

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-Wq 2200 VOLUNTARY CERTIFIED SALT APPLICATOR PROGRAM

Statutory Authority: RSA 489-C:3

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CHAPTER Env-Wq 2200 VOLUNTARY CERTIFIED SALT APPLICATOR PROGRAM

Statutory Authority: RSA 489-C:3

PART Env-Wq 2201 PURPOSE AND APPLICABILITY

Env-Wq 2201.01 Purpose. The purpose of these rules is to implement the voluntary salt applicator certification program established in RSA 489-C.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2201.02 Applicability. These rules shall apply to any commercial applicator, as defined in RSA 489-C:1, II, who elects to obtain the certification authorized by RSA 489-C:2.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

PART Env-Wq 2202 DEFINITIONS

Env-Wq 2202.01 “Apply salt” means “apply salt” as defined in RSA 489-C:1, I, as reprinted in Appendix B.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2202.02 “Approved provider” means an organization that has been approved by the department pursuant to Env-Wq 2207.02 to offer the course work and field work necessary for an individual to become knowledgeable in the areas identified in Env Wq 2204.01.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2202.03 “Commercial applicator” means “commercial applicator” as defined in RSA 489-C:1, II, as reprinted in Appendix B.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2202.04 “Department” means the department of environmental services.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2202.05 “Green SnowPro program” means the salt application education program offered by the university of New Hampshire technology transfer center (UNH T<sup>2</sup> Center) that focuses on efficient and environmentally-friendly winter maintenance practices and the basics of reducing salt use.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2202.06 “Individual certificate” means a certification earned by an individual based on course work as described in this chapter.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2202.07 “Master certificate” means a certification issued to the owner or chief supervisor of a business that employs multiple commercial applicators, as described in RSA 489-C:2.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2202.08 “Salt” means “salt” as defined in RSA 489-C:1, V, as reprinted in Appendix B.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2202.09 “Salt accounting system” means the online database operated by the UNH T<sup>2</sup> Center for the purposes of tracking annual salt use and the locations of salt application by commercial applicators.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

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Env-Wq 2202.10 “Salt alternative” means “salt alternative” as defined in RSA 489-C:1, VI, as reprinted in Appendix B.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

PART Env-Wq 2203 POLICIES AND GOALS FOR APPLYING SALT

Env-Wq 2203.01 Salt Application Policy. It is the policy of the state of New Hampshire that road salt is applied efficiently, such that the least amount of salt is used to ensure safe conditions on surfaces traveled by pedestrians and vehicles in winter conditions.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2203.02 Salt Application Goals. The goals of the certified salt applicator program are:

(a) To have salt use by commercial applicators, as measured in tons of salt per acre per year, decline over time while maintaining safe conditions for pedestrians and vehicles in winter conditions; and

(b) To have commercial salt applicators track their salt use and provide information annually to the salt accounting system.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

PART Env-Wq 2204 CERTIFICATION OF COMMERCIAL APPLICATORS

Env-Wq 2204.01 Qualifications for Initial Certification. To qualify for certification under RSA 489-C:2 and this chapter, an individual shall be knowledgeable in the following areas:

(a) The chemical properties of salt with respect to its ability to melt snow under ambient conditions, including but not limited to pavement temperature, air temperature, and dew point;

(b) Calibration of salt spreading equipment;

(c) Calculation of salt application rates;

(d) Proper use of salt brine for anti-icing;

(e) Proper use of salt brine and other liquids for pre-wetting salt; and

(f) Best management practices for salt application as published by the department and the department of transportation.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2204.02 Application for Initial Certification. Subject to Env-Wq 2204.07, any individual wishing to be certified shall submit to the department the following:

(a) A completed application form that contains the information specified in Env-Wq 2204.03 and is signed as specified in Env-Wq 2204.04; and

(b) Confirmation from an approved provider that the applicant has met all course requirements for certification under this program.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2204.03 Information Required for Initial Certification. The applicant shall provide the following as required by Env-Wq 2204.02(a):

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- (a) As required by RSA 489-C:4, I, the full name and address of the person applying for the certification;
- (b) As required by RSA 489-C:4, II, the name and address of a person whose domicile is in the state and who is authorized to receive and accept service of summons and legal notices of all kinds for the applicant;
- (c) The applicant's mailing address, if different from the address provided pursuant to (a)(1), above, and daytime telephone number and email address, if available;
- (d) The name, address, and daytime telephone number of the salt application business with which the applicant is affiliated;
- (e) Whether the applicant owns, is employed by, or contracts with the business identified pursuant to (b), above, and whether the applicant is seeking a master certificate or an individual certificate; and
- (f) As required by RSA 489-C:4, III, identification of each type of apparatus that is or will be used by the applicant to apply salt or salt alternative and, for each, whether the salt or salt alternative is liquid or dry when applied.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2204.04 Signature Required.

