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Managing Groundwater Protection Areas Guidance and Sample Letters

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Prepared by

Source Water Protection Program
Drinking Water and Groundwater Bureau
Water Division



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INTRODUCTION

This guide has been prepared for water suppliers and local officials conducting groundwater protection programs that are consistent with the protection approach enabled by New Hampshire's Groundwater Protection Act (RSA 485-C). These protection programs involve educating residents and owners of businesses located in the groundwater protection area. Additionally, to conduct inspections to ensure that businesses using greater than household quantities of "regulated substances" are employing best management practices (BMPs) to minimize the risk of groundwater contamination.

This guide also provides sample letters designed to cover all aspects of the program. The sample letters were written to cover a wide range of circumstances and should be modified to apply to your particular situation. However, if a non-compliance issue arises during a BMP inspection, contact Pierce Rigrod [\(603\) 271-0688](tel:603-271-0688) or Liz Pelonzi [\(603\) 271-3906](tel:603-271-3906) within the New Hampshire Department of Environmental Services (NHDES) Drinking Water Source Protection Program and staff will review your compliance letters in advance of sending them to ensure they are consistent with the BMP regulations and meet any legal notification requirements of the program.

This guide also discusses how to perform the BMP compliance inspections. While the five steps are the same in all groundwater protection programs, there are some differences in how Step E (Follow Up On BMP Non-Compliance Issues) is carried out, due to the difference in enforcement authorities. **Therefore, this guide provides two descriptions of Step E, one for a voluntary program and one for a program authorized by a local ordinance or groundwater reclassification.**

Local entities (e.g., municipalities or public water systems) can implement these programs in two ways. The first is with a *voluntary program*, meaning that the local entity can conduct education and inspection activities, but cannot compel local businesses to allow inspections or to use BMPs. The second way, a *regulatory program*, is available to health officers and their agents who have obtained enforcement authority, either through the groundwater reclassification process (under RSA 485-C:9) or through a local health ordinance.*

Public water suppliers may be required to complete these protection programs *at least once every three years* either through NHDES's Chemical Monitoring Waiver Program (community or non-transient non-community water system) or the Wellhead Protection Program (new small or large community water system).

For more information, please see NHDES fact sheet [DWGB-12-5, Protection Programs Required for New Production Wells](#), or call [\(603\) 271-2513](tel:603-271-2513) and [DWGB-12-4, Chemical Monitoring Waivers](#), or call [\(603\) 271-2862](tel:603-271-2862).

An [online basic training for BMP inspectors](#) is also available.

If you have any questions or are interested in in-person training, please call the Drinking Water Source Protection Program at [\(603\) 271-0688](tel:603-271-0688) or [\(603\) 271-3906](tel:603-271-3906).

*If the groundwater protection program is designed to support groundwater reclassification, the process described in this manual, involving notification and inspection of potential contamination sources (PCSs), must be carried out at least once every three years in order to maintain that classification.

MANAGING GROUNDWATER PROTECTION AREAS

Generally, there are five major steps in implementing a groundwater protection program. Each of the five steps is explained in this guide.

5 Steps to Completing a Groundwater Protection Program

1. Notify the municipality(ies) where the groundwater protection areas are or will be located.
2. Educate residents and businesses using only household quantities of regulated substances.
3. Contact businesses using greater-than-household quantities of regulated substances. Notify them of Env-Wq 401 BMP rules and set up inventory interviews and inspections.
4. Perform inspections to determine compliance with best management practices.
5. Follow up on BMP non-compliance issues through letters and additional inspections to obtain compliance.

Regulated substances means any of the following:

Oil as defined in RSA 146-A:2, III.

Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6.

Any substance listed in 40 CFR 302.4, 8/4/17 edition.

Substances used for the treatment of drinking water or waste water at New Hampshire Department of Environmental Services (NHDES)-approved facilities are excluded from BMP inspections. Examples are:

ammonia

sodium hypochlorite

sodium

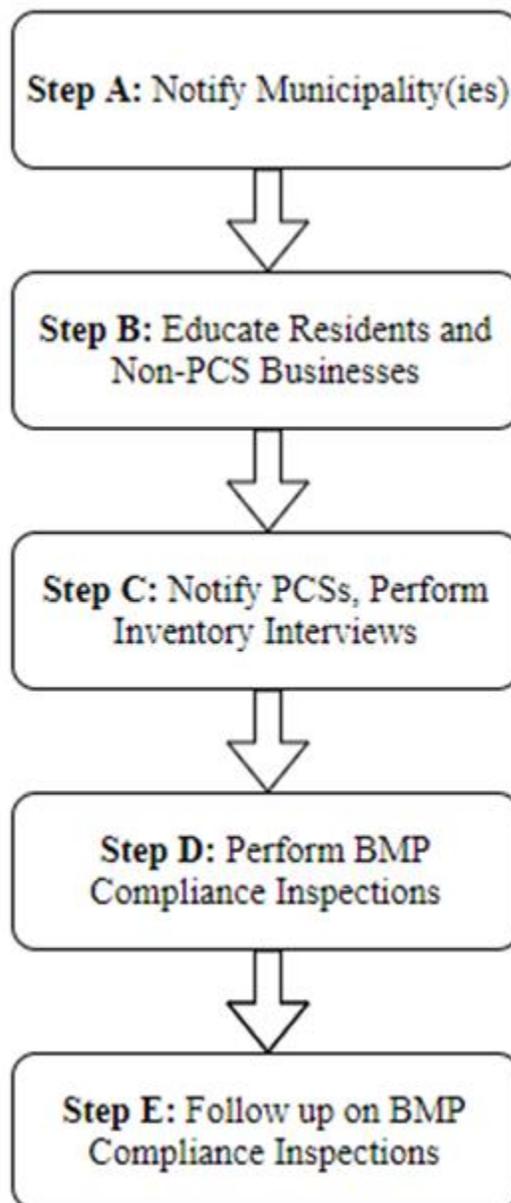
acetic acid

sulfuric acid

potassium hydroxide

potassium permanganate

Chart 1: Five Steps for Managing Groundwater Protection Areas



Step A: Notify Municipalities in Which the Groundwater Protection Area is Located

Use this notice in advance of performing BMP compliance inspections to notify abutting municipalities if your groundwater protection area, or source water protection area for surface water sources, extends into another municipality and that area also contains PCSs. You should not conduct BMP compliance inspections in another municipality without first notifying that municipality. This is a sample letter you may adapt with details concerning your specific water supply needs. Portions of sample letters that require modification are within brackets [*italics*]. Be sure to enclose NHDES BMP for Groundwater Protection fact sheet DWGB-22-4 and a copy of your protection area map with your letter.

If the groundwater protection area or wellhead protection area is completely within the municipality of the entity sponsoring the protection program, i.e., municipal water department, planning board, etc., you can skip Step A. If the program is being conducted by an entity that is not part of municipal government, (e.g., a non-municipal water system) then the governing body (board of selectmen, city council, board of aldermen) should be notified.

Sample Letter A: To Notify Abutting Communities within Groundwater Protection Program Areas

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

[Local Governing Body]

Town Hall

[Town], New Hampshire, [Zip Code]

Dear [Local governing body]:

The purpose of this letter is to inform you about the program we are planning to help protect our source(s) of public drinking water. By doing so we benefit from increased protection of our [*present and/or future*] sources and lower our water system's operating costs by receiving cost-saving waivers from certain drinking water sampling requirements under New Hampshire's Chemical Monitoring Waiver Program.

The area that we protect is called the [*wellhead/groundwater/aquifer/source water*] protection area. This is [*the area that likely contributes groundwater flow to our wells/a portion of the watershed that contributes to our surface water source/other explanation as appropriate*]. New Hampshire Department of Environmental Services (NHDES) delineated this protection area for us, and it is shown on the enclosed map. As you can see, our protection area extends into [*your town or city*].

Our protection program includes an educational mailing that provides information to homeowners and businesses about what they can do to minimize the risk of a release of regulated substances. Under NHDES guidelines, businesses using greater than household quantities of regulated substances are considered potential contamination sources (PCSs). In addition to notifying PCS owners and sending them educational materials, our protection program requires us to conduct in-person inspections of their facilities once every three years. An in-person inspection is a visit to a PCS, done on an appointment basis, to observe the facility for compliance with state administrative rule, Env-Wq 401, Best Management Practices for Groundwater Protection.

The attached NHDES Fact sheet gives an overview of the BMP rules. Since PCSs exist in the portion of our protection area that extends into [*town or city*], we would like to conduct BMP compliance inspections in [*your town or city*]. However, we will not conduct BMP inspections in [*town or city*] without first notifying you. Following each inspection, we send a summary letter to the PCS and we will forward a copy to you, as well. Please contact me at [*phone number and email*] if you have any questions or concerns about this matter.

We appreciate your cooperation with our efforts to protect our valuable source(s) of drinking water.

Sincerely,

[Contact person's name]

Enclosures: NHDES fact sheet DWGB 22-4; Protection area map

Step B: Educate Homeowners and Businesses That Use Only Household Quantities of Regulated Substances (Fewer than 5 gallons)

One method of educating homeowners and non-PCS businesses that use small quantities of regulated substances is to send a letter and basic information about how to protect drinking water supplies. This sample letter provides basic groundwater education to all the homeowners, tenants, and non-PCS businesses that are located within your source protection area. Fill in the appropriate information such as the name and address of the recipient, the date it is mailed, and the name and type of the water system. Be sure to use your letterhead for your letters. Include educational material such as a copy of the "Got Clean Water?" or "Protecting Your Drinking Water" pamphlet in Appendix D.

