

TITLE L

WATER MANAGEMENT AND PROTECTION

CHAPTER 485-C

GROUNDWATER PROTECTION ACT

Section 485-C:1

485-C:1 Statement of Purpose. –

I. The purpose of this chapter is to protect the natural quality of the groundwater resource of the state by assisting local groundwater protection efforts and by establishing procedures and standards for the classification and remediation of groundwater and state permitting of large groundwater withdrawals. The legislature recognizes the fundamental importance of the groundwater resource and the role of local planning and management in groundwater protection, and intends through this legislation to provide a framework for local groundwater protection. The legislature also intends to provide for consistent, protective management and remediation of groundwater affected by regulated contaminants. The natural quality of the groundwater resource shall be preserved and protected in order that groundwater may be used for drinking water supply. Ambient groundwater quality standards shall meet drinking water standards, and the classification of groundwater shall provide opportunity for protecting groundwater of high value as a drinking water supply. The legislature recognizes that groundwater constitutes an integral part of the hydrologic cycle and that the protection of groundwater quality is necessary to preserve the integrity of surface water.

II. The legislature finds that the most effective means of preserving the existing high quality of groundwater is by identification and careful management of operations or activities which may cause contamination of groundwater if not properly conducted. Because groundwater is primarily a local resource, cities and towns should have the first opportunity to institute programs for groundwater protection within the scope of this chapter. Suppliers of water should also have this opportunity because of their vital interest in preserving the quality of their groundwater supply. The state, which has general responsibility for groundwater management in the public trust and interest, should develop groundwater protection programs within the scope of this chapter when such programs are not developed by a local entity.

Source. 1991, 344:1. 1996, 266:1. 2010, 348:1, eff. Sept. 18, 2010.

Section 485-C:2

485-C:2 Definitions. – In this chapter:

I. "Ambient groundwater quality standards" means maximum concentration levels for regulated contaminants in groundwater which result from human operations or activities, as delineated in RSA 485-C:6.

II. "Best management practice" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the risk of contamination of groundwater.

III. "Commissioner" means the commissioner of the department of environmental services.

IV. "Contributing area" means the land above a class of groundwater, which is the vertical projection of the defined class on the land surface.

V. "Department" means the department of environmental services.

VI. "Director" means the director of the division of water supply and pollution control, department of environmental services.

VII. "Division" means the division of water supply and pollution control, department of environmental services.

VIII. "Groundwater" means subsurface water that occurs beneath the water table in soils and geologic formations.

IX. "Groundwater discharge permit" means a permit issued under RSA 485-A:13 for disposal of sewage or waste to the groundwater.

IX-a. "Large groundwater withdrawal" means any withdrawal from groundwater of 57,600 gallons or more of water in any 24-hour period at a single property or place of business except withdrawals associated with short-term use.

X. "Local entity" means a town or city, acting through a planning board, conservation commission, water department, health officer, or other duly constituted municipal unit; a village district established under RSA 52 or its predecessor statutes; an entity established by intergovernmental agreement under RSA 53-A; or a supplier of water for wellhead protection areas tributary to wells owned by the public water system.

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.

XII. "Public water system" means a public water system as defined in RSA 485:1-a, XV.

XIII. "Regulated contaminant" means any physical, chemical, biological, radiological substance or other matter, other than naturally occurring substances at naturally occurring levels, in water which adversely affects human health or the environment.

XIII-a. "Replacement well" means a new well installed to replace or back-up an existing well that operates and impacts water users and water resources in substantially the same manner as the well that is being replaced.

XIII-b. "Short-term use" means the temporary, non-routine withdrawal of groundwater at a specific geographical location over a period of one year or less, and withdrawal of groundwater for contaminated site remediation where the duration of the withdrawal may exceed one year and corresponds with the objectives of the remediation.

XIV. "Stratified drift aquifer" means a geologic formation of predominantly well-sorted sediment deposited by or in bodies of glacial meltwater, including gravel, sand, silt, or clay, which contains sufficient saturated permeable material to yield significant quantities of water to wells.

XV. "Supplier of water" means a supplier of water as defined in RSA 485:1-a, XVI.

XVI. "Transmissivity" means the rate at which water is transmitted through a unit width of a water-bearing formation under a unit hydraulic gradient. It is equal to the hydraulic conductivity times the thickness of the formation, and is given in units of distance squared per unit time.

XVI-a. "Water balance" means the difference between the system input volume and authorized metered consumption. System input volume means the volume of water input to the water supply system corrected for known errors, which is equal to the volume of water derived from the water system's own sources, minus water consumed by treatment processes, plus water imported or purchased, plus or minus the net change in water storage where applicable. Authorized metered consumption means billed metered water plus unbilled metered water. Billed metered water means authorized consumption by all customer types that is both metered and billed. Unbilled metered water means any authorized consumption that is metered but for which the water supplier does not bill.

XVII. "Well" means a hole or shaft sunk into the earth to observe, sample, or withdraw groundwater.

XVIII. "Wellhead protection area" means the surface and subsurface area surrounding a water well or wellfield, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water well or wellfield.

XIX. "Zone of contribution" means the subsurface volume from which groundwater flow is drawn to a pumping well.

Source. 1991, 344:1. 2006, 322:1. 2007, 55:1. 2010, 348:3, 4, eff. Sept. 18, 2010. 2014, 304:1, eff. Sept. 30, 2014.

