

Notice Number 2023-293

Rule Number Env-Wr 300 - Env-Wr 700

<p>1. Agency Name &amp; Address:</p> <p><b>Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095</b></p>	<p>2. RSA Authority: <u>RSA 482:87</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: **Dam Safety Program Rules**

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 the existing dam program safety rules, Env-Wr 300-Env-Wr 700, which implement RSA 482 relative to the regulation of jurisdictional dams (RSA 482:2, II) and their removal, as well as lake level investigations. Specifically, the rules address existing dams (Env-Wr 300), constructing or reconstructing a dam (Env-Wr 400), emergency action plans (Env-Wr 500), removal of dams (Env-Wr 600), and lake level determinations (Env-Wr 700). The rules are intended to ensure that dams are constructed, operated, and maintained in a fashion that protects lives and property located downstream. The rules do not implement a state statute for the first time. The rules are scheduled to expire on January 22, 2024, but are subject to extension for the duration of this readoption proceeding pursuant to RSA 541-A:14-a, I.**

**The proposed changes clarify the requirements and describe the methods and procedures required to aid in their compliance, as well as to incorporate by reference new forms, as well as guidance documents that have been amended since the rules were last readopted in 2014. The initial proposal is annotated to show all of the proposed amendments, and a summary of the notable amendments is set forth below:**

- **Env-Wr 303.04, Env-Wr 304.01, Env-Wr 402.01, Env-Wr 405.03, and Env-Wr 602.02 include incorporation by reference of various forms in order to streamline the application process.**
- **Env-Wr 303.05 adds a link to the Emergency Action Plan (EAP) template to assist dam owners in developing an EAP.**
- **Env-Wr 303.10(a)(3) slightly reduces the design discharge requirement for previously permitted or existing high hazard dams and lessens the technical analysis complexity.**
- **Env-Wr 303.13 is inserted to add dam maintenance and operational requirements that have been used to promote dam stability, and safe and consistent operating conditions, since the inception of the program but were never enforceable.**
- **Env-Wr 403.03(a)(2) clarifies the responsibilities and requirements for engineers who design dams or monitor their construction.**
- **Env-Wr 403.05-Env-Wr 403.10 update various technical references and publications to be used in the design of dams.**

- **Env-Wr 404.03(a)** extends the duration of dam permits to coincide with other permits typically issued for dam projects.
- **Env-Wr 506.01(d)(1) & (2)** clarify and streamline the process for testing the notification procedures associated with emergency action plans.
- **Env-Wr 602.01(c)** adds a requirement related to dam removal projects that, upon request by the Department, hydrologic and hydraulic analyses shall be provided in order to demonstrate that remaining structures no longer qualify as a jurisdictional dam in accordance with RSA 482:2, II.

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:

<b>Rule Section(s)</b>	<b>State Statute(s) Implemented</b>
Env-Wr 301	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 302	RSA 482:5; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 303	RSA 482:5; RSA 482:8-a; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 304	RSA 482:5; RSA 482:87
Env-Wr 401	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 402	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 403	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 404	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 405	RSA 482:1; RSA 482:7; RSA 482:9 – 11-a; RSA 482:29 – 31; RSA 482:87
Env-Wr 501	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 502	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 503	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 504	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 505	RSA 482:1; RSA 482:11-a; RSA 482:12; RSA 482:87
Env-Wr 601	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 602	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 603	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 604	RSA 482:1; RSA 482:2; RSA 482:87
Env-Wr 701	RSA 482:1; RSA 482:4; RSA 482:79-83; RSA 482:87
Env-Wr 702	RSA 482:1; RSA 482:4; RSA 482:79-83; RSA 482:87
Env-Wr 703	RSA 482:1; RSA 482:4; RSA 482:79-83; RSA 482:87

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

Name:	<b>Steve N. Doyon</b>	Title:	<b>Chief Dam Safety Engineer</b>
Mailing Address:	<b>Dam Bureau 29 Haxen Drive Concord, NH 03302-0095</b>	Phone #:	<b>603-271-1966</b>
		Fax#:	<b>603-271-6120</b>
		E-mail:	<b>steve.n.doyon@des.nh.gov</b>

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

Electronic Access (if applicable):

[Download Teams](#) | [Join on the web](#)

**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](mailto: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 # 23:297, dated 12/13/23

**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 reduce costs to political subdivisions and independently owned businesses by \$16,100, and reduce revenue to the Dam Maintenance Fund by \$16,100.

**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):**

Dam owners are assessed an annual fee based on the dam's hazard classification. The proposed rules will result in reclassification of 46 dams from "significant hazard potential" (\$750) to "low hazard potential" (\$400).

**A. To State general or State special funds:**

There will be no additional cost or benefit to the State general fund. The proposed rules will decrease annual fee revenue to the Dam Maintenance Fund by \$16,100. (46 dams X \$350 reduction in the annual fee)

**B. To State citizens and political subdivisions:**

There will be no additional cost or benefits to State citizens. Political subdivisions own 33 of the dams that will be reclassified; 30 municipal dams, 2 county dams and 1 dam owned by UNH. This will reduce the cost of annual fees to political subdivisions by \$11,500. (33 dams X \$350 reduction in the annual fee)

**C. To independently owned businesses:**

Independently owned businesses are owners of 13 dams that will be reclassified. Annual dam registration costs to all independently owned businesses will decrease by \$4,550. (13 dams X \$350 reduction in the annual fee)

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

**The proposed rules modify, but do not expand, the existing dam safety programs, but do not mandate any additional expenditures 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.**