Sample Letter B: To Provide Basic Groundwater Management Instructions for Residents and Non-PCS Businesses

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

[Name of Recipient]

[Recipient Address]

[Town], New Hampshire, [Zip Code]

Dear *[the recipient's name or an appropriate term such as homeowner, neighbor, or customer]*:

The purpose of this letter is to ask for your cooperation in ensuring safe drinking water for the *[Name]* Water System. If we are all careful, substances that could pollute our drinking water will never find their way to our *[well(s)/intake pipe]*.

Your property is located within the area from which water flows to our *[well(s)/intake pipe]*. As such, it is important that you are aware that what you do on your property could affect the quality of the water our system uses. Your activities can also affect the water quality on your own property.

No one wants to drink polluted water. Who would pour gasoline, motor oil, paint, garden or lawn chemicals, or household chemicals into their drinking water? Yet, the equivalent is done when someone pours any of these products down their toilet, sink, or onto the ground. By following the chemical storage, handling, and disposal tips on the enclosed flyers, you can avoid activities that could threaten water quality.

Please take the time to review and follow the instructions on the flyers. We need your help to protect this valuable source of drinking water. The management and users of this public water supply appreciate your cooperation.

Sincerely,

[Contact person's name, title]

[Name, Water System or Town Governing Body]

Enclosure: *Got Clean Water? or Protecting Your Drinking Water*

Step C: Notify Potential Contamination Sources

Successful management of PCSs is based on communication, education and, whenever possible, voluntary compliance. Before conducting inspections to verify compliance with BMPs, notify PCS owners about the following:

- The groundwater or wellhead program (covered in a letter).
- The need for proper management of regulated substances (educational flyer see Appendix D).
- The legal requirements for PCSs (copy of Env-Wq 401 BMP rules see Appendix A).
- What to expect during the inspection (copy of Inspection form see Appendix B).

You first need to identify PCSs using regulated substances within your source protection area, often this is done through a “windshield survey,” that is by driving through your protection area to field verify all PCSs. Guidance concerning windshield surveys is published and available online within Fact Sheet [DWGB-12-3, Performing an Inventory for Drinking Water Protection](#).

The procedure for notifying PCSs and performing inventory interviews is outlined in Chart 2 on page 11. In cases where the PCS owner is not the owner of the property, it is advisable to notify both parties. Keep in mind, however, that the PCS owner is the responsible party.

Inventory Interviews

In addition to notifying PCS owners you have the option of conducting an **inventory interview either by phone or in person** with each PCS owner prior to conducting an inspection. The purposes of these interviews are to educate PCS owners about the program and to verify that each PCS in your inventory does indeed use large quantities of regulated substances. The inventory interview will give the PCS owner a better understanding of the substances you are interested in and give them an opportunity to come into compliance with the BMPs before you conduct your first round of inspections.

Chart 3 on page 12 gives an overview of the inventory interview process. Use a letter similar to Sample Letter C-1 (with the flyer, the BMP rules, and the Inspection Form for BMP Compliance) to notify PCS owners that you will be performing inventory interviews. As with Sample Letter B, check to make sure that the language is consistent with your program. Also, if you are protecting existing wells, fill in the location(s) of the well(s) to be protected.

Explain the purposes of the inspection, and give an overview of the program, and a copy of the Inspection Form and Instructions for BMP Compliance (a copy is in Appendix B). Ask if they use or store a total of more than five gallons of regulated substances. If the PCS owner or representative indicates that they do not, then record that in Section 4 of the form and keep it on file for reference in the future. You do not need to complete any of the remaining sections of the form.

If they do indicate they have more than 5 gallons of regulated substances, then complete the inventory interview by completing sections 2-4 of the form. Provide them with the BMP rules (Env-Wq 401). Ask if they have any questions; if you don't know the answers refer them to NHDES at [\(603\) 271-0688](tel:6032710688) or [\(603\) 271-3906](tel:6032713906).

Let the PCS owner know that you will be scheduling a BMP compliance inspection and suggest they do a self-audit beforehand. Remind them that 5-gallon and larger containers (except on-premises heating oil tanks and registered aboveground and underground storage tanks) of petroleum products are covered by the BMP rules. Talk about the purposes and benefits of the program one more time: protecting drinking water and minimizing their environmental liability.

If during an on-site inventory interview you see any evidence of discharges of regulated substances deliberate or otherwise during your visit, contact NHDES at [\(603\) 271-0688](tel:6032710688) or [\(603\) 271-3906](tel:6032713906) for advice. If not, go ahead with scheduling a compliance inspection, using a letter similar to Sample Letter C-2.

Not Conducting Inventory Interviews

If you will not be conducting inventory interviews, send a letter similar to Sample Letter C-3 on page 15 (with the flyers, the BMP rules, and the Inspection form) to PCS owners to schedule the first round of compliance inspections. As with Sample Letter B, check to make sure that the language in the first and second paragraphs is consistent with your program.

Chart 2: Notify PCs, Perform Inventory Reviews

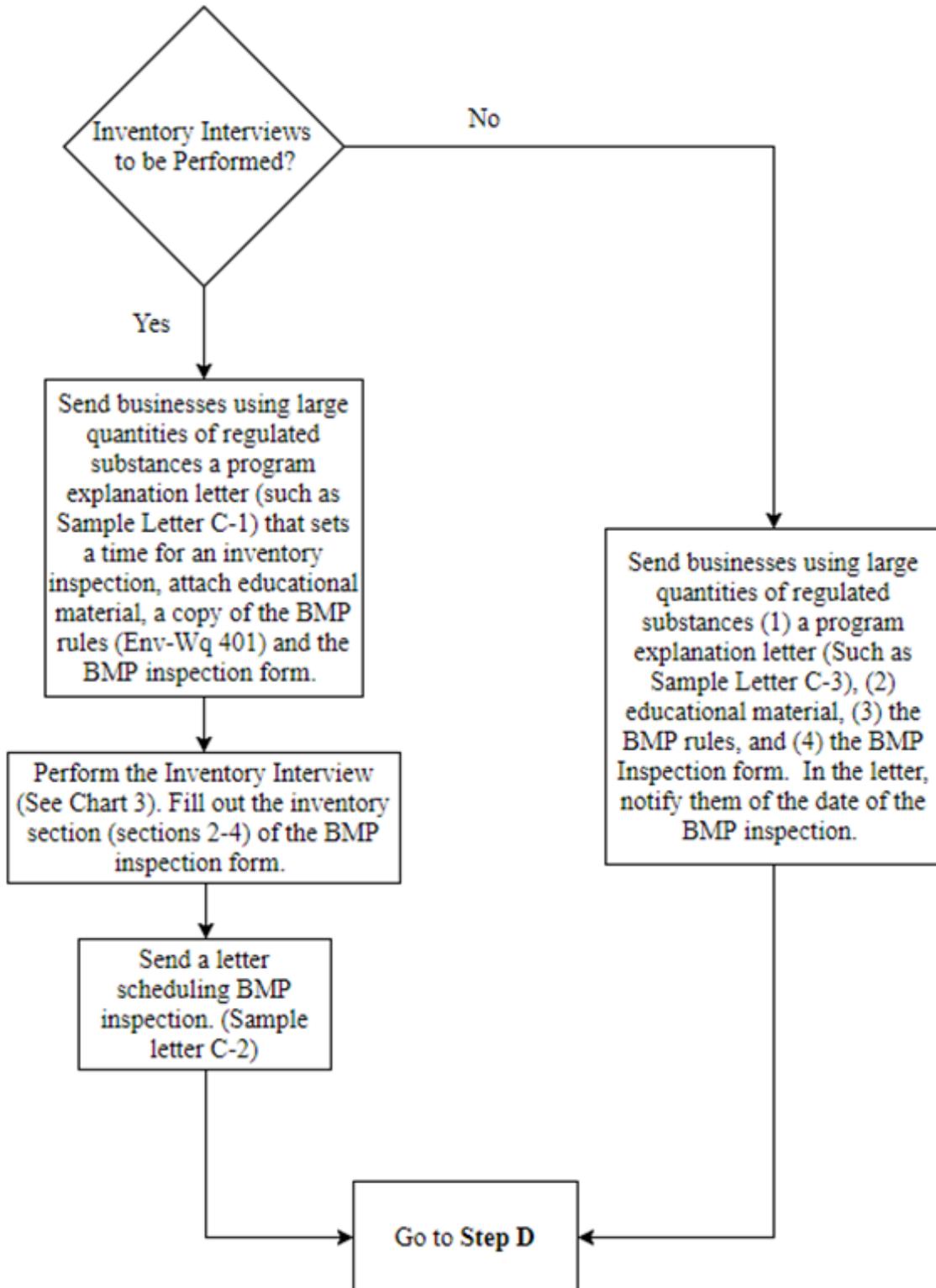
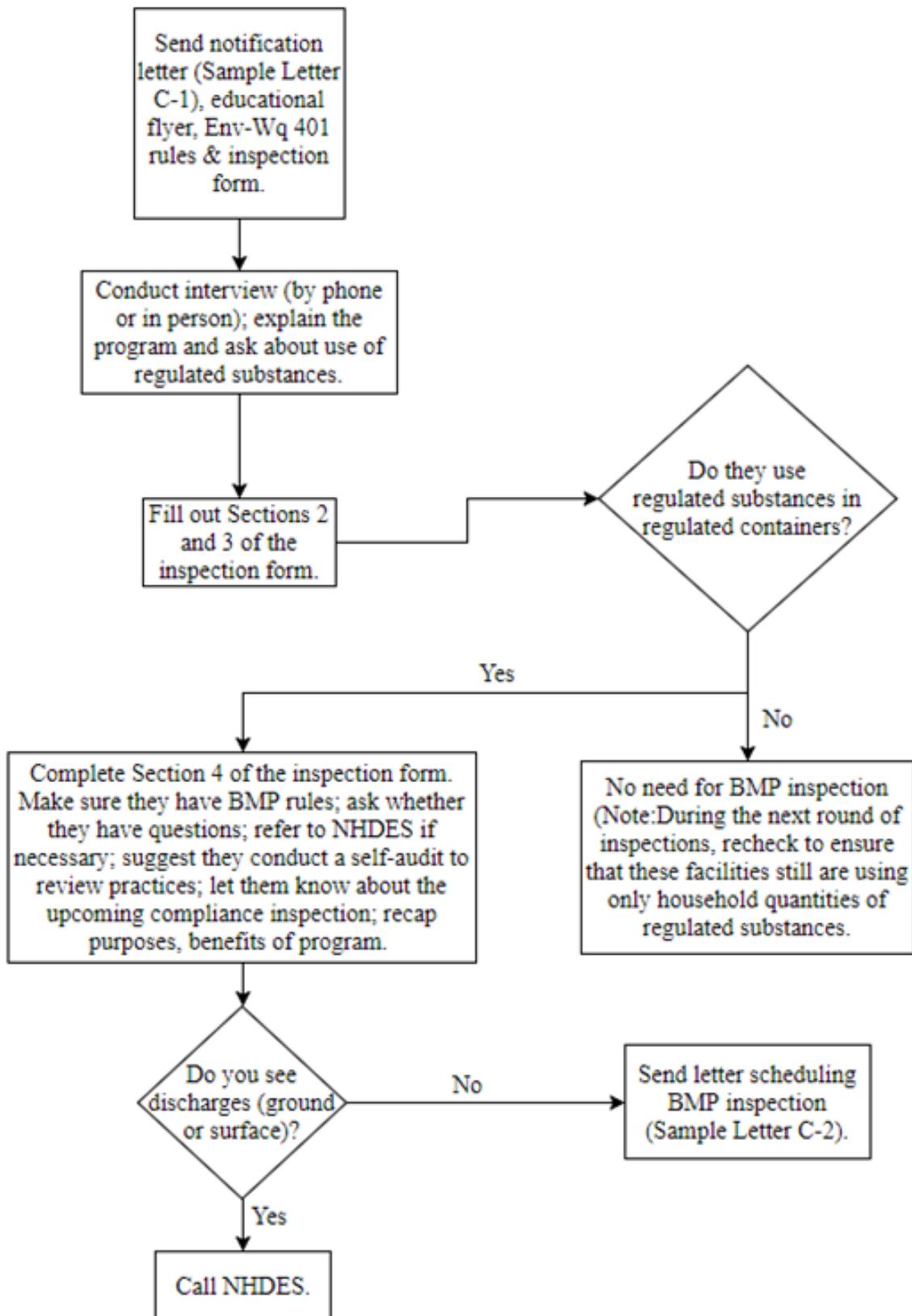