- (a) The applicant for initial or renewal certification shall sign and date the application form.
- (b) The applicant's signature shall constitute certification that:
  - (1) The information provided on or with the application form, as applicable, is true, complete, and not misleading to the best of the applicant's knowledge; and
  - (2) The applicant understands that:
    - a. The submission of false, incomplete, or misleading information is grounds for denying the application or revoking any certification that is issued based on the information; and
    - b. That he or she is subject to penalties specified in RSA 641:3, as reprinted in Appendix C, for making unsworn false statements.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2204.05 Issuance of Certificate.

- (a) Within 10 working days of receiving a complete application as specified in Env-Wq 2204.02, the department shall determine whether the submitted information demonstrates that the applicant meets the requirements for becoming a certified salt applicator specified in this part.
- (b) If the department determines that the applicant meets the requirements and is seeking an individual certificate, the department shall issue a certificate that identifies the individual as a certified salt applicator under RSA 489-C.
- (c) If the department determines that the applicant meets the requirements and is seeking a master certificate, the department shall issue a master certificate that identifies the individual as a certified salt applicator under RSA 489-C who is required by RSA 489-C:2 to:
  - (1) Ensure that all commercial applicators operating under the master certificate receive the required training; and

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(2) Provide the required recordkeeping on behalf of all commercial applicators operating under the master certificate.

(d) A certificate issued under (b) or (c), above, shall be valid from the date of issuance through June 30 of the following year, unless revoked pursuant to Env-Wq 2206.

(e) If the department determines that an applicant does not meet the requirements for certification, the department shall send a written notice to the applicant that:

- (1) Specifies the reason(s) why the applicant was not certified; and
- (2) Informs the applicant that an appeal may be taken as provided in RSA 21-O:14.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2204.06 Certification Renewal; Continuing Education Required.

(a) To apply for renewal, a certified salt applicator shall submit the following to the department no later than June 15 of the year of expiration:

- (1) A completed application form that contains the information specified in Env-Wq 2204.03 and has been signed as specified in Env-Wq 2204.04;
- (2) Documentation that the applicant has completed, within the previous 2 years, not less than 2 hours of instruction from an approved provider in one or more of the areas identified in Env-Wq 2204.01; and
- (3) A statement that the applicant currently holds a valid certification as a salt applicator and has not acted or failed to act in any way that would constitute just cause to revoke the certification.

(b) Within 10 working days of receiving a complete application for renewal as specified in (a), above, the department shall determine whether the information submitted demonstrates that the applicant:

- (1) Currently holds a valid certificate as a salt applicator;
- (2) Has filed all required reports; and
- (3) Has not acted or failed to act in any way that would constitute just cause to revoke the certification.

(c) If the department determines that the applicant meets the requirements for certification renewal and is seeking an individual certificate, the department shall send an individual certificate to the applicant that identifies the applicant as a certified salt applicator.

(d) If the department determines that the applicant meets the requirements for certification renewal and is seeking a master certificate, the department shall send a master certificate that identifies the individual as a certified salt applicator who is required by RSA 489-C:2 to:

- (1) Ensure that all commercial applicators operating under the master certificate receive the required training; and
- (2) Provide the required recordkeeping on behalf of all commercial applicators operating under the master certificate.

(e) A certificate issued under (c) or (d), above, shall be valid from July 1 of the year of issue through June 30 of the following year, unless revoked pursuant to Env-Wq 2206.

(f) If the department determines that the applicant does not meet the requirements for certification renewal, the department shall send a written notice to the applicant that:

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- (1) Specifies the reason(s) why the applicant's certification was not renewed; and
- (2) Informs the individual that an appeal may be taken as provided in RSA 21-O:14.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2204.07 Initial Certification of Certified "Green SnowPro" Applicators.

(a) Any individual certified under the Green SnowPro program within 2 years prior to the 2013 effective date of these rules shall qualify for initial certification under this chapter by submitting a copy of his or her Green SnowPro certificate.

(b) Within 10 working days of receiving a Green SnowPro certificate, the department shall confirm the authenticity of the certificate with the UNH T<sup>2</sup> Center.

(c) If the department determines that the Green SnowPro certificate is authentic and the individual is seeking an individual certificate, the department shall issue a certificate that identifies the individual as a certified salt applicator under RSA 489-C.

