

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

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CHAPTER Env-Wr 700 LAKE LEVEL DETERMINATIONS

PART Env-Wr 701 PURPOSE AND APPLICABILITY

Env-Wr 701.01 Purpose. The purpose of the rules in this chapter is to specify the procedures to be followed when a lake level investigation is conducted pursuant to RSA 482:79.

Source. #4278, eff 6-30-87; ss by #5662, eff 7-1-93,
EXPIRED: 7-1-99

New. #8414, eff 8-20-05; ss by #10510, eff 1-22-14

Env-Wr 701.02 Applicability. The requirements of this chapter shall apply to any lake level investigation initiated pursuant to RSA 482:79.

Source. #4278, eff 6-30-87; ss by #5662, eff 7-1-93,
EXPIRED: 7-1-99

New. #8414, eff 8-20-05; ss by #10510, eff 1-22-14

PART Env-Wr 702 REQUEST; PRELIMINARY INVESTIGATION

Env-Wr 702.01 Formal Request.

(a) A request for a lake level investigation pursuant to RSA 482:79 shall be:

- (1) In writing; and
- (2) Mailed or delivered to the department at the following address:

Lake Level Determination Request
Department of Environmental Services
Water Division
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

(b) The request shall state clearly the reason(s) for the request.

(c) The request shall be signed by at least 10 property owners whose land abuts the water body whose water level is the subject of the request.

Source. #4278, eff 6-30-87; ss by #5662, eff 7-1-93,
EXPIRED: 7-1-99

New. #8414, eff 8-20-05 (formerly Env-Wr 401.01); ss by
#10510, eff 1-22-14

Env-Wr 702.02 Preliminary Investigation.

(a) As required by RSA 482:79, the department shall commence a preliminary investigation of conditions affecting the use and enjoyment of a water body under any of the following circumstances:

- (1) Upon receipt of a request per Env-Wr 702.01;
- (2) Upon request of the New Hampshire attorney general; or

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- (3) On its own motion, when information received by the department warrants further investigation.
- (b) The department shall investigate:
 - (1) The current and past management and control of the outlet; and
 - (2) The effects, if any, of such management and control on:
 - a. The use and enjoyment of shore property above the outlet;
 - b. Any riparian rights below the outlet; and
 - c. The use and enjoyment of the waters above and below the outlet by the public and by owners of littoral or riparian property.
- (c) Based upon the preliminary investigation, the department shall determine whether the management and control of the outlet is having a serious and adverse effect on any of the factors identified in (b)(2), above.
- (d) For purposes of the determination in (c), above, a “serious and adverse effect” means an impact that has a reasonable likelihood of interfering with the use and enjoyment of littoral or riparian property or public waters by:

- (1) Eroding shorelines above or below the outlet;
- (2) Flowing property that is not covered by a flowage easement;
- (3) Interfering with access to the waters above or below the outlet;
- (4) Causing the waters above or below the outlet to be unsuitable for navigation or recreation;
- (5) Causing harm to aquatic or land-based habitat; or
- (6) Any combination of (1) through (5), above.

Source. #4278, eff 6-30-87; ss by #5662, eff 7-1-93,
EXPIRED: 7-1-99

New. #8414, eff 8-20-05 (formerly Env-Wr 401.02); ss by
#10510, eff 1-22-14

PART Env-Wr 703 FURTHER INVESTIGATIONS; PUBLIC HEARING

Env-Wr 703.01 Further Investigation and Public Hearing.

- (a) If the department finds a serious and adverse effect under Env-Wr 702.02(c) and (d), the department shall conduct a further investigation.
- (b) If the department determines that a public hearing to receive information would be helpful to its further investigation, the department shall schedule and conduct the public hearing in accordance with Env-C 200 relative to non-adjudicative procedures.

Source. #4278, eff 6-30-87; ss by #5662, eff 7-1-93,
EXPIRED: 7-1-99

New. #8414, eff 8-20-05 (formerly Env-Wr 401.03); ss by
#10510, eff 1-22-14

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Env-Wr 703.02 Determinations. Based on the further investigation, the department shall:

(a) Ascertain the rights of the owner of the outlet by considering whether:

- (1) The dam is registered with the department;
- (2) Flowage is within any clear deeded flowage limits;
- (3) Base flows are sufficient to accommodate downstream riparian rights;
- (4) The operation is in accordance with any deeded rights associated with the former mill dam act, RSA 482:17 through RSA 482:41, if applicable; and
- (5) Any other factors that are within the jurisdiction of the department under RSA 482 have been identified by the owner as affecting the rights of the owner.

(b) Ascertain the rights of the public and owners of property above and below the outlet, by considering the following:

- (1) Whether there is public access to the impoundment or the stream below the outlet via a government-owned access point;
- (2) The extent to which the impoundment or the stream below the outlet is used for fishing, including whether the impoundment is stocked by the New Hampshire fish and game department;
- (3) What range of water levels is optimum for the ecological health of the impoundment and the stream below the outlet;
- (4) The extent to which the impoundment or the stream below the outlet is used for navigation and what range of water levels is optimum for such navigation;
- (5) The extent to which the impoundment or the stream below the outlet is used for swimming and what range of water levels is optimum for swimming; and
- (6) The extent to which the impoundment or the stream below the outlet is used for other recreation and range of what water levels is optimum for such other recreation.

(c) In making its determination, the department shall consider all information and testimony presented as part of the proceeding.