Chart 3: Performing Inventory Interviews



Sample Letter C-1: Program Explanation Letter that Sets a Time for an Inventory Interview

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

RE: [Give name and location of facility], Present use: [List present use of property]

Dear [Customer, Neighbor, Facility Owner - fill in appropriate term]:

The purpose of this letter is to ask for your cooperation in ensuring safe drinking water. If we are all careful, substances that could pollute our drinking water will never find their way to our wells.

Your facility has been identified as being located in the area from which water flows to our wells [give location of wells] or [which we are protecting as a future source of drinking water]. As such, it is important that you are aware that the present use of your property listed above has the potential to affect the quality of groundwater. Your activity could also affect the water quality of your own well if you have one.

To help you avoid activities that could threaten water quality, we are enclosing an informational flyer, a copy of the State [Best Management Practices for Groundwater Protection rules, Env-Wq 401](#), and the Inspection Form and Instructions for BMP Compliance that can be used to perform a self-audit. Compliance with these rules is mandatory if you use, store, handle, or dispose of regulated substances in greater-than-household quantities. Any unpermitted discharges to groundwater or contamination of groundwater is illegal under RSA 485-A:13 and Env-Wq 1500. By complying with these rules and implementing the suggested practices contained on the flyer you will both help us to protect this valuable source of drinking water and at the same time reduce your own environmental liability.

Providing you with this information is the first phase of the protection program we are undertaking to protect this source of water. The next step is to contact you to determine whether you use greater-than-household quantities of regulated substances and to answer any questions you may have. We will be contacting you at your facility on [date]. Please contact me at [phone number] between the hours of [time] and [time] if there is a specific time or alternate date you would like to meet with me. If you have any questions about this program, please call me or contact N.H. Department of Environmental Services at [\(603\) 271-0688](tel:6032710688).

Thank you.

Sincerely,

[Contact person's name, title]

Enclosures: BMP Rules Flyer, BMP Rules, Inspection Form for BMP Compliance

Sample Letter C-2: Letter Scheduling Appointment for BMP Compliance Inspection after Performing an Inventory Interview

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

RE: *[Give name and location of facility]*

Dear *[Facility Owner - fill in appropriate name]*:

Thank you for giving me a chance to explain the groundwater protection program that we are in the process of implementing. As I explained during the inventory interview, the next step in this program is to conduct best management practice (BMP) inspections of facilities using larger than household quantities of regulated substances.

The purpose of this letter is to notify you of the date that I will be performing an inspection of your facility. I will be in your area on *[date]*. Please contact me at *[phone number]* during the hours of *[time]* and *[time]* if you need me to be at your facility at a specific time or if you need to reschedule for another day.

The first letter I sent you contained a copy of the Inspection Form and Instructions for BMP Compliance that I will be using. I urge you to do a self-audit to correct any violations of the Best Management Practices for Groundwater Protection rules before I arrive. This will also allow you to clarify any questions you may have about the inspection before my visit.

Thanks again for your help in protecting this valuable source of drinking water.

Sincerely,

[Contact person's name, title]

Sample Letter C-3: Program Explanation Letter that Sets a Time for BMP Compliance Inspection

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

RE: *[Give name and location of facility]*, Present use: *[List present use of property]*

Dear *[Facility Owner - fill in appropriate name]*:

The purpose of this letter is to ask for your cooperation in ensuring safe drinking water. If we are all careful, we can protect our current or future sources of drinking water from contamination.

Your facility has been identified as being located in the area *[from which water flows to our wells, give location of well(s)]/that we are protecting as a future source of drinking water*. As such, it is important that you are aware that the present use of your property listed above has the potential to affect the quality of the water. Your activity could also affect the water quality of your own well if you have one.

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 an informational flyer, a copy of the State Best Management Practices for Groundwater Protection rules (Env-Wq 401) and an Inspection Form and Instructions for Best Management Practice (BMP) Compliance that can be used to perform a self-audit. Compliance with these rules is mandatory if you use, store, handle or dispose of regulated substances in greater-than-household quantities. Any discharges, without a NHDES permit, to groundwater or contamination of groundwater is illegal under RSA 485-A:13 and Env-Wq 1500. By complying with these rules and implementing the suggested practices contained on the flyer you will help us to protect our wells while at the same time reducing your own environmental liability.

Providing you with this information is the first phase of a protection program we are undertaking to protect water quality. The next step is to perform a compliance inspection to ensure that you are in compliance with the enclosed rules. - I will be coming to your facility on *[date]*. -Please contact me at *[phone]* during the hours of *[time]* and *[time]* if you need me to arrive at a certain time or if we need to reschedule for a different day. I urge you to perform a self-audit with the attached inspection form so that any violations of the rules can be remedied before my visit. This will also allow you to clarify any questions you may have.

Please feel free to contact me if you have any questions. Or, call N.H. Department of Environmental Services at [\(603\) 271-0688](tel:6032710688). We need your help to protect this valuable source of drinking water! Thank you.

Sincerely,

[Contact person's name, title]

Enclosures: Flyer, BMP Rules, Inspection Form and Instructions for BMP Compliance

Step D: Perform Inspections of Potential Contamination Sources

The Inspection Form and Instructions for BMP Compliance in Appendix B contains a list of PCSs subject to BMP compliance inspections. Those are the only facilities that you should inspect for compliance with the State BMPs for Required Best Management Practices for Groundwater Protection rules (Env-Wq 401).

Examples of facilities that are not subject to inspections under those rules include:

- Gas stations where the only chemical use and storage involves underground storage tanks (USTs).
- Farms: Farms are within the jurisdiction of the Department of Agriculture, Markets and Food, and USTs are regulated separately by NHDES.