Section 485-C:3

485-C:3 Duties of the Department. – The department shall:

- I. Maintain a statewide map identifying the classes of groundwater.
- II. Assist local and regional entities in the development and administration of local wellhead protection programs, including delineation of wellhead protection areas and the inventory and management of activities which have a potential effect on groundwater quality.
- III. [Repealed.]
- IV. Maintain an inventory of wells serving public water supply systems, and establish a priority system for delineation of wellhead protection areas and reclassification of these areas to class GAA.
- V. Provide for the investigation, management, and remediation of contaminated groundwater.
- VI. Manage and preserve the state's groundwater on behalf of the citizens of the state, recognizing that any private use of groundwater and other public waters shall be reasonable in light of the protected interests of the general public in the use and enjoyment of groundwater and other public waters by ensuring that no unmitigated adverse impact, as defined in this chapter, occurs.

Source. 1991, 344:1. 1996, 228:106; 266:2. 2003, 319:9. 2004, 257:44. 2006, 322:2. 2011, 224:117, II, eff. July 1, 2011.

Section 485-C:4

485-C:4 Rulemaking. – The commissioner shall adopt rules, pursuant to RSA 541-A, relative to:

- I. Criteria and procedures for delineating classes of groundwater.
- II. Criteria and procedures for reclassifying groundwater under RSA 485-C:9, II.
- III. Ambient groundwater quality standards as provided under RSA 485-C:6.
- IV. Criteria and procedures for conducting and maintaining inventories of potential contamination sources and managing potential contamination sources under RSA 485-C:8.
- V. Criteria and procedures for the issuance of groundwater release detection permits as provided under RSA 485-C:13.
- VI. Fees for groundwater release detection permits required under RSA 485-C:13.
- VII. Best management practices as provided under RSA 485-C:11, except those practices for agricultural operations and pesticide use, and rulemaking relative to such practices, shall be developed, administered and enforced by the New Hampshire department of agriculture, markets, and food.
- VIII. Criteria and procedures for the investigation, management, and remediation of contaminated groundwater, including the creation of regulated zones of contaminated groundwater and the issuance of permits or similar procedures for the remediation of such zones.
- IX. Criteria and procedures for the notification of owners of affected properties and for the recordation of permits governing groundwater management zones designated by the department in the registry of deeds for affected properties.
- X. Criteria and procedures for the imposition of groundwater use restrictions relative to groundwater management zones.
- XI. Criteria and procedures for accepting adopted municipal land use controls in lieu of recordation requirements.
- XII. All new groundwater withdrawals of 57,600 gallons or more in any 24-hour period. Such rules

shall include:

(a) Criteria and procedures for requiring persons to identify and address impacts of withdrawals on surface waters, subsurface waters, water-related natural resources, and public, private, residential, and farm wells within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e.

(b) Requirements relative to conservation management plans which demonstrate the need for the proposed withdrawals, to be submitted by the persons seeking approval for a withdrawal.

(c) Procedures by which the department may deny permission for withdrawals or order the applicant to provide a response policy, as provided by department rules, for provision of alternative water supply at no initial capital cost to persons whose wells are adversely affected by the proposed withdrawal or order reduced withdrawals if hydrogeologic data indicate that water-related resources are being adversely affected by the withdrawals.

Source. 1991, 344:1. 1995, 130:4. 1996, 228:110; 266:12. 1998, 124:2. 2006, 322:3, eff. Aug. 21, 2006.

Section 485-C:5

485-C:5 Classes of Groundwater. –

I. All groundwater shall be classified for the purpose of prescribing protections and management practices. These classifications do not necessarily reflect existing water quality. For purposes of classification, all groundwater shall be assigned to one of 4 classes as follows:

(a) Class GAA groundwater shall be the most protected class. Groundwater in this class is within the wellhead protection area for wells which presently are used or well sites which have been identified for future use as drinking water supply for public water systems. An inventory of potential contamination sources in the wellhead protection area shall be conducted, and a management program shall be implemented as provided under RSA 485-C:8.

(b) Class GA1 shall be assigned to groundwater in a defined zone of high value for present or future drinking water supply. An inventory of potential contamination sources in the contributing area of this class shall be conducted, and a management program shall be implemented as provided under RSA 485-C:8.

(c) Class GA2 shall be assigned to groundwater within aquifers identified as highly productive for potential use as a public water supply by the U.S. Geological Survey regional groundwater studies, or other regional studies. Zones of stratified drift with a saturated thickness greater than 20 feet, and a transmissivity greater than 1,000 feet squared per day shall be designated as class GA2. Zones of bedrock with average well yields greater than 50 gallons per minute shall also be designated as class GA2.

(d) Class GB shall be assigned to all groundwater not assigned to a higher class.

II. The land area vertically above shall be assigned to the highest class of groundwater beneath it, for purposes of managing potential contamination sources.

Source. 1991, 344:1, eff. June 28, 1991.

Section 485-C:6

485-C:6 Ambient Groundwater Quality Standards. –

I. The commissioner shall establish and adopt ambient groundwater quality standards for regulated contaminants which adversely affect human health or the environment. Ambient groundwater standards shall apply to all regulated contaminants which result from human operations or activities, but do not apply to naturally occurring contaminants. Where federal maximum contaminant level or health advisories have been promulgated under the Federal Safe Drinking Water Act or rules relevant to such act, ambient groundwater quality standards shall be equivalent to such standards. Where such standards are based upon cancer risks, the ambient groundwater quality standards shall be equivalent to that

exposure which causes a lifetime exposure risk of one cancer in 1,000,000 exposed population. Where no federal maximum contaminant level or health advisory has been issued, the commissioner may adopt ambient groundwater quality standards on a basis which provides for an adequate margin of safety to protect human health and safety.

