

Notice Number 2023-292

Rule Number Env-Wr 100 & Env-Wr 200

<p>1. Agency Name & Address:</p> <p>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</p>	<p>2. RSA Authority: <u>RSA 482:87; RSA 541-A:16, I(a) & (b)</u></p> <p>3. Federal Authority: <u>N/A</u></p> <p>4. Type of Action:</p> <p>Adoption _____</p> <p>Repeal _____</p> <p>Readoption _____</p> <p>Readoption w/amendment <u>X</u></p>
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5. Short Title: **Organizational Rules and Procedures for Dam-Related Programs**

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 existing rules Env-Wr 100 implement the organizational rules for the subtitle “Env-Wr” for dam-related programs, especially definitions used throughout Env-Wr 300-Env-Wr 700 and Env-Wr 900. The existing rules Env-Wr 200 contain the procedural requirements relative to jurisdictional dams (RSA 482:2, II) and their removal, including waivers of rules, public hearings, permit proceedings, decisions, and appeals. The rules do not expire, but are proposed to be readopted with amendment in conjunction with another rulemaking proceeding, the readoption with amendment of Env-Wr 300 - Env-Wr 700, which are scheduled to expire on January 22, 2024, but are subject to extension for the duration of that readoption proceeding pursuant to RSA 541-A:14-a, I. This proposal for Env-Wr 100 and Env-Wr 200 does not implement a state statute for the first-time.

The following changes are proposed to amend the existing rules and add new definitions to clarify or introduce information to aid dam owners and their agents in their efforts to comply with the requirements of the dam safety program rules, Env-Wr 300-Env-Wr 700 and Env-Wr 900 and are summarized below.

- **Env-Wr 101.06 is a new rule that defines “campsite” as it will be used in hazard classification determinations for high hazard dams.**
- **Env-Wr 101.07 defining “classification of a dam,” clarifies definitions for the various hazard classifications assigned to dams and eliminates a stepped classification system for dams that impound liquid municipal, commercial, or industrial waste based on location and volume.**
- **Env-Wr 101.17 is a new rule that defines an “exempt dam”.**
- **Env-Wr 101.01, Env-Wr 101.04, Env-Wr 101.13, Env-Wr 101.16, Env-Wr 101.17, Env-Wr 101.26, Env-Wr 101.27, Env-Wr 101.28, Env-Wr 101.29, Env-Wr 101.34, Env-Wr 101.36, Env-Wr 101.41, and Env-Wr 101.48 are additional definitions to describe dam-related terms to aid in conducting analyses, assessments, and in completing forms incorporated by reference in the dam safety program rules, Env-Wr 300 – Env-Wr 700 and Env-Wr 900.**

- **Env-Wr 101.04, Env-Wr 101.05, Env-Wr 101.07, Env-Wr 101.13, Env-Wr 101.16, Env-Wr 101.24, Env-Wr 101.37, Env-Wr 101.40, Env-Wr 101.42, Env-Wr 101.43, and Env-Wr 101.45** are existing definitions which are being deleted.
- **Env-Wr 102 “Duties of the Department”**, is being deleted since all of the duties that were listed in the rules are in RSA 482.
- **Env-Wr 103 “Access to Files”** is being deleted since the requirements related to public records are established in RSA 91-A.
- **Env-Wr 202.04**, regarding action on waiver requests is amended, the criteria for granting a waiver and specifying a timeframe for the Department to issue its written decision on the waiver request.

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

The proposed amendments affect dam owners that include, but are not limited to, private individuals, associations, businesses, village districts, corporations, non-profits, municipalities, and state agencies. The rules also affect engineering consultants hired by dam owners.

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-Wr 100	RSA 482
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)

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

Name:	Steve N. Doyon	Title:	Chief Dam Safety Engineer
Mailing Address:	Dam Bureau 29 Hazen Drive Concord, NH 03302-0095	Phone #:	603-271-1966
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The rules also can be viewed in PDF in 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, February 2, 2024 at 4:00 PM**

Fax

E-mail

Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, January 26, 2024 at 10:00 AM**

Physical Location: **29 Hazen Drive, Concord, NH, Room 208C**
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.
Join on your computer, mobile app or room device via Microsoft Teams, which can be accessed through the following link:
[Click here to join the meeting](#)
Meeting ID: 216 322 018 021
Passcode: sYJVE5
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Electronic Access (if applicable): **Or call in (audio only)**
Call in Number: +1-603-931-4944
Phone Conference ID: 711 690 73#
Contact Jim Weber at (603) 848-8466 or James.R.Weber@des.nh.gov if you have any questions or technical issues connecting to the hearing.

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

FIS # 23:296, dated 12/13/23

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**
There is no difference in cost when comparing the proposed rules to the existing rules.
2. **Cite the Federal mandate. Identify the impact on state funds:**
No federal mandate, no impact on states funds.
3. **Cost and benefits of the proposed rule(s):**
 - A. **To State general or State special funds:**
None.
 - B. **To State citizens and political subdivisions:**
None.
 - C. **To independently owned businesses:**
None.

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

There are no costs attributable to the proposed amendments. The rules thus do not mandate or assign any new, expanded, or modified programs or responsibilities to any political subdivision in such a way as to necessitate additional local expenditures by the political subdivision, and so do not violate Part I, Article 28-a of the N.H. Constitution.