While NHDES does recommend that water suppliers and municipalities inspect gas stations in their source water protection areas annually for compliance with state requirements with respect to storm water management, spill containment, and release prevention and detection, such inspections are optional and are not covered by Env-Wq 401. Other PCS activities may have onsite inspections completed by NHDES and coordinating with NHDES will help reduce duplicating efforts as well as confusion by those subject to various inspections.

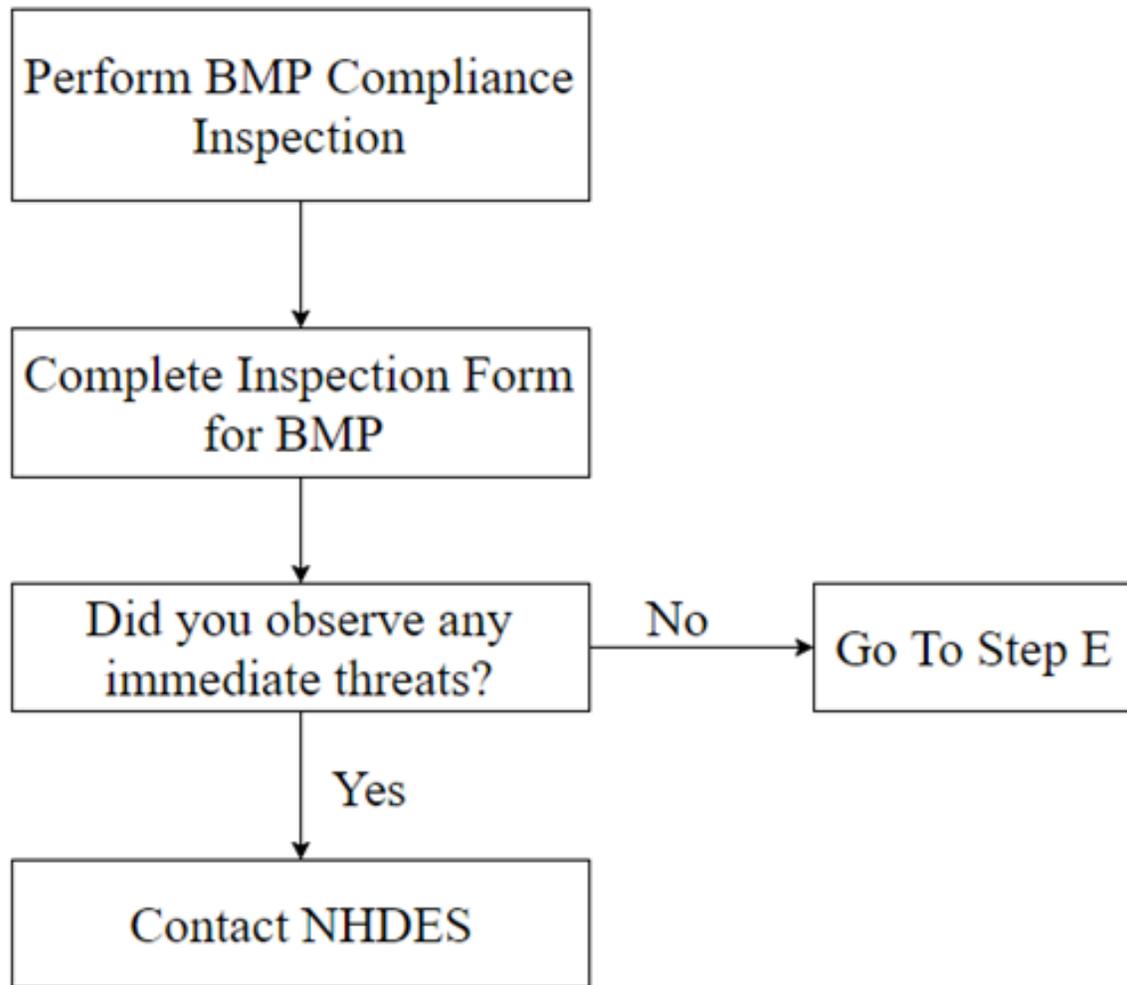
Upon arriving for a compliance inspection, explain why you are there, and make sure you meet with the owner or person in charge. If you scheduled the inspection in advance and the person in charge seems surprised, ask whether your letter had been received. If you have arrived without prior notice, ask whether it is a good time, and if not, try to schedule a time to come back. If the PCS owner will not allow you to inspect the facility, either call NHDES at [\(603\) 271-0688](tel:6032710688) or [\(603\) 271-3906](tel:6032713906) or, if you are a health officer administering a program authorized by a health ordinance or reclassification, obtain an Administrative Inspection Warrant as explained in Step E for non-voluntary programs (see page 18).

Ask to see where regulated substances are stored and handled. Go through the Inspection form, asking questions and making observations. If you have recently conducted an inventory interview at the facility, use your judgment in shortening the time spent on Section Two, Three or Four of the BMP Inspection form. Discuss any problems and their solutions as you conduct the inspection. Try to keep the atmosphere friendly and educational. Stick to what is covered by the Inspection form. PCS owners can be put on the defensive if you ask about sensitive matters that are outside the scope of what the inspection is supposed to cover. When you are finished, review any violations you found during the inspection. Provide solutions or ask them to evaluate possible solutions that will help them meet the intent of the rules. Explain that they would then have at least 30 days to correct problems or work something out with NHDES. Reiterate the benefits of the program: protecting drinking water (yours and theirs) and minimizing their environmental liability.

If you witness any evidence of discharges, contact NHDES at [\(603\) 271-0688](tel:6032710688) or [\(603\) 271-3906](tel:6032713906).

If you feel unsure about conducting the inspections on your own or would like to participate in NHDES' training to conduct BMP inspections, contact NHDES at [\(603\) 271-0688](tel:6032710688) or [\(603\) 271-3906](tel:6032713906). Personnel are available to accompany you on some inspections.

Chart 4: Step D; Perform BMP Compliance Inspection



Step E: Voluntary Programs

Follow up on Potential Contamination Source Inspections

An important point to keep in mind when following up on BMP compliance inspections is that your local groundwater or wellhead program has no enforcement authority unless, 1) it is based upon a local health ordinance adopted under RSA 31:39 or RSA 147; or 2) your program is enabled by groundwater reclassification as provided for under RSA 485-C; or 3) your program is based on the planning and zoning statutes (i.e. RSA 674:17, I). In the absence of one of these authorities, your program must focus on bringing about voluntary compliance with the best management practices for PCSs. (If you do have one or both of these authorities, see pages 24-25 of this guide.) In addition, if you are not a health officer, you do not have the authority to enter the land or the establishment of a PCS for the purpose of administering the Env-Wq 401 BMP rules without the owner's permission. If you are a health officer, there are still certain procedures to follow before entering onto private property without the owner's permission. See pages 24-25 for more details.

If efforts at voluntary compliance are not successful, you may refer violators to NHDES for enforcement, since BMPs apply statewide regardless of groundwater classification. However, keep in mind that NHDES has limited personnel resources available for BMP enforcement. Therefore, make every effort to work out a compliance timetable with violators on your own.

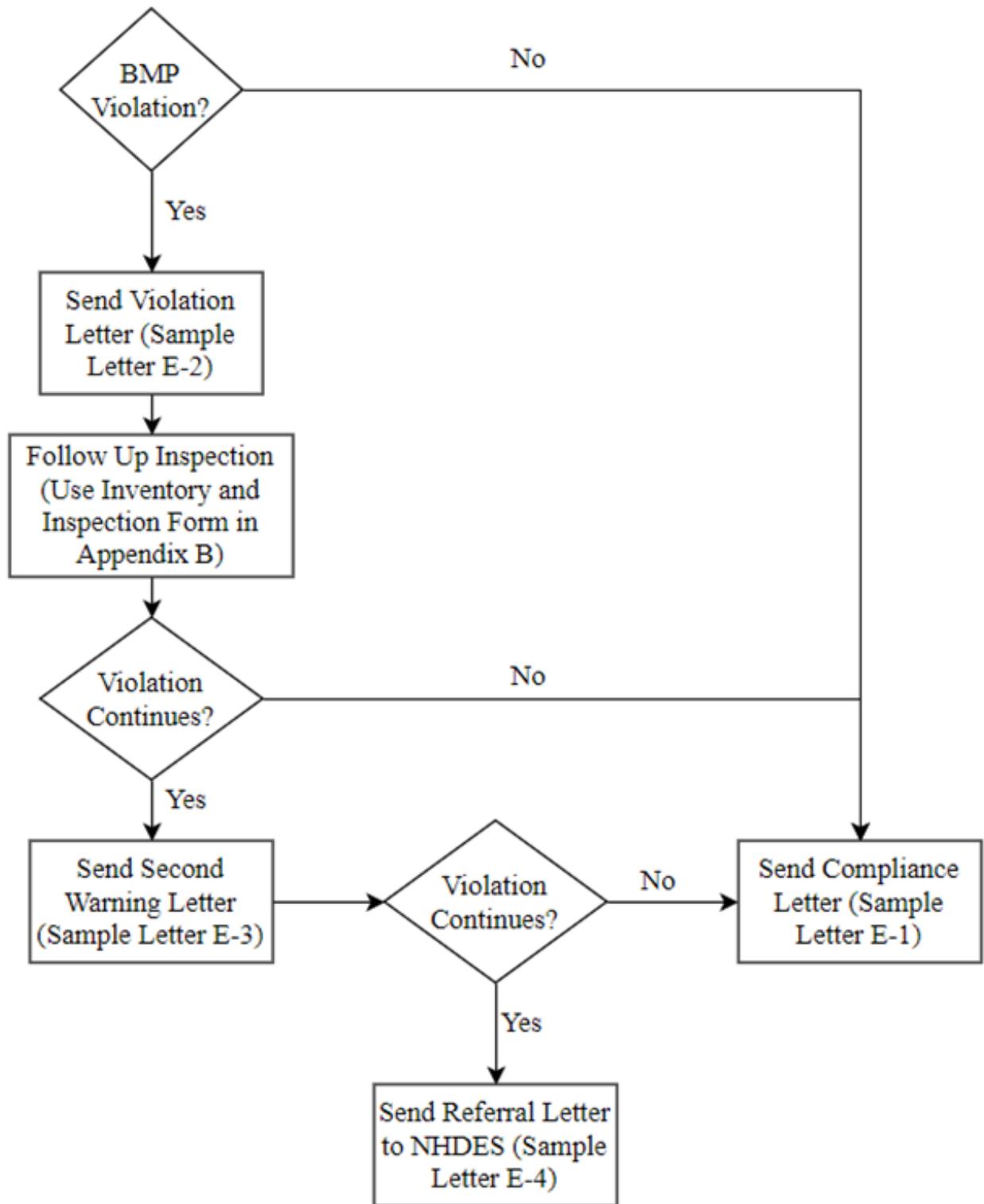
The process for Step E, following up BMP compliance inspections for voluntary programs, is shown in Chart 5 on the following page. After the BMP Inspection form is completed, review Sections 5 – 8 of the form that was completed on-site and summarize any violations of the BMP rules. If you have determined that there are no violations, send a compliance letter similar to Sample Letter E-1.

