TITLE 50
Water Management And Protection

CHAPTER 485A
Water Pollution and Waste Disposal

SECTION 485-A:1

§ 485-A:1 Declaration of Purpose. – The purpose of this chapter is to protect water supplies, to prevent pollution in the surface and groundwaters of the state and to prevent nuisances and potential health hazards. In exercising any and all powers conferred upon the department of environmental services under this chapter, the department shall be governed solely by criteria relevant to the declaration of purpose set forth in this section.

Source. 1989, 339:1, eff. Jan. 1, 1990. 1996, 228:106, 108, eff. July 1, 1996.

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SECTION 485-A:2

§ 485-A:2 Definitions. – I. "Developed waterfront property" means any parcel of land which is contiguous to or within 200 feet of tidal waters or a great pond as defined in RSA 4:40-a and upon which stands a structure suitable for either seasonal or year-round human occupancy.

I-a. "Certificate" means a certificate of competency issued by the department stating that the operator has met the particular requirements established by the department for certification at each level of operation.

I-b. "Certification committee" means those persons designated by the commissioner, and those persons elected by the New Hampshire Water Pollution Control Association to serve as the review committee for certification of wastewater treatment plant operators.

I-c. "Commissioner" means the commissioner of the department of environmental services.

II. "Development plan" means the final map, drawing, plat or chart on which the subdivider presents his plan of subdivision to the department of environmental services for approval of planned or proposed sewage or waste disposal systems.

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

III-a. "Encroachment waiver" means any waiver of the rules adopted in accordance with this chapter which, if granted, would affect the ability of an owner of abutting property to fully utilize his property.

IV. "Failure" means the condition produced when a subsurface sewage or waste disposal system does not properly contain or treat sewage or causes or threatens to cause the discharge of sewage on the ground surface or into adjacent surface or groundwaters.

V. "Groundwaters" shall mean all areas below the top of the water table, including aquifers, wells and other sources of groundwater.

VI. "Industrial waste" means any liquid, gaseous or solid waste substance resulting from any process of industry, manufacturing trade or business or from development of any natural resources.

VII. "Lot" means a part of a subdivision or a parcel of land which can be used as a building site or intended to be used for building purposes, whether immediate or future.

VII-a. "Operator" means:

(a) The individual who has full responsibility for the daily operation of a wastewater treatment plant or a pollution control facility;

(b) The individual normally responsible for the operations shift; or

(c) Individuals who perform important operating functions.

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VIII. "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, ashes, offal, oil, tar, chemicals and other substances other than sewage or industrial wastes, and any other substance harmful to human, animal, fish or aquatic life.

IX. "Person" means any municipality, governmental subdivision, public or private corporation, individual, partnership, or other entity.

IX-a. "Septage" means material removed from septic tanks, cesspools, holding tanks, or other sewage treatment storage units, excluding sewage sludge from public treatment works and industrial waste and any other sludge.

X. "Sewage" means the water-carried waste products from buildings, public or private, together with such groundwater infiltration and surface water as may be present.

XI. "Sewage disposal system" means any private sewage disposal or treatment system, other than a municipally owned and operated system.

XI-a. "Sludge" means the solid or semisolid material produced by water and wastewater treatment processes, excluding domestic septage; provided, however, sludge which is disposed of at solid waste facilities permitted by the department shall be considered solid waste and regulated under RSA 149-M.