II. Ambient groundwater quality standards shall be the water quality basis for issuance of groundwater discharge permits under RSA 485-A:13.

III. Except for discharges of domestic wastewater regulated under RSA 485-A:13 and RSA 485-A:29, no person shall violate ambient groundwater quality standards.

Source. 1991, 344:1. 1996, 228:110, eff. July 1, 1996.

Section 485-C:6-a

485-C:6-a Groundwater Management Zones. – The department may designate groundwater management zones as a component of the remediation of contaminated groundwater. The department shall issue permits or other similar controls for such zones that establish a time period and process for the remediation of the groundwater.

Source. 1996, 266:13, eff. Aug. 9, 1996.

Section 485-C:6-b

485-C:6-b Recordation of Groundwater Management Zone Permits. – The department shall require a person to whom a groundwater management zone permit is issued to record notice of the existence of the groundwater management zone in a form approved by the department. Such notice shall be recorded in the registry of deeds in the chain of title for each property included in whole or part within the groundwater management zone. If the department approves the use of municipal land use controls as an alternative form of notice, such recordation shall not be required.

Source. 1996, 266:13, eff. Aug. 9, 1996.

Section 485-C:7

485-C:7 Potential Contamination Sources. –

I. Human activities or operations upon the land surface shall be considered potential contamination sources if the activity or operation poses a reasonable risk that regulated contaminants may be introduced into the environment in such quantities as to degrade the natural groundwater quality.

II. For purposes of this chapter, potential contamination sources shall include the following:

(a) Vehicle service and repair shops, including but not limited to: automobile, truck, and equipment service or repair shops, autobody shops; and aircraft fueling, deicing, and maintenance areas.

(b) General service and repair shops, including but not limited to: furniture stripping, painting, and refinishing; photographic processing; printing; appliance and small engine repair; boat repair, service, and refinishing; refrigeration, heating, ventilating and air conditioning shops.

(c) Metalworking shops, including, but not limited to: machine shops; metal plating, heat treating, smelting and jewelry making shops.

(d) Manufacturing facilities, including, but not limited to: electronics and chemical manufacturing, processing, and reclamation; paper, leather, plastic, fiberglass, rubber, silicon and glass making; a pharmaceutical production; pesticide manufacture; and chemical preservation of wood and wood products.

(e) Underground and aboveground storage facilities for oil and hazardous substances, as defined in

RSA 146-C.

(f) Waste and scrap processing and storage, including, but not limited to: junkyards, scrap yards, and auto salvage yards; wastewater treatment plants; dumps, landfills, transfer stations and other solid waste facilities; and wastewater or septage lagoons.

(g) Transportation corridors, including, but not limited to, highways and railroads.

(h) Septic systems, including, but not limited to large septic systems which require a groundwater discharge permit under RSA 485-A:13.

(i) Laboratories and professional offices, including but not limited to: medical, dental, and veterinary offices; and research and analytical laboratories.

(j) Use of agricultural chemicals, including but not limited to: golf courses; feed lots, kennels, piggeries, and manure stockpiles; parks; nurseries and sod farms; and the usage of registered pesticides.

(k) Salt storage and use for winter road and parking lot maintenance.

(l) Snow dumps.

(m) Stormwater infiltration ponds or leaching catch basins.

(n) Cleaning services, including but not limited to: dry cleaners, laundromats; beauty salons; and car washes.

(o) Food processing plants, including but not limited to: meat packing and slaughterhouses; dairies; and processed food manufacture.

(p) Fueling and maintenance of excavation and earthmoving equipment.

(q) Concrete, asphalt and tar manufacture.

(r) Cemeteries.

(s) Hazardous waste facilities regulated under the Resource Conservation and Recovery Act, as implemented by RSA 147-A.

Source. 1991, 344:1, eff. June 28, 1991.

Section 485-C:8

485-C:8 Inventory and Management. –

I. Inventory and management under this section shall be performed in GAA or GA1 contributing areas by the department or, by the local entity requesting reclassification under RSA 485-C:9, II(a) or III(a).

II. The inventory of potential contamination sources required in contributing areas designated as class GAA or GA1 shall include the site address, tax map and lot number, property owner name and address, and operator name and address for all potential contamination sources within the contributing area of a designated class. The inventory shall include estimates of the type and quantities of regulated substances used in the activity or generated as waste materials. The inventory shall be based on physical site inspections of the potential contamination sources within the designated class area.

III. Potential contamination sources in class GAA and GA1 contributing areas shall be managed by:

(a) Updating the inventory at intervals not to exceed 3 years.

(b) Notifying the owner of each potential contamination source by letter at intervals not to exceed 3 years that the activity is being conducted within a contributing area of a class of groundwater designated for high protection because of its value for drinking water supply. The notice shall state that such activities shall be subject to best management practices, and shall provide information concerning where copies of applicable best management practices may be obtained.