If your inspection did uncover one or more violations, send a violation letter, via registered mail, similar to Sample Letter E-2. Follow up with a phone call to see whether the PCS owner understands the letter and to schedule a follow-up inspection. A reasonable timetable for compliance is about 30 days, unless the PCS owner provides a good reason why more time is needed.

If the follow-up inspection reveals that the violations have been corrected, send a letter similar to Sample Letter E-1. If violations continue, send a Second Warning letter, via registered mail, similar to Sample Letter E-3. If you do not hear from the PCS owner within 30 days or if a subsequent follow-up inspection reveals that the violations continue, send a referral letter to NHDES similar to E-4, and send a copy to the PCS owner. If you do not hear from NHDES within 30 days, call [\(603\) 271-0688](tel:6032710688) or [\(603\) 271-3906](tel:6032713906).

NHDES has the ability to issue written Cease and Desist Orders and to impose administrative fines for violations of RSA 485-C and Env-Wq 401. Fines can range from \$250 to \$1,000 per violation, and up to \$2,000 for non-compliance with a Cease and Desist Order. The PCS owner is entitled to a hearing before the fine is imposed. If a hearing takes place, the NHDES hearing officer will consider the available evidence before making a decision. The evidence will include your inspection reports, copies of correspondence, and records of your telephone contacts with the PCS owner regarding the violation. Therefore, you should keep in mind that, even in a voluntary program, a successful state enforcement action may depend on the procedures you follow and the records you keep.

Chart 5: Step E; Voluntary Programs—Follow up on BMP Inspection



Sample Letter E-1: The Potential Contamination Source is in Compliance

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

Dear [*Facility Owner - fill in appropriate name*]:

Thank you for participating in the inspection for compliance with the Best Management Practices for Groundwater Protection rules (Env-Wq 401) 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 [*year you intend to do inspection 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 this valuable source of drinking water safe.

Sincerely,

[*Contact person's name, title*]

Sample Letter E-2: The Potential Contamination Source is Violating One or More BMP Rules

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

Dear [*Facility Owner - fill in appropriate name*]:

The purpose of this letter is to summarize the results of the Best Management Practices (BMP) Inspection conducted at your facility on [*date*]. The Inspection was performed to meet the requirements of the [*water system or town name*] Drinking Water Source Protection Program and to ensure compliance with New Hampshire Administrative Rule Env-Wq 401, Best Management Practices for Groundwater Protection. The results of the inspection are as follows:

Facility Description: [*Describe the facility and what you observed during the inspection*]

Regulation Description: [*Quote the pertinent rule, such as Env-Wq 401.04(e) states that regulated containers shall be clearly and visibly labeled with the name of the material stored within.*]

Compliance Description: [*Describe the violation and what can be done to correct it. You should have already discussed this with the facility representative during the inspection.*]

If you need clarification of the rules or the waiver provisions contained in them, please contact DES directly at [\(603\) 271-0688](tel:6032710688) or [\(603\) 271-3906](tel:6032713906).

Thank you in advance for your willingness to help protect our valuable source of drinking water. If you have any questions about this letter, please call me at [*phone number*] between the hours of [*time*] and [*time*].

Sincerely,

[*Contact person's name, title*]

Sample Letter E-3: Second Warning

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

Dear *[Facility Owner - fill in appropriate term]*:

In a letter dated *[date]*, I informed you that you were not in compliance with the Best Management Practices for Groundwater Protection, Env-Wq 401. On *[date]*, I conducted a follow-up inspection to determine compliance with the rules. To the best of my knowledge, you remain out of compliance with the following:

Regulation Description: *[Quote the pertinent rule, such as Env-Wq 401.04(e) states that regulated containers shall be clearly and visibly labeled with the name of the material stored within.]*

Compliance Description: *[Describe the violation and what can be done to correct it. You should have already discussed this with the facility representative during the inspection.]*

[Refer to and include a copy of completed form from follow-up inspection.]

Unless I hear from you within 30 days of the receipt of this letter with an indication that you have corrected the violation(s) or we have agreed to a compliance schedule, I will have no choice but to refer these violations to New Hampshire Department of Environmental Services (NHDES). NHDES is authorized to levy substantial fines and to issue cease and desist orders. Under Env-C 609, fines can range from \$500 to \$1,000 for each day of a continuing violation, and up to \$2,000 for non-compliance with a cease and desist order. It is our policy that unresolved violations are referred to NHDES.

Thank you in advance for your willingness to help protect our valuable source of drinking water. If you have any questions, please call me at *[phone number]* between the hours of *[time]* to *[time]*.

Sincerely,

[Contact person's name, title]

Enclosures: Copy of first violation letter
 Copy of completed Inspection Form and Instructions for BMP Compliance

Sample Letter E-4: Referring the Violation to the State Department of Environmental Services

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

Robert R. Scott, Commissioner
N.H. Department of Environmental Services
29 Hazen Drive, P.O. Box 95
Concord NH 03302-0095

RE: Enforcement Activities under the Groundwater Protection Act, RSA 485-C

Dear Commissioner Scott:

I am writing to request the Department's assistance in managing Potential Contamination Sources in a wellhead or groundwater protection area by enforcing Env-Wq 401 Best Management Practices for Groundwater Protection. I have attempted to bring about voluntary compliance with Env-Wq 401 as described below:

A first compliance inspection was held [date] at [Name of facility, location]. The following violations were discovered during that inspection:

Violation(s): [description of the violations as found on inspection.]

[Cite specific sections of the rules, describe nature of violation(s), and specify the regulated substance(s) involved.]

The enclosed violation letter was sent on [date] and a follow-up inspection was conducted on [date]. The second inspection indicated [describe results], and second warning was sent on [date]. [Describe any communication with the PCS owner since sending the second warning.]

I have enclosed copies of all pertinent correspondence and inspection forms. Thank you for your attention to this matter.

Sincerely,

[Contact person's name, title]

Enclosures: Completed form from initial inspection
 Copy of first violation letter
 Completed form from follow-up inspection
 Copy of second warning
 Copies of other correspondence to or from PCS owner
 Copies of records of telephone conversations with PCS owner
cc.: PCS owner

Step E: Programs Authorized by Groundwater Reclassification or Local Ordinance

Follow up on Potential Contamination Source Inspection

The goal of enforcement of BMP rules is compliance resulting in greater groundwater protection. Furthermore, it is more desirable to achieve voluntary compliance than it is to institute enforcement actions. If you can convince PCS owners that following the BMPs is the right thing to do, as well as being in their own best interests, your enforcement work load will be lessened.

However, if efforts at voluntary compliance are not successful, the health officer has a number of enforcement alternatives available. This description of Step E is written for health officers or building inspectors who are administering a wellhead or groundwater protection program that is authorized by groundwater reclassification or by a local health or zoning ordinance.

If a PCS owner denies you access for an inspection, you may obtain an Administrative Inspection Warrant under RSA 595-B (see your legal counsel for assistance). The form for this warrant is available from the state Health Officer Liaison at [\(603\) 271-4072](tel:6032714072). However, before attempting to seek a warrant, try to convince the PCS owner to agree to the inspection. Make sure the PCS owner understands that even if you do find violations, you will provide every reasonable opportunity for the PCS owner to come into compliance before you pursue enforcement actions. You may contact NHDES at [\(603\) 271-0688](tel:6032710688) or [\(603\) 271-3906](tel:6032713906) for assistance if the facility owner still refuses to comply and NHDES will perform the inspection on your behalf.