XII. "Subdivider" means the legal owner or his authorized agent of a tract or parcel of land being subdivided.

XIII. "Subdivision" means the division of a tract or parcel of land into 2 or more lots, tracts, or parcels for the purpose, whether immediate or future, of sale, rent, lease, building development, or any other reason; provided, however, that sale or other conveyance which involves merely an exchange of land among 2 or more owners and which does not increase the number of owners, and on which no sewage disposal system is to be constructed shall not be deemed a subdivision for the purposes of this chapter. Without limiting the generality of the foregoing, subdivision shall include re-subdivision, and, in the case of a lot, tract or parcel previously rented or leased, the sale, condominium conveyance, or other conveyance thereof; provided however that a re-subdivision of lots in previously approved subdivisions, where lot lines are relocated to conform to necessary changes in the plans because of errors in a survey or new street, access or siting requirements, or errors in building locations, and where the lot sizes are not substantially altered shall not be deemed a subdivision for the purposes of this chapter; and provided further that a re-subdivision in which previously approved lots are grouped together to form larger lots shall not be deemed a subdivision for the purposes of this chapter. The division of a parcel of land held in common and subsequently divided into parts among the several owners shall be deemed a subdivision under this chapter.

XIV. "Surface waters of the state" means streams, lakes, ponds and tidal waters within the jurisdiction of the state, including all streams, lakes, or ponds bordering on the state, marshes, water courses and other bodies of water, natural or artificial.

XV. "Tract or parcel of land" means an area of land, whether surveyed or not surveyed.

XVI. "Waste" means industrial waste and other wastes.

XVI-a. "Wastewater treatment plant" means the treatment facility or group of treatment devices which treats domestic or combined domestic and industrial wastewater through alteration, alone or in combination, of the physical, chemical, or bacteriological quality of the wastewater and which dewaters and handles sludge removed from the wastewater.

XVII. "Bypass" means the intentional diversion of waste streams from any portion of the wastewater facilities.

XVIII. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee.

XIX. "Wastewater facilities" means the structures, equipment, and processes required to collect, convey, and treat domestic and industrial wastes, and dispose of the effluent and sludge.

XX. "Bedroom" means a room furnished with a bed and intended primarily for sleeping, unless otherwise specified by local regulations.

XXI. "Innovative/alternative waste treatment" means treatment which differs from standardized and conventional practice, offers an advantage over such practice in a proposed application and satisfies the pollution abatement and treatment requirements for sewerage and sewage or waste treatment systems in such application.

Source. 1989, 339:1. 1990, 197:1-3; 248:1; 252:9, 10. 1993, 57:1, eff. June 15, 1993; 172:1, eff. July 24, 1993. 1996, 219:1, eff. Aug. 9, 1996; 228:74-76, 105, 106, 108, eff. July 1, 1996. 1998, 102:2, 3, eff. Aug. 1, 1998.

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SECTION 485-A:3

§ 485-A:3 Policies. – It is hereby declared, as a matter of legislative intent, that the department shall, in the administration and enforcement of this chapter, strive to provide that all sources of pollution within the state shall be abated within such times and to such degrees as shall be required to satisfy the provisions of state law or applicable federal law, whichever is more stringent. To the extent not inconsistent with the foregoing nor the aims of any joint state-federal permit program that may from time to time be agreed upon and in force pursuant to this chapter and applicable federal law, the department shall adhere to the following policies:

I. Insofar as practicable, the initial objective of the control program will be to obtain the installation of primary treatment (with adequate disinfection where sewage discharges are involved) for all discharges of sewage and industrial wastes.

II. The second objective will be to require the installation of secondary treatment whenever such additional treatment is necessary to protect the uses assigned to the particular stream classification.

III. The third objective, after all stream classification requirements throughout the state have been satisfied, will be to continue the program of pollution abatement by installing other forms of treatment desirable to maintain all surface waters of the state in as clean a condition as possible, consistent with available assistance funds and technological developments.

IV. Until such time as appropriate methodology and reasonable levels of financial assistance are made available, municipalities with combined sewer systems shall not be required to provide treatment facilities with capacity greater than that necessary to handle anticipated peak dry weather flows.

V. A further objective will be to advance the development and application of innovative/alternative waste treatment systems with guidelines, procedures, pilot projects, demonstration projects, community projects or in any other manner the department may elect.

Source. 1989, 339:1. 1993, 172:2, eff. July 24, 1993. 1996, 228:106, eff. July 1, 1996.