(c) Performing an inspection at least once every 3 years of all potential contamination sources located within the contributing area to ascertain compliance with best management practices provided, however, that the following shall not be subject to inspection under this chapter:

(1) Pesticides which are regulated under RSA 430:28-48; and

(2) Agricultural operations which are operated in compliance with all applicable chapters of RSA title XL and best management practices developed, administered and enforced by the New Hampshire

department of agriculture, markets, and food.

(d) Enforcing rules for best management practices adopted under RSA 485-C:11.

IV. The authority granted to local entities and other agencies under this chapter shall not be interpreted to extend to RSA 430:28-48.

Source. 1991, 344:1. 1995, 130:4. 1996, 228:106, eff. July 1, 1996.

Section 485-C:9

485-C:9 Procedures for Classification and Reclassification. –

I. Within 180 days of June 28, 1991, the commissioner shall assign all groundwater within the state to class GB or class GA2.

II. Procedures for Reclassification to Class GAA.

(a) A local entity may request reclassification of a wellhead protection area to class GAA by submitting a written request to the department which includes a wellhead protection area delineation, a potential contamination source inventory, and a potential contamination source management program to be implemented by the local entity. When a local entity is a town or a city, the local governing body, as defined in RSA 672:6, shall concur in writing with the request for reclassification.

(b) The department may, on its own motion, propose reclassification of an area to class GAA after delineation of the wellhead protection area, inventory of potential contamination sources, and establishment of a written management program to be implemented by the department.

(c) The commissioner shall review requests for reclassification by local entities and proposals for reclassification prepared on the department's own motion, and shall act upon such requests and proposals pursuant to RSA 485-C:9, VI.

III. Procedures for Reclassification to Class GA1.

(a) A local entity may request reclassification of a zone of groundwater to class GA1 by submitting a written request to the department which includes a definition of the contributing area of the proposed zone, a potential contamination source inventory, and a potential contamination source management program, to be implemented by the local entity. When the local entity is a town or a city, the local governing body, as defined in RSA 672:6 shall concur in writing with the request for reclassification.

(b) The department may, on its own motion, propose reclassification of groundwater to class GA1 for any groundwater previously classified GA2, after definition of the contributing area, inventory of potential contamination sources, and establishment of a written management program to be implemented by the department.

(c) The commissioner shall review requests for reclassification by local entities and proposals for reclassification prepared on the department's own motion, and shall act upon such requests and proposals pursuant to RSA 485-C:9, VI.

IV. Procedures for Reclassification to Class GA2. When the department receives a report or study which identifies areas of bedrock or stratified drift aquifers which are highly productive for public water supply, the department shall review the report or study, and shall recommend reclassification to class GA2 to the commissioner for all areas which meet the criteria for this class, and are not currently classified GA1 or GAA.

V. Procedures for Reclassification to Class GB.

(a) The department may, on receipt of a request, or on its own motion, review any contributing area classified as GAA or GA1 to determine if the requirements for inventory and management of potential contamination sources are being met. If the department determines that requirements are not being met, the department shall request correction of deficiencies in writing to the responsible local entity. If deficiencies are not corrected within 6 months, the department may either assume inventory and management of the potential contamination sources in the contributing area and correct the deficiencies, or recommend reclassification to class GB or GA2 to the commissioner.

(b) For a class GA2 area, the commissioner shall reclassify to class GB if a review of regional groundwater studies shows that the criteria of RSA 485-C:5, I(c) for the class are not met.

VI. Procedures Applicable to All Reclassifications. The commissioner shall reclassify groundwater when the commissioner determines that the proposed reclassification meets all the requirements of this chapter and rules adopted under this chapter. Prior to any such reclassification the commissioner shall:

(a) Provide written notice of the proposed reclassification and public hearing to the town or city clerk of all affected municipalities at least 30 days prior to the public hearing.

(b) Provide written notice of the proposed reclassification and public hearing to landholders of record within the contributing area at least 30 days prior to the public hearing.

(c) Hold a public hearing.

Source. 1991, 344:1. 1996, 228:86-89, 106, eff. July 1, 1996.

Section 485-C:10

485-C:10 Degraded Groundwater. –

I. Groundwater which has been degraded below ambient groundwater quality standards by past operations, discharges, or other human activities shall not be excluded from the designated class.

II. Groundwater which does not meet ambient groundwater quality standards due entirely to natural causes shall not be excluded from the designated class.

Source. 1991, 344:1, eff. June 28, 1991.

Section 485-C:11

485-C:11 Best Management Practices. –

I. The department shall develop best management practices for the activities identified in RSA 485-C:7 as potential contamination sources, except those activities under RSA 485-C:7, II(j) which shall be subject to best management practices and the applicable provisions of RSA title XL, developed, administered and enforced by the New Hampshire department of agriculture, markets, and food.

II. Best management practices shall strike a reasonable balance between environmental, energy, and economic impacts. These best management practices shall apply to all potential contamination source activities in the state. In developing best management practices for an activity or type of activity over which another state agency has regulatory jurisdiction, the department shall consult with that agency, and may, through a memorandum of agreement, delegate to that agency the administration of best management practices. Best management practices shall not be inconsistent with applicable state or federal rules and regulations concerning such activities or with the intent of this chapter.

Source. 1991, 344:1. 1995, 130:4. 1996, 228:106, eff. July 1, 1996.