The compliance process for Step E for local programs authorized by reclassification or local health or zoning ordinances, is shown in Chart 6 on page 26. If you have determined that there are no violations, send a compliance letter similar to Sample Letter E-1 on page 20. If your program is authorized by a health ordinance, you may wish to call the letter a Certificate of Compliance.

If You Find a Violation

If your inspection did uncover one or more violations, discuss the rule violation(s) and suggest ways to correct them during the inspection. Let the facility owner be creative in finding solutions that meet the intent of the rule within 30 days, unless there is an immediate threat to public health. Then send a violation letter, similar to Sample Letter E-2 on page 21, via registered mail. Send a copy to the property owner, if different from the PCS owner. Follow up the letter with a phone call to see whether the PCS owner understands the letter and to schedule a follow-up inspection. A reasonable timetable for compliance is about 30 days, unless there is an immediate threat to public health or the PCS owner provides a good reason why more time is needed.

If the follow-up inspection reveals that the violations have been corrected, send a letter similar to Sample Letter E-1. If violations continue, send a Second Warning letter, via registered mail, similar to Sample Letter E-5 on page 27, note that this is different from the Second Warning used for voluntary programs. If you do not hear from the PCS owner within 30 days or if a subsequent follow-up inspection reveals that the violations continue, there are several courses of action to choose from. The choice depends on several factors, including the legal authority for your program.

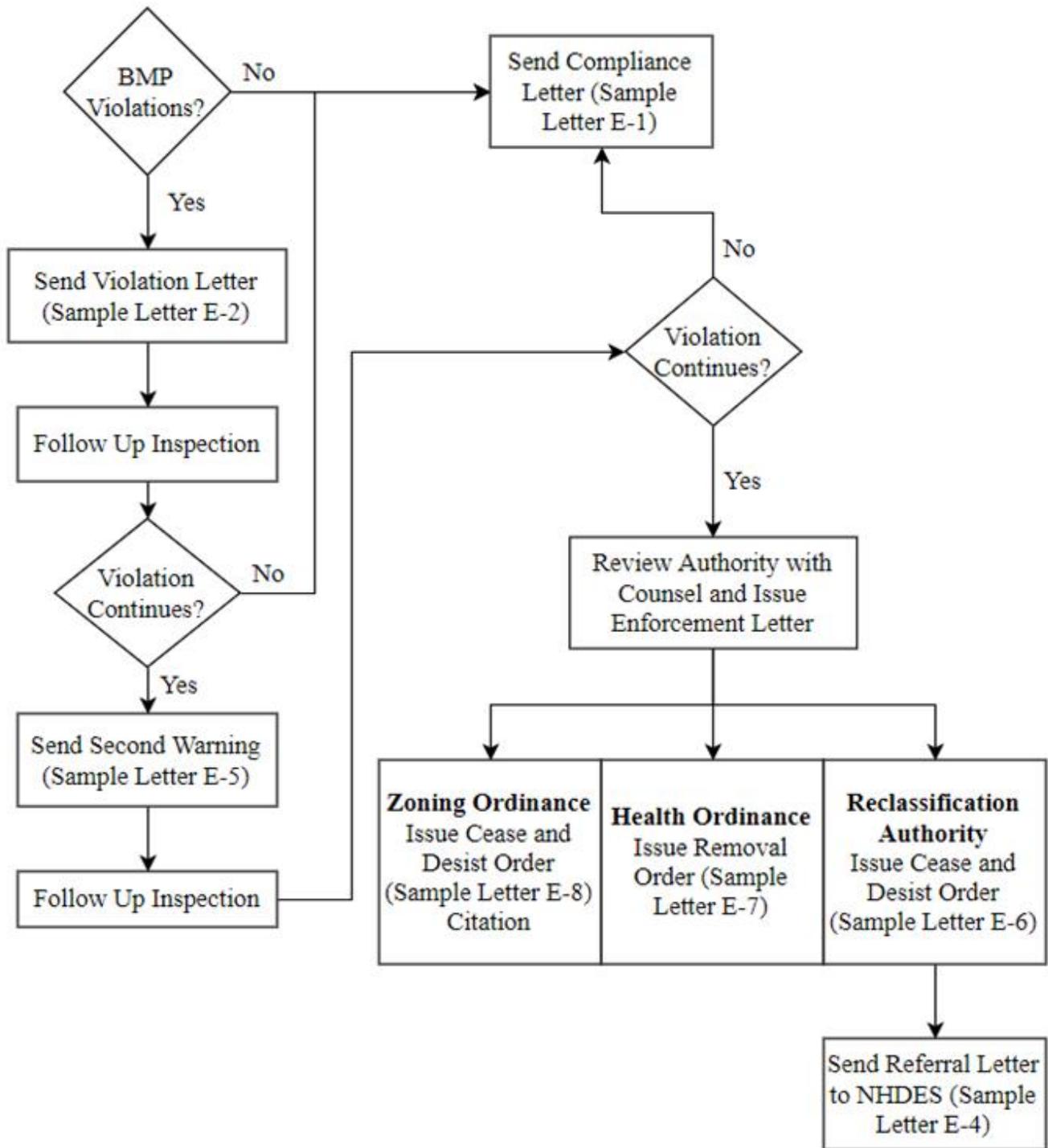
If a local groundwater protection program is authorized by a health ordinance without reclassification, you can pursue enforcement under RSA 147, the Chapter that empowers health officers. Send a removal order similar to Sample Letter E-7 on page 29. If the violation persists, consult your legal counsel for follow-up. To remove the violation, you will need to have funds available if you are going to incur expenses and you may need to obtain a warrant before taking action.

If a local groundwater protection program is authorized by reclassification without a health ordinance, you may issue a cease and desist order under RSA 485-C:16 and refer the violation to NHDES for follow-up. Use Sample Letter E-6 on page 28 as a model. Even if NHDES becomes involved in the inspection or enforcement process, the records of compliance inspection(s), correspondence, and other contact with the PCS owner will be indispensable in an effort to bring the PCS into compliance and/or levy fines.

If a local groundwater protection program is authorized by both a health ordinance and reclassification, there are two options. The municipality may issue a removal order similar to Sample Letter E-7 on page 29. If the violation persists, consult legal counsel for follow-up. If you wish to have NHDES follow up the violation, you may issue a cease and desist order under 485-C:16 and refer the violation to NHDES. Use Sample Letter E-6 on page 28 as a model.

If a local groundwater protection program is authorized by a zoning ordinance (e.g. groundwater protection ordinance) alone, enforcement of zoning violations that affect groundwater protection can be pursued under RSA 676. Enforcement of local zoning ordinances can be pursued for violations that do not result in a “nuisance” that is “injurious to public health” in accordance with RSA 147. For example, if there is a violation of a performance standard in your groundwater protection zone or a site plan requirement send a letter similar to E-8. If the violation persists, local governments may issue cease and desist orders (RSA 676:17-a) and local land use citations (RSA 676:17-b), or may pursue civil penalties and injunctive relief in superior or district court (RSA 676:15, 17). The decision to pursue an enforcement action should be made in consultation with legal counsel.

Chart 6: Step E; Follow Up on BMP Compliance Inspections for Programs Authorized by Groundwater Reclassification or Local Ordinance



Sample Letter E-5: Second Warning

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

Dear *[Facility Owner-fill in appropriate name]*:

In a letter dated *[date]*, I informed you that you were not in compliance with certain Best Management Practices for Groundwater Protection (Env-Wq 401) rules. On *[date]*, I conducted a second inspection of your facility. To the best of my knowledge, you remain out of compliance with the following:

Regulation Description: *[Quote the pertinent rule, such as Env-Wq 401.04(e), which states that regulated containers shall be clearly and visibly labeled with the name of the material stored within.]*

Compliance Description: *[Describe the violation and what can be done to correct it. You should have already discussed this with the facility representative during the inspection.]*

[Refer to and include a copy of completed form from follow-up inspection.]

Unless I hear from you within 30 days of the receipt of this letter with an indication that you have corrected the violation(s) or we have agreed to a compliance schedule, I will have no choice but to proceed with enforcement actions and/or to refer the matter to the NH 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 \$500 to \$2,000 per violation for non-compliance with a cease and desist order. I hope we can avoid the involvement of DES in this matter.

Thank you in advance for your willingness to help protect our valuable source of drinking water. If you have any questions, please call me at *[phone]* between the hours of *[time]* and *[time]*.

Sincerely,

[Contact person's name, title]

Enclosures Copy of first violation letter
 Completed form from follow-up inspection

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)

Sample Letter E-6: Cease and Desist Order—Groundwater Ordinance Violation

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

Dear [Customer, Neighbor, Facility Owner-fill in appropriate name]:

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-Wq 401. You are hereby ordered to cease and desist these activities and to take the following corrective actions within [number of days] calendar days:

Regulation Description: [Quote the pertinent rule, such as Env-Wq 401.04(e) states that regulated containers shall be clearly and visibly labeled with the name of the material stored within.]

Compliance Description: [Describe the violation and what can be done to correct it. You should have already discussed this with the facility representative during the inspection.]

[Refer to and include a copy of completed form from follow-up inspection.]

A copy of the BMP Inspection report that details the nature of the violation 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.

If you have any questions, please call me at [phone number] between the hours of [time] and [time].