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SECTION 485-A:4

§ 485-A:4 Duties of Department. – It shall be the duty of the department and the department is authorized:

I. To exercise general supervision over the administration and enforcement of this chapter.

II. To study and investigate all problems connected with the pollution of the surface waters or groundwaters of the state.

III. To conduct scientific experiments, investigations and research to discover economical and practical methods for the elimination, disposal or treatment of industrial wastes to control pollution of the surface waters or groundwaters of the state.

IV. To cooperate with any other public or private agency in the conduct of such experiments, investigations and research. In order to utilize fully the facilities of the state, it shall be the duty of all other state agencies to cooperate and render such assistance as may be necessary to implement the provisions of this chapter.

V. To do all necessary work relative to the establishment of a proper and reasonable classification pursuant to RSA 485-A:9.

VI. To require the filing with the department of plans and specifications of the installation of systems and devices for handling, treating, or disposing of sewage, industrial and other wastes, at least 30 days prior to the beginning of construction.

VII. To investigate and approve after making such modification as the department deems necessary to conform to the purpose of this chapter and RSA 486, any portions of the applications of those municipalities, industries, or other persons of the state as may request state or federal aid that may at any time be made available in the interest of pollution control. The commissioner of environmental services shall receive or make agreements on behalf of the state for any federal or other moneys as may be allotted for such purposes. Those who have already incurred expense in order to comply with a classification adopted by the legislature or made under RSA 485-A:11 shall be equally eligible to receive any federal or other moneys with those who have not incurred but who are required to incur expense by reason of such classification.

VIII. To confer with responsible authorities of other states relative to methods, means and measures to be employed to control pollution of interstate streams and other waters, and to submit to the legislature recommendations relative to the adoption of interstate compacts pertaining to pollution or its control on all said waters. After said compacts and agreements have been concluded by the necessary legislative and congressional action, the department shall carry out said agreements or compacts by appropriate orders provided for in either the compacts or the provisions of this chapter.

IX. To set standards of design and construction for sewerage and sewage or waste treatment systems and standards or design guidelines as the department determines to be appropriate for innovative/alternative waste treatment systems. Innovative/alternative waste treatment systems shall

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include solar and such other systems as shall be identified or accepted by the department. To reject, if necessary, or modify and approve as deemed necessary for the purposes of the state water pollution control program all engineering or other documents associated with the design and construction of pollution control projects and perform such other related engineering or inspectional work as will provide for proper design, construction and operation of the facilities involved, and take such other action as the department deems necessary, to maximize the effectiveness of sewerage and other pollution control facilities, both proposed and in construction. The department is authorized to purchase professional liability insurance annually in order to provide coverage in connection with resident construction engineering services which may be made available to municipalities by the department for projects undertaken with benefit of a federal grant under the provisions of this chapter; provided, however, that no construction engineering services shall be provided to any municipality with a population of greater than 5,000 according to the office of state planning estimate for that even decade year preceding project application to the department or when the estimated project costs exceed $2,000,000. The purpose of this paragraph is to ensure the planning, construction and operation of publicly owned pollution control facilities which in the judgment of the department will produce maximum benefits with the least expenditure of federal, state and local funds.

IX-a. Any person submitting plans and specifications to the department, as provided for in this section, for the construction of sewerage systems shall pay to the department a fee of $30 for each 300 gallon per day unit of flow for the first 10,000 gallons per day of total flow for which such systems are designed and $15 for each 300 gallon per day unit of flow in excess of such amount. A fee of $200 per plan sheet shall be paid for review of pump stations, force mains, interceptors, and wastewater treatment facilities which are submitted independently of a sewer collection system. This fee shall not apply to municipalities.

IX-b. Any person submitting a request to the department, not accompanied by plans and specifications, for a permit to discharge additional sewage or industrial wastes to a municipal sewer system shall pay to the department a fee of $50. The request, accompanied by the fee, shall be submitted through, and approved by, the affected municipality. This fee shall not apply to municipalities, counties, state agencies, or school districts. These fees shall be deposited with the state treasurer as unrestricted revenue.