Source. #4278, eff 6-30-87; ss by #5662, eff 7-1-93,
EXPIRED: 7-1-99

New. #8414, eff 8-20-05 (formerly Env-Wr 401.03); ss by
#10510, eff 1-22-14

PART Env-Wr 704 FINDINGS; DECISION

Env-Wr 704.01 Findings. After completing its further investigation in accordance with Env-Wr 703, the department shall prepare written findings regarding whether:

(a) The management and control of the outlet is adversely affecting the rights of owners of property above the outlet by eroding shorelines, flowing property not covered by a flowage easement, preventing access to property that is accessible only by boat, or interfering with the use and enjoyment of the water for recreational purposes, including boating, swimming, and fishing;

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(b) The management and control of the outlet is adversely affecting the rights of owners of property below the outlet by eroding shorelines, releasing insufficient water for reasonable riparian uses, or interfering with the use and enjoyment of the water for recreational purposes, including boating, swimming, and fishing;

(c) The management and control of the outlet is adversely affecting the rights of the public to use public waters for navigation or recreational purposes, including boating, swimming and fishing;

(d) The management and control of the outlet is lawful;

(e) The benefits of the current management and control of the outlet outweigh any adverse effects that may be occurring;

(f) Changes to the management and control of the outlet would be of benefit to the public and private interests concerned; and

(g) Changes in the management and control of the outlet to benefit the use and enjoyment of the waters above or below the outlet by the public or by owners of property above or below the outlet would deprive the owner of the outlet or others of rights to which they are lawfully entitled.

Source. #4278, eff 6-30-87; ss by #5662, eff 7-1-93,
EXPIRED: 7-1-99

New. #8414, eff 8-20-05 (formerly Env-Wr 401.04); ss by
#10510, eff 1-22-14

Env-Wr 704.02 Report of Findings; Decision. Based upon its findings, the department shall:

(a) Order no change in the management and control of the outlet if it finds that:

(1) The benefits of the present management and control of the outlet outweigh any adverse effects on the public and on owners of property above or below the outlet; and

(2) Changes in the management and control of the outlet would not be expected to produce benefits that:

a. Are greater than those resulting from the present management; and

b. Would outweigh any adverse effects of the changes;

(b) Order changes in the management and control of the outlet if the benefits expected from the change are:

(1) Greater than the benefits from the present management and control of the outlet; and

(2) Expected to outweigh any adverse effects of the changed management and control of the outlet;

(c) Report to the governor and council its findings, including an estimate of damages, if it finds that changes in the management and control would be of benefit to the public and private interests concerned but would deprive the owner of the outlet or others of rights to which they are lawfully entitled; or

(d) Report to the attorney general if the management and control of the outlet is unlawful.

Source. #4278, eff 6-30-87; ss by #5662, eff 7-1-93,
EXPIRED: 7-1-99

New. #8414, eff 8-20-05 (formerly Env-Wr 401.05); ss by
#10510, eff 1-22-14

Appendix A: Statutes Implemented

Rule Section(s)	State Statute(s) Implemented
Env-Wr 700	RSA 482:1; RSA 482:4; RSA 482:79-83; RSA 482:87

[No Appendix B in this chapter]

Appendix C: Statutory Definitions

RSA 482:2

I. “Classification of a dam” means the potential hazard classification placed on a dam by the department based on the potential threat to life and the potential extent of property damage in the event of accidental damage to, or failure of, the dam structure. The classifications shall be “non-menace,” “low hazard potential,” “significant hazard potential,” or “high hazard potential.”

II. (a) “Dam” means any artificial barrier, including appurtenant works, which impounds or diverts water and which has a height of 6 feet or more, or is located at the outlet of a great pond. A roadway culvert shall not be considered a dam if its invert is at the natural bed of the water course, it has adequate discharge capacity, and it does not impound water under normal circumstances. Artificial barriers which create surface impoundments for liquid industrial or liquid commercial wastes, septage, or sewage, regardless of height or storage capacity, shall be considered dams.

(b) An artificial barrier at a storm water detention basin, which impounds 0.5 acre-foot or less of water during normal conditions, shall not be considered a dam unless its height is 10 feet or greater or its maximum storage is 6 acre-feet or greater.

V. “Dam in disrepair” means a dam which is a menace to public safety and is incapable of safely impounding flood waters to its crest, or is incapable of maintaining a reasonably constant level of waters impounded, or is one which does not contain adequate gates and sluiceways to provide for the holding or controlled discharge of waters impounded.

VI. “Emergency action plan” means a written document delineating a prescribed sequence of actions to be taken by a dam owner to inform the authorities and others downstream of an impending or actual sudden release of water caused by an accident to, or failure of, the dam. This plan shall be developed in consultation with local officials and notification of the plan shall be given to the general public who would be affected by a sudden release of water caused by an accident or other failure of the dam. The plan shall be kept on file with the local emergency management director and other local officials as deemed appropriate by the department.

VII. “Mills” shall include both manufacturing plants and plants at which electric power is generated for public distribution or for the operation of mills, railroads or public utilities.

VIII. “Person” means any individual, partnership, association, corporation, company, organization or legal entity of any kind.

X. “Reconstruction” means:

- (a) A change in the height, length, or discharge capacity of the structure;
- (b) Restoring a breached dam or one in ruins;
- (c) Modification of flashboards which either increases their height or increases the headwater elevation at which the flashboards will fail; or
- (d) A change in the structural configuration of a dam.