(d) If the department determines that the Green SnowPro certificate is authentic and the individual is seeking a master certificate, the department shall issue a master certificate that identifies the individual as a certified salt applicator under RSA 489-C who is required by RSA 489-C:2 to:

- (1) Ensure that all commercial applicators operating under the master certificate receive the required training; and
- (2) Provide the required recordkeeping on behalf of all commercial applicators operating under the master certificate.

(e) A certificate issued under (b) or (c), above, shall be valid from the date of issuance through June 30 of the following year, unless revoked pursuant to Env-Wq 2206.

(f) If the department determines that an applicant does not meet the requirements for certification, the department shall send a written notice to the applicant that:

- (1) Specifies the reason(s) why the applicant was not certified; and
- (2) Informs the applicant that an appeal may be taken as provided in RSA 21-O:14.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

PART Env-Wq 2205 OBLIGATIONS OF CERTIFIED SALT APPLICATORS

Env-Wq 2205.01 Recordkeeping Required.

(a) A certified salt applicator shall keep, for a period of 3 years, a written record for each event requiring de-icing that includes the following:

- (1) The type and rate of application of de-icing materials used;
- (2) The date(s) of treatment; and
- (3) The weather conditions for the event.

(b) As specified in RSA 508:22, II, the records maintained as stated in (a), above, are required in order to qualify for liability protection under RSA 508:22, I.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

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Env-Wq 2205.02 Annual Reporting Required.

(a) Certified applicators shall report the information specified in (b), below, to the salt accounting system no later than June 1 of each year.

(b) The information required to be reported by (a), above, shall describe salt usage during the preceding winter as follows:

- (1) The total amount of salt used, in tons of solid salt and gallons of salt brine;
- (2) The towns in which salt was applied and the number of acres of paved surface maintained within each town; and
- (3) The type and amount of each salt alternative used.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2205.03 Best Management Practices. As specified in RSA 508:22, I, a certified salt applicator who adopts the best management practices for winter road, parking lot, and sidewalk maintenance adopted and published by the department of transportation and the department of environmental services shall be presumed to be acting pursuant to those best management practices in the absence of proof to the contrary.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

PART Env-Wq 2206 REVOCATION OF CERTIFICATION

Env-Wq 2206.01 Revocation of Certificate. If after issuing an initial or renewal certificate the department receives reliable information suggesting that just cause, as specified in Env-Wq 2206.02, exists to revoke the certification, the department shall proceed in accordance with RSA 541-A:30 and the provisions of Env-C 200 that apply to adjudicative proceedings.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2206.02 Acts Justifying Revocation. Just cause to revoke a certificate shall include the following:

- (a) Submitting false or misleading information regarding any application for initial or renewal certification;
- (b) Failing to submit annual reports as required by Env-Wq 2205.02;
- (c) Obtaining certification through fraud, deceit, or intentional falsification; and
- (d) Failing to use reasonable care, judgment, and application of his/her knowledge in performance of his/her duties.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

PART Env-Wq 2207 DESIGNATION AS APPROVED PROVIDER

Env-Wq 2207.01 Application for Approved Provider. An organization that wishes to become an approved provider shall apply by submitting the following in writing to the department:

- (a) A description of the organization, including:
  - (1) The organization's name, mailing address, and daytime telephone number; and

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(2) If the organization is required by RSA 292, RSA 293, RSA 293-A, or other applicable provision of New Hampshire law to register with the New Hampshire secretary of state, proof of being registered and in good standing to do business in New Hampshire.

(b) The name, mailing address, daytime telephone number, and email address of an individual at the organization who can be contacting regarding application;

(c) A list of courses to be offered; and

(d) A complete description of each course for which the organization is seeking approval, including:

(1) The name of the course;

(2) The name and qualifications of each individual who will present the course;

(3) The length of time attendees of the course will be under direct supervision of the instructor;

(4) A syllabus for the course and the written materials to be used in the course;

(5) The method to be used to evaluate attendees at the conclusion of the course; and

(6) The format the organization will use to provide the documentation required by Env-Wq 2204.02(d) and 2204.04(b)(3).

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2207.02 Designation of Approved Provider. The department shall designate an organization as an approved provider for the proposed curriculum if the information submitted demonstrates that the curriculum will impart the information necessary for attendees to become knowledgeable in the areas identified in Env-Wq 2204.01.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

Env-Wq 2207.03 Designation By Rule of Green SnowPro Program. The UNH T<sup>2</sup> Center is hereby designated an approved provider for the Green SnowPro program in use as of September 1, 2013.