Section 485-C:12

485-C:12 Prohibited Uses. – Within any wellhead protection area classified as GAA, the following new uses are prohibited:

I. The siting or operation of a hazardous waste disposal facility as defined under RSA 147-A.

II. The siting or operation of a solid waste landfill.

III. The outdoor storage of road salt or other deicing chemicals in bulk.

IV. The siting or operation of a junk or salvage yard.

V. The siting or operation of a snow dump.

VI. The siting or operation of a wastewater or septage lagoon.

Source. 1991, 344:1, eff. June 28, 1991.

Section 485-C:13

485-C:13 Groundwater Release Detection Permit. –

I. The purpose of a groundwater release detection permit shall be to monitor groundwater for early detection of any impact to groundwater quality.

II. A groundwater release detection permit shall be required for the following activities in all classes of groundwater:

- (a) The siting or operation of a hazardous waste disposal facility as defined under RSA 147-A.
- (b) The siting or operation of a lined solid waste landfill.
- (c) The siting or operation of a lined wastewater lagoon.
- (d) The siting or operation of a facility for processing soils contaminated with petroleum products.

III. A groundwater release detection permit shall be required for the following additional activities in a class GAA wellhead protection area:

- (a) The siting or operation of a new solid waste composting or solid waste resource recovery facility.
- (b) The operation of an existing activity which is listed in RSA 485-C:12 as a prohibited new use, unless such activity is required to obtain a groundwater discharge permit under RSA 485-A:13.

IV. The groundwater release detection permit:

- (a) Shall require compliance with all applicable state and local laws and regulations;
- (b) Shall include periodic monitoring of on-site groundwater quality to be performed by the permittee with reports to the department;
- (c) May contain such other conditions as are reasonable and consistent with the purpose of this chapter; and
- (d) Shall be issued for a fixed term of 5 years.

V. Applications for groundwater release detection permits shall be on forms provided by the department and shall contain such information as the department shall require by rule.

VI. Application for a groundwater release detection permit for an existing facility or activity shall be made within 6 months of the date of notification of reclassification to GAA, or when a permit is required in any class, within 18 months of June 28, 1991. No person shall be deemed in violation of this chapter if such person shall have made application for a groundwater release detection permit for an existing facility or activity which is made within the required period, and the department has failed to grant or deny such permit.

Source. 1991, 344:1. 1996, 228:106, eff. July 1, 1996.

Section 485-C:14

485-C:14 Notice to Municipality. – Upon submission to the department of an application for a permit necessary for an activity in a contributing area classified as GA1 or GAA, which is a potential contamination source under RSA 485-C:7, the state shall notify the local governing body, as defined in RSA 672:6, as well as the local entity, if known, of the filing of the application and shall suspend action on the application for 30 days to allow time for receipt of recommendations from the local entity. For any application required by law to be acted upon within a certain prescribed time, the time shall be extended automatically by 30 days to allow for comment. The department shall proceed to act upon the application at the end of 30 days, even if no comments have been received. If the local entity submits recommendations to the department on the application, the department shall make written findings explaining any deviation from such recommendations. This section shall not apply to applications to construct domestic septic systems, provided that the system has an aggregate capacity of less than 20,000 gallons per day on one lot.

Source. 1991, 344:1, eff. June 28, 1991.

Section 485-C:14-a

485-C:14-a Notification of Large Groundwater Withdrawal Required. – Notwithstanding any provision of law to the contrary, before any person may withdraw 57,600 gallons or more of water in any 24-hour period from a well, such person shall provide written notice to the governing body of the municipality in which the well is located and to the governing bodies of each municipality and each supplier of water within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e. This section shall apply only to wells established after the effective date of this section.

Source. 1998, 124:3. 2006, 322:4, eff. Aug. 21, 2006.

Section 485-C:14-b

485-C:14-b Notification of Groundwater Contamination Required. –

I. Upon the discovery of groundwater contamination where one or more regulated chemical or radiological contaminants exceeds ambient groundwater quality standards, the commissioner shall provide notification of the presence of the contamination to the following:

(a) The owners of all property which contains a water supply well and is within 500 horizontal feet of the well where the contamination is discovered.

(b) Public water suppliers, when the groundwater contamination falls within the wellhead protection area of the public water supply.

(c) The health officer of any municipality which contains property being notified.

II. Notification shall be made in writing within 45 days after the department receives analytical data indicating the presence of the contamination. Each property owner or public water supplier shall be notified at least once upon the discovery of contamination in an area. The commissioner shall provide the notification and shall provide additional notification as the extent of contamination at a site is further determined and remediation occurs.

Source. 2004, 101:1, eff. May 17, 2004.

Section 485-C:15

485-C:15 Investigation and Inspection. – The department, any authorized representative, any authorized representative of any agency operating under a memorandum of agreement with the department, or any town or city health officer may enter any land or establishment for the purpose of administering the provisions of this chapter, and shall at reasonable times have access to any facility subject to this chapter.

Source. 1991, 344:1. 1996, 228:106, eff. July 1, 1996.

Section 485-C:16

485-C:16 Cease and Desist Orders. –

I. The department may issue a written cease and desist order against any violation of this chapter or rule adopted under this chapter. Local health officers shall have concurrent power to issue such orders. Such orders shall set out the specific acts which are alleged to be in violation, and the specific activities which are to be enjoined. Such orders shall be effective immediately. Health officers shall provide copies of such orders to the commissioner upon issuance. The commissioner may take whatever action is

deemed necessary to ensure uniform state enforcement. Any person to whom an order is issued by a local health officer may, within 15 days, request review of the order by the department. The department shall review the order within 15 days of receipt of the request for review. If the department fails to act on the request for review, the order shall no longer be in effect. If the department finds the order to have insufficient basis or to be no longer necessary, it shall state that fact in writing, and the order shall no longer be in effect.