Per Order,

[Name]

[Town/City] Health Officer

Enclosure: Completed form from most recent BMP Inspection

cc.: Commissioner, N.H. Department of Environmental Services

Sample Letter E-7: Removal Order

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

RE: *[Give name and location of PCS]*

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/City name]*. 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 *[number of days]* 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.]*

Facility Description: *[Describe the facility and what you observed during the inspection.]*

Regulation Description: *[Quote the pertinent rule, such as Env-Wq 401.04(e) states that regulated containers shall be clearly and visibly labeled with the name of the material stored within.]*

Compliance Description: *[Describe the violation and what can be done to correct it. You should have already discussed this with the facility representative during the inspection.]*

Failure to correct these deficiencies 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 (NHDES). NHDES is authorized to pursue substantial fines and in some instances cease and desist orders per RSA 485-C. Fines can range from \$500 to \$2,000 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.

Please contact me at *[phone number]* during the hours of *[time]* and *[time]*, 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.

Per Order,

[Name],

[Town/City] Health Officer

Enclosure: Completed form from most recent Inspection Form and Instructions for BMP Compliance

Sample Letter E-8: Cease and Desist—Groundwater Ordinance Violation

PUT FINAL LETTER ON YOUR LETTERHEAD

Date:

RE: *[Give name and location of PCS]*

Dear *[PCS Owner, Property Owner, etc.]*:

You are hereby notified that activities occurring at your property are in violation of the *[site plan regulations]* or *[Groundwater Protection Overlay District]* that contain specific measures to protect the town's groundwater resources. It has been determined by the *[local inspector]* on *[date]*, that conditions at your property are in violation of the performance standards specified *[within the District]* or *[in your plan as approved by the planning board]*. A copy of the BMP inspection report about the nature of the violation is enclosed for your records. *[If a BMP inspection form is not used, the letter must describe the nature of the zoning ordinance violation or site plan regulation requirements.]* You are required to take the corrective action(s) listed below to comply with the performance standards of the ordinance within *[number of days]* working days of receipt of this notice.

Facility Description: *[Describe the facility and what you observed during the inspection.]*

Regulation Description: *[Quote the pertinent performance standard or rule.]*

Compliance Description: *[Describe the violation and what can be done to correct it. You should have already discussed this with the facility representative during the inspection.]*

Failure to correct these deficiencies may result in further action by the town (including the Planning Board, which may act to revoke your approval due to non-compliance with the plans submitted to the town). (Note: Civil penalties of \$275 per day or \$550 per day for the second and subsequent offenses, may be levied for as long as the violation continues after notice of the violation is given in accordance with RSA 676:17, I).

Please contact me at *[phone number]* during the hours of *[time]* and *[time]*, 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,

*[Name],
Town/City, Health/Building] Officer*

Enclosure: Completed Inspection Form and Instructions for BMP Compliance Form

APPENDIX A: Code of Administrative Rules Part Env-Wq 401

Required [Best Management Practices for Groundwater Protection](#)

[Note: Amended and re-adopted from Env-Ws 421]

[NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES](#)

PART Env-Wq 401 REQUIRED BEST MANAGEMENT PRACTICES FOR GROUNDWATER PROTECTION

- Env-Wq 401.01 Purpose
- Env-Wq 401.02 Applicability
- Env-Wq 401.03 Definitions
- Env-Wq 401.04 Storage of Regulated Substances
- Env-Wq 401.05 Transferring Regulated Substances
- Env-Wq 401.06 Floor Drains
- Env-Wq 401.07 Work Sinks
- Env-Wq 401.08 Holding Tanks
- Env-Wq 401.09 Release Response Information
- Env-Wq 401.10 Inspections
- Env-Wq 401.11 Waivers

REVISION NOTE:

Document #8786, effective 1-5-07, readopted with amendments and re-designated former Part Env-Ws 421 titled Best Management Practices as Env-Wq 401 pursuant to a rules reorganization plan for Department rules approved by the Director of the Office of Legislative Services on 9-7-05.

The prior filings for former Env-Ws 421 are: #5543, eff 12-24-92; #6947, eff 2-25-99
Statutory Authority: RSA 485-C:4, VII

Env-Wq 401.01 **Purpose.** The purpose of these rules is to implement RSA 485-C:11 relative to establishing best management practices for activities that are potential contamination sources, which are to be followed when using, storing, or otherwise handling regulated substances to minimize the risk of groundwater contamination.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.02 **Applicability.**

(a) Subject to (b), below, these rules shall apply only to persons who use, store, or otherwise handle any regulated substances in regulated containers.

(b) As provided in RSA 485-C:11, I, these rules shall not apply to:

(1) Potential contamination sources listed in RSA 485-C:7, II(j), which are subject to requirements of RSA title XL and the department of agriculture, markets, and food; or

(2) Those regulated substances defined as pesticides under RSA 430:29, XXVI.

(c) These rules also shall not apply to:

(1) Aboveground storage tanks regulated under RSA 146-A and Env-Or 300;

(2) Underground storage tanks regulated under RSA 146-C and Env-Or 400; or

(3) On-premise-use facilities as defined in RSA 146-E:2, III.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.03 **Definitions.**

(a) "Department" means the New Hampshire department of environmental services.

(b) "Floor drain" means an opening in a floor into which regulated substances might be discharged.

(c) "Impervious surface" means a surface through which regulated contaminants cannot pass when spilled. For purposes of this part, the term includes concrete and asphalt unless unsealed cracks or holes are present, but does not include earthen, wooden, or gravel surfaces or other surfaces that could react with or dissolve when in contact with the substances stored on them.

(d) "Owner" means the owner of the facility or site on which the potential contamination source is located and, if different, the person who is responsible for the day-to-day management of the facility or site.

(e) "Person" means "person" as defined in RSA 485-C:2, XI, as reprinted in Appendix B.

(f) "Potential contamination source" means, as specified in RSA 485-C:7, I, human activities or operations upon the land surface that pose a reasonably-foreseeable risk of introducing regulated substances into the environment in such quantities as to degrade the natural groundwater quality. Examples of potential contamination sources are listed in RSA 485-C:7, II.

(g) "Regulated container" means any device in which a regulated substance is stored, transported, treated, disposed of, or otherwise handled, with a capacity of greater than or equal to 5 gallons, other than a fuel tank attached to a motor vehicle for the sole purpose of supplying fuel to that motor vehicle for that vehicle's normal operation.

(h) "Regulated substance" means any of the following, excluding substances used for the treatment of drinking water or waste water at department-approved facilities:

(1) Oil as defined in RSA 146-A:2, III;

(2) Any substance that contains a regulated contaminant for which an ambient groundwater quality standard has been established pursuant to RSA 485-C:6; and

(3) Any substance listed in 40 CFR 302, 7-1-05 edition.

(i) "Secondary containment" means a structure, such as an impervious berm or dike, that is adequate to contain any spills or leaks at 110% of the volume of the largest regulated container in the storage area.

(j) "Storage area" means a place where a regulated container is kept for a period of 10 or more consecutive days.

(k) "Work sink" means a sink in which regulated substances are used.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.04 **Storage of Regulated Substances.**

(a) The owner shall store all hazardous wastes in compliance with applicable federal requirements and state requirements specified in RSA 147-A and Env-Hw 100 et seq.

(b) The owner shall store all regulated containers on an impervious surface, as follows:

(1) The owner shall inspect the impervious surface prior to storage of any regulated containers and seal any cracks or holes prior to placing any regulated container in the storage area;

(2) The owner shall re-inspect the impervious surface not less than annually for as long as the area is used for storage of regulated substances; and

(3) Whenever the owner finds any cracks or holes in the impervious surface on which any regulated container is stored, the owner shall either:

- a. Immediately seal all such cracks and holes; or
- b. Move the regulated substances to a different storage area that meets the requirements of this section.

(c) The owner shall secure all storage areas against unauthorized entry by any method or combination of methods that renders the storage area tamper-proof and inaccessible, including but not limited to personal or monitored surveillance and physically-restricting access using fencing or box trailers that are locked except when regulated substances are being moved into or out of the secure area.

(d) The owner shall inspect all storage areas weekly for signs of spills or leakage from regulated containers. The aisle space between regulated containers that cannot be moved by hand shall be of ample size to allow an inspector to determine the condition of individual regulated containers.

(e) Each regulated container shall be clearly and visibly labeled with the chemical and trade name of the material stored within.

(f) Each regulated container shall remain closed and sealed at all times except to add or remove regulated substances. Regulated containers equipped with spigots, valves, or pumps shall be considered closed and sealed when the spigots, valves, or pumps are closed or in the "off" position, provided that drip pans are placed and maintained under the spigots, valves, or pumps.

(g) Spill control and containment equipment, including at the minimum absorbents to pick up spills and leaks, shall be located in the immediate area where regulated substances are transferred, used, or stored.