Source. #10447, INTERIM, eff 11-1-13, EXPIRES: 4-30-14

**Appendix A: Statutes Implemented**

<b>Rule Section(s)</b>	<b>State Statute(s) Implemented</b>
Env-Wq 2200 (also see additional statute for specific part below)	RSA 489-C:2
Env-Wq 2206	RSA 541-A:30, II

**Appendix B: RSA 489-C**

**RSA 489-C Salt Applicator Certification Option**

**RSA 489-C:1 Definitions.** In this chapter:

- I. “Apply salt” means to apply salt or a salt alternative to roadways, parking lots, or sidewalks for the purpose of winter maintenance.
- II. “Commercial applicator” means any individual who applies or supervises others who apply salt, but shall not include municipal or state employees.
- III. “Commissioner” means the commissioner of the department of environmental services.
- IV. “Department” means the department of environmental services.
- V. “Salt” means sodium chloride, calcium chloride, magnesium chloride, or any other substance containing chloride.
- VI. “Salt alternative” means any substance not containing chloride used for the purpose of de-icing or anti-icing.

**RSA 489-C:2 Certification Option.** Commercial applicators may elect to be annually certified by the department. Applicator certificates shall be issued by the department. Any business that employs multiple commercial applicators may obtain a master certificate for the owner or chief supervisor, and commercial applicators employed by the business may obtain certificates to qualify under the master certificate. Any business holding a master certificate shall ensure that all commercial applicators operating under its master certificate receive the required training and shall provide the required recordkeeping on behalf of all commercial applicators. Annual fees for certificates obtained under a master certificate shall be significantly less than the fees for a master certificate.

**RSA 489-C:3 Rulemaking Authority.** The commissioner shall adopt rules pursuant to RSA 541-A, relative to:

- I. Policies and goals for applying salt.
- II. Receiving and allocating federal grants and other funds or gifts for the purpose of carrying out any of the provisions of this chapter.
- III. The types and frequency of training programs required for certification.
- IV. Procedures for commercial applicators to obtain certification.
- V. Recordkeeping required for commercial applicators to maintain certification.

**RSA 489-C:4 Application for Certification.** Applications for certification shall be on a form prescribed by the department and shall include the following:

- I. The full name and address of the person applying for the certification.
- II. The name and address of a person whose domicile is in the state, and who is authorized to receive and accept service of summons and legal notices of all kinds for the applicant.
- III. The type of apparatus used to apply salt or salt alternative whether liquid or dry.
- IV. Any other information deemed necessary by the department.

**RSA 489-C:5 Administration and Enforcement.**

- I. The commissioner shall administer and enforce the provisions of this chapter.
- II. The department may issue an order to any person who is in violation of any provision of this chapter, an applicator certificate issued under this chapter, or a rule adopted under this chapter, to cease and desist from any act in violation of such provision, certification, or rule. Orders of the department under this section shall be effective immediately.
- III. The commissioner, after notice and hearing pursuant to RSA 541-A, may revoke the certification of any person who violates this chapter. Rehearings and appeals relating to revocation shall be governed by RSA 541.

**Appendix C: Other Relevant Statutes**

**RSA 508:22 New Section; Liability Limited for Winter Maintenance.**

I. No commercial applicator as defined in RSA 489-C:1, II and certified under RSA 489-C:2, or owner, occupant, or lessee of land whose premises is maintained by a commercial applicator certified under RSA 489-C:2, shall be liable for damages arising from insufficiencies or hazards on any premises owned, occupied, maintained, or operated by them, even with actual notice thereof, when such hazards are caused solely by snow or ice, and the commercial applicator's, owner's, occupant's, or lessee's failure or delay in removing or mitigating such hazards is the result of its implementation, absent gross negligence or reckless disregard of the hazard, of best management practices for winter road, parking lot, and sidewalk maintenance adopted and published by the department of transportation and the department of environmental services. All commercial applicators, owners, occupants, or lessees who adopt such best management practices shall be presumed to be acting pursuant to the best management practices in the absence of proof to the contrary.

II. In order to receive the liability protection provided in paragraph I, a commercial applicator as defined in RSA 489-C:1, II, or an owner, occupant, or lessee of land shall keep a written record describing its winter road, parking lot and property maintenance practices. The written record shall include the type and rate of application of de-icing materials used, the dates of treatment, and the weather conditions for each event requiring de-icing. Such records shall be kept for a period of 3 years.

**RSA 641:3 Unsworn Falsification.** – A person is guilty of a misdemeanor if:

I. He or she makes a written or electronic false statement which he or she does not believe to be true, on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

II. With a purpose to deceive a public servant in the performance of his or her official function, he or she:

- (a) Makes any written or electronic false statement which he or she does not believe to be true; or
- (b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or
- (c) Submits or invites reliance on any writing which he or she knows to be lacking in authenticity; or
- (d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he or she knows to be false.

III. No person shall be guilty under this section if he or she retracts the falsification before it becomes manifest that the falsification was or would be exposed.