II. A written cease and desist order issued by the department under paragraph I may be recorded by the department in the registry of deeds for the county in which the property is situated and, on recordation, such order shall run with the land; provided, however, that an appropriate description of the land involved, including the accurate name of the record owner, shall be incorporated in the cease and desist order. No fee shall be charged for recording such an administrative order; however, the fee for discharge of any such order shall be the same as for the discharge of a lien on real property.

III. No fine or penalty shall be imposed for failure to comply with an order if such failure did not otherwise result in a violation of this chapter or rules adopted under this chapter.

Source. 1991, 344:1. 1996, 228:106, eff. July 1, 1996.

Section 485-C:17

485-C:17 Appeals. – Actions of the department under RSA 485-C:16 may be appealed in accordance with RSA 21-O:14.

Source. 1991, 344:1. 1996, 228:90, eff. July 1, 1996.

Section 485-C:18

485-C:18 Administrative Fines. – The commissioner, after notice and hearing pursuant to RSA 541-A, may impose an administrative fine not to exceed \$2,000 for each offense upon any person who violates any provision of this chapter or any rule, permit or order adopted or issued under this chapter. Rehearings and appeals from a decision of the commissioner under this section shall be in accordance with RSA 541. Any administrative fine imposed under this section shall not preclude the imposition of further penalties under this chapter. The commissioner shall adopt rules, under RSA 541-A, relative to:

I. A schedule of administrative fines which may be imposed under this section for violation of this chapter.

II. Procedures for notice and hearing prior to the imposition of an administrative fine.

Source. 1991, 344:1, eff. July 1, 1993.

Section 485-C:19

485-C:19 Penalties and Other Relief. –

I. Any person who knowingly violates this chapter, or any rule, permit, or order adopted or issued under this chapter; or who knowingly or recklessly makes any material false statement in any document required to be filed or maintained pursuant to this chapter; or who knowingly or recklessly renders inaccurate, falsifies, or tampers with any monitoring device or method required under this chapter; or who knowingly fails, neglects, or refuses to obey any lawful order of the department, shall be guilty of a misdemeanor if a natural person, and a felony if any other person. Such person shall also be subject to a civil penalty not to exceed \$25,000 for each violation or for each day of a continuing violation.

II. Any person who violates this chapter or a rule, permit, or order adopted or issued under this chapter, shall be subject to a civil penalty not to exceed \$10,000 for each violation or for each day of a

continuing violation. Such violation may also be enjoined by the superior court upon application of the attorney general.

Source. 1991, 344:1. 1996, 228:106, eff. July 1, 1996; 266:5, eff. Aug. 9, 1996.

Section 485-C:20

485-C:20 Effect on Local Ordinances. –

I. Nothing in this chapter shall be deemed to preempt the authority of municipalities, under other statutes, to enact local ordinances or regulations affecting groundwater, other than groundwater withdrawals; provided, however, that requirements imposed under this chapter shall be considered as minimum.

II. No regulatory decision made by the department shall abrogate or affect any applicant's obligation to comply with or obtain all applicable and lawful local ordinances, codes, regulations, and approvals not otherwise prohibited by this chapter.

Source. 1991, 344:1. 1998, 124:6. 2010, 348:2, eff. Sept. 18, 2010.

Section 485-C:21

485-C:21 Approval for Large Groundwater Withdrawals. –

I. No person may withdraw more than a total of 57,600 gallons of water in any 24-hour period from a well or wells sited at a single property or place of business after the effective date of this section, regardless of the number of wells sited on the property or business, without the prior approval of the department.

II. Applications for approval of water withdrawals of 57,600 gallons or more per day shall be filed with the department on a form approved by the department. A preliminary report submitted by a public water system pursuant to department rules shall be an application for purposes of this section. Copies of the application and any subsequent materials submitted to the department shall be forwarded by certified mail by the applicant to the governing bodies of each municipality and each supplier of water within the potential impact area of the proposed withdrawal as defined in RSA 485-C:21, V-e. The department shall provide the governing body of each municipality with copies of any mailed correspondence sent to the applicant. The department shall provide the applicant with copies of any mailed correspondence sent to or received from the governing body of a municipality.

III. Following the submission of the application, the department shall hold a public hearing on the application in the municipality in which the proposed withdrawal is to be made upon the request of the governing body of any municipality or supplier of water within the potential impact area, provided that such a hearing is requested within 15 days of receipt of the application.

IV. The department shall hold the public hearing within 30 days after the request of the governing body of the municipality or the supplier of water made pursuant to paragraph III. Notice of the hearing shall be made by the applicant and shall be published twice in 2 different weeks, the last publication to be 7 days before the hearing, in one newspaper of general circulation throughout the state and another newspaper of general circulation in the municipality. The notice shall also be posted in 2 public places in the municipality.

V. The applicant and the governing body of each municipality and each supplier of water within the potential impact area of the well may submit comments to the department relative to the proposed withdrawal within 45 days after the public hearing in the municipality or, if no hearing is requested, within 45 days after the receipt of the application. If the comments relative to the application make recommendations to the department, the department shall specifically consider such recommendations and shall issue written findings with respect to each issue raised that is contrary to the decision of the

department.