(h) Regulated containers in outdoor storage areas shall:

(1) Have secondary containment;

(2) Be kept covered at all times unless the regulated containers are in the process of being transferred to another location;

(3) Have a durable covering that keeps the regulated container and the secondary containment structure free of rain, snow, and ice; and

(4) Not be stored within any of the following set-backs:

- a. For surface waters, 50 feet;
- b. For private wells, 75 feet;
- c. The sanitary protective radius of any public water supply well; or
- d. For storm drains, 50 feet.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.05 **Transferring Regulated Substances.** Regulated substances shall be transferred from or to regulated containers only under the following conditions:

- (a) Funnels and drip pans shall be used; and
- (b) Fueling or transferring shall be done only over an impervious surface.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.06 **Floor Drains.** Interior floor drains shall discharge only as authorized by one of the following:

- (a) A groundwater discharge permit obtained pursuant to Env-Wq 402;
- (b) A discharge registration for a holding tank obtained pursuant to Env-Wq 402;
- (c) A national pollutant discharge elimination system (NPDES) permit; or
- (d) A local authorization to discharge to the local wastewater treatment facility.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.07 **Work Sinks.** Work sinks shall discharge only as authorized by one of the following:

- (a) A groundwater discharge permit obtained pursuant to Env-Wq 402;
- (b) A discharge registration for a holding tank obtained pursuant to Env-Wq 402;
- (c) An NPDES permit; or
- (d) A local authorization to discharge to the local wastewater treatment facility.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.08 **Holding Tanks.** Holding tanks that receive discharges from floor drains or work sinks

shall be registered and maintained in accordance with Env-Wq 402.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.09 Release Response Information.

(a) The owner shall post release response information in accordance with (b), below, at every storage area.

(b) Release response information shall include the information necessary to contact emergency response personnel, including the following:

(1) The name of the individual designated by the owner to be contacted if a spill occurs;

(2) The method by which the designated individual can be contacted when there is a release, such as by phone or in-person at the main office;

(3) The procedure for spill containment; and

(4) Emergency phone numbers including 911 and, depending on local protocol:

a. State police;

b. Local police and fire department;

c. Local hospital;

d. Department of environmental services;

e. Poison control center; and

f. Office of emergency management.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15

Env-Wq 401.10 Inspections. Potential contamination sources in any area shall be subject to inspections by the department.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15 (from Env-Wq 401.02(d))

Env-Wq 401.11 Waivers.

(a) Any person who is subject to these rules who wishes to obtain a waiver of specific rules in this part shall request the waiver in accordance with this section.

(b) The person requesting the waiver(s) shall submit the following information in writing to the department:

(1) The name, mailing address, daytime telephone number, and email address, if any, of the

person who is requesting the waiver and, if the person is other than an individual, the name, daytime telephone number, and email address, if any, of an individual who can be contacted by the department relative to the request;

(2) A description of the facility or site to which the waiver request relates, including the name, address, and identification number of the facility or site;

(3) Identification of the specific section of the rules from which a waiver is being sought;

(4) A full explanation of why a waiver is being requested;

(5) Whether the waiver is needed for a limited or indefinite period of time;

(6) A full explanation with supporting data of the alternative(s), if any, proposed to be implemented or used in lieu of the requirement(s) for which the waiver is requested; and

(7) A full explanation of how granting a waiver with the proposed alternative(s), if any, will meet the criteria specified in (c), below.

(c) The department shall not grant a waiver unless it determines that:

(1) The requirement to be waived is not established by statute, unless the statute that establishes the requirement expressly authorizes the department to grant waivers of the requirement;

(2) The intent of RSA 485-C to preserve and protect the natural quality of groundwater resources will be met; and

(3) Granting a waiver will not result in any adverse effect on human health or the environment.

(d) The department shall include such conditions, including time limitations, as are necessary to ensure that the activities conducted pursuant to the waiver will meet the criteria specified in (c), above.

(e) The department shall issue a written response to a request for a waiver within 90 days of receipt of the request. If the department denies the request, the reasons(s) for the denial shall be clearly stated in the written response.

Source. (See Revision Note) #8786, eff 1-5-07; ss by #10828, eff 5-19-15 (from Env-Wq 401.10)

APPENDIX A

Rule Section(s)	State Statute(s) Implemented	Federal Regulations Implemented
Env-Wq 401 (also see specific section listed below)	RSA 485-C:1; RSA 485-C:11	
Env-Wq 401.11	RSA 541-A:22, IV	

APPENDIX B: STATUTORY DEFINITIONS

485-C:2

XI. "Person" means any individual, partnership, company, public or private corporation, political subdivision or agency of the state, department, agency or instrumentality of the United States, or any other legal entity.

APPENDIX B: [Best Management Practices Survey](#)

Download from <https://www.des.nh.gov/sites/g/files/ehbemt341/files/documents/2020-01/bmp-survey-inspection-form-instructions.doc>

APPENDIX C: Best Management Practices: Photos and Explanation

Best Management Practices: Photos and Explanation

The following are examples of inadequate and adequate management practices related to regulated substances, as defined under New Hampshire Env-Wq 401. For a [complete listing of regulated substances](#) NHDES has created a file that can be viewed through your mobile or desktop device online.

Env-Wq 401.03(c) Impervious surface means a surface through which regulated substances cannot pass when spilled. Impervious surfaces include concrete and asphalt unless unsealed cracks or holes are present, and do not include earthen, wooden, or gravel surfaces or other surfaces which could react with or dissolve when in contact with the substances stored on them. Regulated containers must be stored on an impervious surface.

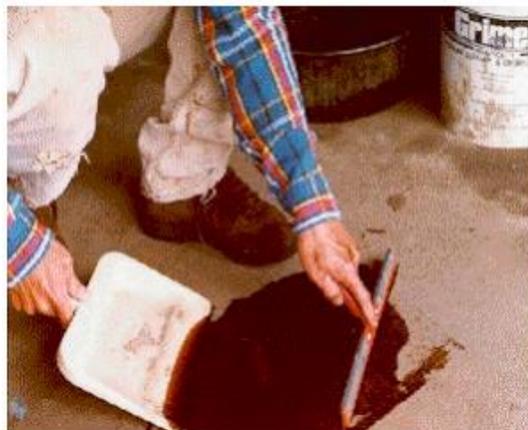
INADEQUATE: Pervious Surface (not suitable for regulated substances)

- Pervious surfaces include soil, wood or gravel surfaces, as well as asphalt or concrete surfaces with floor drains, cracks, holes or other openings to the earth's surface.



ADEQUATE: Impervious Surface

- Spillage onto an impervious surface provides a protective barrier to groundwater and allows for easy clean up.



Env-Wq 401.04(h)(2) Regulated containers in outside storage areas shall be kept covered at all times unless substances are actively being added to or being removed from the regulated container...

•**INADEQUATE:** Uncovered outdoor storage of regulated containers allows the weather to more rapidly degrade the containers resulting in leaks and releases of regulated substances into surrounding ground or surface waters.



•**ADEQUATE:** Covered storage includes buildings as well as trailers, waterproof tarps, or proprietary bins that keep the containers and secondary containment areas free from rain, snow or ice.



Env-Wq 401.03(i) Secondary containment means a structure such as a berm or dike with an impervious surface which is adequate to hold any spills or leaks at 110% of the volume of the largest regulated container that will be stored there. Outdoor storage of regulated substances must have secondary containment.

•**INADEQUATE:** Poor secondary containment and spill control leads to releases of regulated substances through incidental (operational) spills or catastrophic events.



•**ADEQUATE:** Solid waste containers should be covered and receive only solid waste as defined by NH RSA 149M. Small amounts of residual hazardous waste or regulated substances (e.g. small amounts of drying agents with used oil mixed together) are allowed under state rules. Contact NHDES at [\(603\) 271-0688](tel:6032710688) if you have specific questions.



Env-Wq 401.04(a) All hazardous wastes shall be stored in compliance with applicable federal regulations and state requirements as specified in RSA 147-A and rules promulgated pursuant thereto. Additional outdoor storage requirements may be required under Env-Hw 507 of the NH Hazardous Waste Rules.

•**INADEQUATE:** Hazardous waste or regulated substances should not be disposed of in solid waste containers. However, solid waste containers that receive solid waste with residual hazardous wastes or regulated substances, such as used oil, parts washing fluids, antifreeze should be covered to limit exposure to precipitation, leak-proof, and placed upon an impervious surface.



•**ADEQUATE:** Solid waste containers should be covered and receive only solid waste as defined by NH RSA 149M. Small amounts of residual hazardous waste or regulated substances (e.g. small amounts of drying agents with used oil mixed together) are allowed under state rules. Contact NHDES at [\(603\) 271-0688](tel:6032710688) if you have specific questions.



Env-Wq 401.04(c) Storage areas (for regulated substances) shall be secured against unauthorized entry.

•**INADEQUATE:** Unsecured storage is vulnerable to accidental spillage or vandalism.



•**ADEQUATE:** Secured means in a locked storage unit or under surveillance by on-site personnel.



Env-Wq 401.04(f) Each regulated container shall remain closed and sealed at all times except to add or remove regulated substances. Regulated containers equipped with spigots, valves, or pumps shall be considered closed and sealed, provided that drip pans are placed and maintained under the spigots, valves or pumps.

•**INADEQUATE:** Open container without proper controls (i.e. spigots, valves or pumps). The container is not closed and sealed.



•**ADEQUATE:** Container is closed and utilizing a pump to dispense regulated substance.



Env-Wq 401.05(b) Transferring regulated substances from or to containers shall be done only over an impervious surface.

•**INADEQUATE:** Transferring regulated substances (i.e. used oil, gasoline, etc.) over a pervious surface is a violation of Env-Wq 401.05(b).



•**ADEQUATE:** Impervious surfaces or pads are typically asphalt or concrete and can include positive limiting barriers (grooves) at the edges of the pad to hold incidental spills.



APPENDIX D: Public Education Materials