

Notice Number 2023-265

Rule Number Env-Wq 1600

1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority: <u>RSA 485-A:6, X-a</u> 3. Federal Authority: <u>n/a</u> 4. Type of Action: Adoption _____ Repeal _____ Readoption _____ Readoption w/amendment <u>X</u>
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5. Short Title: **Septage Management**

6. (a) Summary of what the rule says and of any proposed amendments including whether the rule implements a state statute for the first time:

The Department of Environmental Services (Department) is proposing to readopt with amendment Env-Wq 1600, *Septage Management*. The existing rules implement RSA 485-A:4, XVI-a, by establishing standards, criteria, and procedures for a permit system to manage the removal, transportation, and disposal of septage. The rules are scheduled to expire on November 26, 2023. The existing rules are subject to extension for the duration of this readoption proceeding pursuant to RSA 541-A:14-a, I.

The Department is proposing to readopt the rules with proposed amendments as summarized below.

- **The rules eliminate the requirement for the Department to publish a notice of an application and the opportunity for a hearing in the newspaper and instead require that the notice and the application be published on the department's website. For land application of septage, the proposed rules require the municipality where the land application will occur to post the notice of the intended date of the land application. (Env-Wq 1603.06, Env-Wq 1603.07, and Env-Wq 1604.02).**
- **The rules add a definition for “septage holding tank area” and eliminate the permit by notification requirements for septage holding tanks, as well as the requirements related to septage transfer/storage permits. A permit will still be required for septage holding tanks. (Env-Wq 1602.37 and Env-Wq 1603.01).**
- **The rules delete some definitions that were either not used in the rules or are now being eliminated due to other proposed changes in the rules. (existing - Env-Wq 1602.08, Env-Wq 1602.22, Env-Wq 1602.35, Env-Wq 1602.43).**
- **The rules add some definitions for terms that are used in the rules but were not previously defined. (new- Env-Wq 1602.16, Env-Wq 1602.32, Env-Wq 1602.35, Env-Wq 1602.37, and Env-Wq 1602.46).**
- **Any septage transported over public waters will be required to be transported by a permitted hauler. (Env-Wq 1605.08).**
- **The rules incorporate by reference all of the required application forms and the associated requirements; and provide the links to the applications to streamline the application process. (Env-Wq 1603.10, Env-Wq 1603.12, Env-Wq 1605.01, Env-Wq 1606.02, Env-Wq 1608.02, Env-Wq 1609.02, and Env-Wq 1610.01).**

- The rules add a requirement that any person proposing to land apply domestic septage must submit a site specific soil map or survey prepared by a certified soil scientist; that a site management plan include the results of a USDA phosphorous site index evaluation; and that if the annual agronomic soil test report recommendations provide that no additional phosphorous is required for crop growth, that no septage containing phosphorous shall be land applied until such time as a subsequent report shows that phosphorous is required for crop growth. (Env-Wq 1608.01, Env-Wq 1608.08, and Env-Wq 1608.09).
- The rules update and revise the pre-application soil testing requirements for land application sites. Added a requirement that soil samples must be tested for per- and polyfluoroalkyl (PFAS) compounds prior to land application and within 6 months prior to permit renewal. (Env-Wq 1608.12).
- The rules add a requirement that an applicant for a facility permit must have the previously required site-specific soil map prepared by a NH certified soil scientist; reduce the expiration date of a permit from 10 years after issuance to 5 years after issuance; and add a requirement that a facility must submit a closure plan no later than one year after permit issuance or renewal, and implement the approved closure plan no later than the date of the permit expiration. (Env-Wq 1609.01 and Env-Wq 1609.03).
- The closure plan requirements have been amended to include requirements that were previously in a published guidance document and were not enforceable. (Env-Wq 1609.10).
- The soil testing requirements for facilities have been revised to mirror the requirements for land application sites. (Env-Wq 1609.11).
- The innovative/alternative septage treatment requirements and research and development permit requirements have been removed as these requirements are addressed in Env-Wq 700. (Env-Wq 1611 and Env-Wq 1612).
- Lastly, the rules revise the Exception Quality certification standards for concentrations of arsenic and mercury so that they are consistent with Env-Or 600. The rules revise Table 1610-1 so that it is consistent with the standards for sludge in Env-Wq 800.

6. (b) Brief description of the groups affected:

Any person who applies for a septage facility permit, septage site (land application) permit, septage holding tank permit, or septage hauler permit pursuant to RSA 485-A:4, XVI-a.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-Wq 1601.01 – Env-Wq 1603.05	RSA 485-A:4, XVI-a; RSA 485-A:6, X-a; RSA 485-A:1
Env-Wq 1603.06	RSA 485-A:4, XVI-a; RSA 483:15; RSA 483:12-a
Env-Wq 1603.07 – Env-Wq 1604	RSA 485-A:4, XVI-a; RSA 541-A:30; RSA 485-A:5-c; RSA 541-A:39
Env-Wq 1605 – Env-Wq 1607	RSA 485-A:4, XVI-a
Env-Wq 1608	RSA 485-A:4, XVI-a; RSA 483; RSA 485-A:5-c
Env-Wq 1609	RSA 485-A:4, XVI-a; RSA 483
Env-Wq 1610 – Env-Wq 1611	RSA 485-A:4, XVI-a
Env-Wq 1612	RSA 485-A:1; RSA 485-A:13; RSA 485-C:6; RSA 485-C:13
Env-Wq 1613	RSA 541-A:22, IV