V-a. Upon the request of the governing body of a municipality within the potential impact area, the department shall hold a public hearing, after receipt of the final report, and prior to a final decision. The department shall notify the municipalities within 10 days of receiving the final report. The municipalities shall have 15 days within which to request a public hearing. Notice and response to hearing requests shall be the same as that required under paragraph IV.

V-b. The department's decision on the application shall be based on a demonstrated need for the withdrawal after review of:

- (a) A description of the need.
- (b) A conservation management plan.
- (c) A conceptual hydrologic model of the withdrawal.
- (d) A water resource and use inventory.
- (e) The effects of the withdrawal on water resources and uses.
- (f) Completion of a withdrawal testing program.
- (g) Development of an impact monitoring and reporting program.
- (h) Identification of potential mitigation measures.

V-c. In order to preserve the public trust, no large groundwater withdrawal shall cause an unmitigated impact as determined by the following:

(a) Reducing the withdrawal capacity of a private water supply well of a single residence as a result of the reduction of available water that is directly associated with the withdrawal as determined by the following:

(1) Any reduction in capacity for wells with a capacity less than water well board recommended optimum minimum flow capacity of 4 gallons per minute for 4 hours before the withdrawal;

(2) Any reduction in capacity below 4 gallons per minute for 4 hours, for wells that had a capacity greater than 4 gallons per minute for 4 hours, before the withdrawal; or

(3) A reduction in capacity where the well still has a capacity between 4 gallons and 10 gallons per minute for 4 hours and the user provides information indicating that the reduction in flow has resulted in the inability to meet his or her water needs;

(b) Reducing the capacity of a public drinking water supply below the minimum withdrawal rates required per consumer determined by the following:

(1) Minimum daily amounts of drinking water shall be determined per use based on the design flow criteria established for public water supply systems established in rules adopted by the department; or

(2) Where it is verified that such wells were unable to produce the design flow before the withdrawal began, the adverse impact shall be any reduction in the ability to produce water;

(c) Reducing the capacity of a water supply that is used for a multiple unit dwelling residence, but that is not a public water supply, that results in the inability to continue established activities or maintain existing water capacity requirements;

(d) Reducing the capacity of a private, non-residential, non-drinking water supply that results in the inability of a commercial, industrial, agricultural, or retail facility to continue established services or production volumes;

(e) Reducing the ability of a registered water user to produce volumes equivalent to the average daily withdrawal for a specific calendar month as determined by discharge measurements and reports made to the department in accordance with the water user requirements under RSA 488 or other previous water use reporting requirements of the department;

(f) Reducing surface water levels or flows that will, or do, cause a violation of surface water quality rules adopted by the department;

(g) Causing a net loss of values for submerged lands under tidal and fresh waters and its wetlands as set forth in RSA 482-A;

(h) Causing the inability of permitted surface water or groundwater discharges to meet permit

conditions;

- (i) Reducing river flows below acceptable levels established pursuant to RSA 483;
- (j) Causing the contamination of groundwater obtained from wells or surface waters from contaminated groundwater whose flow has been altered by the withdrawal, or causing the contamination of an aquifer or contributing to the spread of any existing contamination;
- (k) Causing the long-term predictable rate of replenishment of the aquifer that is the source of the withdrawal to be exceeded.

V-d. Terms and conditions of approval for a large groundwater withdrawal may be altered by the department to accommodate for drought conditions or new withdrawals.

V-e. Applications for large groundwater withdrawals shall be accompanied by an impact assessment of the potential impact area of the proposed withdrawal to demonstrate the preservation of the public trust as set forth in paragraph V-c. The impact assessment shall include at a minimum the following:

- (a) The maximum extent of the cone of depression created by the withdrawal with the assumption of a conceptual hydrological model condition of 180 days of continuous pumping at maximum volumes without recharge from rainfall or snowmelt;
- (b) The maximum extent of the recharge area for the withdrawal with the assumption of a conceptual hydrologic model condition of 180 days of continuous pumping at maximum volumes without recharge from rainfall or snowmelt; and
- (c) The downgradient area of the withdrawal which shall include:
 - (1) An existing or new delineation of a potential impact area large enough so that the size of the entire study area for the withdrawal is at least 10 times the size of the recharge area for the withdrawal;
 - (2) An existing or new delineation of a watershed where the amount of water crossing the downgradient boundary, that is, leaving the study under current conditions, is at least 10 times the amount to be withdrawn; or
 - (3) An alternative method of estimating a potential impact area provided it relies on conservative assumptions, is demonstrated as appropriate for the site by test results, and is clearly explained and justified.

VI. (a) Decisions of the department may be appealed in accordance with RSA 21-O:7, IV.

(b) Any party shall have the right to appeal from the decision of the water council to the superior court of the county in which the large groundwater withdrawal is to be made to determine the validity and the reasonableness of the department's action on the permit. The appeal shall be filed within 60 days after the decision of the water council. The appeal shall suspend the decision of the department pending the outcome of a preliminary hearing. The appeal, so far as practicable, shall have precedence over other actions in the same court.