IX-c. Any person submitting plans and specifications to the department for the construction or installation of facilities for the pretreatment of industrial wastes shall pay to the department a permit fee of $1,000. The discharge permit request, accompanied by the plans and specifications and the fee, shall be submitted through and approved by the affected municipality. This fee shall not apply to municipalities, state agencies, or school districts. These fees shall be deposited with the state treasurer as unrestricted revenue.

X. To provide such services and technical assistance in the area of sanitary engineering as may be required by the commissioner of the department of health and human services to implement the statutory obligations imposed upon the commissioner of the department of health and human services and the rules adopted by said commissioner.

XI. To scientifically measure and monitor residual pesticides in the waters and in the aquatic resources in the waters of the state.

XII. To review, establish maximum state participation fees and modify in any other way which in the judgment of the department will promote economy and the purposes of this chapter, and following such review or modification, approve and cosign jointly with the municipality or other governmental subdivision concerned any proposed contracts or other proposed agreements or changes in contracts or agreements for engineering services related to sewerage and other pollution control facilities. Further, the department shall prescribe the contract documents to be employed and may provide for the assessment of liquidated damages for failure to complete the work within the time stipulated therefor. Except for the financial assistance available to municipalities under the provisions of RSA 486, nothing in this chapter shall be construed to place any additional financial obligation on the state, the department or its personnel.

XIII. To establish rules governing the prequalification of consulting engineers employed in the planning and construction of public water supply and pollution control projects. Any licensed engineering firm seeking initial prequalification shall pay to the department a fee of $200. Prequalification shall be renewed annually and shall be accompanied by a $50 renewal fee. These fees shall be deposited with the state treasurer as unrestricted revenue. The department is further empowered to prescribe the contract award procedures to be followed in the awarding of construction contracts involving state financial assistance.

XIV. To formulate a policy relating to long-term trends affecting the purity of the surface waters or groundwaters of the state. Insofar as practicable and necessary, a continuing program of sampling and subsequent chemical or biological analysis, or both, shall be conducted to establish patterns and reveal long-term trends to serve as a basis for formulating such policy. In conducting said program of sampling and analysis, the department is authorized to accept any assistance as may be proffered by persons that the department deems to be qualified. The department shall make a biennial report of its findings to the governor and council, the senate environment committee, and the house resources, recreation, and development committee. The department shall provide proper warning to the public by posting a sign indicating where water quality standards are not being attained as they relate to specified designated uses.

XV. To establish and prescribe physical, chemical and biological pretreatment standards to which waste must conform before discharge into the collection system or the sewage treatment facility of a municipality or other governmental entity being served by or under order to construct a public sewage treatment facility. In establishing and prescribing pretreatment standards, the department shall give consideration to the following:

(a) The treatment capabilities and operating efficiency of the facilities to which they apply.

(b) The discharge criteria applicable to the facility in order for it to conform to established water quality standards for the receiving water, as expressed in the discharge permit or compliance order issued to the municipality.

(c) Toxic effluent standards.

(d) Such standards as will prevent the discharge of any pollutant through the facility that interferes with, passes through without being rendered innocuous or is otherwise incompatible with the effective operation of the facility.

XVI. To enter into, with the consent of the governor and council, cooperative agreements with the United States Environmental Protection Agency or any other federal agency having jurisdiction in the premises relative to any joint state-federal water pollution enforcement abatement and control programs authorized by law, and involving the issuance of discharge permits.

XVI-a. To regulate the removal, transportation, and disposal of septage through administration of a permit system. As a condition of any permit issued under this chapter, the department may require payment of a reasonable fee, established by rules adopted under RSA 485-A:6, X-a. Funds collected under this paragraph shall be deposited with the treasurer as unrestricted revenue.