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name: **Anthony Drouin** Title: **Administrator III**
Mailing: **Dept. of Environmental Services** Phone #: **(603) 271-3571**
Address: **29 Hazen Drive; P.O. Box 95** Fax#: **(603) 271-2867**
Concord, NH 03302-0095 E-mail: **anthony.f.drouin@des.nh.gov**

The rules also can be viewed in PDF at the Public Comment Opportunities section of the NHDES website at <https://www.des.nh.gov/public-comment-opportunities> and selecting "Rulemaking"

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Friday, December 22, 2023 4:00 PM**

Fax E-mail Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, December 15, 2023 8:30 AM**

Room 208C, NHDES Offices, 29 Hazen Drive, Concord, NH

Physical Location:

NOTE: NHDES security procedures require all visitors to sign in and present photo identification (such as a driver's license). If you plan to attend the public hearing in person, please bring photo identification with you.

Electronic Access (if applicable):

You also may attend the hearing via Microsoft Teams, which can be accessed through the following link:
https://teams.microsoft.com/l/meetup-join/19%3ameeting_NjkwNmEzZDQ0tODlmOS00NmE5LThkNTMtMzIzZWFIYjc2YjU1%40thread.v2/0?context=%7b%22Tid%22%3a%22992deae9-1c4c-42c8-a310-5088af55ba74%22%2c%22Oid%22%3a%22a5479b82-9507-4a15-be30-878966d59615%22%7d

You also may join the meeting by phone:

Call in Number: **(603) 931-4944**

Access Code: **326 675 121#**

Microsoft Teams Meeting ID: **290 958 138 25**

If any questions or technical issues, please contact Ben Giorgi at **603-271-3287** or via email at benjamin.n.giorgi@des.nh.gov

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant):

FIS # 23:269, dated 11/01/2023

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

When compared to the existing rules the proposed rules will increase revenue to the State general fund by a small amount, decrease costs to the Clean Water State Revolving Fund by a small amount, and increase costs to political subdivisions and independently owned businesses by an indeterminable amount.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds.

3. Cost and benefits of the proposed rule(s):

The proposed rules make the following changes that will have a fiscal impact:

- Eliminates permit-by-notification (PBNs) and will require the three (3) haulers that currently have PBNs to obtain permits. There will be minimal annual reporting costs which are indeterminable.
- Requires a new applicant for a site permit to have the site-specific soil map, which is currently required, to now be prepared by a N.H. certified soil scientist. The estimated cost of a certified soil scientist to be \$150/hr. and the cost would be dependent on the size of the proposed site. (The Department notes there have been no new applications for site permits in over 15 years.)
- Requires a new applicant for a site permit to include a phosphorous site index evaluation as part of the site nutrient management recommendations. The Department estimates that the cost of this evaluation would be \$1,500.
- Updates and revises the soil testing requirements for land application sites. Adds a requirement that soil samples be tested for per- and polyfluoroalkyl (PFAS) compounds prior to land application and within 6 months prior to permit renewal. The cost for PFAS sampling is estimated to be \$300-\$500 per site and the testing will have to be conducted twice during the permit term for a total cost of \$1,000 per site. (The Department notes that there are currently three (3) land application sites.)
- Updates the facility closure requirements. Under the current rules, existing facilities are required to submit a closure plan. The proposed rules provide that any new facility permit, or the renewal of an existing facility permit will expire 5 years from the date the new or renewed facility permit is issued, and the facility must close the facility no later than the date of the permit expiration. There are currently 8 active facilities in the state. Facilities are eligible for Clean Water SRF funding, including loan forgiveness, for the planning and construction closure process.

A. To State general or State special funds:

RSA 485-A:4, XVI-a, requires that the funds collected by this program be deposited in the general fund. No changes are proposed to the fees. Any septage transported over public waters will now be required to be transported by a permitted hauler. The Department estimates that there are two or three haulers that transport septage over public waters. The permit fee is \$100 every two years, so there may be an annual increase of \$150 to the general fund. There will be reduced costs to the Clean Water State Revolving Fund as the proposed rules eliminate the requirement to publish notice of a permit application in a newspaper.

B. To State citizens and political subdivisions:

There will be no fiscal cost or benefit to State citizens. There will be closure costs in the future for the four (4) political subdivisions that currently operate septage facilities.

The existing rules require a closure plan to be submitted as a requirement of a permit application. Clean Water SRF funding is available through the state including loan forgiveness, for the planning and construction closure process.

C. To independently owned businesses:

The costs to independently owned businesses are identified in #3 above. Independently owned businesses will realize a benefit from the streamlined application process.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

The proposed rules modify the program for the 4 political subdivisions that currently operate septage facilities. The existing rules require a closure plan to be submitted as a requirement of a permit application. The proposed rules provide that an existing facility permit will expire 5 years from the date the renewal permit is issued and that the facility must close no later than the date of permit expiration. The 4 existing facilities will be eligible for Clean Water SRF funding that is available through the state, including loan forgiveness, for the planning and construction closure process. The Department thus believes that any resulting costs, which would be minimal, that are not covered by the Clean Water SRF funds are allowed under the N.H. Supreme Court decision in City of Concord v. State, 164 N.H. 130 (2012), and so the rules do not violate Part I, Article 28-a of the N.H. Constitution.