VII. Records of public hearings shall be available pursuant to RSA 91-A.

VIII. Before the department issues a large groundwater withdrawal permit, any municipality in which a well is sited or proposed to be sited, or any municipality within the potential impact area of the proposed withdrawal pursuant to paragraph V-e, may require the department to determine that the withdrawal will not infringe on the public's use of groundwater, including any contribution to wetlands and surface waters, by ensuring that the requirements of paragraph V-c are met. The department's determination shall be based on substantial evidence and shall include the methods, evidence, and data it used to support its judgment. No municipality shall be required to collect data relative to a seasonal river overflow surface water stream, in order to determine any long-term unmitigated impact and prevent irreversible effects of the large groundwater withdrawal well, for more than 3 years unless the department provides scientific justification for longer monitoring as it relates to the effect of the groundwater withdrawal only. After the department issues a large groundwater withdrawal permit, such municipality may require the department to provide a written finding describing the status of a decision issued by the department on an application submitted under this section when a local building permit directly related to a large groundwater withdrawal activity expires or becomes null and void, or both. The department shall determine if the change in status of such local permit affects the decision the department

made on the application.

IX. The department shall allow any municipality showing that it may be substantially and specifically affected by a proceeding under this chapter to intervene as a party in the whole or any portion of the proceeding and shall allow the municipality to participate by presentation of argument orally or in writing or for any other purpose, as the department may order. A municipality that intervenes before the department shall retain its status through any appeal of the department's decision.

Source. 1998, 124:4. 2005, 200:1-4. 2006, 322:5. 2007, 169:1. 2010, 158:1, eff. July 17, 2010. 2014, 304:2, eff. Sept. 30, 2014.

Section 485-C:21-a

485-C:21-a Conservation Management Plan Not Required. – The department may grant a renewable exemption from the rules for water conservation practices under RSA 485:61 to any municipality with a water balance of less than 15 percent. The municipality shall calculate the water balance each calendar year after the well is permitted, and such balance and all components defined in the balance shall be submitted to the department no later than the first day of March following the year to which the water balance pertains. The department shall not grant an exemption to any municipality that fails to submit a water balance of less than 15 percent by such date.

Source. 2014, 304:3, eff. Sept. 30, 2014.

Section 485-C:22

485-C:22 Exemptions for Large Groundwater Withdrawals From Replacement Wells. –

I. Large groundwater withdrawals from new wells that replace a well or wells installed prior to August 1, 1998 shall not be subject to the requirements of RSA 485-C:14-a and RSA 485-C:21. Such wells shall require approval of the department under RSA 485-C:22, III-IV.

II. No person shall withdraw 57,600 gallons or more of groundwater from a replacement well or wells over any 24-hour period without the prior approval of the department.

III. Before the department issues an approval for a large groundwater withdrawal from a replacement well or wells, a person shall submit an application to the department to demonstrate the withdrawal from the replacement well or wells will operate and impact water users and resources in substantially the same manner as the well or wells that are being replaced.

IV. Applications for approval of replacement wells shall be submitted to the department and contain the following information:

(a) Name and address of the well owner replacing the well or wells.

(b) Address and map identifying the location of the well or wells being replaced and the location of the replacement well or wells.

(c) Description of the well construction details of the well or wells being replaced and new replacement or replacement wells including:

(1) Depth of well.

(2) Length and diameter of well casing and screen.

(3) Description of overburden and bedrock lithology of the well or wells being replaced and the new replacement well or wells.

(d) Hydrogeologic information that demonstrates that the effects of the replacement well or wells on water users and water resources identified by RSA 485-C:21, V-c will be substantially the same as the well that is being replaced.

Source. 2007, 55:2, eff. July 21, 2007.

Section 485-C:23

485-C:23 Temporary Exemptions for Large Groundwater Withdrawals Required for Emergency Purposes. –

I. The department may approve a new large groundwater withdrawal without compliance with RSA 485-C:14, RSA 485-C:21, or RSA 485-C:22 to protect human health and the environment in the event that circumstances beyond the control of the person requesting the withdrawal occurs, such as fire, flood, drought, other acts of God, or infrastructure failure.

II. A large groundwater withdrawal approved for emergency purposes under paragraph I shall only be allowed to operate for 2 years unless it is approved by the department in accordance with RSA 485-C:21.

III. No withdrawal that the department approves in accordance with paragraph I shall result in an unmitigated impact as described in RSA 485-C:21, V-c. The department shall require that monitoring and mitigation plans be implemented when necessary to identify and mitigate the occurrence of such impacts.

IV. Any party may appeal from the decision of the department to approve a withdrawal in accordance with paragraph I to the superior court of the county in which the large groundwater withdrawal is to be made to determine the validity and the reasonableness of the department's action. The appeal shall be filed within 60 days after the approval of the department.

Source. 2010, 348:5, eff. Sept. 18, 2010.

Section 485-C:24

485-C:24 Short-Term Use Groundwater Withdrawals. – The department shall require a short-term use, large groundwater withdrawal to cease and desist if such withdrawal causes unmitigated impacts as described in RSA 485-A:21, V-c.

Source. 2010, 348:5, eff. Sept. 18, 2010.

Section 485-C:25

485-C:25 Exemption for Certain Large Groundwater Withdrawals Associated With Geothermal Processes. – A geothermal system as defined by RSA 485:1-a, I-b and RSA 485:1-a, XI-a shall not be considered a large groundwater withdrawal if the volume of groundwater extracted minus the volume of water returned to the same aquifer does not exceed 57,600 gallons over any 24-hour period.

Source. 2010, 348:5, eff. Sept. 18, 2010.