XVI-b. To regulate the removal, transportation, and disposal of sludge through administration of a permit system. As a condition of any permit issued under this chapter, the department may require payment of a reasonable fee, established by rules adopted under RSA 485-A:6, X-a. Funds collected under this paragraph shall be deposited with the treasurer as unrestricted revenue.

XVI-c. To implement a program of random on-site testing and inspection of sludge or biosolids samples to be used for any land application by any person obtaining a permit under RSA 485-A:4, XVI-b, provided that inspection shall not be required before the issuance of a permit. The procedures for random inspection and testing of sludge or biosolids samples on a site shall include an inspection for any

setback or area requirements of a site for land application and may include testing for such pollutants as heavy metals, toxins, dioxins, and polychlorinated biphenyl, as determined in rules adopted by the commissioner pursuant to RSA 541-A. The department shall develop a database of inspection results and shall monitor adherence to state and federal requirements for the spreading of sludge or biosolids. The program of random inspection and testing of sludge or biosolids shall be funded by a fee of $500 assessed annually to all sludge quality certification holders as defined in rules adopted by the commissioner. Such fee shall be payable to the department no later than January 1 of each year by all certification holders. All fees shall be deposited in a special nonlapsing account to be used by the department for the sampling and analysis of randomly collected sludge or biosolids samples.

XVII. To give notice by first-class mail to the city or town clerk of the municipality in which is located the point of discharge or point of potential discharge, and all adjacent municipalities located on the same receiving water as the water at the point of discharge, when an application is made for a new permit or when a permit is renewed by the department.

Source. 1989, 339:1. 1990, 3:86, 87; 248:2; 252:11. 1991, 240:1; 371:1. 1993, 172:3. 1995, 310:182, 183, eff. Nov. 1, 1995. 1996, 228:106, eff. July 1, 1996. 1998, 102:4, eff. Aug. 1, 1998; 230:2, eff. June 24, 1998.

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CHAPTER 485A
Water Pollution and Waste Disposal

Classification of Waters

SECTION 485-A:8

§ 485-A:8 Standards for Classification of Surface Waters of the State. – It shall be the overall goal that all surface waters attain and maintain specified standards of water quality to achieve the purposes of the legislative classification. For purposes of classification there shall be 2 classes or grades of surface waters as follows:

I. Class A waters shall be of the highest quality and shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or greater than 153 Escherichia coli per 100 milliliters in any one sample; and for designated beach areas shall contain not more than a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or 88 Escherichia coli per 100 milliliters in any one sample; unless naturally occurring. There shall be no discharge of any sewage or wastes into waters of this classification. The waters of this classification shall be considered as being potentially acceptable for water supply uses after adequate treatment.

II. Class B waters shall be of the second highest quality and shall have no objectionable physical characteristics, shall contain a dissolved oxygen content of at least 75 percent of saturation, and shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 126 Escherichia coli per 100 milliliters, or greater than 406 Escherichia coli per 100 milliliters in any one sample; and for designated beach areas shall contain not more than a geometric mean based on at least 3 samples obtained over a 60-day period of 47 Escherichia coli per 100 milliliters, or 88 Escherichia coli per 100 milliliters in any one sample; unless naturally occurring. There shall be no disposal of sewage or waste into said waters except those which have received adequate treatment to prevent the lowering of the biological, physical, chemical or bacteriological characteristics below those given above, nor shall such disposal of sewage or waste be inimical to aquatic life or to the maintenance of aquatic life in said receiving waters. The pH range for said waters shall be 6.5 to 8.0 except when due to natural causes. Any stream temperature increase associated with the discharge of treated sewage, waste or cooling water, water diversions, or releases shall not be such as to appreciably interfere with the uses assigned to this class. The waters of this classification shall be considered as being acceptable for fishing, swimming and other recreational purposes and, after adequate treatment, for use as water supplies. Where it is demonstrated to the satisfaction of the department that the class B criteria cannot reasonably be met in certain surface waters at all times as a result of combined sewer overflow events, temporary partial use areas shall be established by rules adopted under RSA 485-A:6, XI-c, which meet, as a minimum, the standards specified in paragraph III.

