902 DEFINITIONS

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

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

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

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

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

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

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

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

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PART Env-Wr 903 CONTENTS AND DETERMINATIONS

Env-Wr 903.01 Waters Listed.

(a) The official list shall include the following:

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

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

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

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

(a) Geographical information system database sets created or maintained by:

- (1) The department;
- (2) The U.S.D.A. Natural Resources Conservation Service;
- (3) The United States Geological Survey (“USGS”);
- (4) The United States Environmental Protection Agency;
- (5) The complex systems research center of the university of New Hampshire; or
- (6) Any combination of the above.

(b) Current and historic USGS topographic mapping;

(c) Other historic maps;

(d) Historic photographs, including aerial photographs;

(e) Depth contour mapping;

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- (f) Physical evidence such as shoreline soil, slope and vegetative conditions;
- (g) Historical public uses of the water; and
- (h) Any other data collected by the department to determine the status of a water.

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

Env-Wr 903.03 Publication of the Official List.

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

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

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

Env-Wr 904.01 Official List Maintenance and Updates.

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

- (b) The department shall publish each revised official list as specified in Env-Wr 903.03.

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

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

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

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

Env-Wr 904.03 Posting of Notice.

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

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

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

- (1) The attorney general;

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- (2) The department of resources and economic development;
 - (3) The fish and game department;
 - (4) The office of energy and planning;
 - (5) The department of safety;
 - (6) The department of transportation;
 - (7) The public utilities commission; and
 - (8) The governing body of each community in which the water is located.
- (c) The department also shall post the notice on its website.

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

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

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

Env-Wr 904.05 Decision.

- (a) The department shall issue a final determination on the status of the water within 120 days of the posting of the notice.
- (b) The department shall send a copy of the decision to all who were sent a copy of the notice pursuant to Env-Wr 904.03(b).
- (c) The department shall post a copy of the decision on the department's website.
- (d) If the decision results in a change to the official list, the department also shall revise the official list by publishing an updated list as specified in Env-Wr 903.03.

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

Appendix A: Statutes Implemented

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

[No Appendix B or Appendix C for this chapter]