III. The waters in temporary partial use areas established under paragraph II shall be free from slick, odors, turbidity, sludge deposits, and surface-floating solids of unreasonable kind or quantity, shall contain not less than 5 parts per million of dissolved oxygen; shall have a hydrogen ion concentration within the range of pH 6.0 to 9.0 except when due to natural causes; and shall be free from chemicals and other materials and conditions inimical to aquatic life or the maintenance of aquatic life. These criteria shall apply during combined sewer overflow discharges and up to 3 days following cessation of said discharge. At all other times the standards and uses specified in paragraph II shall apply.

IV. Notwithstanding anything contained in this chapter, the department in submitting classifications relating to interstate waters to the New England Interstate Water Pollution Control Commission for review and approval, as provided for under the terms of Articie V of the compact whereby the interstate commission was created by RSA 484, shall submit such classifications in accordance with the standards of water quality as currently adopted by said interstate water pollution control commission provided, however, that the standards for any classification thus submitted for review and approval shall not be less than, nor exceed the standards of the classification duly adopted by the General Court as provided for in RSA 485-A:9 or 10.

V. Tidal waters utilized for swimming purposes shall contain not more than either a geometric mean based on at least 3 samples obtained over a 60-day period of 35 enterococci per 100 milliliters, or 104 enterococci per 100 milliliters in any one sample, unless naturally occurring. Those tidal waters used for growing or taking of shellfish for human consumption shall, in addition to the foregoing requirements, be in accordance with the criteria recommended under the National Shellfish Program Manual of Operation, United States Department of Food and Drug Administration.

VI. Notwithstanding anything contained in this chapter, the commissioner shall have the authority to adopt such stream classification criteria as may be issued from time to time by the federal Environmental Protection Agency or its successor agency insofar as said criteria may relate to the water uses specified in RSA 485-A:8, I and II, provided, however, that the criteria thus issued shall not result in standards that are less than nor exceed the standards of the classification duly enacted by the general court as provided for in RSA 485-A:9 or 485-A:10.

VII. All tests and sampling for the purposes of examination of waters shall be performed and carried out in a reasonable manner and whenever practicable, in accordance with the commonly accepted scientific method as selected by the department. The waters in each classification shall satisfy all the provisions of all lower classifications. The minimum treatment for the lowest classification shall be as follows:

(a) For sewage, secondary treatment and disinfection as necessary to comply with water quality standards.

(b) For industrial wastes and combined sewer overflows, such treatment as the department shall determine. Appeal from any such determination shall be in the manner provided for in RSA 21-O:14.

VIII. In prescribing minimum treatment provisions for thermal wastes discharged to interstate waters, the department shall adhere to the water quality requirements and recommendations of the New Hampshire fish and game department, the New England Interstate Water Pollution Control Commission, or the United States Environmental Protection Agency, whichever requirements and recommendations provide the most effective level of thermal pollution control.

IX. Subject to the provisions of RSA 485-A:13, I(a), the fish and game department may use rotenone or similar compounds in the conduct of its program to reclaim the public waters of the state for game fishing.

Source. 1989, 339:1. 1991, 371:3-5, eff. Aug. 31, 1991. 1996, 228:77, 106, 110, eff. July 1, 1996. 1998, 63:1, eff. July 11, 1998.

TITLE 50
Water Management And Protection

CHAPTER 485A
Water Pollution and Waste Disposal

Classification of Waters

SECTION 485-A:11

§ 485-A:11 Public Waters Classified. – All lakes and ponds defined as public waters of the state by RSA 271:20 and 21 shall be classified by the passage of this section as not less than Class B, as set forth in RSA 485-A:8 relating to standards for classification of surface waters of the state.

Source. 1989, 339:1, eff. Jan. 1, 1990.

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